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PROCEEDING TO RESOLVE ISSUES	§	PUBLIC UTILITY COMMISSION
IN DOCKET NO. 53719 RELATED TO	§	
TRANSPORTATION	§	OF TEXAS
ELECTRIFICATION AND CHARGING	§	
INFRASTRUCTURE	§	

COMMISSION STAFF’S EXCEPTIONS TO THE PROPOSAL FOR DECISION

I. INTRODUCTION

On July 1, 2022, Entergy Texas, Inc. (ETI) filed an application with the Public Utility Commission of Texas (Commission) requesting authority to change its Texas retail rates in Docket No. 53719, in which ETI also requested the Commission to approve its proposed Transportation Electrification and Charging Infrastructure (TECI) and Transportation Electrification and Charging Demand Adjustment (TECDA) Riders.¹ On August 26, 2023, the Commission severed two contested issues related to ETI’s electric vehicle (EV) riders into this proceeding.²

On June 21, 2024, the administrative law judge (ALJ) from the State Office of Administrative Hearings (SOAH) ALJ filed a Proposal for Decision (PFD) in this docket, and on July 16, 2024, Commission Counsel filed and Exceptions and Replies Memorandum, establishing a deadline of August 1, 2024 to file exceptions to the PFD. Therefore, this pleading is timely filed.

Commission Staff (Staff) is grateful for the reasoned consideration of the SOAH ALJ. This proceeding presented novel issues and the ALJ has carefully considered each of the issues in this proceeding. Staff, however, respectfully excepts to the PFD and the ALJ’s recommendation that ETI’s TECI and TECDA Riders be approved. Further, because some of the issues in this proceeding are also pending resolution by the Commission in El Paso Electric Company’s (EPE) pending application for approval of Texas EV-ready pilot programs and tariffs in Docket No. 54614,³ Staff refers to certain portions of the proposal for decision in that proceeding that conflict with the analysis in this PFD or that are not addressed or analyzed in this PFD.

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

² *Order Severing Issues* (Aug. 16, 2023).

³ *Statement of Intent and Application of El Paso Electric Company for Approval of Texas Electric Vehicle-Ready Pilot Programs and Tariffs*, Docket No. 54614 (pending).

II. EV RATE CLASS RECOMMENDATION

As an initial matter, Staff addresses its recommendation that, if ETI intends to own and operate transportation electrification and charging infrastructure pursuant to PURA⁴ §§ 42.0102 and 42.0103, as well as implement a demand charge adjustment for specific EV customers, it is much more reasonable, if not necessary, for ETI to establish a separate EV rate class where EV-specific policies are embedded into rates in order to effectuate the purpose of the TECI and TECDA Riders and to fully comply with Chapters 42 and 36 of PURA.⁵ Notably, the TECI and TECDA Riders, as proposed, inherently entail various forms of preferential treatment and result in subsidies that are applied to EV customers at the expense of non-EV customers.

Even if ETI commits to recovering the costs for the TECI and TECDA Riders from only participating customers or the Commission conditions approval in that regard, such conditions would not necessarily prevent the non-participating customers from potentially bearing some of the costs. In terms of the TECI Rider, because the custom-tailored approach comes with customer-specific details and costs that are unknown at this time, ensuring the proper costs are being recovered from participating customers would be significantly burdensome on parties and the Commission in a future rate proceeding to review and reconcile such costs.⁶ This is exacerbated by the fact that the Commission and parties have a growing number of incremental cost recovery riders that are already subject to reconciliation in each base rate case,⁷ such that the Commission runs the risk of unreasonably burdening itself in future rate proceedings from being able to sufficiently review every EV-related cost separately for each and every customer that participates.

Instead, establishing a separate EV rate class with tariffed numerical rates would 1) provide transparency and predictability for customers, as well as for the Commission and stakeholders in the review of costs, and 2) be consistent with standard ratemaking practices and with setting rates in the normal manner authorized under Chapter 36 of PURA, ensuring a better capability for ETI to comply with PURA and Commission rules.⁸

⁴ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016.

⁵ Commission Staff's Initial Brief at 9-11 (Apr. 15, 2024) (Staff's Initial Brief) (although Staff's discussion focuses on the TECI Rider, Staff recommends that ETI is free to seek approval of demand charges, like the demand charge adjustments in the TECDA Rider, in a separate EV rate class).

⁶ *Id.* at 7-8.

⁷ *Id.* at 8.

⁸ *Id.* at 9.

And in contrast with ETI's arguments and the ALJ's associated finding, standardizing costs pursuant to a separate EV rate class would not result in an under-recovery from participating customers.⁹ As discussed more fully below, because PURA § 42.0103(o) only applies to agreements to install *public* EV charging stations that will provide EV charging services to the public, ETI's targeted customer base will not be as extensive or various as currently anticipated by ETI, such that a wide variety of options will not be necessary, making it easier for options to be standardized.¹⁰ Accordingly, Staff's proposal would be similar to ETI's approved Area Lighting Service (ALS) Rider, which is standardized and specified unlike the proposed TECI Rider.¹¹ As such, ETI erroneously contends that the ALS Rider supports approval of the TECI Rider.¹² Similarly, because costs for EV charging stations and infrastructure, including costs for operations and maintenance (O&M), can be standardized, there is no basis to conclude that ETI's Additional Facilities Charge (AFC) Rider, Option B supports approval of the TECI Rider, as the AFC Rider has a potentially wide range of unique circumstances that might require nonstandard facilities that also come with a wide range of potential costs.¹³

To argue against standardization, ETI contends that customers under the TECI Rider will have different amounts of power (kW) and energy (kWh) that adds complexity in the potential number of customer options.¹⁴ Further, in an effort to argue that an EV rate class with standard pricing would not comply with Chapter 42 of PURA and the Legislature's findings that contracts and tariffs help foster the development of the EV charging market, ETI seemingly contends that customers would not be required to enter into an agreement with ETI, pursuant to § 42.0103(o), if there was an EV rate class.¹⁵ ETI, however, disregards that many of ETI's standard rate classes 1) include rates for both power (kW) and energy (kWh) and 2) are based on contracts between ETI and customers.¹⁶

⁹ Proposal for Decision at 20-21 and 24-25 (Jun. 21, 2024) (PFD).

¹⁰ Staff's Initial Brief at 9.

¹¹ *Id.* at 11.

¹² *Id.* at 10-11.

¹³ *Id.*

¹⁴ *Id.* at 9.

¹⁵ *Id.*

¹⁶ *Id.* at 10.

Regarding the former, there is no basis to conclude that the same customers, who intend to install and use EV charging stations, will have any more varied amounts of power (kW) and energy (kWh) under an EV rate class than they already might have under their existing rate classes.¹⁷ As an example, the General Service rates are applicable to customers who contract for not less than 5kW or not more 2,500 kW of electric service to be used for general lighting and power, suggesting a varying array of usage by customers in the General Service rate class.¹⁸ Accordingly, an EV rate class can similarly provide standardized rates for power (kW) and energy (kWh), with such rates being applicable to customers who contract with ETI under the EV rate class.¹⁹

Further, that ETI does not intend to provide EV charging services pursuant to PURA § 42.0103(e) is not relevant to whether ETI should be required to establish a separate EV rate class. Specifically, the PFD refers to ETI's arguments that Staff misunderstands the intent of the TECI Rider in that ETI does not intend to provide EV charging services.²⁰ More specifically, ETI's argument focuses on Staff's reference to PURA § 42.0103(m), related to the requirement that rates for EV charging services be entirely consistent with setting rates in the normal manner authorized under Chapter 36 of PURA.²¹ By focusing on the singular reference to PURA § 42.0103(m), ETI mischaracterizes Staff's discussion. Instead, the context behind Staff's reference to PURA § 42.0103(m) was to convey that an EV rate class would be entirely consistent with setting rates in the normal manner authorized under Chapter 36 of PURA,²² not that ETI must be providing EV charging services for ETI to establish an EV rate class.

Lastly, in response to concerns about the delay in being able to establish an EV rate class, ETI is free to submit a base rate application prior to its next deadline to file such an application.²³ Alternatively, ETI may seek approval of a separate EV rate class with demand charges outside of its base rate case.²⁴ Further, ETI may also, as necessary, seek approval to establish additional EV

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ PFD at 20-21.

²¹ *See* Entergy Texas, Inc.'s Reply Brief at 8-9 (Apr. 25, 2024) (ETI's Reply Brief).

²² Staff's Initial Brief at 9.

²³ *Id.* at 10

²⁴ *Id.*

rate options outside of a base rate case, such that additional options for EV-related services, infrastructure, and equipment may be added, as necessary, in the future on an expedited basis.²⁵ Notwithstanding the foregoing options, to the extent that the Commission determines to approve ETI's application, Staff recommends that ETI be required to establish a separate EV rate class in a future rate proceeding so that the costs for the TECI and TECDA Rider are recovered only from an EV rate class. Notably, both Americans for Affordable Clean Energy and Walmart, Inc. (Walmart) find merit in Staff's proposal for an EV rate class.²⁶

III. EXCEPTIONS

A. TECI Rider

5. ALJ's Analysis

Staff's primary recommendation is that the TECI Rider does not comply with Chapter 42 of PURA and, more particularly, 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.²⁷ As such, Staff specifically excepts to the ALJ's findings that the TECI Rider 1) provides a sufficient cost recovery mechanism and does not result in cost-shifting to non-participating customer, 2) does not impede competition, and 3) is not unreasonably preferential, prejudicial, or discriminatory.²⁸

a) Cost Recovery

Based on ETI's argument that participating customers are subject to both the TECI Rider and their applicable electric services tariff, the ALJ erroneously concluded that the cost recovery mechanism in the TECI Rider allows for the full recovery of the costs from the participating customer.²⁹ Staff strongly disagrees with that assessment, as the TECI rider and the examples provided by ETI clearly indicate that TECI costs charged to customers will be offset by actual or projected base rate revenues, leaving either significant portions of actual TECI costs unrecovered

²⁵ *Id.* (citing to Docket Nos. 42742, 50786, and 54241).

²⁶ Commission Staff's Reply Brief at 2 (Apr. 25, 2024) (Staff's Reply Brief).

²⁷ *Id.* at 1.

²⁸ PFD at 22-27.

²⁹ *Id.* at 23-24.

from participating customers, or significant portions of base rate costs unrecovered from participating customers.

Of primary importance, the ALJ disregards that, on its face, the TECI Rider and its built-in offset for projected revenues do not ensure that the participating customers will recover all electric utility-related costs from TECI customers.³⁰ Specifically, “all electric utility-related costs” includes both TECI-related costs, as well as costs associated with base rates and non-fuel firm rate schedules.³¹ ETI contends that, by reading PURA § 42.0103(o)(3) and (p)(2) together, all electric-utility related costs only include the costs of “owning, constructing, financing, operating, maintaining the public EV charging station” and that such statutory costs are to the exclusion of other types of costs that will be separately recovered through a customer’s payment of tariffed non-residential electricity rates.³² However, as discussed below, the base rate revenue offset under the TECI rider applies the recovery of “other types of costs” against the recovery of the costs of “owning, constructing, financing, operating, maintaining the public EV charging station.” 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 § 42.0103(o)(3) that a tariff must provide for “full recovery of the costs of the public EV charging station” from the participating customer,³³ such that “all electric utility-related costs” is its own separate term that is broader than and encompasses the TECI-related costs. Importantly, 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.³⁴

In terms of the revenue offset, ETI incorrectly and unreasonably argues that PURA § 42.0103(o)(3), regarding incremental revenues, supports its approach to offset TECI costs in the manner it has proposed.³⁵ Specifically, ETI fails to acknowledge that incremental revenues associated with EV charging service must ensure recovery of “all electric utility-related costs” and

³⁰ Staff’s Reply Brief at 6.

³¹ *Id.*

³² *Id.* at 6 and 9.

³³ *Id.* at 6.

³⁴ *Id.*

³⁵ *Id.* at 7.

not just the costs of the public EV charging station.³⁶ 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 under the TECI Rider.³⁷

To further support that conclusion, the TECI Rider conflicts with the statutory authorizations and financing orders behind some of the riders that are included in the offsetting revenues.³⁸ Some of the riders include non-fuel firm rate schedule revenues and base rate cost recovery mechanisms, such as Rate Case Expenses, System Restoration Charges, Energy Efficiency Cost Recovery Factors (EECRF), Transmission Cost Recovery Factors (TCRF), Distribution Cost Recovery Factors (DCRF), Generation Cost Recovery Factors, among others.³⁹

For ETI's System Restoration Charges, the Financing Order in Docket No. 52302 requires that ETI, as the servicer for the system restoration bonds, "must remit collections of the system restoration charges to BondCo or the indenture trustee for BondCo's account in accordance with the terms of the servicing agreement."⁴⁰ By Commission order, these funds may not be used for any other purpose, such as paying for TECI costs, as ETI has proposed.⁴¹ In addition, PURA § 36.209, authorizing the TCRF, limits cost recovery under that rider to certain "reasonably and necessary expenditures for transmission infrastructure improvement costs and changes in wholesale transmission charges to the electric utility."⁴² TECI costs do not fall into this category, and applying TCRF revenues against TECI costs is inappropriate.⁴³ Further, PURA § 39.905(b)(1), authorizing the EECRF "for ensuring timely and reasonable cost recovery for utility expenditures made to satisfy the goals of [PURA § 39.905]," does not allow EECRF revenues to be applied towards TECI costs, as ETI has proposed.⁴⁴ Lastly, PURA § 36.210(a)(2), as codified in 16 TAC

³⁶ *Id.*

³⁷ *Id.*

³⁸ Staff's Initial Brief at 20-21.

³⁹ *Id.* at 20.

⁴⁰ *Id.* (citing to *Application of Entergy Texas, Inc. for a Financing Order*, Docket No. 52302, Order at Ordering Paragraph No. 34 (Jan. 14, 2022)).

⁴¹ *Id.*

⁴² *Id.* (citing to PURA § 36.209(b)).

⁴³ *Id.*

⁴⁴ *Id.*

§ 25.243, authorizing the DCRF, requires that incremental distribution base rate revenues be offset against incremental distribution costs.⁴⁵ These inexhaustive examples demonstrate that the proposed TECI Rider, by applying these incremental base rate revenues against TECI costs, does not comply with applicable requirements of PURA, as well as Commission rules and orders.⁴⁶

Ultimately, 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.⁴⁷ 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.⁴⁸

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).⁴⁹ 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.⁵⁰ 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.⁵¹ 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.⁵²

In addition to the projected revenues offset in the TECI Rider, ETI asserted that it will also offset monthly payments collected under the TECI Rider against ETI's overall revenue requirement.⁵³ Because the projected revenues offset will cause the TECI Rider to not fully recover TECI costs, non-participating customers will certainly and unreasonably end up paying for some

⁴⁵ Staff's Reply Brief at 7.

⁴⁶ Staff's Initial Brief at 20-21.

⁴⁷ Staff's Reply Brief at 7.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Staff's Initial Brief at 13-14.

of the TECI costs based on ETI's intention to offset the net monthly payments collected under the TECI Rider (which may be zero for some customers due to the projected revenues offset) against ETI's overall revenue requirement, leaving the unrecovered costs in rates applicable to non-participating customers in violation of PURA § 42.0103(o)(3) and (p)(2).⁵⁴ Furthermore, ETI admits that a non-participating customer who installs the same exact EV charging equipment at the same exact cost may have to pay the full costs, whereas a participating customer would benefit from the revenue offset, resulting in significant subsidies for the participating customer and discriminatory treatment to the identical non-participating customer.⁵⁵ Such significant subsidization and discriminatory treatment are demonstrated in the table below.

	<u>Example 1</u>	<u>Example 2</u>	<u>Example 3</u>
	<u>SFH-SR-1</u> <u>(Page 2 of 7)</u>	<u>SFH-SR-1</u> <u>(Page 4 of 7)</u>	<u>SFH-SR-1</u> <u>(Page 6 of 7)</u>
Total TECI Costs	\$200,971	\$111,210	\$29,418
Total Paid By TECI Rider Customer	\$115,075	\$68,361	\$4,500
Total Paid by non-TECI Rider Customer	\$200,971	\$111,210	\$29,418
Rider TECI Subsidy / Penalty for non-participation	\$85,896	\$42,849	\$24,918
Rider TECI Subsidy %	42.7%	38.5%	84.7%

Based on the preceding discussion, Staff excepts to the PFD to the extent that it has not addressed the issues raised by Staff with regard to how the TECI Rider is explicitly designed to under-recover from participating customers and discriminate against identical non-participating customers by applying base rate revenues against both base rate costs and TECI costs. In contrast, the ALJ does make a finding that Staff's proposal for ETI to establish a standardized EV rate class would potentially result in ETI under-recovering the costs from participating customers.⁵⁶ However, as discussed above in Section II, an EV rate class with rates established based on cost would comport with standard ratemaking practices and cost causation principles, such that ETI would not under-recover from participating customers.

⁵⁴ Staff's Reply Brief at 9.

⁵⁵ Staff's Initial Brief at 6.

⁵⁶ PFD at 25.

Aside from the unrecovered costs due to the projected revenues offset, there are other costs that will not be recovered by participating customers. Specifically, the ALJ discusses that ETI will have attendant costs prior to coming to an agreement with a customer that would still be allocated to that customer.⁵⁷ ETI more specifically states that the attendant costs would be allocated to, and recovered from, the participating customer through the tariff for governing electrical services,⁵⁸ and claims that TECI customers will therefore pay their share of ETI's cost of providing electric delivery service in the manner as every other ETI customer through an established base rate schedule.⁵⁹

ETI, however, disregards that costs related to the TECI Rider that are not ultimately recovered through the TECI Rider should not be shared in the manner described by ETI. Specifically, because these costs will be embedded into ETI's cost of service, non-participating customers will inevitably be paying a portion of those costs, which does not comply with the requirements under PURA § 42.0103(o)(3) and (p)(2). ETI also fails to consider that certain of these attendant costs may not result in a customer becoming a participating customer, such that ETI cannot otherwise claim that non-participating customers will not bear such costs.

Importantly, regardless of whether a customer ultimately becomes a participating customer, the fact that such costs are necessary to provide service to participating customers under the TECI Rider requires them to only be considered as TECI-related costs and demonstrates that ETI should only recover such costs from participating customers to comply with PURA § 42.0103(o)(3) and (p)(2).⁶⁰ The same conclusion applies to other TECI-related costs. Specifically, ETI will incur certain overhead and indirect and incremental costs, some of which are separate and distinct from the attendant costs discussed above.⁶¹ But ETI has not ensured that participating customers will pay an appropriate share of such costs, such that the costs instead will similarly be embedded into ETI's cost of service and subsidized by all other customers, despite the fact that such costs are only necessary to serve the participating customers.⁶²

⁵⁷ *Id.* at 23-24.

⁵⁸ *Id.*

⁵⁹ *See* ETI's Reply Brief at 14 and footnote 59.

⁶⁰ Staff's Reply Brief at 6.

⁶¹ *Id.*

⁶² *Id.*

Finally, Staff excepts to the ALJ's finding that ETI may be able to seek leave from the Commission to recover bad debt expenses from non-participating customers.⁶³ Specifically, while recovering bad debt expense from the broader body of ratepayers may be appropriate as regards the costs of electric utility service that ETI is required to provide under its certificate of convenience and necessity, such an approach is questionable at best when it comes to optional services such as those offered under the proposed TECI and TECDA riders.⁶⁴ Accordingly, Staff recommends that, because these costs are ultimately not necessary for the functioning of ETI's system, it would be appropriate to include a condition that ETI is prohibited from recovering any unrecovered TECI costs as bad debt expenses from any customers.⁶⁵ In the least, ETI should be prohibited from recovering such bad debt expenses from non-participating customers.⁶⁶ To that end, Staff notes that such a condition was recently recommended by the SOAH ALJs in EPE's proceeding in Docket No. 54614.⁶⁷

b) Competition

Staff excepts to the ALJ's finding that the TECI Rider does not stifle competition, but that it instead facilitates growth of the competitive EV charging market.⁶⁸ Specifically, based on the projected revenues offset included in the TECI rider and discussed above, ETI confirmed that a non-participating customer who installs the same exact EV charging equipment at the same exact cost may have to pay the full costs, whereas a participating customer would benefit from the revenue offset, resulting in significant subsidies for the participating customer,⁶⁹ as demonstrated in the table above in Section III.3.a. That Chapter 42 of PURA contemplates electric utilities' participation in developing the infrastructure for supporting EV charging stations and sets out a framework with parameters for electric utility participation does not mean that ETI's proposed

⁶³ PFD at 25.

⁶⁴ Staff's Initial Brief at 14.

⁶⁵ *Id.* at 15

⁶⁶ *Id.*

⁶⁷ Docket No. 54614, Proposal for Decision at 33 (Jun. 28, 2024).

⁶⁸ PFD at 26.

⁶⁹ Staff's Initial Brief at 6.

effort to participate through the TECI Rider should be approved.⁷⁰ While it may help proliferate such infrastructure in ETI's service territory, the inherent subsidies in the rider would effectively discourage and, in fact, prohibit the proliferation of EV charging stations outside of ETI's offering and thus conflict with the Legislature's intent for EV-related tariffs be competitively neutral and foster competition.⁷¹ Specifically, the subsidies would 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.⁷² In the least, the subsidies would prevent private competitive providers from being able to provide their services competitively outside of ETI's offering.⁷³

Further, since ETI has control over which private competitive providers to include on its list of approved vendors that will provide third-party services to TECI customers,⁷⁴ by not being included on ETI's list, a private competitive provider would effectively be prevented from being able to provide service within ETI's territory altogether. Ultimately, such a scheme by ETI is anything but competitively neutral.

Staff also excepts to the PFD to the extent the ALJ has not addressed that ETI intends to offer the TECI Rider to customers of a type that the Legislature did not intend for PURA § 42.0103(o) to apply, such that ETI would inappropriately be owning and operating transportation electrification and charging infrastructure and providing a service that is best left to the competitive market. Importantly, the TECI Rider can only comply with PURA § 42.0103(o) to the extent it is offered to customers who will be using *public* EV charging stations.⁷⁵ Specifically, because PURA § 42.0103(o) only applies to agreements related *public* EV charging stations and PURA § 42.0102(7) defines a *public* EV charging station as a charging station that is accessible for commercial use by the public, TECI customers must make their EV charging stations commercially available to the public.⁷⁶

⁷⁰ PFD at 26.

⁷¹ Staff's Initial Brief at 7.

⁷² *Id.*

⁷³ Staff's Reply Brief at 4.

⁷⁴ PFD at 9.

⁷⁵ Staff's Initial Brief at 3-6.

⁷⁶ *Id.* at 4.

ETI, however, has made it clear that it intends to offer the TECI Rider to customers who will not make EV charging stations accessible for commercial use by the public.⁷⁷ Pursuant to PURA § 11.002 and 16 TAC § 25.1, such ownership, operations, and services related to customers that do fall under the parameters of PURA § 42.0103(o) should be left to competitive providers.⁷⁸ Accordingly, Staff recommends that, to the extent that Staff's exceptions to the overall approval of the TECI Rider are not granted, the ALJ include a finding that ETI may not offer the TECI Rider to customers that will only be using non-public EV charging stations. To that end, Staff notes that such a finding was recently made by the SOAH ALJs in EPE's proceeding in Docket No. 54614.⁷⁹ More particularly, this proposed finding is related to the issues severed from Docket No. 53719 into this proceeding, requiring SOAH to address whether, as a general matter, it was appropriate for vertically integrated utilities, such as ETI, to own transportation electrification and charging infrastructure.⁸⁰ In regards to potential TECI customers that will not fit within the parameters required by PURA § 42.0103(o), Staff recommends that the above issue is ripe for consideration and that the Commission should determine that, as a general matter, it is not appropriate for vertically integrated utilities, such as ETI, to own transportation electrification and charging infrastructure as applied to such customers that do not qualify under PURA § 42.0103(o).

c) Preferential, Prejudicial, or Discriminatory

Staff excepts the ALJ's findings that the TECI Rider is not preferential, prejudicial, or discriminatory and that it appropriately recovers the costs associated with a customer's participation and is reasonable, fair, and appropriate.⁸¹ Instead, although not acknowledged in the PFD, Staff contends that the TECI Rider is inherently preferential based on the subsidies that it provides to participating customers.⁸² With the subsidies, the TECI Rider is also inequitable, because it does not ensure that ETI will collect the full TECI costs from participating customers, while ETI will be able to seek to recover the remaining costs from all its customers, including non-

⁷⁷ *Id.* at 3.

⁷⁸ *Id.* at 5

⁷⁹ Docket No. 54614, Proposal for Decision at 29 (Jun. 28, 2024).

⁸⁰ PFD at 3.

⁸¹ *Id.* at 27.

⁸² Staff's Reply Brief at 10.

participating customers.⁸³ And because non-participating customers would bear some of the unrecovered TECI costs, the TECI Rider is discriminatory.⁸⁴ Furthermore, ETI has not even demonstrated that it will be able to offer the TECI Rider 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.⁸⁵

B. TECDA Rider

4. ALJ's Analysis

Staff excepts to the ALJ's recommendation that the TECDA Rider be approved.⁸⁶ More specifically, Staff excepts to the ALJ's findings that 1) 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, 2) it is appropriate to engage in a holistic approach in the analysis of the TECDA Rider under Chapter 42 of PURA, rather than focusing on one factor, namely whether the rider is based on cost causation principles, 3) the TECDA Rider does not constitute a discounted rate, and 4) the TECDA Rider is not preferential, prejudicial, or discriminatory.⁸⁷

Regarding Staff's first two exceptions, Staff contends that the TECI Rider provides significant discounts from cost-based rates and is thus not based on cost causation principles. And because compliance with Chapter 42 of PURA is necessary to a certain extent, as demonstrated by the Commission's inclusion of such as in issue in its preliminary order for this proceeding, the TECDA Rider must be based on cost causation principles.⁸⁸ ETI's arguments and the ALJ's findings that a holistic approach to analyze the rider under Chapter 42 of PURA is appropriate does not mean that the Legislature's finding under PURA § 42.0102(d)(2) should be ignored or disregarded. Accordingly, any tariff that is filed pursuant to the overall purpose of Chapter 42 of PURA, must not only be consistent with the overall legislative intent, as ETI and the ALJ suggest,

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Staff's Initial Brief at 12-13.

⁸⁶ PFD at 35-38.

⁸⁷ *Id.* at 36-38.

⁸⁸ Staff's Reply Brief at 11.

but also meet each legislative findings therein, which in this case includes ensuring that such tariffs are based on cost causation principles. Notably, for support of its TECI Rider, ETI argues that it complies with well-established cost-causation principles,⁸⁹ in compliance with PURA § 42.0102(d)(2).

Furthermore, Walmart acknowledges that the TECDA Rider diverges from cost-based rates and could create inter- or intra-class subsidies.⁹⁰ Staff also contends that the discounted billing demand does not provide 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, ultimately resulting in higher rates for all customers.⁹¹ Further, Staff contends that costs shifted to non-participating customers would likely far exceed the costs of any relevant make-ready infrastructure, because the rate discount applies to rates that include all of ETI's system costs, including those for generation, transmission, and distribution.⁹² Walmart's and Staff's assertions, supported by evidence,⁹³ are contrary to the hypothetical evidence relied on by ETI and the ALJ, related to ETI's Ratepayer Impact Measure (RIM) analysis, which ETI contends demonstrates that the TECDA Rider would result in incremental revenues, such that there will not be any cost-shifting to non-participating customers.⁹⁴ Accordingly, Staff excepts to the ALJ's analysis to the extent that it does not address the evidence provided by Walmart and Staff.

And regarding the RIM test, Staff contends that it is speculative and should not serve as the basis to depart from cost-based rates.⁹⁵ Staff also agrees with the Office of Public Utility Counsel (OPUC) that the RIM test only provides the Commission with an unproven assumption by ETI that the TECDA Rider will not result in cost shifting.⁹⁶ Ultimately, the ALJ was originally

⁸⁹ See ETI's Reply Brief at 20. Staff notably disagrees, however, that the TECI Rider complies with cost causation principles.

⁹⁰ Staff's Reply Brief at 12.

⁹¹ Staff's Initial Brief at 19.

⁹² *Id.* at 16.

⁹³ See Direct Testimony of Eric S. Austin on Behalf of Walmart, Inc., Walmart Exhibit No. 1 at 9:11-12, Supplemental Direct Testimony of William B. Abbott, PUC Staff Exhibit No. 7 at bates pages 8:22-9:3, and Direct Testimony of William B. Abbott, PUC Staff Exhibit No. 4 at bates pages 11:13-12:2.

⁹⁴ PFD at 29-30.

⁹⁵ Staff's Reply Brief at 14-15.

⁹⁶ OPUC's Post-Hearing Reply Brief at 6 (Apr. 25, 2024).

correct in the initial proposal for decision on this issue that the RIM test only presents a hypothetical situation.⁹⁷ Next, Staff continues to agree with OPUC that the TECDA Rider is a discounted rate under PURA § 36.007.⁹⁸

Lastly, Staff disagrees with the ALJ that the TECDA Rider is not preferential, prejudicial, or discriminatory.⁹⁹ Specifically, the rider would allow qualifying participating customers to pay only a portion of their capacity costs, which they cause ETI to incur and thus would unreasonably discriminate against a non-participating customer with identical usage and load.¹⁰⁰ And, as confirmed by ETI, such non-participating customers may potentially end up paying much more than the participating customers.¹⁰¹ Accordingly, the TECDA Rider is preferential, prejudicial, and discriminatory to such identical non-participating customers. Additionally, it is unduly preferential and discriminatory based on Commission precedent in Docket No. 22344, under which the Commission relevantly did not include billing demand adjustments for select customer groups when setting the rate design for demand-metered classes such as ETI's General Service rate class.¹⁰² The Commission also determined that the demand-metered classes should be bill based on the non-coincident peak (NCP) demand,¹⁰³ especially where the necessary metering is available.¹⁰⁴ In direct contravention with that precedent, the demand adjustment in the TECDA Rider applies to a select customer group and would result in such customers being billed for facility/distribution charges based on monthly kWh energy usage and not NCP demand.¹⁰⁵

⁹⁷ Docket No. 53719, Proposal for Decision at 37 (Jun. 19, 2023).

⁹⁸ Staff's Initial Brief at 19.

⁹⁹ PFD at 37.

¹⁰⁰ Staff's Initial Brief at 17.

¹⁰¹ *Id.* at 17-18.

¹⁰² *Id.* at 18 (citing to PUC Staff Exhibit No. 4 at bates pages 12:4-23 (citing to *Generic Issues Associated with Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 and Public Utility Commission Substantive Rule § 25.344*, Order No. 40: Interim Order Establishing Generic Customer Classification And Rate Design at 1 and 5-7 (Nov. 22, 2000))).

¹⁰³ *Id.* at 18 (citing to PUC Staff Exhibit No. 4 at bates pages 12:4-23 (citing to *Generic Issues Associated with Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 and Public Utility Commission Substantive Rule § 25.344*, Order No. 40: Interim Order Establishing Generic Customer Classification And Rate Design at 1 and 5-7 (Nov. 22, 2000))).

¹⁰⁴ *Id.* at 17.

¹⁰⁵ *Id.* at 18.

In response to the precedent under Docket No. 22344, ETI attempts to equate the TECDA Rider as a rate design similar to that of the billing demand adjustments allowed under 16 TAC § 25.244.¹⁰⁶ ETI's argument regarding this rule is deeply misleading for many reasons.¹⁰⁷ First, 16 TAC § 25.244 applies to transmission and distribution utilities (TDU), and ETI is not a TDU but a vertically integrated electric utility.¹⁰⁸ 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.¹⁰⁹ 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 for all low-load factor customers.¹¹⁰ 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.”¹¹¹ Furthermore, eliminating demand ratchets actually leads to an increase in demand charge rates, and not a discount to rates as the TECDA Rider offers.¹¹² 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.”¹¹³ 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.¹¹⁴

¹⁰⁶ Staff’s Reply Brief at 12.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* (citing to *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)).

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 12-13 (citing to Project No. 39829, Order Adopting Amendment to § 25.244 as Approved at the May 18, 2012 Open Meeting at 48).

¹¹¹ *Id.* at 13.

¹¹² *Id.*

¹¹³ *Id.* (citing to Project No. 39829, Order Adopting Amendment to § 25.244 as Approved at the May 18, 2012 Open Meeting at 21).

¹¹⁴ *Id.*

Even if there was good cause to apply a billing demand adjustment for a specific group of customers, such good cause has not been demonstrated in this proceeding. Specifically, ETI attempts to distinguish EV charging station customers from traditional electric customers but provides no evidence to support the distinction, such that there is no reason to consider EV charging station customers different from other customers with low load factors.¹¹⁵ Accordingly, the TECDA Rider unreasonably discriminates against non-participating customers with identical usage and load and results in unduly preferential treatment for participating customers.

IV. CONCLUSION

Based on the foregoing discussion, Staff excepts to the PFD's recommendations and findings that ETI's TECI and TECDA Riders should be approved. Instead, if the Commission desires to establish or facilitate EV-specific treatments in ETI's rates and tariffs, ETI should be allowed to request the establishment of an EV rate class in a future proceeding. Staff respectfully requests that these exceptions to the PFD and Staff's recommendations for an EV rate class be taken into consideration.

¹¹⁵ Staff's Initial Brief at 17.

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Respectfully submitted,

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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 August 1, 2024 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Scott Miles
Scott Miles