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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**

COMMISSION STAFF'S REPLY BRIEF

Dated: April 25, 2024

Respectfully submitted,

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TABLE OF ABBREVIATIONS

AACE	Americans for Affordable Clean Energy
Commission	Public Utility Commission of Texas
ETI	Entergy Texas, Inc.
EV	Electric Vehicle
OPUC	Office of Public Utility Counsel
PURA	Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001–66.016
Staff	Commission Staff
TAC	Texas Administrative Code
TECDA	Transportation Electrification and Charging Demand Adjustment
TECI	Transportation Electrification and Charging Infrastructure
TIEC	Texas Industrial Energy Consumers
Walmart	Walmart, Inc.

SOAH DOCKET NO. 473-24-07154
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PROCEEDING TO RESOLVE ISSUES IN DOCKET NO. 53719 RELATED TO TRANSPORTATION ELECTRIFICATION AND CHARGING INFRASTRUCTURE	**§ § § § §**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

COMMISSION STAFF'S REPLY BRIEF

I. INTRODUCTION

Staff reiterates its position that the Commission should reject ETI's proposed TECI and TECDA Riders. Importantly, the riders do not comply with the applicable requirements of Chapter 42 and 36 of PURA. As far as the TECI Rider, it does not comply with PURA § 42.0101(d), because it 1) improperly subsidizes the costs for participating customers, stifling competition; 2) is underspecified in terms of costs, such that it is not transparent; and 3) does not provide rates that are based on cost causation principles. Regarding cost causation, the TECI Rider does not ensure that all costs are recovered from participating customers and instead results in non-participating customers bearing some of the under-recovered costs, such that the rider does not comply with PURA § 42.0103(o)(3) and (p)(2). The TECI Rider is also designed in a manner that may result in services being offered on a discriminatory basis, such that it does not comply with PURA § 42.0103(p)(1). In turn, the TECI Rider does not comply with PURA § 36.003, as it is unreasonably preferential and discriminatory, is inequitable, and should be rejected as it is not just and reasonable. Notwithstanding the foregoing, the TECI Rider would not comply with Chapter 42 of PURA to the extent that ETI makes it available to customers who do not intend to offer EV charging services to the public. Specifically, PURA § 42.0103(o) only applies to agreements concerning *public* EV charging stations, such that a participating customer must offer EV charging services to the public.

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

As far as the TECDA Rider, Staff reiterates that it is unreasonably preferential and discriminatory, is inequitable, and grants an unreasonable preference concerning rates to certain persons in a classification, and should rejected as it is not just and reasonable and not based on cost.

II. UNCONTESTED ISSUES

TECI Rider

Staff addressed this issue in its initial brief. Staff, however, reiterates the caveat to the uncontested issues that the TECI Rider will not comply with PURA § 42.0103(o) when offered to customers who will not use the EV charging stations to provide EV charging services to the public. Further, while ETI's initial brief did not address Staff's proposal that ETI should establish an EV base rate class with standard EV rates, Staff continues to contest any position by ETI that an EV base rate class would not comply with Chapter 42 of PURA. In fact, AACE finds merit in this proposal,[1] while Walmart also indicates support for EV charging rate classes.[2] However, in support of the TECI Rider, AACE indicates its concerns with the expediency of approval of an EV base rate class.[3] In response to that concern, Staff reiterates that ETI or any other vertically integrated utility is free to submit a base rate application at any time to implement a new EV base rate class or that ETI alternatively has the option to file an application for new rate class outside of a base rate case.[4]

TECDA Rider

Staff's addressed this issue in its initial brief. However, Staff reiterates that the Commission should be concerned with ETI's lack of commitment to recover lost revenues or unrecovered costs from the TECDA Rider, if any, from participating customers only.

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[1] Americans for Affordable Clean Energy's Initial Brief at 5 (Apr. 15, 2024) (AACE's Initial Brief).

[2] Post-Hearing Brief of Walmart Inc. at 5 (Apr. 15, 2024).

[3] AACE's Initial Brief at 5.

[4] Commission Staff's Initial Brief at 10 (Apr. 15, 2024) (Staff's Initial Brief).

III. CONTESTED ISSUES

TECI Rider

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

No. Staff reiterates that the proposed rates for the TECI Rider do not comply with the requirements of Chapter 42 of PURA. ETI argues that the TECI Rider will comply with Chapter 42 by helping foster the deployment of EV charging facilities and supporting competitive private sector investment in the area.[5] As an initial matter, ETI relevantly disregards that Chapter 42 of PURA was created with the intention to encourage investment in *public* EV charging stations, which, by definition must be accessible for public use and specifically excludes charging stations that are not used commercially for EV charging service.[6] And as noted in Staff's initial brief, ETI has made it clear that it intends to make the TECI Rider available to customers that will not use the EV charging stations commercially for EV charging service.[7] Stated similarly, such customers will not be providing EV charging service to the public, thus preventing the EV charging stations from being *public* EV charging stations. As such, ETI's intentions are not supported by the legislative intentions behind Chapter 42 of PURA. Further, as noted in Staff's initial brief, if ETI is allowed to own transportation electrification and charging infrastructure, including charging facilities, in this manner that is not contemplated or intended by PURA § 42.0103(o) or (e), ETI would be inappropriately providing a service that is best left to the competitive providers.[8]

Regarding ETI's argument that the TECI Rider will comply with Chapter 42 of PURA by supporting competitive private sector investment, ETI argues that the TECI Rider will not result in ETI crowding out or otherwise infringing on the competitive market.[9] In response, Staff reiterates that the TECI Rider inherently provides a significant subsidy to participating customers in a manner that instead stifles competition and meaningfully discourages competitive private sector investment outside of ETI's offering.[10] Specifically, because the TECI Rider provides an

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[5] Entergy Texas, Inc.'s Initial Brief at 5 (Apr. 15, 2024) (ETI's Initial Brief).

[6] Staff's Initial Brief at 4.

[7] *Id.* at 3-4.

[8] *Id.* at 4-6.

[9] ETI's Initial Brief at 5.

[10] Staff's Initial Brief at 6-7.

offsetting credit against a customer's TECI costs, a participating customer may potentially pay nothing for EV charging equipment costs, while a non-participating customer who installs the same exact EV charging equipment at the same exact costs will have to pay the full costs.[11] Such a significant subsidy would essentially compel both customers and private competitive providers to avail themselves of ETI's offering in order to respectively receive and provide EV-related services in ETI's service area.[12] In the least, it would prevent private competitive providers from being able to provide their services competitively outside of ETI's offering.

To further support its arguments, ETI highlights the broad support the TECI Rider has received from relevant stakeholders, including the Legislature, through passage of Chapter 42 of PURA.[13] However, except for the Legislature, the support provided by other stakeholders was prior to the passage of Chapter 42 of PURA.[14] That so many customers and private competitive EV charging station providers support ETI's proposal is consistent with Staff's position that the TECI Rider is unreasonably preferential in subsidizing EV charging installations. Further, ETI disregards the Legislature's findings in PURA § 42.0101 that relevantly, in terms of the TECI Rider, include the encouragement of "competitive" private sector investment in "public" EV charging stations through the development and implementation of "competitively neutral" tariffs that are "based on cost causation principles" and ensure "transparency in pricing."[15] Having already detailed the issues the TECI Rider causes in terms of competition, Staff argues that the subsidies in the TECI Rider also demonstrate that the rider is not based on cost causation principles. In addition, the lack of specified costs in the TECI Rider otherwise prevents the Commission from determining whether the TECI Rider is based on cost causation principles.[16] And because there is a lack of specified costs, there is also a lack of transparency in pricing in the TECI Rider.[17]

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[11] *Id.* at 6.

[12] *Id.* at 7.

[13] ETI's Initial Brief at 5, footnotes 28-32.

[14] *Id.*

[15] Staff's Initial Brief at 3.

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

[17] *Id.*

Lastly, in an attempt to contrast the level of support for the TECI Rider against its opposition, ETI refers to the testimony in this proceeding by William B. Abbott, Staff's witness, as being the only opposition testimony.[18] ETI, however, notably disregards that Evan D. Evans, OPUC's witness, has provided testimony in opposition to the TECI and TECDA Riders in this proceeding as well.[19] ETI also attempts to discredit Mr. Abbott, by stating that his testimony is not based on any expertise in the EV industry or any independent analysis of the EV charging market.[20] However, Mr. Abbott's educational background, professional experience, and principal responsibilities at the Commission, relevantly including analyzing rate design issues,[21] as well as Mr. Abbott's extensive testimonial experience on rate-related proceedings,[22] demonstrate Mr. Abbott's expertise when it comes to understanding PURA and the Commission's rules in terms of rate design issues, which is at the core of this proceeding. Accordingly, Mr. Abbott's testimony provides anything but an armchair analysis, as ETI alleges.[23] In comparison, ETI's testifying expert, Samantha F. Hill, an employee of Entergy Services, LLC in Louisiana, has indicated no prior experience testifying in any proceeding,[24] much less on issues such as tariff and rate design. Ms. Hill's testimony indicates that she has only been in a regulatory role since 2019,[25] in contrast to Mr. Abbott's nearly 14 years of experience in electric utility tariff and rate analysis in Texas.[26] Further, it is ETI that has the burden of proof in this case and the record demonstrates that, in terms of rate design, the TECI Rider does not comply with Chapters 42 and 36 of PURA.

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[18] ETI's Initial Brief at 5-6.

[19] Direct Testimony of Evan D. Evans, OPUC Exhibit No. 47; *see also* Cross-Rebuttal of Evan D. Evans, OPUC Exhibit No. 57

[20] ETI's Initial Brief at 5-6.

[21] Supplemental Direct Testimony of William B. Abbott, PUC Staff Exhibit No. 7 at bates pages 3:7-4:14.

[22] *Id.* at bates pages 17-19.

[23] ETI's Initial Brief at 6.

[24] Direct Testimony of Samantha F. Hill, ETI Exhibit No. 40 at bates pages 3:3-4:14.

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

[26] PUC Staff Exhibit No. 7 at bates page 4:9-12.

B. Preliminary Order Issue No. 2e: Does the TECI Rider comply with the requirements of PURA § 42.0103(o) regarding site host agreements? Will the person pay for all electric utility-related costs under the proposed tariff, and will the tariff provide for full recovery of the costs of the public electric vehicle charging station from the person, including the incremental revenues paid by the person to the utility associated with the electric vehicle charging service?

No. Staff reiterates that the TECI Rider, on its face does not ensure that the participating customers will recover all electric utility-related costs.[27] By reading PURA § 42.0103(o)(3) and (p)(2) together, ETI characterizes "all electric utility-related costs" as the costs of "owning, constructing, financing, operating, and maintaining the public EV charging station" from the participating customer.[28] However, the requirement under PURA § 42.0103(p)(2) that the utility must only recover the costs of "owning, constructing, financing, or operating, and maintaining the public EV charging station" from the participating customer and not the utility's other customers relates to the requirement under PURA § 42.1013(o)(3) that a tariff must provide for "full recovery of the costs of the public EV charging station" from the participating customer. Accordingly, Staff reiterates that "all electric utility-related costs" include both TECI-related costs, as well costs associated with base rates and non-fuel firm rate schedules.[29] The legislature would not have distinguished the two categories of costs for no reason, and it is contrary to the principles of statutory interpretation for ETI to equate the two. Even if, assuming for the purpose of argument, ETI has appropriately characterized the electric utility-related costs, OPUC pointedly indicates that ETI has not ensured that participating customers will pay an appropriate share of overhead and indirect and incremental costs that are being subsidized by all other customers but that will be necessary to serve only the participating customers.[30] In fact, that such costs are necessary to provide service to participating customers under the TECI Rider demonstrates that such costs should ultimately be recovered from only the participating customers rather than being subsidized by all of ETI's customers. Notably, such a finding would comport with cost causation principles and 16 TAC § 25.234(a).

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27 Staff's Initial Brief at 11.

28 ETI's Initial Brief at 6-7 and 11-12.

29 Staff's Initial Brief at 11.

30 Office of Public Utility Counsel's Post-Hearing Brief at 3-6 (Apr. 15, 2024) (OPUC's Initial Brief).

ETI justifies its offsetting revenue approach based on an incorrect and unreasonable interpretation of the provision under PURA § 42.0103(o)(3) regarding "incremental revenues." As discussed, ETI's interpretation fails to acknowledge that incremental revenues associated with EV charging service must ensure recovery of "all electric utility-related costs" and not just the costs of the public EV charging station. In other words, the incremental base rate and non-fuel rider revenues must be applied to recover the corresponding base rate and non-fuel rider costs, and may not also be applied as an offset to the costs of the EV charging stations themselves, as ETI proposes. For example, PURA § 36.210(a)(2), as codified in 16 TAC § 25.243, requires that incremental distribution base rate revenues be offset against incremental distribution costs when establishing Distribution Cost Recovery Factor rates. ETI's approach under the TECI Rider would double-count these incremental revenues by applying these same incremental distribution base rate revenues against both incremental distribution costs and EV charging station costs. The same dollar of incremental base rate revenue cannot reasonably be applied to offset both a dollar of incremental distribution costs and a dollar of EV charging station costs, as ETI proposes.

Accordingly, a finding that "all electric utility-related costs" include both TECI-related costs, as well costs associated with base rates and non-fuel firm rate schedules would also comport with cost causation principles and 16 TAC § 25.234(a). With that finding, based on the fact that the TECI Rider includes an offset for projected or actual base rate and non-fuel firm rate schedule revenues against TECI costs, participating customers will thus fail to pay for all electric utility-related costs. Further, as discussed above, ETI will thus be double-counting such revenues, which is unreasonable and demonstrates that the TECI Rider is not based on cost causation principles.[31] Lastly, these base rate-related costs included in ETI's proposed revenue offset would far exceed the costs of any relevant make-ready infrastructure, because the base rates and non-fuel riders include all of ETI's system costs, including those for generation, transmission, and distribution.[32]

Separately, ETI also contrasts the TECI Rider with a "one-size-fits-all" approach, arguing the latter would fail to appropriately recover the costs associated with a wide variety of potential needs.[33] Because this line of argument can be interpreted to contest Staff's proposal for ETI to establish an EV base rate class, Staff provides the following response. Specifically, as noted in

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[31] *Id.* at 11-12.

[32] *Id.* at 12.

[33] ETI's Initial Brief at 9.

Staff's initial brief, ETI disregards that the correct interpretation of Chapter 42 of PURA, in terms of which customers the TECI Rider should be made available to, would prevent ETI from being able to offer the TECI Rider to the wider variety of customers, making it easier for costs to be standardized for purposes of establishing an EV base rate class.[34] More importantly, ETI's opposition to a "one-size-fits-all" highlights that the TECI Rider's underspecified approach for customer-specific rates based upon changing O&M and EV charging station costs would violate PURA § 36.201 that prohibits the Commission from establishing a tariff that would authorize an electric utility to automatically adjust and pass through to customers any changes in EV charging station costs.[35]

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

No. Staff reiterates that ETI has not demonstrated that it will be able to offer the service under the terms of the tariff on a nondiscriminatory basis, primarily based on both ETI's lack of control over O&M costs and EV charging service prices, as well as ETI's discretion in determining how and when to apply projected revenues as an offset against the TECI costs.[36] In response to Mr. Abbott's testimony that ETI may be able to provide preferential treatment under the TECI Rider to affiliates, ETI argues that PURA § 42.0103(o) only permits a person who is not an affiliate of an electric utility from entering an agreement.[37] Staff, however, notes that § 42.0103(o) only states that PURA § 42.0103 does not prohibit such persons from entering into an agreement. Conversely, it does not state anywhere in PURA § 42.0103 that electric utilities may not generally enter into agreements with affiliates for which the TECI Rider might be used. Further, in contrast to ETI's interpretation of Mr. Abbott's testimony as being in a fundamental opposition to electric utility participation in this space,[38] Mr. Abbott's testimony clearly indicates that, based upon the enactment of Chapter 42 of PURA, he retracted his previous fundamental position that it is not

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34 Staff's Initial Brief at 9.

35 *See* Staff's Initial Brief at 12 (citing to Tr. at 28:17-29:22 (Hill Cross), demonstrating that O&M prices can change at any time).

36 *Id.* at 12-13.

37 ETI's Initial Brief at 11.

38 *Id.*

appropriate for an electric utility in a vertically integrated area to own vehicle-charging facilities or other transportation electrification and charging infrastructure.[39] Notwithstanding that retraction, Mr. Abbott further qualifies his position that PURA § 42.0103 appears to authorize such ownership under certain conditions,[40] but such conditions do not include the manner in which ETI intends to do through the TECI Rider.[41] Instead, Mr. Abbott recommends that ETI instead seek to establish an EV base rate class with transparent rates to comply with Chapters 42 and 36 of PURA.[42]

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

No. Staff reiterates that the TECI rider will significantly fail to ensure that the revenue collected by ETI under the rider will allow the utility to recover the costs of owning, financing, operating, and maintaining the public EV charging station from a participating customer.[43] ETI argues that the statutory costs of owning, constructing, financing, operating, and maintaining the public EV charging station is to the exclusion of other types of costs that will be separately recovered through a customer's payment of tariffed non-residential electricity rates, such that the TECI Rider appropriately recovers all electric utility-related costs.[44] However, as discussed above in Section III.B., and in Staff's initial brief, the TECI Rider ultimately fails to fully recover TECI costs (potentially leading to participating customers paying nothing for EV charging station costs), such that non-participating customers will certainly and unreasonably end up paying for some of the TECI costs, especially since ETI intends to offset the net monthly payments collected under the TECI Rider (which may be zero for some customers) against ETI's overall revenue requirement, leaving the unrecovered costs in rates applicable to non-participating customers.[45]

[39] PUC Staff Exhibit No. 7 at bates page 6:16-19.

[40] *Id.* at bates page 6:19-20.

[41] *Id.* at bates page 7:3-8.

[42] *Id.* at bates page 7:8-11.

[43] Staff's Initial Brief at 13-14.

[44] ETI's Initial Brief at 11-12.

[45] Staff's Initial Brief at 13-14.

In addition, in the event that rider TECI is approved, Staff reiterates its discussion regarding the recovery of potential bad debt expenses, that such recovery, if any, should only be made from participating customers.[46] Further, if rider TECI is approved, Staff supports the recommendations made in TIEC's initial brief that the TECI Rider include language stating that the agreed-upon fixed amount to cover O&M expenses shall be no less than the amount charged to ETI by the O&M vendor and that ETI shall ensure that the entirety of any O&M expenses are covered by the Customer, or, alternatively, that the Commission include an ordering paragraph in its final order stating that ETI may not shift any O&M costs incurred under the TECI Rider to any other customer.[47] In that same regard, to the extent that the TECI Rider is approved, TIEC's proposal should be expanded to include all costs incurred under the TECI Rider, including those that are ultimately unrecovered as bad debt expenses. Even with such modifications, however, Staff maintains that the TECI Rider be rejected as in conflict with Chapters 42 and 36 of PURA.

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

No. Staff reiterates that the TECI Rider is 1) unreasonably preferential based on the subsidization inherent in the rider; 2) inequitable, based on the fact that the TECI Rider does not ensure that ETI will collect the full TECI costs from participating customers and will thus seek to recover the remaining costs from non-participating customers; and 3) discriminatory, because it would require non-participating customers and classes of customers to bear some of the unrecovered TECI costs.[48] ETI argues that, because the TECI Rider complies with Chapter 42 of PURA, it reflects the Legislature's chosen rate design consistent with the requirements of PURA § 36.003.[49] However, as fully detailed in Staff's initial brief and mostly reiterated in this reply brief, the TECI Rider does not comply with Chapter 42 of PURA.

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[46] *Id.* at 14.

[47] Texas Industrial Energy Consumer's Initial Brief at 3 (Apr. 15, 2024).

[48] Staff's Initial Brief at 14-15

[49] ETI's Initial Brief at 12-13.

ETI also argues that the TECI Rider is functionally equivalent to ETI's Commission-approved Additional Facilities Charge (AFC) Rider.[50] ETI also refers to Mr. Abbott's testimony regarding the ability for ETI to use the AFC Rider for its transportation electrification program in an effort to demonstrate that the TECI Rider is in fact reasonable, equitable, and appropriate under PURA § 36.003, just like the AFC Rider.[51] ETI, however, uses Mr. Abbott's testimony out of context in an attempt to confuse the reader that Mr. Abbott's testimony should be taken to indicate that the TECI Rider is just and reasonable, equitable, and appropriate, like the Commission-approved AFC Rider. As discussed in Staff's initial brief, Mr. Abbott's testimony instead demonstrates that the AFC Rider does not provide support for the TECI Rider.[52] As such, Mr. Abbott does not concede that the TECI Rider is functionally equivalent to the AFC Rider and that the TECI Rider thus should be found to comply with PURA § 36.003. In contrast, Mr. Abbott's testimony demonstrates that the TECI Rider does not comply with PURA § 36.003.

<u>TECDA Rider</u>

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

No. Staff reiterates that the TECDA rider does not comply with the requirements of Chapter 42 of PURA and that it is not an appropriate or necessary mechanism that will advance the statute's overall purpose to proliferate the amount of public EV charging stations throughout Texas in the manner in which the Legislature intends.[53] ETI contends that the rider advances the statute's overall purpose[54] but, as stated in Staff's initial brief, ignores the Legislature's finding in PURA § 42.0101(d)(2) that it is necessary to develop and implement tariffs, including demand adjustments like the TECDA Rider, that are based on cost causation principles.[55] Instead, the TECDA Rider provides significant discounts from cost-based rates and is thus not based on cost causation principles.[56]

[50] *Id.* at 13.

[51] *Id.* at 13.

[52] Staff's Initial Brief at 10-11.

[53] *Id.* at 15-16.

[54] ETI's Initial Brief at 15.

[55] Staff's Initial Brief at 16.

[56] *Id.*

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

No. Staff reiterates is position in its initial brief in this proceeding as well as its position already briefed in Docket No. 53719.[57] ETI argues that, in determining whether a rate complies with PURA § 36.003, the Commission is not limited to considering costs, but also may consider the purpose for which service is received, the quantity received, the time of use, and the consistency and regularity of use, among other factors.[58] Although not acknowledged in ETI's brief, Staff interprets this argument to be based on the fact that the rider will allow qualifying participating customers to pay only a portion of the system capacity costs which they cause ETI to incur and thus be subject to the same cost-shifting arguments relied on in the initial proposal for decision. Notably, even though Walmart states its belief that the TECDA Rider complies with the requirements of PURA § 36.003, Walmart acknowledges that the TECDA Rider diverges from traditional cost-based rates and could create inter- or intra-class subsidies.[59]

ETI also attempts to equate the TECDA Rider as a rate design similar to that of the billing demand adjustments allowed under 16 TAC § 25.244.[60] ETI's argument regarding this rule is deeply misleading for many reasons. First, 16 TAC § 25.244 applies to transmission and distribution utilities (TDU) and ETI is not a TDU, but a vertically integrated electric utility.[61] More substantively, 16 TAC § 25.244 prohibits the use of a demand *ratchet* for *all* low load factor customers, and in no way authorizes the exemption from any portion of demand *charges* for a *select group* of customers as proposed by ETI. Indeed, in Project No. 39829, a proposal to exempt from demand ratchets a select group of customers, houses of worship, was considered, and rejected by the Commission, and a broad exemption from demand ratchet billing provisions was adopted

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57 Staff's Initial Brief at 16-18; *see also Application of Entergy Texas, Inc. for Authority to Change Rates*, Docket No. 53719, Commission Staff's Initial Brief on Issues 68 and 69 at 10-12 (Jan. 13, 2023).

58 ETI's Initial Brief at 16.

59 Walmart's Initial Brief at 3 and 5.

60 ETI's Initial Brief at 16-17.

61 *Rulemaking to Establish Billing Demand For Certain Utility Customers Pursuant to PURA § 36.009*, Project No. 39829, Order Adopting Amendment to § 25.244 as Approved at the May 18, 2012 Open Meeting at 45 (May 22, 2012).

for all low-load factor customers.[62] ETI also disregards that 16 TAC § 25.244(c) states that "[t]his subsection shall not be applied in a manner that would shift costs to other customer classes." Furthermore, eliminating demand ratchets actually leads to an increase in demand charge rates, and not a discount to rates as the TECDA Rider offers. Specifically, in Project No. 39829, "[t]he commission note[d] that HB 1064 does not mandate that demand ratchets be abolished completely…[and that] as a practical matter, doing so would result in a significant reduction of the class's billing determinants and a potentially dramatic adverse impact on affected customers' rates." [63] ETI's attempts to confuse the issue should be disregarded – the issue with the demand charge waivers for EV charging under the TECDA Rider is entirely distinct from the issue of demand ratchet waivers for all low-load factor customers.

Similar to 16 TAC § 25.244(c), Chapter 42 of PURA relevantly focuses on the necessity for tariffs to be based on cost causation principles and the prevention of cost-shifting onto non-participating customers. Since ETI relies on Chapter 42 of PURA for support the TECDA Rider, the rider thus must be based on cost causation principles in order to be just and reasonable. In turn, ETI's discussion of the other factors is not relevant for the Commission's determination.

Even if such factors are considered and determined to weigh in favor of finding the TECDA Rider is just and reasonable, the rider still does not comply with PURA § 36.003(b). Specifically, as demonstrated in Staff's initial brief, the TECDA Rider unreasonably discriminates against non-participating customers with identical usage and load and results in unduly preferential treatment for participating customers.[64] Notably, even Samantha F. Hill, ETI's witness, acknowledges that identical non-participating customers may potentially pay more than the participating customers,[65] demonstrating that the TECDA Rider is unduly preferential. Further, the TECDA Rider is unduly preferential and discriminatory based on Commission precedent in Docket No. 22344.[66]

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[62] *Id.* at 48.

[63] *Id.* at 21.

[64] Staff's Initial Brief at 17-18

[65] *Id.*

[66] *Id.* at 18.

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

Yes. Staff reiterates that the proposed billing demand adjustment would be a discounted rate under PURA § 36.007(a) that would potentially result in cost shifting to other customers and thus in ETI's violation of PURA § 36.007(d).[67] In turn, Staff agrees with the analysis provided by OPUC on this issue.[68] In contrast, ETI continues to argue that the TECDA Rider is not unreasonably preferential, prejudicial, discriminatory, or anticompetive, primarily based on the analysis of its RIM test to argue that there will be net benefits to all customers.[69] ETI has not provided any precedent for the use of such speculative analyses as a basis to depart from cost-based rates, and ETI still disregards that some costs are shifted to non-participating customers that otherwise would not have borne those costs or that identical non-participating customers may potentially pay more in comparison to participating customers, demonstrating the cost-shifting concerns.[70]

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

In response to ETI's argument that TECDA customers will enjoy more stable, predictable rates,[71] Staff again notes that ETI has not rebutted the fact that Ms. Hill's after-the-fact per-kWh measure is not a reasonable basis to make such comparisons, and that, in fact, the TECDA Rider would increase electric bill uncertainty "because it adds additional complicated billing demand adjustments that depend upon potentially confusing load factor calculations that vary with monthly usage in addition to the standard billing demand terms."[72] This is in comparison with a very predictable monthly bill for EV charging based on the published demand charge rate in ETI's tariff multiplied by the EV charger's load, regardless of how much or how little energy is used in a particular month. Ultimately, Staff reiterates that the discounted billing demand does not provide

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[67] *Id.* at 19.

[68] OPUC's Initial Brief at 8-10.

[69] ETI's Initial Brief at 19-21.

[70] Staff's Initial Brief at 18.

[71] ETI's Initial Brief at 22.

[72] Staff's Initial Brief at 17 (citing to the Direct Testimony of William B. Abbott, PUC Staff Exhibit No. 4 at bates pages 10:18-11:2).

adequate price signals to customers and can encourage customers to unnecessarily impose higher demands on the system, resulting in higher costs being incurred to achieve lower electric bills under the TECDA Rider.[73] Overall, reliance on non-cost-based rates promotes inefficiencies that could cause higher rates for all customers.[74]

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

In response to ETI's argument that the TECDA Rider will positively impact non-participating customers,[75] Staff reiterates that the TECDA rider will allow qualifying participating customer to pay only a portion of their capacity costs which they have caused ETI to incur.[76] In turn, the TECDA Rider thus would unreasonably discriminate against a non-participating customer with identical usage and load, with the non-participating customer potentially paying much more than the participating customers.[77] Again, ETI's reliance on a speculative RIM test to justify rates that clearly conflict with PURA and standard ratemaking practice in Texas is unprecedented, and should be rejected.

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

Staff does not have any comments on this issue.

<u>TECI and TECDA Rider</u>

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

No. Staff reiterates that ETI's approach in determining the revenue offset in the TECI Rider specifically conflicts with the statutory authorizations and financing orders behind some of the

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[73] Staff's Initial Brief at 19.

[74] *Id.*

[75] ETI's Initial Brief at 22.

[76] Staff's Initial Brief at 19.

[77] *Id.*

riders that are included in the offsetting revenues.[78] Further, the TECI Rider conflicts with PURA § 36.201 and the prohibition against a tariff that would allow a utility to automatically adjust and pass through to customers any changes in costs.

IV. CONCLUSION

Staff respectfully requests the entry of a proposal for decision consistent with the discussion in Staff's initial brief, as supported by the foregoing discussion, rejecting the TECI and TECDA Riders.

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CERTIFICATE OF SERVICE

I certify that unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on April 25, 2024 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ *Scott Miles*
Scott Miles

[78] *Id.* at 20-21.