



Control Number: 50277



Item Number: 109

Addendum StartPage: 0



SOAH DOCKET NO. 473-20-2278
DOCKET NO. 50277

APPLICATION OF EL PASO §
ELECTRIC COMPANY TO AMEND § BEFORE THE STATE OFFICE
ITS CERTIFICATE OF §
CONVENIENCE AND NECESSITY § OF
FOR AN ADDITIONAL GENERATING §
UNIT AT THE NEWMAN § ADMINISTRATIVE HEARINGS
GENERATING STATION IN EL PASO §
COUNTY AND THE CITY OF EL §
PASO §

REPLY BRIEF OF THE CITY OF EL PASO

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**SOAH DOCKET NO. 473-20-2278
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<p>APPLICATION OF EL PASO ELECTRIC COMPANY TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR AN ADDITIONAL GENERATING UNIT AT THE NEWMAN GENERATING STATION IN EL PASO COUNTY AND THE CITY OF EL PASO</p>	<p>§ § § § § § § § §</p>	<p>BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS</p>
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REPLY BRIEF OF THE CITY OF EI PASO

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REPLY BRIEF OF THE CITY OF EL PASO

I. INTRODUCTION AND BACKGROUND

A. Summary of Argument

In this reply brief the City will attempt to not repeat the arguments and citations in its initial brief, but rather to respond to positions of other parties. El Paso Electric (“EPE”), Staff and even OPUC would have us all believed that the COVID-19 Pandemic, its devastating effects on the economy, employment and, of course, health is no different than the “Great Recession” of 2009, or the “dot.com” recession of 2001. They would also have the Commission close its eyes to the effects of the pandemic and continue long term planning as it had not happened. As of the submission of the reply briefs in this case, we as a society, state, and service area are still operating under pandemic conditions. For EPE to contend that the world should proceed as if the pandemic had not struck our society and economy is ludicrous.

In this Reply Brief, the City will respond to the statements and arguments made by EPE and Staff, but mostly to EPE as both Public Utility Commission Staff (“Staff”) and OPUC rely upon EPE’s positions and evidence. The question is still burden of proof, and EPE has not met that burden. EPE did acknowledge that the COVID-19 pandemic has occurred, but has refused acknowledge its magnitude. It acknowledged a recession, but then reverted to the testimony of its

load forecast witness, who only looked at the two recessions.¹ The COVID-19 pandemic is an event on a scale that has not been seen or experienced before. The service area and economy have experienced and are experiencing business shutdowns, stay at home orders, and record unemployment. Rather than pursuing a prudent course action to attempt to understand the actual effects of this crisis,, EPE asks the Commission to authorize it to go full steam ahead as if there has been no change in the country or economy since it did its forecasts.

EPE's next deceitful statement is that peak demand would have to be reduced by more than 200 MW before Newman 6 would no longer be needed.² That allegation has a number of problems. First, no one, anywhere testified to such a statement's veracity. The issue is not a reduction from the 2019 peak demand, which may or may not occur. The question is the starting point for any future growth in demand. As Mr. Norwood testified, a reduction of only 10% in the forecasted demand would largely eliminate the need for Neman 6 for the next 10 years.³ It is the forecasted demand and not necessarily the current demand that is critical to the Newman 6 analysis. Moreover, Mr. Norwood testified that the Company would have the flexibility to supply the level of capacity necessary until 2027 without adding Neman 6.⁴

EPE's argument concerning the New Mexico ETA also does not address the issues raised in the hearing.⁵ EPE argues in its introduction that the New Mexico ETA requirement have nothing to do with the need for Newman 6. Since the initial commitment to move forward with Newman 6 was made before the ETA was enacted, the ETA did not affect EPE's decision. What is lacking and what was addressed by Mr. Norwood is the fact that EPE has not re-evaluated Newman 6 or other projects in light of the ETA. Since the ETA will not allow EPE to recover all of what would be the New Mexico jurisdictional costs of a plant with a forty year life after 2045 (e.g. after 22 years of operation), the question is left open where and how those costs will be recovered. Either there is a gap in EPE's ability to recovery its costs without imposing a burden on Texas ratepayers, or as Mr. Schichtl testified in his New Mexico rebuttal, a greater portion is

¹ EPE Brief at 9-10

² EPE Brief at 10

³ Direct Testimony of Scott Norwood, CEP Ex. 1 at 15(Bates 16)

⁴ Direct Testimony of Scott Norwood CEP Ex. 1 at 13(Bates 14, see also Table 2 page 14(bates 15).

⁵ EPE Brief at 10

going to be allocated to Texas in the future, meaning more costs to Texas ratepayers than EPE is willing to admit.⁶ In either alternative, the ETA does affect Texas ratepayers and EPE. EPE had an obligation to address those issues and chose to avoid them.

B. Application Details and Sufficiency

C. Description of Newman Unit 6

i. proposed date of commercial operations

In this part of the brief⁷ EPE repeats its request in the petition for approval by September 30, 2020. It states not having approval by that date will impact the delivery date of the equipment and the commercial operation date. This part of EPE's request is disingenuous. First, the Commission has one year from the date of the filing in which to make a decision.⁸ Second, as EPE even noted in its rebuttal and testimony, the hearing in the corresponding New Mexico case is not scheduled to begin until July 20, 2020.⁹ What is important about this representation by EPE is that unless EPE commits to the equipment before it has final orders in Texas and New Mexico, it is saying it will not meet its summer of 2023 peak. In that event, EPE, if EPE needs capacity, it will have to either buy short term power, or will have to delay retirements of its gas fired units. Those two options delaying retirements or purchasing capacity exactly what Mr. Norwood proposed and EPE elsewhere in its case attempts to dismiss. EPE's arguments are self-contradictory. EPE cannot have its argument both ways. It chose the timing of its filings. The only logical conclusion from the evidence is that EPE does not, in fact, need the plant by summer peak of 2023.

ii. estimated costs, including incident costs to providing reliable service from the new unit

D. Direct effects to land not owned by EPE

E. Other regulatory approvals

i. New Mexico Public Regulation Commission (NMPRC)

⁶ Tr. at 25:25-27:7 Schichtl Cross(June 9, 2020)

⁷ EPE Brief at 15

⁸ Staff Brief at 6-7

EPE has a companion case pending before the NMPRC, which is scheduled for hearing starting on July 20, 2020. The potential impact of that decision is addressed in Section I E. iv below.

- ii. Federal Energy Regulatory Commission (FERC)
- iii. Commitments made in other requests
- iv. Effect of non-approval on completion of facilities

Staff addresses this question solely in the context of the EPE position.¹⁰ The assumption behind the Staff's statements of additional costs all assume a) that there is no effect on future demands from the COVID-19 crisis (an issue not mentioned by Staff in its testimony), and b) that maximum costs suggested that possibly could be incurred occur. For example, Staff's estimate of additional fuel costs is exactly the potential fuel savings identified by EPE in its cost section. Those savings assume the plant is both needed and used in 2023.¹¹ Additional costs for a short extension of the three plants has not been studied as Mr. Hawkins admitted in the response to the RFI.¹² Moreover, any figures assume potential expenditures that could possibly occur, not anything that necessarily would be scheduled¹³. Staff does not take into account any potential savings to customers by not having the capital or non-fuel operating costs to pay. Like EPE staff ignores the amounts spent by EPE on these units in the past years¹⁴ and also that the EPE estimate is a maximum potential, if the continuation of the plants are needed, and are not in the similar status to Rio Grande 6, the inactive reserve. Staff's predicted costs are not even supported by EPE's discovery response.

In its brief¹⁵EPE declines to address the effect of non-approval on completion of facilities, except to say that it has made no decision. Of course, if Texas approves and New Mexico declines

⁹ EPE Brief at 15, Rebuttal Testimony of James Schichtl, EPE Ex. 12 at 6(Bates 8)

¹⁰ Staff Brief at 7

¹¹ See CEP Ex. 26 EPE Response to CEP RFI 7-17 which refers to the testimony of James Schichtl on fuel savings.

¹² Id.

¹³ Id. (If . . . it is determined that main steam piping should be replaced. . .")

¹⁴ See CEP Ex. 9 EPE Response to CEP RFI 5-21, Attachment A to City of El Paso Initial Brief and fn. 19 in this brief

¹⁵ EPE Brief at 16

the application, and EPE proceeds, there is no evidence of the cost to Texas ratepayers. The only indisputable fact is that if the plant is 100% dedicated to Texas at any time, the cost to Texas ratepayers increases.

II. IS THE CCN NECESSARY FOR THE SERVICE, ACCOMMODATION, CONVENIENCE, OR SAFETY OF THE PUBLIC?

A. Adequacy of Existing Service / Need for Additional Service

The primary issue is whether, given the uncertainties that developed since EPE did its evaluation based on its 2017 load forecast, the issues not satisfied by EPE are what additions are needed in the near term, and how will any requirements be filled. EPE did not portray accurately the cost of short-term extensions, if necessary, of Rio Grande 7, Newman 1, and Newman 2.

i. Unit retirements

1. Timeline

In its section on unit retirements, EPE references are old studies about the feasibility 5 year and 15-year extensions of the three units. It also identifies the units as being anywhere from 59 to 64 years at the time of retirement without providing any logic, given heat rates is why if they are so inefficient, has EPE delayed so long in deciding to retire the units.¹⁶ This is especially true if the “industry average” is between 40 and 50 years. Thus, the question is why are these units viable until summer 2023, but not a minute after that? As shown in Mr. Norwood’s Table 3, the summer peak month equivalent availability of Rio Grande Unit 7, Newman and Newman 2 have been remarkably good over the last several years.¹⁷ It is not a simple matter of cost as EPE has spent very little on these units over the past several years. The amounts of capital and O&M expenses for each of the years 2014-2019 are shown on the discovery response and are not extreme.¹⁸ As Mr. Norwood testified, “If they could delay this decision to pull the trigger a year or two by basically deferring retirement of Rio Grande 7, and Newman 1 and 2 and then picking

¹⁶ EPE brief at 19-21

¹⁷ Direct Testimony of Scott Norwood, CEP Ex. 1 at 15-16 (Bates 16-17)

¹⁸ CEP Ex. 9, EPE Response to CEP RFI 5-21(Bates 2).

up resources purchases, which is a short-term purchase, at a very modest level, and much—much lower than what they’ve already done in the past, then they would have adequate resources at least through 2026.”¹⁹ In terms of the delay, Mr. Norwood noted that COVID-19 is a once in my lifetime type of thing, and that it is prudent to take a little extra time.²⁰

In its brief, EPE misstates its reliance on short term purchases.²¹ First, the record is clear that short term purchases are part of almost every year’s planning process. In Mr. Gallegos original loads and resources document which was the basis of the original decision, there are short term purchases in every year until 2022 and from 2025-2027²² Mr. Gallegos’ answer was simple, for any year in which there was a negative reserve margin they adjust it through resource purchases.²³ When the City suggested resource purchases, EPE argues in it is not a feasible option, resources purchases can be fickle.²⁴ EPE is not consistent on the viability of resource purchases. The document referenced in brief are not broad RFP’s. One RFP was only for a single year renewable energy to be used only to satisfy New Mexico Renewable Energy Act.²⁵ The other was for 50MW of capacity and energy from a facility in Southern New Mexico or West Texas a three year period.²⁶ If those were the only RFP’s, then EPE is hurting for capacity without regard to this application for 2020 and beyond (unless COVID-19) bails it out. EPE has not met its burden to establish that its timeline is reasonable or required.

2. *Effect on generation requirements*

ii. *How much additional capacity is needed and when*

The City addressed this issue in the previous section. Staff mentioned the 2020 load forecast as additional evidence.²⁷ The 2020 load forecast and loads and resources study was

¹⁹ Tr. 98:12-20 Norwood Cross (June 9, 2020)

²⁰ Tr. 98: 21-25 Norwood Cross (June 9, 2020)

²¹ EPE Brief at 26.

²² Direct Testimony of Omar Gallegos EPE Ex. 4 at Exhibit OG-3, line 2.5(also in Exhibit OG-4)(Bates 56-57).

²³ Tr. 50:1-18, Gallegos Cross (June 9, 2020).

²⁴ EPE Brief at 26

²⁵ CEP Ex. 24, EPE response to CEP RFI 7-10, (Bates 2 of 3)

²⁶ Id at Bates 3 of 3

²⁷ Staff Brief at 9

completed prior to any information about COVID-19, and prior to the consequences that have affected the service area, the state and the economy or the additional 70 MW PPAs for which EPE is seeking approval in New Mexico.²⁸ Thus the study does not provide new or additional evidence of current circumstances. In fact, it even does have reductions to the amount of capacity provided by Energy Efficiency measures.²⁹ The 2020 load forecast does not reconfirm any information concerning need and omits new information.

1. Planning reserve margin
2. *Appropriate capacity value of solar Purchased Power Agreements (PPA)*

EPE's claims of a 25% capacity contribution for new solar contracts, while maintaining a 70% capacity contribution for existing solar contracts is not credible.³⁰ EPE currently has purchased power contracts for 107 MW of solar capacity which it treats as contributing 70% of nameplate to in its resource planning process.³¹ However, the two 100 MW Purchased Power contracts identified in the original filing and the 70 MW of additional purchased power agreements signed after the case was filed and not mentioned anywhere in either EPE's direct or rebuttal testimony.³² Although the last two contracts for 70 MW are dedicated to New Mexico, there is no division in the Loads and Resources Study for PPAs that are dedicated to one jurisdiction.³³ All PPA's are used to provide the resources. Thus, if the additional contracts are valued at the same 70% as the older contracts, they contribute 189 MW, EPE's evaluation has only 50MW (25% of the two 100 MW contracts) EPE does not explain why it should be so vastly different from ERCOT's 76%³⁴ or from Entergy Louisiana which is 50% or twice what EPE credits.³⁵ The Commission should reject EPE's approach to credit solar resources because it is inconsistent with what is occurring in Texas and adjacent Louisiana, and because EPE's approach

²⁸ Tr. at 51:3-7, Gallegos Cross (June 9, 2020), Tr. at 49:6-10), Gallegos Cross(June 9, 2020)

²⁹ Tr. at 62:7-63:11, Gallegos Recross (June 9, 2020)

³⁰ EPE Brief at 23-25

³¹ Direct Testimony of Omar Gallegos, EPE Ex. 4 Exhibit OG 3 and 4 (Bates 56-57).

³² Tr. at 20:22-21:15 Schichtl Cross(June 9, 2020)

³³ Tr. at 61:2: 22 Gallegos Recross (June 9, 2020)

³⁴ Direct Testimony of Scott Norwood, CEP Ex. 1 at 17-18(Bates 18-19) Ex. SN-5 (Bates 39)

³⁵ Tr. at 66:25-67:11, Oliver Cross (June 9, 2020)

is internally inconsistent, seemingly manipulated to get to EPE's desired result to justify the addition of Newman 6.

3. Timing of peak demand

In this section of the brief, EPE dismisses the potential effects of Time of Use pricing that may impact future demand, interruptible rates that may impact the peak demand times, and virtually anything else. EPE is pursuing and intends to pursue such additions as advanced metering in the very near future, but gives no effect to the impact such rates viable with advanced metering may have on future rates and future demands. EPE does admit that the annual peak only occurs during a very few hours of the year. EPE sought and selected resources that could be used to serve short-term peaks, . . .³⁶

4. Effect of COVID-19 on long-term peak demand

EPE is steadfast in ignoring the effect of COVID-19 on the economy, the service area, the conduct of business, and the new normal of our existence.³⁷ First EPE persists in discussing data that does not impact the methods it uses to project peaks for system planning purposes. Staff also makes the same arguments as EPE .³⁸ As the City discussed in its initial brief,³⁹ EPE projects energy (kWh or GWh usage) and then converts a year estimate into demand by using a single year system load factor.⁴⁰ Put another way, April and May peaks are not germane to the inquiry whether the annual peak for any particular year is affected by the pandemic. Moreover, the April usage was reduced (as one would expect). EPE provided no details on any May usage except that the information not part of the record was confidential.⁴¹ COVID-19, the recession and the changes which are the "new normal" including remote working, reduced travel and reduced virtually everything, may well impact the future. EPE's full speed ahead approach is neither reasonable nor prudent in the summer of 2020. The solution is to not commit to build Newman 6 at this time. Moreover, EPE's claims that Newman 6 is needed to replace Rio Grande 7, Newman

³⁶ EPE Brief at 27-28

³⁷ EPE Brief at 28-29

³⁸ Staff Brief at 11-12

³⁹ City of El Paso Initial Brief at 11-12

⁴⁰ Tr at 70:1-14; Novela Cross (June 9,2020)

⁴¹ Tr. at 74:6-10, Novela Cross (June 9, 2020)

1, and Newman 2, is not the case if the load growth is not at the levels projected in 2017 or even 2020 before COVID 19. As Mr. Norwood demonstrated, the Company has the flexibility (even ignoring COVID-19) to supply the level of capacity until 2027 without adding Newman 6.⁴² The issue likely comes down to the quote from Mr. Novela's rebuttal in EPE's brief. His opinion is that EPE has to plan for uncertainty by forecasting what it knows. EPE is looking back, not looking forward, and not understanding that the COVID-19 pandemic is unlike anything it has seen before. EPE does not know the effect of COVID-19, so it is choosing to ignore it. EPE is asking the Commission to ignore any effects of COVID-19 as well. EPE's head in the sand approach is untenable in the summer of 2020. In addition, the references to the rebuttal graphs of Mr. Gallegos⁴³ are no help in that they do consider, additional contracts, a reasonable capacity contribution for the solar PPAs and other means of satisfying demand in 2023. Neither EPE nor Staff gave proper consideration to the effects of COVID-19.

iii. Is Newman Unit 6 lowest reasonable cost resource to meet the need

In this section of its brief EPE discussed its original decision making process, which occurred prior to the New Mexico ETA, prior to the COVID-19 crisis and prior to EPE's decision to enter into additional solar purchased power contracts.⁴⁴ The original decision making, except for the issue of the capacity contribution of the solar purchased power contracts on need for additional generation has not been an issue in the hearing.

- 1. Alternatives to Newman 6 considered*
 - a. Delaying retirements*
 - b. Short-term market power purchases*
- 2. New Mexico Energy Transition Act ("ETA") considerations*
- 3. Future carbon regulations*

⁴² Norwood Direct CEP Ex. 1 at 13 (Bates 14)

⁴³ Workpapers to Gallegos Rebuttal, EPE Ex. 13. Electronic versions of OG-R-3 and OG-R-4

⁴⁴ EPE Brief at 31-35

III. EFFECT OF GRANTING THE CCN ON EPE AND ANY ELECTRIC UTILITY SERVING THE PROXIMATE AREA

- A. Effect on EPE
- B. Effect on other utilities

IV. EFFECT ON CUSTOMERS, COMMUNITY AND ENVIRONMENT

- A. *Improvement of service or lowering cost to consumers*
 - i. *Cost to Customers*

EPE provided an incorrect, and understated cost to customers. The claimed rate effect of an increase in the initial year of \$1.77 offset by fuel cost savings of \$.32 of \$1.45 per month. The problem EPE never answered is that its estimate does not account for either the fact that EPE does not allocate generation costs based on energy usage among classes as it did in the estimate, or the effect of its promises to New Mexico of decreasing jurisdictional allocation as an issue related to the ETA. Thus, EPE has not addressed the cost to Texas customers of this proposed construction.

- ii. *New Mexico ETA considerations*

EPE's discussion of the effects of the ETA⁴⁵ makes no sense. Without any explanation, reasoning or citation to evidence, EPE makes the claim that the ETA could increase costs to Texas customers only if the Application is denied in Texas, and only if the reason for the denial is due to concerns about the ETA. Contrary, to the unsupported conclusion, the record does indicate that EPE has told New Mexico not to worry about the cost of Newman 6, because there will be decreasing allocations of production plant in New Mexico, in part due to dedicated resources there.⁴⁶ No matter how one looks at it, EPE has not adequately addressed the effects of the ETA on Texas customers if Newman 6 is certified in Texas, or even considered the impacts if Newman 6 is certified in Texas and not certified in New Mexico.

⁴⁵ EPE Brief at 37

⁴⁶ Tr. at 26:12-20 Schichtl Cross (June 9, 2020)

- B. Effect on implementation of customer choice
- C. Other PURA 37.056(c) factors
 - i. Community values
 - ii. Recreational and park areas
 - iii. Historical and aesthetic values
 - iv. Environmental integrity
 - v. Effect on ability of the state to meet goal of adding renewable energy resources established by PURA § 39.904(a).

V. RELIABILITY

- A. *Satisfaction of identified reliability needs per PURA 39.452(j)*
 - i. *Cost-effective reliability improvement*
 - ii. Western Electricity Coordinating Council (WECC) reliability or costs if Newman Unit 6 approved

VI. TEXAS PARKS AND WILDLIFE

VII. OTHER ISSUES

- A. Conditions/reporting requirements/reviews
- B. Seven-year limit

VIII. CONCLUSION

EPE concludes by stating that the Commission should approve the application because Newman 6 was fairly chosen through a thorough and robust solicitation.⁴⁷ The problem with that approach is that the Commission must decide this application based on a pre-COVID-19 world. At best EPE would admit it does not know the effects of COVID-19. At worst, EPE contends that COVID-19 is no different from the recessions of 2001 and 2008-2009. EPE refuses to recognize that there are current and most likely will be future impacts from COVID-19. EPE has not

assigned proper values to certain PPA's in order to help justify the Newman 6 project. . EPE has other viable options to Newman 6. EPE should postpone its decision to construct a new generation facility until the current and future impacts of COVID-19 are understood. It is not reasonable nor necessary for EPE to proceed with Newman 6 at this time. EPE has not satisfied its burden in this case. The Commission should deny the application.

Respectfully submitted,

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Certificate of Service

I certify that a true and correct copy of this document was served by e-mail and/or US mail on all parties of record in this proceeding on July 7, 2020.

 /s Norman J. Gordon
Norman J. Gordon