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

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

**ENTERGY TEXAS, INC.’S REPLY BRIEF**

**April 25, 2024**

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**ENTERGY TEXAS, INC.’S REPLY BRIEF**

**I. Introduction and Background**

Entergy Texas, Inc.’s (“ETI”) two transportation electrification (“TE”) riders, the Transportation Electrification and Charging Infrastructure Rider (“TECI Rider”),<sup>1</sup> and the Transportation Electrification and Charging Demand Adjustment Rider (“TECDA Rider”), would unquestionably help foster the “rapid installation and widespread use”<sup>2</sup> of electric vehicle (“EV”) charging stations—one of the State’s key priorities. Recognizing that “Texas’ sheer volume of roadway miles leaves ample opportunity for EV charging deployment,” Governor Abbott directed the Texas Department of Transportation to develop an Electric Vehicle Infrastructure Deployment Plan that would include “a way for Texans to easily get from Beaumont to El Paso and Texline to Brownsville in an EV—with a focus on rural placement and connectivity.”<sup>3</sup> One year later, the Texas Legislature passed Senate Bill 1002 (“SB 1002”),<sup>4</sup> which recognizes that “electric utilities . . . and the commission have important roles to fill in supporting the installation and use of infrastructure for electric vehicle charging.”<sup>5</sup>

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<sup>1</sup> The riders are sometimes referred to as “TECI” and “TECDA” (for instance, in the tariffs themselves) and sometimes as “TECI-1” and “TECDA-1” (for instance, in the testimony of ETI witness Samantha Hill). For purposes of this brief, ETI uses TECI and TECDA.

<sup>2</sup> Public Utility Regulatory Act (“PURA”), Tex. Util. Code § 42.0101(b).

<sup>3</sup> Direct Testimony of Jeremiah W. Cunningham, SPS Ex. 1, Attachment JWC-2 at 1 (Bates 35).

<sup>4</sup> Act of May 8, 2023, 88th Leg., R.S., 2023 Tex. Sess. Law Serv. Ch. 53. Now codified at PURA § 42.0101 *et seq.*

<sup>5</sup> PURA § 42.0101(c).

Notably, *every single entity* with a real-world stake in the development of the EV charging market—competitive EV charging service providers,<sup>6</sup> municipalities,<sup>7</sup> utility and industry associations,<sup>8</sup> environmental groups,<sup>9</sup> and businesses that seek to add EV charging infrastructure,<sup>10</sup> support both the TECI and TECDA Riders. Indeed, Americans for Affordable Clean Energy (“AACE”), a group of owners and operators of convenience stores, public travel center facilities, and truck stops that provide retail fuel supply, previously opposed the TECI Rider,<sup>11</sup> but now supports its adoption. As AACE stated in their initial brief, “AACE appreciates ETI’s efforts to make modifications to its proposed TECI Rider, as described above, for consistency with SB 1002. Based upon ETI’s revisions, AACE believes the TECI Rider is in compliance with PURA Chapter 42 and urges the Commission to approve the TECI Rider in order to support the proliferation of EV charging in Texas.”<sup>12</sup> Similarly, Walmart, the only private customer to file testimony in this docket, stated: “Walmart appreciates the Company’s development of the TECDA Rider for customers investing in the transition to electric transportation,” which will allow for a “more robust charging network for public and fleet use. Walmart recommends the Commission approve the TECDA Rider.”<sup>13</sup>

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<sup>6</sup> Direct Testimony of Justin D. Wilson, ChargePoint Ex. 1.0 at 5; Cross-Rebuttal Testimony of Justin D. Wilson, ChargePoint Ex. 4.0 at 14-15; Direct Testimony of Matthew McCaffree, FlashParking Ex. 1 at 6-7, 9.

<sup>7</sup> *Application of Entergy Texas, Inc. for Authority to Change Rates*, Docket No. 53719, Silsbee Economic Development Corporation Letter at 1 (Mar. 9, 2023); Docket No. 53719, Huntsville Walker County Chamber of Commerce Letter at 1 (Mar. 14, 2024); Greater Beaumont Chamber of Commerce Letter at 1 (May 4, 2023); *see* Docket No. 53719, Port Arthur Transit Letter (supporting TECDA Rider).

<sup>8</sup> Rebuttal Testimony of Samantha F. Hill, ETI Ex. 53, Exhibit SFH-R-1 at 2-5 (Bates 52-55) (Edison Electric Institute letter dated Nov. 15, 2022); *see* SPS Ex. 1 at 8-9; Cross-Rebuttal of Jeremiah W. Cunningham, SPS Ex. 2 at 5-7 (supporting ownership of EV charging facilities by vertically integrated utilities); Docket No. 53719, Southwestern Electric Power Company Letter at 1 (Jan. 27, 2023) (same); Docket No. 53719, El Paso Electric Company’s Statement of Position at 1 (Oct. 26, 2022) (same).

<sup>9</sup> Docket No. 53719, United States Business Council for Sustainable Development Letter at 1-2 (Mar. 14, 2023); Docket No. 53719, The Center for Climate and Energy Solutions Comments at 1-2 (Mar. 31, 2023).

<sup>10</sup> Americans for Affordable Clean Energy’s Initial Brief at 4 (“AACE’s Initial Brief”); Docket No. 53719, Letter from Cinemark, Dillard’s, Lineage Logistics, Ross, Staples, and Target Representatives at 1 (Apr. 17, 2023); *see* Direct Testimony of Eric S. Austin, Walmart Ex. 1 at 10 (supporting the TECDA Rider).

<sup>11</sup> *See* Docket No. 53719, AACE’s Initial Brief at 1-2, 6 (Jan. 13, 2023).

<sup>12</sup> AACE’s Initial Brief at 4.

<sup>13</sup> Post-hearing Brief of Walmart Inc. at 6-7 (“Walmart’s Initial Brief”).

Only Commission Staff and the Office of Public Utility Counsel (“OPUC”) oppose ETI’s proposed TE riders.<sup>14</sup> Staff’s opposition to the TECI Rider is based on the rehashed arguments of its witness, who believes that utilities will crowd out private investment in the EV charging market. However, that policy question has been decisively answered by the Legislature through its adoption of SB 1002, which recognizes that electric utilities have an “important role to fill in supporting the installation and use of infrastructure for electric vehicle charging.”<sup>15</sup> That role includes allowing utilities to enter into agreements with its customers for the utility to “own or operate a public electric vehicle charging station on the person’s property . . . .”<sup>16</sup> Staff’s opposition is based on contradictory points, distorted facts, a misreading of the statutes, and its witness’ uninformed views about the EV charging market.<sup>17</sup>

OPUC, which did not submit testimony in this docket, simply restates its opposition to the TECI Rider from its filings in Docket No. 53719, and repeats Staff’s arguments that TECI will impermissibly shift costs to non-participating customers. However, the administrative law judge (“ALJ”) has already weighed those allegations and found that “the associated cost of each EV charging unit and monthly O&M costs, if any, will be integrated into the opting-in customer’s monthly bill. Thus, these costs are recovered directly from the customer and ***will not be shifted to non-participating customers.***”<sup>18</sup> Nothing has changed that would alter that conclusion. The ALJ should continue to recommend that the TECI Rider be approved.

Likewise, with respect to the TECDA Rider, Staff and OPUC repeat their same conclusory and often speculative cost shifting arguments from Docket No. 53719. However, it is uncontested that there are no estimated costs associated with the TECDA Rider, and ETI is not seeking recovery of any costs in this proceeding.<sup>19</sup> Moreover, the only analytical evidence in the record is ETI’s un rebutted Ratepayer Impact Measure (“RIM”) test, a cost-benefit analysis, which resulted in net

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<sup>14</sup> Texas Industrial Energy Consumers (“TIEC”) has requested approval of the TECI Rider with additional language related to operations and maintenance (“O&M”) costs. As discussed below, ETI is amenable to the inclusion of TIEC’s proposed language in the rider.

<sup>15</sup> PURA § 42.0101(c).

<sup>16</sup> *Id.* at § 42.0103(o).

<sup>17</sup> Tr. at 41:15-17 (Abbott Cross) (Apr. 5, 2024) (“I did not conduct an independent analysis or review of the EV charging market.”).

<sup>18</sup> Docket No. 53719, Proposal for Decision (“PFD”) at 31 (emphasis added).

<sup>19</sup> ETI’s Initial Brief at 4.

benefits to all ETI customers in all scenarios analyzed over a 10-year period.<sup>20</sup> The RIM test results demonstrate the TECDA Rider will create incremental net revenues, which will put downward pressure on all ETI customers' rates. The revenues from the TECDA Rider are incremental, because but for the rider's demand relief, the customer would not invest in the EV charging stations.<sup>21</sup> Because the TECDA Rider results in only net benefits (*i.e.*, incremental revenues), there are no costs to be shifted to other customers.

Similar to the TECI Rider, the TECDA Rider is a win-win. ETI customers asked for demand relief in connection with TE charging service, and ETI answered with the targeted, measured, temporary, and self-adjusting TECDA Rider.<sup>22</sup> It benefits participating customers through more stable electricity bills during the nascent EV adoption period, benefits non-participating customers through revenue offsets, and benefits the Commission by advancing the Legislature's and Governor Abbott's policies of promoting private investment in EV charging stations. The TECDA Rider should be approved. Rejecting the TECDA Rider and maintaining the status quo would directly contradict State policy by disincentivizing TE infrastructure investment and encouraging key stakeholders to invest in jurisdictions outside of Texas with more favorable policies addressing outsized demand charges.<sup>23</sup>

## **II. Uncontested Issues**

ETT's initial brief set forth the evidence to support the ALJ's findings with respect to each of the uncontested issues in this matter. ETI refers the ALJ to that evidence, and the lack of opposition from the other parties, in reaching its recommendation on these issues.

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<sup>20</sup> ETI Ex. 53 at 31-32.

<sup>21</sup> See ETI Ex. 53 at 40 ("the revenues facilitated by the TECDA-1 Rider are incremental and would not exist at all without the demand charge assistance provided by the TECDA-1 Rider."); FlashParking Ex. 1 at 9 ("The prospect of higher demand charges due to EV-related load creates a disincentive for a customer that would otherwise install EV charging at a commercial property. In my view, this rider serves to lessen that disincentive in order to encourage further EVs adoption in a rapidly expanding market."); AACE's Initial Brief at 6 ("The TECDA Rider is a reasonable effort to mitigate the inherent barrier that demand charges pose to EV investment.").

<sup>22</sup> See ETI Ex. 53 at 41 ("TECDA-1 Rider was designed in response to demand charge challenges communicated by ETI customers and more generally across the industry in many article, studies, and surveys.").

<sup>23</sup> See *e.g.*, ETI Ex. 40 at 41 (describing mechanisms similar to the TECDA Rider from Florida Power and Light, Xcel Energy Minnesota, and Entergy New Orleans, LLC); ChargePoint Ex. 4.0 at 11-12 (referencing demand charge alternative rates in Kansas, Connecticut, Colorado, and Virginia).

### III. Contested Issues

#### A. TECI RIDER

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

Yes. As discussed in ETI's Initial Brief, AACE's Initial Brief, as well as in the Supplemental Direct and Rebuttal testimonies of Samantha F. Hill, the TECI Rider complies with Chapter 42 of PURA. The TECI Rider will help foster the rapid deployment of EV charging facilities while supporting competitive private sector investment in this area. The TECI Rider will enable ETI to partner with interested customers and competitive third-party providers to facilitate much needed investment in EV charging infrastructure and equipment, consistent with State policy. Staff's opposition is rooted in a view regarding the role of electric utilities that predated Chapter 42 but has not materially changed since the Legislature clarified State policy contrary to Staff's view. As detailed below and in ETI's Initial Brief, Staff's positions are based on a tortured construction of PURA Chapter 42, a misunderstanding of the EV charging market, and mischaracterization of the TECI Rider proposal. The TECI Rider and related customer agreement are precisely what the Legislature contemplated when it adopted Chapter 42.

#### *PURA Chapter 42*

Staff's position, as stated in its Initial Brief, reflects an extraordinary misinterpretation of new PURA Chapter 42 that confuses which provisions apply to public versus private-use charging and what Chapter 42 prohibits.

PURA § 42.0102(7) defines a "Public electric vehicle charging station" as a charging station "accessible for commercial use by the public," and excludes private-use charging equipment "located on the premises of a customer . . . and: (i) used by the customer or the customer's tenants, affiliates, or guests; and (ii) not used commercially for electric vehicle charging service." Put simply, an EV charger is only a "public electric vehicle charging station" if it is made available commercially to the public end-user.

PURA § 42.0102(4) then defines "Electric vehicle charging service" to mean "sales made from a **public electric vehicle charging station** to the public."<sup>24</sup> Thus, while the defined term

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<sup>24</sup> PURA § 42.0102(4) (emphasis added).



“Electric vehicle charging service” does not itself include the word “public,” it refers only to public EV charging and not private-use cases.

PURA § 42.0103 then sets out what is prohibited and certain exceptions thereto. Most importantly, subsection (b) provides, “An electric utility: (1) may not provide **electric vehicle charging service** directly to a customer except as provided by this section.”<sup>25</sup> As noted above, “electric vehicle charging service” means EV charging sales directly to the public end-user. Thus, the fundamental prohibition in PURA Chapter 42 is that electric utilities cannot make EV charging sales directly to the public, end-user (*e.g.*, the driver of a car) unless otherwise provided in the statute (discussed below). In other words, PURA Chapter 42 restricts the type of charging *service* electric utilities can provide. **PURA Chapter 42 does not restrict (1) an electric utility’s ownership of TE infrastructure or (2) the type of service the utility *customer* can provide to itself or others.**

#### *Private-Use Cases*

Based on the above definitions, an EV charger utilized for one of the private-use cases described in PURA § 42.0102(7) is expressly not a “public electric vehicle charging station,” which means it is necessarily not providing “electric vehicle charging service” (*i.e.*, public charging). Thus, in no manner whatsoever does PURA Chapter 42 prohibit ETI’s ownership of EV charging infrastructure or ETI’s customers from using that infrastructure in one of the private use cases. These are the TECI use cases ETI witness Ms. Hill describes (and to which Staff objects as impermissible)<sup>26</sup> in which ETI owns EV charging infrastructure and, for example, a school uses it to charge its buses or an apartment complex offers charging for its tenants’ and guests’ use. In these cases, ETI is not providing a charging service at all, public or otherwise. ETI is billing its customers through the TECI Rider to recover the costs associated with utility-owned infrastructure that the electric customer requests (just as it does with other facilities under the Additional Facilities Charge (“AFC”) Rider). Therefore, any argument by Staff that ETI’s TECI proposal runs afoul of PURA Chapter 42 because its customers may use TECI chargers in a private-use case is simply wrong, because PURA Chapter 42 does not place any limits on utility *ownership* of EV chargers or how its *customers* use those chargers.

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<sup>25</sup> *Id.* at § 42.0103(b) (emphasis added).

<sup>26</sup> Staff’s Initial Brief at 1-6.

Staff's confusion is evident by its claim that "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" but that "ETI has not demonstrated compliance with PURA § 42.0103(e)-(m)."<sup>27</sup> First, ETI is not providing "charging services" at all, which is an undefined term Staff uses. ETI is not controlling access, setting charging rates at the charger, collecting revenues from drivers, etc. Second, PURA §§ 42.0103(e)-(m) provides the exception and process for an electric utility that wants to provide "electric vehicle charging service" (*i.e.*, ***public charging sales directly to an end-use customer***). It has nothing to do with the private-use case Staff is attacking. Staff's fundamental misunderstanding of the key statutory provisions at issue are fatal to its position that certain EV charger use cases are contrary to PURA Chapter 42.

#### ***Public Charging Service (provided by the Utility Customer)***

To the extent the TECI host customer elects to resell electricity through the charger to the public end-user, then the charger becomes a "public electric vehicle charging station" under PURA § 42.0102(7) and the service becomes "electric vehicle charging service." Again, ETI would not be providing a charging service at all, public or otherwise. ETI would charge the utility customer through the TECI Rider for the infrastructure and O&M (as it does with Schedule AFC). The TECI host customer would pay ETI for the separately metered electricity through Schedule General Service ("GS") it resells to the end-user, just as it does to turn the lights on at its facility, run its equipment, etc. And the TECI host *customer* would provide the "electric vehicle charging service" to the end user by controlling access and use, and setting the prices for EV charging. Those prices could be and presumably would be different than the price the Schedule GS customer pays to ETI for the electricity. They would be wholly determined and retained by the TECI host customer. This use case is precisely what is permitted by PURA § 42.0103(o), which provides in pertinent part:

This section does not prohibit a person who is not an electric utility or an affiliate of an electric utility from entering into an agreement with an electric utility for the utility to own or operate a public electric vehicle charging station on the person's property if:

(1) the utility does not:

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<sup>27</sup> *Id.*

- (A) provide electric vehicle charging service using the public electric vehicle charging station; or
  - (B) brand or market the public electric vehicle charging station...
- (2) the person solely determines:
- (A) physical access to and use of the public electric vehicle charging station . . .; and
  - (B) prices for the electric vehicle charging service.

***Public Charging Service (provided by the Electric Utility)***

As explained above, by default, PURA § 42.0203(b) prohibits the electric utility (not the utility's customer) from providing public charging service directly to the public end-user, except as specifically permitted by the statute. PURA §§ 42.0103(e)-(m), which Staff mistakenly applies to *private-use* cases, is actually the lengthy and detailed set of conditions and requirements that must be met for the electric utility to make EV charger sales directly to public drivers. In essence, this is a set of provisions that allows the utility to step in and make direct EV charging sales to the public if the Commission agrees the area in question is underserved and the Commission sets the charging rates. ETI could not and will not be providing "electric vehicle charging service" (*i.e.*, public charging) through its TECI or TECDA Riders, which leave the control and use of the charger entirely at the utility customer's discretion.

***Staff's Proposed "EV Rate Class"***

Staff's skewed construction of Chapter 42 is apparently offered in service of its witness' position that the TECI Rider should be rejected in favor of an EV rate class, because these rates would "be entirely consistent with setting rates in the normal manner authorized under PURA Chapter 36, as PURA § 42.0103(m) requires."<sup>28</sup> Once again, Staff misreads PURA Chapter 42 and misconstrues the TECI offering. PURA § 42.0103(m) requires the Commission to "set in a manner authorized under Chapter 36 the rates the utility may charge for **electric vehicle charging service**" (*i.e.*, public charging).<sup>29</sup> But as discussed above, ETI will not be providing "electric vehicle charging service" under the TECI Rider, and thus PURA § 42.0103(m) does not apply at all. More fundamentally, Staff is not the applicant in this case. It is not Staff's ill-defined proposal

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<sup>28</sup> Staff's Initial Brief at 9.

<sup>29</sup> PURA § 42.0103(m) (emphasis added).

that is before the Commission for adoption. The question before the ALJ and the Commission is whether ETI's proposal is reasonable and comports with PURA Chapter 42.

Staff's attempt to shoehorn this inapt reference to Chapter 36 into this matter is merely a means to reach its desired result. And yet, even under the "traditional ratemaking standards" that Staff wishes to impose on the TECI Rider, the rider fares exceedingly well. The TECI Rider is modeled on the AFC Rider, Option B, which the Commission has already approved.<sup>30</sup> In fact, Staff's own witness concedes that the AFC Rider appropriately reflects traditional ratemaking standards, where he argues that customers who seek to have EV charging facilities built on their property should contract with ETI under that tariff.<sup>31</sup> The only difference between the AFC Rider, which, again, the Commission has already approved, and the TECI Rider is that the TECI Rider separately identifies the amount of O&M expense to be recovered. As Ms. Hill testified, separately stating the amount of O&M ensures that the total amount of O&M services are recovered during the contract term.<sup>32</sup> The AFC Rider assumes recovery of O&M over a 30 year period, which greatly exceeds the TECI agreement's 10 year maximum.<sup>33</sup> In other words, the TECI Rider is simply a better-fitting tariff than Schedule AFC for the type of infrastructure at issue. Given that the Commission has repeatedly approved this type of tariff, Chapter 42 does not restrict utility ownership of the applicable infrastructure, and ETI's proposal is designed to support State policy, Staff's strained position related to rate design must fail.

### *The EV Charging Market*

Staff's fundamental objection to the TECI Rider is the same one it asserted in Docket No. 53719: that electric utilities are "monopolies in the areas they serve" and that ownership of EV charging facilities "should be left to competitive providers."<sup>34</sup> But the Legislature has squarely rejected Staff's view through the adoption of SB 1002 during the pendency of Docket No. 53719.

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<sup>30</sup> ETI Ex. 53 at 15-17.

<sup>31</sup> See Staff Ex. 7 at 7-8 ("Any customer can, under ETI's existing tariff, elect to install an EV charger on their property and pay existing tariffed rates for electric service. If non-standard infrastructure is required to accommodate EV chargers on a customer's premises, ETI's existing Additional Facilities Charge (AFC) rider is available to accommodate such installations.").

<sup>32</sup> ETI Ex. 96 at 9-10.

<sup>33</sup> *Id.*

<sup>34</sup> Staff's Initial Brief at 5 (citing the Direct Testimony of William F. Abbott filed in Docket No. 53719).

The Legislature expressly found that “electric utilities . . . have important roles to fill in supporting the installation and use of infrastructure for electric vehicle charging.”<sup>35</sup> While Staff suggests that non-public EV charging facilities should be completely left to competitive charging providers, Chapter 42 does not support that limitation, and Staff has fundamentally misinterpreted the relevant statutory provisions, as discussed above. As the previously quoted statute makes clear, electric utilities’ role extends to supporting the “installation and use of infrastructure for *electric vehicle charging*,”<sup>36</sup> not just “public” electric vehicle charging.

Staff’s position also fails to reflect the current reality of an underdeveloped EV charging market, which has left vast areas of the state without adequate infrastructure. The Legislature passed SB 1002, in part, because there currently exists significant barriers to the buildout of EV charging infrastructure, especially in rural areas of the State.<sup>37</sup> The Legislature determined that utility offerings, such as the TECI Rider, which fits squarely within PURA § 42.0103(o), are necessary to encourage the development of the EV charging market. Staff’s Initial Brief presents a false dichotomy between competitive EV charging provider offerings on the one hand, and ETI’s TECI Rider on the other. But rather than crowd out the competitive market, ETI will *partner with* competitive EV charging providers and customers to build a bridge to a more robust, sustainable market in which Texans can “easily get from Beaumont to El Paso and Texline to Brownsville in an EV.”<sup>38</sup> ETI is not proposing to build EV chargers and displace the sales of such chargers in the private market; ETI is *eliminating hurdles* to those private market sales, which will still occur and are essential to ETI’s TECI proposal. As demonstrated by the unanimous support of competitive EV charging providers, retail fueling stations, and business customers, ETI’s offering is a win-win for everyone with a real, practical concern for the currently underdeveloped EV charging market. Staff’s position is based solely on the testimony of its witness, Mr. Abbott, who is not a subject matter expert on the EV industry, and who admitted that his recommendation is not informed by any independent study or analysis of the EV charging market.<sup>39</sup>

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<sup>35</sup> PURA § 42.0101(c).

<sup>36</sup> *Id.*

<sup>37</sup> See SPS Ex. 1, Attachment JWC-2 at 1 (Bates 35) (“I direct TxDOT and stakeholders to include in the plan a way for Texans to easily get from Beaumont to El Paso and Texline to Brownsville in an EV—with a focus on rural placement and connectivity.”).

<sup>38</sup> *Id.*

<sup>39</sup> Tr. at 41:11-17 (Abbott Cross) (Apr. 5, 2024).

Mr. Abbott’s lack of experience and expertise in this area results in unreliable opinions. Staff’s assertions that the TECI Rider’s design will produce competition-harming subsidies, that the offering will be too confusing for potential customers, and that EV charging services are “standardizable,” are not based on anything other than Mr. Abbott’s uninformed views. Staff’s attempt to show that the TECI Rider will inappropriately subsidize TE costs mischaracterizes Ms. Hill’s Rebuttal testimony and her testimony at trial. Staff presents a table that it says “demonstrates the resulting subsidies provided to the hypothetical participating customers in Ms. Hill’s illustrative examples.”<sup>40</sup> However, what Staff refers to as the “Total Paid by non-TECI Rider Customer”<sup>41</sup> is instead “**Total ETI Costs**,” as shown in Ms. Hill’s Supplemental Rebuttal Exhibit.<sup>42</sup> Staff, without explanation or justification, conflates a non-participating TECI customer with ETI in service of its spurious subsidy argument.

Staff also repeatedly criticizes the revenue credits afforded to TECI Customers that would reduce the “Total TECI Costs,”<sup>43</sup> characterizing this as an impermissible “subsidy.”<sup>44</sup> But the incorporation of revenue credits, often referred to as “revenue justification,” is exactly what is contemplated by PURA § 42.0103(o)(3), which requires the “incremental revenues paid by the person to the utility” to be considered in assessing whether the host as paid for “all electric utility-related costs.” As noted below, the exact same feature exists in ETI’s Commission-approved Electric Extension Policy (*i.e.*, its line extension policy). This is not some impermissible subsidy, but the Legislature’s recognition that the host customer will be contributing incremental revenues to help cover a utility’s fixed costs. Staff not only inappropriately equates a non-participating customer’s costs with ETI’s costs, but it also completely ignores Ms. Hill’s testimony that non-participating customers that wish to install EV charging facilities outside the TECI program would be afforded the same revenue credit based on ETI’s line extension policy.<sup>45</sup>

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<sup>40</sup> Staff’s Initial Brief at 6-7.

<sup>41</sup> *Id.* at 7.

<sup>42</sup> *See, e.g.*, ETI Ex. 96, Exhibit SFH-SR-1 at 2 (Bates 26) (showing Total ETI costs of \$200,972).

<sup>43</sup> Staff’s Initial Brief at 6-7.

<sup>44</sup> *Id.* at 6-8, 14.

<sup>45</sup> Tr. at 30:8-15 (Hill Cross) (Apr. 5, 2024) (“Q: Will ETI be providing such an offset for these contract revenues for customers that install EV charging stations on their own at their own costs outside of the program?”)

### *Transparency and Complexity*

Staff's view that the TECI Rider terms will be too burdensome for customers and discourage adoption fails to reflect the relative sophistication of potential EV facilities customers, all of whom will take service on a non-residential rate.<sup>46</sup> This view is also belied by the fact that all of the parties in this case with a real-world interest in the provision of EV charging *support* ETI's proposal. ETI proposed the TECI Rider in both this docket and in its general base rate case, and not a single customer complained that the rider was too confusing or burdensome. That is likely because the rider is in fact, straightforward, and it is quite common for nonresidential customers to consider utility offerings and associated customer agreements, such as the AFC Rider, or ETI's Green Future Option, among other voluntary riders.<sup>47</sup> As Ms. Hill testified, ETI's "customer service reps will have discussions with our customers just like they do today, and this is one more tool in their tool bag to offer customers to meet their needs."<sup>48</sup>

The results-oriented aim of Staff's arguments is most clearly illustrated by the inconsistency in how it characterizes whether the TECI Rider will facilitate competition. Staff asserts that TECI Rider should be rejected because it will "force the private competitive providers out of competition" while in the same breath arguing that the rider should be rejected because "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.***"<sup>49</sup> Staff's opposition in this regard merely underscores the fact that the TECI Rider will enable ETI to facilitate partnerships between customers and EV charging providers in order to rapidly deploy TE infrastructure. The fact that vendors have the flexibility to change their prices, which is obviously also the case outside the TECI program, demonstrates that the TECI Rider embraces competitive market forces and development. The flexibility to change prices is a salient feature of competitive markets, and the TECI Rider appropriately allows competitive providers to remain competitive by charging prices that they choose. Just as fuel prices and, thus, the ultimate cost to customers of consuming

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A: Yes, customers who install on their own outside of the TECI program would be able to use our line extension policy, our extension of service policy, which also affords for a similar revenue adjustment.").

<sup>46</sup> ETI Ex. 96 at 21.

<sup>47</sup> *See id.*

<sup>48</sup> Tr. at 69:20-23 (Hill Cross) (Apr. 5, 2024).

<sup>49</sup> Staff's Initial Brief at 7-8 (emphasis added).

electricity changes over time, the cost of EV charging infrastructure and its maintenance changes over time. But customers will know that cost when making the entirely voluntary determination to participate in ETI's TECI offering and it will be clearly reflected in their customer agreement.

Staff's refrain that the TECI Rider is not transparent and that it will be difficult for the Commission to review related costs in future proceedings is entirely unfounded.<sup>50</sup> As Ms. Hill testified at the hearing, "all of the charges, materials, supplies, capital, O&M, used to fulfill the TECI Rider agreement will be accounted for in an identifiable way."<sup>51</sup> Each TECI customer agreement will have an associated work order number or project code by which ETI will be able to readily provide the specific cost information applicable to the TECI Rider program in a future rate case.<sup>52</sup> That will enable the Commission to fulfill its statutory duty to "ensure that revenue collected by an electric utility under an agreement under Subsection (o) allows 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."<sup>53</sup> And ETI will have the burden to provide all evidence necessary to demonstrate its compliance with Chapter 42, including that the costs of TECI infrastructure and O&M incurred on behalf of a voluntary customer are, indeed, being collected from that customer. As Mr. Abbott conceded, there is no "revenue collected" under a TECI agreement because the TECI Rider is not in effect.<sup>54</sup> As such, the time for reviewing such revenues for compliance with section 42.0103(p)(2) will necessarily be in a future rate proceeding. As discussed in ETI's Initial Brief and in more detail below, the TECI Rider is designed to recover the costs of "owning, constructing, financing, operating, and maintaining" the EV charging facilities, as required by the statute.<sup>55</sup>

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<sup>50</sup> See Staff's Initial Brief at 8.

<sup>51</sup> Tr. at 70:8-10 (Hill Cross) (Apr. 5, 2024).

<sup>52</sup> *Id.* at 70:11-15.

<sup>53</sup> PURA § 42.0103(p)(2).

<sup>54</sup> Tr. at 39:3-9 (Abbott Cross) (Apr. 5, 2024).

<sup>55</sup> PURA § 42.0103(p)(2).



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

- i. Will the person pay for all electric utility-related costs under the proposed tariff, and will the tariff provide for full recovery of the costs of the public electric vehicle charging station from the person, including incremental revenues paid by the person to the utility associated with the electric vehicle charging service? (PO Issue No. 2e)**

As Staff concedes,<sup>56</sup> there is no dispute regarding whether the TECI Rider complies with the requirements of PURA § 42.0103(o) regarding site host agreements, except for whether the rider and related agreement provide for the recovery of “all electric utility-related costs”<sup>57</sup> of the program. The ALJ has already found that “the associated cost of each EV charging unit and monthly O&M costs, if any, will be integrated into the opting-in customer’s monthly bill. Thus, these costs are recovered directly from the customer and will not be shifted to non-participating customers.”<sup>58</sup> The TECI Rider’s cost recovery features have not changed since the ALJ made that determination and as such, the ALJ should make the same finding here. Staff and OPUC simply warm over their prior, baseless allegations that the rider will fail to recover the appropriate costs.

However, Staff and OPUC fail to recognize that participating TECI customers will pay 100% of their allocable share of ETI’s cost of service through a nonresidential tariff, like for instance, Schedule GS.<sup>59</sup> Staff and OPUC appear to suggest that a TECI customer will only pay under the TECI Rider, and they ignore the customer’s separate contribution to pay ETI’s embedded cost of service through a base rate schedule,<sup>60</sup> except where such recognition suits their arguments elsewhere.<sup>61</sup> As ETI’s Initial Brief makes clear, TECI customers will pay their share of ETI’s costs of providing electric delivery service in the same manner as every other ETI customer through an established base rate schedule while also paying a “net monthly charge based on the

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<sup>56</sup> Staff’s Initial Brief at 2 (“No party contested whether the TECI Rider complied with **all but one portion** of PURA § 42.0103(o).”) (emphasis added).

<sup>57</sup> PURA § 42.0103(o)(3).

<sup>58</sup> PFD at 31.

<sup>59</sup> See ETI’s Initial Brief at 7; ETI Ex. 40 at 17 (“Under ETI’s proposed TECI-1 Rider offering, the TECI-1 Rider customer will be paying for any electricity usage by the vehicle charger under an existing eligible non-residential rate schedule.”).

<sup>60</sup> ETI Ex. 40 at 17.

<sup>61</sup> See Staff’s Initial Brief at 6.

investment by the Company in such TE and charging infrastructure and other modifications to Company's facilities"<sup>62</sup> to cover ETI's cost of "owning, constructing, financing, and operating and maintaining"<sup>63</sup> the TE infrastructure.

Staff's argument that the TECI Rider's revenue credit feature will result in unrecovered costs has already been rejected by the Legislature and the Commission. Pursuant to PURA § 42.0103(o)(3), "incremental revenues paid by the" participating customer must be considered in the determination of whether the agreement covers all "electric utility-related costs." The TECI Rider appropriately credits four years of TECI Rider revenues against the customer's TE infrastructure and O&M costs.<sup>64</sup> That four year period is the same adopted by the Commission for ETI's line extension policy, which recognizes the incremental revenues provided by the extension of service to a new customer as an offset to contributions in aid of construction.<sup>65</sup> In both instances, the customer "will not be required to reimburse the Company for" new facilities when projected revenues "for the first four years of the contract term . . . is equal to or exceeds the Company's projected investment . . . ." Compare ETI's Electric Extension Policy:

**The Customer will not be required to reimburse the Company for New Facilities when Anticipated Revenues for the first four years of the contract term** (if a contract is entered), or for the first four years after electric service associated with the New Load is provided (if no contract is entered) **is equal to or exceeds the Company's Projected Investment** in New Facilities necessary to serve the New Load. Anticipated Revenues are defined as projected annual non-fuel firm rate schedule revenues, plus base rate cost recovery mechanisms. Anticipated Revenues are defined as **projected** annual non-fuel firm rate schedule revenues, plus base rate cost recovery mechanisms.<sup>66</sup>

. . . with the TECI Rider:

**Customers** installing TE and charging infrastructure through the TECI Rider **will not be required to reimburse the Company for the total installed cost of such TE and charging infrastructure**, including for the installation of underground infrastructure, as determined by the Company in its sole discretion, for new TE and

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<sup>62</sup> ETI's Initial Brief at 7.

<sup>63</sup> PURA § 42.0103(p)(2).

<sup>64</sup> See ETI Ex. 95 at 7-8, 11.

<sup>65</sup> Docket No. 53719, ETI's Clean Record Copy of Tariffs at Page 3.1 (Aug. 31, 2023).

<sup>66</sup> *Id.*

charging infrastructure load or incremental load for additional TE charging infrastructure, **when projected Contract Revenues for the first four years of the contract term** (if a contract is required), or projected Revenues for the first four years after electric service to the TE and charging infrastructure is expected to commence (if no contract is required) **is equal to or exceeds the Company's projected investment** to construct and install the TE and charging infrastructure and any related infrastructure necessary to serve the TE and charging infrastructure new load.<sup>67</sup>

In both instances, ETI appropriately credits new customers for projected revenues, consistent with Commission precedent, and in the case of the TECI Rider, the express requirements of PURA § 42.0103(o)(3).

OPUC asserts, without any citation to evidence in the record, that “ETI has not ensured” that TECI customers will pay “an appropriate share” of overhead and other costs, such as costs of obtaining regulatory approval, salaries and other employee benefits, costs of marketing, etc.<sup>68</sup> Yet again, OPUC wholly fails to explain why a TECI customer who pays not only the tariffed rate for electric delivery service (*e.g.*, Schedule GS), but also the specific costs of EV charging infrastructure and O&M (Schedule TECI), has somehow failed to pay their “appropriate share” of such costs. OPUC’s one attempt to establish unrecovered costs through citation of evidence actually proves ETI’s point: as Ms. Hill testified, “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.”<sup>69</sup> OPUC’s wholly conclusory claims that TECI will fail to recover program costs should be rejected.

As ETI’s Initial Brief shows, and as Ms. Hill’s Supplemental Rebuttal Testimony illustrates, the TECI Rider will not only recover, but **over-recover** the incremental costs driven by the TECI customer over time and, thus, will benefit non-participating customers by helping to offset ETI’s general revenue requirement.<sup>70</sup>

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<sup>67</sup> ETI Ex. 95, Exhibit SFH-S-1 at 5 (Bates 18).

<sup>68</sup> OPUC’s Initial Brief at 3.

<sup>69</sup> *Id.* (citing Tr. at 70:8-12) (Hill Cross) (Apr. 5, 2024)).

<sup>70</sup> *See* ETI’s Initial Brief at 8; ETI Ex. 96, Exhibit SFH-SR-1 at 1 (Bates 25).

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

Yes. ETI will offer TECI under the terms of the TECI Rider to all nonresidential customers in good standing who would seek agreements in ETI's service area, on a nondiscriminatory basis under PURA § 42.0103(p)(1).<sup>71</sup> The TECI Rider is "is available to Entergy Texas, Inc. ("ETI" or the "Company") customers taking metered service under the Company's non-residential rate schedules."<sup>72</sup> Staff makes the bizarre claim that the answer is "No" because "a vendor can control" its costs and "change them as they see fit at any time, ETI cannot prevent the vendors from discriminating against certain customers."<sup>73</sup> This statement shows that Staff is not really interested in fostering a competitive EV market, but rather simply in opposing the TECI Rider. Any notion of discrimination is a feature of regulation, not competition. Competitive EV charging providers must be able to adjust their prices in the face of changing circumstances, and indeed, the animating theory in favor of competition is that as a market develops, price reductions are passed on to the consumer.<sup>74</sup> Staff's position would freeze competitive forces before they are able to develop a healthy market. Clearly, outside of ETI's TECI offering those same competitive EV charging providers will change their prices over time. That is not "discrimination"; it is market economics.

Staff repeats its projected revenues critique as a reason to suggest the TECI Rider is discriminatory. Staff is purportedly concerned with the possibility that projected revenues might not match the "actual revenues that ETI receives from a customer" because these "may be impacted by the prices set for EV charging service, something that ETI does not indicate is factored into its projected revenues."<sup>75</sup> However, the TECI Rider does in fact take this into account through the rider's net monthly bill provisions. As Ms. Hill's Supplemental Direct Testimony explains, projected revenues "will be backstopped by a minimum bill requirement" to ensure that the host customer "pay[s] for all electric utility-related costs of the charging station."<sup>76</sup> If actual revenues

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<sup>71</sup> ETI Ex. 40 at 12.

<sup>72</sup> ETI Ex. 95, Exhibit SFH-S-1 at 1 (Bates 14).

<sup>73</sup> Staff's Initial Brief at 12.

<sup>74</sup> See *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 695 (1978).

<sup>75</sup> Staff's Initial Brief at 13.

<sup>76</sup> ETI Ex. 95 at 7.

do not match projected revenues, the Net Monthly Bill provisions will automatically kick in to ensure the host customer covers these costs. These tariff and agreement provisions are the same for all eligible customers, and cannot be changed without subsequent Commission approval.

**4. Will the revenue collected by Entergy Texas under each agreement with a participating person allow the utility to recover the costs of owning, constructing, financing, operating, and maintaining the public electric vehicle charging station from the person and not the utility's other customers under PURA § 42.0103(p)(2)? (PO Issue No. 4)**

Yes. As discussed in ETI's Initial Brief,<sup>77</sup> the TECI Rider is designed to recover "all electric utility-related costs,"<sup>78</sup> of the TECI program, specifically, the costs of "owning, constructing, financing, operating, and maintaining the public electric vehicle charging station,"<sup>79</sup> from the participating customer and not the utility's other customers. Staff and OPUC repeat the arguments made in response to Preliminary Order Issue No. 2e, and add one more: that the rider fails to ensure that TECI customers pay for the risk of defaulting customers.<sup>80</sup> However, this issue has already been addressed by the proposal for decision issued in Docket No. 53719. There, the ALJ found that "an electric utility, including ETI, already bears the risk of a defaulting customer, regardless of whether it is a result of an arrangement made under the TECI-1 Rider or some other contract, and that the existence of this risk does not support denial of the TECI-1 Rider."<sup>81</sup> Nothing has changed with respect to the potential for default risk since the PFD's findings on this issue,<sup>82</sup> and there is no reason to revisit that decision. If anything, the risk to other customers is less than before, as ETI has tightened up the net monthly bill language to make it even clearer that customers must pay any shortfalls in projected revenues.<sup>83</sup>

TIEC recognizes that "ETI intends to charge customers for all of the O&M costs that they incur,"<sup>84</sup> but seeks the addition of two sentences to the "Application" section of the TECI Rider

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<sup>77</sup> ETI's Initial Brief at 11-12.

<sup>78</sup> PURA § 42.0103(o)(3).

<sup>79</sup> *Id.* at § 42.0103(p)(2).

<sup>80</sup> Staff's Initial Brief at 14; OPUC's Initial Brief at 6.

<sup>81</sup> PFD at 31.

<sup>82</sup> Tr. at 78:25-79:16 (Hill Redirect) (Apr. 5, 2024).

<sup>83</sup> *Id.* at 79:9-12.

<sup>84</sup> TIEC's Initial Brief at 2.

to assuage their concerns regarding potential nonrecovery.<sup>85</sup> With the inclusion of the following language, TIEC “respectfully requests that the Commission approve the Proposed Rider”:

The agreed upon fixed amount to cover O&M expenses shall be no less than amount charged to ETI by the O&M vendor. ETI shall ensure that the entirety of any O&M expenses are covered by the Customer.<sup>86</sup>

ETI is amenable to the addition of this language to the TECI Rider, which comports with its intent all along, and has included this language in the Ordering Paragraphs section of its proposed Findings of Fact and Conclusions of Law.

As shown in ETI’s Initial Brief, and by the uncontroverted evidence in this case, the TECI program will not only cover the statutorily identified costs of owning, constructing, financing, operating, and maintaining the public electric vehicle charging station, but it will also provide incremental revenues that will exceed these costs and that will reduce the rates that all customers pay.<sup>87</sup> Thus, “these costs are recovered directly from the customer and will not be shifted to non-participating customers.”<sup>88</sup>

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

- ii. Is the rate just and reasonable?**
- iii. Is the rate not unreasonably preferential, prejudicial, or discriminatory?**
- iv. Is the rate sufficient, equitable, and consistent in application to each class of consumer?**

As discussed in ETI’s Initial Brief and above, because the TECI Rider complies with PURA Chapter 42, it reflects the Legislature’s chosen rate design consistent with the requirements of PURA § 36.003.<sup>89</sup> While the TECI Rider is specific to TE infrastructure and equipment, the fact that it is functionally equivalent to a Commission-approved tariff, the AFC Rider, indicates that its cost recovery design is sound and nondiscriminatory. The costs incurred by ETI for the

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 3.

<sup>87</sup> *See* ETI Ex. 96, Exhibit SFH-SR-1 at 1 (Bates 25).

<sup>88</sup> PFD at 31.

<sup>89</sup> Tex. Gov’t Code § 311.023.

equipment, installation, and any ongoing O&M will be added to each TECI Rider customer's monthly bill as a fixed payment in accordance with well-established cost causation principles.

OPUC appears to argue that the TECI Rider is somehow discriminatory because "it is not applicable to each class of consumer."<sup>90</sup> But PURA § 36.003 does not require that every tariff be *applicable* to each class of customer; rather, it requires a tariff be offered on a non-discriminatory basis to the classes to which it *is applicable*. By OPUC's reasoning, Schedule RS (Residential) is discriminatory, as are most other tariffs that utilities offer than have applicability sections and requirements.

Lastly, Staff once again leans on unfounded allegations that non-participating customer classes, such as the residential class, will be harmed because ETI "will seek to recover the remaining costs from non-participating customers."<sup>91</sup> Staff points to uncollectible expense related to default risk, and states that ETI should "be required to only recover or seek recovery of any uncollectible TECI costs from other participating customers."<sup>92</sup> However, not only is default risk not a basis to recommend the rider's rejection, as the ALJ has previously found,<sup>93</sup> but any such related costs are not even at issue. As Ms. Hill's testimony makes clear, ETI is not seeking to recover any such costs in this proceeding, and how such costs are recovered, if they are ever incurred, will be decided by the Commission in a future proceeding.<sup>94</sup>

The TECI Rider fulfills the Legislature's recognition that electric utilities and the Commission have a role to play in ensuring the rapid deployment of EV charging facilities, and meets each of the statutory requirements. The rider should be approved.

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<sup>90</sup> OPUC's Initial Brief at 6.

<sup>91</sup> Staff's Initial Brief at 15.

<sup>92</sup> *Id.*

<sup>93</sup> PFD at 31.

<sup>94</sup> Tr. at 65:19-66:12 (Hill Cross) (Apr. 5, 2024).

## **B. TECDA RIDER**

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

Because PURA Chapter 42 does not explicitly address the rate design features, no specific statutory requirements from Chapter 42 should apply to ETT's proposal. While Staff agrees that the "type of rate design measure proposed by the TECDA Rider is not explicitly included in Chapter 42 of PURA,"<sup>95</sup> Staff goes on to attempt to discredit the rider by excluding three out of four elements listed in the statute's legislative findings.<sup>96</sup> Staff's singular focus on "cost causation principles" as applied to the TECDA Rider is misguided and does not comport with statutory construction principles.<sup>97</sup>

When interpreting PURA, the Commission applies the established rules of statutory construction. A statute's interpretation is "a pure question of law,"<sup>98</sup> and "[t]he goal of statutory construction is to give effect to the intent of the legislature."<sup>99</sup> In determining the legislative intent, the entire act, rather than isolated portions, must be considered.<sup>100</sup> The "object sought to be attained" by enacting the statute, the "circumstances under which the statute was enacted," and the "consequences of a particular construction," are also considered.<sup>101</sup>

Staff's isolation of the term "cost-causation principles" as applied to the TECDA Rider diverges from established statutory construction rules. In interpreting Chapter 42, the Commission should view the entire act as a whole and consider the Legislature's principal objective in passing SB 1002, which was to encourage and support private investment in public EV charging stations. The legislative intent is clear from the findings highlighted below:

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<sup>95</sup> Staff's Initial Brief at 15.

<sup>96</sup> PURA § 42.0101(d)(2) refers to: (1) developing and implementing competitively neutral electricity tariffs; (2) based on cost causation principles; (3) ensuring transparency in pricing; and (4) recognizing changing market needs.

<sup>97</sup> Staff's Initial Brief at 15-16.

<sup>98</sup> *Mitchell Energy Corp. v. Ashworth*, 943 S.W.2d 436, 437 (Tex. 1997).

<sup>99</sup> *Sorokohit v. Rhodes*, 889 S.W.2d 239, 241 (Tex. 1994).

<sup>100</sup> *Jones v. Fowler*, 969 S.W.2d 429, 432 (Tex. 1998).

<sup>101</sup> Tex. Gov't Code § 311.023; *see City of Austin v. Sw. Bell Tel. Co.*, 92 S.W.3d 434, 442 (Tex. 2002).



**Sec. 42.0101. LEGISLATIVE FINDINGS.**

(a) The legislature finds that it is in the best interests of this state to continue the long-standing policy of supporting private sector investment in infrastructure by establishing a framework designed to encourage competitive private sector investment in the deployment of public electric vehicle charging stations.

(b) The legislature finds that encouraging investment in the deployment of public electric vehicle charging stations is essential to foster the rapid installation and widespread use of public electric vehicle charging stations on property whose owners or tenants desire to install public electric vehicle charging stations.

(c) The legislature finds that electric utilities, transmission and distribution utilities, competitive entities, and the commission have important roles to fill in supporting the installation and use of infrastructure for electric vehicle charging.

(d) The legislature finds that it is necessary to:

(1) implement competitively neutral policies to encourage competitive private sector investment in public electric vehicle charging station deployment;

(2) develop and implement competitively neutral electricity tariffs that are optimized for public electric vehicle charging stations and based on cost causation principles while ensuring transparency in pricing and recognizing changing market needs; and

(3) encourage competitive private investment, ownership, and operation of public electric vehicle charging stations, including equipment that allows for fast charging.

The Commission should approve the TECDA Rider, because it addresses “one of the greatest barriers to entry into the EV charging market by private businesses,”<sup>102</sup> and promotes private investment in public EV charging, consistent with the policies set forth in Chapter 42. AACE, Walmart, FlashParking, and ChargePoint support approval of the TECDA Rider, recognizing it encourages investment in EV charging.<sup>103</sup> In fact, Walmart expressed interest in building a national EV charging network at Sam’s Club and Walmart parking lots across the country and explained how unpredictable demand charges can make such investments uneconomic during the early EV adoption period.<sup>104</sup> The increased investment in EV charging stations will promote greater adoption of EVs, which will lead to economic, environmental, and societal benefits,<sup>105</sup> including more jobs in Texas, addressing range anxiety,<sup>106</sup> lower emissions, and lower electricity rates for ETI customers. The increased investment in public EV charging stations will

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<sup>102</sup> AACE’s Initial Brief at 5-6; *see also* ChargePoint Ex. 4.0 at 12 (referring to demand charges as “one of the largest barriers to deployment of EV charging stations”).

<sup>103</sup> *See, e.g.*, Walmart’s Initial Brief at 3-5; ChargePoint Ex. 4.0 at 12; AACE’s Initial Brief at 5; FlashParking Ex. 1 at 8-9.

<sup>104</sup> *See* Walmart’s Initial Brief at 1-2.

<sup>105</sup> ETI Ex. 40 at 25, 41.

<sup>106</sup> *See id.* at 25-26 (addressing job creation and reducing range anxiety).

also advance Governor Abbott’s goal of ensuring “a way for Texans to easily get from Beaumont to El Paso” in an EV.<sup>107</sup>

To misapply the “cost causation principles” factor to a rate design measure like the TECDA Rider, when Staff acknowledges that “the type of rate design measure proposed by the TECDA Rider is not explicitly included in Chapter 42 of PURA,”<sup>108</sup> is myopic, particularly when the TECDA Rider is consistent with the overall legislative intent. Staff’s tunnel vision thwarts the State’s goals of promoting investment in Texas. Nevertheless, the RIM test results demonstrate that the incremental revenues from TECDA customers will exceed costs in every scenario, benefitting all ETI customers.<sup>109</sup>

- 2. Do the proposed rates for the TECDA Rider comply with the requirements of PURA § 36.003? (PO Issue No. 7)**
  - i. Is the rate just and reasonable?**
  - ii. Is the rate not unreasonably preferential, prejudicial, or discriminatory?**
  - iii. Is the rate sufficient, equitable, and consistent in application to each class of consumer?**

Yes. The TECDA Rider complies with PURA § 36.003 and should be approved for the reasons provided in ETI’s Initial Brief.<sup>110</sup> Staff relies exclusively on costs in arguing that the TECDA Rider does not meet PURA § 36.003. But, “[c]ost is not the only [pertinent] factor;” the Commission should also consider, “the purpose for which the service is received, the quantity received, the time of use, and the consistency and regularity of use, among other factors.”<sup>111</sup> These factors, particularly the purpose for the service to promote investment in EV charging stations, the TECDA Rider limitations on the quantity received, and the inconsistent and irregular use expected by EV site hosts in the early EV adoption period heavily favor Commission approval of the TECDA Rider, as explained in more detail in ETI’s Initial Brief.<sup>112</sup>

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<sup>107</sup> See SPS Ex. 1, Attachment JWC-2 at 1 (Bates 35).

<sup>108</sup> Staff’s Initial Brief at 15.

<sup>109</sup> ETI’s Initial Brief at 20-21.

<sup>110</sup> *Id.* at 15-19.

<sup>111</sup> *Nucor Steel v. Pub. Util. Comm’n*, 168 S.W.3d 260, 268 (Tex. App.—Austin 2005, no pet.).

<sup>112</sup> See ETI’s Initial Brief at 15-19.

Staff attempts to sow confusion when it mischaracterizes Ms. Hill's cost analysis as being based on a per-kWh basis.<sup>113</sup> Ms. Hill's Direct and Rebuttal testimonies simply describe *effective* rates on a per kWh basis to demonstrate the challenges demand charges pose for Schedule GS customers.<sup>114</sup> ChargePoint witness Justin Wilson explained, "[w]hen traditional demand-based rates are applied to EV charging customers with low utilization and high demand it results in *unpredictable* electricity bills with a high "*effective cost per kWh*" for the site host."<sup>115</sup> The effective rate refers "to the common practice of dividing the entire electric bill by usage (kWh)."<sup>116</sup> ETI's stakeholders are sophisticated, agree demand charges pose one of the largest barriers to entry, understand the TECDA Rider mechanism to address that barrier, and support its approval.<sup>117</sup> Because some public EV charging providers set prices on a per kWh basis,<sup>118</sup> viewing their electric bills in this manner guides their economic decision to invest. Moreover, 16 Texas Administrative Code ("TAC") § 25.244 discussed in ETI's Initial Brief also uses a load factor threshold to provide certain low load factor Transmission and Distribution Utility ("TDU") customers demand relief.<sup>119</sup> Far from being confusing or resulting in billing uncertainty, the TECDA Rider is straightforward, increases billing certainty, based on sound principles the Commission has recognized in its own substantive rules, and supported by real-world stakeholders that want to invest in EV charging stations but for the outsized demand costs expected in the nascent EV adoption period.

Next, Staff misapplies precedent from over 20 years ago, designed to address unbundling issues, to argue that the TECDA Rider is somehow discriminatory because it will offset participating customers' non-coincident peak ("NCP") demand charge when their load factor drops below 15%.<sup>120</sup> But since the Commission issued the rate design rules cited by Staff in 2000, it has

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<sup>113</sup> Staff's Initial Brief at 16.

<sup>114</sup> ETI Ex. 40 at 35-36.

<sup>115</sup> ChargePoint Ex. 4.0 at 13 (emphasis added); *see* ChargePoint Ex. 1.0 at 19-20 ("Many EV charging sites have sporadic sessions of high demand resulting in unpredictable utilization and lower load factors. This leads to situations where the demand-based (per kW) component of an EV charging site host's electricity bill is far higher than the volumetric (per kWh) component, driving up the "*effective cost per kWh*" for the site host.") (emphasis added).

<sup>116</sup> ETI Ex. 53 at 34, n. 54.

<sup>117</sup> *See* ChargePoint Ex. 1.0 at 19-20; AACE's Initial Brief at 5-6.

<sup>118</sup> ETI Ex. 53 at 34, n. 54.

<sup>119</sup> 16 TAC § 25.244; *see* ETI's Initial Brief at 16-17.

<sup>120</sup> Staff's Initial Brief at 18.

recognized that certain customers should pay lower than their NCP demand charges in specific circumstances. First, during unbundling, the Commission already recognized that seasonal agricultural customers would require demand relief based on variable usage patterns:

[P]arties generally agreed that an exception is appropriate for seasonal agricultural customers, based on testimony that applying a ratchet to these customers' usage could result in charges higher than their current bundled rate on an annual basis. **The Commission acknowledges these unique characteristics of seasonal agricultural customers, and, therefore, grants an exception to the establishment of generic ratcheted distribution demand charges for these customers.** The design for each customer class that includes seasonal agricultural customers shall contain a provision for the recovery of distribution charges without the use of a demand ratchet for those customers.<sup>121</sup>

Eleven years later, the Commission expanded this initial exception to apply to nonresidential secondary voltage service customers with annual load factors less than 25% in adopting 16 TAC § 25.244.<sup>122</sup> In the order adopting the rule, the Commission specifically stated that the rule was made under its authority granted by PURA § 36.003 to ensure just and reasonable rates.<sup>123</sup> Further, the Commission agreed “that allowing the commission to have flexibility is important when considering the unique circumstances of each TDU’s service territory,” conveying its authority to accept a higher load factor threshold than 25% in a comprehensive base rate case.<sup>124</sup>

Given the demand relief under 16 TAC § 25.244 is just and reasonable, so too is the TECDA Rider’s temporary and targeted demand relief, particularly given the Legislature’s and Governor Abbott’s priority in promoting investment in EV charging stations.

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<sup>121</sup> *Application of Central Power & Light Company for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 & Public Utility Commission Substantive Rule § 25.344*, Docket No. 22352, Order at 36 (Oct. 5, 2001) (emphasis added).

<sup>122</sup> 16 TAC § 25.244(c).

<sup>123</sup> *Rulemaking to Establish Billing Demand for Certain Utility Customers Pursuant to PURA § 36.009*, Docket No. 39829, Order Adopting § 25.244 as Approved at the May 18, 2012 Open Meeting at 48 (May 24, 2012).

<sup>124</sup> *Id.* at 25-26.

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

No. In its PFD in Docket No. 53719, the ALJ found 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.”<sup>125</sup> Thus, the TECDA Rider is not a discounted rate.

Even if the TECDA Rider is deemed a discount, the Commission should approve the rider, because ETI has satisfied the requirements under PURA § 36.007. Subsection 36.007(a) allows the Commission to approve “charges that are less than rates approved by the regulatory authority but not less than their marginal costs” so long as the rates are not “unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.”<sup>126</sup> Marginal costs include energy and capacity components.<sup>127</sup> Under PURA § 36.007(d), the Commission “shall ensure that the electric utility’s allocable costs of serving customers paying discounted rates... are not borne by the utility’s other customers.”<sup>128</sup>

Staff and OPUC provide little to no analysis on this issue. Staff wrote only two sentences in this section of its brief, relying exclusively on OPUC witness Evan Evans’s testimony. And OPUC misstates or mischaracterizes evidence in the record without applying the facts to the law. For example, OPUC states that ETI has not provided “any analysis or calculations of their marginal cost or capacity components,” but also discusses the RIM test, which undeniably included marginal costs.<sup>129</sup> The RIM test compared the charges (revenue benefits) from TECDA Rider customers with the marginal costs of serving those customers, and Ms. Hill described those costs in her rebuttal testimony as follows:<sup>130</sup>

Q26. WHAT COSTS WERE INCORPORATED IN THE RIM ANALYSIS?

A. In the RIM analysis of TECDA-1 Rider, there are four streams of costs.

1. Incremental capacity supply costs;
2. Incremental energy supply costs;

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<sup>125</sup> PFD at 36-37.

<sup>126</sup> PURA § 36.007(a).

<sup>127</sup> *Id.* at § 36.007(b).

<sup>128</sup> *Id.* at § 36.007(d).

<sup>129</sup> OPUC’s Initial Brief at 9-10; ETI Ex. 53 at 32-33.

<sup>130</sup> ETI Ex. 53 at 32-33.

3. Embedded transmission-related costs; and
4. Embedded distribution-related costs.<sup>131</sup>

As shown below, the RIM test resulted in net benefits (with ratios above 1.0) in every scenario analyzed over a 10-year period, meaning the charges exceed the marginal costs under PURA § 36.007(a).

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

The incremental revenues from the TECDA Rider customers will benefit all ETI customers by offsetting their rates.<sup>131</sup> Because the net revenues exceed the net costs, there are no costs to be shifted to other customers. No other party witness has performed or provided any analysis regarding ETI's marginal costs to support their speculative concerns regarding cost shifting in the future, nor has any party refuted the RIM test. With the RIM test admitted into evidence, OPUC makes a bizarre attempt to discredit it by asserting the Commission has not "approved" it.<sup>132</sup> But, the Commission has not "approved" *any* evidence in this case, including, for instance, Mr. Evans' testimony. The RIM test is widely accepted in the industry as an economic evaluation test from the California Standard Practice Manual for Economic Analysis of Demand-Side Management Programs.<sup>133</sup> It is used to evaluate the impact of a change in load from a demand-side management program or contract for new additional load on the rates charged to a utility's other customers,

<sup>131</sup> *Id.* at 40-41.

<sup>132</sup> OPUC's Initial Brief at 10.

<sup>133</sup> ETI Ex. 53 at 31.

assuming instant ratemaking.<sup>134</sup> In this case, the RIM test was used to evaluate the TECDA Rider's impact on non-participating customers.<sup>135</sup> Staff cannot credibly allege cost shifting concerns related to the TECDA Rider while simply ignoring un rebutted evidence to the contrary. Staff propounded zero requests for information on the TECI or TECDA Riders and made no attempt to dispute the RIM test's substance.

The incremental revenues from the TECDA Rider benefit all ETI customers by putting downward pressure on their rates.<sup>136</sup> Therefore, the TECDA Rider cannot be unreasonably preferential, prejudicial, or discriminatory to any class of ETI customers.<sup>137</sup> Finally, there are no cost shifting concerns under PURA § 36.007(d), because there are no such costs. The revenues from TECDA Rider customers are incremental and would not exist but for the rider.<sup>138</sup>

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

If the TECDA Rider is approved, participating customers will benefit from more stable, predictable monthly bills associated with its new, separately metered service for EV charging.<sup>139</sup> Staff seems to argue that the TECDA Rider could encourage customers "to unnecessarily impose higher demands on the system" that "could cause higher rates for all customers."<sup>140</sup> But Staff's argument is speculative, based on no analysis, and, once again, contrary to un rebutted record evidence. Because, as ChargePoint explains, public EV charging site hosts "have little to no control over when or how frequently EV drivers utilize their stations to charge a vehicle, and therefore have little to no control over the demand or electricity consumption that their public

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<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 40-41.

<sup>137</sup> OPUC appears to take issue with the TECDA Rider based on speculative future cost recovery, but ETI is not seeking to recover any costs associated with this rider in this proceeding. *See* OPUC's Initial Brief at 13 ("the TECDA-1 Rider *would be* unreasonably preferential... *if* the unrecovered demand charges are recovered from non-participating customers.") (emphasis added).

<sup>138</sup> ETI Ex. 53 at 38-39; Tr. 75:12-22 (Hill Cross) (Apr. 5, 2024).

<sup>139</sup> ETI Ex. 53 at 35-37.

<sup>140</sup> Staff's Initial Brief at 19.

charging site experiences during a billing period,”<sup>141</sup> there is no way a TECDA customer would purposefully impose higher demands on the system as Staff insinuates.

OPUC argues that safeguards should be put into place to ensure costs associated with developing and implementing the TECI and TECDA Riders are not included in ETI’s next base rate case.<sup>142</sup> However, it is uncontested that ETI is not seeking any cost recovery associated with these riders in this case.<sup>143</sup> OPUC’s concerns over costs in ETI’s next base rate case are outside of the scope of this proceeding.

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

Contrary to the assertions of Staff and OPUC, the TECDA Rider will positively impact non-participating ETI customers. It is uncontested that there are no estimated costs expected from the TECDA Rider.<sup>144</sup> Furthermore, ETI’s RIM test shows that the incremental revenues created through the TECI Rider will have a *downward* impact on all customer rates.<sup>145</sup> The next time ETI files an application to change its base rates, ETI expects, and its unrebutted RIM test supports, that the incremental revenues from the TECDA Rider will serve to offset ETI’s costs, providing a net benefit to all customers.<sup>146</sup> Staff’s suggestions that the TECDA Rider will somehow shift costs to non-participating customers is not supported in the record.<sup>147</sup> Critically, Staff does not assert that the TECDA Rider will result in any costs to customers. Without any real costs, any argument by Staff that costs will be shifted is inconsistent with its own position.

OPUC further suggests that without the proper safeguards in place, the TECDA Rider could *hypothetically* result in “indirect and incremental costs” for non-participating customers.<sup>148</sup> Putting aside that OPUC also did not argue that the TECDA Rider would result in any costs to

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<sup>141</sup> ChargePoint Ex. 4.0 at 13-14.

<sup>142</sup> OPUC’s Initial Brief at 11.

<sup>143</sup> ETI’s Initial Brief at 4.

<sup>144</sup> *See id.*

<sup>145</sup> ETI Ex. 53 at 40-41.

<sup>146</sup> *Id.*; Tr. at 75:12-22 (Hill Cross) (Apr. 5, 2024).

<sup>147</sup> Staff Initial Brief at 19.

<sup>148</sup> OPUC Initial Brief at 11.



customers, OPUC's argument ignores the substantial safeguards that ETI has proposed for the TECDA Rider. Specifically, the TECDA Rider is limited to the first 30,000 kW of load, individual charging load up to 1,500, and for a five-year term.<sup>149</sup> These safeguards reasonably balance addressing customers' needs in the early EV adoption period and maximizing the incremental revenues preserved to offset ETI's overall revenue requirement to the benefit of non-participating customers.<sup>150</sup> The five-year limit per customer is reasonable and provides an appropriate amount of time for site utilization to increase such that the TECDA Rider is no longer necessary.<sup>151</sup> Moreover, the TECDA Rider will be monitored "to ensure that it is working as intended and to better understand usage patterns and load factors for new separate metered customers using electricity for electrified transportation equipment."<sup>152</sup> Importantly, ETI is not seeking any cost recovery in this docket. Once the TECDA Rider has been implemented, OPUC and Staff can make arguments, based on actual data, about the potential cost recovery associated with the rider. Staff's and OPUC's arguments on this point are premature.

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

The Commission should approve the TECDA Rider without imposing any conditions, because non-participating customers will benefit from the incremental revenues. The Commission should reject OPUC's suggestion for the expiration of the TECDA Rider when new rates are approved in ETI's next base rate case, as unnecessary given the temporary five-year term and self-adjusting nature of the rider.<sup>153</sup>

The Commission should also disregard OPUC's argument about rate case expenses in this proceeding.<sup>154</sup> All parties, including OPUC, agreed to specific provisions addressing rate case

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<sup>149</sup> ETI Ex. 40 at 40.

<sup>150</sup> ETI Ex. 53 at 30, 46.

<sup>151</sup> *Id.* at 46.

<sup>152</sup> *Id.* at 32-33.

<sup>153</sup> See OPUC Initial Brief at 12.

<sup>154</sup> *Id.*

expenses in ETI's stipulated settlement in Docket No. 53719.<sup>155</sup> When the Commission severed these TE issues, it did not include any issues related to rate case expenses.<sup>156</sup> Therefore OPUC's attempt to relitigate rate case expenses is outside the scope of this proceeding. Moreover, OPUC's argument that customers ineligible to take service under a particular tariff should not pay the cost of litigating issues related thereto is inconsistent with the manner in which rate case expenses are routinely allocated to customer classes. Under OPUC's approach, industrial customers should not bear any rate case expenses associated with issues that do not directly impact industrial customers (e.g., the considerable cost utilities routinely incur to address rate design issues such as the customer charge applicable to Schedule RS). It seems unlikely OPUC would benefit from such a policy if it were truly thought through. OPUC has failed to offer any credible basis to segregate rate case expenses in this manner. Finally, even though the residential customers OPUC represents are not eligible to directly take service under the TECI and TECDA Riders, many residential customers will benefit from the proliferation of TE charging infrastructure that these riders will facilitate.

### **C. TECI AND TECDA RIDERS**

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

For the reasons discussed above and in ETI's Initial Brief, ETI's TECI Rider and TECDA Rider comply with PURA and Commission rules. As discussed above, Staff's argument that the TECI Rider's four-year revenue credit somehow conflicts with Commission rules is directly contradicted by ETI's Commission-approved Electric Extension Policy, which includes the exact same revenues as an offset to the costs associated with new facilities. Staff also errs by arguing that non-base rate recovery mechanisms, such as the Energy Efficiency Cost Recovery Factors and System Restoration Charges are included in the revenues credited to the TECI customer.<sup>157</sup> As the proposed rider states, "Projected Contract Revenues. . . *shall not include* existing and future *non-*

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<sup>155</sup> See Docket No. 53719, Unopposed Stipulation & Settlement Agreement at ¶¶ 74-79 (May 10, 2023).

<sup>156</sup> Docket No. 53719, Order Severing Issues at 1 (Aug. 16, 2023).

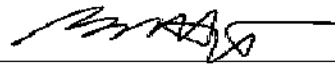
<sup>157</sup> Staff's Initial Brief at 20.

*base rate cost recovery mechanisms . . .*<sup>158</sup> Instead, only non-fuel firm revenues (i.e., base rates) and base rate recovery mechanisms (i.e., cost recovery factors like the TCRF) are included in the TECI Rider revenue credit mechanism in the exact same way that ETI credits customers under the existing Electric Extension Policy. ETI's proposed offerings thus not only comply with Chapter 42 of PURA, but also the remainder of PURA and the Commission's rules. Finally, for the reasons discussed above in Section III.B.2., the Commission's interim order from 2000 on unbundling does not apply to ETI's TECDA Rider.

#### **IV. Conclusion**

Former Chairman Lake previously observed that "the market is moving faster than the policy" on these issues.<sup>159</sup> Now that State policy has been established through the adoption of SB 1002, now is the time to adopt the TECI and TECDA Riders. Their implementation will encourage investment in EV charging facilities in Texas, advancing the State's policies and ensuring that ETI and the Commission are able to fulfill the roles given to them by the Legislature. The TECI and TECDA Riders should be recommended for approval.

Respectfully submitted,



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<sup>158</sup> ETI Ex. 95, Exhibit SFH-S-1 at 2 (Bates 15) (emphasis added).

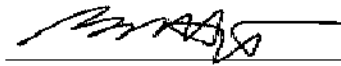
<sup>159</sup> Open Meeting at Item No. 22 (Oct. 6, 2022), available at: [https://www.adminmonitor.com/tx/puct/open\\_meeting/20221006/](https://www.adminmonitor.com/tx/puct/open_meeting/20221006/).

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**ATTORNEYS FOR ENTERGY TEXAS, INC.**

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Entergy Texas, Inc.'s Reply Brief was served by electronic delivery on all parties of record in this proceeding on April 25, 2024.

A handwritten signature in black ink, appearing to read "G. G. Hoyt", is written over a horizontal line.

George G. Hoyt