Filing Receipt

Filing Date - 2024-04-15 02:51:18 PM

Control Number - 55338

Item Number - 79

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**

COMMISSION STAFF'S INITIAL BRIEF

Dated: April 15, 2024

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION

Marisa Lopez Wagley
Division Director

Ian Groetsch
Managing Attorney

/s/ Scott Miles
Scott Miles
State Bar No. 24098103
Anthony Kanalas
State Bar No. 24125640
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7228
(512) 936-7268 (facsimile)
Scott.Miles@puc.texas.gov

TABLE OF CONTENTS

TABLE OF ABBREVIATIONS

Commission	Public Utility Commission of Texas
ETI	Entergy Texas, Inc.
EV	Electric Vehicle
OPUC	Office of Public Utility Counsel
PURA	Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001–66.016
SPS	Southwestern Public Service Company
Staff	Commission Staff
TAC	Texas Administrative Code
TECDA	Transportation Electrification and Charging Demand Adjustment
TECI	Transportation Electrification and Charging Infrastructure

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

COMMISSION STAFF'S INITIAL BRIEF

I. INTRODUCTION

The Commission should reject ETI's proposed TECI and TECDA Riders, as both do not comply with the requirements of PURA §§ 42.0101 and 36.003, while the TECI Rider further does not comply with applicable requirements under PURA § 42.0103 and the TECDA Rider further does not comply with the requirements of PURA § 36.007. While Staff does not contest ETI's proposed TECI Rider in terms of its general compliance with PURA § 42.0103(o)(1)-(2), the fact that ETI intends to make the rider available to customers who do not intend to offer EV charging services to the public demonstrates that the TECI Rider will not comply with PURA § 42.0103(o), which can only be used by an electric utility for agreements with customers that instead will offer EV charging services to the public.

Regardless of the types of customers to whom ETI will make the rider available, the TECI Rider should be rejected because it conflicts with PURA § 42.0101(d). Specifically, it fails to 1) foster competition, 2) ensure transparency in pricing, and 3) provide rates that are based on cost causation principles. Instead, the rider would 1) improperly subsidize the costs for participating customers, stifling competition, 2) be underspecified in terms of costs, such that it is not transparent, 3) not ensure that all costs are recovered from participating customers or that the tariff is based on cost causation principles, 4) result in non-participating customers bearing some of the under-recovered costs, and 5) be offered on a discriminatory basis. Separate from non-compliance with Chapter 42 of PURA, the TECI Rider also does not comply with PURA § 36.003, as it is unreasonably preferential and discriminatory, is inequitable, and should be rejected as it is not just and reasonable. Similarly, ETI's proposed TECDA Rider is also unreasonably preferential and discriminatory, is inequitable, and grants an unreasonable preference concerning rates to certain persons in a classification, and should be rejected as it is not just and reasonable.

And as far as the TECI Rider, ETI should not be allowed to own transportation and electrification and charging infrastructure—including vehicle-charging facilities—in the manner it has proposed in its application. Rather, if ETI is to own such infrastructure and facilities, it should establish an EV base rate class with standard EV rates established consistent with PURA Chapters 42 and 36, Commission rules, and standard ratemaking practice.

II. UNCONTESTED ISSUES

TECI Rider

No party contested whether the TECI Rider complied with all but one portion of PURA § 42.0103(o). Specifically, under the TECI Rider, a person who is not an electric utility or an affiliate will be able to enter an agreement with ETI to own or operate a public EV charging station on the person's property.[1] Further, ETI will not be providing EV charging service to the public.[2] ETI also will not brand or market the EV charging station as owned or operated by the utility, including not presenting ETI's name, logo, or any other distinguishing mark to indicate that the utility owns or operates the EV charging station.[3] And finally, the participating customer will solely determine the physical access to and use of the EV charging station,[4] as well as the prices for the EV charging service.[5] Accordingly, the TECI Rider generally complies with PURA § 42.0103(o)(1)-(2).

Staff, however, contests that the TECI Rider complies with PURA § 42.0103(o) when offered to customers who will not use the EV charging stations to provide EV charging services to the public. Further, to the extent ETI contests Staff's proposal that ETI should establish an EV base rate class with standard EV rates, Staff contests any position by ETI that an EV base rate class would not comply with Chapter 42 of PURA.

---

[1] Supplemental Direct Testimony of Samantha F. Hill, ETI Exhibit No. 95 at bates page 5:21-25.

[2] *Id.* at bates pages 5:25-6:1.

[3] *Id.* at bates page 6:6-10.

[4] *Id.* at bates page 6:14-15.

[5] *Id.* at bates pages 6:25-7:3.

TECDA Rider

No party contested issues related to the estimated costs, if any, or cost recovery for the TECDA Rider. However, Staff recommends that the Commission should be concerned with ETI's lack of commitment to recover lost revenues from the TECDA Rider, if any, from participating customers only.[6]

III. CONTESTED ISSUES

TECI Rider

A. Preliminary Order Issue No. 1: Do the proposed rates for the TECI Rider comply with the requirements of Chapter 42 of PURA?

No. The proposed rates for the TECI Rider do not comply with the requirements of Chapter 42 of PURA. Specifically, under Chapter 42, the Legislature found that it is necessary to encourage "competitive" private sector investment in public EV charging stations.[7] Correspondingly, the Legislature also found that it is necessary to develop and implement "competitively neutral" tariffs for "public" EV charging stations that are "based on cost causation principles" and ensure "transparency in pricing" that would help foster the competitive private sector investment in public EV charging stations.[8] Further, PURA § 42.0103(m) requires that EV charging service rates must be reasonable and ensure that competition is not impaired.

Based on the supplemental direct testimony of Samantha F. Hill, ETI's witness, the TECI Rider gives the host customer complete discretion whether to use EV chargers for their own use, or to provide public charging service.[9] As evidence that ETI anticipates having customers that will not use EV charging stations to provide EV charging services to the public, Ms. Hill's testimony indicates that ETI expects for the TECI Rider to be used by customers, such as school districts and colleges who will use the EV charges to charge fleet EV buses, and apartment complexes who will install EV charging stations for use only by employees, tenants, and guests.[10]

---

[6] Tr. at 77:25-78:8 (Hill Cross).

[7] PURA § 42.0101(a) and (d)(1) and (3).

[8] PURA § 42.0101(d)(2).

[9] ETI Exhibit No. 95 at bates page 6:15-17.

[10] Supplemental Rebuttal Testimony of Samantha F. Hill, ETI Exhibit No. 96 at bates page 13; *see also* Tr. at 33:1-6 (Hill Cross).

The Legislature, however, crafted Chapter 42 of PURA with the intention of encouraging investment in *public* EV charging stations.[11] And under PURA § 42.0102(7), a public EV charging station is defined as a charging station that is accessible for commercial use by the public.[12] Further, it specifically excludes vehicle charging equipment that is located on the premises of a customer and used by the customer or the customer's tenants, affiliates, or guests and not used commercially for EV charging service.[13] As such, customers, such as those referenced above, would not be using the TECI Rider to install *public* EV charging stations, because the EV charging stations would not be accessible for commercial use by the public. In turn, to the extent that ETI offers the TECI Rider to such customers, the underlying agreements would not adhere to the requirements of PURA § 42.0103(o). Importantly, PURA § 42.0103(o) only applies to agreements in which the electric utility will own or operate a *public* EV charging station on the customer's property, such that the customers must make the EV charging stations commercially available to the public.

While the TECI Rider in such circumstances violates PURA § 42.0103(o), it may be something that the Legislature otherwise contemplated in Chapter 42. Specifically, while PURA § 42.0102(4) defines EV charging service as sales made from a public EV charging station to the public,[14] PURA § 42.0103(e) states that an electric utility may provide EV charging service directly to a customer, but only if certain requirements are met.[15] Therefore, it can be interpreted that PURA § 42.0103(e) would enable ETI to provide EV charging services directly to certain customers that do not intend to make the EV charging stations commercially available to the general public. However, for such customers, ETI has not demonstrated compliance with PURA § 42.0103(e)-(m).

In contrast, if the Legislature intended for PURA § 42.0103(e) to require an electric utility to make the EV charging station available to the public in addition to providing EV charging service directly to the host customer, then, to the extent that ETI may seek to offer the TECI Rider pursuant to PURA § 42.0103(e) to customers who do not intend to provide EV charging services,

---

[11] PURA § 42.0101(a)-(d).

[12] PURA § 42.0102(7).

[13] PURA § 42.0102(7)(B).

[14] PURA § 42.0102(4).

[15] PURA § 42.0103(e).

the Commission should deny such a request. Specifically, in such a scenario it would not be appropriate for an electric utility in a vertically integrated area to own vehicle-charging facilities or other transportation electrification and charging infrastructure. Instead, such ownership should be left to competitive providers. As shown in the direct testimony of William B. Abbott, Staff's witness, the basis for this recommendation are the underlying principles of PURA and the Commission's rules regarding regulation of electric public utilities.[16] Specifically, PURA § 11.002, relating to Purpose and Findings, importantly states in part that:

> (b) Public utilities traditionally are by definition monopolies in the areas they serve. As a result, the normal forces of competition that regulate prices in a free enterprise society do not operate. Public agencies regulate utility rates, operations, and services as a substitute for competition.[17]
>
> (c) Significant changes have occurred in the telecommunications and electric power industries since the Public Utility Regulatory Act was originally adopted. Changes in technology and market structure have increased the need for minimum standards of service quality, customer service, and fair business practices to ensure high-quality service to customers and a healthy marketplace where competition is permitted by law….[18]

Further, 16 TAC § 25.1, relating to Purpose and Scope of Rule, importantly states in part that:

> (a) **Mission of the Public Utility Commission of Texas (commission).** The mission of the commission is to assure the availability of safe, reliable, high quality services that meet the needs of all Texans at just and reasonable rates. To accomplish this mission, the commission shall regulate electric and telecommunications utilities as required while facilitating competition, operation of the free market, and customer choice.[19]

In the case of ETI's proposed TECI Rider and this scenario in which a participating customer will not be providing EV charging services, as required by Chapter 42 of PURA, the rider would authorize ETI to own all or portions of transportation electrification and charging infrastructure on a non-residential customer's property for the customer's use,[20] which in Staff's view would allow

---

[16] Direct Testimony of William B. Abbott, PUC Staff Exhibit No. 4 at bates pages 5:18-6:33 and 8:5-16.

[17] *Id.* at bates page 5:20-24 (citing to PURA § 11.002(b)).

[18] *Id.* at bates page 6:1-7 (citing to PURA § 11.002(c)).

[19] *Id.* at bates page 6:28-33 (citing to 16 TAC § 25.1(a)).

[20] *Id.* (citing to Direct Testimony of Samantha F. Hill, ETI Exhibit No. 40 at 10-11).

ETI to inappropriately provide a competitive service under this scenario that is not authorized by Chapter 42 of PURA.[21]

Even if ETI does not make the TECI Rider available to such customers, the rider still does not comply with the requirements of Chapter 42 of PURA in terms of fostering competition and implementing competitively neutral policies and tariffs, as well as ensuring that such tariffs provide transparent prices that are based on cost causation principles. As shown in the proposed TECI Rider, the net monthly bill for a participating customer will be reduced by additional revenues projected to be received by ETI.[22] Specifically, the rider states that customers will not be required to reimburse the Company for the total installed cost if the projected revenues for the first four years of the contract term or the first four years after electric service is expected to commence is equal to or exceeds the projected infrastructure costs.[23] And as far as the projected revenues, ETI will determine those in its sole discretion and will include projected annual non-fuel firm rate schedule revenues, plus base rate cost recovery mechanisms.[24] This language in the rider clearly demonstrates that the TECI costs paid under the TECI Rider will not include the full TECI costs. Instead, the participating customer will receive an offsetting credit towards those costs in the amount of their base rate and non-fuel rate schedule revenues, potentially resulting in the customer paying nothing for the TECI infrastructure costs.

In fact, Ms. Hill provided some illustrative examples in her supplemental rebuttal testimony demonstrating hypotheticals in which a participating customer does not pay the total TECI costs.[25] As confirmed by Ms. Hill, a non-participating customer who installs the same exact EV charging equipment at the same exact cost may have to pay the full costs,[26] whereas a participating customer would benefit from the revenue offset included in the net monthly bill, resulting in significant subsidies for the participating customer. The table below demonstrates the resulting subsidies provided to the hypothetical participating customers in Ms. Hill's illustrative examples.

[21] *Id.*

[22] ETI Exhibit No. 95 at bates page 15 (Section III of the TECI Rider).

[23] *Id.* (Section V of the TECI Rider).

[24] *Id.*

[25] ETI Exhibit No. 96 at bates page 25-31.

[26] Tr. at 30:5-31:6 (Hill Cross).

	Example 1	Example 2	Example 3
	SFH-SR-1 (Page 2 of 7)	SFH-SR-1 (Page 4 of 7)	SFH-SR-1 (Page 6 of 7)
Total TECI Costs	$200,971	$111,210	$29,418
Total Paid By TECI Rider Customer	$115,075	$68,361	$4,500
Total Paid by non-TECI Rider Customer	$200,971	$111,210	$29,418
Rider TECI Subsidy / Penalty for non-participation	$85,896	$42,849	$24,918
Rider TECI Subsidy %	42.7%	38.5%	84.7%

Based on the supplemental direct testimony Mr. Abbott, the rider, through these subsidies, would significantly discourage the proliferation of EV charging stations outside of ETI's offering and thus conflict with the Legislature's intent for EV-related tariffs to encourage competition.[27] Customers in ETI's service territory would effectively be forced to contract with ETI to install public EV charging stations on their property, as any other option would be prohibitively expensive in comparison without the revenue offset. Similarly, ETI's ability to subsidize EV charging stations under the TECI Rider would either force private competitive providers to work with ETI in order to offer services in ETI's service territory or force the private competitive providers out of competition.[28] Ultimately, there is no sense in which ETI's proposed TECI Rider can be considered competitively neutral.

Separate from issues with competition, the TECI Rider also includes a significant lack of specificity or transparency.[29] One such issue with the lack of transparency is that customers would need to negotiate various terms and prices, which may be burdensome for some customers and discourage adoption of EV charging stations by such customers.[30] Notably, the customer-tailored approach in the TECI Rider comes with customer-specific details that are not available at this time, such that a sufficient review of the TECI Rider rates, which in part must be based on costs, is untenable for customers, as well as the Commission.[31] In terms of the O&M costs associated with

[27] Supplemental Direct Testimony of William B. Abbott, PUC Staff Exhibit No. 7 at bates page 12:9-20.

[28] *Id.*

[29] *Id.* at bates page 9:21-11:17.

[30] *Id.* at bates page 11:12-17.

[31] PUC Staff Exhibit No. 4 at bates page 8:18-9:11; *see also* 16 TAC § 25.234(a).

EV charging stations and infrastructure, Ms. Hill confirmed that ETI is not proposing what those costs will be in this proceeding.[32] Further, Ms. Hill indicated that ETI will not have control over the O&M package costs offered by its selected vendors and that the vendors can change the prices at their discretion.[33]

If the Commission does not determine that the TECI Rider inherently provides a subsidy to participating customers, as demonstrated by Staff above, and approves the TECI Rider, then the Commission will be required to determine whether there was in fact any subsidization and cost-shifting in a future rate case. As detailed by Mr. Abbott, ensuring that the proper costs are being recovered from participating customers would be significantly burdensome on parties and the Commission, especially given the customer-specific nature of the TECI Rider and potentially numerous EV charging stations that might be installed, as well as the growing number incremental cost recovery riders that are subject to reconciliation in each base rate case.[34] Furthermore, Ms. Hill testified that ETI could not commit in this proceeding to extend the statutory deadlines in any future rate proceeding,[35] even though an extension could help alleviate the aforementioned burdens on other parties and the Commission.

Altogether, the lack of transparency in pricing in the TECI Rider does not comply with the Legislature's intent for EV-related tariffs to provide such transparency and prevents the Commission from determining whether the TECI Rider is based on cost causation principles. In fact, despite the lack of transparency, under the TECI Rider, ETI will effectively be double counting base rate revenues towards both rate base, rider, and TECI costs,[36] which actually demonstrates that the TECI Rider conflicts with cost causation principles. Regardless, it is clear that the TECI Rider does not comply with the requirements of Chapter 42 of PURA, namely, to comply with the Legislature's findings that tariffs developed and implemented pursuant to Chapter 42 be competitively neutral, transparent in terms of pricing, and based on cost causation principles.

---

[32] Tr. at 21:1-24:12 (Hill Cross).

[33] Tr. at 27:12-29:22 (Hill Cross).

[34] PUC Staff Exhibit No. 7 at bates page 10:17-11:5.

[35] Tr. at 78:9-14 (Hill Cross).

[36] *Infra* in discussion of Preliminary Order Issue No. 2e.

In contrast to the TECI Rider, Mr. Abbott notes that tariffed numerical rates provide transparency and predictability for customers,[37] and that standard ratemaking practice involves setting numerical rates for standard electric service.[38] As such, Mr. Abbott's proposal that ETI establish an EV base rate class is not ill-defined, as suggested by Ms. Hill.[39] Rather, such a proposal would be entirely consistent with setting rates in the normal manner authorized under PURA Chapter 36, as PURA § 42.0103(m) requires. Furthermore, Staff notes that Ms. Hill mischaracterizes Mr. Abbott's testimony as being contradictory by arguing for the EV rate class, while also acknowledging that the TECI Rider offers a customer-specific approach with potentially numerous and incredibly burdensome costs that will need to be verified.[40] Ms. Hill's reference to Mr. Abbott's acknowledgement of the latter does not take into account Mr. Abbott's testimony that EV charging service is standardizable.[41] Ms. Hill attempts to argue that the number of options and decision points that will come with the TECI Rider prevents it from becoming standardized,[42] but that argument is impacted by the fact that ETI should not be able to offer the TECI Rider to the wide variety of customers referenced in Ms. Hill's testimony.[43] As previously detailed, PURA § 42.0103(o) only applies to agreements to install *public* EV charging stations that will provide EV charging services commercially to the public, such that many of the various customers necessitating the wider variety of options will be diminished, making it even easier for options to be standardized.

Additionally, Ms. Hill argues that customers under the TECI Rider will have different amount of power (kW) and energy (kWh) that adds complexity to the potential customer options.[44] She also notes that PURA § 42.0103(o) contemplates agreements between utilities and customers to argue that an EV rate class with standard pricing would be inconsistent with the Legislature's finding that contracts and tariffs help foster the development of the EV charging market.[45] She,

---

[37] PUC Staff Exhibit No. 7 at bates page 11:13-14.

[38] *Id.* at bates page 10:1-2.

[39] ETI Exhibit No. 96 at bates page 6:16.

[40] *Id.* at bates pages 4:18-5:3.

[41] PUC Staff Exhibit No. 7 at bates pages 13:23-14:1 and 14:11-20.

[42] ETI Exhibit No. 96 at bates pages 12:14-13:12.

[43] *Id.* at bates page 13:10-12.

[44] *Id.* at bates pages 13:12-14:2.

[45] *Id.* at bates page 14:3-9.

however, disregards that many of ETI's standard rate classes, such as the General Service rate class, 1) include rates for both power (kW) and energy (kWh) and 2) are based on contracts between ETI and customers.[46] And there is no basis to conclude that the same customers, who intend to install and use EV charging stations, will have any more varied amounts of power (kW) and energy (kWh) under an EV rate class than they already might have under their existing rate classes. As an example, the General Service rates are applicable to customers who contract for not less than 5kW or not more 2,500 kW of electric service to be used for general lighting and power,[47] suggesting a varying array of usage by customers in the General Service rate class. Accordingly, an EV rate class can similarly provide standardized rates for power (kW) and energy (kWh), with such rates being applicable to customers who contract with ETI under the EV rate class. And in response to ETI's perceived concern about such a rate class not going into effect until 2028 or 2029, this concern is first based on the latest date in which ETI would need to file its next base rate case.[48] However, ETI is free to submit a base rate application prior to that time. Second, the Commission has approved a new rate class with demand charges outside of a base rate case in Docket No. 43955,[49] as well as new LED lighting base rates outside of a base rate case in Docket Nos. 42742, 50786, and 54241.[50]

Separate from Staff's proposal for an EV rate class, Ms. Hill argues that the proposed TECI Rider is not materially different than ETI's approved Additional Facilities Charge (AFC) Rider, Option B or ETI's approved Area Lighting Service (ALS) Rider to support approval of the TECI Rider.[51] As demonstrated by Mr. Abbott, the AFC and ALS rate schedules do not provide support

---

[46] *Application of Entergy Texas, Inc. for Authority to Change Rates*, Docket No. 53719, ETI's Clean Copy of Tariffs at Page 9.1 (Aug. 31, 2023) (showing rates for General Service rate class).

[47] *Id.*

[48] Tr. at 54:22-56:9 (Abbott Cross).

[49] *Application of Sharyland Utilities, L.P. for Approval of Rate For Wholesale Transmission at Distribution Level Voltage*, Docket No. 43955, Order (May 6, 2015).

[50] *Application of Centerpoint Energy Houston Electric, LLC to Amend Rate Schedule 6.1.1.1.6 Lighting Services in its Tariff for Retail Delivery Service*, Docket No. 42742, Order (Nov. 14, 2014); *Petition of Southwestern Electric Power Company to Implement Rate Schedules Municipal Street and Parkway Lighting and Area Lighting-Light Emitting Diode*, Tariff Control No. 50786, Notice of Approval (Sept. 11, 2020); *Petition Of AEP Texas Inc. to add Lighting Options to Municipal Street Lighting Service Tariff*, Tariff Control No. 54241, Notice of Approval (Feb. 24, 2023).

[51] Rebuttal Testimony of Samantha F. Hill, ETI Exhibit No. 53 at bates pages 15:9-17:10.

for the proposed TECI Rider.[52] The AFC Rider is necessary because of the potentially wide range of unique circumstances that might require nonstandard facilities that also come with a wide range of potential costs.[53] In contrast with non-standard facilities, EV chargers and necessary O&M costs may become very common over time, such that EV charging service is much more standardizable than AFC service.[54] Conversely, the ALS Rider is standardized and specified unlike the proposed TECI Rider.[55] Instead, the ALS Rider supports adoption of Staff's proposal for ETI to have an EV rate class. Notwithstanding the foregoing, ETI has not met its burden to prove that the TECI Rider complies with Chapter 42 of PURA, as previously discussed and further supported by the discussion of the issues below.

B. Preliminary Order Issue No. 2e: Does the TECI Rider comply with the requirements of PURA § 42.0103(o) regarding site host agreements? 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 the incremental revenues paid by the person to the utility associated with the electric vehicle charging service?

No. The TECI Rider does not ensure that the participating customers will recover all electric utility-related costs. Pursuant to PURA § 42.0103(o)(3), ETI must prove that its proposed TECI Rider ensures that the participating customers pay for "all electric utility-related costs" and that the rider provides for "full recovery of the public EV charging station" from the participating customers, including incremental revenues paid by the participating customers associated with the EV charging service. All "electric utility-related costs" include both TECI-related costs, as well costs associated with base rates and non-fuel firm rate schedules. Participating customers, however, would benefit from the offsetting of projected base rate and non-fuel firm rate schedule revenues against TECI costs, and thus fail to pay for all electric utility-related costs. Specifically, the projected revenues include non-fuel firm rate schedule revenues and base rate cost recovery mechanisms.[56] More particularly, as demonstrated by Ms. Hill's illustrative examples, the projected revenue credit in each hypothetical includes non-fuel base rate and rider charges,

---

[52] PUC Staff Exhibit No. 7 at bates pages 13:14-20.

[53] *Id.* at bates page 13:16-21.

[54] *Id.* at bates pages 13:22-14:2.

[55] *Id.* at bates page 14:5-7.

[56] ETI Exhibit No. 95 at bates page 15 (Section V of the TECI Rider).

including charges for Rate Case Expenses, System Restoration Charges, Energy Efficiency Cost Recovery Factors, Transmission Cost Recovery Factors, Distribution Cost Recovery Factors, Generation Cost Recovery Factors, among others.[57] In turn, this results in ETI double counting these revenues by applying the same $1 in base rate or rider revenues against both $1 in TECI costs and $1 in base rate or rider costs. Applying the same $1 in revenues against $2 in costs is unreasonable and demonstrates that the TECI Rider is not based on cost causation principles. Importantly, and as noted by Mr. Abbott with regard to the base rate charges avoided under the TECDA rider, these base rate-related costs included in ETI's proposed revenue offset would far exceed the costs of any relevant make-ready infrastructure, because the base rates and non-fuel riders include all of ETI's system costs, including those for generation, transmission, and distribution.[58]

C. Preliminary Order Issue No. 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)?

No. ETI has not demonstrated that it will be able to offer the service under the terms of the tariff on a nondiscriminatory basis, primarily based on both ETI's lack of control over O&M costs and EV charging service prices, as well as ETI's discretion in determining how and when to apply projected revenues as an offset against the TECI costs. As previously noted, part of the reason for the TECI Rider's lack of specificity and transparency is based on ETI's lack of control over the O&M costs determined by its vendors.[59] Because a vendor can control such costs and change them as they see fit at any time, ETI cannot prevent the vendors from discriminating against certain customers, such that ETI cannot guarantee that the TECI Rider will be offered on a nondiscriminatory basis. Even if there was no concern that a vendor would potentially be able to discriminate against certain customers, Ms. Hill does not deny that a vendor can still change its O&M prices at any time, presumably to account for market changes, and that two customers may contract for the same exact type and level of O&M services but end up paying different costs.[60]

---

[57] ETI Exhibit No. 96 at bates pages 25-31.

[58] *Id.* at bates pages 8:22-9:3.

[59] Tr. at 23:14-18 and 28:17-29:22 (Hill Cross).

[60] Tr. at 29:13-22 (Hill Cross).

This lack of control in the O&M costs effectively would result in ETI offering service under the terms of the tariff on a discriminatory basis in violation of PURA § 42.0103(p)(1).

In addition to ETI's lack of control over the O&M costs, it also lacks control in the prices set by customers that will offer EV charging services through their installed public EV charging stations.[61] While PURA § 42.0103(o)(2)(B) necessitates ETI's lack of control over EV charging service prices being set by customers, the fact that ETI has no control over the prices should be considered in light of ETI's proposal to offset TECI infrastructure costs by a customer's *projected* revenues. Notably, the actual revenues that ETI receives from a customer may be impacted by the prices set for EV charging service, something that ETI does not indicate is factored into its projected revenues. As such, it is possible for ETI to potentially under-project or over-project a customer's revenues and thus offer service under the TECI Rider on a discriminatory basis when compared with customers whose revenues are appropriately projected. Furthermore, the TECI Rider states that ETI shall determine in its sole discretion the applicability of projected revenues,[62] without any restrictions, guarantees, or commitments that will prevent ETI from effectively using that discretion in a manner that offers service on a discriminatory basis in violation of PURA § 42.0103(p)(1).

D. Preliminary Order Issue No. 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)?

No. Based on the previous discussion of Ms. Hill's illustrative examples, the TECI rider will significantly fail to ensure that the revenue collected by ETI under the rider will allow the utility to recover the costs of owning, financing, operating, and maintaining the public EV charging station from a participating customer. Because the TECI rider fails to fully recover TECI costs, non-participating customers will certainly and unreasonably end up paying for some of the TECI costs.[63] This conclusion is bolstered by Ms. Hill's assertion that ETI will offset net monthly

[61] ETI Exhibit No. 95 at bates page 6:25-7:3.

[62] *Id.* at bates pages 16 (Section V of the TECI Rider).

[63] PUC Staff Exhibit No. 7 at bates page 12:3-6.

payments collected under the TECI Rider against ETI's overall revenue requirement.[64] Since these net monthly payments will fall far short of recovering the TECI costs from participating customers, as discussed previously, ETI's approach would then leave the under-recovered costs in ETI's overall revenue requirement included in rates to be collected from all customers, in violation of PURA § 42.0103(o)(3) and (p)(2). In fact, ETI has made no commitments in this proceeding that it will not seek to recover these under-recovered TECI costs from non-participating customers in the future.

Conversely, in the event that a participating customer stops making payments under the TECI Rider and ETI is ultimately unable to recover its investment from the participating customer, Ms. Hill stated that ETI would treat it as a bad debt expense.[65] And based on ETI's briefing in Docket No. 53719, in which ETI argued the Commission considers uncollectible expenses as part of conducting business for an electric utility,[66] ETI would seemingly subject non-participating customers to bear some portion of any potential uncollectible TECI costs or at least seek recovery in that manner in a future base rate case. While recovering bad debt expense from the broader body of ratepayers may be appropriate as regards the costs of electric utility service that ETI is required to provide under its certificate of convenience and necessity, such an approach is questionable at best when it comes to optional services such as those offered under the proposed TECI and TECDA riders. In any case, ETI has made no commitments in this proceeding that it will not seek to recover any potential uncollected TECI costs from non-participating customers in the future.

E. Preliminary Order Issue No. 5: Do the proposed rates comply with the requirements of PURA § 36.003? Is the rate just and reasonable? Is the rate not unreasonably preferential, prejudicial, or discriminatory? Is the rate sufficient, equitable, and consistent in application to each class of consumer?

No. As demonstrated above, there is significant subsidization inherent in ETI's proposed TECI Rider and this subsidization conflicts with the requirements under PURA § 36.003 that rates may not be unreasonably preferential. Additionally, the fact that the TECI Rider does not ensure

---

[64] ETI Exhibit No. 53 at bates page 19:4-6.

[65] Tr. at 61:20-62:5 (Hill Cross).

[66] Docket No. 53719, Entergy Texas, Inc.'s Initial Brief Addressing Preliminary Order Issue Nos. 68 and 69 at 18 (Jan. 13, 2023) (citing to Cross-Rebuttal Testimony of Jeremiah W. Cunningham, SPS Exhibit No. 2 at 14:17-15:4 (citing to *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 43695, Order on Rehearing at Findings of Fact Nos. 310-311 (Feb. 23, 2016))).

that ETI will collect the full TECI costs from participating customers demonstrates that the rider is inequitable, as ETI will seek to recover the remaining costs from non-participating customers. And given that the TECI Rider is only applicable to non-residential customers (and should only be applicable to non-residential customers that intend to provide EV charging services), requiring non-participating customer classes, such as the residential class, to bear some of the TECI costs could be considered as a discriminatory practice against the non-participating customer classes. As such, Staff supports the recommendation by Evan D. Evans, OPUC's witness, that the Commission ensure ETI's non-participant retail customers are protected from the risk of bearing costs related to ETI's TECI Rider, including protection from bearing the cost for any uncollectible expenses that result from ETI being unable to collect from defaulting participating customers.[67] Further, Staff recommends this level of protection be extended to all non-participating customers, such that ETI be required to only recover or seek recovery of any uncollectible TECI costs from other participating customers. Alternatively, it would be reasonable for the Commission to prohibit ETI from recovering any uncollectible costs associated with its TECI Rider from any of its customers, as these costs are not necessary for the functioning of the ETI system in the provision of standard utility service. Altogether, ETI's proposed TECI Rider is unreasonably preferential and discriminatory, is inequitable, and should be rejected as it is not just and reasonable.[68]

<u>TECDA Rider</u>

A. Preliminary Order Issue No. 6: Do the proposed rates for the TECDA Rider comply with the requirements of Chapter 42 of PURA?

No. As detailed below, the rider does not comply with the requirements of PURA § 36.003, because it would shift significant costs to non-participating customers.[69] Importantly, while the type of rate design measure proposed by the TECDA Rider is not explicitly included in Chapter 42 of PURA, that is not to say that the TECDA Rider is not impacted by Chapter 42, as Ms. Hill initially suggests in her supplemental direct testimony.[70] Notably, Ms. Hill does argue in her supplemental rebuttal testimony that the TECDA rider is supported by PURA § 42.0101(b)-(c), as

---

[67] Cross-Rebuttal Testimony of Evan D. Evans, OPUC Exhibit No. 57 at 14:5-9.

[68] PUC Staff Exhibit No. 4 at bates page 7:12-13; *see also* PUC Staff Exhibit No. 7 at bates page 7:3-5.

[69] PUC Staff Exhibit No. 7 at bates page 8:20-21.

[70] ETI Exhibit No. 95 at bates page 4:11-12.

it encourages investment in the deployment of public EV charging stations and allows ETI to fulfill its role to support the installation and use of infrastructure for EV charging.[71] Ms. Hill, however, ignores the Legislature's finding in PURA § 42.0101(d)(2) that it is necessary to develop and implement tariffs that are based on cost causation principles. As such, Chapter 42 of PURA requires any proposed tariff, including demand adjustments like the TECDA Rider, to be based on cost causation principles. Instead, as detailed below, the TECDA Rider provides significant discounts from cost-based rates and is thus not based on cost causation principles.[72] Furthermore, as noted by Mr. Abbott, the costs shifted to non-participating customers would likely far exceed the costs of any relevant make-ready infrastructure, because the rate discount applies to rates that include all of ETI's system costs, including those for generation, transmission, and distribution.[73] Accordingly, the TECDA Rider is not an appropriate or necessary mechanism that will encourage deployment of EV charging stations in the manner in which the Legislature intends.

B. Preliminary Order Issue No. 7: Do the proposed rates comply with the requirements of PURA § 36.003? Is the rate just and reasonable? Is the rate not unreasonably preferential, prejudicial, or discriminatory? Is the rate sufficient, equitable, and consistent in application to each class of consumer?

No. As an initial matter, Staff reiterates its position already briefed in Docket No. 53719.[74] Specifically, it would not be reasonable to adopt ETI's proposed TECDA Rider based on the analysis provided by ETI. Specifically, as noted by Mr. Abbott, capacity-related costs for demand charges result from customer demand (kW) and not by customer energy (kWh) use.[75] Therefore, ETI's analysis of the costs on a per-kWh basis is unreasonable, in error, and should not be considered to support ETI's proposed TECDA Rider in this proceeding. Furthermore, customers with lower load factors, including EV charging stations that have lower usage, are less efficient in using the delivery system than customers with higher load factors, such that the low load factor

[71] ETI Exhibit No. 96 at bates pages 5:11-6:2.

[72] PUC Staff Exhibit No. 7 at bates page 8:21-22.

[73] *Id.* at bates pages 8:22-9:3.

[74] Docket No. 53719, Commission Staff's Initial Brief on Issues 68 and 69 at 10-12 (Jan. 13, 2023).

[75] Staff Exhibit No. 4 at bates page 10:8-11.

customers have higher capacity or delivery costs per kWh used.[76] As such, the costs per kWh should not determine the capacity costs relevant to the analysis for ETI's proposed TECDA Rider.

Comparatively, the Commission has determined on the same basis that non-coincident peak demand charges are the most appropriate rate design for distribution delivery cost recovery where the necessary metering is available.[77] Ms. Hill attempts to distinguish EV charging station customers from traditional electric customers by arguing that once the early adoption period of the TECDA Rider has surpassed and the EV charging industry has become more widespread, energy utilization (kWh) will increase to stabilize the effective cost per kWh, such that EV charging station customers will experience higher utilization and higher load factors and thus demand charges will no longer be a challenge.[78] However, she provides no evidence to support this assertion. As such, there is no reason to consider EV charging station customers different from other customers with low load factors. Because of the potentially misguided and confusing load factor calculations used to support billing demand adjustments to the TECDA Rider, the rider itself increases electric bill uncertainty for customers, as noted by Mr. Abbott.[79]

The TECDA Rider also will impact non-participating customers. Specifically, the rider would allow qualifying participating customers to pay only a portion of their capacity costs, which they cause ETI to incur and thus would unreasonably discriminate against a non-participating customer with identical usage and load.[80] And such a non-participating customer would potentially end up paying much more than the participating EV charging station customers.[81] Regarding Ms. Hill's assertion that the TECDA Rider is needed to help proliferate EV charging stations in ETI's service territory, Mr. Abbott counters that an increase in the amount of customers taking service under ETI's proposed TECDA Rider would correspondingly increase the amount of discriminatory cost shifting to other customers.[82] Ms. Hill ultimately argues that there would be a net benefit to

---

[76] *Id.* at bates page 10:11-13.

[77] *Id.* at bates page 10:14-16.

[78] ETI Exhibit No. 53 at bates page 38:11-39:3.

[79] PUC Staff Exhibit No. 4 at bates page 10:18-11:2.

[80] *Id.* at bates page 11:3-6.

[81] *Id.* at bates page 11:6-8.

[82] *Id.* at bates page 11:8-13.

ETI's non-participating customers.[83] However, this speculative assertion ignores the fact that some costs are shifted to non-participating customers that otherwise would not have borne those costs, such that these discriminatory practices cannot be ignored. Furthermore, she essentially acknowledges Mr. Abbott's assertion that such discrimination may occur, as identical non-participating customers may potentially pay more than the participating customers.[84] Regardless, the TECDA Rider is still unduly preferential and discriminatory based on Commission precedent in Docket No. 22344.[85] Specifically, the Commission relevantly did not include billing demand adjustments for select customer groups when setting the rate design for demand-metered classes such as ETI's General Service rate class.[86] Additionally, the Commission also determined the following:

> Many of the parties propose that demand-metered classes should be billed based on the non-coincident peak (NCP) demand.
>
> ...
>
> With respect to a facilities/delivery charge, the Commission finds that the NCP billing determinant should be used for non-IDR metered customers.
>
> ...
>
> The distribution facilities/delivery charge for IDR metered customers shall be billed on the NCP billing determinant.[87]

In direct contravention of this precedent, ETI's proposed TECDA Rider includes a demand adjustment and would result in participating customers being billed for facility/distribution charges based on monthly kWh energy usage and not NCP demand.[88]

[83] ETI Exhibit No. 53 at bates pages 30:18-33:6.

[84] *Id.* at bates page 35:4-7.

[85] PUC Staff Exhibit No. 4 at bates pages 12:4-23 (citing to *Generic Issues Associated with Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 and Public Utility Commission Substantive Rule § 25.344*, Order No. 40: Interim Order Establishing Generic Customer Classification And Rate Design at 1 and 5-7 (Nov. 22, 2000)).

[86] *Id.*

[87] *Id.*

[88] *Id.* at bates page 13:1-4.

C. Preliminary Order Issue No. 10: Is the proposed rate, with a billing demand adjustment, a discounted rate under PURA § 36.007?

Yes. As noted by Mr. Evans, the proposed billing demand adjustment would be a discounted rate under PURA § 36.007(a) that would potentially result in cost shifting to other customers and thus ETI's violation of PURA § 36.007(d).[89]

D. Preliminary Order Issue No. 11: What impacts will there be on current customers who enroll in the TECDA Rider if Entergy Texas's application is granted?

The discounted billing demand does not provide adequate price signals to customers and can encourage customers to unnecessarily impose higher demands on the system, resulting in higher costs being incurred.[90] Overall, reliance on non-cost-based rates promotes inefficiencies that could cause higher rates for all customers.[91]

E. Preliminary Order Issue No. 12: What impacts will there be on Texas customers who do not enroll in the TECDA Rider if Entergy Texas's application is granted?

As stated above, the TECDA rider will allow qualifying participating customer to pay only a portion of their capacity costs which cause ETI to incur and thus would unreasonably discriminate against a non-participating customer with identical usage and load,[92] with the non-participating customer potentially paying much more than the participating customers.[93]

F. Preliminary Order Issue No. 13: 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?

Staff does not have any comments on this issue. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

---

[89] OPUC Exhibit No. 57 at 19:3-10 and 21:4-6.

[90] PUC Staff Exhibit No. 4 at bates page 11:13-12:2.

[91] *Id.*

[92] *Id.* at bates page 11:3-6.

[93] *Id.* at bates page 11:6-8; *see also* ETI Exhibit No. 53 at bates page 35:4-7.

TECI and TECDA Rider

A. Preliminary Order Issue No. 14: Do Entergy Texas's proposed programs and the corresponding tariffs comply with all other applicable requirements of PURA and Commission rules?

No. As detailed above, the projected revenues that ETI will use to offset TECI costs include non-fuel firm rate schedule revenues and base rate cost recovery mechanisms,[94] such as Rate Case Expenses, System Restoration Charges, Energy Efficiency Cost Recovery Factors (EECRF), Transmission Cost Recovery Factors (TCRF), Distribution Cost Recovery Factors, Generation Cost Recovery Factors, among others.[95] This approach of applying base rate and rider revenues against TECI costs specifically conflicts with the statutory authorizations and financing orders behind certain of these riders. For example, the Financing Order in Docket No. 52302, authorizing ETI's System Restoration Charges, requires that ETI, as the servicer for the system restoration bonds, "must remit collections of the system restoration charges to BondCo or the indenture trustee for BondCo's account in accordance with the terms of the servicing agreement."[96] By Commission order, these funds may not be used for any other purpose, such as paying for TECI costs, as ETI has proposed.

In addition, PURA § 36.209, authorizing the TCRF, limits cost recovery under that rider to certain "reasonably and necessary expenditures for transmission infrastructure improvement costs and changes in wholesale transmission charges to the electric utility."[97] TECI costs do not fall into this category, and applying TCRF revenues against TECI costs is inappropriate. Further, PURA § 39.905(b)(1), authorizing the EECRF "for ensuring timely and reasonable cost recovery for utility expenditures made to satisfy the goals of [PURA § 39.905]," does not allow EECRF revenues to be applied towards TECI costs, as ETI has proposed. These inexhaustive examples demonstrate that the proposed TECI Rider does not comply with applicable requirements of

---

[94] ETI Exhibit No. 95 at bates page 15 (Section V of the TECI Rider).

[95] ETI Exhibit No. 96 at bates pages 25-31.

[96] *Application of Entergy Texas, Inc. for a Financing Order*, Docket No. 52302, Order at Ordering Paragraph No. 34 (Jan. 14, 2022).

[97] PURA § 36.209(b).

PURA, as well as Commission rules and orders. Similarly, the TECDA Rider directly contravenes a Commission order.[98]

IV. CONCLUSION

Staff respectfully requests the entry of a proposal for decision consistent with the foregoing discussion, rejecting the TECI and TECDA Riders based on findings that the riders do not comply with the requirements of Chapters 42 and 36 or PURA, as discussed above.

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

CERTIFICATE OF SERVICE

I certify that unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on April 15, 2024 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ *Scott Miles*
Scott Miles

---

[98] PUC Staff Exhibit No. 4 at bates pages 12:4-23 (citing to *Generic Issues Associated with Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 and Public Utility Commission Substantive Rule § 25.344*, Order No. 40: Interim Order Establishing Generic Customer Classification And Rate Design at 1 and 5-7 (Nov. 22, 2000)).