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

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

**OFFICE OF PUBLIC UTILITY COUNSEL'S
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

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August 1, 2024

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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
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**OFFICE OF PUBLIC UTILITY COUNSEL'S
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully submits these exceptions to the proposal for decision (“PFD”) issued by the State Office of Administrative Hearings (“SOAH”) administrative law judge (“ALJ”) in this proceeding on June 21, 2024.¹ The deadline to file exceptions to the PFD is August 1, 2024.² Therefore, this pleading is timely filed.

I. INTRODUCTION

OPUC excepts to the PFD and takes exception to the ALJ’s blanket approval of ETI’s Transportation Electrification and Charging Demand Adjustment (“TECDA”) and Transportation Electrification and Charging Infrastructure (“TECT”) riders without limitation or modification³ and requests that the Commission issue an order in this proceeding consistent with OPUC’s exceptions. OPUC is not filing exceptions on every issue in which its position was not adopted by the PFD. Rather, OPUC’s exceptions are limited to the recommendations made by the ALJ relating to

¹ Proposal for Decision (Jun. 21, 2024). (PFD).

² PUC OPDM Exceptions and Replies Memorandum (Jul. 16, 2024).

³ PFD at 38.

Entergy Texas, Inc.'s ("ETI") Ratepayer Impact Measure ("RIM") Test and subsequent determination that the TECDA rider is reasonable.⁴

II. DISCUSSION

Contrary to the ALJ's recommendations, OPUC maintains the position stated in its Initial Brief⁵ and Post-Hearing Reply Brief⁶ that the TECDA Rider is unreasonably preferential and discriminatory, is inequitable, and grants an unreasonable preference concerning rates to certain customers in a classification if the unrecovered participant demand charges are shifted to non-participating customers. OPUC further continues to support the Staff ("Staff") of the Public Utility Commission of Texas's ("Commission") well-reasoned arguments that the TECDA and TECI riders will: "1) improperly subsidize the costs for participating customers, stifling competition, 2) be underspecified in terms of costs, such that it is not transparent, 3) not ensure that all costs are recovered from participating customers or that the tariff is based on cost causation principles, 4) result in non-participating customers bearing some of the under-recovered costs, and 5) be offered on a discriminatory basis."⁷ Additionally, OPUC supports Commission Staff's argument that "[R]egardless of the types of customers to whom ETI will make the riders available, the TECI Rider should be rejected because it conflicts with PURA § 42.0101(d). Specifically, it fails to 1) foster competition, 2) ensure transparency in pricing, and 3) provide rates that are based on cost causation principles."⁸

⁴ *Id.*

⁵ OPUC's Post-Hearing Initial Brief at 8 (Apr. 15, 2024).

⁶ OPUC's Post-Hearing Reply Brief (Apr. 25, 2024).

⁷ Commission Staff's Initial Brief at 1 (Apr. 15, 2024). (Staff's Initial Brief).

⁸ *Id.*

With regard to the TECDA rider, the ALJ incorrectly places the burden of proof on OPUC to show that ETI's RIM test is not a reliable measure to analyze whether the demand charge relief provided to TECDA participating customers will be borne by non-participating customers.⁹ In the PFD's analysis and explanation, the ALJ misrepresents OPUC's position stating that:

OPUC objects to the use of the RIM test to analyze the potential revenues and costs because the Commission has not approved the use of the test. Nevertheless, it is a test relied upon by [ETI witness Ms. Samantha Hill] and OPUC did not provide any authority supporting the proposition that, because the Commission had not approved the use of the test, it should be excluded from the record. Moreover, OPUC failed to provide modeling or analyses countering the results of ETI's RIM test.¹⁰

OPUC excepts to the ALJ's reasoning that because OPUC did not "provide modeling or analyses countering the results of ETI's RIM test" and because Ms. Hill "nevertheless" relied on the results of such analysis, that ETI satisfied its burden of proof by a preponderance of the evidence that the "TECDA rider will not result in cost shifting from participating customers to non-participating customers."¹¹ OPUC further excepts to the ALJ's assertion that it is OPUC's responsibility to provide authority as to why the Commission should or should not accept the results of the RIM test. As Commission Chairman Thomas Gleeson succinctly rationalized in his memorandum to the Commission in Docket No. 56354, "Texas courts have recognized that "the burden of proof is on him who best knows the facts, and that "[o]ne of the recognized principles in determining the burden [of proof] is to place it on the party having peculiar knowledge of the

⁹ PFD at 35.

¹⁰ *Id.*

¹¹ *Id.* at 36.

facts to be proved.”¹² OPUC opined that to its knowledge there has been no instance in the last 20 years where the Commission has relied on the results of the RIM test to determine whether a rate was reasonable,¹³ and Ms. Hill offered direct testimony confirming that the Commission has not approved the RIM test as a reliable tool to define when a rate is reasonable.¹⁴ OPUC *does not have* to provide any modeling or analysis countering the results of the RIM test because it is *not* OPUC’s burden of proof.

In the PFD, the ALJ referred to ETI’s assertion that the Public Utility Regulatory Act (“PURA”) authorizes discounted rates.¹⁵ The ALJ stated, “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.”¹⁶ However, OPUC continues to underscore the fact that ETI did not provide an analysis that showed that revenues pursuant to the discounted demand charge will exceed ETI’s marginal costs in accordance with PURA § 36.007’s requirement that “a regulatory authority may approve wholesale or retail tariffs or contracts containing charges that are less than rates approved by the regulatory authority but not less than the utility’s marginal cost.”¹⁷ Consequently, ETI has not met the requirement to offer the discounted TECDA rates.

¹² *Application of Undine, LLC for Authority to Change Rates*, Docket No. 56354, Chairman Thomas Gleeson Memorandum (Jul. 10, 2024) (citing *W.A. Ryan & Co. v. Missouri, K & T. Ry. Co.*, 65 Tex. 13, 19 (1885); *Dessommes v. Dessommes*, 505 S.W.2d 673, 679 (Tex.Civ.App. 1973), writ refused NRE (June 26, 1974).).

¹³ OPUC’s Post-Hearing Reply Brief at 6.

¹⁴ Tr. at 75:7 – 11 (Hill Cross) (Apr. 5, 2024).

¹⁵ PFD at 37.

¹⁶ PFD at 34.

¹⁷ OPUC’s Post-Hearing Reply Brief at 7.

As discussed in OPUC's Initial Post-Hearing Brief, the Commission should specifically recognize the proposed TECDA Rider is a discounted rate.¹⁸ This designation would guarantee that the discounts provided by ETI's TECDA Rider are being scrutinized in ETI's future base rates to "ensure that the electric utility's allocable costs of serving customers paying discounted rates under this section are not borne by the utility's other customers."¹⁹

Furthermore, the ALJ determined, "The TECDA Rider itself does not provide a discounted rate to customers participating in that program; it is a mechanism that [sic] is applied to the enumerated rates."²⁰ However, the *purpose* of the proposed TECDA Rider is to provide incentives in the form of discounted rates to participating customers due to the fact that it contains a mechanism that would limit billing demands, and thereby reduce demand charges, for participating customers if their load factor is below 15 percent. This mechanism is similar to the mechanisms describing discounted rates for certain institutions of higher education and military bases provided for in PURA § 36.351 and § 36.354.²¹ Furthermore, PURA § 36.351 intentionally includes the requirement that "[a]n investor-owned electric utility may not recover from residential customers or any other customer class the assigned and allocated costs of serving a state university or college that receives a discount under this section."²² Like, investor-owned utilities, ETI should not be able to recover costs of serving participating customers from any other class or non-participating customers. Therefore, OPUC disagrees with the ALJ's determination that the TECDA Rider does not provide discounts to participating customers.

¹⁸ OPUC's Initial Post-Hearing Brief at 8.

¹⁹ PURA § 36.007(d).

²⁰ PFD at 37.

²¹ PURA §§ 36.351(f), 36.354(c).

²² PURA § 36.351(f).

OPUC maintains the position that the Commission should identify the TECDA rider as a discounted rate and as such, order ETI to refrain from passing on the costs of providing such an incentive to participating customers or recovering such costs from non-participating customers.

Should the Commission determine it is prudent to approve the TECI or TECDA riders, OPUC would respectfully urge the Commission to include protections against cost shifting and any potential for unrecovered costs from defaulting customers being borne by other electric service customers. Furthermore, OPUC strongly recommends the Commission include protections against the rate case expenses pertaining to these riders being borne by other electric service customers who simply *do not benefit* from these riders.

III. CONCLUSION

For the reasons stated herein, OPUC respectfully requests that the Commission modify the PFD to include findings of fact and conclusions of law consistent with these exceptions and that OPUC be granted any other relief to which it may be entitled.

Date: August 1, 2024

Respectfully submitted,
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**ATTORNEYS FOR THE
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CERTIFICATE OF SERVICE
SOAH DOCKET NO. 473-24-07154
PUC DOCKET NO. 55338

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 1st day of August 2024 by facsimile, electronic mail, and/or first class, U.S. Mail.

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