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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

### BRIEF OF THE CITY OF EL PASO

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

COMES NOW the City of El Paso (the "City") and files this brief pursuant to the Briefing Schedule ordered and agreed to at the Final Hearing on this matter.

#### I. HISTORY

This case arises out of a rate agreement between the City and the El Paso Electric Company ("EPE") in July 2005. Basic terms of the rate agreement included a five year rate freeze, provisions for sharing excess earnings, and the agreement for sharing margins on off-system sales (the subject of this docket). The City and EPE filed this case as a joint petition in January 2006. Subsequently, after a long period of discovery and discussions between the parties, a stipulation was signed by EPE, the City, Staff, and Border Steel (industrial customer intervenor) (the "Stipulation"). Thereafter, after the City and EPE had filed their direct testimony, the Office of Public Utility Counsel filed a statement of position on September 26, 2006 in which it stated that it "neither agrees nor objects to the fuel related provisions of the Stipulation. . ." Finally, at the hearing on the merits, on October 18, 2006, the State of Texas and EPE announced an agreement whereby the State of Texas agreed not to oppose the petition or Stipulation among EPE, the City, Staff and Border Steel. Thus, at the hearing itself, the only party expressing any opposition was Texas ROSE. The nature

of the Texas ROSE opposition is not clear. In the process of its direct case and its cross-examination Texas ROSE did not address any issue other than an issue related to the level of funding for certain low income programs. In the evidence itself, Texas ROSE did not address the fuel related provisions of the agreement, and the impression is that it has no opposition to those provisions. Thus, if there is an evidentiary basis for the approval of the fuel related provisions, the Commission should approve.

## **II. DISCUSSION**

The only testimony in the case which addressed any basis for approval of the terms of the agreement was the testimony of EPE witness Gary Hedrick (EPE Ex. 4) and the direct testimony of City witness William Studer (City EX 1). Both Mr. Hedrick and Mr. Studer addressed the underlying circumstances of the rate agreement, including the provisions related to the margin sharing provisions, and addressed the issues as a matter of public policy. Thus, as an exception to the Commission's rules, an evidentiary basis exists for approval of those portions of the agreement. No party presented any contrary evidence, nor did any party introduced any evidence through cross-examination to challenge the public policy basis of the proposed agreement. The Texas ROSE issues relate only to matters which are not part of the agreement between EPE and the City (and the matters which provide provisions for margin sharing related to customers outside the City limits of the City of El Paso). Issues related to EPE's level of commitment to programs for low income customers, or how actively it may pursue the enrollment of customers on the low income rider for residential service, are legitimate concerns of this Commission in an appropriate proceeding. However, this proceeding relates to only one rate issue, the issue of the fuel related provisions of the agreement

which is the subject of the joint petition. Thus, if the evidence indicates concerns on those issues, there is still no reason not to approve the stipulation of the other parties and the joint petition itself.

WHEREFORE, PREMISES CONSIDERED, the City prays the joint petition be granted, that the fuel related provisions of the rate agreement between the City and EPE be approved, that the provisions of the Stipulation between Staff, EPE, the City, and Border Steel be approved as they would apply outside the City limits of the City of El Paso, and for such other and further relief to which the City may be entitled.

Respectfully submitted,

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**Certificate of Service**

I certify that a true and correct copy of this document was served by either facsimile, electronic mail, or United States first-class mail on all parties of record in this proceeding on November 3, 2006.

By: \_\_\_\_\_

  
Norman J. Gordon