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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

June 21, 2024

Shelah Cisneros, Commission Counsel

VIA EFILE TEXAS

**RE: SOAH Docket No. 473-24-07154.PUC; PUC Docket No. 55338;
*Proceeding to Resolve Issues in Docket No. 53719 Related to
Transportation Electrification and Charging Infrastructure***

Dear Parties:

Please find attached a Proposal for Decision (PFD) in this case. By copy of this letter, the parties to this proceeding are being served with the PFD.

The Commission will place this case on an open meeting agenda for the Commissioners' consideration. The Commission will notify the Administrative Law Judge and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Enclosure

CC: Service List

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

PROCEEDING TO RESOLVE ISSUES IN DOCKET NO. 53719 RELATED TO TRANSPORTATION ELECTRIFICATION AND CHARGING INFRASTRUCTURE

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LIST OF ACRONYMS AND DEFINED TERMS

TERM	DEFINITION
AFC	Additional Facilities Charge
ALJ	Administrative Law Judge
ALS	Area Lighting Service
AACE	Americans for Affordable Clean Energy
ChargePoint	ChargePoint, Inc.
Cities	Cities of Anahuac, Beaumont, Bridge City, Cleveland, Dayton, Groves, Houston, Huntsville, Liberty, Montgomery, Navasota, Nederland, Oak Ridge North, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Roman Forest, Rose City, Shenandoah, Silsbee, Sour Lake, Splendora, Vidor, West Orange, and Willis
Commission	Public Utility Commission of Texas
EPE	El Paso Electric Company
ERCOT	Electric Reliability Council of Texas
ETI	Entergy Texas, Inc.
EV	Electric Vehicle
FEA	Federal Executive Agencies
FlashParking	FlashParking, Inc.
General Service	GS
Kroger	The Kroger Co.
kW	Kilowatt
kWh	Kilowatt-hour
O&M	Operations and Maintenance
OPUC	Office of Public Utility Counsel
PFD	Proposal for Decision
PURA	Public Utility Regulatory Act
RIM	Ratepayer Impact Measure
SB	Senate Bill
Sempra	Sempra Infrastructure Partners, LP
SOAH	State Office of Administrative Hearings

SPS	Southwestern Public Service Company
Staff	Staff of the Public Utility Commission of Texas
TAC	Texas Administrative Code
TE	Transportation Electrification
TECDA Rider	Transportation Electrification and Charging Demand Adjustment
TECI Rider	Transportation Electrification and Charging Infrastructure
TIEC	Texas Industrial Energy Consumers
Walmart	Walmart Inc.

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

PROCEEDING TO RESOLVE ISSUES IN DOCKET NO. 53719 RELATED TO TRANSPORTATION ELECTRIFICATION AND CHARGING INFRASTRUCTURE

PROPOSAL FOR DECISION

I. INTRODUCTION

Entergy Texas, Inc. (ETI) filed an application with the Public Utility Commission of Texas (Commission) in Docket No. 53719 (Docket No. 53719), requesting authority to change its rates.¹ The parties filed an unopposed agreement addressing all issues in Docket No. 53719, except for issues related to transportation electrification.² The Commission adopted the settlement agreement and severed the

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

² Docket No. 53719, Unopposed Stipulation and Settlement Agreement at 1-2 (May 10, 2023).

two remaining contested issues related to transportation electrification from Docket No. 53719, creating this proceeding.³ For the reasons discussed below, the Administrative Law Judge (ALJ) recommends approval of ETI's proposed transportation electrification riders, the Transportation Electrification and Charging Infrastructure Rider (TECI Rider) and the Transportation Electrification and Charging Demand Adjustment Rider (TECDA Rider).

II. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not contested.

The Commission has jurisdiction over this proceeding under Public Utility Regulatory Act (PURA)⁴ §§ 14.001, 32.001, 36.001-.112, 36.211, 39.452(k), and Chapter 42. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to the conduct of the hearing in this proceeding under PURA § 14.053 and Texas Government Code § 2003.049.

On May 19, 2023, the governor of Texas signed Senate Bill (SB) 1002, which addresses the construction, ownership, and operation of electric vehicle charging stations, creating Chapter 42 in PURA that became effective on September 1, 2023.⁵

³ Docket No. 53719, Order (Aug. 24, 2023) and Order Severing Issues (Aug. 16, 2023) (Severing Order).

⁴ Public Utility Regulatory Act (PURA), Tex. Util. Code §§ 11.001-66.016.

⁵ Act of May 8, 2023, 88th Leg., R.S. 2023 Tex. Sess. Law. Serv. Ch. 53 (S.B. 1002).

On June 19, 2023, the ALJ filed a Proposal for Decision (PFD) in Docket No. 53719 (Initial PFD). The ALJ noted the lack of existing law pertaining to transportation electrification when ETI filed its application in Docket No. 53719 and that recently passed legislation would affect the issues in that proceeding.⁶ The ALJ deferred to the Commission as to whether, as a general matter, it was appropriate for vertically integrated utilities, such as ETI, to own transportation electrification and charging infrastructure.⁷ Additionally, the ALJ opined on ETI's proposed transportation electrification riders, recommending approval of the TECI Rider and denial of the TECDA Rider.⁸

On August 16, 2023, the Commission issued the Order Severing Issues (Severing Order), to allow parties to continue and conclude litigation of the case against the backdrop of the pending SB 1002. The Severing Order separated the two issues related to transportation electrification from Docket No. 53719, creating this docket, and transferred related portions of the record from Docket No. 53719 to the instant case.⁹

The following entities intervened in Docket No. 53719 and their status as parties in that case transferred to the instant proceeding: Cities;¹⁰ Texas Industrial

⁶ Docket No. 53719, Initial PFD at 16-18 (Jun. 19, 2023).

⁷ *Id.* at 37.

⁸ *Id.*

⁹ Severing Order at 4-5.

¹⁰ Cities refers to the Cities of Anahuac, Beaumont, Bridge City, Cleveland, Dayton, Groves, Houston, Huntsville, Liberty, Montgomery, Navasota, Nederland, Oak Ridge North, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Roman Forest, Rose City, Shenandoah, Silsbee, Sour Lake, Splendora, Vidor, West Orange, and Willis.

Energy Consumers (TIEC); ChargePoint, Inc. (ChargePoint); FlashParking, Inc. (FlashParking); Walmart Inc. (Walmart); the Kroger Co. (Kroger); Sierra Club; Southwestern Public Service Company (SPS); Sempra Infrastructure Partners, LP (Sempra); Americans for Affordable Clean Energy (AACE); El Paso Electric Company (EPE); Federal Executive Agencies (FEA); and the Office of Public Utility Counsel (OPUC).¹¹ Commission staff (Staff) also participated as a party.

On September 9, 2023, ETI filed supplemental direct testimony, describing adjustments made to the proposed riders originally filed in Docket No. 53719 because of the newly enacted legislation. Subsequently, Walmart filed direct testimony supporting ETI's proposed riders and Staff filed supplemental direct testimony in opposition.¹² Sierra Club, AACE, TIEC, and OPUC filed statements of position.¹³ TIEC, AACE, and Walmart either support or do not oppose ETI's proposed riders, but OPUC and Staff oppose the riders.

On December 13, 2023, the Commission referred this case to SOAH. The Commission issued its Supplemental Preliminary Order on December 14, 2023, identifying 14 issues to be addressed in this proceeding. The following uncontested

¹¹ ChargePoint filed a motion to withdraw as party to this proceeding, which was granted by the Commission ALJ. *See* ChargePoint, Inc.'s Motion to Withdraw (Sep. 11, 2023); Commission Order No. 3, Granting Motion to Withdraw Intervention (Sep. 13, 2023).

¹² *See* Walmart Ex. 1 and Staff Ex. 7.

¹³ Sierra Club Statement of Position (Mar. 27, 2024); AACE Statement of Position (Mar. 28, 2024); TIEC Statement of Position (Apr. 2, 2024); and OPUC Statement of Position (Apr. 3, 2024).

issues will not be discussed in the PFD and are only addressed in the Findings of Fact and Conclusions of Law: Preliminary Order Issue Nos. 2a, 2b, 2c, 2d, and 8.¹⁴

On April 5, 2024, the ALJ convened a hearing on the merits. The following parties participated, through counsel: ETI, AACE, TIEC, Walmart, OPUC, and Staff. The participating parties filed timely post-hearing briefs. The record closed on April 25, 2024, with the submission of reply briefs.

III. BACKGROUND

A. APPLICABLE LAW

The Texas Legislature enacted legislation creating a new chapter in PURA, pertaining to public charging of electric vehicles, Chapter 42.¹⁵

In PURA § 42.0101, the Legislature promulgated the general policy of the new chapter finding that it is in Texas’s best interest to invest in infrastructure by establishing a framework designed to encourage competitive private sector investment in the deployment of public electric vehicle charging stations.¹⁶ Additionally, the Legislature found it essential to encourage investment in the deployment of public electric vehicle charging stations to foster the installation and widespread use of public electric vehicle charging stations on the property of owners

¹⁴ See Joint Proposed Briefing Outline at 1-2 (Apr. 9, 2024) (wherein the parties agreed to not contest these issues); SOAH Order No. 5 (Apr. 10, 2024) (adopting parties’ proposals in the Joint Proposed Briefing Outline).

¹⁵ Act of May 8, 2023, 88th Leg., R.S. 2023 Tex. Sess. Law. Serv. Ch. 53 (S.B. 1002).

¹⁶ PURA § 42.0101(a).

or tenants who desire to install public electric vehicle charging stations.¹⁷ Additionally, the Legislature noted that electric utilities and the Commission, among others, inhabit important roles in supporting the installation of and buildout of infrastructure that would support electric vehicle charging.¹⁸

To that end, the Legislature finds it necessary to develop and implement competitively neutral electricity tariffs optimized for public electric vehicle charging stations based on cost causation principles while recognizing dynamic market needs and ensuring transparency in pricing.¹⁹ Moreover, the Legislature finds it necessary to implement competitively neutral policies to encourage competitive private sector investment.²⁰

An *electric vehicle charging provider* is the owner or operator of a public electric vehicle charging station, but the definition does not include an electric utility or transmission and distribution utility.²¹ A *public electric vehicle charging station* is a charging system that delivers electricity from a source outside of an electric vehicle into an electric vehicle, separate from make-ready infrastructure, and is accessible for commercial use by the public.²² *Electric vehicle charging services* are sales made

¹⁷ PURA § 42.0101(b).

¹⁸ PURA § 42.0101(b)-(c).

¹⁹ PURA § 42.0101(d)(2).

²⁰ PURA § 42.0101(d)(1).

²¹ PURA § 42.0102(3).

²² PURA § 42.0102(7).

from a public electric vehicle charging station to the public.²³ *Make-ready infrastructure* is the electrical infrastructure servicing a public electric vehicle charging station's electrical load on the electric utility's or transmission and distribution utility's side of the point of delivery, including site-specific electrical infrastructure, but excludes the public electric vehicle charging station or any utility infrastructure on the customer's side of the point of delivery, up to and including the meter.²⁴

PURA § 42.0103 specifically pertains to public charging of electric vehicles outside of the Electric Reliability Council of Texas (ERCOT) region. It allows a person who is not an electric utility to enter 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 certain conditions are met.²⁵ Those conditions include, but are not limited to, the person having sole responsibility for determining physical access to and use of the charging station, in addition to prices for the charging service.²⁶ Moreover, the person must pay for all the electric utility-related costs under a tariff approved by the commission that provides for the full recovery of all costs of the public electric vehicle charging station from that person, including incremental revenues paid by the person to the utility associated with the electric vehicle charging service.²⁷

²³ PURA § 42.0102(4).

²⁴ PURA § 42.0102(6).

²⁵ PURA § 42.0103(o).

²⁶ PURA § 42.0103(o)(2).

²⁷ PURA § 42.0103(o)(3).

Additionally, the Commission shall require the electric utility for which it has approved a tariff under Subsection (o) to offer the terms of service to other persons seeking agreements in the utility's service area on a non-discriminatory basis, as well as ensure the revenue collected by the electric utility allows it to recover the costs of owning, constructing, financing, operating, and maintaining the public electric charging station from that person and not the utility's other customers.²⁸

B. ETI'S PROPOSED TARIFFS²⁹

1. TECI Rider

The TECI Rider allows a non-residential customer to partner with ETI to plan transportation electrification and charging infrastructure and equipment on the requesting customer's property for its own use and, if it so chooses, for public use.³⁰ This rider would allow a qualifying customer³¹ to enter into an agreement with ETI for ETI to construct the customer's requested transportation electrification infrastructure and equipment, up to and including a "turnkey" transportation electrification option.³² The "turnkey" option would allow a customer to have ETI

²⁸ PURA § 42.0103(p).

²⁹ This section includes language from the Initial PFD's section entitled "ETI's Proposed TECI-1 and TECDA-1 Riders," incorporating edits made to the proposed language in the instant case. Initial PFD at 18-23.

³⁰ ETI Ex. 40 (Hill Direct Testimony (Dir.)) at 8.

³¹ The TECI-1 Rider would only be available to non-residential customers. ETI Ex. 40 (Hill Dir.), SFH-1 at 1.

³² ETI Ex. 40 (Hill Dir.) at 8.

construct the necessary infrastructure and equipment, up to and including the electric vehicle charging equipment on site.³³

Under the agreement, ETI would organize and oversee each aspect of the installation, including working with third parties to provide a site assessment and supervising the permitting and inspections required for the installation.³⁴ After the installation is completed, ETI would construct, own, and maintain only the portions of the transportation electrification and charging infrastructure and equipment that the participating customer does not itself want to own and maintain.³⁵ Ownership of the infrastructure and equipment lies at the option of the customer: (1) a customer may own the entirety of the transportation electrification and charging infrastructure and equipment, with ETI's role limited to providing electric service;³⁶ (2) a customer may divide ownership, with ETI owning the transportation electrification infrastructure up to the electric vehicle chargers and the customer owning the electric vehicle chargers; or (3) ETI may own all of the transportation electrification and charging infrastructure and equipment including the electric vehicle chargers, also known as the turnkey option. If a customer decides to divide ownership, the customer may choose a third-party provider from a list of ETI approved vendors to install the electric vehicle charging equipment.³⁷

³³ Docket No. 53719, ETI Initial Brief at 15-16.

³⁴ ETI Ex. 40 (Hill Dir.) at 8.

³⁵ ETI Ex. 40 (Hill Dir.) at 8. *See* Docket No. 53719, SPS Initial Brief at 3 (provides a visual representation of the transportation electrification and charging infrastructure and equipment).

³⁶ ETI Ex. 40 (Hill Dir.) at 9.

³⁷ ETI Ex. 40 (Hill Dir.) at 8-9.

The costs associated with installing the transportation electrification and charging infrastructure and equipment would be collected under the TECI Rider and added to the requesting customer's net monthly bill.³⁸ If the customer chooses to allow ETI to service the electric vehicle charging stations after installation, then the associated operations and maintenance (O&M) costs would be added separately to the customer's monthly bill.³⁹ The TECI Rider describes how ETI would credit the customer with a portion of the incremental non-fuel revenues projected to result from transportation electrification and charging infrastructure to partially offset the overall cost.⁴⁰

In addition to paying under the TECI Rider for costs associated with the agreement, the participating customer would also pay according to applicable rate schedules for electric services provided to that customer.⁴¹

Upon entering into the agreement, the participating customer chooses the recovery timeframe, with a maximum period of 10 years.⁴² The timeframe covers ETI's recovery of the costs from the participating customer to install transportation electrification and charging infrastructure, in addition to other modifications of

³⁸ ETI Ex. 40 (Hill Dir.) at 11-12.

³⁹ ETI Ex. 40 (Hill Dir.) at 17.

⁴⁰ ETI Ex. 40 (Hill Dir.) at 18.

⁴¹ ETI Ex. 95 (Hill Supplemental Direct Testimony (Supp. Dir.) and Exhibits), SFH-S-1 at 2.

⁴² ETI Ex. 95 (Hill Supp. Dir.), SFH-S-1 at 1.

ETI's facilities.⁴³ Any modifications, additions, or replacement of the infrastructure or equipment made subsequent to the agreement that is not already covered within that agreement results in the negotiation of a new agreement to cover the additional costs.⁴⁴

If ETI must construct new facilities to extend electric service from ETI's existing infrastructure to the site where a customer requests to have the electric vehicle chargers installed, the customer is not required to reimburse ETI for the total installed cost of construction if the projected revenues for the electric vehicle chargers within the first four years of the contract term are equal to or exceed the projected cost to construct and install the transportation electrification and charging equipment and any related infrastructure necessary to serve the associated new load.⁴⁵ ETI would determine whether the projected revenues for each transportation electrification and charging infrastructure installation will reach this threshold.⁴⁶ If ETI determines that a customer must share these costs, the rider states that ETI will structure the customer's payments to fully recover the installation costs by the end of the recovery term set by the agreement.⁴⁷

⁴³ ETI Ex. 95 (Hill. Supp. Dir.), SFH-S-1 at 1.

⁴⁴ ETI Ex. 95 (Hill. Supp. Dir.), SFH-S-1 at 1.

⁴⁵ ETI Ex. 95 (Hill. Supp. Dir.), SFH-S-1 at 2.

⁴⁶ ETI Ex. 40 (Hill Dir.), SFH-1 at 2.

⁴⁷ ETI Initial Brief at 16; ETI Ex. 95, SFH-S-1 at 1.

ETI states that the net monthly payments collected under this rider will offset ETI's overall revenue requirement, which will benefit ETI's other customers, including those that do not opt in to the program.⁴⁸

2. TECDA Rider

The TECDA Rider addresses demand charges in electric vehicle charger billing. Under Rate Schedule General Service (GS), a customer's demand is measured as the highest 30 minutes of demand in kilowatts (kW) measured during the month, subject to other factors in the rate schedule.⁴⁹ The customer's demand, otherwise known as load, may be assessed as the ratio of use of electrical energy during a certain timeframe to the maximum amount of energy that would have been used in that timeframe, based on the customer's demand.⁵⁰

Under the current rate structure, the demand charges were designed to recover demand-related costs from conventional electric customers.⁵¹ In contrast, a separately metered electric vehicle charging station might experience uncertain electric service costs on a per kilowatt hour (kWh) basis. Thus, the impact to electric vehicle charging station customers under the current rate structure would be widely variable, as their load factors change due to changing electric vehicle charging use.⁵²

⁴⁸ ETI Initial Brief at 8.

⁴⁹ ETI Ex. 40 (Hill. Dir.) at 30.

⁵⁰ ETI Ex. 40 (Hill. Dir.) at 30.

⁵¹ ETI Ex. 40 (Hill. Dir.) at 32.

⁵² ETI Ex. 40 (Hill. Dir.) at 32.

According to ETI, the proposed TECDA Rider would limit the amount of demand billed under Rate Schedule GS to a qualifying customer during any billing period in which the actual calculated load factor is less than 15 percent.⁵³ Under the rider, the amount of billing demand billed to electric vehicle charging stations would be the lesser of: (1) measured demand (kW), as conventionally determined and subject to the GS terms; or (2) adjusted demand (kW), as calculated based on actual usage and a minimum 15 percent monthly load factor.⁵⁴ ETI maintains that the resulting effect limits the effective cost per kWh under Rate Schedule GS to a narrow band between \$0.15 and \$0.20 per kWh, based on current rates and riders.⁵⁵

Only customers subject to ETI's existing Rate Schedule GS that have qualifying, separately metered transportation electrification and charging equipment would qualify to opt in to the TECDA Rider.⁵⁶ ETI characterizes the rider as self-adjusting, since the billed amount of demand is limited to an electric vehicle charging station with a load factor lower than 15 percent, and only for that particular month.⁵⁷

ETI states that its proposed TECDA Rider would not materially impact qualified customers that do not opt in to the program.⁵⁸ Its proposal would limit the rider's application to a customer with an electric load less than or equal to 1,500 kW,

⁵³ ETI Ex. 40 (Hill Dir.) at 27.

⁵⁴ ETI Ex. 40 (Hill Dir.) at 27.

⁵⁵ ETI Ex. 40 (Hill Dir.) at 33-34.

⁵⁶ ETI Ex. 40 (Hill Dir.) at 27.

⁵⁷ ETI Ex. 40 (Hill Dir.) at 35.

⁵⁸ ETI Ex. 40 (Hill Dir.) at 37.

and for a term of five years.⁵⁹ Moreover, it would be available for the first 30,000 kW of electric load that enrolls and becomes operational after the rider is approved, and would be in operation for five years.⁶⁰

Under the TECDA Rider, ETI would not own any of the charging equipment, unlike with the TECI Rider.

IV. DISCUSSION AND ANALYSIS

ETI contends that its proposed riders will support the proliferation of transportation electrification and charging infrastructure in compliance with Chapter 42 of PURA.

Walmart does not take a position on the TECI Rider but recommends approval of the TECDA Rider. TIEC and AACE generally recommend approval of ETI's proposed riders, in addition to supporting modifications. In contrast, OPUC and Staff argue ETI's proposed riders should be denied. Their objections to the riders fall into two general categories: the programs created by the riders result in cost-shifting to non-participating customers and the riders are preferential or discriminatory, the discussion of which is detailed below.

⁵⁹ ETI Ex. 40 (Hill Dir.) at 38.

⁶⁰ ETI Ex. 40 (Hill Dir.) at 38.

A. TECI RIDER

1. ETI's Position

ETI argues that the program created by the TECI Rider furthers the legislative mandate for the proliferation of infrastructure supporting expansion of an electric vehicle charging network and that it meets the requirements of Chapter 42.

First, ETI argues that the TECI Rider is designed to recover all costs from the participating customer and that no costs will be shifted to non-participating customers.⁶¹ The costs associated with the construction and operation of the electric vehicle charging stations will be incorporated into the participating customer's monthly bill.⁶² Additionally, a participating customer would pay under the applicable tariff for any electric services provided to that customer.⁶³ Thus, the participating customer would be paying for costs associated with construction and operation of the electric vehicle charging stations under the TECI Rider, in addition to the provision of electric service to that customer under the applicable tariff.

Moreover, ETI reasons that the TECI Rider is appropriate to use in furthering the purpose of Chapter 42 because it is tailored to the type of agreement contemplated in PURA § 42.0103(o), which allows an individual to enter into a contract with an electric utility to own or operate an electric vehicle charging station,

⁶¹ ETI Initial Brief at 11.

⁶² ETI Ex. 95 (Hill Supp. Dir.), SFS-S-1 at 1.

⁶³ ETI Initial Brief at 7.

provided certain conditions are met.⁶⁴ ETI explains that the TECI Rider offers eligible customers who opt in to the program a mechanism to build electric vehicle charging stations, configured to their preferences, with the added benefit of partnering with third-parties who will provide services, also of their choosing.⁶⁵ The rider provides a straightforward framework for interested parties to negotiate an agreement for the construction and operation of new electric vehicle charging stations, but also leaves certain items open for participating customers to configure the new equipment to their needs.⁶⁶

ETI also points out that it modeled the TECI Rider after its Commission-approved Additional Facilities Charge (AFC) Rider, but that it differs in two respects: the AFC Rider does not account for either O&M or line extension costs, both of which the TECI Rider accounts for and allocates as chargeable to the participating customer.⁶⁷ Thus, ETI argues, the TECI Rider is better designed to capture the nuances inherent in building electric vehicle charging stations, accounting for competitive market forces and development.⁶⁸

Second, because participating customers have the option to choose a third party to service its facilities, and any of the attendant options available as a result of

⁶⁴ ETI Initial Brief at 9.

⁶⁵ ETI Initial Brief at 9.

⁶⁶ ETI Reply Brief at 12.

⁶⁷ ETI Initial Brief at 8-9.

⁶⁸ ETI Reply Brief at 12-13.

choosing that third-party servicer, ETI argues that the TECI Rider will facilitate, not stifle, competition.⁶⁹

Finally, ETI posits that, because it complies with the requirements of Chapter 42, it also complies with PURA § 36.003, rendering it a just and reasonable, non-discriminatory, and equitable rate structure.⁷⁰

2. TIEC's, AACE's, and Walmart's Positions

TIEC introduced an amendment to the TECI Rider, changing the language such that the participating customer would be required to pay the entire O&M amount charged by the third-party vendor.⁷¹ ETI states that it is amenable to TIEC's proposed language and has agreed to incorporate it into the TECI rider.⁷²

AACE supports approval of the TECI Rider, arguing that it comports with the requirements of Chapter 42 of PURA, and does not oppose TIEC's proposed amendment.⁷³

Walmart does not take a position on the TECI Rider.⁷⁴

⁶⁹ ETI Initial Brief at 5.

⁷⁰ ETI Initial Brief at 12-13.

⁷¹ TIEC Initial Brief at 2-3.

⁷² ETI Reply Brief at 19.

⁷³ AACE Initial Brief at 1-3.

⁷⁴ Walmart Ex. 1 (Austin Dir.) at 10.

3. OPUC's Position

OPUC's objections to the TECI Rider are rooted in one main concern: whether the costs attributed to a customer's participation in the TECI Rider are appropriately allocable to that particular customer and that no costs are shifted to non-participating customers.⁷⁵ OPUC refers to ETI witness Samantha Hill's testimony that ETI will be using existing resources and not adding more customer service agents.⁷⁶ Moreover, OPUC notes that the TECI Rider does not include language requiring a participating customer to reimburse ETI for line extension costs, in the event that a participating customer requires one to integrate its requested electric vehicle chargers into ETI's existing infrastructure.⁷⁷

ETI responds that, in the Initial PFD, the ALJ found that the TECI Rider does not shift costs to non-participating customers.⁷⁸ ETI adds that the revisions made to the TECI Rider to align with the recently passed legislation did not change the cost recovery mechanism, so the ALJ's findings on this particular point should remain the same.⁷⁹

Nevertheless, ETI replies, the participating customers pay under both the TECI Rider, which accounts for electric vehicle charging station costs, and the

⁷⁵ OPUC Initial Brief at 4.

⁷⁶ OPUC Initial Brief at 3-4; Hearing Transcript (Tr.) at 68-69.

⁷⁷ OPUC Initial Brief at 6.

⁷⁸ ETI Reply Brief at 14.

⁷⁹ ETI Reply Brief at 14.

applicable tariff governing electric service, which captures all other costs associated with that particular participating customer, including providing electric service.⁸⁰ ETI responds that OPUC fails to explain how there would be outstanding costs attributable to a participating customer that might be shifted to non-participating customers if the participating customer pays under the tarified rate for electric delivery service as well as all of the costs specific to electric vehicle charging and infrastructure under the TECI Rider, including line extension costs.⁸¹

Finally, OPUC argues that, in the event that a participating customer defaults and ETI incurs a bad debt expense, ETI could then attempt to recover those amounts from non-participating customers.⁸² ETI responds that this point was already addressed in the Initial PFD, where the ALJ found that this type of expense could be treated as any other bad debt and that ETI already bears the risk of those financial consequences.⁸³

4. Staff's Position

Staff presents several arguments in opposition to the TECI Rider, but they can be crystallized into two objections: the costs should be standardized and ETI's participation in the electric vehicle charging market would impede competition. Furthermore, Staff asserts the TECI Rider is not necessary for ETI's reliability of

⁸⁰ ETI Reply Brief at 14.

⁸¹ ETI Reply Brief at 16.

⁸² OPUC Initial Brief at 6.

⁸³ ETI Reply Brief at 18.

service or financial integrity, and, for these reasons, Staff recommends denial of the rider.⁸⁴

First, Staff argues that the TECI Rider lacks transparency because of the number of options available to the participating customer through the rider, making it difficult to evaluate the attendant costs.⁸⁵ Staff states that the rider should instead model ETI's Area Lighting Service (ALS) Rider by providing a standardized rate schedule, creating predictability as to the costs involved.⁸⁶ Opposite of ETI's proposal, Staff contends ETI should create an electric vehicle base rate class with standardized electric vehicle rates.⁸⁷ AACE does not oppose Staff's proposal; however, it argues the creation of an electric vehicle rate class should be considered by the Commission in a future proceeding, not in the instant case.⁸⁸

ETI responds that Staff's argument on this particular point highlights a fundamental misunderstanding of what the TECI Rider provides: ETI will not be providing electric vehicle charging *services* under the rider; rather, ETI would bill its customers through the TECI Rider to recover the costs associated with the *building and operating* of infrastructure requested by the participating customer.⁸⁹ Moreover, ETI points out that a rider with standardized costs would not be able to account for

⁸⁴ Staff Ex. 7 (Abbott Supp. Dir.) at 7-8, 15.

⁸⁵ Staff Initial Brief at 7.

⁸⁶ Staff Initial Brief at 10-11.

⁸⁷ Staff Ex. 7 (Abbott Supp. Dir.) at 7.

⁸⁸ AACE Reply Brief at 2; AACE Initial Brief at 4-5.

⁸⁹ ETI Reply Brief at 6.

certain expenditures, denying ETI the ability to recover all costs associated with the agreement from the participating customer.⁹⁰ Finally, ETI criticizes Staff's alternative as "ill-defined," not properly before the Commission, and that the only consideration is whether the TECI Rider is reasonable and comports with Chapter 42.⁹¹

Second, Staff argues that the TECI Rider essentially subsidizes building and operating electric vehicle charging stations for certain qualifying customers.⁹² According to Staff, this provides ETI an unfair advantage over other businesses providing similar, competitive services and will crowd out competitors, "forcing" ETI customers who wish to build electric vehicle chargers to opt into the TECI Rider, rather than choosing a competitor.⁹³

ETI responds that, by partnering with third-party servicers, it is providing more choices to its qualifying customers, not fewer.⁹⁴ Moreover, ETI argues, the legislative findings in PURA Chapter 42 contemplate the participation of electric utilities in the electric vehicle sector and found their involvement necessary.⁹⁵

⁹⁰ ETI Reply Brief at 9.

⁹¹ ETI Reply Brief at 9.

⁹² Staff Initial Brief at 4.

⁹³ Staff Ex. 7 (Abbott Supp. Dir.) at 12.

⁹⁴ ETI Reply Brief at 10.

⁹⁵ ETI Reply Brief at 10.

5. ALJ's Analysis

The objections to ETI's proposed TECI Rider fall into three categories: (1) whether the cost recovery mechanism sufficiently recovers costs incurred by ETI from the participating customer; (2) whether the services provided by the rider would impede competition; and (3) whether the rider is unreasonably preferential, prejudicial, or discriminatory.

The ALJ finds that, as proposed in the instant case, the TECI Rider: (1) provides a sufficient cost recovery mechanism and does not result in cost-shifting to non-participating customers; (2) does not impede competition; and (3) is not unreasonably preferential, prejudicial, or discriminatory. The ALJ discusses each topic further below.

a) Cost Recovery

The Legislature promulgated a framework designed to implement the legislative findings specifically for the public charging of electric vehicles outside of ERCOT in PURA § 42.0103.⁹⁶ With respect to cost recovery, a person must pay for all electric utility-related costs under a tariff that provides for the full recovery of 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.⁹⁷ Moreover, the statute charges the Commission with the responsibility of ensuring that the revenue collected under an agreement that falls

⁹⁶ PURA § 42.0103.

⁹⁷ PURA § 42.0103(o)(3).

under Subsection (o) allows the utility to recover the costs of owning, constructing, financing, operating, and maintaining the electric vehicle charging station from the person and not the utility's other customers.⁹⁸

PURA § 42.0103 contemplates the general type of agreement set forth by the TECI Rider, as it allows a participating customer to enter into an agreement with ETI for the ownership, construction, financing, operation, and maintenance of an electric vehicle charging station, the specifications of which are negotiated and established on a case-by-case basis between ETI, the participating customer, and, if the customer chooses, a third-party vendor. Moreover, it provides for the recovery of costs from ETI from the participating customer.

OPUC and Staff argue that the TECI Rider does not adequately recover all the costs associated with an agreement entered into under the rider, potentially resulting in ETI recouping unrecovered costs from non-participating customers.

First, OPUC references the fact that ETI will be using existing customer service resources to inform customers of the program and field questions about the program. ETI witness Hill clarified that these services will be used until a customer chooses to participate in the program, then the attendant costs would be allocated to that participating customer's account. ETI notes that the participating customers will be paying under two different riders: the TECI Rider, for costs related to electric vehicle charging, and the tariff governing general electric services, which would

⁹⁸ PURA § 42.0103(p)(2).

capture the other costs. The incremental amount attributed to a customer service agent discussing the TECI Rider as an option for a qualifying rider would be captured under the electric services tariff; then, if the customer avails themselves of the option to participate in the program created by the TECI Rider, those costs associated with the construction and operation of the electric vehicle charging stations would accrue to their account.

Because the participating customer will be subject to the TECI Rider and the applicable electric services tariff, the ALJ is persuaded that the cost recovery mechanism in the TECI Rider accounts for the costs associated with the agreement. Thus, the ALJ finds that the TECI Rider allows for full recovery of the costs from the participating customer.

Second, Staff argues that the TECI Rider lacks transparency, contrary to standard ratemaking practice. ETI responds that leaving certain terms open for negotiation, depending on the needs of the participating customer, fosters and encourages competition, as third-party servicers must then vie for a potential participating customer's business. Additionally, if the costs are too standardized and do not account for those charges, then ETI would under-recover the costs associated with the contract, resulting in the very concern held by OPUC and Staff.

The ALJ agrees with ETI. As discussed above, the TECI Rider provides a framework for ETI, a participating customer, and a third-party servicer to enter into an agreement to construct, own, and/or operate electric vehicle charging stations. Certain terms must be left open for negotiation between the parties, such as what

will be constructed and by whom, who will own it, and the timeframe for cost recovery, among other options, but the terms are all still subject to the requirements of the rider. The TECI Rider provides a reasonable framework within which the parties entering into an agreement can negotiate those terms to suit their particular needs, but still providing a clear structure governing the terms of the transaction. A standardized agreement would remove the ability to account for all costs associated with the agreement, potentially resulting in ETI under-recovering the costs from the participating customer. Thus, the ALJ finds that the TECI Rider is sufficiently transparent and standardizing all costs could result in an under-recovery.

Finally, OPUC argues that, if a customer defaults, then ETI would incur a bad debt expense, which ETI would then seek to recover from other, non-participating customers. However, the ALJ considered this argument in the Initial PFD and is again unpersuaded by this point. ETI already bears the risk of accruing a bad debt expense if a participating customer defaults and it would be required to seek leave from the Commission to be able to recover that expense from non-participating customers.

b) Competition

In PURA § 42.0101, the Legislature found that it is in the best interests of the state to establish a framework for encouraging competitive private sector investment in the deployment of public electric vehicle charging stations.⁹⁹ Electric utilities, in conjunction with other entities, have an important role in supporting the installation

⁹⁹ PURA § 42.0101(a).

and use of infrastructure for electric vehicle charging.¹⁰⁰ To that end, the Legislature found that it was necessary to develop and implement competitively neutral tariffs optimized for public electric vehicle charging stations based on cost causation principles that ensure transparency in pricing and recognizing changing market needs.¹⁰¹ Finally, the Legislature found it necessary to encourage competitive private investment, ownership, and operation of public electric vehicle charging stations.¹⁰²

Staff argues that the TECI Rider “significantly impairs competition” because it unreasonably subsidizes electric vehicle charging services, which would result in stifling the provision of similar charging stations by competitive providers.¹⁰³

However, the statutory language contemplates electric utilities’ participation in developing the infrastructure for supporting electric vehicle charging stations and sets out a framework with parameters for its participation. As stated above, the creation of this type of program arguably opens avenues for electric vehicle charging service providers to generate business through services obtained via new clients. Thus, the ALJ finds the framework created by the TECI Rider aids in the proliferation of the infrastructure supporting electric vehicle charging stations, thereby facilitating the growth of the competitive electric vehicle charging market, not stifling it.

¹⁰⁰ PURA § 42.0101(c).

¹⁰¹ PURA § 42.0101(d)(2).

¹⁰² PURA § 42.0101(d)(3).

¹⁰³ Tr. at 38; Staff Ex. 7 (Abbott Supp. Dir.) at 12.

c) Preferential, Prejudicial, or Discriminatory

PURA § 42.0103(p)(1) requires an electric utility to offer the services outlined in Subsection (o) to persons seeking such agreements within its service area on a non-discriminatory basis. OPUC contends that the TECI Rider is preferential and discriminatory because it is not offered to all ETI customers. However, ETI distinguishes between failing to provide the opportunity to participate in the program offered under the TECI Rider for those that qualify, as opposed to opening participation to all of ETI's customers.

The ALJ agrees with ETI's interpretation. Given the nature of the services offered by the TECI Rider, the ALJ finds it reasonable for ETI to place parameters on who may participate in that program, especially since it may involve a significant financial investment. Thus, the ALJ is unpersuaded by OPUC's argument and finds that the TECI Rider is not preferential, prejudicial, or discriminatory.

The ALJ finds that the TECI Rider strikes a balance between creating a general framework within which parties can navigate constructing, owning, financing, and operating electric vehicle charging stations, depending on a participating customers' needs, and the statutory requirements. The ALJ finds that the TECI Rider appropriately recovers the costs associated with a customer's participation in the TECI Rider and is reasonable, fair, and appropriate.

B. TECDA RIDER

ETI argues that the TECDA Rider furthers the legislative findings by removing barriers to entry in the electric vehicle charging market.¹⁰⁴ AACE and Walmart agree, supporting the contention that the TECDA Rider could provide demand charge relief to site hosts. However, OPUC and Staff posit that the TECDA Rider could result in cost-shifting, constitutes a discounted rate, and is preferential and discriminatory. TIEC does not opine on this issue.

1. ETI's Position

ETI did not amend the language of the TECDA Rider to align with Chapter 42 because the new statutory language does not specifically address rate design.¹⁰⁵

ETI reviewed the purpose of the TECDA Rider, emphasizing that the TECDA Rider addresses one of the greatest barriers into the electric vehicle charging market by private businesses.¹⁰⁶ ETI reiterated its arguments from Docket No. 53719 that the TECDA Rider is narrow in scope, self-adjusting, and intended to address unpredictable demand charges that remain a barrier to entry into the electric vehicle charging market by private businesses.¹⁰⁷ ETI points out that the bills for participating customers will only automatically adjust from the Schedule GS rates to the TECDA Rider when the use surpasses the 15 percent monthly load factor

¹⁰⁴ ETI Reply Brief at 21.

¹⁰⁵ ETI Ex. 95 (Hill Supp. Dir.) at 4; *see* PURA Chapter 42.

¹⁰⁶ ETI Reply Brief at 21-22.

¹⁰⁷ ETI Initial Brief at 16-17.

floor.¹⁰⁸ As electric vehicle usage, and, thus, charging of electric vehicles, increases and becomes more consistent, then the automatic implementation of TECDA Rider and its application will decrease.¹⁰⁹

Although ETI witness Hill's supplemental direct testimony did not provide new evidence for the TECDA Rider, she explained during the hearing that there will be no costs incurred by ETI as a result of implementing the TECDA Rider, only incremental revenues.¹¹⁰ In support, Ms. Hill referred to the Ratepayer Impact Measure (RIM) analysis:¹¹¹

	10-Yr RIM Results				
	NPV		NPV		Average
Benefits	600 KW 5% LF	600 KW 10% LF	1,500 KW 5% LF	1,500 KW 10% LF	
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, TCRF, AND GCRR	\$0	\$0	\$0	\$0	\$0
Total Benefits	\$534,111	\$737,281	\$1,328,334	\$1,836,259	\$1,108,996
Costs					
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
Total Costs	\$466,110	\$529,902	\$1,165,273	\$1,324,752	\$871,509
RIM B/C Ratio	1.15	1.39	1.14	1.39	1.27

¹⁰⁸ ETI Initial Brief at 17.

¹⁰⁹ ETI Initial Brief at 17.

¹¹⁰ Tr. at 75-76.

¹¹¹ ETI Ex. 53 (Hill Rebuttal Testimony (Reb.)) at 31; ETI Initial Brief at 21.

The RIM test is an economic evaluation test set out in the California Standard Practice Manual for Economic Analysis of Demand-Side Management Programs.¹¹² It can be used to evaluate whether a program such as one created by the TECDA Rider would have an adverse impact on ratepayers.¹¹³ The RIM test considers the incremental benefits of a utility's proposal and the costs associated with providing the service such that, if the benefits exceed costs, it would provide a net benefit to customers.¹¹⁴

According to the RIM test results, ETI posits that there will not be any costs associated with the TECDA Rider because the net revenues exceed the net costs.¹¹⁵ Thus, Ms. Hill clarified, there are no costs to shift to non-participating customers; rather, it would generate incremental revenues that would not have existed if not but for the implementation of the rider.¹¹⁶

In addition to clarifying the results of the RIM test, ETI likens the TECDA Rider to a similar mechanism embedded in subsection (c) of a Commission-approved rule, 16 Texas Administrative Code § 25.244, which contains a billing demand adjustment if a non-residential secondary voltage service customer that has an annual load factor less than or equal to 25 percent.¹¹⁷ This rule further provides that

¹¹² ETI Ex. 53 (Hill Reb.) at 29.

¹¹³ ETI Ex. 53 (Hill Reb.) at 29.

¹¹⁴ ETI Ex. 53 (Hill Reb.) at 30.

¹¹⁵ ETI Reply Brief at 27.

¹¹⁶ Tr. at 75-76.

¹¹⁷ ETI Initial Brief at 16-17; 16 Tex. Admin. Code § 25.244(c).

the mechanism provided in subsection (c) will not be applied in a manner that would shift costs to other customer classes.¹¹⁸

Finally, ETI opines that the TECDA Rider is not discriminatory, nor does it result in a discounted rate.¹¹⁹

2. AACE's and Walmart's Positions

AACE recommends approval of the TECDA Rider, stating that it could offer demand relief, potentially benefiting site hosts and encouraging investment in electric vehicle charging stations.¹²⁰ AACE requests two modifications be made to the rider: to remove the limitation of its application to the first 30,000 kW of load and to extend the life of the TECDA Rider beyond the proposed five-year limitation, because high demand charges may still exist for site hosts.¹²¹ ETI posits that the limitations imposed by the TECDA Rider are reasonable and that AACE's modifications are not necessary.¹²²

Walmart recommends approval of the TECDA Rider.¹²³ Walmart witness Eric S. Austin testified regarding the economic importance of limiting potentially high monthly operating costs of public electric vehicle charging stations in periods

¹¹⁸ ETI Initial Brief at 16-17; 16 Tex. Admin. Code § 25.244(c).

¹¹⁹ ETI Initial Brief at 17-18.

¹²⁰ AACE Initial Brief at 5.

¹²¹ AACE Initial Brief at 6.

¹²² ETI Reply Brief at 29-30.

¹²³ Walmart Ex. 1 (Austin Dir.) at 10.

of low utilization.¹²⁴ He stated that Walmart invests in electric vehicle charging equipment for both the public and its own private use and that electric vehicle charging rates can either promote or impede electric vehicle charging investment.¹²⁵ Mr. Austin explained that, for underused chargers billed by the utility under a rate tariff with a demand charge, the operator may be assessed a demand charge after a single use, which negatively impacts the economics for that unit and might lead to little or no third-party investment in public electric vehicle chargers in areas with low usage.¹²⁶ Lastly, he highlighted the fact that there is an option to return to a more traditional, demand-based tariff, once usage increases.¹²⁷

3. OPUC's and Staff's Positions

OPUC's and Staff's objections to the TECDA Rider intersect in at least two respects: that the TECDA results in cost-shifting from participating customers to non-participating customers and that it constitutes a discounted rate, prohibited by PURA.¹²⁸ OPUC argues that the demand ratchet results in unrecovered revenues and that ETI would obtain that lost revenue from non-participating customers, thereby impermissibly shifting costs.¹²⁹ OPUC adds that, because the RIM test used by ETI witness Hill was not approved by the Commission, it should not be a basis

¹²⁴ Walmart Ex. 1 (Austin Dir.) at 10.

¹²⁵ Walmart Ex. 1 (Austin Dir.) at 10-11.

¹²⁶ Walmart Ex. 1 (Austin Dir.) at 11.

¹²⁷ Walmart Ex. 1 (Austin Dir.) at 11-12.

¹²⁸ OPUC Initial Brief at 7-8; Staff Initial Brief at 15-16.

¹²⁹ OPUC Initial Brief at 8.

for analyzing, and potentially approving, the TECDA Rider.¹³⁰ OPUC did not provide a model refuting the RIM test results.

ETI responds by reiterating that there is no risk of cost shifting because there will not be any costs associated with the TECDA Rider, only incremental revenues generated.¹³¹ Moreover, ETI points out, the incremental revenues would be generated because of the implementation of the TECDA Rider.¹³²

Additionally, ETI generally criticized Staff's focus on whether the TECDA Rider abides by cost causation principles, arguing that it is misguided and does not comport with statutory construction principles.¹³³ ETI argues for widening the scope of what should be considered, stating that Chapter 42 should be viewed as a whole along with the Legislature's principle objective in enacting SB 1002: to encourage and support private investment in public electric vehicle charging stations.¹³⁴

Next, OPUC and Staff reiterate their arguments from Docket No. 53719 that the TECDA Rider results in a discounted rate.¹³⁵ ETI replies by referring to the Initial PFD, where the ALJ found that OPUC and Staff mischaracterized the mechanism provided by the TECDA Rider and that the "discount" would be

¹³⁰ OPUC Initial Brief at 10.

¹³¹ ETI Reply Brief at 21.

¹³² ETI Reply Brief at 21.

¹³³ ETI Reply Brief at 21.

¹³⁴ ETI Reply Brief at 21.

¹³⁵ OPUC Initial Brief at 9; Staff Initial Brief at 19.

imposed on rates in the tariff, not within the tariff itself.¹³⁶ Moreover, ETI argues that, even if it constitutes a discounted rate, PURA § 36.007(a) allows for approval of charges that are less than rates authorized by the regulatory authority but not less than their marginal costs, as long as the rates are not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.¹³⁷

Finally, OPUC and Staff argue that the TECDA Rider is preferential, prejudicial, and discriminatory because its terms will not apply to all of ETI's customers.¹³⁸ In the event that the Commission approves the TECDA Rider, OPUC recommends phasing it out in ETI's next base rate case.¹³⁹

ETI contests that argument, asserting that the TECDA Rider will be offered to ETI customers who meet the qualifications of the rider and that ETI is permitted to impose said qualifications.¹⁴⁰ ETI argues further that, because it does not offer participation in the TECDA Rider to all ETI customers, does not, in and of itself, make it discriminatory.¹⁴¹ Finally, ETI posits that the Commission should reject OPUC's request to phase out the TECDA Rider in the next base rate case because it is unnecessary, given the self-adjusting nature of the rider.¹⁴²

¹³⁶ Initial PFD at 36-37.

¹³⁷ ETI Reply Brief at 26.

¹³⁸ OPUC Initial Brief at 9 and 13; Staff Initial Brief at 17.

¹³⁹ OPUC Initial Brief at 12.

¹⁴⁰ ETI Reply Brief at 20.

¹⁴¹ ETI Reply Brief at 20.

¹⁴² ETI Reply Brief at 30.

4. ALJ's Analysis

Newly implemented PURA Chapter 42 does not provide statutory language pertaining specifically to rate design, the ratemaking component addressed by the mechanism provided by the TECDA Rider. However, the legislative findings promulgated in Chapter 42 provide guidance as to the Legislature's intent in enacting the bill creating Chapter 42. This, in tandem with the additional evidence admitted into the record in this proceeding and transferred from Docket No. 53719, lead the ALJ to recommend approval of the TECDA Rider.

As with the TECI Rider, OPUC and Staff raise concerns that costs will be shifted from participating customers to non-participating customers. In the context of the TECDA Rider, OPUC and Staff argue that, if ETI provides demand charge relief to some participating customers, then ETI essentially forgoes recovering that revenue from those customers and would seek to obtain it by some other means, potentially by shifting those unrecovered revenues to capture those amounts from non-participating customers.¹⁴³

However, ETI witness Hill, referring to the RIM test, clarified that the demand relief provided by the TECDA Rider does not result in lost revenues. OPUC objects to the use of the RIM test to analyze the potential revenues and costs because the Commission has not approved use of the test. Nevertheless, it is a test relied upon by Ms. Hill and OPUC did not provide any authority supporting the proposition that, because the Commission had not approved the use of the test, it

¹⁴³ OPUC Initial Brief at 8; Staff Initial Brief at 15.

should be excluded as evidence in the record. Moreover, OPUC failed to provide modeling or analyses countering the results of ETI's RIM test.

Thus, the ALJ finds that ETI proved, by a preponderance of the evidence, that the TECDA Rider will not result in cost shifting from participating customers to non-participating customers.

Additionally, ETI lodged a more global critique of OPUC's and Staff's focus on the cost causation concerns they have with the TECDA Rider. ETI posits that their focus on one factor does not comport with statutory construction principles and that a holistic approach must be employed. To that end, ETI argues that the focus should be on whether the TECDA Rider, and, for that matter, the TECI Rider, aid in encouraging and supporting private investment in public electric vehicle charging stations.

Relatedly, Walmart witness Mr. Austin presented evidence from the perspective of a business seeking to invest in expanding its electric vehicle charging network. He testified that the TECDA Rider would remove one of the barriers to entry in the electric vehicle charging market by private businesses. Mr. Austin stated that high and unpredictable demand charges can impede the progress of building out that infrastructure. This bolsters ETI's argument that the TECDA Rider aligns with the legislative findings that it is necessary to implement policies to encourage competitive private sector investment and to encourage private investment, ownership, and operation of public electric vehicle charging stations.

The ALJ finds that it is appropriate to engage in a holistic approach in the analysis, rather than focusing on one factor.

Next, as in Docket No. 53719, OPUC and Staff again characterize the demand relief mechanism provided by the TECDA Rider as a discounted rate and argue its is preferential, prejudicial, and discriminatory because it would not apply to all of ETI's customers.¹⁴⁴ In response, ETI cited the Initial PFD, where the ALJ found that the TECDA Rider does not result in a discounted rate. ETI argues further that, even if it constitutes a discounted rate, it may be lower than what the Commission approves, so long as it is not unreasonably prejudicial, preferential, or discriminatory. Further, ETI states that because it would offer participation in the TECDA Rider to those customers that qualify does not, in and of itself, mean that ETI would implement the rider in a discriminatory fashion.

The ALJ found OPUC's and Staff's arguments unpersuasive in Docket No. 53719 and finds them so again here. The TECDA Rider itself does not provide a discounted rate to customers participating in that program; it is a mechanism that that is applied to the enumerated rates. Thus, the ALJ reaffirms her finding from the Initial PFD that the TECDA Rider does not constitute a discounted rate. Additionally, the ALJ agrees with ETI's assessment. ETI is permitted to set parameters on who may opt into the TECDA Rider. It would be a very different proposition if ETI failed to offer the option to participate to qualifying customers.

¹⁴⁴ OPUC Initial Brief at 8; Staff Initial Brief at 19.

However, that is not the case here. The ALJ finds that the TECDA Rider is not preferential, prejudicial, or discriminatory.

Given the forgoing discussion, the ALJ finds the TECDA Rider reasonable and recommends approval of the TECDA Rider.

V. CONCLUSION

The ALJ concludes that the additional evidence admitted into the record in this proceeding, in conjunction with additional documents transferred from Docket No. 53719, comports with the requirements established in PURA Chapter 42. The ALJ recommends approval of ETI's proposed TECI and TECDA Riders.

VI. FINDINGS OF FACT

Applicant

1. Entergy Texas, Inc. (ETI) is a Texas corporation registered with the Texas secretary of state under filing number 800911623.
2. ETI owns and operates for compensation equipment and facilities to generate, transmit, distribute, and sell electricity in Texas.
3. ETI is required under certificate of convenience and necessity number 30076 to provide service to the public and to provide retail electric utility service within its certificated service area.

Application in Docket No. 53719

4. On July 1, 2022, in PUC Docket No. 53719 (Docket No. 53719), ETI filed an application with the Public Utility Commission of Texas (Commission) requesting authority to change its Texas retail rates based on a historical test year of January 1, 2021, through December 31, 2021, adjusted for known and

measurable changes. The application included a request for approval of new Transportation Electrification and Charging Infrastructure (TECI) and Transportation Electrification and Charging Demand Adjustment (TECDA) Riders.

Interventions in Docket No. 53719

5. The following entities intervened Docket No. 53719 and were admitted as parties: the cities of Anahuac, Beaumont, Bridge City, Cleveland, Dayton, Groves, Houston, Huntsville, Liberty, Montgomery, Navasota, Nederland, Oak Ridge North, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Roman Forest, Rose City, Shenandoah, Silsbee, Sour Lake, Splendora, Vidor, West Orange, and Willis (Cities); Texas Industrial Energy Consumers (TIEC); ChargePoint, Inc. (ChargePoint); FlashParking, Inc. (FlashParking); Walmart Inc. (Walmart); the Kroger Co. (Kroger); Sierra Club; Southwestern Public Service Company (SPS); Sempra Infrastructure Partners, LP (Sempra); Americans for Affordable Clean Energy (AACE); El Paso Electric Company (EPE); Federal Executive Agencies (FEA); and the Office of Public Utility Counsel (OPUC). Commission staff (Staff) also participated as a party.

Referral to SOAH and Evidentiary Record in Docket No. 53719

6. On July 6, 2022, the Commission referred ETI's case to the State Office of Administrative Hearings (SOAH).
7. On August 4, 2022, the Commission issued a Preliminary Order.
8. In SOAH Order No. 14 issued on December 28, 2022, the SOAH Administrative Law Judges (ALJs) admitted the documents listed in Exhibit A to the Joint Motion to Admit Evidence.
9. On May 10, 2023, ETI filed an Unopposed Stipulation and Settlement Agreement (Stipulation) on behalf of itself, Staff, OPUC, TIEC, Sierra Club, Kroger, FEA, and Walmart. Cities, AACE, ChargePoint, SPS, EPE, Sempra, and FlashParking were not signatories to the Stipulation, but did not oppose it.

10. On May 10, 2023, ETI filed a second Joint Motion to Admit Evidence on behalf of itself, Staff, OPUC, Cities, TIEC, Sierra Club, Kroger, FEA, Walmart, FlashParking, SPS, ChargePoint, Sempra, AACE, and EPE.
11. In SOAH Order No. 20 issued on May 18, 2023, the SOAH ALJ admitted the documents listed in Exhibit A to the second Joint Motion to Admit Evidence and granted a partial remand to the Commission of the settled contested issues, excluding contested Preliminary Issue Nos. 68 and 69 related to transportation electrification and charging infrastructure.

Initial Proposal for Decision in Docket No. 53719

12. On June 19, 2023, SOAH issued the Proposal for Decision (Initial PFD).
13. On July 25, 2023, SOAH submitted a letter regarding the exceptions filed, not recommending any changes to the Proposal for Decision.

Severance and Referral to SOAH

14. On August 16, 2023, the Commission severed Preliminary Order Issue Nos. 68 and 69 from Docket No. 53719 into a new Docket No. 55338, Proceeding to Resolve Issues in Docket No. 53719 Related to Transportation Electrification and Charging Infrastructure.
15. The parties' status as intervenors in Docket No. 53719 were transferred to the instant docket.
16. On December 13, 2023, the Commission referred this case to SOAH.
17. On December 14, 2023, the Commission issued a Supplemental Preliminary Order.
18. The SOAH ALJ granted ChargePoint's motion to withdraw.
19. The hearing on the merits convened by videoconference on April 5, 2024.
20. On April 15, 2024, Walmart, AACE, ETI, TIEC, OPUC, and Staff filed initial post-hearing briefs.

21. On April 25, 2024, AACE, ETI, TIEC, OPUC, and Staff, filed reply briefs and proposed findings of fact, conclusions of law, and ordering paragraphs.

Testimonies and Statements of Position in Severed Case

22. On September 20, 2023, ETI filed supplemental direct testimony.
23. On February 27, 2024, Walmart filed direct testimony.
24. On March 5, 2024, Staff filed supplemental direct testimony.
25. Sierra Club, AACE, TIEC, and OPUC filed statements of position on March 27 and 28 and April 2 and 3, respectively.

TECI Rider

26. There are approximately 80,000 electric vehicles (EVs) registered in Texas, and that number is expected to reach 1,000,000 vehicles by the year 2028.
27. Current charging infrastructure investment is insufficient in many areas of Texas to support existing and expected future EVs.
28. Rural areas lack adequate access to EV charging facilities.
29. Expanding access to and facilitating the market for EV charging facilities is consistent with state policy and PURA¹⁴⁵ chapter 42.
30. Electric utilities in the vertically integrated areas are well positioned to help further the state's policy of expanding access to and facilitating the market for EV charging facilities.
31. It is appropriate for an electric utility in a vertically integrated area to own EV charging facilities and other transportation electrification (TE) and charging infrastructure.
32. Under ETI's TECI Rider, any ETI customer in good standing and taking service under a metered non-residential, non-lighting rate schedule would be

¹⁴⁵ Public Utility Regulatory Act (PURA), Tex. Util. Code §§ 11.001-66.016.

eligible to enter an agreement with ETI to own or operate an EV charging station on the person's property on a nondiscriminatory basis.

33. Under the TECI Rider and related agreement, only the customer, if it so chooses, will be providing EV charging service to the public, and ETI will not provide EV charging service to the public.
34. ETI will not brand or market any public EV charging station developed under the TECI Rider as owned or operated by ETI, including by presenting ETI's name, logo, or any other distinguishing mark to indicate that ETI owns or operates the EV charging station.
35. The TECI customer will solely determine the physical access to and use of the public EV charging station necessary to carry out the responsibilities associated with ownership and operation of the public electric vehicle charging station, and prices for the EV charging service.
36. The TECI Rider and related agreement provide for the recovery of all electric utility-related costs, including the costs of owning, constructing, financing, operating, and maintaining the public EV charging station from the TECI customer.
37. The TECI Rider is voluntary, in that a customer desiring to install one or more chargers on its property may choose to avail themselves of the rider, or they can make the investment themselves where the Company's role is limited to providing electric service.
38. Customers that choose to participate in the TECI Rider would decide whether ETI only owns the distribution infrastructure, also owns the make-ready infrastructure, and would decide whether ETI or the customer owns and maintains the EV charger(s) itself.
39. ETI plans to contract with licensed, local third-party TE installers to install any chargers.
40. ETI will work with EV Supply Equipment Original Equipment Manufacturers to provide and maintain the charging station equipment and cloud software.

41. Customers that choose to participate in the TECI Rider would be able to choose the charging equipment and the network service provider from a list of prequalified vendors.
42. The costs incurred by ETI for the equipment, installation, and ongoing operations and maintenance expenses would be added to each participating TECI Rider customer's monthly electric bill as a fixed payment over the customer-selected recovery term of between one and ten years.
43. ETI's cost recovery from participating TECI Rider customers is reasonable, fair, and appropriate.

TECDA Rider

44. ETI's TECDA Rider is designed to provide demand charge relief and to reduce electric bill uncertainty for new Rate Schedule General Service (GS) customers installing separately metered charging equipment that elect to participate in the TECDA Rider.
45. The TECDA Rider would limit the amount of demand billed under Rate Schedule GS to a TECDA Rider customer during any billing period in which the actual calculated load factor is less than 15 percent.
46. Under the Rate Schedule GS with the TECDA Rider applied, the amount of Billing Demand billed to EV charging stations would be the lesser of: (a) measured demand (kilowatts (kW)), as conventionally determined and subject to the GS terms; or (b) adjusted demand (kW), as calculated based on actual usage and a minimum 15 percent monthly load factor.
47. The TECDA Rider would be self-correcting and would phase out over time. As charging station utilization improves with the increased adoption of EVs above the 15 percent monthly load factor floor, the participating customers' bills would automatically adjust to the standard rates under Rate Schedule GS.
48. The TECDA Rider would be limited to customers with electric load less than or equal to 1,500 kW for a term of five years and would be available for only the first 30,000 kW of electric load that enrolls and becomes operational after the TECDA Rider is approved.

49. The Ratepayer Impact Measure test shows that the TECDA Rider is expected to result in net benefits through lower rates to ETI customers over a ten-year period.
50. The terms and conditions contained in the TECDA Rider are reasonable and appropriate.
51. There are no estimated costs for the TECDA Rider, and ETI is not seeking recovery of any costs in this case.
52. ETI's TECDA Rider is reasonable and should be approved.

VII. CONCLUSIONS OF LAW

1. ETI is a public utility as that term is defined in PURA § 11.004(1) and an electric utility as that term is defined in PURA § 31.002(6).
2. The Commission exercises regulatory authority over ETI and the subject matter of its application for authority to change rates under PURA §§ 14.001, 32.001, 36.001-.112, .211, and 39.452(k), and 16 Texas Administrative Code (TAC) §§ 25.130 and 25.231.
3. SOAH exercised jurisdiction over this proceeding under PURA § 14.053 and Texas Government Code § 2003.049.
4. This docket was processed in accordance with the requirements of PURA, the Texas Administrative Procedure Act, and Commission rules.
5. ETI provided adequate notice of its application in compliance with PURA § 36.103 and 16 TAC § 22.51(a) and filed affidavits attesting to the completion of notice in compliance with 16 TAC § 22.51(d).
6. It is appropriate for a vertically integrated electric utility to own vehicle-charging facilities or other TE and charging infrastructure in accordance with chapter 42 of PURA, as enacted by the recent passage of Senate Bill 1002. Act of May 8, 2023, 88th Leg., R.S., 2023 Tex. Sess. Law Serv. Ch. 53 (S.B. 1002) (codified as Tex. Util. Code ch. 42).

7. The Commission determines it is appropriate for ETI to own TE and charging infrastructure, including public EV charging stations under ETI's proposed TECI Rider and related agreement.
8. ETI's proposed rate, with the TECDA Rider's billing demand adjustment, is not a discounted rate under PURA § 36.007.
9. The TECI Rider and TECDA Rider approved in this Order are just and reasonable; are not unreasonably discriminatory, preferential, or prejudicial; are sufficient, equitable, and consistent in application to each class of customer; and meet the requirements of PURA § 36.003.
10. The riders approved in this Order meet the requirements of PURA § 36.603 and 16 TAC § 25.234.

VIII. ORDERING PARAGRAPHS

1. It is appropriate for ETI to own TE and charging infrastructure, including charging stations.
2. ETI's proposed TECI and TECDA Riders are approved.
3. Within 20 days of the date of this Order, ETI must file a clean record copy of the tariffs approved in this Order, with the approved effective dates, with Central Records to be marked Approved and filed in the Commission's tariff books.
4. ETI's clean record copy of the TECI Rider shall include the following language under the Application section: "The agreed-upon fixed amount to cover operations and maintenance (O&M) expenses shall be no less than the 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."
5. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed June 21, 2024

A handwritten signature in black ink, appearing to read "Rachelle Robles", written in a cursive style.

Rachelle Nicolette Robles,
Presiding Administrative Law Judge