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

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

**OFFICE OF PUBLIC UTILITY COUNSEL'S
POST-HEARING REPLY BRIEF**

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April 25, 2024

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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 reply brief.¹ Pursuant to State Office of Administrative Hearings (“SOAH”) Order No. 3, the deadline to submit post-hearing reply briefs is April 25, 2024.² Therefore, this pleading is timely filed.

I. INTRODUCTION

OPUC takes issue with Entergy Texas, Inc.’s (“ETI” or “Company”) interpretation of certain facts and the law as discussed in the Company’s initial brief and responds as follows:

III. CONTESTED ISSUES

TECI-1 RIDER

In its initial brief, ETI attempts to assure the Public Utility Commission of Texas (“Commission”) that “[n]othing has changed regarding the ‘rate related aspect’ of the TECI Rider

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 SOAH Order No. 3 (Jan. 18, 2024).

since the PFD's issuance"³ in Docket No. 53719 and that the language has been strengthened to clarify that the Company will recover "all electric utility-related costs" from the program's participating customer.⁴ However, OPUC contends as outlined in its initial brief that ETI has failed to ensure or commit that the rate case expenses associated with obtaining approval of the proposed riders in this docket and all indirect or overhead costs that are reasonably allocable to administer, market, evaluate performance, and respond to customer inquiries for this program will be recovered solely from participating customers.⁵

ETI also contends that Staff of the Public Utility Commission of Texas ("Staff") is the only party that filed witness testimony in this proceeding in opposition to the TECI Rider.⁶ OPUC has not filed testimony supporting the TECI rider.⁷ As noted in the direct testimony of OPUC witness Mr. Evan Evans, its initial brief, and in this reply brief, OPUC has made clear that it conditionally opposes the TECI Rider.⁸

ETI further stresses that participating customers will pay 100% of their allocable share of ETI's cost of service through a nonresidential tariff that is in addition to their metered service being taken under the Company's non-residential rate schedules.⁹ However, as shown in ETI witness Ms. Samantha Hill's testimony, there will be additional indirect and incremental costs associated with the development, regulatory approval, and sales of the TECI program that will not

³ Entergy Texas, Inc's Initial Brief at 2 (Apr. 15, 2024). (ETI's Initial Brief).

⁴ ETI's Initial Brief at 2 (Apr. 15, 2024).

⁵ Office of Public Utility Counsel's Initial Brief at 2 (Apr. 15, 2024). (OPUC's Initial Brief).

⁶ ETI's Initial Brief at 6 (Apr. 15, 2024).

⁷ Direct Testimony and Workpapers of Evan D. Evans at 34:20-28 (Oct. 26, 2022). (Evans Direct).

⁸ OPUC's Initial Brief at 2-6 (Apr. 15, 2024).

⁹ ETI's Initial Brief at 7 (Apr. 15, 2024).

be specifically accounted for and recovered from the participating customers.¹⁰ And there are no plans to add additional resources to do so.¹¹

Consequently, OPUC maintains its position that ETI has provided inadequate assurance that the Company will only recover the rate case expenses associated with obtaining approval of the TECI Rider from TECI Rider customers. ETI has provided no assurance that any costs associated with the TECI Rider that are unrecovered due to default or bad debts will be borne entirely by participants. It is worth noting that ETI is promoting the participation of customers in a relatively new, competitive field. Yet ETI has not provided any analysis or other evidence addressing the level of defaults that can be expected. Since ETI has not committed to or propose 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.

Throughout its initial brief, ETI contends that “[t]he 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.”¹² The language is silent, however, on the treatment of costs ETI incurs *before* a customer agreement is in place. OPUC would underscore that again, ETI has not provided any data or assurances that *all* costs associated with the TECI Rider, including costs incurred *before* any customer agreement is made and *after* a customer defaults, will be recovered solely from participating customers. While ETI promises that they *intend* to assign a specific work order or

¹⁰ 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).

¹¹ Tr. at 68:21-24, 69:1-25 (Hill Cross) (Apr. 5, 2024).

¹² ETI’s Initial Brief at 9 (Apr. 15, 2024).

project number to all the TECI costs, those specialized accounting methods will only initiate once ETI begins working with the customer.¹³

OPUC agrees with Staff that “[r]egardless 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.”¹⁴ To safeguard non-participating customers and comply with Public Utility Regulatory Act § 36.003, the Commission must ensure all costs incurred to provide service under the TECI Rider are borne solely by the TECI Rider customers.

TECDA-1 RIDER

ETI argues that various parties are in support of the proposed riders, but unsurprisingly fails to mention the financial benefits those parties seek to gain from the adoption and implementation of the programs.¹⁵ It is not surprising that nearly every party representing the private sector, including Walmart, Americans for Affordable Clean Energy (“AAACE”),

¹³ Tr. at 66:15-24 (Hill Cross) (Apr. 5, 2024), *see also* Tr. at 69:6-12 (Hill Cross) (Apr. 5, 2024).

¹⁴ Staff of the Public Utility Commission of Texas’s Initial Brief at 1 (Apr. 15, 2024). (Staff’s Initial Brief).

¹⁵ ETI’s Initial Brief at 2 (Apr. 15, 2024).

ChargePoint, and FlashParking support adoption of the TECDA Rider as a means to support their self-interests:¹⁶

- Americans for Affordable Clean Energy (AACE): is a group of companies who want to build the EV charging network. Members include: Casey's Retail Company, Circle K, Kwik Trip, Love's Family of Companies, QuikTrip Corporation, RaceTrac, Inc., Sheetz, Inc., TravelCenters of America, Inc. and Wawa, Inc. AACE's members have an interest in installing, owning, and operating electric vehicle (EV) charging stations in Texas. More importantly, AACE's goal is to work with state policymakers to create a robust marketplace for EV fast charging in Texas.¹⁷
- Walmart: Walmart also has substantial experience offering electric vehicle ("EV") charging to its customers in other jurisdictions and is actively growing its presence in the EV charging space. Walmart currently hosts more than 1,200 public Direct Current Fast Chargers at 285 different locations and across 43 states and plans to build its own EV fast-charging network at thousands of Walmart and Sam's Club locations across the U.S. over the next few years.¹⁸
- Charge Point: ChargePoint is a world leading electric vehicle (EV) charging network, providing scalable solutions for every charging scenario from home and multifamily to workplace, parking, hospitality, retail, and transport fleets of all types. ChargePoint's cloud subscription platform and software-defined charging hardware is designed to enable businesses to support drivers, add the latest software features and expand fleet needs with minimal disruption to overall business.¹⁹
- FlashParking: ... the company also provides electric vehicle ("EV") charging solutions, built specifically to meet the growing demand for urban EV charging and address unique infrastructure challenges. The company's EV charging solutions focus on Level 2 charging and enable parking operators to manage primary traffic, off-peak hours, and potentially balance demands on the electric grid. FlashParking works with parking operators, commercial real estate companies, and other stakeholders and is actively working with clients to deploy charging infrastructure across the country. FlashParking seeks to work cooperatively with all stakeholders including Entergy to facilitate development of EV charging across Texas.²⁰

¹⁶ *Id.*

¹⁷ Americans for Affordable Clean Energy's Initial Brief at 1 (Apr. 15, 2024). (AACE Initial Brief).

¹⁸ Walmart's Initial Brief at 3 (Apr. 15, 2024).

¹⁹ Direct Testimony of Justin Wilson at 1:17-22 (Oct. 26, 2022).

²⁰ Direct Testimony of Matthew McCaffree at 4:4-13 (Nov. 1, 2022).

Nevertheless, ETI characterizes OPUC and Staff's position on the TECDA Rider as misguided and assumes based on its Ratepayer Impact Measure ("RIM") Test results that the incremental revenues received from the TECDA Rider will eventually offset ETI's costs and ultimately benefit all of ETI's customers.²¹ However, even ETI witness Ms. Hill admitted that the Commission has never approved ETI's RIM Test analysis.²² Furthermore, OPUC is unaware of any instance in the last 20 years in which the Commission relied on the results of a RIM Test in its determination of whether a rate, particularly a discount rate, was reasonable.

What *is* known is that all customers who would be served under the TECDA rider that have load factors in any month that are less than 15%, will have their billing demand capped, or limited, during each month in which their load factor drops below 15%.²³ Even if the Commission were to accept ETI's assertion that the results of the RIM test will result in increased revenues instead of lost revenues and will benefit other customers through these additional revenues, there would be no benefit until the new rates go into effect from ETI's next base rate case.²⁴ Prior to that time, ETI would retain and benefit from all incremental revenues. Furthermore, ETI did not provide an analysis that showed that revenues pursuant to the discounted demand charge will exceed ETI's marginal costs pursuant to PURA § 36.007. ETI's claim that the TECDA Rider will not result in cost shifting²⁵ is based entirely on the unproven assumption of increased revenues that will result from the TECDA Rider that will exceed costs. However, ETI's assumption of increased revenues that will only occur if the TECDA Rider is approved is just that, an assumption. ETI refuses to

²¹ ETI's Initial Brief at 14 (Apr. 15, 2024).

²² Tr. at 75:7 – 11 (Hill Cross) (Apr. 5, 2024).

²³ ETI's Initial Brief at 19 (Apr. 15, 2024).

²⁴ ETI's Initial Brief at 14 (Apr. 15, 2024).

²⁵ ETI's Initial Brief at 17 (Apr. 15, 2024).

provide any analysis showing that revenues under the TECDA discounted rates will exceed marginal costs pursuant to PURA § 36.007.

OPUC's position regarding the potential for shifting of unrecovered participant demand charges to non-participating customers has not changed.²⁶ Based on PURA § 36.007(d) which states, "[n]otwithstanding 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,²⁷" 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.²⁸

ETI has claimed the demand charges in ETI's General Service ("GS") rate schedule are designed to appropriately recover the demand-related costs from customers, including those customers with load factors below 15%, but ETI has no analysis that shows that it will not over-recover costs from customers with load factors below 15%.²⁹ Despite the fact that ETI would not agree that the GS rate over recovers costs from customers with load factors below 15%, the Company argues the discounted demand charge under the TECDA Rider is not providing service below their costs.³⁰ As PURA § 36.007(a) states:

²⁶ OPUC's Initial Brief at 8 (Apr. 15, 2024).

²⁷ PURA § 36.007(d).

²⁸ *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).

²⁹ Tr. at 73:12-19 (Hill Cross) (Apr. 5, 2024).

³⁰ Tr. at 74 (Hill Cross) (Apr. 5, 2024).

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.

ETI still has yet to provide any marginal cost analysis to show that this proposed billing demand discount is not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.³¹

Moreover, ETI brings up for the first time in its initial brief an entirely new demand ratchet issue, contending the TECDA rate design is similar to the billing demand adjustment for certain transmission and distribution utility customers with low load factors under 16 Tex. Admin. Code ("TAC") § 25.244.³² OPUC would proffer that this is an entirely different issue. The demand ratchet is defined in 16 TAC § 25.244(b)(1) as: "[a] provision in a TDU's tariff for retail distribution service that allows a customer to be billed based on the greater of the peak demand by that customer in the current month or some fixed percentage of the peak demand for that customer during previous months."³³ However, there has been no testimony or evidence that this discount is necessary to avoid the application of a demand ratchet.

Furthermore, ETI continues to assert that the TECDA Rider is self-correcting.³⁴ What the Company does not mention is that although it claims to automatically adjust to the standard Schedule GS rates if the load factor exceeds 15%, what it actually does is simply provide demand charge discounts if the load factor is 15%, or less. There is no automatic feature and it is by no

³¹ PURA § 36.007(b).

³² ETI's Initial Brief at 16 (Apr. 15, 2024).

³³ 16 TAC § 25.244(b)(1).

³⁴ ETI's Initial Brief at 17 (Apr. 15, 2024).

means self-correcting. To be self-correcting, the rate would need to recover the discounts in months in which the load factor exceeds 15%. It does not.

Finally, ETI's argument that the TECDA Rider is not a discounted rate because the "discount would be imposed on rates in the tariff, not made within the tariff itself," is misguided.³⁵ Specifically, PURA § 36.007(a) states, "[o]n 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."³⁶ ETI has not provided any evidence or support that the charges will be consistently greater than the Company's marginal cost.

In addition, nothing in PURA § 42, including PURA § 42.0103(d) negates or countermands PURA § 36.007(a), which 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.³⁷

OPUC maintains its position that the Commission should highly scrutinize ETI's TECDA Rider and potential cost shifting implications.³⁸ 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

³⁵ ETI's Initial Brief at 19 (Apr. 15, 2024).

³⁶ PURA § 36.007(a).

³⁷ PURA § 42.0103(d).

³⁸ OPUC's Initial Brief (Apr. 15, 2024).

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.

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 related to or associated with 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

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 25, 2024

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CERTIFICATE OF SERVICE
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I hereby certify that on the 25th 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