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Filing Date - 2024-04-15 01:51:41 PM

Control Number - 55338

Item Number - 75

**SOAH DOCKET NO. 473-24-07154
PUC DOCKET NO. 55338**

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

**AMERICANS FOR AFFORDABLE CLEAN ENERGY'S
INITIAL BRIEF**

APRIL 15, 2024

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COMES NOW, Americans for Affordable Clean Energy (AACE), and files this Initial Brief in the above-styled and numbered docket. Pursuant to SOAH Order No. 3, this brief is timely filed.¹ In support thereof, AACE shows the following:

AACE is a non-profit organization whose members consist of owners and operators of convenience stores, public travel center facilities, and truck stops that provide retail fuel supply as well as other services at existing locations in Texas and across the United States. AACE’s members have an interest in installing, owning, and operating electric vehicle (EV) charging stations in Texas. More importantly, AACE’s goal is to work with state policymakers to create a robust marketplace for EV fast charging in Texas. AACE supports the Public Utility Commission of Texas’ (Commission) approval of both the Transportation Electrification and Charging Infrastructure (TECI) Rider and the Transportation Electrification and Charging Demand Adjustment (TECDA) Rider.

I. INTRODUCTION

On July 1, 2022, Entergy Texas, Inc. (ETI) filed its Application for Authority to Change Rates with the Commission.² The Application included two Riders, the TECI Rider and the TECDA Rider which deal with distinct aspects of the EV infrastructure and market. On December 1, 2022, two issues relating to EV charging, Issues No. 68 and 69, were severed from the hearing and instead decided on written submission.³ The ALJ filed a Proposal for Decision (PFD) on

¹ SOAH Order No. 3 – Adoption Procedural Schedule; Setting Hearing on the Merits; and Adopting Hearing Procedures (Jan. 18, 2024).

² *Application of Entergy Texas, Inc. for Authority to Change Rates*, Docket No. 53719, ETI’s Statement of Intent and Application for Authority to Change Rates (Jul. 1, 2022).

³ Docket No. 53719, SOAH Order No. 11 – Memorializing Prehearing Conference and Motions to Consolidate (Dec. 1, 2022).

June 19, 2023.⁴ Between the dates the Application was submitted and the PFD was filed, the Legislature passed Senate Bill (SB) 1002. SB 1002 created a new chapter, Chapter 42, of the Public Utility Regulatory Act (PURA) that addresses EV charging facilities and establishes a framework for related issues.⁵ As noted by the ALJ in the PFD, SB 1002 specifically “provides conditions on how electric utilities operating outside of and within ERCOT may provide EV charging service directly to customers, including authorizing the ownership of EV charging facilities and EV-related infrastructure equipment.”⁶ After the PFD was filed, the parties to the proceeding filed an unopposed agreement that addressed all issues in the preliminary order except for Issues Nos. 68 and 69, and the TECI and TECDA Rider. On August 16, 2023, the Commission ordered that Issues Nos. 68 and 69 be severed from Docket No. 53719 and placed into the new Docket No. 55338, *Proceeding to Resolve Issues in Docket No. 53719 Related to Transportation Electrification and Charging Infrastructure*.⁷

ETI filed Supplemental Direct Testimony detailing the modifications it made to the proposed Riders pursuant to SB 1002 in this proceeding. The Hearing on the Merits was held on April 5, 2024. AACE participated in the Hearing on the Merits and now submits this Initial Brief for the ALJ’s consideration.

III. CONTESTED ISSUES

TECI RIDER

Pursuant to the passing of SB 1002, codified at PURA Chapter 42, ETI altered its proposed TECI Rider to comply with the new PURA Chapter 42 by: 1) removing language that allowed ETI’s branding on any customer-owned EV charging stations;⁸ 2) clarifying that any replacements, modifications, and/or additions to the transportation electrification infrastructure will be subject to a new agreement and such related costs will be added to each TECI Rider customers’ monthly bill as a fixed payment;⁹ and 3) revising language in the Other Provisions section of the tariff to clarify that the total installed cost of transportation electrification and charging infrastructure is subject to

⁴ Docket No. 53719, SOAH Proposal for Decision (PFD) with Memorandum (Jun. 19, 2023) (SOAH PFD).

⁵ Docket No. 53719, SOAH PFD at 16.

⁶ *Id.*

⁷ Docket No. 53719, Order Severing Issues (Aug. 16, 2023).

⁸ Supplemental Direct Testimony of Samantha Hill, ETI Ex. 95 at Bates 10-11.

⁹ *Id.* at Bates 10.

applicable adjustment for additional revenues projected to be received by ETI to ensure that the Other Provisions section is read consistently with the Net Monthly Bill associated with the Rider.¹⁰

ETI's modifications bring the proposed TECI Rider into compliance with the requirements of SB 1002, codified in PURA Chapter 42. ETI's initial proposed TECI Rider Agreement allowed for ETI's brand to be on the EV charging station pursuant to ETI's consent.¹¹ As initially proposed, the portion of the Rider allowing branding was in direct violation of PURA § 42.0103(o)(1) which forbids a utility from placing branding or marketing on public EV charging stations as owned or operated by the utility. To comply with PURA Chapter 42's ban of an electric utility's branding on EV charging stations, ETI removed the language that would allow ETI's brand to be placed on the EV charging station pursuant to ETI's consent.¹² The modified TECI Rider Agreement now completely disallows the use of ETI's brand on any of the EV charging stations in compliance with PURA § 42.0103(o)(1).

Additionally, PURA § 42.0103(o)(3) requires that "the person 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." Pursuant to this section, ETI added language to further clarify that any replacements, modifications, and/or additions to the transportation electrification infrastructure will be subject to a new agreement and such related costs will be added to each TECI Rider customers' monthly bill as a fixed payment. Adding clarifying language that the TECI Rider customer pays for their costs, including replacement, modifications, and/or additions, further implements the requirements under PURA § 42.0103(o)(3), but also indicates to non-TECI Rider customers that costs related to ETI's TECI Rider investments will be covered by an Agreement with ETI and no cost associated with ETI's investment will be imposed on the non-TECI Rider customers.¹³

Lastly, ETI revised the Other Provisions section of the TECI Rider to comply with PURA § 42.0103(o)(3) which requires the site host to pay an electric utility's costs for the EV charging stations, but also requires the electric utility to account for the incremental revenues associated

¹⁰ *Id.*

¹¹ ETI Ex. 95 at Bates 24, Exhibit SFH-S-2 at 5.

¹² *Id.*

¹³ ETI Ex. 95 at Bates 10.

with the EV charging service paid by the site host to the utility. ETI changed the Other Provisions section to clarify that the total installed cost of TE and charging infrastructure may be adjusted for additional revenues projected to be received by ETI.¹⁴ This change is in compliance with PURA Chapter 42 and also ensures that the section is read consistent with the calculation of the TECI Rider's Net Monthly Bill.¹⁵ This clarification further establishes that ETI is not over collecting or double charging TECI Rider customers.

AACE appreciates ETI's efforts to make modifications to its proposed TECI Rider, as described above, for consistency with SB 1002. Based upon ETI's revisions, 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.

Additionally, it is worth noting that although Chapter 42 allows for electric utilities to construct, own, and maintain transportation electrification infrastructure, it puts parameters on such ownership, affirming the continued protection of the competitive market from monopoly encroachment, which illustrates the Legislature's support for private investment and participation in this competitive market. This continued support for protection of the competitive market is shown in PURA § 42.0101(a), "[t]he legislature finds that it is in the best interests of this state to continue the long-standing policy of supporting private sector investment in infrastructure by establishing a framework to encourage competitive private sector investment in the deployment of public electric vehicle charging stations." (emphasis added).

Commission Staff witness William B. Abbott maintains his position from Docket 53719, before SB 1002 was passed, that ETI should not be allowed to own transportation electrification and charging infrastructure – including vehicle charging facilities – in the manner it has proposed.¹⁶ Mr. Abbott maintains this position based on PURA's explicit support for limiting monopoly encroachment into the competitive market of EV charging and the continued presence of competitive EV charging providers operating within ETI's service territory.¹⁷ Instead of the TECI Rider, Mr. Abbott proposes that if ETI is to own transportation electrification infrastructure,

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at Bates 9; *see also* Direct Testimony of William B. Abbott, PUC Staff Exhibit No. 4 at 7.

¹⁷ PUC Staff Exhibit No. 4 at 8.

it should establish an EV base rate class with standard EV rates.¹⁸ With the competitive parameters in place, it is not inappropriate for an electric utility, such as ETI, to construct, own, and maintain EV charging infrastructure; nevertheless, AACE finds merit in Mr. Abbott's proposal in the current docket to establish an EV base rate class with standard EV rates.¹⁹ EV charging stations are typically subject to costly demand charges due to the fact that fast charging stations require high levels of capacity to deliver a large amount of electricity in a short period of time. These demand charges are a rate design component that was not developed with EV charging load in mind. Not only do demand charges make charging stations uneconomical, but they are also difficult for businesses to pass onto customers because they are not the actual energy cost to customers and may not be known until the end of the month. These uncertain and high demand charges discourage private investments by making it impossible for private businesses to recover their costs accurately and efficiently. As proposed by Mr. Abbott, an EV base rate class would mitigate some of these demand charges, allow the Commission to ensure that all rates are just and reasonable, and certify that no additional costs related to ETI investing in EV charging infrastructure are being borne by non-EV customers. For these reasons, AACE believes Staff's suggestion to create an EV base rate class has merit and should be considered by the Commission in a future proceeding.

Importantly, AACE's concern lies with the expediency of approval of a path forward and AACE understands that denying the TECI Rider and ordering ETI to create an EV base rate class would delay the support ETI could provide private businesses from installing and using EV charging stations as SB 1002 intended. Thus, AACE encourages the Commission to approve the TECI Rider, and take Staff's proposed EV base rate class into consideration in a future proceeding.

TECDA RIDER

ETI has made no modifications to its proposed TECDA Rider; therefore, AACE maintains its position that the Commission should approve the TECDA Rider to the extent that it could offer demand relief, which would benefit site hosts and encourage investment in EV charging.²⁰ As briefly discussed above, demand charges make it very challenging for private companies to offer electricity to EV drivers at a price that is competitive with gasoline or diesel and are one of the

¹⁸ Supplemental Direct Testimony of William B. Abbott, PUC Staff Exhibit No. 7 at 7.

¹⁹ *Id.* at 14.

²⁰ Docket No. 53719, AACE Initial Brief at 7 (Jan. 13, 2023).

greatest barriers to entry into the EV charging market by private businesses. The TECDA Rider is a reasonable effort to mitigate the inherent barrier that demand charges pose to EV investment. Nevertheless, AACE recommends that the TECDA Rider's limitations be increased in order to allow site hosts full relief from the high demand charges faced when investing in EV charging stations. The proposed TECDA Rider is only applicable to the first five years after initially taking electric service and at 30,000 KW of load.²¹ Applying the proposed demand relief to only the first 30,000 KW of load would not provide for many EV charging sites for private businesses. Many of those businesses would be limited to either the number of chargers in which they could invest, or they would be forced to face sporadic, high demand charges for a portion of their chargers. Additionally, the Commission should extend the limitation beyond five years because relief from high demand charges may still be necessary for site hosts. As ChargePoint has indicated, the sporadic, high demand charges could remain an issue even after five years.²² EV fast charging stations result in high, unpredictable demand charges that sight hosts cannot recover accurately, discouraging private businesses from investing in EV chargers. High demand charges may extend beyond the first five years or 30,000 KW of load.

AACE appreciates the efforts to use limitations to protect non-qualifying TECDA Rider customers from subsidizing costs borne under the Rider. However, an increase in these limitations, further limiting demand charges, would encourage continued investments in EV charging stations by private, unregulated businesses, which would allow for the proliferation of EVs in Texas. Thus, AACE urges the Commission to approve the TECDA Rider with the caveat that ETI increases the limitations currently established the proposed Rider.

IV. CONCLUSION

AACE respectfully urges the Commission to approve the TECI Rider and take Staff's proposed EV base rate class into consideration in a future proceeding, and approve the TECDA Rider with the caveat that ETI increases the limitations currently established the proposed Rider. AACE further requests any additional relief to which it may be entitled.

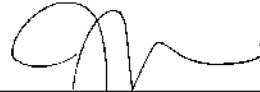
²¹ Rebuttal Testimony and Exhibits of Samantha F. Hill, ETI Ex. 53 at Bates 34.

²² Direct Testimony of Justin D. Wilson, ChargePoint Ex. 1.0 at 20.

Respectfully submitted,

LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.

816 Congress Ave., Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 (Fax)



JAMIE L. MAULDIN
State Bar No. 24065694
jmauldin@lglawfirm.com

SAMANTHA N. MILLER
State Bar No. 24131515
smiller@lglawfirm.com

**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 April 15, 2024 in accordance with Project No. 50664.



JAMIE L. MAULDIN