



Control Number: 49849



Item Number: 262

Addendum StartPage: 0

DOCKET NO. 49849

JOINT REPORT AND APPLICATION § PUBLIC UTILITY COMMISSION
OF EL PASO ELECTRIC COMPANY, §
SUN JUPITER HOLDINGS LLC, AND § OF TEXAS
IIF US HOLDING 2 LP FOR §
REGULATORY APPROVALS UNDER §
PURA §§ 14.101, 39.262, AND 39.915 §

STIPULATION

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

As of December 17, 2019, El Paso Electric Company (“EPE”), Sun Jupiter Holdings LLC (“Sun Jupiter”), and IIF US Holding 2 LP (“IIF US 2”) (collectively, “Joint Applicants”) and most parties to this docket have reached a settlement concerning the *Joint Report and Application of El Paso Electric Company, Sun Jupiter Holdings LLC, and IIF US Holding 2 LP for Regulatory Approvals under PURA §§ 14.101, 39.262, and 39.915* (the “Joint Report and Application”) filed in this proceeding. Based upon that settlement, the following parties joined in this stipulation (“Stipulation”) regarding all issues in this docket: Joint Applicants; Staff of Public Utility Commission of Texas (“Commission Staff”); Office of Public Utility Counsel; City of El Paso; Texas Industrial Energy Consumers; Freeport-McMoRan, Inc.; International Brotherhood of Electrical Workers Local 960; Vinton Steel, LLC; and United States Department of Defense & all other Federal Executive Agencies (collectively, “Signatories”).¹ The Signatories agree that a negotiated resolution of this proceeding on the basis set forth in this Stipulation is in the public interest, will conserve the parties’ and the public’s resources, and eliminate controversy. Accordingly, the Signatories request approval of this Stipulation by the Commission and entry of an order (including findings of fact and conclusions of law) as set out in Attachment A hereto (“Proposed Order”).

I.

This Stipulation has been drafted by all Signatories and is the result of negotiation, compromise, settlement, and accommodation. The Signatories agree that the terms and conditions

¹ The only parties to this proceeding not joining the Stipulation are a group of intervenors known as the “Rate 41 Group” and Dr. Richard C. Bonart. Accordingly, Joint Applicants anticipate that the only issues for which a hearing is required are the issues Rate 41 Group and Dr. Bonart continue to raise.

are interdependent. If the Commission does not accept this Stipulation as presented, or issues an order inconsistent with the terms of this Stipulation or the Proposed Order, the Signatories agree that any Signatory adversely affected by the alteration has the right to withdraw from this Stipulation in the manner and within the time period prescribed herein, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under the law.

This Stipulation is binding on each of the Signatories only for the purpose of resolving the issues as set forth herein and for no other purpose.

By this Stipulation, the Signatories resolve all issues among them related to this proceeding and hereby stipulate and agree as follows and request that the Commission enter the Proposed Order attached hereto as Attachment A that reflects the following:

A. Transaction:

1. In the Joint Report and Application filed in this docket, Joint Applicants seek Commission approval of a transaction through which, in accordance with the Agreement and Plan of Merger (“Merger Agreement”) attached as Exhibit A to the Joint Report and Application, Sun Jupiter’s wholly-owned subsidiary, Sun Merger Sub Inc. (“Merger Sub”), will merge with and into EPE, with EPE continuing as the surviving corporation (the “Transaction”). IIF US 2 will provide Sun Jupiter the equity necessary to complete the acquisition of EPE. As a result of the Transaction, EPE will become a direct, wholly-owned subsidiary of Sun Jupiter and an indirect, wholly owned subsidiary of IIF US 2. Shares held by EPE’s current public shareholders immediately before the Transaction’s effective time will be cancelled and converted into the right to receive \$68.25 in cash per share without interest, and shares of EPE’s common stock will be delisted from the New York Stock Exchange (“NYSE”). The per-share purchase price of \$68.25 in cash represents an enterprise value of approximately \$4.3 billion, including EPE’s net debt, and is a 17% premium to EPE’s unaffected closing price on May 31, 2019, the last trading day before the announcement of the Merger Agreement. Immediately following the Transaction, Sun Jupiter will own all the equity in EPE.
2. The Signatories agree that, based on the requirements of this Stipulation, the Transaction is in the public interest in accordance with PURA §§ 39.262(l)–(m) and

39.915. The Signatories specifically agree that the Transaction will not adversely affect EPE's reliability of service, availability of service, or cost of service.

3. The Signatories also agree that, based on the requirements of this Stipulation, the Transaction is in the public interest in accordance with PURA § 14.101. The Signatories specifically agree that the Transaction will not (a) result in the transfer of jobs to workers outside of Texas, (b) adversely affect the health or safety of EPE's customers or employees, or (c) result in a decline in service. The Signatories also agree that the Transaction will result in no EPE property or other assets being sold, transferred, or otherwise affected.

B. Agreed Regulatory Commitments:

The Signatories agree to the following Regulatory Commitments:

Duration of Commitments

1. Except to the extent that any of the following conditions explicitly state otherwise, the following commitments will apply as of closing of the Transaction and continue to apply thereafter, unless and until altered by the Commission.

Governance Limits and Documentation

2. A Delegation of Authority declaring the duties of the EPE Board of Directors and Sun Jupiter shall be adopted as soon as practicable after the closing of the Transaction in a form substantially similar to the Delegation of Authority attached hereto as Attachment

B. The Delegation of Authority shall bind Sun Jupiter and EPE and shall be filed with the Commission.

3. The Delegation of Authority will establish that the sole authorized purpose of EPE is the provision of retail and wholesale electric utility service and the performance of activities reasonably necessary and appropriate to exercise utility service provision.
4. The Delegation of Authority will establish that the sole authorized purpose of Sun Jupiter, the direct shareholder of EPE, is the ownership of EPE and the performance of activities reasonably necessary and appropriate to exercise such ownership.
5. The EPE Board of Directors shall consider, subject to applicable Texas law, the best interests of EPE, consistent with the Commission approved ring fence.
6. The Delegation of Authority will require that any amendment thereto that concerns the conditions set forth therein or in these Regulatory Commitments will require the prior approval of the Commission.
7. No more than thirty (30) days after the closing of the Transaction, EPE will amend its corporate bylaws to incorporate the provisions of the Delegation of Authority (including these Regulatory Commitments). To the extent thereafter that any changes are sought to amend EPE's bylaws that impact the terms of the Delegation of Authority or these Regulatory Commitments, such changes shall be approved by the Commission before the effectiveness of such changes.
8. No more than thirty (30) days after the closing of the Transaction, Sun Jupiter will incorporate the provisions of the Delegation of Authority (including these Regulatory Commitments) into its Limited Liability Company Agreement ("LLC Agreement"). To the extent thereafter that any changes are sought to amend the LLC Agreement that impact the terms of the Delegation of Authority or these Regulatory Commitments,

such changes shall be approved by the Commission before the effectiveness of such changes.

9. The LLC Agreement will include a provision that Sun Jupiter has a duty to act, subject to applicable Delaware law, in the best interests of EPE consistent with the Commission approved ring fence.

Economic Development and Community Commitments

10. Economic Development Fund. Joint Applicants will dedicate \$100 million to promote economic development in the EPE service territory, including the City of El Paso, Texas and the City of Las Cruces, New Mexico. Of that amount, \$80,000,000 will be jurisdictionally allocated to EPE's Texas service territory over a period of fifteen (15) years. The \$80,000,000 allocated to Texas will be administered by the City of El Paso's Economic Development Department and will be funded by Sun Jupiter in fifteen (15) equal annual installments of \$5,333,333.33. The first installment will be made by December 15, 2020, with each successive installment due by December 15 or the following business day of the applicable year. Contributions to the fund will not be recoverable in EPE's rates.
11. Charitable Giving. Joint Applicants will maintain EPE's annual amount of charitable giving following the closing of the Transaction at EPE's average annual charitable giving level for the three-year period ending December 31, 2018 (i.e., approximately \$1.2 million per year throughout EPE's service territory). This commitment will remain regardless of the level allowed in EPE's rates. All Signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.
12. Low-Income Assistance Programs. Joint Applicants will maintain EPE's existing low-income assistance programs while evaluating potential methods to improve such programs.
13. Entry-Level Training Programs. Joint Applicants will create or enhance programs that provide entry-level training focused on engineering, management, and finance skills for the local labor force in collaboration with The University of Texas at El Paso, El Paso Community College, and New Mexico State University. This commitment will

remain regardless of the level allowed in EPE's rates. All Signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.

14. Apprenticeship Programs. Joint Applicants will create or enhance apprenticeship programs for technical and professional positions for students in local high schools and colleges. This commitment will remain regardless of the level allowed in EPE's rates. All Signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.
15. Supplier Diversity. Joint Applicants will continue and enhance utility supplier diversity by promoting the inclusion of minority-, women-, LGBTQ-, and veteran-owned businesses into EPE's supply chain. This commitment will remain regardless of the level allowed in EPE's rates. All Signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.
16. New Technology Programs. Joint Applicants will study and evaluate growth opportunities related to electric vehicles, distributed generation, and battery storage in collaboration with The University of Texas at El Paso, El Paso Community College, and New Mexico State University. All Signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.

Rate and Capital Expenditure Commitments

17. Rate Credit. EPE will issue a rate credit to its Texas customers in a total aggregate amount for all customers of \$21 million. The rate credit will be distributed among customers in 36 monthly installments. No later than 45 days after the closing of the

Transaction, EPE will make a tariff filing to implement the rate credit. EPE will not attempt to recover the value of this rate credit in future rate cases.

18. Goodwill. Joint Applicants will not seek recovery in rates of the Transaction acquisition premium. Any goodwill associated with the Transaction will not be included in rate base, cost of capital, or operating expenses in future EPE ratemaking proceedings. Write-downs or write-offs of goodwill will not be included in the calculation of net income for dividend or other distribution payments purposes.
19. Pushdown Accounting. Neither IIF US 2 nor any of its affiliates will elect to apply pushdown accounting for the Transaction (i.e., the Transaction will have no impact on EPE's assets being acquired). Any incremental goodwill will not be allocated to, or recognized within, EPE's balance sheet.
20. Transaction Costs. Joint Applicants will not seek recovery of Transaction costs in EPE's rates. None of the Transaction costs will be borne by EPE's customers, nor will EPE seek to include Transaction costs in its rates. Transaction costs are those incremental costs paid to advance or consummate the Transaction. Examples of Transaction costs include, but are not limited to: IIF US 2 time and expenses; EPE change-of-control payments; any tax impact as a result of the Transaction; certain executive severance costs related to the Transaction; and third-party costs, including bank advisors, external legal advisors, rating agencies, and expert witnesses and consultants in each case paid to advance or consummate the Transaction. Transaction costs do not include EPE employee time.
21. Capital Expenditures. EPE will continue to make minimum capital expenditures in an amount equal to EPE's current five-year budget for the five-year period beginning January 1, 2021, subject to the following adjustments, which shall be reported to the Commission in EPE's earnings monitoring report: EPE may reduce capital spending due to conditions not under EPE's control, including, without limitation, siting delays, cancellations of projects by third-parties, weaker than expected economic conditions, or if EPE determines that a particular expenditure would not be prudent.
22. Transition Costs. No IIF US 2 time and expenses, third party costs, fees, expenses, or costs of the transition ("transition costs") will be borne by EPE's customers, nor will EPE seek to include transition costs in its rates. Transition costs are those costs

necessary to integrate EPE into the holdings of IIF US 2, whether incurred before or after the closing of the Transaction, including the one-time transition costs being incurred whether directly or indirectly through affiliate charges to transition EPE to ownership by IIF US 2 and to integrate EPE's operations and systems with those of IIF US 2. Provided, however, that transition costs do not include EPE employee time, "costs to achieve" savings or synergies or costs that reflect reasonable and necessary costs in providing service to the public. "Costs to achieve" reflect reasonable and necessary amounts incurred to realize operating enhancements, efficiency gains, or costs reduction initiatives.

23. Electric Furnace Rate. EPE will not propose to eliminate the Electric Furnace Rate in its next base rate case following Commission approval of the Transaction.
24. EADIT. EPE commits that it will not amortize or reduce the regulatory liabilities for excess accumulated deferred income taxes recorded as a result of the federal legislation commonly referred to as the Tax Cuts and Jobs Act of 2017 until the amortization is reflected in rates, and EPE agrees that the determination of the treatment of this amount will be addressed in the next base rate case for EPE.

Ring-Fencing Commitments

25. Name/Logo. EPE will maintain an existence that is separate and distinct from Sun Jupiter, IIF US 2, and any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II), including, its separate name, logo, franchises, obligations, and privileges.
26. EPE Credit Ratings. EPE and IIF US 2 shall take the actions necessary to ensure the existence of EPE's stand-alone credit and debt ratings, as applicable. EPE will, except as otherwise approved by the Commission, be registered with a least two major nationally and internationally recognized credit rating agencies. EPE, Sun Jupiter, and IIF US 2 will take efforts to ensure that EPE's credit ratings reflect the ring-fence provisions contemplated herein such that the credit rating agencies provide EPE with a stand-alone credit rating.
27. Credit Ratings and Dividends. In considering subclauses (a)–(b) below, the Disinterested Directors (as defined below) on the EPE Board of Directors shall have the ability to prevent EPE from making any dividends or other distributions, other than

contractual tax payments, if they determine in good faith that it is in the best interests of EPE to retain such amounts to meet the expected future requirements of EPE (including compliance with the below debt-to-equity commitment) as follows:

- a. For so long as EPE's credit rating remains at BBB (Baa2) at two of the major credit rating agencies (Moody's, S&P, and Fitch), no dividend shall be paid by EPE, except for contractual tax payments, unless such dividend is approved by a majority vote of the EPE Board of Directors, including at least two Disinterested Directors.
- b. If EPE's credit rating falls to BBB- (Baa3) at one of the major credit rating agencies, no dividend shall be paid by EPE, except for contractual tax payments, unless approved by a majority vote of the EPE Board of Directors, including all four Disinterested Directors, until EPE's credit rating at two of the major credit rating agencies returns to BBB (Baa2), at which point the above provisions of subclause (a) apply.
- c. If EPE's credit ratings at two of the major credit ratings agencies falls to BBB- (Baa3), no dividends shall be paid, except for contractual tax payments, until otherwise ordered by the Commission or EPE's credit rating at one of the major credit rating agencies returns to BBB (Baa2), at which point the above provisions of subclause (b) apply.
- d. If EPE's credit rating at one of the major credit rating agencies falls below BBB- (Baa3), no dividends shall be paid, except for contractual tax payments, until otherwise ordered by the Commission or EPE's credit rating returns to BBB- (Baa3), at which point the above provisions of subclause (c) apply.

28. Equity Ratio and Dividends. EPE will suspend payment of dividends or other distributions, except for contractual tax payments, until otherwise allowed by the Commission if issuance of the dividend or distributions, except for contractual tax payments, would cause the equity ratio of EPE's total capital for ratemaking purposes to fall below that established from time to time by the Commission for EPE ratemaking

purposes. EPE will make a quarterly compliance filing with the Commission regarding this commitment.

29. Net Income and Dividends. EPE will limit its payment of dividends, except for contractual tax payments, to an amount not to exceed its net income (as determined in accordance with GAAP and excluding the impact of the Palo Verde Nuclear Decommissioning Trust).
30. Dividend Policy. Any amendments to the dividend policy shall be approved by a majority of the EPE Board of Directors, including at least a majority of the Disinterested Directors.
31. Holding Company. In connection with the Transaction, IIF US 2 has created Sun Jupiter, an indirect, wholly-owned special-purpose entity, to hold 100% of the equity interests in EPE.
32. Holding Company Existence. Sun Jupiter will be retained between EPE and IIF US 2 for so long as IIF US 2 owns EPE.
33. No Debt/Credit Guarantees. EPE will not guarantee the debt or credit instruments of Sun Jupiter, IIF US 2, or any other affiliate (excluding EPE and Rio Grande Resources Trust II).
34. No Pledging of Assets/Stock. EPE's assets, revenues, or stock shall not be pledged by Sun Jupiter, IIF US 2, or any of its affiliates or subsidiaries, for the benefit of any entity other than EPE.
35. No Inter-Company Debt. Neither EPE nor Sun Jupiter will enter into any inter-company debt transactions with IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II) post-closing of the Transaction, unless approved by the Commission.
36. No Inter-Company Lending. Neither EPE nor Sun Jupiter will lend money to or borrow money from IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II) post-closing of the Transaction. Further, Sun Jupiter and EPE will not borrow money from J.P. Morgan Chase & Co. ("JP Morgan") and its affiliates except that EPE may borrow from JP Morgan or any of its affiliates on an arm's-length basis if approved by a majority of the EPE Board of Directors excluding the IIF US 2 representatives on the EPE Board of Directors, and provided further that

nothing herein shall obligate JP Morgan or any of its affiliates to lend money to EPE or any of its affiliates at any time.

37. Credit Facility. Neither EPE nor Sun Jupiter will be borrowers under a common credit facility with one another nor with JP Morgan and its affiliates, IIF US 2, or any of IIF US 2's affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II).
38. Cross-Default Provisions. EPE will not include in any of its debt or credit agreements cross-default provisions relating to Sun Jupiter or IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II). Neither EPE nor Sun Jupiter will include in any of its debt or credit agreements cross-default provisions relating to the securities of IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II). Under no circumstances will any debt of EPE become due and payable or otherwise be rendered in default because of any cross-default or similar provisions of any debt or other agreement of IIF US 2, the Sun Jupiter Entities, or any of their affiliates (excluding EPE and Rio Grande Resources Trust II).
39. Financial Covenants or Rating Agency Triggers. EPE's debt or credit agreements will not include any financial covenants or rating-agency triggers related to Sun Jupiter or IIF US 2 or any of IIF US 2's affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II), nor will Sun Jupiter's debt or credit agreements include any financial covenants or rating-agency triggers related to IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II).
40. No Transaction-Related Debt at EPE. EPE will not incur, guaranty, or pledge assets for any new incremental debt related to the Transaction.
41. Debt at Sun Jupiter Holdings LLC. Without prior approval of the Commission, Sun Jupiter Holdings LLC will not incur any third-party debt in excess of the amount in place at the closing of the Transaction, which shall not exceed \$700 million. Further,

all third-party debt held at Sun Jupiter Holdings LLC will be extinguished within five (5) years of closing.

42. Bankruptcy Expenses and Liabilities. Neither EPE nor Sun Jupiter will seek to recover from EPE's customers any costs incurred as a result of a bankruptcy of IIF US 2 or any of its affiliates (excluding EPE and Rio Grande Resources Trust II).
43. EPE Senior Management. Following closing of the Transaction, EPE's CEO and other senior management who directly report to the CEO will hold no positions with IIF US 2 or any of its affiliates or subsidiaries (excluding EPE).
44. Non-Consolidation Legal Opinion. IIF US 2 will obtain a non-consolidation legal opinion that provides that, in the event of a bankruptcy of IIF US 2, Sun Jupiter, or any of their affiliates (excluding EPE and Rio Grande Resources Trust II), a bankruptcy court would not consolidate the assets and liabilities of EPE with IIF US 2, Sun Jupiter, or any of their affiliates (excluding EPE and Rio Grande Resources Trust II).
45. Affiliate Asset Transfer. Neither EPE nor Sun Jupiter will transfer any material assets or facilities to any affiliates, other than a transfer that is on an arm's-length basis consistent with the Commission and New Mexico Public Regulation Commission ("NMPRC") affiliate standards as applicable to EPE.
46. Arm's-Length Relationship. Each of EPE and Sun Jupiter will maintain an arm's-length relationship with one another and with IIF US 2 and its affiliates, consistent with the Commission and NMPRC affiliate standards as applicable to EPE.
47. Access to Books and Records. IIF US 2 will provide the Commission access to its books and records, as well as those of its applicable affiliates, as necessary to facilitate the Commission's audit or review of any affiliate transactions, if any, as between EPE and IIF US 2 or IIF US 2's affiliates in accordance with PURA § 14.154.
48. Separate Books and Records. Each of EPE and Sun Jupiter will maintain accurate, appropriate, and detailed books, financial records and accounts, including checking and

other bank accounts, and custodial and other securities safekeeping accounts that are separate and distinct from those of any other entity.

49. Representations to the Public. Sun Jupiter and its affiliates will not represent to the public or creditors that EPE has any liability for the obligations of Sun Jupiter or IIF US 2 or any of their affiliates (except for EPE and Rio Grande Resources Trust II).
50. Consolidated Tax Return. EPE will be a party to a consolidated corporate tax return with the Sun Jupiter consolidated tax group, which will be carried out subject to a formal tax sharing agreement and policy.
51. Modification of Ring Fence. EPE, Sun Jupiter, and IIF US 2 acknowledge the Commission's jurisdiction to initiate a future proceeding to modify the EPE ring fence, but they reserve their rights to contest any other aspect of the filing. No party to this proceeding has waived any argument regarding whether the EPE ring fence should be modified or the scope of any modification, and all parties reserve their rights to argue their positions in the future docket, if such docket is initiated.

Local Control and Management Commitments

52. Headquarters. EPE's existing headquarters will remain in El Paso, Texas for so long as IIF US 2 owns EPE.
53. Continued Ownership. IIF US 2 will maintain a controlling ownership interest in EPE for at least ten (10) years post-closing.
54. Management Day-to-Day Control. EPE's CEO and EPE's senior management will continue to have day-to-day control over EPE's operations and senior management will continue to reside in the El Paso, Texas and Las Cruces, New Mexico vicinity.
55. Management Primary Point of Contact. EPE's local management will remain the primary point of contact for all regulatory, operational, and community engagement matters.
56. EPE Board/Competitive Affiliates. At the closing of the Transaction and thereafter, EPE will have a Board of Directors that will not include any employees of any IIF US 2 competitive affiliates (as that term is defined in Commission rules) in Texas, any members from the boards of directors of any IIF US 2 competitive affiliates in Texas,

or any individuals with direct responsibility for the management or strategies of any such competitive affiliates.

Powers of the EPE Directors

57. Board Composition. EPE's post-closing Board of Directors will comprise ten (10) directors, of which:

- One (1) will be EPE's CEO;
- Up to two (2) will be IIF US 2-level representatives (members of the Infrastructure Investments Group); and
- The remaining seven (7) will satisfy the definition of NYSE Independent Directors. No Independent Director shall be a then-current officer of any IIF subsidiary. Of the seven (7) NYSE Independent Directors:
 - At least four (4) will be "Disinterested;"²
 - At least two (2) will reside within EPE's service territory; and
 - At least two (2) will be individuals that either served on the EPE Board of Directors immediately prior to closing of the Transaction, are local business/community leaders, or are from a university within EPE's service territory.

58. Disinterested Director Appointment. The initial Disinterested Directors will be identified in a compliance filing made by EPE within 30 days after closing of the Transaction. After establishment of EPE's initial post-closing Board of Directors, the

² Disinterested Directors will be independent from IIF US 2 and its subsidiaries and affiliated entities (other than EPE and Rio Grande Resources Trust II) and JP Morgan, and will have no material financial relationship with IIF US 2 or its subsidiaries or affiliated entities (other than EPE and Rio Grande Resources Trust II) or JP Morgan currently or within the previous five years. A personal banking relationship of the type that is generally available to other similarly situated clients is not a material financial relationship.

Disinterested Directors will be appointed by a majority of a committee comprised of the Disinterested Directors.

59. Disinterested Director Initial Term. The initial terms of the Disinterested Directors will be staggered such that in each year no more than two Disinterested Directors will be up for renewal.
60. Disinterested Director Removal. A Disinterested Director may only be removed by majority vote of the remaining Disinterested Directors and cannot be removed by a shareholder vote.
61. EPE Director Compensation/Financial Performance. The compensation of EPE directors will in no manner be tied to, reflect, or be related to the financial, operating, or other performance of any entity or interest other than EPE.
62. EPE Director Compensation/Powers of the Board. The EPE Board of Directors shall have the power to set the compensation and benefits for EPE directors, in the form and manner it directs, subject to the approval of Sun Jupiter.
63. New Mexico Board Meeting. EPE Board of Directors meetings will take place in Las Cruces, New Mexico at least once per year.

Additional Capital Commitments

64. Approval of EPE Budgets. A majority of EPE directors, including at least one IIF US 2-level representative and four Independent/Disinterested Directors must approve any capital or any expense budget (whether a one-year budget or a multi-year budget or forecast). The prior year's budget will remain in effect until a new budget can be adopted in accordance with the foregoing.
65. Variances in EPE Budget. If EPE management seeks approval of a capital project or a series of projects that would be in excess of the approved annual budget by more than 10%, such projects or series of projects must be approved by a majority of the EPE Board of Directors, including at least one IIF US 2-level representative and four Independent/Disinterested Directors. Any budget or forecast outside this threshold will also be identified in an annual report to the Commission and EPE will provide the reasons for the variance.
66. Equity/Debt Issuances. The volumes and types of all EPE equity and debt issuances will be determined by a vote of the EPE Board of Directors including majorities of both

the entire EPE Board of Directors and of its Independent and Disinterested Directors. No Sun Jupiter Entity³ will have the power to alter or override such votes.

67. Third-Party Equity Issuances. The General Partner of IIF US 2 will have the power to decline to make provision for such equity issuances as the EPE Board of Directors approves. In the event that IIF US 2 declines to provide equity for a project that (a) EPE management has recommended, (b) the EPE Board has determined is in keeping with Good Utility Practice, and (c) such project is approved by a majority of the EPE Board of Directors, EPE is authorized to issue non-voting, non-convertible preferred equity at then prevailing market terms solely to secure the equity portion of a capital project. EPE shall not sell a primary issuance of preferred equity to IIF US 2, JP Morgan, or any of their respective affiliates.

Employment Commitments

68. Workforce. For at least five (5) years post-closing, as a result of the Transaction, EPE will not implement any material involuntary workforce reductions or changes to wages, benefits, and other terms and conditions of employment in effect prior to the Transaction.
69. Existing Collective Bargaining Agreements. EPE will honor the terms of EPE's existing collective bargaining agreements.
70. Collective Bargaining Negotiations. EPE will enter into good faith bargaining with its represented employees during and after the term of the existing collective bargaining agreements in order to negotiate new bargaining agreements.
71. Responsible Contractor Policy. EPE will adhere to a Responsible Contractor Policy.
72. EPE Officer, Manager, and Employee Compensation. The compensation of EPE officers, managers, and employees will in no manner be tied to, reflect, or be related to

³ The Sun Jupiter Entities consist of the entities between EPE and IIF US 2.

the financial, operating, or other performance of any entity other than EPE and Rio Grande Resources Trust II.

Code of Conduct

73. Code of Conduct. EPE will file with the Commission for authority to amend and update its code of conduct to incorporate all applicable conditions and limitations on affiliate transactions required by these Regulatory Commitments.
74. Arm's Length Relationship with JP Morgan. EPE and Sun Jupiter will maintain arm's-length relationships with all affiliates and with all persons, entities, and interests directly or indirectly owned or controlled by JP Morgan. Joint Applicants agree to apply the Commission's regulations regarding arm's-length transactions among affiliates to JP Morgan regardless of whether JP Morgan is an actual affiliate as defined under PURA. Nothing in the foregoing is intended to prohibit IIF US 2's management of Sun Jupiter, which is a member managed entity.

Other Commitments

75. FERC Preemption. Neither EPE nor IIF US 2 nor IIF US 2's affiliates will assert before the Commission or a Texas court of competent jurisdiction that the Commission is preempted pursuant to the Federal Power Act (e.g., under a Federal Energy Regulatory Commission ("FERC") tariff) from making a determination regarding the cost recovery of affiliate costs sought to be allocated to EPE.
76. Compliance Reports. For a period of five (5) years after the closing of the Transaction, EPE will make annual reports to the Commission regarding its compliance with the terms stated in the order approving the Transaction.
77. Reports of SAIDI and SAIFI to Commission. EPE will report its actual system-level SAIDI and SAIFI statistics to the Commission in its annual Service Quality Reports filed pursuant to 16 Tex. Admin. Code § 25.81, as may be amended.
78. Modification of Commission Order. If EPE, Sun Jupiter, or IIF US 2 seeks any modification to the final order entered in Docket No. 49849 prior to five (5) years after the date of its issuance, then in any such proceeding, Commission Staff may hire independent consultants selected by the Commission and paid for by EPE, Sun Jupiter, or IIF US 2. EPE, Sun Jupiter, or IIF US 2 will timely pay the reasonable costs of the services of such consultants as determined by the Commission. The amount that EPE,

Sun Jupiter, and IIF US 2 will be responsible to pay will not exceed \$300,000 per proceeding. EPE, Sun Jupiter, and IIF US 2 agree that EPE will not seek recovery of these costs in its rates.

79. Texas Utility. EPE will continue to operate in the State of Texas as a public utility subject to the continuing jurisdiction of the Commission.
80. Duration of Regulatory Commitments. Unless explicitly stated otherwise in these Regulatory Commitments, all of the Regulatory Commitments will apply as of closing of the Transaction and continue to apply thereafter, unless and until modified by the Commission.

II.

The Signatories agree that the terms of this Stipulation are fair, reasonable, and in the public interest. The Signatories further stipulate to the facts contained in the Proposed Order attached hereto as Attachment A and will take all reasonable efforts to obtain the prompt adoption of an order by the Commission consistent with Attachment A. The Signatories further agree to support and defend the terms of this Stipulation as set forth herein.

III.

This Stipulation has been drafted by all Signatories and is the result of negotiation, compromise, settlement, and accommodation. The Signatories agree that the terms and conditions herein are interdependent. The various provisions of this Stipulation are not severable. None of the provisions of this Stipulation shall become fully operative unless the Commission shall have entered a final order approving this Stipulation consistent with the Proposed Order. If the Commission does not accept this Stipulation as presented, or issues an order inconsistent with the terms of this Stipulation or the Proposed Order, the Signatories agree that any Signatory adversely affected by that alteration has the right to withdraw from this Stipulation, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under the law. The right to withdraw must be exercised by providing the other Signatories written notice within twenty (20) days of the date the Commission order acting on this Stipulation is filed. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the changes to this Stipulation made by the Commission.

IV.

This Stipulation is binding on each of the Signatories only for the purpose of settling the issues as set forth herein and for no other purposes. The matters resolved herein are resolved on the basis of a compromise and settlement. Except to the extent that this Stipulation expressly governs a Signatory's rights and obligations for future periods, this Stipulation shall not be binding or precedential on a Signatory outside of this proceeding except for a proceeding to enforce the terms of this Stipulation. The Signatories agree that a Signatory's support of the resolution of this docket in accordance with this Stipulation may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forum. Because this is a Stipulation, a Signatory is under no obligation to take the same position as set out in this Stipulation in other proceedings not referenced in this Stipulation whether those dockets present the same or a different set of circumstances. Notwithstanding any other provision herein, a Signatory's agreement to entry of a final order of the Commission consistent with this Stipulation should not be regarded as an agreement to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Stipulation.

V.

This Stipulation contains the entire agreement among the Signatories. Moreover, this Stipulation supersedes all other written and oral exchanges or negotiations among the Signatories or their representatives with regard to the subjects contained herein. The Signatories hereby waive the right to an evidentiary hearing in this proceeding and waive cross-examination of all witnesses.

VI.

Each person executing this Stipulation represents that he or she is authorized to sign this Stipulation on behalf of the party represented. Facsimile or emailed copies of signatures are valid for purposes of evidencing this Stipulation, which may be executed in multiple counterparts.

VII.

WHEREFORE, PREMISES CONSIDERED, the Signatories respectfully request that this Honorable Commission enter an order consistent with the terms of this Stipulation.

EL PASO ELECTRIC COMPANY

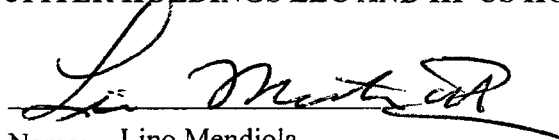


By: _____

Name: Casey Wren

Title: Counsel for El Paso Electric Company

SUN JUPITER HOLDINGS LLC AND IIF US HOLDING 2 LP



By: _____

Name: Lino Mendiola

Title: Attorney for Sun Jupiter Holdings LLC and IIF US Holding 2 LP

STAFF OF THE PUBLIC UTILITY COMMISSION OF TEXAS

By: _____

Name:

Title:

VI.

Each person executing this Stipulation represents that he or she is authorized to sign this Stipulation on behalf of the party represented. Facsimile or emailed copies of signatures are valid for purposes of evidencing this Stipulation, which may be executed in multiple counterparts.

VII.

WHEREFORE, PREMISES CONSIDERED, the Signatories respectfully request that this Honorable Commission enter an order consistent with the terms of this Stipulation.

EL PASO ELECTRIC COMPANY

By: _____

Name:

Title:

SUN JUPITER HOLDINGS LLC AND IIF US HOLDING 2 LP

By: _____

Name:

Title:


STAFF OF THE PUBLIC UTILITY COMMISSION OF TEXAS

By: 

Name: Rashmin Asher

Title: Staff Attorney

OFFICE OF PUBLIC UTILITY COUNSEL

By: 

Name: Moses B. Winston

Title: Deputy Public Counsel

TEXAS INDUSTRIAL ENERGY CONSUMERS

By: _____

Name:

Title:

CITY OF EL PASO

By: _____

Name:

Title:

FREEPORT-MCMORAN, INC.

By: _____

Name:

Title:

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 960

By: _____

Name:

Title:

OFFICE OF PUBLIC UTILITY COUNSEL

By: _____

Name:

Title:

TEXAS INDUSTRIAL ENERGY CONSUMERS

By: Katie Coleman w/permission
JBS

Name: Katie Coleman

Title: Attorney

CITY OF EL PASO

By: _____

Name:

Title:

FREEPORT-MCMORAN, INC.

By: _____

Name:

Title:

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 960

By: _____

Name:

Title:

OFFICE OF PUBLIC UTILITY COUNSEL

By: _____

Name:

Title:

TEXAS INDUSTRIAL ENERGY CONSUMERS

By: _____

Name:

Title:

CITY OF EL PASO

By: _____ 

Name: Norman J. Gordon

Title: Attorney of Record

FREEPORT-MCMORAN, INC.

By: _____

Name:

Title:

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 960

By: _____

Name:

Title:

OFFICE OF PUBLIC UTILITY COUNSEL

By: _____

Name:

Title:

TEXAS INDUSTRIAL ENERGY CONSUMERS

By: _____

Name:

Title:

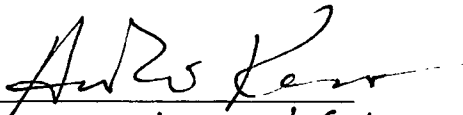
CITY OF EL PASO

By: _____

Name:

Title:

FREEPORT-MCMORAN, INC.

By: 

Name: Andrew Kever

Title: counsel

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 960

By: _____

Name:

Title:

OFFICE OF PUBLIC UTILITY COUNSEL

By: _____

Name:

Title:

TEXAS INDUSTRIAL ENERGY CONSUMERS

By: _____

Name:

Title:

CITY OF EL PASO

By: _____

Name:

Title:

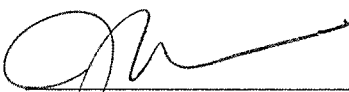
FREEPORT-MCMORAN, INC.

By: _____

Name:

Title:


INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 960

By:  _____

Name: *Jamie Mauldin*

Title: *Attorney*

VINTON STEEL, LLC

By: 

Name: Miguel A. Huerta

Title: Counsel for Vinton Steel, LLC

**UNITED STATES DEPARTMENT OF DEFENSE & ALL OTHER FEDERAL
EXECUTIVE AGENCIES**

By: _____

Name:

Title:

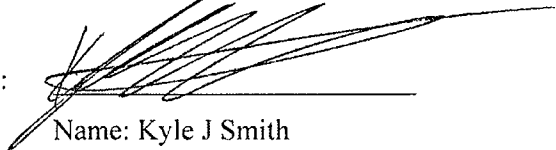
VINTON STEEL, LLC

By: _____

Name:

Title:

**UNITED STATES DEPARTMENT OF DEFENSE & ALL OTHER FEDERAL
EXECUTIVE AGENCIES**

By:  _____

Name: Kyle J Smith

Title: General Attorney, U.S. Army Legal Services Agency

ATTACHMENT A

DOCKET NO. 49849

JOINT REPORT AND	§	PUBLIC UTILITY COMMISSION
APPLICATION OF EL PASO	§	
ELECTRIC COMPANY, SUN	§	OF TEXAS
JUPITER HOLDINGS LLC, AND IIF	§	
US HOLDING 2 LP FOR	§	
REGULATORY APPROVALS	§	
UNDER PURA §§ 14.101, 39.262, AND	§	
39.915	§	

PROPOSED ORDER

This Order addresses the joint report and application filed by El Paso Electric Company (EPE), Sun Jupiter Holdings LLC (Sun Jupiter), and IIF US Holding 2 LP (IIF US 2) (collectively, the applicants) pursuant to Sections 14.101, 39.262 and 39.915 of the Public Utility Regulatory Act (PURA).¹ The applicants and certain other parties to the docket entered into a non-unanimous settlement agreement (stipulation) that resolves all issues among those parties. The stipulation contains numerous regulatory commitments by the applicants. For the reasons discussed in this Order, the Commission finds that the transaction is in the public interest under PURA §§ 14.101, 39.262, and 39.915, provided that all the regulatory commitments described in this Order are met.

A stipulation signed by the applicants, Commission Staff, Office of Public Utility Counsel (OPUC); City of El Paso (CEP); Texas Industrial Energy Consumers (TIEC); Freeport-McMoRan, Inc. (Freeport-McMoRan); International Brotherhood of Electrical Workers Local 960 (IBEW 960); Vinton Steel, LLC (Vinton Steel); and United States Department of Defense & all other Federal Executive Agencies (DoD/FEA) (collectively, the signatories) was filed on December 18, 2019.

I. Discussion**A. The Proposed Transaction**

In the joint report and application filed in this docket, the applicants seek Commission approval of a transaction through which, in accordance with the June 1, 2019 Agreement and Plan

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001–66.016 (West 2016 & Supp. 2019) (PURA).

of Merger (merger agreement) attached as Exhibit A to the joint report and application, Sun Jupiter's wholly-owned subsidiary, Sun Merger Sub Inc. (Merger Sub), will merge with and into EPE, with EPE continuing as the surviving corporation (the transaction). IIF US 2 will provide Sun Jupiter the equity necessary to complete the acquisition of EPE. As a result of the transaction, EPE will become a direct wholly owned subsidiary of Sun Jupiter and an indirect wholly owned subsidiary of IIF US 2. Shares held by EPE's current public shareholders immediately before the transaction's effective time will be cancelled and converted into the right to receive \$68.25 in cash per share without interest, and shares of EPE's common stock will be delisted from the New York Stock Exchange (NYSE). The per-share purchase price of \$68.25 in cash represents an enterprise value of approximately \$4.3 billion, including EPE's net debt, and is a 17% premium to EPE's unaffected closing price on May 31, 2019, the last trading day before the announcement of the merger agreement. Immediately following the transaction, Sun Jupiter will own all the equity in EPE.

B. Regulatory Commitments

The applicants proposed numerous regulatory commitments in both the joint report and application and in their rebuttal testimonies filed in this proceeding. The signatories have agreed to several additional regulatory commitments. These regulatory commitments are set forth in findings of fact 42 through 62 below. The Commission finds that these regulatory commitments must be imposed in order to find that the transaction is in the public interest under PURA §§ 14.101, 39.262, and 39.915. The Commission finds that it may enforce these regulatory commitments under PURA §§ 39.362(o) and 39.915(d).

The Commission adopts the following findings of fact and conclusions of law.

II. Findings of Fact

Procedural History

1. On August 13, 2019, the applicants filed their joint report and application requesting approval of a transaction by which Sun Jupiter would acquire EPE.
2. On August 20, 2019, the Commission issued an order requiring Commission Staff's recommendations on sufficiency of notice and sufficiency of the application.
3. On August 27, 2019, Commission Staff filed a recommendation on the sufficiency of notice.

4. On September 3, 2019, Commission Staff filed a recommendation on the sufficiency of the application.
5. On September 5, 2019, a prehearing conference was held. The following entities entered appearances: EPE, Sun Jupiter and IIF US 2, OPUC, TIEC, CEP, Vinton Steel, IBEW, Freeport-McMoRan, a group of intervenors known as the Rate 41 Group, and Commission Staff.
6. On September 9, 2019, the Commission administrative law judge (ALJ) issued Order No. 3, finding notice and the application sufficient; granting the motions to intervene of OPUC, TIEC, CEP, Vinton Steel, IBEW 960, and Freeport-McMoRan; memorializing the prehearing conference; and adopting a procedural schedule.
7. On October 3, 2019, the ALJ issued Order No. 4, granting the motions to intervene of Rate 41 Group and Richard C. Bonart DVM.
8. On October 25, 2019, Richard C. Bonart DVM filed direct testimony.
9. On October 28, 2019, CEP filed the direct testimonies of Mark E. Garrett and Daniel J. Lawton, Rate 41 Group filed the direct testimony of James W. Daniel, and TIEC filed the direct testimony of Charles S. Griffey.
10. On October 29, 2019, the ALJ issued Order No. 7, establishing procedures and guidelines for the prehearing conference and hearing on the merits and setting deadlines.
11. On November 5, 2019, Commission Staff filed the direct testimonies of John Antonuk, Darryl Tietjen, and Constance McDaniel Wyman.
12. On November 13, 2019, EPE filed the rebuttal testimonies of Cynthia S. Prieto, James Schichtl, and Nathan T. Hirschi, and Sun Jupiter and IIF US 2 filed the rebuttal testimonies of John Reed, Andrew E. Gilbert, and Ellen Lapson.
13. On November 15, 2019, the ALJ issued Order No. 9, granting the late-filed motion to intervene of DoD/FEA.
14. On November 19, 2019, the applicants, together with Commission Staff, TIEC, and CEP, filed a joint request for a one-day continuance of the hearing on the merits in order to continue settlement negotiations.

15. On November 20, 2019, a prehearing conference was held and the ALJ granted the one-day continuance.
16. On November 20, 2019, EPE, Sun Jupiter and IIF US 2, together with the intervenors, filed a second joint request for a continuance of the hearing on the merits in order to continue settlement negotiations.
17. On November 20, 2019, the ALJ issued Order No. 10, granting the continuance, requiring an update, and setting tentative dates for a limited hearing on the merits, if needed.
18. On December 18, 2019, a stipulation signed by the following parties was filed: the applicants, Commission Staff, OPUC; CEP; TIEC; Freeport-McMoRan; IBEW 960; Vinton Steel; and the DoD/FEA.

Notice

19. Notice of the joint report and application in this docket was provided by first-class mail to: (a) all affected counties and municipalities; (b) all neighboring utilities and electric cooperatives of EPE; and (c) all authorized representatives for parties in Docket No. 46831, *Application of El Paso Electric Company to Changes Rates*.
20. On September 4, 2019, applicants filed their proof of notice.

Description of the Parties to the Transaction

21. EPE is an investor-owned electric utility providing bundled electric service to approximately 429,000 retail and wholesale customers in a 10,000 square mile area of the Rio Grande Valley in west Texas and southern New Mexico, under certificate of convenience and necessity no. 30050. Its service territory extends from Hatch, New Mexico to Van Horn, Texas. EPE's principal industrial and large customers include a steel production facility, an oil refinery, several medical centers, two large universities, and U.S. military installations, including Fort Bliss in Texas and the White Sands Missile Range and Holloman Air Force Base in New Mexico.
22. Sun Jupiter is a newly created Delaware limited liability company formed solely for the purpose of entering into the merger agreement, completing the transaction, and thereafter owning 100% of the equity interests in EPE. Sun Jupiter conducts no business activities other than its ownership of Merger Sub and will become the sole owner of EPE upon the closing of the transaction. Sun Jupiter is an indirect wholly owned subsidiary of IIF US 2.

Merger Sub is a Texas corporation newly formed by Sun Jupiter solely for the purpose of entering into the merger agreement and completing the transaction. Merger Sub is a wholly owned subsidiary of Sun Jupiter and has not engaged in any business except for activities incidental to its formation and as contemplated by the merger agreement. Subject to the terms of the merger agreement, upon completion of the transaction, Merger Sub will merge with and into EPE, with EPE continuing as the surviving corporation under Sun Jupiter.

23. IIF US 2 is a limited partnership organized under the laws of the state of Delaware. It is one of three master partnerships that constitute the Infrastructure Investments Fund (IIF), a long-term private investment fund that invests capital provided predominantly by institutional investors (such as pension funds and insurance companies) into infrastructure companies in developed countries. IIF's practice is to hold its portfolio companies as separate entities with individual dedicated governance structures, including standalone management teams integrated into local communities and dedicated, boards of directors made up of a majority independent directors with strong governance protocols. As of June 30, 2019, IIF (through IIF US 2 and its two other master partnerships) owned a portfolio with a gross asset value of over \$25 billion across 19 portfolio companies and 439 unique assets, diversified across 25 countries and 12 subsectors. IIF's net asset value as of that same date was approximately \$12.2 billion.

Description of the Proposed Transaction

24. The joint report and application and the direct testimonies of Nathan Hirschi and Andrew Gilbert describe the transaction, as detailed in findings of fact 25 through 36.
25. The transaction will occur in accordance with merger agreement executed by EPE, Sun Jupiter, and Merger Sub on June 1, 2019. Pursuant to the merger agreement, Merger Sub will merge with and into EPE, with EPE continuing as the surviving corporation.
26. As a result of the transaction, EPE will become a direct wholly owned subsidiary of Sun Jupiter and, through IIF US 2, one of IIF's portfolio companies.
27. Under the merger agreement, shares of EPE common stock held by EPE's shareholders immediately before the transaction's effective time will be cancelled and converted into

the right to receive \$68.25 in cash per share without interest, and shares of EPE's common stock will be delisted from the NYSE.

28. The per-share purchase price of \$68.25 in cash represents an enterprise value of approximately \$4.3 billion, including EPE's net debt, and is a 17% premium to EPE's unaffected closing price on May 31, 2019, the last trading day before the announcement of the merger agreement.
29. IIF US 2 will provide Sun Jupiter the equity necessary to complete the acquisition of EPE.
30. Immediately following the transaction, Sun Jupiter will own all the equity in EPE.
31. The transaction will result in Sun Jupiter directly replacing EPE's public shareholders at closing, with IIF US 2 as the indirect sole shareholder of EPE.
32. Applicants made numerous regulatory commitments related to the transaction in the joint report and application and in their rebuttal testimonies.
33. EPE's board of directors, after considering several competing bids to acquire EPE, unanimously approved the merger agreement and recommended that EPE's shareholders vote in favor of the transaction.
34. After closing of the transaction, EPE will remain an independently operated, locally managed, regulated electric utility headquartered in El Paso, Texas. No material changes in EPE's day-to-day operations are expected.
35. IIF US 2's investment in EPE will provide additional access to necessary funding for EPE's systems, operations, and growth.
36. The transfer of ownership of EPE as a result of the transaction will not involve the transfer of any of EPE's assets, franchises, or certificates of convenience and necessity.

The Stipulation

37. A stipulation was executed by the signatories on December 18, 2019.
38. The signatories agreed that the stipulation resolves all issues among them related to this proceeding and that the stipulation is binding on each of the signatories for the purpose of resolving the issues set forth in the stipulation.

39. The signatories agreed that, based on the requirements of the stipulation, the transaction is in the public interest in accordance with PURA §§ 14.101, 39.262(*l*)–(*m*), and 39.915.
40. The regulatory commitments included in the stipulation, as agreed to by all the signatories, are adopted by the Commission and set forth below in finding of fact 42 through 62.
41. The stipulation, taken as a whole, is a just and reasonable resolution of the issues, is supported by a preponderance of the evidence, is consistent with the relevant provisions of PURA, is in the public interest, and should be approved.

Regulatory Commitments

42. The signatories agreed that except to the extent that any of the following conditions (through finding of fact 62) explicitly state otherwise, the following commitments will apply as of closing of the transaction and continue to apply thereafter, unless and until altered by the Commission.
43. The signatories agreed to the following regulatory commitments addressing governance limits and documentation:
 - a. A delegation of authority declaring the duties of the EPE Board of Directors and Sun Jupiter shall be adopted as soon as practicable after the closing of the transaction in a form substantially similar to the delegation of authority attached to the stipulation as Attachment B. The delegation of authority shall bind Sun Jupiter and EPE and shall be filed with the Commission.
 - b. The delegation of authority will establish that the sole authorized purpose of EPE is the provision of retail and wholesale electric utility service and the performance of activities reasonably necessary and appropriate to exercise utility service provision.
 - c. The delegation of authority will establish that the sole authorized purpose of Sun Jupiter, the direct shareholder of EPE, is the ownership of EPE and the performance of activities reasonably necessary and appropriate to exercise such ownership.
 - d. The EPE board of directors shall consider, subject to applicable Texas law, the best interests of EPE, consistent with the Commission-approved ring fence.

- e. The delegation of authority will require that any amendment thereto that concerns the conditions set forth therein or in these regulatory commitments will require the prior approval of the Commission.
 - f. No more than thirty (30) days after the closing of the transaction, EPE will amend its corporate bylaws to incorporate the provisions of the delegation of authority, including these regulatory commitments. To the extent thereafter that any changes are sought to amend EPE's bylaws that impact the terms of the delegation of authority or these regulatory commitments, such changes shall be approved by the Commission before the effectiveness of such changes.
 - g. No more than thirty (30) days after the closing of the transaction, Sun Jupiter will incorporate the provisions of the delegation of authority (including these regulatory commitments) into its limited liability company agreement (LLC agreement). To the extent thereafter that any changes are sought to amend the LLC agreement that impact the terms of the delegation of authority or these regulatory commitments, such changes shall be approved by the Commission before the effectiveness of such changes.
 - h. The LLC agreement will include a provision that Sun Jupiter has a duty to act, subject to applicable Delaware law, in the best interests of EPE consistent with the Commission-approved ring fence.
44. The regulatory commitments addressing governance limits and documentation in this Order are reasonable.
45. The signatories agreed to the following regulatory commitments addressing economic development and community:
- a. Economic Development Fund. The applicants will dedicate \$100 million to promote economic development in the EPE service territory, including the City of El Paso, Texas and the City of Las Cruces, New Mexico. Of that amount, \$80,000,000 will be jurisdictionally allocated to EPE's Texas service territory over a period of fifteen (15) years. The \$80,000,000 allocated to Texas will be administered by the City of El Paso's Economic Development Department and will be funded by Sun Jupiter in fifteen (15) equal annual installments of \$5,333,333.33.

The first installment will be made by December 15, 2020, with each successive installment due by December 15 or the following business day of the applicable year. Contributions to the fund will not be recoverable in EPE's rates.

- b. Charitable Giving. The applicants will maintain EPE's annual amount of charitable giving following the closing of the transaction at EPE's average annual charitable giving level for the three-year period ended December 31, 2018 (*i.e.*, approximately \$1.2 million per year throughout EPE's service territory). This commitment will remain regardless of the level allowed in EPE's rates. All signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.
- c. Low-Income Assistance Programs. The applicants will maintain EPE's existing low-income assistance programs while evaluating potential methods to improve such programs.
- d. Entry Level Training Programs. The applicants will create or enhance programs that provide entry-level training focused on engineering, management, and finance skills for the local labor force in collaboration with The University of Texas at El Paso, El Paso Community College, and New Mexico State University. This commitment will remain regardless of the level allowed in EPE's rates. All signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.
- e. Apprenticeship Programs. The applicants will create or enhance apprenticeship programs for technical and professional positions for students in local high schools and colleges. This commitment will remain regardless of the level allowed in EPE's rates. All signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.

- f. Supplier Diversity. The applicants will continue and enhance utility supplier diversity by promoting the inclusion of minority-, women-, LGBTQ-, and veteran-owned businesses into EPE's supply chain. This commitment will remain regardless of the level allowed in EPE's rates. All signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.
 - g. New Technology Programs. The applicants will study and evaluate growth opportunities related to electric vehicles, distributed generation, and battery storage in collaboration with The University of Texas at El Paso, El Paso Community College, and New Mexico State University. All signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.
46. The regulatory commitments addressing economic development and community in this Order are reasonable.
47. The signatories agreed to the following regulatory commitments addressing rates, ratemaking treatment of certain items, and capital expenditures:
- a. Rate Credit. EPE will issue a rate credit to its Texas customers in a total aggregate amount for all customers of \$21 million. The rate credit will be distributed among customers in 36 monthly installments. No later than 45 days after the closing of the transaction, EPE will make a tariff filing to implement the rate credit. EPE will not attempt to recover the value of this rate credit in future rate cases.
 - b. Goodwill. The applicants will not seek recovery in rates of the transaction acquisition premium. Any goodwill associated with the transaction will not be included in rate base, cost of capital, or operating expenses in future EPE ratemaking proceedings. Write-downs or write-offs of goodwill will not be included in the calculation of net income for dividend or other distribution payments purposes.

- c. Pushdown Accounting. Neither IIF US 2 nor any of its affiliates will elect to apply pushdown accounting for the transaction (*i.e.*, the transaction will have no impact on EPE's assets being acquired). Any incremental goodwill will not be allocated to, or recognized within, EPE's balance sheet.
- d. Transaction Costs. The applicants will not seek recovery of transaction costs in EPE's rates. None of the transaction costs will be borne by EPE's customers, nor will EPE seek to include transaction costs in its rates. Transaction costs are those incremental costs paid to advance or consummate the transaction. Examples of transaction costs include, but are not limited to: IIF US 2 time and expenses; EPE change-of-control payments; any tax impact as a result of the transaction; certain executive severance costs related to the transaction; and third-party costs, including bank advisors, external legal advisors, rating agencies, and expert witnesses and consultants in each case paid to advance or consummate the transaction. Transaction costs do not include EPE employee time.
- e. Capital Expenditures. EPE will continue to make minimum capital expenditures in an amount equal to EPE's current five-year budget for the five-year period beginning January 1, 2021, subject to the following adjustments, which shall be reported to the Commission in EPE's earnings monitoring report: EPE may reduce capital spending due to conditions not under EPE's control, including, without limitation, siting delays, cancellations of projects by third-parties, weaker than expected economic conditions, or if EPE determines that a particular expenditure would not be prudent.
- f. Transition Costs. No IIF US 2 time and expenses, third party costs, fees, expenses, or costs of the transition (transition costs) will be borne by EPE's customers, nor will EPE seek to include transition costs in rates. Transition costs are those costs necessary to integrate EPE into the holdings of IIF US 2, whether incurred before or after the closing of the transaction, including the one-time transition costs being incurred whether directly or indirectly through affiliate charges to transition EPE to ownership by IIF US 2 and to integrate EPE's operations and systems with those of IIF US 2. Provided, however, that transition costs do not include EPE employee time, "costs to achieve" savings or synergies or costs that reflect reasonable and

necessary costs in providing service to the public. “Costs to achieve” reflect reasonable and necessary amounts incurred to realize operating enhancements, efficiency gains, or costs reduction initiatives.

- g. Electric Furnace Rate. EPE will not propose to eliminate the Electric Furnace Rate in its next base rate case following Commission approval of the transaction.
 - h. EADIT. EPE commits that it will not amortize or reduce the regulatory liabilities for excess accumulated deferred income taxes recorded as a result of the federal legislation commonly referred to as the Tax Cuts and Jobs Act of 2017 until the amortization is reflected in rates, and EPE agrees that the determination of the treatment of this amount will be addressed in the next base rate case for EPE.
48. The regulatory commitments addressing rates, the ratemaking treatment of certain items, and capital expenditures in this Order are reasonable.
49. The signatories agreed to the following regulatory commitments addressing ring-fencing:
- a. Name/Logo. EPE will maintain an existence that is separate and distinct from Sun Jupiter, IIF US 2, and any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II), including, its separate name, logo, franchises, obligations, and privileges.
 - b. EPE Credit Ratings. EPE and IIF US 2 shall take the actions necessary to ensure the existence of EPE’s stand-alone credit and debt ratings, as applicable. EPE will, except as otherwise approved by the Commission, be registered with a least two major nationally and internationally recognized credit rating agencies. EPE, Sun Jupiter, and IIF US 2 will take efforts to ensure that EPE’s credit ratings reflect the ring-fence provisions contemplated herein such that the credit rating agencies provide EPE with a stand-alone credit rating.
 - c. Credit Ratings and Dividends. In considering subclauses (i)–(ii) below, the disinterested directors (as defined below) on the EPE board of directors shall have the ability to prevent EPE from making any dividends or other distributions, other than contractual tax payments, if they determine in good faith that it is in the best interests of EPE to retain such amounts to meet the expected future requirements

of EPE (including compliance with the below debt-to-equity commitment) as follows:

- i. For so long as EPE's credit rating remains at BBB (Baa2) at two of the major credit rating agencies (Moody's, S&P, and Fitch), no dividend shall be paid by EPE, except for contractual tax payments, unless such dividend is approved by a majority vote of the EPE board of directors, including at least two disinterested directors.
 - ii. If EPE's credit rating falls to BBB- (Baa3) at one of the major credit rating agencies, no dividend shall be paid by EPE, except for contractual tax payments, unless approved by a majority vote of the EPE board of directors, including all four disinterested directors, until EPE's credit rating at two of the major credit rating agencies returns to BBB (Baa2), at which point the above provisions of subclause (i) apply.
 - iii. If EPE's credit ratings at two of the major credit ratings agencies falls to BBB- (Baa3), no dividends shall be paid, except for contractual tax payments, until otherwise ordered by the Commission or EPE's credit rating at one of the major credit rating agencies returns to BBB (Baa2), at which point the above provisions of subclause (ii) apply.
 - iv. If EPE's credit rating at one of the major credit rating agencies falls below BBB- (Baa3), no dividends shall be paid, except for contractual tax payments, until otherwise ordered by the Commission or EPE's credit rating returns to BBB- (Baa3), at which point the above provisions of subclause (iii) apply.
- d. Equity Ratio and Dividends. EPE will suspend payment of dividends or other distributions, except for contractual tax payments, until otherwise allowed by the Commission if issuance of the dividend or distributions, except for contractual tax payments, would cause the equity ratio of EPE's total capital for ratemaking purposes to fall below that established from time to time by the Commission for EPE ratemaking purposes. EPE will make a quarterly compliance filing with the Commission regarding this commitment.

- e. Net Income and Dividends. EPE will limit its payment of dividends, except for contractual tax payments, to an amount not to exceed its net income (as determined in accordance with GAAP and excluding the impact of the Palo Verde Nuclear Decommissioning Trust).
- f. Dividend Policy. Any amendments to the dividend policy shall be approved by a majority of the EPE board of directors, including at least a majority of the disinterested directors.
- g. Holding Company. In connection with the transaction, IIF US 2 has created Sun Jupiter, an indirect, wholly owned special-purpose entity, to hold 100% of the equity interests in EPE.
- h. Holding Company Existence. Sun Jupiter will be retained between EPE and IIF US 2 for so long as IIF US 2 owns EPE.
- i. No Debt/Credit Guarantees. EPE will not guarantee the debt or credit instruments of Sun Jupiter, IIF US 2, or any other affiliate (excluding EPE and Rio Grande Resources Trust II).
- j. No Pledging of Assets/Stock. EPE's assets, revenues, or stock shall not be pledged by Sun Jupiter, IIF US 2, or any of its affiliates or subsidiaries, for the benefit of any entity other than EPE.
- k. No Inter-Company Debt. Neither EPE nor Sun Jupiter will enter into any inter-company debt transactions with IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II) post-closing of the transaction, unless approved by the Commission.
- l. No Inter-Company Lending. Neither EPE nor Sun Jupiter will lend money to or borrow money from IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II) post-closing of the transaction. Further, Sun Jupiter and EPE will not borrow money from J.P. Morgan Chase & Co. (JP Morgan) and its affiliates except that EPE may borrow from JP Morgan or any of its affiliates on an arm's-length basis if approved by a majority of the EPE board of directors excluding the IIF US 2 representatives on the EPE board of directors, and provided

further that nothing herein shall obligate JP Morgan or any of its affiliates to lend money to EPE or any of its affiliates at any time.

- m. Credit Facility. Neither EPE nor Sun Jupiter will be borrowers under a common credit facility with one another nor with JP Morgan and its affiliates, IIF US 2, or any of IIF US 2's affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II).
- n. Cross-Default Provisions. EPE will not include in any of its debt or credit agreements cross-default provisions relating to Sun Jupiter or IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II). Neither EPE nor Sun Jupiter will include in any of its debt or credit agreements cross-default provisions relating to the securities of IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II). Under no circumstances will any debt of EPE become due and payable or otherwise be rendered in default because of any cross-default or similar provisions of any debt or other agreement of IIF US 2, the Sun Jupiter Entities, or any of their affiliates (excluding EPE and Rio Grande Resources Trust II).
- o. Financial Covenants or Rating Agency Triggers. EPE's debt or credit agreements will not include any financial covenants or rating-agency triggers related to Sun Jupiter or IIF US 2 or any of IIF US 2's affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II), nor will Sun Jupiter's debt or credit agreements include any financial covenants or rating-agency triggers related to IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II).
- p. No Transaction Related Debt at EPE. EPE will not incur, guaranty, or pledge assets for any new incremental debt related to the transaction.
- q. Debt at Sun Jupiter Holdings LLC. Without prior approval of the Commission, Sun Jupiter Holdings LLC will not incur any third-party debt in excess of the amount in place at closing of the transaction, which shall not exceed \$700 million. Further, all third-party debt held at Sun Jupiter Holdings LLC will be extinguished within five (5) years of closing.

- r. Bankruptcy Expenses and Liabilities. Neither EPE nor Sun Jupiter will seek to recover from EPE's customers any costs incurred as a result of a bankruptcy of IIF US 2 or any of its affiliates (excluding EPE and Rio Grande Resources Trust II).
- s. EPE Senior Management. Following closing of the transaction, EPE's CEO and other senior management who directly report to the CEO will hold no positions with IIF US 2 or any of its affiliates or subsidiaries (excluding EPE).
- t. Non-Consolidation Legal Opinion. IIF US 2 will obtain a non-consolidation legal opinion that provides that, in the event of a bankruptcy of IIF US 2, Sun Jupiter, or any of their affiliates (excluding EPE and Rio Grande Resources Trust II), a bankruptcy court would not consolidate the assets and liabilities of EPE with IIF US 2, Sun Jupiter, or any of their affiliates (excluding EPE and Rio Grande Resources Trust II).
- u. Affiliate Asset Transfer. Neither EPE nor Sun Jupiter will transfer any material assets or facilities to any affiliates, other than a transfer that is on an arm's-length basis consistent with the Commission and New Mexico Public Regulation Commission (NMPRC) affiliate standards as applicable to EPE.
- v. Arm's-Length Relationship. Each of EPE and Sun Jupiter will maintain an arm's-length relationship with one another and with IIF US 2 and its affiliates, consistent with the Commission and NMPRC affiliate standards as applicable to EPE.
- w. Access to Books and Records. IIF US 2 will provide the Commission access to its books and records, as well as those of its applicable affiliates, as necessary to facilitate the Commission's audit or review of any affiliate transactions, if any, as between EPE and IIF US 2 or IIF US 2's affiliates in accordance with PURA § 14.154.
- x. Separate Books and Records. Each of EPE and Sun Jupiter will maintain accurate, appropriate, and detailed books, financial records and accounts, including checking and other bank accounts, and custodial and other securities safekeeping accounts that are separate and distinct from those of any other entity.
- y. Representations to the Public. Sun Jupiter and its affiliates will not represent to the public or creditors that EPE has any liability for the obligations of Sun Jupiter or

IIF US 2 or any of their affiliates (except for EPE and Rio Grande Resources Trust II).

- z. Consolidated Tax Return. EPE will be a party to a consolidated corporate tax return with the Sun Jupiter consolidated tax group, which will be carried out subject to a formal tax sharing agreement and policy.
 - aa. Modification of Ring Fence. EPE, Sun Jupiter, and IIF US 2 acknowledge the Commission's jurisdiction to initiate a future proceeding to modify the EPE ring fence, but they reserve their rights to contest any other aspect of the filing. No party to this proceeding has waived any argument regarding whether the EPE ring fence should be modified or the scope of any modification, and all parties reserve their rights to argue their positions in the future docket, if such docket is initiated.
50. The regulatory commitments addressing ring-fencing in this Order are reasonable.
51. The signatories agreed to the following regulatory commitments addressing local control and management:
- a. Headquarters. EPE's existing headquarters will remain in El Paso, Texas for so long as IIF US 2 owns EPE.
 - b. Continued Ownership. IIF US 2 will maintain a controlling ownership interest in EPE for at least ten (10) years post-closing.
 - c. Management Day-to-Day Control. EPE's CEO and EPE's senior management will continue to have day-to-day control over EPE's operations and senior management will continue to reside in the El Paso, Texas and Las Cruces, New Mexico vicinity.
 - d. Management Primary Point of Contact. EPE's local management will remain the primary point of contact for all regulatory, operational, and community engagement matters.
 - e. EPE Board/Competitive Affiliates. At the closing of the transaction and thereafter, EPE will have a Board of Directors that will not include any employees of any IIF US 2 competitive affiliates (as that term is defined in Commission rules) in Texas, any members from the boards of directors of any IIF US 2 competitive affiliates in

Texas, or any individuals with direct responsibility for the management or strategies of any such competitive affiliates.

52. The regulatory commitments addressing local control and management in this Order are reasonable.
53. The signatories agreed to the following regulatory commitments addressing the composition and the powers of the EPE directors:
 - a. Board Composition. EPE's post-closing board of directors will comprise ten (10) directors, of which:
 - i. One (1) will be EPE's CEO;
 - ii. Up to two (2) will be IIF US 2-level representatives (members of the Infrastructure Investments Group); and
 - iii. The remaining seven (7) will satisfy the definition of NYSE independent directors. No independent director shall be a then-current officer of any IIF subsidiary. Of the seven (7) NYSE independent directors:
 1. At least four (4) will be "disinterested;"²
 2. At least two (2) will reside within EPE's service territory; and
 3. At least two (2) will be individuals that either served on the EPE board of directors immediately prior to the closing of the transaction, are local business/community leaders, or are from a university within EPE's service territory.
 - b. Disinterested Director Appointment. The initial disinterested directors will be identified in a compliance filing made by EPE within 30 days after closing of the transaction. After establishment of EPE's initial post-closing board of directors, the disinterested directors will be appointed by a majority of a committee comprised of the disinterested directors.

² Disinterested directors will be independent from IIF US 2 and its subsidiaries and affiliated entities (other than EPE and Rio Grande Resources Trust II) and JP Morgan, and will have no material financial relationship with IIF US 2 or its subsidiaries or affiliated entities (other than EPE and Rio Grande Resources Trust II) or JP Morgan currently or within the previous five years. A personal banking relationship of the type that is generally available to other similarly situated clients is not a material financial relationship.

- c. Disinterested Director Initial Term. The initial terms of the disinterested directors will be staggered such that in each year no more than two disinterested directors will be up for renewal.
 - d. Disinterested Director Removal. A disinterested director may only be removed by majority vote of the remaining disinterested directors and cannot be removed by a shareholder vote.
 - e. EPE Director Compensation/Financial Performance. The compensation of EPE directors will in no manner be tied to, reflect, or be related to the financial, operating, or other performance of any entity or interest other than EPE.
 - f. EPE Director Compensation/Powers of the Board. The EPE board of directors shall have the power to set the compensation and benefits for EPE directors, in the form and manner it directs, subject to the approval of Sun Jupiter.
 - g. New Mexico Board Meeting. EPE board of directors meetings will take place in Las Cruces, New Mexico at least once per year.
54. The regulatory commitments addressing the composition and the powers of the EPE directors in this Order are reasonable.
55. The signatories agreed to the following additional capital regulatory commitments:
- a. Approval of EPE Budgets. A majority of EPE directors, including at least one IIF US 2-level representative and four independent/disinterested directors must approve any capital or any expense budget (whether a one-year budget or a multi-year budget or forecast). The prior year's budget will remain in effect until a new budget can be adopted in accordance with the foregoing.
 - b. Variances in EPE Budget. If EPE management seeks approval of a capital project or a series of projects that would be in excess of the approved annual budget by more than 10%, such projects or series of projects must be approved by a majority of the EPE board of directors, including at least one IIF US 2-level representative and four independent/disinterested directors. Any budget or forecast outside this threshold will also be identified in an annual report to the Commission and EPE will provide the reasons for the variance.

- c. Equity/Debt Issuances. The volumes and types of all EPE equity and debt issuances will be determined by a vote of the EPE board of directors including majorities of both the entire EPE board of directors and of its independent and disinterested directors. No Sun Jupiter Entity³ will have the power to alter or override such votes.
 - d. Third Party Equity Issuances. The general partner of IIF US 2 will have the power to decline to make provision for such equity issuances as the EPE board of directors approves. In the event that IIF US 2 declines to provide equity for a project that (a) EPE management has recommended, (b) the EPE board of directors has determined is in keeping with Good Utility Practice, and (c) such project is approved by a majority of the EPE board of directors, EPE is authorized to issue non-voting, non-convertible, preferred equity at then-prevailing market terms solely to secure the equity portion of a capital project. EPE shall not sell a primary issuance of preferred equity to IIF US 2, JP Morgan, or any of their respective affiliates.
56. The additional capital regulatory commitments in this Order are reasonable.
57. The signatories agreed to the following regulatory commitments addressing employment:
- a. Workforce. For at least five (5) years post-closing, as a result of the transaction, EPE will not implement any material involuntary workforce reductions or changes to wages, benefits, and other terms and conditions of employment in effect prior to the transaction.
 - b. Existing Collective Bargaining Agreements. EPE will honor the terms of EPE's existing collective bargaining agreements.
 - c. Collective Bargaining Negotiations. EPE will enter into good faith bargaining with its represented employees during and after the term of the existing collective bargaining agreements in order to negotiate new bargaining agreements.
 - d. Responsible Contractor Policy. EPE will adhere to a Responsible Contractor Policy.
 - e. EPE Officer, Manager, and Employee Compensation. The compensation of EPE officers, managers, and employees will in no manner be tied to, reflect, or be related

³ The Sun Jupiter Entities consist of the entities between EPE and IIF US 2.

to the financial, operating, or other performance of any entity other than EPE and Rio Grande Resources Trust II.

58. The regulatory commitments addressing employment in this Order are reasonable.
59. The signatories agreed to the following regulatory commitments addressing code of conduct:
 - a. Code of Conduct. EPE will file with the Commission for authority to amend and update its code of conduct to incorporate all applicable conditions and limitations on affiliate transactions required by these regulatory commitments.
 - b. Arm's-Length Relationship with JP Morgan. EPE and Sun Jupiter will maintain arm's-length relationships with all affiliates and with all persons, entities, and interests directly or indirectly owned or controlled by JP Morgan. The applicants agree to apply the Commission's regulations regarding arm's-length transactions among affiliates to JP Morgan regardless of whether JP Morgan is an actual affiliate as defined under PURA. Nothing in the foregoing is intended to prohibit IIF US 2's management of Sun Jupiter, which is a member-managed entity.
60. The regulatory commitments addressing code of conduct in this Order are reasonable.
61. The signatories agreed to the following other regulatory commitments:
 - a. FERC Preemption. Neither EPE nor IIF US 2 nor IIF US 2's affiliates will assert before the Commission or a Texas court of competent jurisdiction that the Commission is preempted pursuant to the Federal Power Act (e.g., under a Federal Energy Regulatory Commission (FERC) tariff) from making a determination regarding the cost recovery of affiliate costs sought to be allocated to EPE.
 - b. Compliance Reports. For a period of five (5) years after the closing of the transaction, EPE will make annual reports to the Commission regarding its compliance with the terms stated in the order approving the transaction.
 - c. Reports of SAIDI and SAIFI to Commission. EPE will report its actual system-level SAIDI and SAIFI statistics to the Commission in its annual Service Quality Reports filed pursuant to 16 Tex. Admin. Code § 25.81 (TAC), as may be amended.

- d. Modification of Commission Order. If EPE, Sun Jupiter, or IIF US 2 seeks any modification to the final order entered in Docket No. 49849 prior to five (5) years after the date of its issuance, then in any such proceeding, Commission Staff may hire independent consultants selected by the Commission and paid for by EPE, Sun Jupiter, or IIF US 2. EPE, Sun Jupiter, or IIF US 2 will timely pay the reasonable costs of the services of such consultants as determined by the Commission. The amount that EPE, Sun Jupiter, and IIF US 2 will be responsible to pay will not exceed \$300,000 per proceeding. EPE, Sun Jupiter, and IIF US 2 agree that EPE will not seek recovery of these costs in its rates.
- e. Texas Utility. EPE will continue to operate in the State of Texas as a public utility subject to the continuing jurisdiction of the Commission.
- f. Duration of Regulatory Commitments. Unless explicitly stated otherwise in these regulatory commitments, all of the regulatory commitments will apply as of closing of the transaction and continue to apply thereafter, unless and until modified by the Commission.

62. The other regulatory commitments in this Order are reasonable.

Tangible and Quantifiable Benefits to Texas Customers

- 63. In determining whether the transaction is in the public interest under PURA §§ 14.101, 39.262, and 39.915, the Commission has evaluated whether the transaction would provide tangible and quantifiable benefits to ratepayers that are specific to the transaction at issue.
- 64. Based on regulatory commitments in findings of fact 45 and 47 as set forth in this Order, the transaction will result in tangible and quantifiable benefits to Texas customers on a timely basis.

Evaluation of the Transaction

- 65. Based on the record evidence and regulatory commitments made by the applicants, a reasonable value is being paid for EPE's securities.
- 66. Based on the record evidence and regulatory commitments made by the applicants, the transaction will not adversely affect the health or safety of EPE's customers or employees.



67. Based on the record evidence and regulatory commitments made by the applicants, the transaction will not result in the transfer of jobs of citizens of this state to workers domiciled outside of this state.
68. Based on the record evidence and regulatory commitments made by the applicants, the transaction will not result in a decline in service to EPE's customers.
69. Based on the record evidence, the transaction does not involve the sale, lease, or transfer of EPE's assets.
70. Based on the record evidence and regulatory commitments relating to transaction costs and transition costs set forth in this Order, the transaction will not result in Texas ratepayers bearing transaction-related costs unrelated to the corresponding benefits to Texas ratepayers.
71. Based on the record evidence and regulatory commitments made by the applicants, the transaction will not adversely affect EPE's reliability of service, availability of service, or cost of service.
72. The regulatory commitments regarding rate credits that will be given to customers ensure that ratepayers will receive a benefit from the transaction in a timely manner.
73. The benefits of the transaction to Texas ratepayers exceed its corresponding costs and risks.
74. Based on the record evidence and regulatory commitments, the transaction provides tangible and quantifiable benefits to Texas ratepayers.
75. If all regulatory commitments described in this Order are met, the transaction is in the public interest.

III. Conclusions of Law

1. EPE is an electric utility as defined by PURA § 31.002.
2. The Commission has jurisdiction and authority over this proceeding under PURA §§ 14.101, 39.262, and 39.915.
3. Notice of the transaction and the events in this docket was provided in accordance with 16 TAC § 22.55.
4. The stipulation reached by the signatories resolves all issues pending in this docket.

5. The Commission's consideration of the stipulation complies with PURA § 14.054 and 16 TAC § 22.206.
6. The transaction and the provisions of the stipulation are consistent with the public interest within the meaning of PURA §§ 14.101, 39.262, and 39.915 and otherwise satisfy the applicable requirements of those sections.
7. The Commission may enforce any representation or commitment made by the applicants under PURA §§ 39.262(o) and 39.915(d).

VI. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The transaction, as modified by the stipulation dated December 18, 2019, is approved.
2. EPE, IIF US 2, and Sun Jupiter shall comply with the regulatory commitments as set forth in findings of fact 42 through 62.
3. For a period of five (5) years, EPE shall file the annual reports to the Commission regarding its compliance with the terms stated in the Order and the stipulation in a compliance docket, Docket No. ____.
4. No later than 45 days after the issuance of this Order, EPE shall initiate a tariff filing to implement the \$21 million rate credit to be provided to EPE's Texas customers.
5. No more than 30 days after the closing of the transaction, EPE shall amend its corporate bylaws to incorporate the provisions of the delegation of authority, including the regulatory commitments set forth in findings of fact 42 through 62. To the extent thereafter that any changes are sought to amend EPE's bylaws that impact the terms of the delegation of authority or these regulatory commitments, such changes shall be approved by the Commission before the effectiveness of such changes.
6. No more than 30 days after the closing of the transaction, Sun Jupiter shall incorporate the provisions of the delegation of authority, including the regulatory commitments set forth in findings of fact 42 through 62, into its LLC agreement. To the extent thereafter that any changes are sought to amend the LLC agreement that impact the terms of the delegation of

authority or the regulatory commitments, such changes shall be approved by the Commission before the effectiveness of such changes.

7. No more than 30 days after the closing of the transaction, the applicants shall file the delegation of authority in Docket No. ____.
8. No more than 30 days after the closing of the transaction, EPE shall identify the initial disinterested directors in a compliance filing submitted in Docket No. ____, which Commission Staff shall review to confirm that the directors comply with the disinterested director definition.
9. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the stipulation. Entry of this Order should not be regarded as precedent as to the appropriateness of any principle or methodology underlying the stipulation, except for the purpose of enforcing the stipulation or this Order in any future proceeding.
10. All other motions or requests for entry of specific findings of fact and conclusions of law, and other requests for general or specific relief not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS on the _____ day of _____ 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER

ATTACHMENT B

DELEGATION OF AUTHORITY**Sun Jupiter Holdings LLC**

WHEREAS, the sole authorized purpose of El Paso Electric Company ("EPE") is the provision of retail and wholesale electric utility service and the performance of activities reasonably necessary and appropriate to provide such service;

WHEREAS, the sole authorized purpose of Sun Jupiter Holdings LLC ("Sun Jupiter"), the direct shareholder of EPE upon closing of the transaction ("Transaction"), is the ownership of EPE and the performance of activities reasonably necessary and appropriate to exercise such ownership;

WHEREAS, Sun Jupiter is a wholly-owned, indirect subsidiary of IIF US Holding 2 LP ("IIF US 2"), a constituent entity of the Infrastructure Investments Fund ("IIF");

WHEREAS, in order to provide for orderly governance and continued local authority of EPE, Sun Jupiter desires to delegate to the EPE Board of Directors ("EPE Board") certain authorities; and

WHEREAS, the EPE Board shall consider, subject to applicable Texas law, the best interests of EPE, consistent with the Public Utility Commission of Texas ("PUCT") approved ring fence;

NOW THEREFORE, Sun Jupiter hereby:

1. Creates the Initial EPE Board.

a. EPE's initial Board of Directors after the Transaction closes will consist of ten (10) Directors as follows:

- i. One (1) Director will be EPE's CEO;
- ii. Up to two (2) Directors will be IIF US 2-level representatives who may be members of the Infrastructure Investments Group ("IIF Representatives"); and
- iii. The remaining seven (7) Directors will satisfy the definition of New York Stock Exchange independent directors and be elected to terms of not less than three years ("Independent Directors"). No Independent Director shall be a then-current officer of any IIF subsidiary. Of the seven (7) Independent Directors:

1. At least four (4) Independent Directors will be "Disinterested Directors":

- a. Disinterested Directors will be independent from IIF US 2 and its subsidiaries and affiliated entities (other than EPE and Rio Grande Resources Trust II) and J.P. Morgan Chase & Co. ("JP Morgan"), and will have no material financial relationship with IIF US 2 or its subsidiaries or affiliated entities (other than EPE and Rio Grande Resources Trust II) or JP Morgan currently or within the previous five years. A personal banking relationship of the type that is generally available to other similarly situated clients is not a material financial relationship.

- b. The initial terms of the Disinterested Directors will be staggered such that in each year no more than two Disinterested Directors will be up for renewal.
 - c. Within 30 days after the closing of the Transaction, EPE will identify the initial Disinterested Directors in a compliance filing submitted at the PUCT.
 - d. A Disinterested Director may only be removed by a majority vote of the remaining Disinterested Directors and cannot be removed by a shareholder vote.
 - 2. At least two (2) Independent Directors will reside within EPE's service territory; and
 - 3. At least two (2) Independent Directors will be individuals that either served on EPE's Board immediately prior to the closing of the Transaction, are local business/community leaders, or are from a university within EPE's service territory.
 - iv. No Directors will be employees of any IIF US 2 competitive affiliate (as that term is defined by PUCT rules) in Texas, members from the boards of directors of any IIF US 2 competitive affiliates in Texas, or individuals with direct responsibility for management or strategies of any such competitive affiliates in Texas.
2. ***Adopts this Delegation of Authority ("Delegation of Authority")***.
- a. Sun Jupiter acknowledges and agrees that, to the fullest extent permitted by applicable law:
 - i. Decisions with respect to implementing the matters set forth on Schedule I attached hereto shall be expressly reserved to the EPE Board and, consistent with this Delegation of Authority, the EPE Board shall be expressly delegated to hold the exclusive authority to review, authorize, and approve such matters as and to the extent required (the "Delegated Matters"), without any obligation to obtain any separate authorization or approval from Sun Jupiter or any officer, employee, or authorized signatory of Sun Jupiter prior to the execution and delivery of any definitive, legally binding commitment or the taking of any other action with respect to or in connection with the Delegated Matters by EPE, its officers, employees, or authorized representatives; provided, that:
 - 1. certain decisions made by the EPE Board set forth in Schedule I shall require an affirmative vote by the IIF Representative(s);
 - 2. certain decisions made by the EPE Board set forth in Schedule I shall require votes by the Independent and/or Disinterested Directors;
 - 3. decisions with respect to certain matters set forth on Schedule II shall require the express approval of Sun Jupiter in its capacity as the sole shareholder of EPE (the "Sun Jupiter Matters"), and no authorization or approval of such

matters shall be made by the EPE Board nor shall any action be taken by EPE with respect to such matters, without such express approval; and

4. the foregoing delegation is subject to the governance provisions set forth on Schedule II being implemented and in full force and effect with respect to EPE.
- ii. To the extent the EPE Board wishes to review and/or approve matters not specifically enumerated as Delegated Matters (Schedule I), but consistent with its fiduciary duties and not inconsistent with the provisions of this Delegation of Authority, including the Sun Jupiter Matters (Schedule II), the EPE Board shall have the power and authority to do so.
- iii. To the extent a particular Delegated Matter does not require action by the EPE Board and the EPE Board does not otherwise reserve the right to act on that matter consistent with this Delegation of Authority, EPE management shall have responsibility with respect to such Delegated Matters.

Any actions taken by the directors or officers of EPE in accordance with and pursuant to this Delegation of Authority shall, for all purposes and in all respects, and without any further action of Sun Jupiter and EPE, be deemed to be the due and proper actions of EPE.

The delegations of authority set forth herein shall be deemed to include, in the case of each such delegation of authority, the authority to perform such further ancillary acts and deeds, for and on behalf of EPE, as may be necessary, proper or advisable, in the judgment of the EPE Board, to fully carry out the actions and effectuate the intent and purposes of the matters described herein in each case in accordance with the Delegated Matters (Schedule I) and subject to the Sun Jupiter Matters (Schedule II).

Notwithstanding any contrary provision contained herein, the Delegated Matters and Sun Jupiter Matters are subject to, and the provisions hereof shall be construed and interpreted in compliance with, all applicable requirements of any order of the PUCT and New Mexico Public Regulation Commission (“NMPRC”), including, specifically, any commitments made by EPE in connection with any such orders.

IIF US 2 hereby acknowledges and accepts this Delegation of Authority.

SCHEDULE I**DELEGATED MATTERS***1. Local Authority Matters*

- a. Maintain EPE's headquarters in El Paso, Texas for so long as IIF US 2 owns a controlling interest in EPE.
- b. Cause EPE's CEO and EPE's senior management to continue to have day-to-day control over EPE's operations and senior management to continue to reside in the El Paso, Texas and Las Cruces, New Mexico vicinity.
- c. Cause EPE's local management to remain the primary point of contact for all regulatory, operational, and community engagement matters.
- d. Appoint the EPE CEO and his or her executive officer direct reports, subject to the requirement that the IIF Representatives and at least four of the seven Independent Directors on the EPE Board approve those appointments as well. The EPE Board shall have sole responsibility for appointing all other officers of EPE, provided that the EPE Board may delegate the appointment of specified officers to EPE management upon a majority vote of the EPE Board.
- e. Continue to operate EPE in the State of Texas and State of New Mexico as a public utility subject to the continuing jurisdiction of the PUCT and NMPRC, respectively.

2. Governance Matters

- a. Maintain an EPE Board charter that documents the EPE Board's responsibilities, authorities, and function, including specific Board committees and committee membership in each case consistent with this Delegation of Authority.
- b. After the appointment of the initial EPE Board described in the preamble of this Delegation of Authority, maintain the EPE Board consistent with the following requirements:
 - i. The EPE Board will consist of ten Directors.
 - ii. One (1) Director will be EPE's CEO.
 - iii. Two (2) Directors will be IIF Representatives.
 - iv. The remaining seven (7) Directors will be Independent Directors and elected to terms of not less than three years. No Independent Director shall be a then-current officer of any IIF subsidiary. Of the seven (7) Independent Directors:
 - 1. At least four (4) Independent Directors will be Disinterested Directors:
 - a. Terms of the Disinterested Directors will be staggered such that in each year no more than two Disinterested Directors will be up for renewal.
 - b. Within 30 days after the closing of the Transaction, EPE will identify the initial Disinterested Directors in a compliance filing submitted at the PUCT.

- c. A Disinterested Director may only be removed by a majority vote of the remaining Disinterested Directors and cannot be removed by a shareholder vote.
- 2. At least two (2) Independent Directors will reside within EPE's service territory.
- v. No Directors will be employees of any IIF US 2 competitive affiliate (as that term is defined by PUCT rules) in Texas, members from the boards of directors of any IIF US 2 competitive affiliates in Texas, or individuals with direct responsibility for management or strategies of any such competitive affiliates in Texas.
 - vi. After appointment of the initial EPE Board, shareholder approval will be required for the appointment of all future Directors to the EPE Board (Schedule II), except for Disinterested Directors.
 - vii. After appointment of the initial EPE Board, a nominating committee consisting entirely of Independent Directors will nominate and appoint the Independent (Non-Disinterested) Directors subject to shareholder approval (Schedule II).
 - viii. A sub-committee of the nominating committee described in (vii) above, comprised solely of the Disinterested Directors, will nominate and appoint the Disinterested Directors subject to approval of a majority of the Disinterested Directors.
- c. Set the compensation and benefits of EPE officers, in the form and manner the EPE Board directs, subject to shareholder approval (Schedule II).
- d. Compensation of EPE directors will not be tied to, reflective of, or related to the financial, operational, or other performance of any entity or interest other than EPE.
- e. Ensure EPE's CEO and other senior management who report directly to the CEO (1) hold no positions with IIF US 2 or any of its affiliates or subsidiaries (excluding EPE, Rio Grande Trust II, and Sun Jupiter) and (2) do not serve, or have not served within one year, as an officer, employee, or other representative of any entity owned or controlled by JP Morgan, provided, for the avoidance of doubt, that the foregoing excludes IIF US 2 and its affiliates.
- f. Ensure a majority of the entire EPE Board, including at least one IIF Representative and at least four of the seven Independent Directors, approve the following:
 - i. any capital or any expense budget (whether a one-year budget or a multi-year budget or forecast). The prior year's budget will remain in effect until a new budget can be adopted in accordance with the foregoing.
 - ii. any capital project or series of projects that would be in excess of the approved annual budget by more than 10%. EPE will identify in an annual report to the PUCT any project or series of projects outside this threshold and provide the reasons for the variance.
- g. Determine the volumes and types of all EPE equity and debt issuances, subject to approval by a majority of the entire EPE Board and at least four of the seven Independent

Directors. The shareholder or shareholder entity (Sun Jupiter Entities) does not have the power to alter or override such votes.

- h. Approve EPE proposed debt issuances, subject to the approval of at least four of the seven Independent Directors, provided that such EPE debt issuance would not be reasonably likely to (1) cause EPE to fall below an investment grade credit rating or (2) result in non-compliance with the commitment to maintain EPE's authorized equity ratio of EPE's total capital for ratemaking purposes.
- i. Issue non-voting, non-convertible preferred equity at then-prevailing market terms solely to secure the equity portion of a capital project (a) which EPE management has recommended, (b) which the EPE Board has determined is in keeping with Good Utility Practice (as that term is defined in PUCT rules), (c) which has been approved by a majority of the EPE Board, and (d) for which Sun Jupiter or IIF US 2 has declined to provide the equity, subject to the Sun Jupiter Matters set forth in Schedule II. The EPE Board shall ensure that EPE does not sell a primary issuance of preferred equity to IIF US 2, JP Morgan, or any of their respective affiliates.
- j. Make or cause EPE to make annual reports to the PUCT regarding EPE's compliance with the terms of the PUCT order approving the Transaction, for a period of five (5) years after the closing of the Transaction.
- k. Establish a dividend and distribution policy (the "Dividend Policy") at the first EPE Board meeting after the closing of the Transaction. Such Dividend Policy shall provide that, in considering subclauses i–ii below, the Disinterested Directors shall have the ability to prevent EPE from making any dividends or other distributions, other than contractual tax payments, if they determine in good faith that it is in the best interests of EPE to retain such amounts to meet the expected future requirements of EPE (including compliance with the commitment to maintain EPE's authorized equity ratio of EPE's total capital for ratemaking purposes) as follows:
 - i. For so long as EPE's credit rating remains at BBB (Baa2) at two of the major credit rating agencies (S&P, Moody's, and Fitch), no dividend shall be paid by EPE, except for contractual tax payments, unless such dividend is approved by a majority vote of the EPE Board, including at least two Disinterested Directors.
 - ii. If EPE's credit rating falls to BBB- (Baa3) at one of the major credit rating agencies, no dividend shall be paid by EPE, except for contractual tax payments, unless approved by a majority vote of the EPE Board, including all four Disinterested Directors, until EPE's credit rating at two of the major credit rating agencies returns to BBB (Baa2), at which point the provisions of subclause (i) apply.
 - iii. If EPE's credit ratings at two of the major credit rating agencies falls to BBB- (Baa3), no dividends shall be paid, except for contractual tax payments, until otherwise ordered by the PUCT or EPE's credit rating at one of the major credit rating agencies returns to BBB (Baa2), at which point the provisions of subclause (ii) apply.

- iv. If EPE's credit rating at one of the major credit rating agencies falls below BBB- (Baa3), no dividends shall be paid, except for contractual tax payments, until otherwise ordered by the PUCT or EPE's credit rating returns to BBB- (Baa3), at which point the provisions of subclause (iii) apply.

Such Dividend Policy will also include a provision that the payment of dividends and other distributions, except for contractual tax payments, will be suspended until otherwise allowed by the PUCT and the NMPRC if issuance of the dividend or distribution would cause the equity ratio of EPE's total capital for ratemaking purposes to fall below that established from time to time by the PUCT and NMPRC for EPE ratemaking purposes. EPE will make a quarterly report to the PUCT regarding compliance with this requirement of the Dividend Policy. The Dividend Policy will also limit the payment of dividends, except for contractual tax payments, to an amount not to exceed EPE's net income (as determined in accordance with GAAP and excluding the impact of the Palo Verde Nuclear Decommissioning Trust). The EPE Board shall thereafter enforce the Dividend Policy, declaring dividends when permitted thereby and withholding dividends in situations where dividends are prohibited by the Dividend Policy or the PUCT and NMPRC orders approving the Transaction. Any amendment to the Dividend Policy shall be approved by a majority of the EPE Board, including at least a majority of the Disinterested Directors, and may not be amended in such a way that contravenes this Delegation of Authority or the Regulatory Commitments contained in the PUCT order approving the Transaction without prior PUCT approval.

- l. Ensure that EPE Board meetings take place in Las Cruces, New Mexico at least once per year.
- m. Place EPE in voluntary bankruptcy, such decision to require shareholder approval (Schedule II) and approval of at least four of the seven Independent Directors.

3. *Ring-Fencing Matters*

- a. Maintain EPE's existence so that it is separate and distinct from Sun Jupiter, IIF US 2, and any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II), including, its separate name, logo, franchises, obligations, and privileges.
- b. Take the actions necessary to ensure the existence of EPE's stand-alone credit and debt ratings, as applicable. The EPE Board will ensure that EPE will, except as otherwise approved by the PUCT, be registered with at least two major nationally and internationally recognized credit rating agencies. The EPE Board will ensure that EPE will take efforts to ensure that EPE's credit ratings reflect the ring-fence provisions contemplated herein and in the PUCT order approving the Transaction such that the credit rating agencies provide EPE with a stand-alone credit rating.
- c. Prevent EPE from guaranteeing the debt or credit instruments of Sun Jupiter, IIF US 2, or any other affiliate (excluding EPE and Rio Grande Resources Trust II).
- d. Prevent EPE from entering into any inter-company debt transactions with IIF US 2 or any of its affiliates or subsidiaries (excluding Rio Grande Resources Trust II) post-closing of the Transaction, unless approved by the PUCT.

- e. Prevent EPE from lending money to or borrowing money from IIF US 2 or any of its affiliates or subsidiaries (excluding Rio Grande Resources Trust II).
- f. Prevent EPE from borrowing money from JP Morgan and its affiliates except on an arm's-length basis if approved by a majority of the EPE Board excluding the IIF Representatives, and provided further that nothing herein shall obligate JP Morgan or any of its affiliates to lend money to EPE or any of its affiliates at any time.
- g. Prevent EPE from being a borrower under a common credit facility with Sun Jupiter, JP Morgan and its affiliates, or IIF US 2 and its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II).
- h. Prevent the inclusion in any of EPE's debt or credit agreements cross-default provisions relating to Sun Jupiter or IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II). The EPE Board will prevent EPE from including in any of its debt or credit agreements cross-default provisions relating to the securities of IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II). Under no circumstances will any debt of EPE become due and payable or otherwise be rendered in default because of any cross-default or similar provisions of any debt or other agreement of IIF US 2, the Sun Jupiter Entities, or any of their affiliates (excluding EPE and Rio Grande Resources Trust II).
- i. Prevent the inclusion of any financial covenants or rating-agency triggers related to Sun Jupiter or IIF US 2 or any of IIF US 2's affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II) in EPE's debt or credit agreements.
- j. Prevent EPE from incurring, guaranteeing, or pledging assets for any new incremental debt related to the Transaction.
- k. Prevent recovery from EPE's customers of any costs incurred as a result of a bankruptcy of IIF US 2 or any of its affiliates (excluding EPE and Rio Grande Resources Trust II).
- l. Ensure EPE's CEO and other senior management who directly report to the CEO do not hold executive positions with IIF US 2 nor any of its affiliates or subsidiaries (excluding EPE).
- m. Prevent transfer of any of EPE's material assets or facilities to any affiliates, other than a transfer that is on an arm's-length basis consistent with the PUCT and NMPRC affiliate standards as applicable to EPE.
- n. Cause EPE to maintain an arm's-length relationship with all affiliates; with Sun Jupiter; with IIF US 2 and its affiliates (excluding EPE and Rio Grande Resources Trust II); and with all persons, entities, and interests directly or indirectly owned or controlled by JP Morgan,¹ consistent with the PUCT and NMPRC affiliate standards as applicable to EPE. Nothing in the foregoing is intended to prohibit IIF US 2's management of Sun Jupiter, which is a member managed entity.

¹ EPE, Sun Jupiter, and IIF US 2 agree to apply the PUCT's regulations regarding arm's-length transactions among affiliates to JP Morgan regardless of whether JP Morgan is an actual affiliate as defined under the Texas Public Utility Regulatory Act ("PURA").

- o. Provide the PUCT and NMPRC access to EPE's books and records as necessary to facilitate either commission's audit or review of any affiliate transactions, if any, as between EPE and IIF US 2 or IIF US 2's affiliates.
- p. Cause EPE to maintain accurate, appropriate, and detailed books, financial records and accounts, including checking and other bank accounts, and custodial and other securities safekeeping accounts for EPE that are separate and distinct from those of any other entity.
- q. Cause EPE to be a party to the consolidated corporate tax return with the Sun Jupiter consolidated tax group, pursuant to the Tax Sharing Agreement between EPE and Sun Jupiter and the other parties thereto.
- r. Cause EPE to acknowledge the PUCT's jurisdiction to initiate a future proceeding to modify the EPE ring fence, with EPE reserving its rights to contest any other aspect of such filing.

4. *Rate and Capital Expenditure Matters*

- a. Ensure EPE issues a rate credit to its Texas customers in a total aggregate amount for all customers of \$21 million. The rate credit will be distributed among customers in 36 monthly installments. No later than 45 days after the closing of the Transaction, EPE will make a tariff filing at the PUCT to implement the rate credit. EPE will not attempt to recover the value of this rate credit in future rate cases.
- b. Prevent EPE from seeking recovery in rates of the acquisition premium related to the Transaction. The EPE Board will ensure that any goodwill associated with the Transaction will not be included in rate base, cost of capital, or operating expenses in future EPE ratemaking proceedings. Write-downs or write-offs of goodwill will not be included in the calculation of net income for dividend or other distribution payments purposes.
- c. Prevent recognition within EPE's balance sheet any incremental goodwill associated with the Transaction.
- d. Prevent recovery in rates of costs incurred in connection with the completion of the Transaction in keeping with the following requirements:
 - i. None of the transaction costs will be borne by EPE's customers, nor will EPE seek to include transaction costs in EPE's rates. Transaction costs are those incremental costs paid to advance or consummate the Transaction. Examples of transaction costs include, but are not limited to: IIF US 2 time and expenses; EPE change-of-control payments; any tax impact as a result of the Transaction; certain executive severance costs related to the Transaction; and third-party costs, including bank advisors, external legal advisors, rating agencies, and expert witnesses and consultants in each case paid to advance or consummate the Transaction. Transaction costs do not include EPE employee time.
 - ii. None of the transition costs will be borne by EPE's customers, nor will EPE seek to include the transition costs in EPE's rates. Transition costs are those costs

necessary to integrate EPE into the holdings of IIF US 2, whether incurred before or after the closing of the Transaction, including the one-time transition costs being incurred whether directly or indirectly through affiliate charges to transition EPE to ownership by IIF US 2 and to integrate EPE's operations and systems with those of IIF US 2. Provided, however, that transition costs do not include EPE employee time, "costs to achieve" savings or synergies or costs that reflect reasonable and necessary costs in providing service to the public. "Costs to achieve" reflect reasonable and necessary amounts incurred to realize operating enhancements, efficiency gains, or costs reduction initiatives.

- e. Continue to cause EPE to make minimum capital expenditures in an amount equal to EPE's current five-year budget for the five-year period beginning January 1, 2021, subject to the following adjustments, which shall be reported to the PUCT in EPE's earnings monitoring report: EPE may reduce capital spending due to conditions not under EPE's control, including, without limitation, siting delays, cancellations of projects by third-parties, weaker than expected economic conditions, or if EPE determines that a particular expenditure would not be prudent.
- f. Prevent EPE from proposing to eliminate the Electric Furnace Rate in its next Texas base rate case following PUCT approval of the Transaction.
- g. Prevent EPE from amortizing or reducing the regulatory liabilities for excess accumulated deferred income taxes recorded as a result of federal legislation commonly referred to as the Tax Cuts and Jobs Act of 2017 until the amortization is reflected in rates, and cause the determination of the treatment of such amount to be addressed in EPE's next Texas base rate case for EPE.

5. *Employment Matters*

- a. Prevent implementation as a result of the Transaction, any material involuntary workforce reductions or changes to wages, benefits, and other terms and conditions of employment in effect prior to the Transaction, for at least five (5) years post-closing of the Transaction.
- b. Cause EPE to honor the terms of EPE's collective bargaining agreements existing at the closing of the Transaction.
- c. Cause EPE to enter into good faith bargaining with its represented employees during and after the term of the existing collective bargaining agreements in order to negotiate new collective bargaining agreements.
- d. Cause EPE to adhere to the Responsible Contractor Policy after the closing of the Transaction.
- e. Ensure the compensation of EPE officers, managers, and employees will in no manner be tied to, reflect, or be related to the financial, operating, or other performance of any entity other than EPE and Rio Grande Resources Trust II.

6. *Economic Development and Community Matters*

- a. Ensure EPE maintains its annual amount of charitable giving following the closing of the Transaction at EPE's average annual charitable giving level for the three-year period ending December 31, 2018 (i.e., approximately \$1.2 million per year throughout EPE's service territory) regardless of the level allowed in EPE's rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such shall be described in the executive summary of the rate filing package.
- b. Ensure EPE maintains EPE's existing low-income assistance programs while evaluating potential methods to improve such programs.
- c. Ensure EPE creates or enhances programs that provide entry-level training focused on engineering, management, and finance skills for the local labor force in collaboration with The University of Texas at El Paso, El Paso Community College, and New Mexico State University regardless of the level allowed in EPE's rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such shall be described in the executive summary of the rate filing package.
- d. Ensure EPE creates or enhances apprenticeship programs for technical and professional positions for students in local high schools and colleges, regardless of the level allowed in EPE's rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such shall be described in the executive summary of the rate filing package.
- e. Ensure EPE continues and enhances utility supplier diversity by promoting the inclusion of minority-, women-, LGBTQ-, and veteran-owned businesses into EPE's supply chain, regardless of the level allowed in EPE's rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such shall be described in the executive summary of the rate filing package.
- f. Ensure EPE studies and evaluates growth opportunities related to electric vehicles, distributed generation, and battery storage in collaboration with The University of Texas at El Paso, El Paso Community College, and New Mexico State University. To the extent EPE seeks to recover these costs in rates, the inclusion of such shall be described in the executive summary of the rate filing package.

7. *Other Matters*

- a. Prevent EPE from asserting before the PUCT or a Texas court of competent jurisdiction that the PUCT is preempted pursuant to the Federal Power Act (e.g., under a Federal Energy Regulatory Commission ("FERC") tariff) from making a determination regarding the cost or recovery of affiliate costs sought to be allocated to EPE.
- b. Cause EPE to file with the PUCT for authority to amend and update EPE's code of conduct to incorporate all applicable conditions and limitations on affiliate transactions required by the PUCT order approving the Transaction.
- c. Cause EPE to report its actual system-level SAIDI and SAIFI statistics to the PUCT in its annual Service Quality Reports filed pursuant to 16 Texas Administrative Code § 25.81, as may be amended.

- d. Cause EPE to pay for the reasonable costs associated with independent consultants selected by the PUCT if EPE, Sun Jupiter, or IIF US 2 seek any modifications to the PUCT order approving the Transaction prior to five (5) years after the date of the issuance of the final PUCT order approving the Transaction, in an amount not to exceed \$300,000 per proceeding. The EPE Board will ensure EPE does not seek recovery of these costs in its rates.

SCHEDULE II**SUN JUPITER MATTERS***1. Local Authority Matters*

- a. IIF US 2 will maintain a controlling ownership interest in EPE for at least ten (10) years post-closing of the Transaction.

2. Governance Matters

- a. After appointment of the initial EPE Board as described in the preamble of this Delegation of Authority, shareholder approval is required for the appointment of any future Director to the EPE Board, except for Disinterested Directors.
- b. After appointment of the initial EPE Board, a nominating committee consisting entirely of Independent Directors will nominate and appoint future Independent (non-Disinterested) Directors subject to shareholder approval.
- c. Shareholder approval is required in setting the compensation and benefits of EPE officers.
- d. Shareholder approval is required to change the number of directors that constitute the EPE Board, provided that vacancies that are in the process of being filled shall not be considered a reduction in the number of directors.
- e. Shareholder approval is required for the removal of any Director on the EPE Board, except for Disinterested Directors.
- f. Shareholder approval is required for any changes to the certificate of formation, by-laws, or other organizational documents of EPE.
- g. Shareholder approval is required in connection with the issuance of any debt by EPE that is not contemplated by the annual budget approved by the EPE Board.
- h. Shareholder approval is required for (i) any decisions, commitments or actions related to entering into any merger, consolidation, amalgamation, share purchase or other business combination transaction, or any sale of all or substantially all of the assets of EPE; (ii) any decisions and actions that would reasonably be expected to lead to or result in (a) a material change in the nature of the business of EPE or (b) the carrying out by EPE any business other than its current business as of the date on which the Transaction is approved; and (iii) take any steps to wind up, terminate or dissolve the corporate existence of EPE or institute an EPE bankruptcy filing.

3. Ring-Fencing Matters

- a. Sun Jupiter, is an indirect, wholly-owned special-purpose entity created by IIF US 2, which upon closing of the Transaction will hold 100% of the equity interests in EPE; IIF

- US 2 will cause Sun Jupiter to be retained between EPE and IIF US 2 for so long as IIF US 2 owns EPE.
- b. Sun Jupiter and IIF US 2 will take efforts to ensure that EPE's credit ratings reflect the ring-fence provisions contemplated herein and in the PUCT order approving the Transaction such that the rating agencies provide EPE with a stand-alone credit rating.
 - c. Sun Jupiter and IIF US 2 will not, and will cause their affiliates not to, pledge EPE's assets, revenues, or stock for the benefit of any entity other than EPE.
 - d. Sun Jupiter will not enter into any inter-company debt transactions with IIF US 2 or any of its affiliates or subsidiaries post-closing of the Transaction, unless approved by the PUCT.
 - e. Sun Jupiter will not lend money to or borrow money from IIF US 2 or any of its affiliates or subsidiaries post-closing of the Transaction.
 - f. Sun Jupiter will not borrow money from JP Morgan and its affiliates.
 - g. Sun Jupiter will not be a borrower under a common credit facility with EPE, JP Morgan and its affiliates, or IIF US 2 and its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II).
 - h. Sun Jupiter will not include in any of its debt or credit agreements cross-default provisions relating to the securities of IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II). Under no circumstances will any debt of EPE become due and payable or otherwise be rendered in default because of any cross-default or similar provisions of any debt or other agreement of IIF US 2, the Sun Jupiter Entities, or any of their affiliates (excluding EPE and Rio Grande Resources Trust II).
 - i. Sun Jupiter will not include in its debt or credit agreements any financial covenants or rating-agency triggers related to IIF US 2 or any of IIF US 2's affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II).
 - j. Sun Jupiter will not seek to recover from EPE's customers any costs incurred as a result of a bankruptcy of IIF US 2 or any of its affiliates (excluding EPE and Rio Grande Resources Trust II).
 - k. Sun Jupiter will obtain, prior to closing of the Transaction, a non-consolidation legal opinion that provides that, in the event of a bankruptcy of IIF US 2, Sun Jupiter, or any of their affiliates (excluding EPE and Rio Grande Resources Trust II), a bankruptcy court would not consolidate the assets and liabilities of EPE with IIF US 2, Sun Jupiter, or any of their affiliates (excluding EPE and Rio Grande Resources Trust II).
 - l. Sun Jupiter will not transfer any of EPE's material assets or facilities to any affiliates, other than a transfer that is on an arm's-length basis consistent with the PUCT and NMPRC affiliate standards as applicable to EPE.
 - m. Sun Jupiter will maintain an arm's-length relationship with all affiliates; with EPE; with IIF US 2 and its affiliates (excluding EPE and Rio Grande Resources Trust II); and with all persons, entities, and interests directly or indirectly owned or controlled by JP

Morgan,² consistent with the PUCT and NMPRC affiliate standards as applicable to EPE. Nothing in the foregoing is intended to prohibit IIF US 2's management of Sun Jupiter, which is a member managed entity.

- n. Sun Jupiter will not incur, without prior approval of the PUCT, any third-party debt in excess of the amount in place at the closing of the Transaction, which shall not exceed \$700 million. Further, all third-party debt held at Sun Jupiter will be extinguished within five (5) years of the closing of the Transaction
- o. Sun Jupiter will maintain accurate, appropriate, and detailed books, financial records and accounts, including checking and other bank accounts, and custodial and other securities safekeeping accounts that are separate and distinct from those of any other entity.
- p. IIF US 2 will provide the PUCT access to its books and records, as well as those of its applicable affiliates, as necessary to facilitate audit or review of any affiliate transactions, if any, as between EPE and IIF US 2 or IIF US 2's affiliates in accordance with PURA § 14.154.
- q. Sun Jupiter and IIF US 2 will not, and will cause their respective affiliates not to, represent to the public or creditors that EPE has any liability for the obligations of Sun Jupiter or IIF US 2 or any of their affiliates (except for EPE and Rio Grande Resources Trust II).
- r. Sun Jupiter's LLC Agreement will include a provision that Sun Jupiter has a duty to act, subject to applicable Delaware law, in the best interests of EPE consistent with the PUCT approved ring fence.
- s. Sun Jupiter and IIF US 2 acknowledge the PUCT's jurisdiction to initiate a future proceeding to modify the EPE ring fence, with Sun Jupiter and IIF US 2 reserving their rights to contest any other aspect of such filing.

4. *Rate and Capital Expenditure Matters*

- a. Neither IIF US 2 nor any of its affiliates will elect to apply pushdown accounting for the Transaction. Any incremental goodwill will not be allocated to, or recognized within, EPE's balance sheet.

5. *Economic Development and Community Matters:*

- a. Sun Jupiter will dedicate \$100 million to promote economic development in EPE's service territory, including the City of El Paso, Texas and the City of Las Cruces, New Mexico. Of that amount, \$80,000,000 will be jurisdictionally allocated to EPE's Texas service territory over a period of fifteen (15) years. The \$80,000,000 allocated to Texas will be administered by the City of El Paso's Economic Development Department and will be funded by Sun Jupiter in fifteen (15) equal annual installments of \$5,333,333.33. The first installment will be made by December 15, 2020, with each successive

² EPE, Sun Jupiter, and IIF US 2 agree to apply the PUCT's regulations regarding arm's-length transactions among affiliates to JP Morgan regardless of whether JP Morgan is an actual affiliate as defined under PURA.

installment being due by December 15 or the following business day of the applicable year.

6. *Other Matters*

- a. Neither IIF US 2 nor IIF US 2's affiliates will assert before the PUCT or a Texas court of competent jurisdiction that the PUCT is preempted pursuant to the Federal Power Act (e.g., under a FERC tariff) from making a determination regarding the cost or recovery of affiliate costs sought to be allocated to EPE.
- b. If EPE, Sun Jupiter, or IIF US 2 seek any modification to the PUCT order approving the Transaction prior to five (5) years after the date of the issuance of that order, then in any such proceeding, PUCT Staff may hire independent consultants selected by the PUCT and paid for by EPE, Sun Jupiter, or IIF US 2. Sun Jupiter will ensure EPE, Sun Jupiter, or IIF US 2 will timely pay the reasonable costs of the services of such consultants as determined by the PUCT. The amount that EPE, Sun Jupiter, or IIF US 2 will be responsible to pay will not exceed \$300,000 per proceeding.