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

ENTERGY TEXAS, INC.'S INITIAL BRIEF

April 15, 2024

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ENTERGY TEXAS, INC.'S INITIAL BRIEF

I. Introduction and Background

Entergy Texas, Inc. ("ETI") initially proposed the two transportation electrification ("TE") riders under consideration here in its most recent base rate case, Docket No. 53719.[1] While those riders were being reviewed by the Commission, the Texas Legislature stepped in and unequivocally announced the state's policy regarding whether electric utilities may participate in the electric vehicle ("EV") charging market through the passage of Senate Bill 1002 ("SB 1002").[2] The Legislature declared that establishing a "framework to encourage competitive private sector investment in the deployment"[3] of EV charging stations is "essential" to foster their "rapid installation and widespread use"[4] and that "electric utilities . . . and the commission have important roles to fill" in this regard.[5]

One of the ways in which electric utilities, like ETI, can support the proliferation of much-needed EV charging stations is by "entering into an agreement"[6] with a customer "for the utility to own or operate a public electric vehicle charging station" on the customer's property,[7] and charging the customer under a Commission approved tariff.[8] That is precisely what the

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[1] Entergy Texas, Inc.'s Statement of Intent and Application for Authority to Change Rates, ETI Ex. 1 at 7-8.

[2] Act of May 8, 2023, 88th Leg., R.S., 2023 Tex. Sess. Law Serv. Ch. 53 ("SB 1002"). Now codified at Public Utility Regulatory Act ("PURA") § 42.0101 *et seq.*

[3] PURA § 42.0101(a).

[4] *Id.* at § 42.0101(b).

[5] *Id.* at § 42.0101(c).

[6] *Id.* at § 42.0103(o).

[7] *Id.*

[8] *Id.* at § 42.0103(o)(3).

Transportation Electrification and Charging Infrastructure Rider ("TECI Rider")[9] does. Before SB 1002 became effective, the administrative law judge ("ALJ") deferred the threshold question of whether it is "appropriate for ETI to own EV charging facilities and TE charging infrastructure" to the Commission.[10] However, if the Commission determined that such ownership is permissible, the ALJ "recommend[ed] approval of ETI's proposed TECI-1 Rider."[11] Now that SB 1002 is the law, the question is settled – electric utilities may own and operate TE infrastructure. Nothing has changed regarding the "rate related aspect" of the TECI Rider since the PFD's issuance;[12] ETI has only strengthened the rider's language to make even clearer that it will recover "all electric utility-related costs"[13] from the participating customer.[14] As discussed in further detail below, the TECI Rider satisfies every statutory requirement set forth in the new legislation and should be approved.

ETI's other TE rider, the Transportation Electrification and Charging Demand Adjustment Rider ("TECDA Rider") directly supports the State policy clarified in SB 1002, because it would undoubtedly "encourage competitive private sector investment in the deployment of public electric vehicle charging stations"[15] by providing temporary and measured relief from outsized demand charges during the early EV adoption period. This is why nearly every party representing the private sector, including Walmart, Americans for Affordable Clean Energy ("AACE"), ChargePoint, and FlashParking, supports adoption of the TECDA Rider.[16] Over time, as EVs proliferate and charger capacity factors increase, the rider will no longer be necessary and will automatically cease operation. It is intended to provide a bridge to the future of widespread EV adoption, where usage patterns and frequency will be more established. The billing certainty and

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[9] 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 brief, ETI uses TECI and TECDA.

[10] *Application of Entergy Texas, Inc. for Authority to Change Rates*, Docket No. 53719, Proposal for Decision ("PFD") at 17 (Jun. 19, 2023).

[11] *Id.* at 31.

[12] *Id.*

[13] PURA § 42.0103(o)(3).

[14] Supplemental Rebuttal Testimony and Exhibit of Samantha F. Hill, ETI Ex. 96 at 9-10.

[15] PURA § 42.0101(a).

[16] Direct Testimony of Eric S. Austin, Walmart Ex. 1 at 10-13; Docket No. 53719, AACE's Statement of Position at 3-4 (Nov. 30, 2022); Cross-Rebuttal Testimony of Justin D. Wilson, ChargePoint Ex. 4.0 at 15; Direct Testimony of Matthew McCaffree, FlashParking Ex. 1 at 8-9.

demand relief provided by the TECDA Rider will encourage the buildout of new EV charging facilities in ETI's service area, especially in rural areas where chargers are scarce. The TECDA Rider will advance Governor Abbott's goal of helping provide "a way for Texans to easily get from Beaumont to El Paso" in an EV.[17] Because all revenues charged under the TECDA Rider will be incremental, these amounts can only serve to lower rates for all customers. The TECDA Rider should also be approved.

II. Uncontested Issues

A. TECI RIDER

1. 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? (PO Issue No. 2a)

Yes. It is uncontested that, pursuant to the TECI Rider offering, nonresidential ETI customers in good standing will be able to enter an agreement with ETI to own or operate a public EV charging station on the person's property.[18]

2. Will Entergy Texas *not* be providing electric vehicle charging service to the public? (PO Issue No. 2b)

Yes. It is uncontested that, pursuant to the TECI Rider and related agreement, only the customer, if it so chooses, will be providing EV charging service to the public and that ETI will *not* be providing EV charging service to the public.[19]

3. 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? (PO Issue No. 2c)

Yes. It is uncontested that ETI will *not* brand or market any public electric vehicle charging station developed under the TECI Rider as owned or operated by ETI, including by presenting

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[17] *See* Direct Testimony of Jeremiah W. Cunningham, SPS Ex. 1, Attachment JWC-2 at 1 (Bates 35).

[18] Supplemental Direct Testimony and Exhibits of Samantha F. Hill, ETI Ex. 95, Exhibit SFH-S-2 (Bates 20-45); PURA § 42.0103(o).

[19] ETI Ex. 95 at 5-6; PURA § 42.0103(o)(1)(A).

ETI's name, logo, or any other distinguishing mark to indicate that ETI owns or operates the public electric vehicle charging station.[20] ETI made conforming revisions to the TECI agreement to clarify its compliance with this provision of SB 1002.[21]

4. Will the person solely determine the physical access to and use of the public electric vehicle charging station necessary to carry out the responsibilities associated with ownership and operation of the public electric vehicle charging station, and prices for the electric vehicle charging service? (PO Issue No. 2d)

Yes. It is uncontested that a participating TECI customer will solely determine the physical access to and use of the public EV charging station necessary to carry out the responsibilities associated with ownership and operation of the public electric vehicle charging station, and prices for the electric vehicle charging service.[22]

B. TECDA RIDER

1. What are the estimated costs of the TECDA Rider? (PO Issue No. 8)

It is uncontested that there are no estimated costs for the TECDA Rider.[23]

2. Is Entergy Texas proposing to recover these costs in this proceeding? (PO Issue No. 9)

It is uncontested that ETI is not seeking to recover any costs in this proceeding.[24] Rather, ETI is requesting approval of its proposed TECI and TECDA Riders.[25]

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[20] ETI Ex. 95 at 6.

[21] *Id.* at 6, Exhibit SFH-S-2 at 5 (Bates 24); PURA § 42.0103(o)(1)(B).

[22] ETI Ex. 95 at 6-7; PURA §§ 42.0103(o)(2)(A)-(B).

[23] Tr. at 77:25-78:8 (Hill Cross) (Apr. 5, 2024)

[24] *Id.*

[25] ETI Ex. 1 at 7-8.

III. Contested Issues

A. TECI RIDER

1. Do the proposed rates for the TECI Rider comply with the requirements of Chapter 42 of PURA? (PO Issue No. 1)

Yes. As discussed herein, as well as in the Supplemental Direct Testimony of Samantha F. Hill, the TECI Rider complies with Chapter 42 of PURA. The TECI Rider will help foster the rapid deployment of EV charging facilities while supporting competitive private sector investment in this area. The TECI Rider will enable ETI to partner with interested customers and third parties to build out the critical infrastructure and equipment necessary to bolster EV adoption in Texas. While ETI will own and operate the TE infrastructure, it will do so by contracting with competitive third-party providers who have the requisite experience and expertise in the delivery of EV infrastructure and operations and maintenance ("O&M") services.[26] Rather than crowding out or otherwise infringing on the competitive market, ETI has repeatedly committed that it will foster the market's development by facilitating mutually beneficial transactions between ETI customers and competitive EV charging providers.[27]

The win-win nature of the TECI Rider is reflected in the broad support it has received from relevant stakeholders, including competitive EV charging service providers,[28] municipalities,[29] experts in the field,[30] utility and industry associations,[31] environmental groups,[32] and ultimately, the Texas Legislature itself through the passage of specific, enabling legislation. Indeed, the only

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[26] Direct Testimony of Samantha F. Hill, ETI Ex. 40 at 19-22, 24-26.

[27] *Id.*

[28] Direct Testimony of Justin D. Wilson, ChargePoint Ex. 1.0 at 5; Cross-Rebuttal Testimony of Justin D. Wilson, ChargePoint Ex. 4.0 at 14-15; Direct Testimony of Matthew McCaffree, FlashParking Ex. 1 at 6-7.

[29] 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).

[30] Docket No. 53719, Letter from Reg Pecen, Ph.D., Quanta Endowed Professor at 1-2 (Feb. 27, 2023).

[31] SPS Ex. 1 at 8-9; Cross-Rebuttal of Jeremiah W. Cunningham, SPS Ex. 2 at 5-7; Docket No. 53719, Southwestern Electric Power Company Letter at 1 (Jan. 27, 2023); Docket No. 53719, El Paso Electric Company's Statement of Position at 1 (Oct. 26, 2022); 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); Docket No. 53719, Alliance for Transportation Electrification Comments at 1 (Nov. 18, 2022).

[32] 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).

opposition testimony filed against the TECI Rider in this proceeding was provided by Commission Staff witness William Abbott, who admitted that his opinions were based solely on what was filed in ETI's prior base rate case, and thus not on any independent knowledge of the EV charging market.[33] Mr. Abbott is not a subject matter expert on the EV industry, nor does he claim to be based on his educational and professional experience.[34] On cross-examination he admitted that his recommendation is not informed by any independent study or analysis of the EV charging market,[35] and that it is the Texas Legislature's province to establish state policy.[36] The TECI Rider is exactly what the Legislature had in mind when it specified the role electric utilities are to play in supporting the nascent EV charging industry. Mr. Abbott's armchair analysis is no basis to thwart the Legislative mandate regarding electric utilities' "important role" in supporting the development of the EV charging market.[37]

2. Does the TECI Rider comply with the requirements of PURA § 42.0103(o) regarding site host agreements? (PO Issue No. 2)

i. 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? (PO Issue No. 2e)

As set forth above, there is no dispute regarding whether the TECI Rider complies with the requirements of PURA § 42.0103(o) regarding site host agreements,[38] except for whether the rider and related agreement provide for the recovery of "all electric utility-related costs,"[39] of the program, specifically, the costs of "owning, constructing, financing, operating, and maintaining

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[33] Commission Staff's Response to Entergy Texas, Inc.'s First Request for Information Question Nos. 1-1 through 1-4, ETI Ex. 98 at 3.

[34] *See generally* Supplemental Direct Testimony of William B. Abbott, Staff Ex. 7 at 3-4, Attachment WBA-1 (Bates 16-19).

[35] Tr. at 41:11-17 (Abbott Cross) (Apr. 5, 2024).

[36] *Id.* at 45:15-17.

[37] PURA § 42.0101(c).

[38] See discussion at Sections II.A.1–II.A.4, *supra*.

[39] PURA § 42.0103(o)(3).

the public electric vehicle charging station"[40] from the participating customer. However, in disputing whether the TECI Rider will recover such costs, the opposing parties either mischaracterize how the TECI Rider offering works, or mischaracterize the applicable statutory provisions.

It is crucial to note from the outset that participating customers will pay 100% of their allocable share of ETI's cost of service through a nonresidential tariff, like for instance, the General Service ("GS") tariff.[41] In other words, there will be no situation in which a customer pays *only* under the TECI Rider; customers will also always pay ETI's embedded cost of service through a base rate schedule.[42] As the rider states, "|t|his Transportation Electrification and Charging Infrastructure ("TECI") Rider is available to Entergy Texas, Inc. ("ETI" or the "Company") customers ***taking metered service under the Company's non-residential rate schedules***."[43] TECI customers will thus be paying their share of ETI's costs of providing electric delivery service in the same manner as every other ETI customer through an established base rate schedule. The TECI customer will ***also pay*** a "net monthly charge based on the investment by the Company in such TE and charging infrastructure and other modifications to Company's facilities"[44] to cover ETI's cost of "owning, constructing, and financing"[45] the TE infrastructure. On top of the net monthly charge, the TECI customer will pay an ***additional*** "fixed amount to cover operation and maintenance ("O&M") expenses based on the Customer's desired level of warranty, insurance, remote monitoring, access, and network services."[46]

Far from avoiding ETI's costs of providing service, participating customers will be directly investing in the buildout of new EV charging infrastructure in a manner that is specifically tailored to the costs ETI incurs for providing these services. These new facilities will generate incremental revenues that will go beyond merely paying for the cost associated with the TECI-related

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[40] *Id.* at § 42.0103(p)(2).

[41] *See* ETI Ex. 40 at 17 ("Under ETI's proposed TECI-1 Rider offering, the TECI-1 Rider customer will be paying for any electricity usage by the vehicle charger under an existing eligible non-residential rate schedule.").

[42] *Id.*

[43] ETI Ex. 95, Exhibit SFH-S-1 at 1 (Bates 14) (emphasis added).

[44] *Id.*

[45] PURA § 42.0103(p)(2).

[46] ETI Ex. 95, Exhibit SFH-S-1 at 1 (Bates 14).

infrastructure and O&M, and will in fact benefit all customers by reducing ETI's overall cost of service. Ms. Hill's Supplemental Rebuttal Testimony provides an illustrative example of three different TECI Rider use cases.[47] These examples demonstrate the recovery of ***all*** of the installed capital and O&M costs through TECI Rider customer payments as well as through the incremental revenue from the use of the TE equipment. As her testimony illustrates, the TECI Rider will not only recover, but *over*-recover the incremental costs driven by the TECI customer over time and, thus, benefit non-participating customers by helping to offset ETI's general revenue requirement, as shown in the example below:[48]

For illustrative purposes

Customer Example	10-Year Incremental Net ETI (Cost)/Revenue	
1. School District	$ 64,104.00	
2. Community College	45,151.74	
3. Apartment Complex	11,082.24	
Total illustrative example 10-year benefit to customers	**$ 120,337.98**	{a}

{a} Note this is just three example customers over the 10-year contract period. Any additional customers over the 10-years shown here would create a greater benefit to all customers.

ETI modeled the TECI Rider on the Commission-approved Additional Facilities Charge ("AFC") Rider, Option B, in which the Company constructs, owns, and maintains electrical infrastructure requested by a specific customer who pays for that infrastructure via a fixed payment each month.[49] ETI developed the TECI percentage-based rates by calculating level monthly payment percentages to be applied to the investment made by the Company for the Recovery Term period between 1 year and 10 years, in the same way that the AFC Rider recovers capital costs.[50] The Company chose to propose the TECI Rider rather than use the AFC Rider, Option B for TE infrastructure projects for two reasons. First, AFC Rider, Option B does not explicitly contemplate use of ETI's Electric Extension Policy because the AFC Rider does not typically involve increased revenues.[51] This differentiating element compared to Schedule AFC is expressly permitted by new

[47] ETI Ex. 96, Exhibit SFH-SR-1 at 1 (Bates 25).

[48] *See id.*

[49] ETI Ex. 53 at 15-16.

[50] *Id.* at 16.

[51] *Id.* at 17.

PURA § 42.0103(o)(3), which states that the host customer's full repayment shall account for "incremental revenues paid by the person to the utility associated with the electric vehicle charging service." Second, the AFC Rider reflects historic transmission and distribution O&M expense, whereas the TECI Rider will include the customer-specified level and type of O&M (e.g., extended warranty, networking service).[52] The TECI Rider and Agreement are thus a more appropriately tailored approach to the variety of types of infrastructure and O&M services that are available from competitive EV charging providers.

The TECI Rider is designed to recover the costs of owning, constructing, financing, operating, and maintaining the EV charging facilities, while allowing the flexibility necessary for customers to choose the facilities and O&M services that suit their needs. Some of ETI's customers, such as school districts, have begun transforming their vehicle fleets to EVs and need a way to conveniently charge those vehicles.[53] Other non-residential customers want to offer EV charging on their premises to their customers (e.g., hotel guests, grocery shoppers) or employees who use their own personal EVs.[54] Electrified marine vessels in the Texas Gulf need electric shore power so that a vessel can plug into the local electricity grid and turn off its engines while at the dock.[55] The TECI Rider offering enables all of these types of customers to meet their specific goals and requirements. A "one-size-fits-all" approach would fail to appropriately recover the costs associated with such a wide variety of potential needs, as well as fail to reflect the diverse offerings available in the competitive market.[56] As Ms. Hill's Supplemental Rebuttal Testimony shows, just one EV charging vendor's offerings would quickly outstrip the feasibility of designing a rate tied to a specific dollar amount of recovery:[57]

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[52] *Id.*

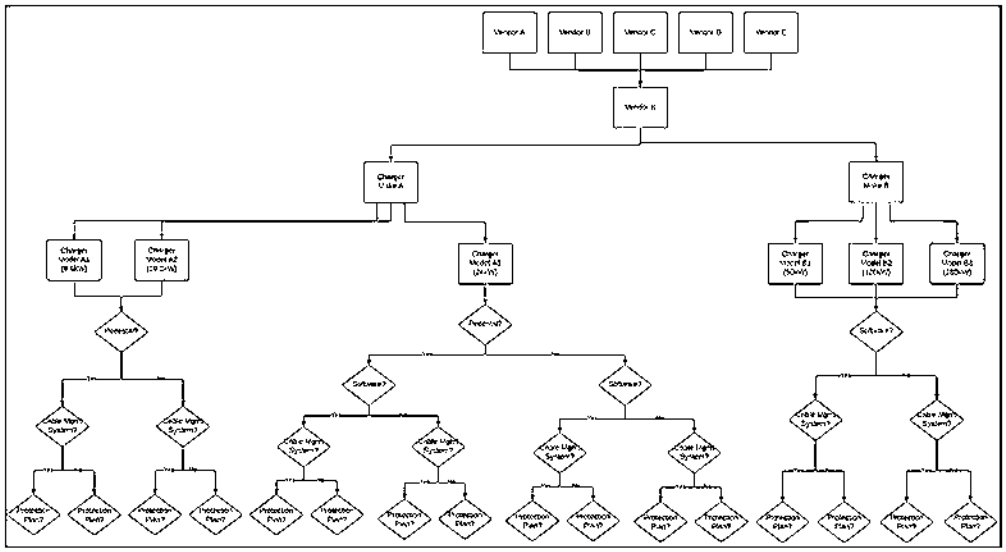
[53] ETI Ex. 40 at 12.

[54] *Id.*

[55] *Id.*

[56] ETI Ex. 96 at 12.

[57] *Id.* at 13.



As the ALJ previously found, under the TECI Rider, "the associated cost of each EV charging unit and monthly O&M costs, if any, will be integrated into the opting-in customer's monthly bill. Thus, these costs are recovered directly from the customer and will not be shifted to non-participating customers."[58] Nothing has changed that would alter those conclusions. The ALJ should make the same determination here.

3. Will Entergy Texas offer service under the terms of the tariff to other persons seeking agreements in Entergy Texas's service area on a nondiscriminatory basis under PURA § 42.0103(p)(1)? (PO Issue No. 3)

Yes, ETI will offer TECI under the terms of the TECI Rider to all nonresidential customers in good standing who would seek agreements in ETI's service area, on a nondiscriminatory basis under PURA § 42.0103(p)(1).[59] As discussed above, the TECI Rider is "is available to Entergy Texas, Inc. ("ETI" or the "Company") customers taking metered service under the Company's non-residential rate schedules."[60] There is nothing whatsoever to suggest otherwise, except the spurious and completely baseless allegation from Mr. Abbott that ETI might offer a sweetheart

[58] PFD at 31.

[59] ETI Ex. 40 at 12.

[60] ETI Ex. 95, Exhibit SFH-S-1 at 1 (Bates 14).

deal to an affiliate because the rider is in his words "underspecified."[61] Not only is there no basis to allege ETI will impermissibly advantage its affiliates, PURA § 42.0103(o) only permits "a person who is not . . . an affiliate of an electric utility" to enter into a TECI agreement. The scenario Staff raises cannot occur because ETI affiliates cannot take service under the TECI Rider.[62] Mr. Abbott is simply attempting to invent ways to sink the TECI Rider. Rather than a legitimate concern with ETI's specific TECI proposal, Staff's position lays bare Mr. Abbott's continued and more fundamental opposition to electric utility participation in this space, which is directly contrary to new PURA Chapter 42.

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)? (PO Issue No. 4)

Yes, as discussed in Section III.A.2.i. above, the TECI Rider is designed to recover "all electric utility-related costs,"[63] of the TECI program, specifically, the costs of "owning, constructing, financing, operating, and maintaining the public electric vehicle charging station"[64] from the participating customer and not the utility's other customers. The Legislature's decision to identify the types of electric utility-related costs that must be recovered through the TECI agreement, specifically, the costs of "owning, constructing, financing, operating, and maintaining the public electric vehicle charging station" was deliberate and must be given effect.[65] Other types of costs that were excluded from the statute are thus not required to be recovered from TECI agreement revenues,[66] likely because these other costs will be separately recovered through the

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[61] Staff Ex. 7 at 13.

[62] *See* ETI Ex. 96 at 23 ("If Staff is truly concerned ETI might use TECI to discriminate in favor of an affiliate, it will have every opportunity to propound discovery to explore that issue in a future rate proceeding.").

[63] PURA § 42.0103(o).

[64] *Id.* at § 42.0103(p)(2).

[65] *Laidlaw Waste Sys. (Dallas), Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995) ("It is a rule of statutory construction that every word of a statute must be presumed to have been used for a purpose. Likewise, we believe every word excluded from a statute must also be presumed to have been excluded for a purpose." (quoting *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535 (Tex. 1981)).

[66] *Id.*

TECI customer's payment of tariffed nonresidential electricity rates.[67] The TECI program will not only cover the statutorily required costs, but it will also provide incremental revenues that will exceed these costs and that will reduce the rates that all ratepayers pay.[68] Again, as the ALJ previously found, under the TECI Rider, "the associated cost of each EV charging unit and monthly O&M costs, if any, will be integrated into the opting-in customer's monthly bill. Thus, these costs are recovered directly from the customer and will not be shifted to non-participating customers."[69] Nothing has changed that would alter those conclusions.

5. Do the proposed rates comply with the requirements of PURA § 36.003? (PO Issue 5)

ii. Is the rate just and reasonable?

iii. Is the rate not unreasonably preferential, prejudicial, or discriminatory?

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

The Legislature's decision to permit electric utilities and their customers to enter into agreements regarding the ownership and operation of EV charging infrastructure, and its decision to delineate the types of costs that must be recovered under such an agreement, necessarily reflects a just and reasonable, nondiscriminatory, and equitable rate structure.[70] The Legislature's recent, specific direction regarding electric utilities' and the Commission's "important role[] to fill in supporting the installation and use of infrastructure for electric vehicle charging,"[71] fleshes out the general direction provided by PURA § 36.003, which was first enacted in 1975.[72] Because, as

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[67] ETI Ex. 95, Exhibit SFH-S-1 at 1 (Bates 14).

[68] *See* ETI Ex. 96, Exhibit SFH-SR-1 at 1 (Bates 25).

[69] PFD at 31.

[70] Tex. Gov't Code § 311.021 ("In enacting a statute, it is presumed that . . . a just and reasonable result is intended.").

[71] PURA § 42.0101(c).

[72] *Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC*, 591 S.W.3d 127, 133 (Tex. 2019) (stating that the Court's "text-based approach to statutory construction requires us to study the language of the specific provision at issue, within the context of the statute as a whole, endeavoring to give effect to every word, clause, and sentence." (quotation omitted)).

discussed above, the TECI Rider complies with PURA Chapter 42, it reflects the Legislature's chosen rate design consistent with the requirements of PURA § 36.003.[73]

While the TECI Rider is specific to TE infrastructure and equipment, the fact that it is functionally equivalent to a Commission-approved tariff, the AFC Rider, indicates that its cost recovery design is sound and nondiscriminatory. The costs incurred by ETI for the equipment, installation, and any ongoing O&M will be added to each TECI Rider customer's monthly bill as a fixed payment in accordance with well-established cost causation principles. Mr. Abbott's concession that ETI could have proposed to include its TE infrastructure program under the Commission-approved AFC Rider demonstrates beyond any doubt that ETI's proposed cost recovery methodology is reasonable, equitable, and appropriate under PURA § 36.003.[74] Lastly, as noted above, the TECI Rider and related Agreement will be available to all nonresidential, non-affiliated customers in good standing and will therefore be "equitable and consistent in application to each class of consumer."[75]

B. TECDA RIDER

The TECDA Rider is a temporary measure that reduces electric bill uncertainty caused by early-phase low EV adoption rates and normal utility demand charges for non-residential Schedule GS customers installing separately metered charging equipment. Depending on a customer's load and resulting "load factor" (*i.e.*, the relative proportion of monthly energy usage to peak demand), demand charges can represent a significant proportion of a monthly electric bill.[76] A separately metered EV charger with high demand (kilowatt ("kW")) and lower energy usage (kilowatt-hour ("kWh")) can present two challenges for the customer: (1) a rate structure where demand charges represent a significantly greater share of the bill than energy charges; and (2) a resulting high "effective cost per kWh," where the total bill is divided by a relatively low volume of energy usage (kWh).[77] As a result, it may be prohibitively expensive for an EV charger site host to operate

[73] Tex. Gov't Code § 311.023.

[74] Staff Ex. 7 at 7-8 ("If non-standard infrastructure is required to accommodate EV chargers on a customer's premises, ETI's existing Additional Facilities Charge (AFC) rider is available to accommodate such installations.").

[75] Preliminary Order Issue No. 5 (citing PURA § 36.003).

[76] ETI Ex. 40 at 33.

[77] *Id.*

during the early phase of EV market growth, which may deter capital investment in EV chargers with separate electric service.[78]

In addition, this situation can also lead to unpredictable electric bills where the electricity costs far exceed the revenue that a publicly accessible station receives from EV drivers.[79] A customer site that wants to offer public charging access may be unwilling to take on the risk of unprofitability given the potential inability to manage its electricity rates.[80] The TECDA Rider seeks to reduce such bill uncertainty for separately metered charging equipment by initially limiting the effective cost per kWh under Schedule GS to a narrow band between $0.15 and $0.20 per kWh based on current rates and riders (before any applicable taxes and fees).[81]

Walmart, AACE, ChargePoint, and FlashParking support Commission approval of the TECDA Rider, recognizing demand relief is an important measure in promoting EV charging investment.[82] Only two parties, OPUC and Commission Staff, oppose the TECDA Rider. They contend there are cost-shifting concerns to non-participating customers from "lost revenues" or "underrecovered revenues" under the rider.[83] But, these concerns are misguided and easily allayed. If the Commission approves the TECDA Rider, then the effect on non-participating customers, if any, will be positive. Regardless, ETI does not expect any immediate impacts to non-participating customers, because they will continue to pay their tariffed rates, which the Commission approved in Docket No. 53719 and were based on the historical test year ending December 31, 2021. Then, when ETI files its next base rate case, the incremental revenues received from TECDA customers will offset ETI's costs, putting downward pressure on rates and benefitting all customers.

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[78] *Id.*

[79] *See* ChargePoint Ex. 4.0 at 13-14 ("site hosts operating public EV charging stations have little to no control over when or how frequently EV drivers utilize their stations to charge a vehicle, and therefore have little to no control over the demand or electricity consumption that their public charging site experiences during a billing period. Under traditional demand-based rates this creates a large uncertainty in the customers' effective cost per kWh and the total electric bill for a particular billing period.")

[80] *See id.*; ETI Ex. 40 at 33.

[81] ETI Ex. 40 at 35-36.

[82] Walmart Ex. 1 at 10-13; Docket No. 53719, AACE's Statement of Position at 3-4 (Nov. 30, 2022); ChargePoint Ex. 4.0 at 15; FlashParking Ex. 1 at 8-9.

[83] Tr. at 75:12-22, 77:11-24 (Hill Cross) (Apr. 5, 2024).

As designed, the TECDA Rider incentivizes customers who may be on the fence to invest in EV charging infrastructure and equipment, which will result in incremental revenues. For instance, a Schedule GS customer, such as an apartment building, that elects to participate in the TECDA program will pay not only for the electricity to keep the lights on for its tenants, but also the customer charge, energy charge, and demand charge (as adjusted by the TECDA Rider, if any) for the separately metered EV charging. The revenues received by ETI from the customer's new, separately metered EV charging will be incremental to any revenues it is receiving today, and will certainly exceed the demand adjustment, as shown by the Ratepayer Impact Measure ("RIM") test discussed below in Section III.B.3. The TECDA Rider should be approved.

1. Do the proposed rates for the TECDA Rider comply with the requirements of Chapter 42 of PURA? (PO Issue No. 6)

PURA Chapter 42 does not specifically address the TECDA rate design features, so its statutory requirements are not directly applicable. Notably, however, the rider advances the statute's purpose of "continu[ing] the long-standing policy of supporting private sector investment in infrastructure" by "encourag[ing] competitive private sector investment in the deployment of public electric vehicle charging stations" and "foster[ing] the rapid installation and widespread use of public electric charging stations."[84] Promoting investments in Texas, in turn, will pave the way for Governor Abbott's vision for "Texans to easily get from Beaumont to El Paso" in an EV.[85]

2. Do the proposed rates for the TECDA Rider comply with the requirements of PURA § 36.003? (PO Issue No. 7)

i. Is the rate just and reasonable?

ii. Is the rate not unreasonably preferential, prejudicial, or discriminatory?

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

Yes. The TECDA Rider complies with the requirements of PURA § 36.003 and should be approved. The Commission has broad discretion in setting rates, but it must ensure that each rate

[84] PURA §§ 42.0101(a)-(b).

[85] SPS Ex. 1, Attachment JWC-2 at 1 (Bates 35).

an electric utility makes, demands, or receives is "just and reasonable."[86] The Commission also has discretion in determining rate design methodology, a complicated endeavor involving several factors.[87] In considering whether a rate complies with PURA § 36.003, "[c]ost is not the only factor that is pertinent to the Commission's decision; the Commission may also consider the purpose for which the service is received, the quantity received, the time of use, and the consistency and regularity of use, among other factors."[88]

Regarding the cost factor, ETI designed Schedule GS appropriately to recover fixed, energy, and demand charges.[89] The TECDA Rider is limited in scope to target high demand, low usage EV charging services. For only the new, separately metered EV charging application, it temporarily limits the amount of demand billed under Schedule GS to a participating customer during any billing period in which the load factor is less than 15% for a term of five years.[90] Apart from the TECDA Rider changing the amount of Billing Demand (kW), all other rates and charges under the Commission-approved Schedule GS will be the same.[91] Under Schedule GS with TECDA applied, the amount of Billing Demand billed to EV charging stations will be the lesser of: (a) measured demand (kW), as conventionally determined and subject to terms of the GS (*i.e.*, when the load factor from the measured demand is equal to or greater than 15%); or (b) adjusted demand (kW), as calculated based on actual usage and a minimum 15% monthly load factor.[92] A minimum monthly load factor of 15% reasonably balances facilitating the development of EV charging infrastructure for public use and maximizing the incremental revenues preserved to offset ETI's overall revenue requirement to the benefit of other customers.[93]

This rate design is similar to the billing demand adjustment for certain transmission and distribution utility customers with low load factors in 16 Tex. Admin. Code ("TAC") § 25.244.

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[86] *Pub. Util. Comm'n of Tex. v. Tex. Indus. Energy Consumers*, 620 S.W.3d 418, 427 (Tex. 2021) (citing PURA § 36.003(a)).

[87] *Nucor Steel v. Pub. Util. Comm'n*, 168 S.W.3d 260, 267 (Tex. App.—Austin 2005, no pet.).

[88] *Id.* at 268.

[89] ETI Ex. 40 at 32; Docket No. 53719, ETI's Clean Record Copy of Tariffs at Page 9.1 (Aug. 31, 2023).

[90] ETI Ex. 40 at 29.

[91] *Id.*

[92] *Id.*

[93] *Id.* at 38.

Subsection (c) of the rule provides: "the demand ratchet shall not apply to a nonresidential secondary voltage service customer that has an annual load factor less than or equal to 25 percent."[94] In the order adopting the rule, the Commission stated:

> The commission concludes that a load-factor threshold of 25% is appropriate. This figure strikes a balance between a threshold that is high enough to provide demand ratchet relief to low-load-factor customers with primarily off-peak usage, but not so high as to affect customers with a large degree of on-peak usage or interfere with a utility's ability to reasonably recover the costs of providing distribution service while avoiding significant intra-class subsidization.[95]

ETI's proposed TECDA Rider's load factor threshold of 15% is more conservative than the 25% in this rule, further supporting its reasonableness. Also, "load from EV charging customers contributes much less to system peaks when compared to other commercial and industrial customers," indicating that the EV charging customers do not impose the same amount of costs on the system as traditional customers.[96] In other words, absent the TECDA Rider, EV charging customers would be allocated costs in excess of the actual costs to serve them.[97]

While the proposed TECDA Rider reduces Billed Demand (kW) for underutilized EV chargers in the early adoption period, the bills for these customers will automatically adjust to standard Schedule GS rates if station utilization increases above the 15% monthly load factor floor.[98] In this way, the rider phases out on its own as EV adoption increases and EV charging becomes more regular and consistent in the next few years.[99]

Besides costs, the rider's purpose in promoting third-party investment in EV charging by addressing unpredictable demand charges during low utilization periods heavily favors its adoption. For instance, without the TECDA Rider, a Schedule GS customer would receive a demand charge on their monthly bill for a single use of the charging station in a month.[100] This

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[94] 16 TAC § 25.244(c).

[95] *Rulemaking to Establish Billing Demand for Certain Utility Customers Pursuant to PURA § 36.009*, Project No. 39829, Order Adopting § 25.244 as Approved at the May 18, 2012 Open Meeting at 21 (May 17, 2012).

[96] ChargePoint Ex. 4.0 at 12.

[97] *See id.*

[98] ETI Ex. 40 at 36.

[99] *Id.*

[100] Walmart Ex. 1 at 8.

reality under the currently approved GS tariff adversely impacts a third party's investment decision. As several parties recognize, the TECDA Rider addresses a well-known cost barrier to foster investment in EV charging infrastructure and equipment.[101] Adjusting the rate design is critical to advancing the State's policy to promote private investment in public EV charging. The Commission should consider these important policy factors addressing the "consistency and regularity of use" when determining the reasonableness of the TECDA Rider.[102]

In considering the "quantity received,"[103] the TECDA Rider is available only to qualifying non-residential customers taking service under Schedule GS for the purpose of installing new, separately metered EV charging stations.[104] Again, such customers pay their full demand charge under their applicable base rate tariff for their non-EV-related electric service. To qualify for the TECDA Rider, the customer's EV charging load must be less than or equal to 1,500 kW.[105] The rider's availability is on a first-come, first-serve basis and is limited to the first 30,000 kW of EV charging load to become operational after the rider's effective date.[106]

The TECDA Rider is also not unreasonably preferential, prejudicial, or discriminatory. The rider is only available to Schedule GS customers who have added separately metered EV charging installations, because that tariff contains a demand charge component. Neither Schedule Residential Service nor Schedule Small General Service includes demand charges.[107] Also, it is not necessary for Schedule Large General Service customers, because that tariff has the same 2,500 electric load maximum as Schedule GS, such that any new EV charging loads would typically be served on Schedule GS.[108] The TECDA Rider is appropriately targeted to provide demand relief

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[101] Walmart Ex. 1 at 8; Docket No. 53719, AACE's Statement of Position at 3-4 (Nov. 30, 2022); *see* FlashParking Ex. 1 at 9 ("The prospect of higher demand charges due to EV-related load creates a disincentive for a customer that would otherwise install EV charging at a commercial property. In my view, this rider serves to lessen that disincentive in order to encourage further EVs adoption in a rapidly expanding market."); ChargePoint Ex. 4.0 at 13 ("The TECDA Rider would increase these benefits [to the grid and ratepayers] by addressing one of the largest barriers to the deployment of EV charging stations and encouraging greater investment in EV charging services.").

[102] *Nucor Steel*, 168 S.W.3d 260, 268.

[103] *Id.*

[104] ETI Ex. 40 at Exhibit SFH-2 (Bates 48).

[105] *Id.*

[106] *Id.*

[107] ETI Ex. 40 at 42-43.

[108] *Id.*

to Schedule GS customers with separately metered EV charging installations to promote third-party investment in EV charging infrastructure and equipment.

Taken together, these rate factors as well as the TECDA customers' characteristics demonstrate that the TECDA Rider is not only just and reasonable, but also sufficient, equitable, and consistent in its application.

3. Is the proposed rate, with a billing demand adjustment, a discounted rate under PURA § 36.007? (PO Issue No. 10)

PURA § 36.007 allows the Commission to approve retail tariffs that (1) contain "charges that are less than rates approved by the regulatory authority but not less than the utility's marginal cost" and (2) are not "unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive."[109] The TECDA Rider easily meets this standard. First, the TECDA Rider is arguably not even a discounted rate to begin with, because, as the ALJ found, the "'discount' would be imposed on rates in the tariff, not made within the tariff itself."[110]

Second, even if the TECDA Rider were to be construed as a discounted rate under PURA § 36.007, it meets the statutory requirements. Indeed, the rate will result in a net benefit to *all* customers by increasing net revenues. In general, increased revenues from EV charging that result from expanded market penetration of EVs will contribute to the recovery of ETI's fixed costs and put downward pressure on electric rates generally.[111]

For example, assume a host customer wants to install ten Level 2 EV chargers, but is concerned with unpredictable electricity bills due to low usage. The TECDA Rider adjusts the demand charge component of the bill when the load factor is less than 15%, stabilizing the monthly bills, and thus, promotes third-party investment in EV charging infrastructure. If the customer installs these ten chargers and elects to participate in the program, then the customer will be responsible for paying the rates set forth in Schedule GS, with the demand charge adjusted if needed based on the TECDA Rider. Schedule GS includes a fixed Customer Charge of $52.59 per month, an Energy Charge of $0.02840 per kWh, and a Billing Load Charge of $9.50 per kW applied to the highest thirty-minute kW demand registered during the month on the meter subject

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[109] PURA § 36.007(a).

[110] PFD at 36-37.

[111] ETI Ex. No. 40 at 39.

to certain minimum bill language, as well as other applicable riders.[112] Using the illustrative values from Samantha Hill's Direct Testimony of 65,700 kWh of energy, 75 kW of demand, and a load factor of 10%,[113] a customer under Schedule GS without the TECDA Rider would pay $920.58. With the TECDA Rider, the billed demand would be adjusted to 50 kW to reflect the minimum 15% monthly load factor.[114] In this scenario, the customer would pay $683.08, as shown below.

	Schedule GS		**Example from ETI Ex. No. 40 at 37**		**Schedule GS (without TECDA)**	**Schedule GS (with TECDA)**	**Difference**
Customer Charge	$52.59	per month			$52.59	$52.59	$0.00
Billing Load Charge	$9.50	per kW	75	kW	$712.50	$475.00	$237.50
Energy Charge	$0.02840	per kWh	65,700	Annual kWh	$155.49	$155.49	$0.00
MONTHLY TOTAL					$920.58	$683.08	

This $683.08 represents incremental revenue to ETI and trumps the $237.50 difference in the Billing Load Charge that OPUC and Commission Staff characterize as a "discount" or "lost revenue."

The RIM test is a broader application and analysis of this example, which takes into account the TECDA Rider's demand adjustment. It compares the benefits (*i.e.*, revenue from base rates, fuel rates, and other base-related riders) to the costs (*i.e.*, incremental capacity supply costs, incremental energy supply costs, embedded transmission-related costs, and embedded distribution-related costs) of implementing the TECDA Rider.[115] When the benefits exceed the costs, the RIM test reflects a benefits-to-costs ratio of 1.0 or greater. Importantly, the RIM test resulted in positive net benefits across all scenarios analyzed over the next ten years.[116]

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[112] ETI Ex. 40 at 34; Docket No. 53719, ETI's Clean Record Copy of Tariffs at Page 9.1 (Aug. 31, 2023).

[113] ETI Ex. 40 at 35.

[114] *Id.*

[115] ETI Ex. 53 at 30.

[116] *Id.* at 31, Table 1.

	10-Yr RIM Results NPV				
Benefits	600 KW 5% LF	600 KW 10% LF	1,500 KW 5% LF	1,500 KW 10% LF	Average
Base Rate	$444,387	$597,194	$1,104,024	$1,486,042	$907,912
Fuel	$89,724	$140,087	$224,309	$350,217	$201,084
DCRF, TCRF, AND GCRR	$0	$0	$0	$0	$0
Total Benefits	**$534,111**	**$737,281**	**$1,328,334**	**$1,836,259**	**$1,108,996**
Costs					
Energy Supply Costs	$116,200	$179,992	$290,501	$449,980	$259,168
Capacity Supply Costs	$153,664	$153,664	$384,157	$384,157	$268,910
Transmission Costs	$31,677	$31,677	$79,193	$79,193	$55,435
Distribution Costs	$164,569	$164,569	$411,422	$411,422	$287,996
Total Costs	**$466,110**	**$529,902**	**$1,165,273**	**$1,324,752**	**$871,509**
RIM B/C Ratio	**1.15**	**1.39**	**1.14**	**1.39**	**1.27**

These results empirically show that the TECDA Rider will positively impact all of ETI's customer base by lowering overall rates, even considering the $237.50 demand relief afforded by the TECDA Rider in the example above.[117] Critically, no other party has proposed any alternative modeling to refute the results of ETI's RIM test. In fact, no other party has even asserted that the TECDA program will result in net costs for ETI's customers.[118] Without any evidence to the contrary and because the rates ETI proposes to charge under the TECDA Rider will ***reduce*** overall rates, the TECDA Rider cannot be unreasonably preferential, prejudicial, or discriminatory to any class of ETI customers.

Finally, no ETI customers will incur any costs associated with the demand relief provided by the TECDA Rider. While PURA § 36.007(d) prohibits utilities from shifting costs associated with any discounted rate to other utility customers, ETI has shown that such cost shifting will not occur with the TECDA Rider because there *are no such costs*. As explained above, revenues created by the TECDA Rider are incremental and would not exist but for the rider.[119]

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[117] *See* ETI Ex. 53 at 31-32.

[118] *See supra* Section II.B.1 (no party contested that the TECDA Rider will result in costs to ETI customers (PO Issue No. 8)).

[119] ETI Ex. 53 at 38-39; Tr. 75:12-22 (Hill Cross) (Apr. 5, 2024).

4. What impacts will there be on current customers who enroll in the TECDA Rider if Entergy Texas's application is granted? (PO Issue No. 11)

The TECDA Rider encourages ETI's Schedule GS customers in Texas to invest in EV charging.[120] TECDA customers will enjoy more stable, predictable effective electric rates during the nascent EV adoption stage.[121]

5. What impacts will there be on Texas customers who do not enroll in the TECDA Rider if Entergy Texas's application is granted? (PO Issue No. 12)

The TECDA Rider will positively impact non-participating Texas customers in ETI's service territory. It is uncontested that there are no estimated costs expected from the TECDA Rider.[122] The next time ETI files an application to change its base rates, ETI expects, and its unrebutted RIM test supports, that the incremental revenues from the TECDA Rider will serve to offset ETI's costs, providing a net benefit to all customers.[123]

6. What, if any, conditions should be placed on approval to ensure that Texas customers who have not enrolled in the TECDA Rider are not unreasonably affected by approval of Entergy Texas's application? (PO Issue No. 13)

If the Commission approves the TECDA Rider, no conditions are necessary, because non-participating customers will not be harmed. As discussed above, the incremental revenues from EV charging are expected to drive down electric rates for all ETI customers, providing widespread benefits regardless of EV adoption by the individual customer.[124]

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[120] ETI Ex. 40 at 40-41.

[121] ETI Ex. 53 at 34, 36.

[122] *See supra* Section II.B.1.

[123] ETI Ex. 53 at 41; Tr. At 75:12-22 (Hill Cross) (Apr. 5, 2024).

[124] *Id.*

C. TECI AND TECDA RIDERS

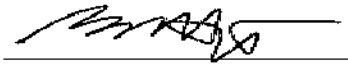
1. Do Entergy Texas's proposed programs and the corresponding tariffs comply with all other applicable requirements of PURA and Commission rules? (PO Issue No. 14)

For the reasons discussed above, ETI's proposed programs and TECI and TECDA tariffs comply with PURA and Commission rules.

IV. Conclusion

The Legislature has determined that electric utilities like ETI are uniquely situated to partner with their customers and competitive private providers to advance the EV charging infrastructure goals of the State of Texas. Key stakeholders from a broad and diverse array of interests and needs have expressed support for ETI's riders, which are fully compliant with the new Legislation and traditional ratemaking requirements. Approval of ETI's TECI and TECDA Riders is "essential to foster the rapid installation and widespread use of public electric vehicle charging stations" and by implementing a key piece of the Legislative design.[125] For these reasons, the proposed riders should be adopted.

Respectfully submitted,



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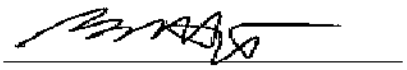
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Entergy Texas, Inc.'s Initial Brief was served by electronic delivery on all parties of record in this proceeding on April 15, 2024.



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