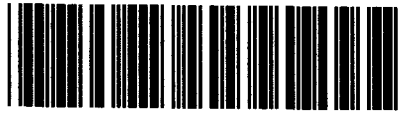




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| <p>JOINT PETITION OF EL PASO ELECTRIC COMPANY AND THE CITY OF EL PASO FOR APPROVAL OF FUEL-RELATED PROVISIONS OF RATE AGREEMENT</p> | <p>§ § § § §</p> | <p>BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS</p> |
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**DIRECT TESTIMONY OF
GARY R. HEDRICK
ON BEHALF OF
EL PASO ELECTRIC COMPANY**

August 2006

149

PUC DOCKET NO. 32289

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| JOINT PETITION OF EL PASO ELECTRIC COMPANY AND THE CITY OF EL PASO FOR APPROVAL OF FUEL-RELATED PROVISIONS OF RATE AGREEMENT | § § § § § | BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS |
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DIRECT TESTIMONY OF GARY R. HEDRICK

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| Exhibit GRH-4 | Navigant Report |
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| JOINT PETITION OF EL PASO ELECTRIC COMPANY AND THE CITY OF EL PASO FOR APPROVAL OF FUEL-RELATED PROVISIONS OF RATE AGREEMENT | § § § § § | BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS |
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DIRECT TESTIMONY OF

GARY R. HEDRICK

1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Gary R. Hedrick. My business address is El Paso Electric Company, 100
4 N. Stanton, El Paso, Texas 79901.

5

6 Q. WHAT IS YOUR CURRENT POSITION?

7 A. I am President and Chief Executive Officer of El Paso Electric Company (“EPE” or
8 the “Company”).

9

10 Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL
11 QUALIFICATIONS.

12 A. I hold both a Bachelor and a Master of Business Administration degree from the
13 University of Texas at El Paso. I have completed the Stone & Webster Utility
14 Management Development Program, as well as the Harvard University – Kennedy
15 School of Government Leadership Program for Senior Executives.

1 I began my career with the Company in 1977. Between the years of 1977-
2 1988, I held various management and professional positions within the Company.
3 From 1988-1990, I was the Company's Treasurer. In 1990, I was promoted to Vice-
4 President, Financial Planning & Rate Administration and held this position until 1996.
5 From 1996-2000, I held the position of Vice-President, Chief Financial Officer &
6 Treasurer. From 2000-2001, I became the Company's Executive Vice-President,
7 Chief Financial & Administrative Officer. And, since 2001, I have been the
8 Company's President and Chief Executive Officer.

9
10 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

11 A. My testimony supports the Commission's approval of the fuel-related provisions of
12 the rate agreement, executed July 12, 2005, between EPE and the City of El Paso
13 (2005 Rate Agreement), as implemented through the Stipulation entered in this case.
14 The 2005 Rate Agreement represents the determination of just and reasonable rates by
15 the City of El Paso, a regulatory authority with original jurisdiction over
16 approximately 86% of the revenues in EPE's Texas service territory. Those rates
17 establish overall revenues at an amount that permits EPE a reasonable opportunity to
18 earn a reasonable return on its invested capital.

19 In their Petition filed in this case, EPE and the City of El Paso (Joint
20 Petitioners) specifically request that the Commission order that (1) EPE continue to
21 reconcile fuel and purchased power expenses in accordance with the Commission's
22 fuel rules in effect on July 1, 1995, (2) customers be credited 25% of the wheeling
23 revenues and off-system sales margins and that EPE retain 75% of such amounts, and
24 (3) EPE begin such allocation of wheeling revenues and margins as of July 1, 2005.

1 Joint Petitioners have joined with Commission Staff and Border Steel, Inc. in a
2 Stipulation Implementing Fuel Provisions of Rate Agreement (Stipulation) that
3 supports this request. In addition to supporting the approval of the fuel-related
4 provisions of the 2005 Rate Agreement, the Stipulation commits EPE to extend key
5 provisions of the Rate Agreement (originally applicable only within the City of El
6 Paso) throughout its Texas service territory. I will discuss these commitments, as well
7 as the fuel-related provisions of the Rate Agreement, in this testimony. I have
8 attached the Stipulation to my testimony as Exhibit GRH-1.

9
10 **II. CONTINUATION OF DOCKET NO. 12700 RATE TREATMENTS**

11 Q. HAS THE COMMISSION PREVIOUSLY APPROVED SIMILAR TREATMENT
12 OF EPE'S WHEELING REVENUES AND OFF-SYSTEM SALES MARGINS?

13 A. Yes.

14
15 Q. PLEASE EXPLAIN.

16 A. In 1995, the Commission approved similar rate treatments in Commission Docket No.
17 12700. That comprehensive settlement froze EPE's Texas base rates for a period of
18 ten years, giving EPE and its customers ten years of rate stability and predictability
19 and effectively eliminating the need for long and costly rate proceedings. At the
20 expiration of the Docket No. 12700 stipulation, the City and EPE agreed to extend
21 those benefits within the City of El Paso by entering into the 2005 Rate Agreement.
22 On July 12, 2005, the El Paso City Council approved the 2005 Rate Agreement.

23 The 2005 Rate Agreement, like its Docket No. 12700 predecessor, addresses
24 both base rate and fuel treatments. Both settlements include base rate and fuel-related

1 provisions in order to establish an overall just and reasonable revenue level. The 2005
2 Rate Agreement extends the Docket No. 12700 base rate freeze within the City, as
3 well as the treatment of certain fuel-related revenues and expenses. Specifically, the
4 2005 Rate Agreement calls for EPE to continue to reconcile its fuel and purchased
5 power costs during the new 2005 Rate Agreement freeze period according to the
6 Commission's Substantive Rules in effect on July 1, 1995 (the rules in effect at the
7 time the Docket No. 12700 base rates were set). As with the comprehensive
8 settlement reached in Docket No. 12700, the 2005 Rate Agreement calls for the
9 sharing of wheeling revenues and off-system sales margins between customers and
10 EPE.

11

12 Q. PLEASE EXPLAIN THE RATIONALE UNDERLYING THE 2005 RATE
13 AGREEMENT.

14 A. The Joint Petitioners entered into the 2005 Rate Agreement in an effort to preserve the
15 mutual value of base rate certainty and stability, enhance Company participation in
16 community and economic development efforts within the City of El Paso, and
17 minimize litigation costs for rate proceedings during the New Freeze Period. EPE's
18 electric service within the City of El Paso comprises 85% of EPE's total Texas
19 customers, 84% of EPE's total Texas kWh sales, and 86% of EPE's total Texas
20 revenues. Consequently, the cost effective establishment of utility revenues within the
21 city limits of El Paso represents a significant benefit to both EPE and its customers.

22

23 Q. PLEASE DESCRIBE IN MORE DETAIL THE FUEL-RELATED PROVISIONS
24 APPROVED BY THE COMMISSION IN DOCKET NO. 12700.

1 A. The Stipulation and Settlement Agreement (Schedule D to the Agreed Order in Docket
2 No. 12700) specifies that EPE is to reconcile its fuel costs “according to the
3 Commission’s substantive rules in effect on July 1, 1995.” (Docket No. 12700
4 Stipulation, Para. 2(f).) I provide a copy of the Agreed Order and its Schedule D as
5 Exhibit GRH-2 and a copy of the relevant portions of the Commission’s 1995
6 substantive rules addressing fuel cost recovery as Exhibit GRH-3. The 1995 rules
7 regarding fuel cost recovery are substantially the same as the Commission’s current
8 rules, with a notable exception of transmission wheeling. Unlike the general treatment
9 of non-ERCOT utilities in the Commission’s present fuel rules, the 1995 rule
10 classifies wheeling revenues and expenses as components of eligible fuel costs.

11 The Docket No. 12700 Agreed Order and Stipulation required EPE to share
12 wheeling revenues and margins on off-system sales with its Texas retail customers.
13 (Agreed Order, FoF No. 19, Docket No. 12700 Stipulation Para. 9.) Specifically, the
14 Agreed Order states:

15 As part of the overall settlement of this case, a reasonable
16 sharing beginning July 1, 1995 and continuing during the
17 Freeze Period of all margins on off-system sales (as defined in
18 the Stipulation) and wheeling revenues will allow ratepayers to
19 receive (i) 25 percent of such margins and revenues in the form
20 of a credit to their fuel costs during the five-year period
21 commencing July 1, 1995 and (ii) 50 percent of such margins
22 and revenues the remainder of the Freeze Period.

23 The fuel-related provisions of the 2005 Rate Agreement provide continuity to EPE and
24 its customers regarding these fuel treatments approved in Docket No. 12700 and,
25 coupled with the base rate freeze, provide EPE the opportunity to earn a reasonable
26 return on its investment.

27

1 Q. WHAT ARE THE FUEL-RELATED PROVISIONS OF THE 2005 RATE
2 AGREEMENT FOR WHICH YOU ARE REQUESTING COMMISSION
3 APPROVAL?

4 A. As set out in Section I of the Stipulation entered in this case, the signatories agree that
5 “EPE shall continue to reconcile fuel and purchased power expenses in accordance
6 with the Commission’s Fuel Rules in effect on July 1, 1995,” that “customers will be
7 credited 25% of the wheeling revenues and off-system sales margins, while EPE will
8 retain 75%,” and that EPE shall begin this allocation effective July 1, 2005.

9
10 Q. IS EPE ASKING THE COMMISSION TO APPROVE THE 2005 RATE
11 AGREEMENT PASSED BY THE CITY OF EL PASO?

12 A. No. The City Council adopted the 2005 Rate Agreement pursuant to its exclusive
13 original jurisdiction over the rates, operations, and services of EPE pursuant to PURA
14 § 33.001. Although the City of El Paso has made a determination of the just and
15 reasonable nature of the base rates within the City and has agreed to a recovery
16 mechanism for fuel-related revenues and expenses, the City does not have jurisdiction
17 over fuel-related rates in Texas. Therefore, Commission approval of these fuel-related
18 provisions is again required. EPE and the City seek the Commission’s assistance in
19 implementing the 2005 Rate Agreement by giving its approval to the fuel-related
20 provision of that agreement.

21

1 **III. REVIEW OF FUEL-RELATED PROVISIONS**

2 Q. IN YOUR OPINION, WHAT IS THE APPROPRIATE CONTEXT IN WHICH TO
 3 REVIEW THE FUEL-RELATED PROVISIONS OF THE 2005 RATE
 4 AGREEMENT?

5 A. The fuel-related provisions of the 2005 Rate Agreement are best viewed in the context
 6 of the overall rate agreement.

7
 8 Q. ARE THE OVERALL RATES PROVIDED FOR IN THE 2005 RATE
 9 AGREEMENT DESIGNED TO PERMIT EPE A REASONABLE OPPORTUNITY
 10 TO EARN A REASONABLE RETURN ON ITS INVESTED CAPITAL?

11 A. Yes. In adopting the 2005 Rate Agreement, the El Paso City Council found that “it is
 12 in the public interest to provide for cost-based rates which permit the Company a
 13 reasonable opportunity to earn a reasonable return on the Company’s invested
 14 capital.” Therefore, as with the overall rates established in Docket No. 12700, both
 15 the base and fuel rate treatments, together, combine to allow EPE a reasonable
 16 opportunity to earn a reasonable rate of return.

17
 18 Q. ARE THE BASE RATES THAT WERE APPROVED IN DOCKET NO. 12700 THE
 19 SAME BASE RATES THAT ARE NOW IN EFFECT AND WILL REMAIN SO
 20 UNDER THE 2005 RATE AGREEMENT?

21 A. No. Except for those large customer classes that chose to exempt themselves from the
 22 rate freeze in 1995, the current rates are actually lower than those approved in Docket
 23 No. 12700. In 1999, EPE, the City, and others entered into a stipulation in Docket No.
 24 20450, *Application of El Paso Electric Company to Reconcile Fuel and Fuel-Related*

1 *Revenues and Implement Certain Voluntary Base Rate Reductions and Refunds*, which
2 led to the voluntary reduction of EPE's base rates by about \$15,400,000 per year. For
3 residential customers, this voluntary reduction amounted to an approximate 8.8%
4 decrease. It is these new, lower rates that are frozen in the City of El Paso by the 2005
5 Rate Agreement.

6
7 Q. WHAT HAS BEEN EPE'S EARNINGS EXPERIENCE UNDER THE 1999 RATES
8 THAT ARE NOW FROZEN UNDER THE 2005 RATE AGREEMENT?

9 A. As can be seen in EPE earnings monitoring reports filed with the Commission for the
10 years 2000 and forward, EPE's return on invested capital has varied between 3.51%
11 and 6.54%. EPE's return on equity shown on these same reports has varied between
12 -2.67% and 7.34%.

13
14 Q. IN YOUR OPINION, WILL EPE'S ANTICIPATED RETURNS EXCEED
15 REASONABLE RETURNS DURING THE TERM OF THE RATE AGREEMENT?

16 A. No. Barring unusual circumstances, EPE expects that its prospective earned returns,
17 inclusive of earnings from shared off-system sales margins, will provide EPE with an
18 opportunity to earn a return commensurate with its risks and of that of similarly
19 situated utilities.

20
21 Q. ARE THERE ANY CUSTOMER PROTECTIONS AGAINST EARNING
22 EXCESSIVE RETURNS DURING THE TERM OF THE RATE AGREEMENT?

23 A. Yes. As I will describe later in my testimony, EPE has agreed to a "deadband" rate
24 mechanism that would share any such returns.

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Q. IN APPROVING THE 2005 RATE AGREEMENT, DID THE CITY EVALUATE EPE'S OPERATING EXPENSES?

A. Yes. As is required under the 2005 Rate Agreement, the City selected a qualified consultant, Navigant Consulting, Inc., to determine whether EPE's operating expenses were within a reasonable range. Overall, Navigant concludes that EPE's operating expenses were reasonable. The measure of just and reasonable rates under Texas law is that they afford the utility a reasonable opportunity to earn a reasonable return on its invested capital. Therefore, because EPE's operating expenses are reasonable and EPE is expected to earn a reasonable return on its invested capital (including the effects of margins retained from off-system sales), EPE's rates are just and reasonable. I have attached the Navigant Report as Exhibit GRH-4.

IV. STIPULATION

Q. HAS EPE MADE ANY COMMITMENTS BEYOND THOSE IN THE 2005 RATE AGREEMENT THAT SUPPORT COMMISSION APPROVAL OF THE FUEL-RELATED PROVISIONS?

A. Yes. EPE has made additional commitments that are reflected in the Stipulation filed in this docket.

Q. WHAT ARE THOSE COMMITMENTS?

A. First, under Section 1(c) of the 2005 Rate Agreement, EPE may not seek an increase in base rates during the New Freeze Period, except in very limited circumstances. In the Stipulation filed in this case, EPE stipulates that it will not seek an increase in base

1 rates during the New Freeze Period in the rest of EPE's Texas jurisdictional service
2 area outside the City of El Paso. This commitment to not seek an increase in base
3 rates is subject to the same terms and conditions set forth in the 2005 Rate Agreement.

4 Second, EPE has stipulated to extend its obligation under the 2005 Rate
5 Agreement to share earnings above the upper-end of the "deadband" with customers
6 or jurisdictional regulatory authorities in the rest of EPE's Texas service area outside
7 the City of El Paso.

8
9 Q. PLEASE EXPLAIN EPE'S AGREEMENT TO SHARE EARNINGS ABOVE THE
10 DEADBAND.

11 A. As set out in the 2005 Rate Agreement, EPE and the City of El Paso have agreed that
12 EPE will share earnings above a certain level. Specifically, this level, or "deadband,"
13 is defined in the 2005 Rate Agreement:

14 The midpoint of the Deadband shall be defined as four hundred
15 (400) basis points above the 12-month Moody's Public Utility
16 Bond Yield average for utilities of comparable credit quality
17 during the Supplemental Franchise Fee payment period. The
18 ceiling of the Deadband will then be calculated as two hundred
19 (200) basis points above the midpoint and the floor as two
20 hundred (200) basis points below the midpoint.

21 If EPE's annual return on equity, as defined in the 2005 Rate Agreement, exceeds the
22 ceiling of the Deadband, the Company shall return 50% of the City jurisdictional
23 return above the ceiling. Based on currently available data, the ceiling, midpoint, and
24 floor of the Deadband are 12.2%, 10.2%, and 8.2%. I have attached these calculations
25 as Exhibit GRH-5.

26 Similar to the earnings sharing provisions of the 2005 Rate Agreement,
27 described above, in the Stipulation filed in this case, EPE pledges that, if the

1 Company's annual return on equity exceeds the ceiling of the Deadband, the Company
2 shall return 50% of the earnings above the ceiling in EPE's Texas jurisdiction outside
3 the City of El Paso.

4
5 Q. WHY IS A "DEADBAND" MECHANISM A REASONABLE MECHANISM TO
6 USE FOR REVENUE SHARING PURPOSES?

7 A. This mechanism provides EPE with an opportunity to earn a reasonable return and
8 provides an economic incentive to operate as efficiently as possible, thereby benefiting
9 both customers and EPE. This mechanism further protects customers from returns on
10 equity above a reasonable level by sharing such returns, should they occur, without
11 having to incur the cost of litigation associated with a rate case. In addition, the return
12 on equity percentage level is dynamic, reflecting current economic conditions, not
13 simply that related to a fixed point in time. And, furthermore, this mechanism
14 provides customers with an opportunity to share in larger than expected returns, an
15 opportunity they would not have under traditional ratemaking.

16
17 Q. HOW IS RETURN ON EQUITY DEFINED FOR THE PURPOSE OF REVENUE
18 SHARING?

19 A. As stated in paragraph 1(d)(iii) of the 2005 Rate Agreement, return on equity is
20 "defined as the Company's net income before discontinued operations, extraordinary
21 items, and cumulative effects of a change in accounting principle, divided by average
22 common stock equity adjusted in that year for discontinued operations, extraordinary
23 items and cumulative effects of a change in accounting principle, as reported in the

1 Company's Form 10-K Annual Report filed with the Securities and Exchange
2 Commission . . .”

3
4 Q. WHY IS THIS DEFINITION OF RETURN ON EQUITY REASONABLE TO USE
5 FOR REVENUE SHARING PURPOSES?

6 A. The primary advantage of using this definition of return on equity for revenue sharing
7 purposes is the transparent nature of the calculation. Given the relatively
8 straightforward definition of earnings and average common equity balances, and that
9 such information is readily obtainable from EPE's SEC 10-K filing, virtually anyone
10 will be able to calculate EPE's compliance with the revenue sharing provisions of
11 EPE's rate agreement.

12
13 Q. HOW DOES THE STIPULATION ACCOMPLISH THIS SHARING OF
14 EARNINGS ABOVE THE DEADBAND?

15 A. Section II of the Stipulation filed in this case calls for EPE to return such earnings to
16 customers taking service in the Commission's original jurisdictional areas of EPE's
17 territory through a base rate rider. For customers taking service in original jurisdiction
18 cities other than El Paso, EPE will seek direction from those cities regarding the
19 distribution of such earnings.

20
21 Q. ARE WHEELING REVENUES AND OFF-SYSTEM SALES MARGINS
22 RETAINED BY THE COMPANY INCLUDED IN THE CALCULATION OF
23 RETURN ON EQUITY?

1 A. Yes. Off-system sales are reflected in EPE's operating revenues in its Form 10-K.
2 Therefore, the retained wheeling revenues and off-system sales margins contribute to
3 EPE's net income reported in the Form 10-K.

4
5 Q. WHY IS THIS AN IMPORTANT CONSIDERATION?

6 A. Wheeling revenues and retained margins are part of EPE's overall revenues that will
7 determine its book return on equity. Therefore, these revenues and retained margins
8 allow EPE to earn a reasonable return without having to raise base rates to do so.
9 Should EPE's return on equity exceed the upper-end of the deadband, an additional
10 50% of such revenues and retained margins will be shared with customers either
11 through a direct refund or indirectly through another benefit such as lower city taxes
12 or increased city services. Customers enjoy these potential benefits, while EPE
13 shoulders a risk that reduced opportunities in the market may reduce retained off-
14 system sales margins.

15
16 **V. ADDITIONAL CONSIDERATIONS**

17 Q. ARE THERE OTHER BENEFITS CONVEYED BY THE 2005 RATE
18 AGREEMENT, INCLUSIVE OF ITS FUEL-RELATED PROVISIONS, THAT YOU
19 WOULD LIKE TO IDENTIFY?

20 A. Yes. The 2005 Rate Agreement helps establish a stable and predictable business
21 environment in El Paso for business recruitment and other economic development
22 activities. The Agreement also recognizes the value to the community and
23 surrounding areas of having a financially healthy NYSE listed company headquartered
24 in El Paso. The 2005 Rate Agreement, inclusive of its fuel-related provisions,

1 enhances the Company's ability to participate in local civic and charitable programs.
2 And, as I have alluded to above, customers ultimately pay the costs of regulation and
3 ratemaking. The 2005 Rate Agreement minimizes these costs for the term of the
4 agreement and makes funds available for more constructive uses. More generally,
5 Commission approval of the fuel-related provisions of the 2005 Rate Agreement will
6 acknowledge that the public interest is served by efficient and cost effective
7 settlements such as the 2005 Rate Agreement.

8
9 Q. CAN YOU PROVIDE AN EXAMPLE OF THE INCREASED CIVIC
10 PARTICIPATION MADE POSSIBLE BY THE 2005 RATE AGREEMENT,
11 ALONG WITH ITS FUEL-RELATED PROVISIONS?

12 A. Yes. EPE's Board of Directors has approved a gift of \$5 million to the El Paso
13 campus of the Texas Tech University School of Medicine, made in ten annual
14 installments of \$500,000 each. This contribution should result in more physicians in
15 an underserved area of the State. The 2005 Rate Agreement, along with its fuel-
16 related provisions, help make this contribution possible. In fact, the gift is expressly
17 conditioned on the continuation the 2005 Rate Agreement and its margin-sharing
18 provisions. If the Rate Agreement terminates prior to the expiration of its five-year
19 term or the margin-sharing ratios are reduced (or eliminated) during that same term,
20 EPE has no further obligation under the pledge.

21
22 Q. WHAT IS YOUR RECOMMENDATION?

23 A. I recommend that the Commission approve the fuel-related provisions of the 2005
24 Rate Agreement as implemented through the Stipulation entered into in this case.

1 These provisions meet the requirements of P.U.C. SUBST. R. 25.236(a)(7), are
2 consistent with Commission precedent, and are a reasonable resolution of the issues in
3 this proceeding.

4
5 **VI. PURA § 39.903(g)**

6 Q. WHY HAVE YOU INCLUDED A SECTION IN YOUR TESTIMONY
7 ADDRESSING PURA § 39.903(g)?

8 A. The Commission's Preliminary Order entered in this proceeding identifies certain
9 issues that the Commission intends to address in this docket. Issue nos. 7 and 8
10 identified in that order are:

11 7. Is the low-income weatherization-program funding
12 provided by EPE sufficient to meet the requirements of
13 PURA § 39.903(g)?
14

15 8. Are the requirements of PURA § 39.903(g) fulfilled by
16 the rate agreement and the enrollment system for the
17 low-income rider?
18

19 These issues were raised by Texas ROSE, an intervenor in this proceeding. PURA §
20 39.903(g) states, "Until customer choice is introduced in a power region, an electric
21 utility may not reduce, in any manner, programs already offered to assist low-income
22 electric customers."
23

24 Q. DOES THE APPLICATION OF JOINT PETITIONERS IN THIS DOCKET
25 ADDRESS, CHANGE, OR REDUCE PROGRAMS OFFERED BY EPE TO ASSIST
26 LOW-INCOME ELECTRIC CUSTOMERS?

27 A. No. The application filed in this docket does not address or alter any low-income
28 weatherization funding provided by EPE or the enrollment system for the low-income

1 rider available for residential customers. In other words, the application filed in this
2 docket has nothing to do with EPE's low-income programs.

3
4 Q. HAS EPE REDUCED, IN ANY MANNER, PROGRAMS ALREADY OFFERED
5 TO ASSIST LOW-INCOME ELECTRIC CUSTOMERS?

6 A. No. Section 39.903(g) of PURA became effective on September 1, 1999 as part of the
7 electric industry restructuring legislation, Senate Bill 7. Since that time, EPE's low-
8 income programs have been governed by two documents. First, the Commission's
9 Order in Docket No. 19545 and, later, an agreement between EPE, Texas ROSE, and
10 the Texas Legal Services Center (TLSC). These two documents are attached to this
11 testimony as GRH-6 and GRH-7. The Commission's Order in Docket No. 19545
12 requires EPE to fund low-income programs through the Texas Department of Housing
13 and Community Affairs in the amount of \$240,000 for 1999 and \$385,000 per year for
14 2000 and 2001. The agreement with Texas ROSE and TLSC, entered into on August
15 22, 2001, continues this funding in the amount of \$450,000 for 2002, \$455,000 for
16 2003, \$460,000 for 2004, and \$268,300 for the period from January 1, 2005 through
17 July 31, 2005 (an amount equivalent to \$460,000 on an annual basis). Since the
18 expiration of this agreement, EPE has continued to fund this low-income program in
19 the amount of \$460,000 per year.

20 Therefore, EPE has not reduced, in any manner, programs already offered to
21 assist low-income electric customers since the effective date of PURA § 39.903(g). In
22 fact, as can be seen above, EPE has increased funding for this program in many years
23 since then.

24

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2 A. Yes, it does.

CRH

P.U.C. DOCKET NO. 32289

| | | |
|-------------------------------|---|---------------------------|
| JOINT PETITION OF EL PASO | § | |
| ELECTRIC COMPANY AND THE CITY | § | BEFORE THE |
| OF EL PASO FOR APPROVAL OF | § | PUBLIC UTILITY COMMISSION |
| FUEL-RELATED PROVISIONS OF | § | OF TEXAS |
| RATE AGREEMENT | § | |

STIPULATION IMPLEMENTING FUEL PROVISIONS OF RATE AGREEMENT

This Stipulation is entered into by and between El Paso Electric Company (EPE or the Company) and the City of El Paso (City), the Staff of the Public Utility Commission of Texas (Commission Staff), and Border Steel, Inc., through their duly authorized representatives (collectively, Signatories).

I. Implementation of Fuel Related Provisions of Rate Agreement

The Signatories agree that the fuel-related provisions of the Rate Agreement entered into by the City and EPE effective July 1, 2005 (Rate Agreement) (Attachment A to the Petition) should be approved by the Commission as set out below:

A. Pursuant to Section 1(f) of the Rate Agreement, EPE shall continue to reconcile fuel and purchased power expenses in accordance with the Commission’s Fuel Rules in effect on July 1, 1995.

B. Pursuant to Section 6 of the Rate Agreement, customers will be credited 25% of the wheeling revenues and off-system sales margins, while EPE will retain the remaining 75%.

C. EPE shall begin allocating margins consistent with the margin sharing mechanism in Section 6 effective July 1, 2005.

II. Agreement Not to Increase Base Rates Outside the City Limits

As further inducement for the support of the approval of the fuel-related provisions of the Rate Agreement, Sections 1(f) and 6, as outlined in the Petition filed on January 17, 2006 in Docket No. 32289, EPE agrees as follows:

A. In Section 1(c) of the Rate Agreement, EPE makes a commitment to not seek from its Texas regulatory authorities an increase in base rates applicable during the New Freeze Period. EPE stipulates that this commitment extends to customers in the Commission's original jurisdictional areas and in the municipalities retaining original jurisdiction over EPE's rates (other than the City of El Paso) (Original Jurisdiction Cities) in EPE's Texas service territory. EPE further stipulates that this commitment applicable outside the original jurisdiction of the City of El Paso extends to the tariffed base rates stated in the rate schedules applicable to the Exempt Classes, as that term is defined in the Rate Agreement. This commitment to not seek an increase in base rates from Texas regulatory authorities is subject to the same terms and conditions set forth in the Rate Agreement. To the extent that a base rate tariff applicable to an Exempt Class allows for a rate different from the tariffed rate, this commitment does not alter EPE's ability to negotiate a new rate different from the tariffed rate or to change a negotiated rate when such an agreement between EPE and the customer expires, provided that the changed rate does not exceed the rate stated in the tariff. To the extent that a base rate tariff does not state a numerical rate but, instead, provides a formula rate, this commitment does not alter the ability of EPE and its customer to calculate or update the calculation of such a rate as provided for in the tariff. To the extent that a base rate tariff grants EPE discretion to determine the availability of a particular rate, this commitment does not alter EPE's ability to exercise that discretion.

B. As explained in Paragraph 1(d)(iii) of the Rate Agreement, if, during the New Freeze Period, the Company's return on equity as defined in Paragraph 1(d)(iii) shall fall below the floor of the Deadband, as defined in Paragraph 1(d)(iv) of the Rate Agreement, and is calculated to remain below the floor, the Company may file for a rate increase. This Stipulation does not alter a party's right, if any, to defend against such a requested rate increase. If, during the New Freeze Period, the Company's annual return on equity shall exceed the ceiling of the Deadband, the Company shall: (1) distribute a proportional share of fifty percent (50%) of the

pre-tax return above the ceiling to customers taking service in the Commission's original-jurisdictional areas of EPE's Texas service territory (calculated by taking the ratio of the Company's gross revenues in those areas of EPE's Texas service territory to the Company's total gross revenues); and (2) seek direction from the Original Jurisdiction Cities (other than the City of El Paso) regarding the distribution of a proportional share of fifty-percent (50%) of the pre-tax return above the ceiling to each municipality's original jurisdictional area of EPE's Texas service territory (calculated by taking the ratio of the Company's gross revenues in those areas to the Company's total gross revenues).

C. The Company will notify the Commission of earnings in excess of the ceiling of the Deadband no later than forty-five (45) days after the filing of the Company's SEC Form 10-K Annual Report with the SEC. Within thirty (30) days of notifying the Commission of such earnings, EPE shall file an application with the Commission for approval of a base rate rider to return such earnings to customers taking service in the Commission's original-jurisdictional areas of EPE's Texas service territory.

D. The Company will notify the Original Jurisdictional Cities of earnings in excess of the ceiling of the Deadband no later than forty-five (45) days after the filing of the Company's SEC Form 10-K Annual Report with the SEC. Within thirty (30) days of notifying the Original Jurisdiction Cities of such earnings, EPE shall present a plan for approval by the Original Jurisdiction Cities of a mechanism to distribute the excess earnings.

E. The terms of this Stipulation are binding on the parties for the term of the New Freeze Period, as it is defined in the Rate Agreement. If the Rate Agreement or any portion of the Rate Agreement expires or terminates, then the terms of this Stipulation are also deemed expired or terminated and no longer in effect.

III. Amended Petition and Additional Notice

A. EPE and the City agree to immediately amend their Petition to indicate that in this proceeding they are no longer seeking Commission approval of Section 5 of the Rate Agreement concerning Palo Verde Nuclear Generating Station Performance Standards.

B. Prior to the Hearing on the Merits in this case, EPE agrees to send notice of this proceeding and this Stipulation to its Texas customers located outside of the City of El Paso and the Texas municipalities that it serves, other than the City of El Paso. This includes providing notice of the relief requested and that, if the fuel related provisions of the Rate Agreement are approved by the Commission, EPE will not seek from its Texas regulatory authorities an increase in base rates applicable during the New Freeze Period.

IV. Miscellaneous

A. A Proposed Order, together with the Findings of Fact, Conclusions of Law, and Ordering Paragraphs will be made a part of this Stipulation and manifest the Signatories' agreement regarding the treatment of the fuel-related provisions of the Rate Agreement. The Signatories respectfully request that the PUCT adopt a final order consistent with this Stipulation and in the form of a Proposed Order that will be drafted by the Signatories at the appropriate time.

B. The Signatories agree that the terms and conditions herein are interdependent and further agree that, given the interdependence of the terms and the comprehensive nature of the compromises and settlement terms, the Stipulation is indivisible. Thus, if the Commission enters an order in Docket No. 32289 that is materially inconsistent with this Stipulation, then any Signatory may withdraw. A Signatory who withdraws shall not be deemed to have waived any procedural right or taken any substantive position on any fact or issue by virtue of the Signatory's entry into the Stipulation or its subsequent withdrawal. However, the parties agree that, if a Signatory withdraws from this Stipulation, all negotiations, discussions and conferences related to this settlement are privileged, inadmissible, and not relevant to prove any issues in Docket No. 32289 pursuant to Texas law, including but not limited to Texas Rule of Evidence 408.

C. The Signatories agree that no oral or written statements made during the course of settlement negotiations may be used for any purpose other than as necessary to support the entry by the PUCT of an order implementing this Stipulation. Other than to support the entry of the stipulation, all oral or written statements made during the course of settlement negotiations are

governed by Texas Rule of Evidence 408 and are inadmissible. The obligations set forth in this paragraph shall continue in full force and effect even if this Stipulation is not approved or otherwise terminated.

D. The Signatories agree that their request to adopt a final order consistent with the terms of this Stipulation does not indicate the Signatories' endorsement or approval of any principle or methodology that may underlie this Stipulation, except where indicated by express findings of fact or conclusions of law. The Signatories also agree that the PUCT's entry of an order consistent with this Stipulation shall not be regarded as precedent for the appropriateness of the methodology underlying the Stipulation, except where express findings of fact or conclusions of law are entered.


E. This Stipulation is binding on each Signatory only for the purpose of settling the issues set forth herein and for no other purposes. The matters resolved are resolved on the basis of a compromise and settlement. The Signatories agree that their decision not to litigate or contest Docket No. 32289 does not waive any Signatory's right to contest such issues in another proceeding (to the extent the issue is not specifically addressed in this Stipulation), including future fuel reconciliation proceedings.

F. Notwithstanding any other provision in this Stipulation, this Stipulation does not alter Commission Staff's right to file rate cases or otherwise seek inquiries into the reasonableness of EPE's rates during the New Freeze Period.

G. Each person signing this document represents that they are authorized to sign it on behalf of the Signatory represented. For administrative convenience, this document may be executed in multiple counterparts and may be filed with facsimile signatures.

SIGNED this ____ day of _____, 2006.

EL PASO ELECTRIC COMPANY

By:  _____
William Coe

**PUBLIC UTILITY COMMISSION
OF TEXAS**

By: _____
Paul Curtis

CITY OF EL PASO

By: _____
Norman Gordon

BORDER STEEL, INC.

By:  _____
Drew Miller

SIGNED this 31st day of July, 2006.

EL PASO ELECTRIC COMPANY

By: _____
William Coe

PUBLIC UTILITY COMMISSION
OF TEXAS

By: Paul A. Curtis
Paul Curtis

CITY OF EL PASO

By: _____
Norman Gordon

BORDER STEEL, INC.

By: _____
Drew Miller

SIGNED this ____ day of _____, 2006.

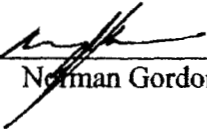
EL PASO ELECTRIC COMPANY

By: _____
William Coe

**PUBLIC UTILITY COMMISSION
OF TEXAS**

By: _____
Paul Curtis

CITY OF EL PASO

By:  _____
Norman Gordon

BORDER STEEL, INC.

By: _____
Drew Miller

GRH 2

DOCKET NO. 12700

APPLICATION OF EL PASO ELECTRIC
COMPANY FOR AUTHORITY TO
CHANGE RATES AND FOR
APPROVAL OF REACQUISITION
OF PALO VERDE LEASED ASSETS

§
§
§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

RECEIVED
AUG 31 1995
PUBLIC UTILITY COMMISSION
AUSTIN, TEXAS

AGREED ORDER

In open meeting at its offices in Austin, Texas, on August 30, 1995, the Public Utility Commission of Texas ("Commission") finds that this docket was processed by the Presiding Officers and Commission in accordance with applicable statutes and Commission rules. On July 27, 1995, El Paso Electric Company ("Company") and the City of El Paso ("City") executed a Stipulation and Settlement Agreement ("Stipulation") contemplating an increase in rates for the Company's Texas service territory. The Stipulation also has been signed by: the Commission General Counsel, the Office of Public Utility Counsel ("OPC"), the State of Texas ("State"), ASARCO Incorporated ("ASARCO"), Phelps-Dodge Refining Corporation ("Phelps-Dodge"), Border Steel Rolling Mills, Inc. and El Paso Iron & Metal Company ("Border Steel"), the Department of Defense ("DOD"), and the International Brotherhood of Electrical Workers ("IBEW") (collectively "Signatories"). Consistent with the Stipulation, the Commission issues the following order:

1. Pursuant to P.U.C. PROC. R. § 22.263, this Order **SHALL** become effective on the date that a Company plan of reorganization consistent with the terms of the Stipulation becomes effective. Provided that the City has not given notice to the Commission that the plan of reorganization is inconsistent with the Stipulation, upon written notification by the Company that the plan has become effective, the Commission will, pursuant to Gov't Code § 2001.142(b), send a copy of this Order and the Company's notice to the service list by first class mail. The notice provisions of this ordering paragraph shall be the sole mechanism for complying with Gov't Code § 2001.142. Pursuant to Gov't Code § 2001.146, motions for rehearing, if any, must be filed no later than the 20th day following such notification. If a plan

of reorganization consistent with the terms of the Stipulation does not become effective or the Stipulation becomes null and void, then this Order and the two prior interim rate orders entered in this docket **SHALL BE** be null and void, except for Ordering Paragraph 10 of the Second Interim Order; provided, however, the Company may continue to charge the rates approved in this Order on an interim basis until such time as the Commission orders otherwise. The Commission specifically retains jurisdiction over this docket until such time as this Order becomes final and non-appealable or all motions for rehearing have been overruled. The Company has agreed, and the Commission hereby **ORDERS**, that each working day between the date of this order and the date this order becomes final **SHALL BE** considered a day of hearing pursuant to the provisions of the Public Utility Regulatory Act of 1995, S.B. 319, 74th Leg., R.S. 1995 ("PURA") § 2.212(d) (formerly § 43(d)).

2. The Commission hereby **APPROVES** those portions of the Stipulation which address the regulation and supervision of the business of the Company consistent with the jurisdiction granted by PURA § 1.101(a), and **ADOPTS** this Order setting rates which are consistent with the Stipulation.
3. Because the Company's proposed merger with Central and South West Corporation ("CSW") under the Third Amended Plan of Reorganization has been terminated, the Commission hereby **DISMISSES** the application filed by the Company and CSW for a determination under PURA § 1.251 (formerly PURA § 63) that the acquisition of the common stock of the Company by CSW is in the public interest.
4. The Company **SHALL** receive a \$24.946 million annual base rate increase in this docket, applicable in all portions of the Company's service area over which the Commission has original or appellate jurisdiction. The distribution of the rate increase agreed to in the Stipulation is reasonable. The tariffs currently on file that became effective on an interim basis on August 3, 1995 are **APPROVED**.

5. The Company **SHALL** retain all base rate revenues collected under its bonded and interim rates, with no refunds or surcharges, and upon the effective date of this Order the Company shall be released from its obligations under any bond supporting such bonded and interim rates.
6. The Commission **ACKNOWLEDGES** that the Stipulation provides that the Company's Texas base rates will be maintained at the levels ordered in this docket during the ten-year period beginning August 2, 1995 (the "Freeze Period") subject to certain limited exceptions provided therein. The ten-year rate freeze agreed to in the Stipulation is unopposed, it is the product of negotiation between the Company and a broad cross-section of its customers, and it is reflective of the relative value to all the parties of the benefits obtained through settlement negotiations.
7. The rate moderation plan ("RMP") established in Docket No. 7460 is **TERMINATED** effective June 30, 1993, and the balance of RMP deferrals in the sum of \$68,070,000, less related ADFIT, as of that date is placed in rate base as of June 30, 1993, and **SHALL** be fully amortized by the end of the Freeze Period, so that there is no balance to be included in rates that may be effective after August 1, 2005. There **SHALL** be no additional Mirror CWIP approved, utilized or amortized for purposes of amortizing the RMP deferrals.
8. Deferred carrying charges and deferred lease payments are **ELIMINATED** from the accounting deferrals for Palo Verde Unit 3, resulting in a balance of \$4,308,000 of Unit 3 accounting deferrals, less \$1,457,000 of related ADFIT, as of June 30, 1993, which will be placed in rate base as of June 30, 1993, and **SHALL** be fully amortized by the end of the Freeze Period. The Company shall recover all remaining Palo Verde Unit 1 and 2 accounting deferrals, subject to the rate freeze limitations under the Stipulation, with the unamortized balance (\$83,312,000, less related ADFIT, as of June 30, 1993) in rate base fully amortized by the end of the Freeze Period, so that all Palo Verde accounting deferrals are **ELIMINATED**

from the Company's books at the end of the Freeze Period and there **SHALL** be no balance to be included in rates that may be effective after August 1, 2005. ADFIT associated with disallowed Unit 3 deferrals **SHALL NOT** be included as an offset to rate base.

9. The application of the Company for a determination that the reacquisition of the leased portions of the Palo Verde assets is consistent with the public interest pursuant to PURA § 1.251 (formerly § 63) is **APPROVED**. Except as provided in Paragraph 13, the reacquired leased Palo Verde assets **SHALL** be included in rate base at their original cost, less accumulated depreciation, as reflected in Schedule A attached to this Order.
10. Palo Verde Unit 3 is deemed to be 100% used and useful in providing service to the public.
11. It is hereby **ORDERED** that, except as provided in paragraphs 12 and 13 below, during the Freeze Period the rate base recognized in Schedule A shall be used as the initial basis for purposes of any cost of service analysis for the Company, including any PURA § 2.211 rate inquiry (or its equivalent) or earnings monitoring evaluation.
12. It is hereby **ORDERED**, that in any proceeding brought by the General Counsel, OPC or the State of Texas during the Freeze Period, pursuant to PURA § 2.211 (formerly § 42) or its equivalent, the Company's rate base **SHALL** include, in addition to the assets recognized in Schedule A to this Order: (1) Palo Verde Unit 3 accounting deferrals in the amount of \$66,654,000, as of June 30, 1993 and (2) additional Docket No. 7460 RMP deferrals (which would have accrued but for termination of the RMP as of June 30, 1993) in the amount of \$25,041,000 for the period of July 1, 1993, through December 31, 1994.
13. It is hereby **ORDERED** that should the Company, its successors or assigns, contrary to the terms of the Stipulation, file for a rate increase effective on a date within the Freeze Period,

then the previously leased Palo Verde assets **SHALL** be assigned the values recognized in Schedule B of this Order for purposes of any such proceeding.

14. It is hereby **ORDERED** that in any proceeding brought under PURA §§ 2.211 or 2.212 (formerly §§ 42 or 43) or its equivalent, for an effective date of the proposed change on or after August 2, 2005 but before August 2, 2006, the Company's tariff or tariffs **SHALL** be designed to collect \$17 million less in base revenues ("Exclusion Factor") than the otherwise authorized revenue requirement. The Exclusion Factor in such a proceeding for an effective date of the proposed change on or after August 2, 2006 but before August 2, 2007 **SHALL** be \$8 million. For rates with an effective date of the proposed change after August 1, 2007 the Exclusion Factor **SHALL** be zero. The Exclusion Factor **SHALL NOT** be considered for financial integrity analysis or cash flow analysis in any proceeding before a Texas regulatory authority.
15. In the event the Company sells, transfers, leases or assigns any operating asset for a value of \$10,000,000 or more during the Freeze Period, it is hereby **ORDERED** that the Texas jurisdictional share of the net gain on such sale **SHALL** be paid to ratepayers as a credit to the base rates notwithstanding the rate freeze over what would have been the remaining life of the asset, unless the City and Company otherwise agree and the Commission approves an alternate treatment. It is further **ORDERED** that ratepayers **SHALL** be credited with a return on the unamortized portion of such gain at the Company's last approved rate of return.
16. The Commission **ACKNOWLEDGES** the Stipulation provides that the Company will file tariffs to implement the discount required by Senate Bill 373, Public Utility Regulatory Act of 1995, S.B. 319, as amended by S.B. 373, § 2.2141, 74th Leg. R.S. 1995. Nothing in this Order prevents such tariffs from becoming effective on October 1, 1995 and remaining effective thereafter consistent with the Stipulation and subject to the right of the State or the Company to seek to adjust base rates on account of a change in such law.

17. The performance standards for the Company detailed in Docket No. 8892 with respect to Palo Verde **SHALL** be used as the mechanism for any future assessments of Palo Verde Units 1, 2 and 3 operations and performance; provided, however, during the Freeze Period under the Stipulation (i) Palo Verde rate base **SHALL NOT** be reduced on account of performance or operations, unless the capacity factor, as measured on a station basis for any consecutive 24 month period, shall fall below 35% and (ii) penalties and rewards for all three Units **SHALL** be reported and evaluated on a calendar year basis using the three-year rolling average dictated by Docket No. 8892. The first such reporting period shall run from January 1, 1993 to December 31, 1995. Any penalties or rewards accruing under the performance standards **SHALL** be incorporated in the Company's fuel reconciliation proceedings during the Freeze Period.
18. The amounts of Palo Verde decommissioning expense allowed on an annual basis in the Company's cost of service **SHALL** be those described in Schedule C to this Order. Such amounts shall be adjusted in any future rate proceeding or earnings monitoring evaluation as necessary to reflect the cost estimate of the most recent official decommissioning study prepared for the Palo Verde participants and to enable the Company to secure an exemption pursuant to section 468A of the Internal Revenue Code from federal income tax liability in connection with its nuclear decommissioning trust. The Company's decommissioning expense shall be recognized as reasonable and necessary in any rate proceeding or earnings monitoring evaluation initiated during the Freeze Period.
19. There **SHALL** be no surcharge of rate case expenses associated with this docket or any previous dockets, including any amounts paid to the City as reimbursement of the City's expenses. The Company **SHALL NOT** recover from Texas retail ratepayers any bankruptcy reorganization costs arising from Case No. 92-10148-FM.

20. Any recovery from the Company's pending lawsuit No. 95-7153, or causes of action that accrued to the Company as a result of the failure of its proposed merger or arising out of the Company's bankruptcy, shall be **RETAINED** by the Company and not passed through to ratepayers. Any costs incurred by the Company in connection with such litigation **SHALL NOT** be considered reasonable and necessary operating expenses for ratemaking purposes in accordance with PURA § 2.203(a) (formerly § 39(a)). Any liabilities incurred by the Company in connection with such litigation **SHALL** be borne by the Company and **SHALL NOT** be recovered from ratepayers.
21. The Commission **ACKNOWLEDGES** the joint stipulation entered into by the Company and the General Counsel to resolve issues related to the Company's Demand Side Management ("DSM") and Energy Efficiency Plan ("EEP"). Consistent with the joint stipulation, the Company **SHALL** make the following filings in Project No. 13750, *Compliance with Docket No. 12700 DSM/EEP Joint Stipulation*:
- a. Within nine months of this Order becoming effective, the Company shall furnish the Commission Staff and the City a report or manual which demonstrates the savings maintenance or savings persistence of its DSM programs for those customers receiving demand-related savings.
 - b. The Company shall furnish to the Staff and the City copies of all program designs and procedures as they are adopted and/or implemented by the Company.
 - c. Within 12 months of this Order becoming effective, the Company shall provide to the Staff and the City its evaluation of an Energy Efficient Electric Appliance Incentive Program for residential and small commercial customers located in residential-type buildings.
 - d. The Company's residential audit program follow-up procedure is appropriate and necessary and should be continued in its current form.
 - e. An informal approach of providing the Commission Staff with copies of the Company's program design and implementation is appropriate and effective. The Company will continue to send the Staff copies of all program designs and procedures as they are adopted and/or implemented. No prior approval is requested or required by

this procedure but is intended to provide the Commission Staff with appropriate updated information with respect to the Company's programs on an ongoing basis.

- f. Based upon EPEC's demonstrated substantial compliance related to its DSM and EEP programs and the agreements contained in the Joint Stipulation, the parties agree that all requirements of previous final orders have been met. The General Counsel agrees that the Staff will evaluate the Company's DSM or EEP program in the future based on the merits of the program and agreements contained in the Joint Stipulation and not in any way based on EPEC's actions prior to the entry of a final order in this docket.
 - g. To the extent that any testimony filed by a party hereto is inconsistent with the terms the parties' Joint Stipulation, the Joint Stipulation will supersede the inconsistent testimony.
22. The Company **SHALL** make monthly payments to the decommissioning funds for Palo Verde Units 1, 2, and 3 as prescribed by P.U.C. SUBST. R. 23.21(b)(1)(F) and 23.59.
23. The Company **SHALL** comply with the directives set forth below:
- a. If any person should initiate a rate proceeding during the Freeze Period that affects Rate 30 or Rate 27, the Company **SHALL** provide direct cost support for Rate 30 and Rate 27.
 - b. Within 18 months after the implementation date of its Low Income Rider program under Rate 01, the Company **SHALL** demonstrate the actual participation rate and file a report in Project No. 13774, *Reconciliation of Number of Participants in El Paso Electric Company's Low Income Rider Program*, which **SHALL** be provided to General Counsel, OPC and the City. This reconciliation shall compare the 50 percent estimation to actual participation levels and the revenue difference, if any.
 - c. In its next rate case, the Company **SHALL** file testimony concerning the participation rate for its Experimental Off-Peak Rider under Rate 24.
 - d. The Company **SHALL** continue its monitoring of Rate 41 school customers to assess the impact of year round schools. The Company **SHALL** also assess the impact of including non-public schools in Rate 41. The Company **SHALL** file the results in the first rate case after the Freeze Period. In that filing, the Company also **SHALL** present testimony redesigning the applicability clause of Rate 41 to reflect the removal of non-

school customers. The Company is not limited in its right to present testimony and may file testimony supporting other alternatives or proposed changes in its Rate 41 rate design. To the extent any City of El Paso or El Paso County account, which was not in Rate 41 at the time of the Commission's Order in Docket No. 9945, receives service under Rate Class 41, the Commission hereby **ORDERS** that all state accounts become eligible for Rate 41.

24. The Commission hereby **ADOPTS** and **INCORPORATES** by reference in this Order the findings of fact and conclusions of law attached to this Order as Attachment 1. All motions, applications, and requests for entry of specific findings of fact and conclusions of law and other requests for relief, both general and specific, that are not expressly granted herein are hereby **DENIED**. No rights, liabilities or obligations **SHALL** arise under this Agreed Order until it becomes effective according to paragraph 1. Pending the effective date of this Agreed Order, the Company **SHALL** continue to comply with paragraph 33 of the Commission's Interim Order, Severance Order and Order of Remand signed March 3, 1995 (the "First Interim Order"). On the effective date of this Order, this Order shall **SUPERSEDE** the Commission's First Interim Order and the Second Interim Order signed August 2, 1995, except for paragraph 35 of the First Interim Order, which severs from this docket issues relating to the Company's fuel factor and fuel reconciliation. If a Company plan of reorganization consistent with the terms of this Order does not become effective, then it is expressly agreed and stipulated by the parties, and the Commission hereby **ORDERS** that, unless adopted in a subsequent final order,

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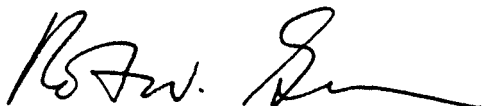
no part of any prior interim order or this Order, including the attached findings of fact and conclusions of law, shall have any collateral estoppel, res judicata, or other preclusive effect in any administrative or judicial proceedings.

SIGNED AT AUSTIN, TEXAS the 30th day of August 1995.

PUBLIC UTILITY COMMISSION OF TEXAS



PAT WOOD, III, Chairman



ROBERT W. GEE, Commissioner



JUDY WALSH, Commissioner

ATTEST:



**PAULA MUELLER
SECRETARY OF THE COMMISSION**

DOCKET NO. 12700

AGREED ORDER

Page 11

Agreed to and accepted by:

EL PASO ELECTRIC COMPANY ✓

By: [Signature]
Name: Walter Demond
Title: Attorney

PHELPS-DODGE REFINING CORPORATION & CHEVRON U.S.A., INC. ✓

By: _____
Name: _____
Title: _____

PUBLIC UTILITY COMMISSION OF TEXAS GENERAL COUNSEL ✓

By: _____
Name: _____
Title: _____

BORDER STEEL ROLLING MILLS, INC. AND EL PASO IRON & METAL COMPANY ✓

By: [Signature]
Name: C. Michael Ginnings
Title: Attorney

OFFICE OF PUBLIC UTILITY COUNSEL ✓

By: _____
Name: _____
Title: _____

The execution of this Agreed Order by Border Steel Rolling Mills, Inc. and El Paso Iron & Metal Company is subject to the approval of the U.S. Bankruptcy Court for the Western District of Texas, El Paso Division.

CITY OF EL PASO ✓

By: [Signature]
Name: KIRKMAN J. GORDON
Title: ATTORNEY

DEPARTMENT OF DEFENSE ✓

By: _____
Name: _____
Title: _____

ASARCO INCORPORATED ✓

By: _____
Name: _____
Title: _____

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS ✓

By: _____
Name: _____
Title: _____

STATE OF TEXAS ✓

By: _____
Name: _____
Title: _____

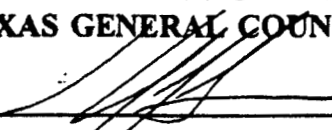
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Agreed to and accepted by:


EL PASO ELECTRIC COMPANY

By: _____
Name: _____
Title: _____

PUBLIC UTILITY COMMISSION OF TEXAS GENERAL COUNSEL

By: 
Name: Charles E. Johnson
Title: Assistant General Counsel

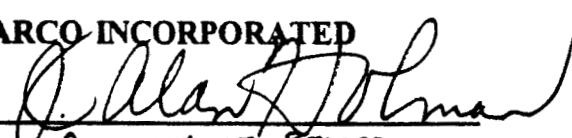
OFFICE OF PUBLIC UTILITY COUNSEL

By: 
Name: Marion T. Drew
Title: Asst Public Counsel

CITY OF EL PASO

By: _____
Name: _____
Title: _____

ASARCO INCORPORATED

By: 
Name: ATTORNEY-OF-RECORD
Title: J. ALAN TOLMAN

PHELPS-DODGE REFINING CORPORATION & CHEVRON U.S.A., INC.

By: _____
Name: _____
Title: _____

BORDER STEEL ROLLING MILLS, INC. AND EL PASO IRON & METAL COMPANY

By: _____
Name: _____
Title: _____

The execution of this Agreed Order by Border Steel Rolling Mills, Inc. and El Paso Iron & Metal Company is subject to the approval of the U.S. Bankruptcy Court for the Western District of Texas, El Paso Division.

DEPARTMENT OF DEFENSE

By: _____
Name: _____
Title: _____

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

By: _____
Name: _____
Title: _____

STATE OF TEXAS

By: _____
Name: _____
Title: _____

DRAFT 8/10/95 - 8:35PM

Agreed to and accepted:

EL PASO ELECTRIC COMPANY

By: _____
Name: _____
Title: _____

PUBLIC UTILITY COMMISSION OF TEXAS GENERAL COUNSEL

By: _____
Name: _____
Title: _____

OFFICE OF PUBLIC UTILITY COUNSEL

By: _____
Name: _____
Title: _____

CITY OF EL PASO

By: _____
Name: _____
Title: _____

ASARCO INCORPORATED

By: _____
Name: _____
Title: _____

PHELPS-DODGE REFINING CORPORATION & CHEVRON U.S.A., INC.

By: _____
Name: _____
Title: _____

BORDER STEEL ROLLING MILLS, INC. AND EL PASO IRON & METAL COMPANY

By: _____
Name: _____
Title: _____

DEPARTMENT OF DEFENSE

By: David A. McCormick
Name: DAVID A MCCORMICK
Title: General Attorney

11 AUG 95

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS

By: _____
Name: _____
Title: _____

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Agreed to and accepted:

EL PASO ELECTRIC COMPANY

By: _____
Name: _____
Title: _____

PUBLIC UTILITY COMMISSION OF TEXAS GENERAL COUNSEL

By: _____
Name: _____
Title: _____

OFFICE OF PUBLIC UTILITY COUNSEL

By: _____
Name: _____
Title: _____

CITY OF EL PASO

By: _____
Name: _____
Title: _____

ASARCO INCORPORATED

By: _____
Name: _____
Title: _____

PHELPS-DODGE REFINING CORPORATION & CHEVRON U.S.A., INC.

By: _____
Name: _____
Title: _____

BORDER STEEL ROLLING MILLS, INC. AND EL PASO IRON & METAL COMPANY

By: _____
Name: _____
Title: _____

DEPARTMENT OF DEFENSE

By: _____
Name: _____
Title: _____

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

By: _____
Name: _____
Title: _____

STATE OF TEXAS

By: Richard A. Muscat
Name: Richard A. Muscat
Title: Assistant Attorney General

DOCKET NO. 12700

AGREED ORDER

Page 11

Agreed to and accepted by:

EL PASO ELECTRIC COMPANY

By: _____
Name: _____
Title: _____

PUBLIC UTILITY COMMISSION OF TEXAS GENERAL COUNSEL

By: _____
Name: _____
Title: _____

OFFICE OF PUBLIC UTILITY COUNSEL

By: _____
Name: _____
Title: _____

CITY OF EL PASO

By: _____
Name: _____
Title: _____

ASARCO INCORPORATED

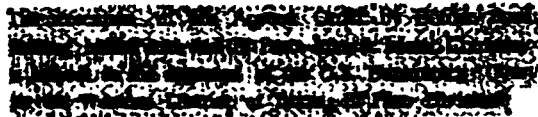
By: _____
Name: _____
Title: _____

PHELPS-DODGE REFINING CORPORATION
~~INCORPORATED~~
INC.

By: Allen Hall
Name: _____
Title: _____

BORDER STEEL ROLLING MILLS, INC. AND EL PASO IRON & METAL COMPANY

By: _____
Name: _____
Title: _____



DEPARTMENT OF DEFENSE

By: _____
Name: _____
Title: _____

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

By: _____
Name: _____
Title: _____

STATE OF TEXAS

By: _____
Name: _____
Title: _____

14834.R2

42-44

Agreed to and accepted by:

EL PASO ELECTRIC COMPANY

By: _____
Name: _____
Title: _____

PHELPS-DODGE REFINING CORPORATION & CHEVRON U.S.A., INC.

By: _____
Name: _____
Title: _____

PUBLIC UTILITY COMMISSION OF TEXAS GENERAL COUNSEL

By: [Signature]
Name: Charles E. Johnson
Title: Assistant General Counsel

BORDER STEEL ROLLING MILLS, INC. AND EL PASO IRON & METAL COMPANY

By: _____
Name: _____
Title: _____

OFFICE OF PUBLIC UTILITY COUNSEL

By: [Signature]
Name: Marion T. Drew
Title: Asst Public Counsel

The execution of this Agreed Order by Border Steel Rolling Mills, Inc. and El Paso Iron & Metal Company is subject to the approval of the U.S. Bankruptcy Court for the Western District of Texas, El Paso Division.

CITY OF EL PASO

By: _____
Name: _____
Title: _____

DEPARTMENT OF DEFENSE

By: _____
Name: _____
Title: _____

ASARCO INCORPORATED

By: [Signature]
Name: ATTORNEY-OF-RECORD
Title: J. ALAN HOLMAN

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

By: [Signature]
Name: [Signature]
Title: Attorney for IBEW

STATE OF TEXAS

By: _____
Name: _____
Title: _____

Findings of Fact

Introduction and Procedural Matters

1. On January 10, 1994, Central and South West Corporation ("CSW") and El Paso Electric Company (the "Company") (jointly referred to as "Applicants") filed two applications under PURA § 1.251 (formerly § 63) requesting that the Commission find their proposed reacquisition of the previously leased Palo Verde assets to be in the public interest and that the proposed acquisition of 100 percent of the Company's stock by CSW to be in the public interest.
2. On the same date, the Applicants filed an application under PURA § 2.212 (formerly § 43) seeking a base rate increase for the Company and implementation of certain regulatory, ratemaking, and accounting treatments to satisfy conditions to the effectiveness of the merger.
3. The hearing on the merits was convened on April 20, 1994, and was finally recessed, but not adjourned, on November 1, 1994.
4. The Applicants published notice of the requested rate increase in English and Spanish once a week for four consecutive weeks in newspapers of general circulation in El Paso, Culberson, and Hudspeth Counties in Texas, the three counties in which the Company provides electric service. Applicants also provided individual notice by mail to all affected utility customers, and provided notice to the county judges of the three affected counties and to all affected municipalities.
5. The Commission signed an Interim Order, Severance Order and Order of Remand on March 3, 1995.

Stipulation and Settlement Agreement

6. On July 27, 1995, the Company and the City executed a Stipulation and Settlement Agreement ("Stipulation") contemplating an increase in rates for the Company. A copy of the Stipulation is attached as Schedule D hereto. The Stipulation was admitted into evidence at the Commission's final order meeting on August 2, 1995.

7. All parties to this docket that participated in matters resolved by the Agreed Order, except Chevron U.S.A., Inc., have signed the Stipulation or withdrawn as parties. No party to this docket opposes the Stipulation.

8. The record developed in this case, as well as the intensive negotiations that preceded the Stipulation, the careful scrutiny of the rates resulting from the Stipulation by all parties, including General Counsel, the OPC and the City, and the fact that the Order contemplated by the Stipulation is acceptable to the Company and a diverse group of ratepayers who represent the entire spectrum of the Company's customers, combine to demonstrate that this Order, setting rates consistent with the Stipulation, results in just and reasonable rates. Furthermore, the adoption of rates consistent with the Stipulation serves the public interest in that it promotes the adequate and efficient provision of service, is in accordance with applicable law, conserves resources, avoids the uncertainties inherent in future litigation and reduces rate case expenses now and in the future.

9. The Commission signed on August 2, 1995 a Second Interim Order that approved interim rates for the Company consistent with the Stipulation.

The Company's Bankruptcy

10. The Company filed a petition in bankruptcy court for protection under Chapter 11 on January 8, 1992.

Description of the Company

11. The Company is an investor-owned electric utility engaged in the generation, transmission and distribution of electricity to retail customers in the states of Texas and New Mexico, wholesale customers (other utilities), and to the national utility of the Republic of Mexico (the "Comisión Federal de Electricidad" or "CFE").

12. The Company owns or has an interest in 1,497 MW of installed generation capacity, including 600 MW of nuclear capacity, 793 MW of gas capacity, and 104 MW of coal capacity. The Palo Verde Nuclear Generating Station ("Palo Verde") consists of three 1,270 MW nuclear units that have total capability of 3,810 MW. The Company owns or leases 15.8 percent of Palo Verde which represents approximately a 200 MW share of each unit, or 600 MW total.

13. The Company's three major FERC jurisdictional wholesale customers are Imperial Irrigation District ("IID"), Texas-New Mexico Power Co. ("TNP") and Rio Grande Electric Cooperative, Inc. ("RGEC").

Reacquisition of the Leased Palo Verde Assets

14. In 1986 and 1987, the Company entered into sale and leaseback transactions involving 100 percent of its 15.8 percent interest in Palo Verde Unit 2 and 39.5 percent of its 15.8 percent interest in Palo Verde Unit 3.

15. Applying the PURA § 2.206 (formerly § 41(a)) standard, the reasonable rate base value of the reacquired Palo Verde plant is the prudent original cost of \$718,944,000 less depreciation of \$141,452,000 through December 1994, for a total rate base of \$577,492,000.

16. Pursuant to the Stipulation, the Company's decision to reacquire the Palo Verde assets is prudent and reasonable, and the reacquisition of the Palo Verde assets is in the public interest.

Revenue Requirement Phase

17. The Company's quality and continuity of service are high.

18. On November 3, 1994, the Company and the General Counsel filed a Joint Stipulation of issues related to the Company's Demand Side Management ("DSM") and Energy Efficiency Plan ("EEP"). The terms of the Joint Stipulation are as follows:

- a. The Company is in substantial compliance with all previous Commission recommendations and orders relating to the DSM and EEP programs, including Docket Nos. 9165 and 9945.
- b. Given the Company's demonstrated substantial compliance with all previous Commission orders relating to the DSM and EEP programs, no reporting is necessary in any future Company case with regard to any Commission order or Commission Staff finding prior to entry of an order in this case.
- c. The Company's residential audit program follow-up procedure is appropriate and necessary and should be continued in its current form.
- d. Based upon the Company's demonstrated substantial compliance related to its DSM and EEP programs and the agreements contained in the Joint Stipulation, the parties agree that all requirements of previous final orders have been met. The General Counsel agrees that the Staff will evaluate a Company DSM or EEP program in the future based on the merits of the program and agreements contained in the Joint Stipulation and not in any way based on the Company's actions prior to the entry of a final order in this docket.

Miscellaneous Revenue Requirement

19. As part of the overall settlement of this case, a reasonable sharing beginning July 1, 1995 and continuing during the Freeze Period of all margins on off-system sales (as defined in the Stipulation) and wheeling revenues will allow ratepayers to receive (i) 25 percent of such margins and revenues in the form of a credit to their fuel costs during the five-year period commencing July 1, 1995 and (ii) 50 percent of such margins and revenues during the remainder of the Freeze Period. Incremental costs associated with off-