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PUC DOCKET NO. 32289

**JOINT PETITION OF EL PASO
ELECTRIC COMPANY AND THE CITY
OF EL PASO FOR APPROVAL OF
FUEL-RELATED PROVISIONS OF
RATE AGREEMENT**

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**BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS**

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PUBLIC UTILITY COMMISSION
EL PASO, TEXAS

ORDER

This order addresses the joint petition of the City of El Paso and El Paso Electric Company (EPE) for approval of the fuel-related provisions of the rate agreement entered into by the City of El Paso and EPE effective July 1, 2005. EPE provided notice to all interested parties and filed a "Stipulation Implementing Fuel Provisions of Rate Agreement" (stipulation) in conjunction with a proposed order. The stipulation was executed by EPE, the City of El Paso, the Commission Staff, and Border Steel, Inc., and it resolves all issues between the signatories related to this proceeding. Moreover, no party continues to oppose the stipulation. The stipulation is approved.

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

I. Findings of Fact

Procedural History

1. EPE is an integrated electric utility providing retail electric service within the state of Texas and southern New Mexico.
2. On January 17, 2006, the City of El Paso and EPE filed a joint petition for approval of the fuel-related provisions of the rate agreement entered into by the City of El Paso and EPE.
3. Texas Ratepayers' Organization to Save Energy (Texas ROSE), the Office of Public Utility Counsel (OPC), Border Steel, Inc., and the State of Texas filed motions to intervene. The motions to intervene were all granted.

4. On April 3, 2006, consistent with the requirements of P.U.C. SUBST. R. 25.235(b), EPE filed an affidavit evidencing proof of notice in the following manner: a) publication once each week for two consecutive weeks in both English and Spanish in a newspaper having general circulation in each county served by EPE in its Texas service area; b) individual notice to counsel for each party that participated in EPE's prior fuel-reconciliation proceeding, Docket No. 30143;¹ and c) individual notice to EPE's Texas retail customers via bill insert, in English and Spanish.
5. The parties to this proceeding are EPE, the City of El Paso, Commission Staff, the State of Texas, OPC, Border Steel, Inc., and Texas ROSE.
6. On July 31, 2006 EPE and the City of El Paso filed a stipulation entered into between EPE, the City of El Paso, Commission Staff, and Border Steel, Inc., the signatories.
7. On August 9, 2006, EPE and the City of El Paso filed a withdrawal of their request to approve section 5 of the 2005 rate agreement and indicated intent for the joint petition to be considered amended to reflect the stipulation.
8. On September 14, 2006, EPE submitted proof of its compliance with the additional notice provision of the stipulation. EPE provided individual notice to customers located outside the City of El Paso via a bill insert. In addition, notice was provided to the Texas municipalities EPE serves other than the City of El Paso.
9. OPC neither agrees nor objects to the fuel-related portions of the stipulation. Texas ROSE did not sign the stipulation and challenged aspects of EPE's low-income weatherization-program funding and low-income rider, as well as the water-conservation rider approved by the City of El Paso. Via position statement, OPC also expressed concerns about these issues raised by Texas ROSE.

¹ *Petition of El Paso Electric Company to Reconcile Fuel Costs*, Docket No. 30143, Order (March 31, 2006).

10. Prior to the hearing on the merits, EPE and the State of Texas executed a bilateral settlement agreement, filed in the Commission's central records on October 18, 2006.
11. The State of Texas does not oppose the stipulation.
12. A hearing on the merits was held before the Commissioners on October 18, 2006.
13. On November 29, 2006, EPE filed a supplemental settlement agreement on low-income programs entered into between EPE, Texas ROSE, and the Texas Legal Services Center. EPE stated that it was authorized to report that the City of El Paso, OPC, the State of Texas, and Border Steel do not oppose the settlement agreement, and that Commission Staff does not take a position on the settlement agreement.
14. Subsequent and pursuant to the settlement agreement, Texas ROSE filed a letter stating Texas ROSE's support for the stipulation and its withdrawal of any claims that EPE has violated PURA § 39.903(g). Texas ROSE and Texas Legal Services Center requested that the provisions of the settlement agreement be approved and reflected in the Commission's final order in this proceeding.
15. Commission Staff filed a response opposing Texas ROSE's request that the provisions of the settlement agreement be approved and reflected in the Commission's order.
16. Texas ROSE does not oppose the stipulation.

Stipulation

17. The stipulation resolves all issues between the signatories implementing the fuel-related provisions, Sections 1(f) and 6, of the rate agreement. The signatories recommend approval of the stipulation. The signatories agree that the Commission should accept the compromise and settlement in its entirety as a just and reasonable resolution, which is in the public interest.

18. The signatories agree that the resolution of the matters in this application, consistent with the stipulation, is supported by a preponderance of the credible evidence in this case, and the evidence shows that the resolution of such matters as a whole is just, reasonable, and consistent with the public interest.

Implementation of Fuel-Related Provisions of Rate Agreement

19. Pursuant to section 1(f) of the rate agreement, EPE shall continue to recover fuel and purchased-power expenses in accordance with the Commission's fuel rules in effect on July 1, 1995.
20. 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%.
21. EPE shall begin allocating wheeling revenues and off-system sales margins consistent with the margin-sharing mechanism in section 6 effective July 1, 2005.

Agreement Not to Increase Base Rates Outside the City Limits

22. 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.
23. 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 as 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.

24. As explained in paragraph 1(d)(iii) of the rate agreement, if, during the new freeze period, EPE'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, EPE 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, EPE's annual return on equity shall exceed the ceiling of the deadband, EPE 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 EPE's gross revenues in those areas of EPE's Texas service territory to EPE'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 EPE's gross revenues in each area to EPE's total gross revenues).
25. EPE 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 EPE'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.

26. EPE will notify the original-jurisdiction cities of earnings in excess of the ceiling of the deadband no later than forty-five (45) days after the filing of EPE'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.
27. The terms of this stipulation are binding on the signatories 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.

Low-Income Issues

28. EPE has not violated the Public Utility Regulatory Act² (PURA) § 39.903(g) in funding its low-income weatherization program.
29. EPE has not violated PURA § 39.903(g) in its administration of the low-income rider program.
30. The supplemental settlement agreement on low-income programs is effective November 29, 2006 and is binding on the parties to that agreement for the term of the new freeze period as defined in the 2005 rate agreement.
31. Texas ROSE and Texas Legal Services Center withdraw any claim that EPE has violated PURA § 39.903(g).
32. EPE agreed to increase the funding for its low-income weatherization and refrigerator-replacement programs by \$20,000 a year through 2010 and agreed to work with interested parties to establish a plan for increased enrollment in the low-income rider program.

² TEX. UTIL CODE, ANN. §§ 1.001 – 66.017 (Vernon's 1998 of Supp. 2006).

33. EPE remains subject to all Commission energy-efficiency rules.

EPE Agreement with State of Texas

34. Pursuant to its settlement agreement with the State of Texas, EPE agreed that, no later than July 1, 2010, it will begin crediting 90% of off-system sales margins to reconcilable fuel, for the benefit of customers, and agreed to continue crediting 90% of off-system sales margins to reconcilable fuel, at least through June 2015. This treatment is subject to the Commission's approval in a future proceeding.
35. Pursuant to its settlement agreement with the State of Texas, EPE agreed that, no later than July 1, 2010, it will begin treating its wheeling expenses and revenues associated with non-native load in accordance with then-existing Commission rules and other substantive and procedural law.

II. Conclusions of Law

1. EPE is an electric utility as that term is defined in PURA § 31.002(1).
2. The Commission has jurisdiction over this docket pursuant to PURA §§ 14.001, 36.001, and 36.203.
3. EPE has provided notice of this proceeding consistent with the requirements of P.U.C. SUBST. R. 25.235(b).
4. The City of El Paso and EPE's joint petition, as modified by the stipulation, meets the requirements of P.U.C. SUBST. R. 25.236(a)(7), is consistent with Commission precedent, is a reasonable resolution of the issues in this proceeding, and is in the public interest.
5. It is reasonable to implement the fuel-related provisions of the rate agreement consistent with the terms of the stipulation.

6. The stipulation represents a reasonable resolution of the contested issues in this docket, is supported by a preponderance of the credible record evidence, is in accordance with applicable law, and is in the public interest and should be approved.
7. The settlement agreement between EPE and the State of Texas and the supplemental settlement agreement between EPE, Texas ROSE, and Texas Legal Services Center are not binding on the Commission, the Commission Staff, or any parties other than the signatories to those agreements.

III. Ordering Paragraphs

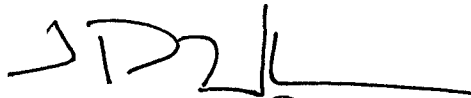
In accordance with the above findings of fact and conclusions of law, the Commission issues the following order:

1. The stipulation resolving all issues concerning the City of El Paso and EPE's joint petition for implementation of the fuel-related provisions, sections 1(f) and 6, of the rate agreement is hereby approved. Specifically, pursuant to section 1(f), EPE shall continue to recover fuel and purchased-power expenses in accordance with the Commission's fuel rules in effect on July 1, 1995. Also, pursuant to section 6 (effective July 1, 2005), customers will be credited 25% of the wheeling revenues and off-system sales margins, while EPE will retain the remaining 75%.
2. The Commission in this order is not addressing the merits of the settlement between EPE and the State of Texas, or of the supplemental settlement between EPE, Texas ROSE, and the Texas Legal Services Center.
3. The entry of an order consistent with the stipulation of the signatories does not indicate the Commission's approval or endorsement of any principle or methodology that may underlie the stipulation of the signatories and is not to be considered precedent in future cases except where express findings of fact or conclusions of law are entered.

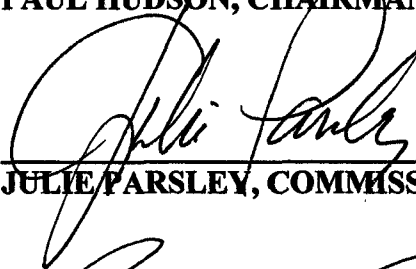
4. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

SIGNED AT AUSTIN, TEXAS on the 8th day of December, 2006.

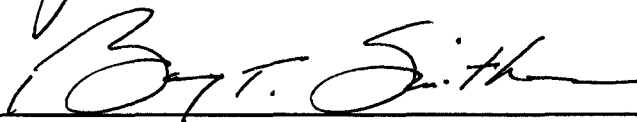
PUBLIC UTILITY COMMISSION OF TEXAS



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