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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** |

# OFFICE OF PUBLIC UTILITY COUNSEL'S POST-HEARING INITIAL BRIEF


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**April 15, 2024**

## TABLE OF CONTENTS

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

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

**OFFICE OF PUBLIC UTILITY COUNSEL'S**
**<u>POST-HEARING INITIAL BRIEF</u>**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

The Office of Public Utility Counsel ("OPUC"), representing the interests of residential and small commercial consumers in Texas, respectfully submits this initial brief and shows the following:[1]

## I. INTRODUCTION

As part of its application requesting authority to change rates filed on July 1, 2021 in Docket No. 53719, Entergy Texas, Inc. ("ETI" or "Entergy Texas") proposed to include two new riders pertaining to transportation electrification ("TE") technology and related infrastructure and equipment.[2] The Transportation Electrification and Charging Infrastructure ("TECI") rider is a rider designed to allow ETI to partner with interested nonresidential customers to plan, construct, own, operate, and maintain TE related infrastructure and equipment (such as electric vehicle ("EV") charging and Shore Power) on customer-owned property, with costs incurred by ETI to be

[1] The fact that OPUC does not address an issue should not be interpreted as agreement with any particular position on the issue. All page number references are to the native page numbers unless indicated otherwise.

[2] *Application of Entergy Texas, Inc. for Authority to Change Rates*, Docket No. 53719, (Jul. 1, 2022) ("Application").

added to the interested customers' monthly electric bill as a fixed payment.[3] The Transportation and Electrification Charging Demand Adjustment ("TECDA") rider is designed to provide targeted demand charge relief and reduce electric bill uncertainty exclusively for non-residential customers installing EV charging infrastructure and taking new separately metered electric service under Rate Schedule GS.[4] After the close of briefing, the governor signed Senate Bill 1002 ("SB 1002"), which addresses the operation of public electric-vehicle ("EV") charging stations through enactment of Public Utility Regulatory Act ("PURA") Chapter 42, Public Charging of Electric Vehicles.[5] On August 16, 2023, the Public Utility Commission of Texas ("Commission") issued an order severing these riders from the rate case and initiated the instant docket for the purpose of further considering ETI's proposed EV charging riders in light of the new legislation.[6]

The Commission referred this docket to the State Office of Administrative Hearings ("SOAH") on December 13, 2023, and on April 5, 2024 a hearing on the merits was conducted.[7] SOAH Order No. 3 requires parties to submit post-hearing initial briefs by April 15, 2024.[8] Therefore, this pleading is timely filed.

## II. TECI-1 RIDER

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

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[3] *Id.* at 7-8.

[4] *Id.* at 8.

[5] Supplemental Preliminary Order (Dec. 14, 2023).

[6] Order Severing Issues (Aug. 16, 2023).

[7] Order of Referral (Dec. 13, 2023).

[8] SOAH Order No. 3 (Jan. 18, 2024).

**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)**

No. As proposed, ETI has not ensured TECI customers will pay an appropriate share of overhead costs and other common costs such as:

- Costs associated with obtaining regulatory approval of the rider;
- Salaries, travel expenses and other direct expenses associated with technical meetings with customers or potential customers, including on-site visits; and,
- Employee benefit expenses, payroll related taxes, and other overhead costs associated with marketing, administering, running, and monitoring the program.

In addition, hearing testimony taken from Ms. Hill shows that while ETI has committed to maintain separate accounting records for all the materials and supplies invested in TE equipment, ETI has made no provisions to recover those costs from TECI rider customers.[9]

Q Will ETI keep separate accounting for all the materials and supplies invested in the transportation electrification and equipment that it maintains?[10]

A Yes, all -- all of the charges, materials, supplies, capital, O&M, used to fulfill the TECI Rider agreement will be accounted for in an identifiable way. And if in a future time, you know, we need to provide those, we can.[11]

[9] Tr. at 70:2–12 (Hill Cross) (Apr. 5, 2024).

[10] Tr. at 70:2–4 (Hill Cross) (Apr. 5, 2024).

[11] Tr. at 70:8–12 (Hill Cross) (Apr. 5, 2024).

d. **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)**

No. through additional hearing testimony, Ms. Hill confirmed that there are additional indirect and incremental costs associated with the development, regulatory approval, and sales of the TECI program that will not be specifically accounted for and recovered from the participating customers.[12]

Q Okay. So any customer-associated communication or outreach for the TECI Rider will be using only existing resources until they sign the customer agreement. And then once they sign a customer agreement, those -- anything associated with that agreement is then billed 100 percent to that customer. Am I understanding that correctly?[13]

A Yes, our customer service reps will have discussions with our customers just like they do today, and this is one more tool in their toolbag to offer customers to meet their needs.[14]

Q So you'll be using existing resources then?[15]

A Yes. We will not be adding additional resources at this time.[16]

Entergy Texas has not provided any data or assurances that all costs associated with the TECI Rider will be allocated solely to participating customers. Even though Entergy Texas states

[12] Tr. at 69:13-70:1 (Hill Cross) (Apr. 5, 2024), *see also* Direct Testimony of Evan D. Evans at 32:14-18 (Aug. 24, 2023). (Evans' Direct).

[13] Tr. at 69:13-19 (Hill Cross) (Apr. 5, 2024).

[14] Tr. at 69:20-23 (Hill Cross) (Apr. 5, 2024).

[15] Tr. at 69:24 (Hill Cross) (Apr. 5, 2024).

[16] Tr. at 69:25-70-1 (Hill Cross) (Apr. 5, 2024).

that they intend to assign a specific work order or project number to TECI costs, those specialized accounting methods will only begin once Entergy Texas begins working with the customer.[17]

Q How does ETI intend to maintain separate accounting for the fulfillment costs for the TECI Rider such as developing, implementing, and administering and monitoring the program, the TECI program?[18]

A We do not intend to add any incremental resources at this time for this program. All of the costs that are incurred through the TECI Rider, once we are working with the customer will be contracted and identifiable to that particular contract and that project.[19]

Q Does ETI intend to specifically account for other program costs, such as payroll-related taxes or benefits, other related overhead costs for the TECI Rider?[20]

A So once our project managers begin working with the TECI Rider participant, all of the costs will be part of that project, including our internal labor costs would be paid for by that customer in executing that TECI Rider customer agreement and that installation. We do not intend to add any incremental resources outside of working with that customer directly.[21]

Additionally, Ms. Hill confirmed ETI has no plans to add additional resources or separate accounting for incremental costs such as marketing, travel, customer service, or billing inquiries related to the TECI rider.[22]

Q So ETI is not intending to maintain separate accounting for the customer service or billing inquiries or marketing of the TECI Rider?[23]

A No, there will be no separate accounting for the discussions our customer reps have.[24]

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[17] Tr. at 66:15-24 (Hill Cross) (Apr. 5, 2024), *see also* Tr. at 69:6-12 (Hill Cross) (Apr. 5, 2024).

[18] Tr. at 66:15-18 (Hill Cross) (Apr. 5, 2024).

[19] Tr. at 66:19-24 (Hill Cross) (Apr. 5, 2024).

[20] Tr. at 69:2-5 (Hill Cross) (Apr. 5, 2024).

[21] Tr. at 69:6-12 (Hill Cross) (Apr. 5, 2024).

[22] Tr. at 68:21-24, 69:1-25 (Hill Cross) (Apr. 5, 2024).

[23] Tr. at 68:21-24 (Hill Cross) (Apr. 5, 2024).

[24] Tr. at 68:25-69:1 (Hill Cross) (Apr. 5, 2024).

However, the assertion by ETI that it intends to use existing resources to serve TECI Rider customers in marketing, travel, customer service, or billing inquiries related to the TECI rider does not relieve the TECI customers from bearing an appropriate share of the existing resources that are subsidized by all other customers and which will be required to serve the TECI customers.

Furthermore, Entergy Texas continues to assert that there have been no analyses as to, nor have they determined how to treat, the recovery of a bad debt expense if a TECI customer defaults during the contract term. ETI witness Samantha Hill stated that the likely resolution would be to treat the bad debt "just like or very similar to" the way they treat residential, commercial, or Additional Facilities Charge ("AFC") Rider customers that default on their contracts: "If at that point we still cannot collect all that is due to Entergy, again, we would treat them like -- just like or very similar to a customer we provide power to, residential, commercial or the AFC Rider, and it could be that it's treated much like bad debt expense."[25]

However, since ETI has not committed to or proposed to establish the TECI Rider as a separate class in the allocation of costs, the TECI Rider customers would not be allocated the bad debt expense associated with any such defaults. To safeguard non-participating customers, the Commission must ensure all costs incurred to provide service under the TECI Rider are borne by the TECI Rider customers.

**e. Do the proposed rates comply with the requirements of PURA § 36.003? (PO Issue No. 5)**

No. The TECI-1 Rider is a program that ETI seeks to offer to non-residential customers only.[26] Therefore, it is not applicable to each class of consumer. Additionally, as discussed in the

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[25] Tr. at 61:22-24 (Hill Cross) (Apr. 5, 2024).

[26] Direct Testimony of Samantha Hill at 8:12-15 (Aug. 25, 2023). (Hill Direct).

Direct Testimony and Errata to the Direct Testimony of OPUC witness Evan D. Evans, ETI includes a line extension provision in the TECI-1 Rider that eliminates the TECI customer requirement of reimbursement for any cost of construction and installation of new facilities necessary to extend electric service to the TE charging infrastructure.[27] OPUC maintains that this level of unreimbursed extension of facilities costs would not be supported by ETI's proposed rates.

## III. TECDA-1 RIDER

OPUC believes that the Administrative Law Judge's ("ALJ") recommendations in the Proposal for Decision in Docket No. 53719 regarding the TECDA-1 Rider should be upheld:

- Page 36 - The ALJ is persuaded by Staff's and OPUC's arguments that there are potential cost-shifting concerns inherent in ETI's proposed TECDA-1 Rider.
- Page 37 - Due to the cost-shifting concerns, the ALJ is unconvinced that the terms of the TECDA-1 Rider are not unreasonably preferential, prejudicial, or discriminatory. Thus, the ALJ recommends denial of the TECDA-1 Rider.
- FOF 63. It is unknown whether the potential incremental revenues generated by the TECDA-1 Rider would cover the under-recovered revenues that ETI would have recovered from the same customers were the rider not implemented.
- FOF 64. ETI failed to show that its cost recovery from participating TECDA-1 Rider customers would not be unreasonably preferential, prejudicial, or discriminatory.
- COL 9. If the Commission determines it is appropriate for ETI to own TE and charging infrastructure, including charging stations:

  b. ETI's proposed TECDA-1 Rider should be denied as it is unreasonably preferential, prejudicial, or discriminatory. PURA § 36.603; 16 TAC § 25.234.

- Proposed Ordering Paragraph 1 - If the Commission determines it is appropriate for ETI to own TE and charging infrastructure, including charging stations, ETI's proposed TECI-1 Rider is approved and its proposed TECDA-1 Rider is denied.[28]

[27] ERRATA to the Direct Testimony of Evan D. Evans at 30:15-22 (Nov. 29, 2022).

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

OPUC's principle concern is the shifting of unrecovered participant demand charges to non-participating customers. OPUC maintains its position that the TECDA Rider is unreasonably preferential and discriminatory, is inequitable, and grants an unreasonable preference concerning rates to certain customers in a classification if the unrecovered participant demand charges are shifted to non-participating customers.[29]

PURA § 36.007(d) states, "Notwithstanding any other provision of this title, the commission shall ensure that the electric utility's allocable costs of serving customers paying discounted rates under this section are not borne by the utility's other customers." ETI has claimed the demand charges in ETI's General Service rate schedule are designed to appropriately recover the demand-related costs from customers, including those customers with load factors below 15%, and ETI has no analysis that shows that it over-recovers costs from customers with load factors below 15%.[30]

Q In your research or analysis or while you were preparing for this application during this entire time, have you or your department performed any analysis that shows that ETI's rates will overrecover costs from the TECDA Rider from customers that have load factors below 15 percent?[31]

A The analysis that we did did not show that we would overrecover costs.[32]

Consequently, the demand cap provision of the TECDA Rider *is* a discount rate, and ETI is prohibited from recovering these costs from ETI's other customers.

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[29] *Application of Entergy Texas, Inc. for Authority to Change Rates*, Docket No. 53719, Office of Public Utility Counsel's Post-Hearing Initial Brief (Jan. 20, 2023).

[30] Tr. at 73:12-19 (Hill Cross) (Apr. 5, 2024).

[31] Tr. at 73:12-17 (Hill Cross) (Apr. 5, 2024).

[32] Tr. at 73:18-19 (Hill Cross) (Apr. 5, 2024).

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

Yes. PURA § 36.007(a) states:

> On application by an electric utility, a regulatory authority may approve wholesale or retail tariffs or contracts containing charges that are less than rates approved by the regulatory authority but not less than the utility's marginal cost. The charges must be in accordance with the principles of this title and may not be unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.

The TECDA Rider provides a demand charge discount to participating customers by capping their billing demand in any month in which their load factor falls below 15%.[33] Therefore, by applying a billing demand cap, Entergy Texas is providing a discount to those customers. However, in those months in which the customer's load factor is *above* 15%, the TECDA Rider does *not* recover the discount.[34] Additionally, ETI has not provided any analysis or calculations of their marginal cost or capacity components to show that this proposed billing demand discount is not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.[35] PURA § 36.007(d) states, "Notwithstanding any other provision of the title, the commission shall ensure that the electric utility's allocable costs of serving customers paying discounted rates under this section are not borne by the utility's other customers." Accordingly, the under-recovered demand revenues that result from the application of the billing demand cap in the TECDA Rider should not be borne by other customers. The TECDA Rider is being offered exclusively to customers taking service under ETI's existing Rate Schedule GS.[36] ETI asserts the results of the Rate Impact Measure ("RIM") test they performed indicate the TECDA Rider demand discount

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[33] Hill Direct at 27.

[34] Cross Rebuttal Testimony of Evan D. Evans at 16:17-20 (Aug. 24, 2023).

[35] PURA § 36.007(b).

[36] Hill Direct at 27:5-9.

will not result in lost revenues and will be an overall benefit to customers due to increased revenues.[37]

Q How does ETI intend to recover the lost revenues associated with the demand charge discounts applied to the TECDA customers?[38]

A Our RIM test analysis showed that, one, it is incremental revenues, it's not lost revenues, it's revenues that wouldn't be there but for the TECDA Rider; and, two, it's an overall benefit to all customers, and so it's going to -- it's going to actually give more revenues putting downward pressure on rates, lowering rates for all customers.[39]

Q So you're not seeking cost recovery for any lost revenues associated with that, if there were some?[40]

A We don't believe that there are lost revenues.[41]

However, ETI also admitted that the RIM test it used in this case has not been approved by the Commission.[42]

Q Let me -- let me rephrase that question, I guess. I guess what I'm getting at is, has the RIM test been approved by the Commission?[43]

A The RIM test used in this case has not been ruled on by the Commission.[44]

In addition, if the TECDA Rider were to result in increased revenues, ETI would benefit and not its customers. This results from the fact that ETI would retain any increased revenues it receives before the final rates in ETI's next rate case become effective.

[37] Tr. at 75:12–76:5 (Hill Cross) (Apr. 5, 2024).

[38] Tr. at 75:12-15 (Hill Cross) (Apr. 5, 2024).

[39] Tr. at 75:16-22 (Hill Cross) (Apr. 5, 2024).

[40] Tr. at 75:23-24 (Hill Cross) (Apr. 5, 2024).

[41] Tr. at 75:25 (Hill Cross) (Apr. 5, 2024).

[42] Tr. at 75:7–11 (Hill Cross) (Apr. 5, 2024).

[43] Tr. at 75:7–9 (Hill Cross) (Apr. 5, 2024).

[44] Tr. at 75:10–11 (Hill Cross) (Apr. 5, 2024).

The burden to prove the TECDA Rider is not a discounted rate falls on Entergy Texas.[45] However, ETI has continued to side-step or ignore OPUC's assertions that it is a discounted rate and punt this issue to avoid answering this question.[46]

Q Well, if you're not willing to call it a discounted rate, can you explain why?[47]

A That is not what I'm here to testify on today, whether it is or is not a discounted rate, and I would leave that up to the Commission to decide.[48]

Therefore, OPUC encourages the Commission to highly scrutinize ETI's response to this question.

**e. 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)**

If proper precautions and safeguards are not put into place, then indirect and incremental costs and expenses for the development, regulatory approval, and implementation of the TECI-1 and TECDA Riders would be included in ETI's base rate cost of service in its next base rate case. As a result, it will cause the costs to be allocated to all of ETI's customers and force non-participating customers to pay for services they are not voluntarily participating in or even qualified to request to participate in.

**f. 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)**

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[45] PURA § 36.006.

[46] Tr. at 71:7-11 (Hill Cross) (Apr. 5, 2024).

[47] Tr. at 71:7-8 (Hill Cross) (Apr. 5, 2024).

[48] Tr. at 71:9-11 (Hill Cross) (Apr. 5, 2024).

The under-recovered demand revenues that result from the application of the billing demand cap in the TECDA Rider should not be borne by other customers. If the TECDA Rider is approved by the Commission, the rider should expire when new rates are approved in ETI's next base rate case, unless the rider is ratified in that base rate case. Additionally, if the TECDA Rider is approved, the proposed load factor-based billing demand cap should be considered a discounted rate pursuant to PURA § 36.007(a). OPUC further recommends that all rate case expenses relative to the TECI-1 and TECDA Riders be separated out and not allocated to Residential Service or other customer classes for which these riders are not applicable.

## IV. CONCLUSION

For the reasons stated herein and discussed in the Direct Testimony and Cross-Rebuttal Testimony of OPUC witness Mr. Evan Evans and in OPUC's Statement of Position, OPUC recommends the following concerning ETI's proposed TECI-1 rider:

- ETI be required to maintain separate accounting for the all investment, depreciation expenses, and other costs associated with the TECI-1 Tariff;
- Appropriate safeguards are established that ensure ETI's participation in the competitive markets does not hinder the development and expansion of the competitive market for TE infrastructure and charging equipment or unduly limits a TE site host's ability to choose their preferred TE infrastructure and charging equipment;
- The Commission establish that appropriate allocations of ETI's overhead costs are assigned to ETI's investment in make-ready TE infrastructure and charging equipment, ETI's activities to market these services, and ETI's operation and

maintenance of associated equipment. These overhead costs should include, but not be limited to investment in general and intangible rate base, administrative and general expenses, wages and salaries, property insurance, property taxes, and payroll taxes;

- The Commission ensure that ETI's non-participant retail electric service customers are adequately compensated for the fact that they financially support ETI, which enables ETI to compete from the advantageous position of being the certificated public utility in its service area and possess immense customer information; and
- Adequate steps and procedures are instituted that fully protect ETI's non-participant retail electric service customers from bearing any costs or risks associated with ETI's investment and efforts to provide make-ready TE infrastructure and charging equipment, including protection from the risk of default by TECI-1 customers.

For the reasons stated herein and discussed in the Direct Testimony and Cross-Rebuttal Testimony of OPUC witness Mr. Evan Evans, OPUC recommends the following concerning ETI's proposed TECDA-1 Rider:

- The Commission determine the TECDA-1 Rider would be unreasonably preferential and discriminatory, is inequitable and grants an unreasonable preference concerning rates to certain customers in a classification if the unrecovered demand charges are recovered from non-participating customers;

- The Commission ensure the under-recovered demand revenues that result from the application of the billing demand cap in the TECDA-1 Rider will not be borne by other customers, and
- If the TECDA-1 Rider is approved by the Commission, the proposed load factor based billing demand cap is identified as a discounted rate pursuant to PURA § 36.007(a).

Finally, OPUC recommends that all rate case expenses relative to the TECI-1 Rider and the TECDA-1 Rider be separated and not allocated to Residential Service and other customer classes for which these riders are not applicable.

OPUC respectfully requests that the SOAH ALJs adopt and incorporate OPUC's recommendations into the Proposal for Decision in this proceeding. OPUC further requests to be granted any other relief to which it may be entitled.

Date: April 15, 2024

Respectfully submitted,

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**ATTORNEYS FOR THE**
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**CERTIFICATE OF SERVICE**

SOAH DOCKET NO. 473-24-07154
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I hereby certify that on the 15th day of April 2024, a true and correct copy of the foregoing document was served on all parties of record in this proceeding.

Renee Wiersema

Renee L. Wiersema