

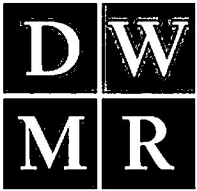


## **Filing Receipt**

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September 10, 2024

Filing Clerk  
Public Utility Commission of Texas  
1701 N. Congress Avenue, Suite 8-100  
Austin, TX 78711

RE: Project 34277 – Amendment to Nuclear Decommissioning Trust Agreements

To Whom it May Concern:

In accordance with 16 Tex. Admin. Code (TAC) § 25.301(b)(3), attached for filing are copies of recently executed documents related to the decommissioning trust for El Paso Electric Company's interest in the Palo Verde Nuclear Generating Station. The attached documents are:

Decommissioning Trust Agreement for Palo Verde Unit 1  
Decommissioning Trust Agreement for Palo Verde Unit 2  
Decommissioning Trust Agreement for Palo Verde Unit 3  
Fiduciary Investment Management Agreement

The Decommissioning Trust Agreements for each of the units amends and restates the Decommissioning Trust Agreements that were effective prior to these amendments. This filing is made pursuant to 16 TAC § 25.301(b)(3) which requires EPE to file its amendment within 30 days after modification or execution of the amendment to its nuclear decommissioning trust.

Please contact me if you have any questions at (512) 703-4531 or by email at [bslocum@dwmrlaw.com](mailto:bslocum@dwmrlaw.com).

Yours Very Truly,

Bret J. Slocum  
Attorney for El Paso Electric Company

cc Legal Division Office of Public Utility Commission of Texas  
Rate Regulation Division of the Public Utility Commission of Texas  
Office of Public Utility Counsel



**DECOMMISSIONING TRUST AGREEMENT**

Dated as of August 30, 2024

Between

EL PASO ELECTRIC COMPANY

And

STATE STREET GLOBAL ADVISORS TRUST COMPANY  
As Decommissioning Trustee

For

El Paso Electric Company Palo Verde Unit 1 Decommissioning Trust

DECOMMISSIONING TRUST AGREEMENT  
FOR EL PASO ELECTRIC COMPANY PALO VERDE UNIT 1 DECOMMISSIONING TRUST

This Decommissioning Trust Agreement (the "**Agreement**"), to be effective as of August 30, 2024 (the "**Effective Date**"), between State Street Global Advisors Trust Company, a Massachusetts non-depository trust company ("**Decommissioning Trustee**") and El Paso Electric Company, a Texas corporation ("**El Paso**").

The Nuclear Regulatory Commission ("**NRC**"), an agency of the United States of America, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, has promulgated regulations codified in Title 10, Chapter 1 of the Code of Federal Regulations, Part 50, as amended. These regulations, applicable to El Paso, require that each holder of a license issued pursuant thereto must provide assurance that funds will be available for Decommissioning.

El Paso and others entered into the Arizona Nuclear Power Project Participation Agreement executed as of August 23, 1973 (the "**ANPP Participation Agreement**"). Amendment 13 to the ANPP Participation Agreement, effective June 15, 1991, requires El Paso to establish and maintain funds for the accumulation, over a period not in excess of the remaining term of the operating license for Unit 1 and the period thereafter until completion of Decommissioning, of funds sufficient to pay Decommissioning Cost.

In addition, El Paso is required by the Public Utility Commission of Texas ("**PUCT**"), the New Mexico Public Regulation Commission ("**NMPRC**"), the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission to establish a source of funds to pay for Decommissioning.

Under Applicable Tax Law, certain federal income tax benefits are available to El Paso from establishing and making contributions to a "Nuclear Decommissioning Reserve Fund" for Unit 1. In order to satisfy its obligations under the ANPP Participation Agreement, to comply with the requirements of the governmental authorities referred to above, and to obtain such federal income tax benefits, on April 1, 1986, El Paso entered into a Decommissioning Trust Agreement, which was amended by Amendment No. 1 dated September 1, 1991 (the "**Original Agreement**"), creating two decommissioning trust funds to provide external funds for Decommissioning, for purposes of this Agreement designated as the Decommissioning Trust Fund and the Second Fund. The Decommissioning Trust Fund is intended at all times to qualify as a "Nuclear Decommissioning Reserve Fund" under Applicable Tax Law.

On January 9, 1996, in Cause No. 92-10148-FM, styled In re: El Paso Electric Company, the United States Bankruptcy Court for the Western District of Texas (Austin Division) entered an order confirming the Fourth Amended Plan of Reorganization of El Paso (the "**Plan**"). In accordance with the Plan, which became effective on February 12, 1996, El Paso and Decommissioning Trustee restated and amended the Original Agreement to ensure that the Decommissioning Trust Fund and the Second Fund would continue to be held, managed and distributed, without interruption, in accordance with the terms of the Original Agreement, Applicable Law, and Applicable Tax Law.

This Agreement, in turn, amends and restates the Original Agreement, as restated and amended effective February 12, 1996, as further restated and amended effective December 24, 2003, and as further restated and amended effective April 1, 2006, to read in its entirety as follows and continues the Decommissioning Trust Fund and the Second Fund.

Therefore, in consideration of the foregoing premises, the acceptance by Decommissioning Trustee of the trusts created, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto restate and amend the Original Agreement, as restated and amended effective April 1, 2006, as follows:

**SECTION 1. Definitions; References to Sections.** All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth in Appendix A hereto. Unless otherwise stated, references to a "Section" are to a section of this Agreement.

**SECTION 2. Creation of Trust Funds.** El Paso has established and hereby confirms the establishment with Decommissioning Trustee of the Decommissioning Trust Fund and the Second Fund (each a "**Fund**" and together the "**Funds**"). Each Fund shall include: (A) all cash and investments thereof, as more specifically described in Section 7; (B) all dividends, interest, cash, instruments, and other property from time to time received, receivable, or otherwise distributed or distributable in respect of or in exchange for any or all such investments; (C) all rights and privileges with respect to such investments; and (D) all proceeds of any of the foregoing and any property of any character whatsoever into which any of the foregoing may be converted. El Paso and Decommissioning Trustee intend that no third party shall have access to the Funds except as provided herein.

**SECTION 3. Purpose of Trust Funds; Tax Qualification.** The Funds are for the accumulation and funding of amounts to pay costs, liabilities, and expenses of Decommissioning, including the accumulation, over a period not in excess of the remaining term of the operating license for Unit 1 and the period thereafter until completion of Decommissioning, of amounts which are sufficient to pay Decommissioning Cost. The Decommissioning Trust Fund, but not the Second Fund, is intended at all times to qualify as a "**Nuclear Decommissioning Reserve Fund**" under Applicable Tax Law. El Paso and the applicable Fiduciary Investment Manager(s), if any, and Decommissioning Trustee (but with respect to Decommissioning Trustee only as to those assets of the Funds that are not under the direction of a Fiduciary Investment Manager) shall seek to obtain the best possible tax treatment of amounts collected for nuclear plant decommissioning; and in this regard, El Paso and the applicable Fiduciary Investment Manager(s), if any, and Decommissioning Trustee (but with respect to Decommissioning Trustee only as to those assets of the Funds that are not under the direction of a Fiduciary Investment Manager) shall take maximum advantage of tax deductions and credits when it is consistent with sound business practices to do so. The assets of the Decommissioning Trust Fund must be used as authorized by section 468A of the Code and shall be used exclusively:

(A) subject to the limitations and conditions of Section 9, to satisfy, in whole or in part, El Paso's obligation to pay for Decommissioning;

(B) subject to the limitations and conditions of Section 8, to pay Expenses; and

(C) to the extent not currently required for the uses described in (A) and (B) above, and subject to the limitations and conditions of Section 7, for investment in Qualified Investments.

The Funds shall be used exclusively for Decommissioning of Unit 1. This Agreement may not be amended so as to violate section 468A of the Code or the regulations thereunder.

**SECTION 4. Declaration and Acceptance of Trust.** Decommissioning Trustee accepts the trusts created hereby and declares that it will hold and administer all estate, right, title, and interest in and to each Fund upon the trusts set forth herein, but only on the terms of this Agreement, and agrees to receive and disburse all moneys and investments constituting any part of each Fund in accordance with this Agreement. No implied duties or obligations shall be read into this Agreement against Decommissioning Trustee. Decommissioning Trustee shall not commit any act, enter into any transaction, or permit any act or transaction to occur that is an "act of self-dealing" between the Decommissioning Trust Fund and "a disqualified person" as those terms are defined by Applicable Tax Law, and, if such an act occurs, Decommissioning Trustee shall promptly take all necessary steps to correct it as soon as it has knowledge of the occurrence.

**SECTION 5. Ownership of Funds.** Not in limitation of its fiduciary duty hereunder, title to any and all property held in each Fund shall be held by Decommissioning Trustee in its name as trustee as owner of record. At all times, Decommissioning Trustee shall follow the directives of (A) the applicable Fiduciary Investment Manager, if any, with respect to exercising any and all corresponding voting, consensual, and other rights accruing to the owner of such property in connection with such property, and, except as provided in this subsection 5.(A), (B) El Paso with respect to exercising any and all such voting, consensual, and other rights. Decommissioning Trustee shall have the right, in its name, as trustee upon prior written notice to El Paso, to settle, compromise, prosecute, or defend any action, claim, or proceeding with respect to any and all property held in each Fund. Subject to the provisions of this Agreement, Decommissioning Trustee may sell, assign, endorse, pledge, transfer, and make any agreement respecting, or otherwise deal with, any and all property held in each Fund; provided, however, that except as required by Section 7, nothing herein contained shall be construed as requiring or obligating Decommissioning Trustee to make any inquiry as to the nature or sufficiency of any payment received by it, to present or file any claim or notice, or to take any action with respect to any of the property held in each Fund. It is not the duty of Decommissioning Trustee or a Fiduciary Investment Manager to ensure that the Funds are adequate to pay for Decommissioning.

**SECTION 6. Payments into the Funds.** From time to time, but not less than quarter annually, El Paso shall pay amounts into one or both of the Funds. El Paso may deposit all or any part of any payment entirely into the Decommissioning Trust Fund, entirely into the Second Fund, or partly into each in whatever proportion El Paso shall determine in its discretion; except that, if a deduction is allowed under Applicable Tax Law for payments into the Decommissioning Trust Fund, El Paso shall not make, and Decommissioning Trustee shall not accept, any payment into such Fund unless such payment (a) is in cash, to the extent Applicable Tax Law requires the payment to be in cash, and (b) complies with the amount limitation imposed by Applicable Tax Law and a deduction pursuant to Applicable Tax Law is allowed for the entire payment.

Decommissioning Trustee may accept from El Paso, as proof that these conditions are satisfied, a certificate executed by El Paso as to compliance with the amount limitation and deductibility of such payment, and, unless Decommissioning Trustee has actual knowledge to the contrary, Decommissioning Trustee may rely on such certificate without further inquiry or verification.

#### **SECTION 7. Investment of Funds.**

(A) Decommissioning Trustee. Any amounts held by Decommissioning Trustee in each Fund shall be invested and reinvested by it from time to time, but only in Qualified Investments; provided, however, if El Paso has delivered to Decommissioning Trustee a copy of an order of a state or federal regulatory agency that El Paso certifies is binding on El Paso and limits the investments in which all or a part of either Fund may be invested, the investment of such Fund shall not violate such order. A Fiduciary Investment Manager appointed by El Paso may direct investments and reinvestments of the Funds by written direction which shall certify that the directed investment qualifies as an investment in Qualified Investments and is within the limitation set forth in the preceding sentence. Decommissioning Trustee may rely upon such direction and certification without further inquiry or verification unless Decommissioning Trustee has actual knowledge that the directed investment does not satisfy the conditions and limitations of this Section 7.

In performing its duties and exercising its powers as Decommissioning Trustee hereunder, and in performing any investment management functions hereunder, Decommissioning Trustee shall comply with the following:

(i) it shall add all income, including interest, earned on the corpus of each Fund to such corpus as a part thereof, and shall owe the same duties with regard to such income as it owes with regard to such corpus;

(ii) it shall have the continuing duty to review the assets of each Fund to determine the appropriateness of the investments consistent with all terms, provisions and limitations of this Agreement, including without limitation to ensure compliance with the provisions of the investment guidelines of this Section 7, any order of a state or regulatory agency limiting investments that El Paso has delivered and certified to Decommissioning Trustee as provided above, and any other applicable governing regulations;

(iii) it shall not lend all or any part of either Fund to itself or to any of its officers or directors or permit any act of "self-dealing" prohibited by Applicable Tax Law;

(iv) it shall not invest or reinvest amounts in either Fund with, or in any instrument or security issued by, itself or any of its officers or directors, except that it may invest or reinvest amounts in the Funds in time deposits, demand deposits, or money market accounts of Decommissioning Trustee, and except that it may invest amounts in the Funds in mutual funds and exchange-traded funds that contain securities issued by Decommissioning Trustee provided such securities constitute no more than five percent (5%) of the fair market value of the assets of such funds at the time of the investment;

(v) it shall not invest or reinvest amounts in either Fund with, or in any instrument or security issued by, El Paso, its subsidiaries or affiliates or their successors or assigns, except that it may invest or reinvest amounts in the Funds in mutual funds and exchange-traded funds that contain securities issued by El Paso provided such securities constitute no more than five percent (5%) of the fair market value of the assets of such funds at the time of the investment; and

(vi) Notwithstanding anything to the contrary in this Agreement, if directed by El Paso, Decommissioning Trustee shall hold and maintain one or both of the Funds in a segregated account and invest and administer such Fund(s) separately from the assets of Decommissioning Trustee or other trusts.

(B) Fiduciary Investment Manager. Any amount of each Fund directed to be invested by a Fiduciary Investment Manager shall be invested and reinvested by Decommissioning Trustee as directed by such Fiduciary Investment Manager from time to time, but only in Qualified Investments; provided, however, if El Paso has delivered to a Fiduciary Investment Manager a copy of an order of a state or federal regulatory agency that El Paso certifies is binding on El Paso and limits the investments in which all or a part of a Fund may be invested, the investment of such Fund shall not violate such order. A Fiduciary Investment Manager appointed by El Paso may direct investments and reinvestments of the Funds by written direction which shall certify that the directed investment qualifies as an investment in Qualified Investments and is within the limitation set forth in the preceding sentence. Decommissioning Trustee may rely upon such written direction and certification without further inquiry or verification unless Decommissioning Trustee has actual knowledge that the directed investment does not satisfy the conditions and limitations of this Section 7.

In performing its duties and exercising its powers as a Fiduciary Investment Manager hereunder, a Fiduciary Investment Manager shall comply with the following:

(i) it shall direct the addition of all income, including interest, earned on the corpus of each Fund subject to its direction to such corpus as a part thereof, and shall owe the same duties with regard to such income as it owes with regard to such corpus;

(ii) it shall have a continuing duty to review the assets of each Fund subject to its direction to determine the appropriateness of the investments consistent with all terms, provisions and limitations of this Agreement, including without limitation to ensure compliance with the provisions of the investment guidelines of this Section 7, any order of a state or regulatory agency limiting investments that El Paso has delivered to such Fiduciary Investment Manager as hereinabove provided and any other applicable governing regulations;

(iii) it shall not direct the lending of all or any part of either Fund to itself or to any of its officers or directors or permit any act of "self-dealing" prohibited by Applicable Tax Law;



(iv) it shall not direct the investment or reinvestment of amounts in either Fund with, or in any instrument or security issued by, itself or any of its officers or directors;

(v) it shall not invest or reinvest amounts in either Fund with, or in any instrument or security issued by, Decommissioning Trustee or any of Decommissioning Trustee's officers or directors, except that it may invest or reinvest amounts in the Funds in time deposits, demand deposits, or money market accounts of Decommissioning Trustee, and except that it may invest amounts in the Funds in mutual funds and exchange-traded funds that contain securities issued by Decommissioning Trustee provided such securities constitute no more than five percent (5%) of the fair market value of the assets of such funds at the time of the investment;

(vi) it shall not direct the investment or reinvestment of amounts in either Fund with, or in any instrument or security issued by El Paso, its subsidiaries or affiliates or associates or their successors or assigns of El Paso, except that it may direct the investment or reinvestment of amounts in the Funds in mutual funds and exchange-traded funds that contain securities issued by El Paso provided such securities constitute no more than five percent (5%) of the fair market value of the assets of such funds at the time of the investment; and

(vii) it shall provide Decommissioning Trustee directives concerning voting, consensual, and other rights and powers accruing in connection with assets of the Funds subject to such Fiduciary Investment Manager's direction.

(C) General. It is the intent of El Paso that neither Decommissioning Trustee nor a Fiduciary Investment Manager shall have any powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations that are set out in this Section 7.

(D) Investments Standards. To the extent not inconsistent with the other provisions of this Section 7 and to the extent that Decommissioning Trustee does not currently require the assets of the Funds for the purpose of satisfying the liability of El Paso for Decommissioning and to pay Expenses:

(i) Decommissioning Trustee shall, in connection with investing and reinvesting assets of the Funds, exercise the same standard of care that a reasonable person would exercise in the same circumstances; provided, however, that this subsection 7.(D)(i) shall apply only as to those assets of the Funds that are not subject to the direction of a Fiduciary Investment Manager; and

(ii) a Fiduciary Investment Manager appointed to direct the investment and reinvestment of all or any portion of the assets of the Funds shall, with respect to such assets subject to its direction, exercise the same degree of care that a reasonable person would exercise in the same circumstances.

For purposes of this subsection entitled "Investment Standards", a "**reasonable person**" means a prudent investor as described in the Federal Energy Regulatory Commission's "Regulations Governing Nuclear Plant Decommissioning Trust Funds" at 18 CFR 35.32(a)(3), or any successor regulation and *Restatement of the Law, (Third), Trusts*, Section 227, including the general comments and reporter's notes with respect thereto.

(E) Qualified Investments. Qualified Investments include those investments meeting the investment standards, limitations, conditions, and requirements prescribed in the foregoing subsections of this Section 7 and the following criteria which may be amended by El Paso upon written notice to Decommissioning Trustee and each Fiduciary Investment Manager.

(i) Investment Portfolio Goals. The Funds shall be invested consistent with the goals set forth in this subsection 7.(E)(i).

- (a) Assets of the Decommissioning Trust Fund shall be invested only as permitted for a "Nuclear Decommissioning Reserve Fund" under Applicable Tax Law.
- (b) Assets of the Funds shall be invested with a goal of earning a reasonable return commensurate with the need to preserve the value of the assets of the Funds.
- (c) In keeping with prudent investment practices, the portfolio of securities held in the Funds shall be diversified to the extent reasonably feasible given the size of the Funds.
- (d) Asset allocation and the acceptable risk level of the assets of the Funds should take into account market conditions, the time horizon remaining before the commencement and completion of Decommissioning, and the funding status of the Funds. While maintaining an acceptable risk level consistent with the goal referenced in subsection 7.(E)(i)(b) of this Section 7, the investment emphasis when the remaining life of the liability, as defined in subsection 7.(E)(ii)(d)(4) of this subsection, exceeds five years should be to maximize net long-term earnings. The investment emphasis in the remaining investment period of the Funds should be on current income and the preservation of each Fund's assets.
- (e) In selecting investments, the impact of the investment on the volatility and expected return of the assets of the Funds, net of fees, commissions, expenses, and taxes should be considered.

(ii) General Requirements. The restrictions contained in this subsection 7.(E)(ii) apply to the Decommissioning Trust Fund and Second Fund in the aggregate. For purposes of this subsection 7.(E)(ii), a commingled funds is defined as a



professionally managed investment fund of fixed-income or equity securities established by an investment company regulated by the Securities Exchange Commission or a bank regulated by the Office of the Comptroller of the Currency.

- (a) Diversification. For the purpose of this subsection 7.(E)(ii)(a), a commingled or mutual fund or exchange-traded fund is not considered a security; rather, the diversification standard applies to all securities, including the individual securities held in such funds. Once the portfolio of securities (including those held in commingled or mutual or exchange-traded funds) held in the Funds contains securities with an aggregate value in excess of \$20 million, it shall be diversified such that:
  - (1) no more than five percent (5%) of the securities held may be issued by one entity, with the exception of the federal government, its agencies and instrumentalities; and
  - (2) the portfolio shall contain at least 20 different issues of securities, and municipal securities and real estate investments shall be diversified as to geographic region.
- (b) Derivatives. The use of derivative securities in the Funds is limited to those whose purpose is to enhance returns of the Funds without a corresponding increase in risk or to reduce risk of the assets of the Funds. Derivatives may not be used to increase the value of the assets of the Funds by any amount greater than the value of the underlying securities. Prohibited derivative securities include, but are not limited to, mortgage strips; inverse floating rate securities; leveraged investments or internally leveraged securities; residual and support tranches of collateralized mortgage obligations; tiered index bonds or other structured notes whose return characteristics are tied to non-market events; uncovered call/put options; large counter-party risk through over-the-counter options, forwards and swaps; and instruments with similar high-risk characteristics.
- (c) Leverage. The use of leverage (borrowing) to purchase securities or the purchase of securities on margin for a Fund is prohibited.
- (d) Investment limits in equity securities. The following investment limits shall apply to the percentage of the aggregate market value of all non-fixed income investments relative to the total portfolio market value:
  - (1) except as noted in subsection 7.(E)(2)(b), when the weighted average remaining life of the liability exceeds 5 years, the equity cap shall be sixty percent (60%);

- (2) when the weighted average remaining life of the liability ranges between 5 years and 2.5 years, the equity cap shall be thirty percent (30%). Additionally, during all years in which expenditures for Decommissioning occur, the equity cap shall also be thirty percent (30%);
- (3) when the weighted average remaining life of the liability is less than 2.5 years, the equity cap shall be zero percent (0%);
- (4) for purposes of this subsection 7.(E)(ii)(4), the weighted average remaining life in any given year is defined as the weighted average of years between the given year and the years of each Decommissioning outlay, where the weights are based on each year's expected Decommissioning expenditures divided by the amount of the remaining liability in that year; and
- (5) should the market value of non-fixed income investments, measured monthly, exceed the appropriate cap due to market fluctuations, the market value of the non-fixed income investments shall be reduced below the cap as soon as practicable. Such reductions may be accomplished by investing all future contributions to a Fund in debt securities as is necessary to reduce the market value of the non-fixed income investments below the cap, or if prudent, by the sale of equity securities.

(iii) Specific Investment Restrictions. The restrictions contained in this subsection 7.(E)(iii). apply to the Decommissioning Trust Fund and the Second Fund in the aggregate.

- (a) Fixed-income investments. Assets of the Funds shall not be invested in corporate or municipal debt securities that have a bond rating below investment grade "BBB-" by Standard & Poor's Corporation or "Baa3" by Moody's Investor's Service) at the time that the securities are purchased. If the debt rating of a company or municipality issuing the particular debt security falls below investment grade at some time after the security was purchased, the appropriateness of continuing to hold such security shall be reexamined. The overall portfolio of debt instruments shall have a quality level, measured quarterly not below an "AA" grade by Standard & Poor's Corporation or "Aa2" by Moody's Investor's Service. In calculating the quality of the overall portfolio, debt securities issued by the federal government shall be considered as having an "AAA" rating.

(b) Equity Investments.

- (1) At least seventy percent (70%) of the aggregate market value of the equity assets of the Funds, including the individual securities in commingled funds, shall have a quality ranking from a major rating service such as the earnings and dividend ranking for common stock by Standard and Poor's or the quality rating of Ford Investor Services. Further, the overall portfolio of ranked equities shall have a weighted average quality rating equivalent to the composite rating of the Standard and Poor's 500 Index assuming equal weighting of each ranked security in the Index. If the quality rating, measured quarterly, falls below the minimum quality standard, the quality level of the equity assets of the Funds shall be increased to the required level as soon as is practicable and prudent; and
- (2) assets of the Funds shall not be invested in equity securities if the issuer has a capitalization of less than \$100 million.

(c) Commingled funds. The following guidelines shall apply to the investments made through commingled funds. Examples of commingled funds appropriate for investment by nuclear decommissioning trust funds include United States equity-indexed funds, actively managed United States equity funds, balanced funds, bond funds, real estate investment trusts, and international funds.

- (1) The commingled funds should be selected consistent with the investment goals specified in subsection 7.(E)(i) and the general requirements in subsection 7.(E)(ii);
- (2) in evaluating the appropriateness of a particular commingled fund, the following duties shall be of a continuing nature:
  - (I) a duty to determine whether the fund manager's fee schedule for managing the fund is reasonable, when compared to fee schedules of other such managers;
  - (II) a duty to investigate and determine whether the past performance of the investment manager in managing the commingled fund has been reasonable relative to prudent investment and utility decommissioning trust practices and standards; and

- (III) a duty to investigate the reasonableness of the net after-tax return and risk of the commingled fund relative to similar funds, and the appropriateness of the commingled fund within all of the assets of the Funds;
- (3) the payment of load fees shall be avoided; and
- (4) commingled funds focused on specific market sectors or concentrated in a few holdings shall be used only as necessary to balance the Funds' overall investment portfolio mix.

Notwithstanding any other provision of this Section 7, nothing in this Section 7 shall be construed to permit any investment otherwise prohibited by any other provision of this Agreement, Applicable Law, or Applicable Tax Law. This Agreement and the investments of the Funds shall be interpreted and construed in a manner consistent with the parties' intention that this Agreement and the Funds at all times comply with all requirements of the Nuclear Regulatory Commission and other applicable governmental regulations and rules, including without limitation the rules of the PUCT, the NMPPRC, and the Federal Energy Regulatory Commission, including but not limited to the "Final Rule" regarding the formation, organization and purposes of nuclear plant decommissioning trust funds and for fund investments issued June 16, 1995, as may be amended from time to time.

**SECTION 8. Expenses; Indemnification.** El Paso shall pay all Expenses and, subject to Section 9.(D), may direct Decommissioning Trustee, in writing, to pay specified Expenses of a Fund from such Fund. El Paso shall certify in writing to Decommissioning Trustee whether and the extent to which an item is an Expense of a specified Fund and whether Applicable Tax Law permits its payment out of the assets of the Fund; and Decommissioning Trustee may, unless it has actual knowledge to the contrary, rely upon such certification without further inquiry or verification.

Except to the extent Decommissioning Trustee has actual knowledge to the contrary, Decommissioning Trustee shall be fully protected in relying upon the existence of any fact or state of facts represented to it in writing by El Paso or a duly appointed Fiduciary Investment Manager.

Except with respect to liability or fiduciary responsibility for any error or loss that may result by reason of the exercise or nonexercise of the duties, obligations, and/or fiduciary responsibility that are allocated to Decommissioning Trustee herein and that is finally determined by a court of competent jurisdiction to be the result of Decommissioning Trustee's own negligence or willful misconduct, El Paso shall indemnify Decommissioning Trustee, directly from El Paso's own assets (including the proceeds of any insurance policy the premiums of which are paid from El Paso's own assets), from and against any and all claims, demands, losses, damages, expenses (including, by way of illustration and not limitation, reasonable attorneys' fees and other legal and litigation costs), judgments, and liabilities arising from, out of, or in connection with the administration or investment of the Funds. Decommissioning Trustee shall not be liable for any

action taken by Decommissioning Trustee or any failure to act by Decommissioning Trustee if the action taken or the failure to act was directed by El Paso or a Fiduciary Investment Manager, if Decommissioning Trustee reasonably relied on such direction. This Section 8 shall survive the termination of this Agreement.

#### **SECTION 9. Payments and Distributions from the Funds.**

(A) Subject to the other provisions of this Section 9, Decommissioning Trustee shall make payments out of the Funds upon presentation by El Paso of (A) a certificate signed by El Paso (i) instructing Decommissioning Trustee to disburse amounts in the Funds in a manner designated in such certificate for purposes of paying for Decommissioning and (ii) certifying that disbursements, if any, directed to be made from assets of the Decommissioning Trust Fund are for payment of only those costs, liabilities, and expenses of Decommissioning that qualify as "nuclear decommissioning costs" under Applicable Tax law, and (B) documentation reasonably acceptable to Decommissioning Trustee that such payment for Decommissioning is due and payable.

(B) Upon termination of the Decommissioning Trust Fund under Applicable Tax Law, El Paso may direct Decommissioning Trustee to transfer all property remaining in the Decommissioning Trust Fund to El Paso for disbursement or distribution as may then be provided by law. In addition, upon its receipt of a certificate signed by El Paso certifying that Decommissioning has been completed under Applicable Law and all costs of Decommissioning have been paid in full, all property then held in both Funds shall be paid by Decommissioning Trustee to El Paso for disbursement or distribution as may then be provided by law and the Funds shall terminate.

(C) At any time and from time to time El Paso may direct Decommissioning Trustee in writing to, and upon receipt of such direction Decommissioning Trustee shall, subject to the applicable provisions of Section 9.(D), distribute to El Paso for disbursement or distribution as then may be provided or permitted by law or transfer from the Decommissioning Trust Fund to the Second Fund any:

(i) Deemed Distribution Amount that El Paso certifies in writing is deemed distributed under Applicable Tax Law;

(ii) Excess Contribution that El Paso certifies in writing (a) has occurred under Applicable Tax Law, and (b) is being transferred within the time permitted for withdrawal or transfer of such Excess Contribution by Applicable Tax Law; and

(iii) amount that El Paso certifies in writing may be transferred to the Second Fund in accordance with Applicable Law and Applicable Tax Law by reason of the disposition of all or a part of El Paso's interest in or license to possess Unit 1.

(D) Notwithstanding any other provision in this Agreement, except for (i) payments made under Section 8 for Expenses, (ii) to the extent allowed by Applicable Law, Deemed Distribution Amounts and Excess Contributions transferred to the Second Fund or distributed to

El Paso under Section 9.(C), and (iii) withdrawals made pursuant to 10 C.F.R. 50.82(a)(8) no disbursement or payment from the Funds shall be made unless (a) thirty (30) business days prior written notice of the intention to make such disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, and (b) Decommissioning Trustee has not received written notice of an objection during such thirty (30) business day period from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards. The notices required by this Section 9.(D) may be made by or on behalf of Decommissioning Trustee.

(E) Unless Decommissioning Trustee has actual knowledge to the contrary, Decommissioning Trustee shall be fully protected in relying upon any certificate described in Section 9 without further inquiry or verification.

**SECTION 10. Further Assurances.** El Paso agrees that it will, at its sole expense, do all such further acts and things and execute and deliver all such additional conveyances, assignments, agreements, and instruments, as may be necessary or desirable or as Decommissioning Trustee may at any time reasonably request in connection with the administration and enforcement of this Agreement, or relative to the Funds or any part thereof, or in order to assure and confirm unto Decommissioning Trustee its rights, powers, and remedies hereunder.

El Paso may provide general investment policies in writing to Decommissioning Trustee or a Fiduciary Investment Manager, but may not engage in the day-to-day management of the Funds or mandate, or itself make individual investment decisions except to the extent that El Paso retains the right under this Agreement to approve investments in time deposits, demand deposits, or money market accounts of Decommissioning Trustee, in mutual funds and exchange-traded funds that contain securities issued by Decommissioning Trustee (subject to the limitations elsewhere herein set forth), or in mutual funds and exchange-traded funds that contain securities issued by El Paso, its subsidiaries or affiliates or their successors or assigns (subject to the limitations elsewhere herein set forth).

El Paso will regularly supply to Decommissioning Trustee and to each Fiduciary Investment Manager, and regularly update, essential information about Unit 1, including its description, useful life, the Decommissioning plan that El Paso intends to follow, El Paso's anticipated liquidity needs once Decommissioning begins, and any other information that Decommissioning Trustee and a Fiduciary Investment Manager need to construct and maintain, over time, a sound investment plan for the Funds. El Paso will monitor the performance of the Decommissioning Trustee and each Fiduciary Investment Manager and, if necessary, replace those entities that are not properly performing assigned responsibilities.

**SECTION 11. Irrevocability and Modification.** This Agreement is irrevocable and may not be amended or modified except by a writing signed by the parties hereto and approved, to the extent required by Applicable Law, by applicable regulatory authority(s). The parties agree that they will execute any amendments requested by El Paso that are necessary to secure and maintain the qualification of the Decommissioning Trust Fund as a "Nuclear Decommissioning Reserve Fund" under Applicable Tax Law and the deduction of contributions to such Fund as provided by such law, or to comply with Applicable Law.



Not in limitation of the foregoing, if and to the extent that, now or in the future, federal tax law may extend certain tax benefits to a trust fund or funds that are created and maintained by El Paso for creation of a reserve or funds for costs associated with Decommissioning (hereinafter in this Section 11 referred to as such "**other trusts**") which such other trusts would qualify as a "Nuclear Decommissioning Reserve Fund" under Applicable Tax Law, including without limitation, Internal Revenue Code section 468A, only if established and maintained pursuant to a single trust agreement for a particular nuclear power plant, the parties hereto, upon the creation of such other trusts may amend this Agreement by attaching hereto as an allonge the governing instruments by which such other trusts may be created. In such event, such other trusts shall be administered under the terms of this Agreement to the extent not inconsistent with the governing instruments by which such other trusts may be created and such other trusts shall thereafter be administered as separate funds under the terms of this Agreement.

**SECTION 12. Obligation for Decommissioning.** Nothing in this Agreement and no act or omission relating to the Funds shall be read, construed, understood, or interpreted to place any obligation whatsoever on Decommissioning Trustee or a Fiduciary Investment Manager relating to Decommissioning or any Decommissioning Cost, all of which shall at all times remain the sole obligation of El Paso.

**SECTION 13. Governing Law.** This Agreement shall be deemed to be a contract made in Texas for all purposes and shall be construed in accordance with and governed by the laws of such State, including the provisions of the Texas Trust Code, with respect to all matters of construction, validity, and performance.

**SECTION 14. Resignation and Replacement of Decommissioning Trustee or Fiduciary Investment Manager.**

(A) Decommissioning Trustee may resign at any time without cause by giving at least 90 days prior written notice to El Paso, and El Paso may remove Decommissioning Trustee at any time with or without cause by giving written notice to Decommissioning Trustee, such resignation or removal to be effective on the acceptance of appointment by a successor Decommissioning Trustee under this Section 14. In case of the resignation or removal of Decommissioning Trustee, El Paso may appoint a successor Decommissioning Trustee by an instrument signed by El Paso. If a successor Decommissioning Trustee shall not have been appointed by El Paso within 90 days after the giving of such written notice of resignation or removal, Decommissioning Trustee or El Paso may apply to any court of competent jurisdiction to appoint a successor Decommissioning Trustee to act until such time, if any, as a successor Decommissioning Trustee shall have been appointed by El Paso and shall have accepted its appointment under this Section 14. Any successor Decommissioning Trustee so appointed by such court shall immediately and without further act be superseded by any successor Decommissioning Trustee appointed by El Paso as provided above.

(i) In appointing a Decommissioning Trustee, El Paso shall have the following duties which will be of a continuing nature:

- (a) a duty to determine whether Decommissioning Trustee's fee schedule for administering the trust is reasonable when compared to other institutional trustees rendering similar services;
- (b) a duty to investigate and determine whether the past administration of trusts by Decommissioning Trustee has been reasonable;
- (c) a duty to investigate and determine whether the financial stability and strength of Decommissioning Trustee is adequate;
- (d) a duty to investigate and determine whether Decommissioning Trustee is in compliance with the requirements of this Agreement; and
- (e) a duty to investigate any other factors which may bear on whether Decommissioning Trustee is suitable.

(ii) Any successor Decommissioning Trustee, however appointed, shall execute and deliver to the predecessor Decommissioning Trustee an instrument accepting such appointment, and thereupon such successor Decommissioning Trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties, and trusts of the predecessor Decommissioning Trustee with like effect as if originally named as Decommissioning Trustee herein; and such predecessor Decommissioning Trustee shall duly assign, transfer, deliver, and pay over to such successor Decommissioning Trustee all moneys or other property then held by such predecessor Decommissioning Trustee upon the trusts expressed in this Agreement, shall do all acts necessary to vest title of record in such successor Decommissioning Trustee, and shall transfer and deliver to such successor Decommissioning Trustee copies of all records pertaining to the Funds and this Agreement. In addition, upon the written request of such successor Decommissioning Trustee, such predecessor Decommissioning Trustee shall execute and deliver to such successor Decommissioning Trustee an instrument transferring to such successor Decommissioning Trustee, upon the trusts expressed in this Agreement, all the estates, properties, rights, power, duties, and trusts of such predecessor Decommissioning Trustee.

(iii) Any successor Decommissioning Trustee, however appointed, shall be a bank or trust company with trust powers incorporated and doing business in the United States of America and having net worth of at least \$150,000,000, if there be such an institution willing, able and legally qualified to perform the duties of Decommissioning Trustee hereunder upon reasonable or customary terms; provided however, that in calculating the \$150,000,000 net worth requirement, the net worth of the Decommissioning Trustee's parent corporation and/or affiliates



may be taken into account only if such entities guarantee Decommissioning Trustee's responsibilities to the Funds.

(iv) Any corporation into which Decommissioning Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Decommissioning Trustee shall be a party, or any corporation to which substantially all the corporate trust business of Decommissioning Trustee may be transferred, shall, subject to the terms of subsection 14(A)(iii), be Decommissioning Trustee under this Agreement without further act.

(v) No successor Decommissioning Trustee (other than a successor by reason of an event described in Section 14(A)(iv)) shall be liable for any act, omission or breach of trust by a predecessor Decommissioning Trustee, whether or not such successor Decommissioning Trustee knows or should have known of such act, omission, or breach of trust, and shall have no duty to compel redress of any breach of trust by a predecessor Decommissioning Trustee.

(B) If a Fiduciary Investment Manager is appointed by El Paso hereunder, such appointment shall be made in writing; however, El Paso may not serve as a Fiduciary Investment Manager. A Fiduciary Investment Manager may resign at any time without cause by giving at least ninety (90) days prior written notice to El Paso, and El Paso may remove a Fiduciary Investment Manager at any time with or without cause by giving written notice to such Fiduciary Investment Manager. The resignation or removal of a Fiduciary Investment Manager is not conditioned on the acceptance of appointment by a successor Fiduciary Investment Manager under this Section 14; provided, however, that if a Fiduciary Investment Manager other than the Decommissioning Trustee resigns or is removed and is not replaced by El Paso, Decommissioning Trustee shall, at that time, assume all investment responsibilities of such Fiduciary Investment Manager.

(i) In appointing a Fiduciary Investment Manager, El Paso shall have the following duties which will be of a continuing nature:

- (a) a duty to determine whether such Fiduciary Investment Manager's fee schedule for investment management services is reasonable when compared to other such managers;
- (b) a duty to investigate and determine whether the past performance of such Fiduciary Investment Manager in managing investments has been reasonable;
- (c) a duty to investigate and determine whether the financial stability and strength of such Fiduciary Investment Manager is adequate for purposes of liability;
- (d) a duty to investigate and determine whether such Fiduciary Investment Manager is in compliance with the requirements of its

investment management agreement and this Agreement as it relates to investments and to such Fiduciary Investment Manager; and

- (e) a duty to investigate any other factors which may bear on whether such Fiduciary Investment Manager is suitable.

**SECTION 15. Successors and Assigns; Additional Parties.** This Agreement shall be binding upon and inure to the benefit of each party and its successors and permitted assigns.

**SECTION 16. Termination of Funds.** If not otherwise terminated sooner in accordance with the terms of this Agreement, each Fund shall end on the earlier of (A) the date specified in a written agreement between El Paso and Decommissioning Trustee and (B) the date that is twenty-one (21) years less one day after the death of the last survivor of the descendants of Joseph P. Kennedy, the father of President John F. Kennedy, that were living on April 1, 1986. Upon such termination, all of the assets of the Funds shall be distributed to El Paso or its successor. Notwithstanding the foregoing provisions of this Section 16, if one or both of the Funds shall be or become valid under Applicable Law for a period subsequent to the date set out in Section 16(B) (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the creation of such a fund for a period in gross exceeding the period for which such Fund is hereinabove stated to extend and be valid), then such Fund shall not terminate as aforesaid but shall extend to and continue in effect until (but only if such nontermination and extension shall then be valid under Applicable Law) such time as such Fund shall, under Applicable Law, cease to be valid.

**SECTION 17. Accountings; Tax Returns and Reports; Audits.** Decommissioning Trustee shall keep accurate and detailed records and accounts of all investments, receipts, disbursements and other transactions of the Funds. All accounts, books, and records relating to the Funds shall be open to inspection and audit at all reasonable times by El Paso, its designee or an applicable governmental agency having jurisdiction over the Funds.

Within thirty (30) business days after the end of each calendar month and within thirty (30) business days after the close of each annual accounting period of each Fund, and as soon as reasonably practicable after the resignation or removal of a Decommissioning Trustee has become effective, Decommissioning Trustee shall furnish to El Paso a written account setting forth all (A) investments, receipts, disbursements, and other transactions effected by it during such month or year, as applicable, or during the part of the month or year to the date any such resignation or removal is effective, as applicable, and containing a description of all assets, including but not limited to all securities, purchased and sold (the description of the securities purchased must state the price at which each individual security was purchased), the cost or net proceeds of sale, and the securities and investments held at the end of such period, (B) the gains or losses realized by each Fund upon sales or other disposition of its assets, (C) the increase or decrease in the value of each Fund, (D) the fair market values of each Fund, and (E) the liabilities (excluding liability for Decommissioning) of the Funds incurred or unpaid at the end of such period. Within three (3) business days after the end of each calendar month and within three (3) business days after the close of each annual accounting period of each Fund, and as soon as reasonably practicable after the resignation or removal of a Decommissioning Trustee has become effective, Decommissioning

Trustee shall also provide El Paso secured web-based access to the information described in clauses (A)-(E) of this Section 17. The accounting shall also furnish El Paso such other information as Decommissioning Trustee may possess and as may be necessary for El Paso, Decommissioning Trustee and/or a Fiduciary Investment Manager to comply with any reporting requirements applicable to any of such parties and/or the Funds. If the fair market value of an asset in a Fund is not available, when necessary for accounting or reporting purposes the fair market value of the asset shall be determined in good faith by Decommissioning Trustee, assuming an orderly liquidation at the time of such determination. In addition, upon the written request of El Paso, which may be at any time and from time to time, Decommissioning Trustee shall provide El Paso the fair market value of the assets in a Fund as of a date other than the last day of a month or an annual accounting period of a Fund. If there is a disagreement between the Decommissioning Trustee, a Fiduciary Investment Manager and/or any other party as to any act or transaction reported in an accounting, Decommissioning Trustee or the Fiduciary Investment Manager, as applicable, shall have the right to have such disagreement settled by a court of competent jurisdiction. Decommissioning Trustee shall make such other reports as may be agreed upon in writing with El Paso.

Decommissioning Trustee shall retain its records and accountings related to the Funds as long as necessary for the proper administration thereof and at least for any period required by any applicable law, but with respect to each record and account for not less than six (6) years following the creation thereof.

El Paso shall have the right to cause the books, records, and accounts of Decommissioning Trustee that relate to the Funds to be examined and audited by independent auditors designated by El Paso at such times as El Paso may determine, and Decommissioning Trustee shall make such books, records, and accounts available for such purposes at all reasonable times.

El Paso shall, with the cooperation of Decommissioning Trustee, prepare or, upon agreement of Decommissioning Trustee, authorize Decommissioning Trustee to prepare, such tax returns and other reports for or with respect to each Fund as may be required from time to time by Applicable Law.

#### **SECTION 18. Rights of Decommissioning Trustee.**

(A) Decommissioning Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Agreement or required by the Texas Trust Code, and no implied duties or obligations shall be read into this Agreement against Decommissioning Trustee except such as are required by the Texas Trust Code.

(B) Decommissioning Trustee shall not have any obligation to invest, manage, control, make any payment from, or otherwise deal with, the Funds except as expressly provided herein or in written guidelines or instructions received pursuant to the terms hereof.

(C) Decommissioning Trustee may rely and shall be protected in acting upon any certificate, statement, notice, or other writing believed by it to be genuine and to have been signed or presented by the proper party or parties, and unless it has actual knowledge to the contrary,

Decommissioning Trustee shall not be bound to make any investigation into the facts or matters stated in any certificate, statement, notice, or other writing received by it.

(D) In the administration of the Funds hereunder, Decommissioning Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled persons to be selected and employed by it, and Decommissioning Trustee shall not be liable for anything done or omitted by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons to the extent permitted by law and to the extent no such action or omission constitutes negligence or willful misconduct by Decommissioning Trustee.

(E) With respect to any obligation of El Paso hereunder to indemnify Decommissioning Trustee, Decommissioning Trustee shall look solely to El Paso and shall not have any lien upon the assets of the Funds to secure such obligation.

#### **SECTION 19. Notices.**

(A) Except as otherwise provided in this Agreement, all notices under this Agreement shall be in writing and be effective upon receipt if delivered by (1) hand, (2) certified or registered United States Mail postage prepaid, or (3) facsimile, provided that service by facsimile after 5:00 p.m. local time of the recipient shall be deemed delivered on the following business day, as follows:

If notice is to the Trustee:

State Street Global Advisors Trust Company  
1 Iron Street  
Boston, MA 02210  
Attn: Terrence Bertrand  
Email: [terrence\\_bertrand@ssga.com](mailto:terrence_bertrand@ssga.com)

With a copy to:

State Street Global Advisors Trust Company  
1 Iron Street  
Boston, MA 02210  
Attn: General Counsel  
Email: [sean\\_o'malley@ssga.com](mailto:sean_o'malley@ssga.com)

If notice is to the Grantor:

El Paso Electric Company  
Attention Controller  
100 N. Stanton  
El Paso, Texas 79901  
email: [ndt.committee@epelectric.com](mailto:ndt.committee@epelectric.com)

and, if the notice is sent for the purposes described in Sections 5, 14(A), 14(B), and 19(B), with a copy to:

El Paso Electric Company  
Attention Controller  
100 N. Stanton  
El Paso, Texas 79901  
email: ndt.committee@epelectric.com

(B) Each person may change its address for purposes of notice under this Agreement by notice complying with Section 19(A).

Any notice required under this Agreement may be waived in writing by the party entitled thereto.

**SECTION 20. Counterpart Execution.** This Agreement may be executed in any number of counterparts and by each of the parties hereto on separate counterparts; all such counterparts shall together constitute but one and the same instrument.

**SECTION 21. Effective Date.** This Agreement shall become effective on the "Effective Date" as defined herein.

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be duly executed as of the day and year above written.

EL PASO:

EL PASO ELECTRIC COMPANY

By: Cynthia S. Prieto  
Cynthia S. Prieto  
Title: VP Controller, NDT Committee Chair

DECOMMISSIONING TRUSTEE:

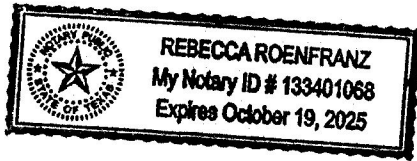
STATE STREET GLOBAL ADVISORS TRUST  
COMPANY

By: Daniel R. [Signature]  
Title: Global Head of Strategic Relationships  
Senior Managing Director

APPROVED AS TO FORM  
OFFICE OF THE GENERAL COUNSEL [Signature]

STATE OF TEXAS     §  
                                  §  
COUNTY OF EL PASO   §

The foregoing instrument was acknowledged before me this 14 day of August, 2024 by Cynthia Prieto, VP Controller EL PASO ELECTRIC COMPANY, a Texas corporation, on behalf of said corporation.



Rebecca RoenFranz  
Notary Public

My commission expires: 10-19-25

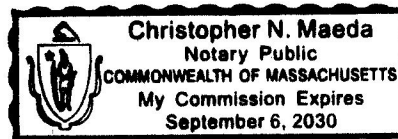
COMMONWEALTH OF MASSACHUSETTS §  
§  
COUNTY OF SUFFOLK§

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of August, 2024 by David Ireland,  
State Street Global Advisors Trust Company, a Massachusetts non-depository trust company, on behalf of such company.

Christopher N. Maeda  
Notary Public

My commission expires: September 6<sup>th</sup> 2030

On this 20th day of August 2024, before me, the undersigned notary public, David Ireland personally appeared, proved to me through satisfactory evidence of identification, which was his employee identification card, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily as an authorized signer for State Street Global Advisors Trust Company, a Massachusetts non-depository trust company, on behalf of such company.





**Appendix A**  
**to**  
**Decommissioning Trust Agreement**

**for El Paso Electric Company Palo Verde Unit 1 Decommissioning Trust**

**DEFINITION OF TERMS**

**ANPP Participation Agreement** shall mean the Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, as amended, among Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Public Service Company of New Mexico, Southern California Public Power Authority, Department of Water and Power of The City of Los Angeles, and El Paso.

**Applicable Law** shall mean all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, permits, certificates, orders, interpretations, licenses, and permits of any federal, state, county, municipal, foreign, international, regional, or other governmental authority, agency, board, body, instrumentality, or court, and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator, or other judicial or quasi-judicial tribunal (including those pertaining to health, safety, the environment, or otherwise).

**Applicable Tax Law** shall mean Code Section 468A, any comparable subsequent provisions of the Code, the United States Treasury regulations promulgated under such section or provisions, and other provisions of the Code relating to the federal taxation of the Funds.

**Code** shall mean the Internal Revenue Code of 1986, as amended, or any successor law.

**Decommissioning** shall mean the decommissioning and retirement from service of Unit 1, and the related possession, maintenance, and disposal of material, radioactive or otherwise used in or produced by or relating to Unit 1, including, without limitation: (i) placement and maintenance in a state of protective storage; (ii) in-place entombment and maintenance; (iii) dismantlement; (iv) removal, decontamination and disposition of equipment and fixtures; (v) razing; (vi) removal and disposition of debris related to Unit 1 from the PVNGS Site; (vii) restoration of the PVNGS Site related to Unit 1 for unrestricted use; (viii) any other actions relating to decommissioning and retirement from service of Unit 1 required by the NRC; and (ix) all activities undertaken incident to the implementation thereof.

**Decommissioning Cost** shall mean El Paso's pro-rata share, under the ANPP Participation Agreement, of the greater of (i) the latest estimate of Termination Costs (as that term is defined by the ANPP Participation Agreement) for Unit 1 or (ii) the minimum amount required by the NRC to be funded for the decommissioning of Unit 1.

**Deemed Distribution Amount** shall mean an amount in the Decommissioning Trust Fund that is treated by Applicable Tax Law as having been distributed by reason of the disqualification of all or a part of such Fund.

**Excess Contribution** shall mean the amount by which cash payments made (or deemed made) by El Paso into the Decommissioning Trust Fund during any taxable year of El Paso exceeds the payment limitation imposed by Applicable Tax Law.

**Expenses** shall mean: (a) in the case of the Decommissioning Trust Fund, (i) the tax imposed by Code Section 468A(e)(2); (ii) any state or local tax imposed on the income or the assets of such Fund; and (iii) legal, accounting, and actuarial fees and expenses, trustee's fees and expenses, and all other ordinary administrative costs and incidental expenses, incurred by Decommissioning Trustee, a Fiduciary Investment Manager, or El Paso in connection with the operation of such Fund, but in each case only to the extent permitted by Code Section 468A(e)(4)(B) or other Applicable Tax Law to be paid from the assets of a "Nuclear Decommissioning Reserve Fund," as that term is used in Applicable Tax Law; and (b) in the case of the Second Fund, (i) any federal, state, or local tax actually paid by El Paso with respect to the income or the assets of such Fund including a payment to El Paso of the federal income tax (at the statutory rate) with respect to the taxable income of such Fund required to be included on El Paso's federal income tax return; and (ii) legal, accounting and actuarial expenses, trustee's fees and expenses, and all other ordinary administrative costs and incidental expenses, incurred by Decommissioning Trustee, a Fiduciary Investment Manager, or El Paso in connection with the operation of such Fund; provided, however, Expenses shall not include taxes on or with respect to fees paid to Decommissioning Trustee or a Fiduciary Investment Manager and taxes that Code Section 4951 requires be paid by Decommissioning Trustee; and further provided that the total trustee and investment manager fees paid on an annual basis for the entire portfolio including commingled funds shall not exceed 0.7% of the entire portfolio's average annual balance.

**Fiduciary Investment Manager** shall mean any institution or professional appointed by El Paso, other than Decommissioning Trustee, who is responsible for the investment and reinvestment of the Funds.

**License** shall mean NRC Facility Operating License No. NPF-41, issued December 31, 1984, as the same may be amended, modified, extended, renewed or superseded from time to time.

**NRC** shall mean the Nuclear Regulatory Commission of the United States of America or any successor agency.

**PVNGS** shall mean the Palo Verde Nuclear Generating Station, which is located on the PVNGS Site.

**PVNGS Site** shall mean the real property located in Maricopa County, Arizona, approximately 36 miles west of the City of Phoenix, Arizona and approximately 16 miles west of the City of Buckeye, Arizona, which legal description is contained in Appendix B to the ANPP Participation Agreement.

**Qualified Investments** shall mean investments that meet the intent, standards, liabilities, and general and specific requirements and conditions on investments as set forth in Section 7 herein.

**Unit 1** shall mean the 1336 megawatt unit, commonly known as Unit 1, at PVNGS.

**DECOMMISSIONING TRUST AGREEMENT**

Dated as of August 30, 2024

Between

EL PASO ELECTRIC COMPANY

And

STATE STREET GLOBAL ADVISORS TRUST COMPANY  
As Decommissioning Trustee

For

El Paso Electric Company Palo Verde Unit 2 Decommissioning Trust

DECOMMISSIONING TRUST AGREEMENT  
FOR EL PASO ELECTRIC COMPANY PALO VERDE UNIT 2 DECOMMISSIONING TRUST

This Decommissioning Trust Agreement (the "**Agreement**"), to be effective as of August 30, 2024 (the "**Effective Date**"), between State Street Global Advisors Trust Company, a Massachusetts non-depository trust company ("**Decommissioning Trustee**") and El Paso Electric Company, a Texas corporation ("**El Paso**").

The Nuclear Regulatory Commission ("**NRC**"), an agency of the United States of America, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, has promulgated regulations codified in Title 10, Chapter 1 of the Code of Federal Regulations, Part 50, as amended. These regulations, applicable to El Paso, require that each holder of a license issued pursuant thereto must provide assurance that funds will be available for Decommissioning.

El Paso and others entered into the Arizona Nuclear Power Project Participation Agreement executed as of August 23, 1973 (the "**ANPP Participation Agreement**"). Amendment 13 to the ANPP Participation Agreement, effective June 15, 1991, requires El Paso to establish and maintain funds for the accumulation, over a period not in excess of the remaining term of the operating license for Unit 2 and the period thereafter until completion of Decommissioning, of funds sufficient to pay Decommissioning Cost.

In addition, El Paso is required by the Public Utility Commission of Texas ("**PUCT**"), the New Mexico Public Regulation Commission ("**NMPRC**"), the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission to establish a source of funds to pay for Decommissioning.

Under Applicable Tax Law, certain federal income tax benefits are available to El Paso from establishing and making contributions to a "Nuclear Decommissioning Reserve Fund" for Unit 2. In order to satisfy its obligations under the ANPP Participation Agreement, to comply with the requirements of the governmental authorities referred to above, and to obtain such federal income tax benefits, on April 1, 1986, El Paso entered into a Decommissioning Trust Agreement, which was amended by Amendment No. 1 dated September 1, 1991 (the "**Original Agreement**"), creating two decommissioning trust funds to provide external funds for Decommissioning, for purposes of this Agreement designated as the Decommissioning Trust Fund and the Second Fund. The Decommissioning Trust Fund is intended at all times to qualify as a "Nuclear Decommissioning Reserve Fund" under Applicable Tax Law.

On January 9, 1996, in Cause No. 92-10148-FM, styled In re: El Paso Electric Company, the United States Bankruptcy Court for the Western District of Texas (Austin Division) entered an order confirming the Fourth Amended Plan of Reorganization of El Paso (the "**Plan**"). In accordance with the Plan, which became effective on February 12, 1996, El Paso and Decommissioning Trustee restated and amended the Original Agreement to ensure that the Decommissioning Trust Fund and the Second Fund would continue to be held, managed and distributed, without interruption, in accordance with the terms of the Original Agreement, Applicable Law, and Applicable Tax Law.

This Agreement, in turn, amends and restates the Original Agreement, as restated and amended effective February 12, 1996, as further restated and amended effective December 24, 2003, and as further restated and amended effective April 1, 2006, to read in its entirety as follows and continues the Decommissioning Trust Fund and the Second Fund.

Therefore, in consideration of the foregoing premises, the acceptance by Decommissioning Trustee of the trusts created, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto restate and amend the Original Agreement, as restated and amended effective April 1, 2006, as follows:

**SECTION 1. Definitions; References to Sections.** All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth in Appendix A hereto. Unless otherwise stated, references to a "Section" are to a section of this Agreement.

**SECTION 2. Creation of Trust Funds.** El Paso has established and hereby confirms the establishment with Decommissioning Trustee of the Decommissioning Trust Fund and the Second Fund (each a "**Fund**" and together the "**Funds**"). Each Fund shall include: (A) all cash and investments thereof, as more specifically described in Section 7; (B) all dividends, interest, cash, instruments, and other property from time to time received, receivable, or otherwise distributed or distributable in respect of or in exchange for any or all such investments; (C) all rights and privileges with respect to such investments; and (D) all proceeds of any of the foregoing and any property of any character whatsoever into which any of the foregoing may be converted. El Paso and Decommissioning Trustee intend that no third party shall have access to the Funds except as provided herein.

**SECTION 3. Purpose of Trust Funds; Tax Qualification.** The Funds are for the accumulation and funding of amounts to pay costs, liabilities, and expenses of Decommissioning, including the accumulation, over a period not in excess of the remaining term of the operating license for Unit 2 and the period thereafter until completion of Decommissioning, of amounts which are sufficient to pay Decommissioning Cost. The Decommissioning Trust Fund, but not the Second Fund, is intended at all times to qualify as a "**Nuclear Decommissioning Reserve Fund**" under Applicable Tax Law. El Paso and the applicable Fiduciary Investment Manager(s), if any, and Decommissioning Trustee (but with respect to Decommissioning Trustee only as to those assets of the Funds that are not under the direction of a Fiduciary Investment Manager) shall seek to obtain the best possible tax treatment of amounts collected for nuclear plant decommissioning; and in this regard, El Paso and the applicable Fiduciary Investment Manager(s), if any, and Decommissioning Trustee (but with respect to Decommissioning Trustee only as to those assets of the Funds that are not under the direction of a Fiduciary Investment Manager) shall take maximum advantage of tax deductions and credits when it is consistent with sound business practices to do so. The assets of the Decommissioning Trust Fund must be used as authorized by section 468A of the Code and shall be used exclusively:

(A) subject to the limitations and conditions of Section 9, to satisfy, in whole or in part, El Paso's obligation to pay for Decommissioning;

(B) subject to the limitations and conditions of Section 8, to pay Expenses; and

(C) to the extent not currently required for the uses described in (A) and (B) above, and subject to the limitations and conditions of Section 7, for investment in Qualified Investments.

The Funds shall be used exclusively for Decommissioning of Unit 2. This Agreement may not be amended so as to violate section 468A of the Code or the regulations thereunder.

**SECTION 4. Declaration and Acceptance of Trust.** Decommissioning Trustee accepts the trusts created hereby and declares that it will hold and administer all estate, right, title, and interest in and to each Fund upon the trusts set forth herein, but only on the terms of this Agreement, and agrees to receive and disburse all moneys and investments constituting any part of each Fund in accordance with this Agreement. No implied duties or obligations shall be read into this Agreement against Decommissioning Trustee. Decommissioning Trustee shall not commit any act, enter into any transaction, or permit any act or transaction to occur that is an "act of self-dealing" between the Decommissioning Trust Fund and "a disqualified person" as those terms are defined by Applicable Tax Law, and, if such an act occurs, Decommissioning Trustee shall promptly take all necessary steps to correct it as soon as it has knowledge of the occurrence.

**SECTION 5. Ownership of Funds.** Not in limitation of its fiduciary duty hereunder, title to any and all property held in each Fund shall be held by Decommissioning Trustee in its name as trustee as owner of record. At all times, Decommissioning Trustee shall follow the directives of (A) the applicable Fiduciary Investment Manager, if any, with respect to exercising any and all corresponding voting, consensual, and other rights accruing to the owner of such property in connection with such property, and, except as provided in this subsection 5.(A), (B) El Paso with respect to exercising any and all such voting, consensual, and other rights. Decommissioning Trustee shall have the right, in its name, as trustee upon prior written notice to El Paso, to settle, compromise, prosecute, or defend any action, claim, or proceeding with respect to any and all property held in each Fund. Subject to the provisions of this Agreement, Decommissioning Trustee may sell, assign, endorse, pledge, transfer, and make any agreement respecting, or otherwise deal with, any and all property held in each Fund; provided, however, that except as required by Section 7, nothing herein contained shall be construed as requiring or obligating Decommissioning Trustee to make any inquiry as to the nature or sufficiency of any payment received by it, to present or file any claim or notice, or to take any action with respect to any of the property held in each Fund. It is not the duty of Decommissioning Trustee or a Fiduciary Investment Manager to ensure that the Funds are adequate to pay for Decommissioning.

**SECTION 6. Payments into the Funds.** From time to time, but not less than quarter annually, El Paso shall pay amounts into one or both of the Funds. El Paso may deposit all or any part of any payment entirely into the Decommissioning Trust Fund, entirely into the Second Fund, or partly into each in whatever proportion El Paso shall determine in its discretion; except that, if a deduction is allowed under Applicable Tax Law for payments into the Decommissioning Trust Fund, El Paso shall not make, and Decommissioning Trustee shall not accept, any payment into such Fund unless such payment (a) is in cash, to the extent Applicable Tax Law requires the payment to be in cash, and (b) complies with the amount limitation imposed by Applicable Tax Law and a deduction pursuant to Applicable Tax Law is allowed for the entire payment.



Decommissioning Trustee may accept from El Paso, as proof that these conditions are satisfied, a certificate executed by El Paso as to compliance with the amount limitation and deductibility of such payment, and, unless Decommissioning Trustee has actual knowledge to the contrary, Decommissioning Trustee may rely on such certificate without further inquiry or verification.

#### **SECTION 7. Investment of Funds.**

(A) Decommissioning Trustee. Any amounts held by Decommissioning Trustee in each Fund shall be invested and reinvested by it from time to time, but only in Qualified Investments; provided, however, if El Paso has delivered to Decommissioning Trustee a copy of an order of a state or federal regulatory agency that El Paso certifies is binding on El Paso and limits the investments in which all or a part of either Fund may be invested, the investment of such Fund shall not violate such order. A Fiduciary Investment Manager appointed by El Paso may direct investments and reinvestments of the Funds by written direction which shall certify that the directed investment qualifies as an investment in Qualified Investments and is within the limitation set forth in the preceding sentence. Decommissioning Trustee may rely upon such direction and certification without further inquiry or verification unless Decommissioning Trustee has actual knowledge that the directed investment does not satisfy the conditions and limitations of this Section 7.

In performing its duties and exercising its powers as Decommissioning Trustee hereunder, and in performing any investment management functions hereunder, Decommissioning Trustee shall comply with the following:

(i) it shall add all income, including interest, earned on the corpus of each Fund to such corpus as a part thereof, and shall owe the same duties with regard to such income as it owes with regard to such corpus;

(ii) it shall have the continuing duty to review the assets of each Fund to determine the appropriateness of the investments consistent with all terms, provisions and limitations of this Agreement, including without limitation to ensure compliance with the provisions of the investment guidelines of this Section 7, any order of a state or regulatory agency limiting investments that El Paso has delivered and certified to Decommissioning Trustee as provided above, and any other applicable governing regulations;

(iii) it shall not lend all or any part of either Fund to itself or to any of its officers or directors or permit any act of "self-dealing" prohibited by Applicable Tax Law;

(iv) it shall not invest or reinvest amounts in either Fund with, or in any instrument or security issued by, itself or any of its officers or directors, except that it may invest or reinvest amounts in the Funds in time deposits, demand deposits, or money market accounts of Decommissioning Trustee, and except that it may invest amounts in the Funds in mutual funds and exchange-traded funds that contain securities issued by Decommissioning Trustee provided such securities constitute no more than five percent (5%) of the fair market value of the assets of such funds at the time of the investment;

(v) it shall not invest or reinvest amounts in either Fund with, or in any instrument or security issued by, El Paso, its subsidiaries or affiliates or their successors or assigns, except that it may invest or reinvest amounts in the Funds in mutual funds and exchange-traded funds that contain securities issued by El Paso provided such securities constitute no more than five percent (5%) of the fair market value of the assets of such funds at the time of the investment; and

(vi) Notwithstanding anything to the contrary in this Agreement, if directed by El Paso, Decommissioning Trustee shall hold and maintain one or both of the Funds in a segregated account and invest and administer such Fund(s) separately from the assets of Decommissioning Trustee or other trusts.

(B) Fiduciary Investment Manager. Any amount of each Fund directed to be invested by a Fiduciary Investment Manager shall be invested and reinvested by Decommissioning Trustee as directed by such Fiduciary Investment Manager from time to time, but only in Qualified Investments; provided, however, if El Paso has delivered to a Fiduciary Investment Manager a copy of an order of a state or federal regulatory agency that El Paso certifies is binding on El Paso and limits the investments in which all or a part of a Fund may be invested, the investment of such Fund shall not violate such order. A Fiduciary Investment Manager appointed by El Paso may direct investments and reinvestments of the Funds by written direction which shall certify that the directed investment qualifies as an investment in Qualified Investments and is within the limitation set forth in the preceding sentence. Decommissioning Trustee may rely upon such written direction and certification without further inquiry or verification unless Decommissioning Trustee has actual knowledge that the directed investment does not satisfy the conditions and limitations of this Section 7.

In performing its duties and exercising its powers as a Fiduciary Investment Manager hereunder, a Fiduciary Investment Manager shall comply with the following:

(i) it shall direct the addition of all income, including interest, earned on the corpus of each Fund subject to its direction to such corpus as a part thereof, and shall owe the same duties with regard to such income as it owes with regard to such corpus;

(ii) it shall have a continuing duty to review the assets of each Fund subject to its direction to determine the appropriateness of the investments consistent with all terms, provisions and limitations of this Agreement, including without limitation to ensure compliance with the provisions of the investment guidelines of this Section 7, any order of a state or regulatory agency limiting investments that El Paso has delivered to such Fiduciary Investment Manager as hereinabove provided and any other applicable governing regulations;

(iii) it shall not direct the lending of all or any part of either Fund to itself or to any of its officers or directors or permit any act of "self-dealing" prohibited by Applicable Tax Law;



(iv) it shall not direct the investment or reinvestment of amounts in either Fund with, or in any instrument or security issued by, itself or any of its officers or directors;

(v) it shall not invest or reinvest amounts in either Fund with, or in any instrument or security issued by, Decommissioning Trustee or any of Decommissioning Trustee's officers or directors, except that it may invest or reinvest amounts in the Funds in time deposits, demand deposits, or money market accounts of Decommissioning Trustee, and except that it may invest amounts in the Funds in mutual funds and exchange-traded funds that contain securities issued by Decommissioning Trustee provided such securities constitute no more than five percent (5%) of the fair market value of the assets of such funds at the time of the investment;

(vi) it shall not direct the investment or reinvestment of amounts in either Fund with, or in any instrument or security issued by El Paso, its subsidiaries or affiliates or associates or their successors or assigns of El Paso, except that it may direct the investment or reinvestment of amounts in the Funds in mutual funds and exchange-traded funds that contain securities issued by El Paso provided such securities constitute no more than five percent (5%) of the fair market value of the assets of such funds at the time of the investment; and

(vii) it shall provide Decommissioning Trustee directives concerning voting, consensual, and other rights and powers accruing in connection with assets of the Funds subject to such Fiduciary Investment Manager's direction.

(C) General. It is the intent of El Paso that neither Decommissioning Trustee nor a Fiduciary Investment Manager shall have any powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations that are set out in this Section 7.

(D) Investments Standards. To the extent not inconsistent with the other provisions of this Section 7 and to the extent that Decommissioning Trustee does not currently require the assets of the Funds for the purpose of satisfying the liability of El Paso for Decommissioning and to pay Expenses:

(i) Decommissioning Trustee shall, in connection with investing and reinvesting assets of the Funds, exercise the same standard of care that a reasonable person would exercise in the same circumstances; provided, however, that this subsection 7.(D)(i) shall apply only as to those assets of the Funds that are not subject to the direction of a Fiduciary Investment Manager; and

(ii) a Fiduciary Investment Manager appointed to direct the investment and reinvestment of all or any portion of the assets of the Funds shall, with respect to such assets subject to its direction, exercise the same degree of care that a reasonable person would exercise in the same circumstances.

For purposes of this subsection entitled "Investment Standards", a "**reasonable person**" means a prudent investor as described in the Federal Energy Regulatory Commission's "Regulations Governing Nuclear Plant Decommissioning Trust Funds" at 18 CFR 35.32(a)(3), or any successor regulation and *Restatement of the Law, (Third), Trusts*, Section 227, including the general comments and reporter's notes with respect thereto.

(E) **Qualified Investments.** Qualified Investments include those investments meeting the investment standards, limitations, conditions, and requirements prescribed in the foregoing subsections of this Section 7 and the following criteria which may be amended by El Paso upon written notice to Decommissioning Trustee and each Fiduciary Investment Manager.

(i) **Investment Portfolio Goals.** The Funds shall be invested consistent with the goals set forth in this subsection 7.(E)(i).

- (a) Assets of the Decommissioning Trust Fund shall be invested only as permitted for a "Nuclear Decommissioning Reserve Fund" under Applicable Tax Law.
- (b) Assets of the Funds shall be invested with a goal of earning a reasonable return commensurate with the need to preserve the value of the assets of the Funds.
- (c) In keeping with prudent investment practices, the portfolio of securities held in the Funds shall be diversified to the extent reasonably feasible given the size of the Funds.
- (d) Asset allocation and the acceptable risk level of the assets of the Funds should take into account market conditions, the time horizon remaining before the commencement and completion of Decommissioning, and the funding status of the Funds. While maintaining an acceptable risk level consistent with the goal referenced in subsection 7.(E)(i)(b) of this Section 7, the investment emphasis when the remaining life of the liability, as defined in subsection 7.(E)(ii)(d)(4) of this subsection, exceeds five years should be to maximize net long-term earnings. The investment emphasis in the remaining investment period of the Funds should be on current income and the preservation of each Fund's assets.
- (e) In selecting investments, the impact of the investment on the volatility and expected return of the assets of the Funds, net of fees, commissions, expenses, and taxes should be considered.

(ii) **General Requirements.** The restrictions contained in this subsection 7.(E)(ii) apply to the Decommissioning Trust Fund and Second Fund in the aggregate. For purposes of this subsection 7.(E)(ii), a commingled funds is defined as a

professionally managed investment fund of fixed-income or equity securities established by an investment company regulated by the Securities Exchange Commission or a bank regulated by the Office of the Comptroller of the Currency.

- (a) Diversification. For the purpose of this subsection 7.(E)(ii)(a), a commingled or mutual fund or exchange-traded fund is not considered a security; rather, the diversification standard applies to all securities, including the individual securities held in such funds. Once the portfolio of securities (including those held in commingled or mutual or exchange-traded funds) held in the Funds contains securities with an aggregate value in excess of \$20 million, it shall be diversified such that:
  - (1) no more than five percent (5%) of the securities held may be issued by one entity, with the exception of the federal government, its agencies and instrumentalities; and
  - (2) the portfolio shall contain at least 20 different issues of securities, and municipal securities and real estate investments shall be diversified as to geographic region.
- (b) Derivatives. The use of derivative securities in the Funds is limited to those whose purpose is to enhance returns of the Funds without a corresponding increase in risk or to reduce risk of the assets of the Funds. Derivatives may not be used to increase the value of the assets of the Funds by any amount greater than the value of the underlying securities. Prohibited derivative securities include, but are not limited to, mortgage strips; inverse floating rate securities; leveraged investments or internally leveraged securities; residual and support tranches of collateralized mortgage obligations; tiered index bonds or other structured notes whose return characteristics are tied to non-market events; uncovered call/put options; large counter-party risk through over-the-counter options, forwards and swaps; and instruments with similar high-risk characteristics.
- (c) Leverage. The use of leverage (borrowing) to purchase securities or the purchase of securities on margin for a Fund is prohibited.
- (d) Investment limits in equity securities. The following investment limits shall apply to the percentage of the aggregate market value of all non-fixed income investments relative to the total portfolio market value:
  - (1) except as noted in subsection 7.(E)(2)(b), when the weighted average remaining life of the liability exceeds 5 years, the equity cap shall be sixty percent (60%);

- (2) when the weighted average remaining life of the liability ranges between 5 years and 2.5 years, the equity cap shall be thirty percent (30%). Additionally, during all years in which expenditures for Decommissioning occur, the equity cap shall also be thirty percent (30%);
- (3) when the weighted average remaining life of the liability is less than 2.5 years, the equity cap shall be zero percent (0%);
- (4) for purposes of this subsection 7.(E)(ii)(4), the weighted average remaining life in any given year is defined as the weighted average of years between the given year and the years of each Decommissioning outlay, where the weights are based on each year's expected Decommissioning expenditures divided by the amount of the remaining liability in that year; and
- (5) should the market value of non-fixed income investments, measured monthly, exceed the appropriate cap due to market fluctuations, the market value of the non-fixed income investments shall be reduced below the cap as soon as practicable. Such reductions may be accomplished by investing all future contributions to a Fund in debt securities as is necessary to reduce the market value of the non-fixed income investments below the cap, or if prudent, by the sale of equity securities.

(iii) Specific Investment Restrictions. The restrictions contained in this subsection 7.(E)(iii). apply to the Decommissioning Trust Fund and the Second Fund in the aggregate.

- (a) Fixed-income investments. Assets of the Funds shall not be invested in corporate or municipal debt securities that have a bond rating below investment grade "BBB-" by Standard & Poor's Corporation or "Baa3" by Moody's Investor's Service) at the time that the securities are purchased. If the debt rating of a company or municipality issuing the particular debt security falls below investment grade at some time after the security was purchased, the appropriateness of continuing to hold such security shall be reexamined. The overall portfolio of debt instruments shall have a quality level, measured quarterly not below an "AA" grade by Standard & Poor's Corporation or "Aa2" by Moody's Investor's Service. In calculating the quality of the overall portfolio, debt securities issued by the federal government shall be considered as having an "AAA" rating.

(b) Equity Investments.

- (1) At least seventy percent (70%) of the aggregate market value of the equity assets of the Funds, including the individual securities in commingled funds, shall have a quality ranking from a major rating service such as the earnings and dividend ranking for common stock by Standard and Poor's or the quality rating of Ford Investor Services. Further, the overall portfolio of ranked equities shall have a weighted average quality rating equivalent to the composite rating of the Standard and Poor's 500 Index assuming equal weighting of each ranked security in the Index. If the quality rating, measured quarterly, falls below the minimum quality standard, the quality level of the equity assets of the Funds shall be increased to the required level as soon as is practicable and prudent; and
- (2) assets of the Funds shall not be invested in equity securities if the issuer has a capitalization of less than \$100 million.

(c) Commingled funds. The following guidelines shall apply to the investments made through commingled funds. Examples of commingled funds appropriate for investment by nuclear decommissioning trust funds include United States equity-indexed funds, actively managed United States equity funds, balanced funds, bond funds, real estate investment trusts, and international funds.

- (1) The commingled funds should be selected consistent with the investment goals specified in subsection 7.(E)(i) and the general requirements in subsection 7.(E)(ii);
- (2) in evaluating the appropriateness of a particular commingled fund, the following duties shall be of a continuing nature:
  - (I) a duty to determine whether the fund manager's fee schedule for managing the fund is reasonable, when compared to fee schedules of other such managers;
  - (II) a duty to investigate and determine whether the past performance of the investment manager in managing the commingled fund has been reasonable relative to prudent investment and utility decommissioning trust practices and standards; and

- (III) a duty to investigate the reasonableness of the net after-tax return and risk of the commingled fund relative to similar funds, and the appropriateness of the commingled fund within all of the assets of the Funds;
- (3) the payment of load fees shall be avoided; and
- (4) commingled funds focused on specific market sectors or concentrated in a few holdings shall be used only as necessary to balance the Funds' overall investment portfolio mix.

Notwithstanding any other provision of this Section 7, nothing in this Section 7 shall be construed to permit any investment otherwise prohibited by any other provision of this Agreement, Applicable Law, or Applicable Tax Law. This Agreement and the investments of the Funds shall be interpreted and construed in a manner consistent with the parties' intention that this Agreement and the Funds at all times comply with all requirements of the Nuclear Regulatory Commission and other applicable governmental regulations and rules, including without limitation the rules of the PUCT, the NMPPRC, and the Federal Energy Regulatory Commission, including but not limited to the "Final Rule" regarding the formation, organization and purposes of nuclear plant decommissioning trust funds and for fund investments issued June 16, 1995, as may be amended from time to time.

**SECTION 8. Expenses; Indemnification.** El Paso shall pay all Expenses and, subject to Section 9.(D), may direct Decommissioning Trustee, in writing, to pay specified Expenses of a Fund from such Fund. El Paso shall certify in writing to Decommissioning Trustee whether and the extent to which an item is an Expense of a specified Fund and whether Applicable Tax Law permits its payment out of the assets of the Fund; and Decommissioning Trustee may, unless it has actual knowledge to the contrary, rely upon such certification without further inquiry or verification.

Except to the extent Decommissioning Trustee has actual knowledge to the contrary, Decommissioning Trustee shall be fully protected in relying upon the existence of any fact or state of facts represented to it in writing by El Paso or a duly appointed Fiduciary Investment Manager.

Except with respect to liability or fiduciary responsibility for any error or loss that may result by reason of the exercise or nonexercise of the duties, obligations, and/or fiduciary responsibility that are allocated to Decommissioning Trustee herein and that is finally determined by a court of competent jurisdiction to be the result of Decommissioning Trustee's own negligence or willful misconduct, El Paso shall indemnify Decommissioning Trustee, directly from El Paso's own assets (including the proceeds of any insurance policy the premiums of which are paid from El Paso's own assets), from and against any and all claims, demands, losses, damages, expenses (including, by way of illustration and not limitation, reasonable attorneys' fees and other legal and litigation costs), judgments, and liabilities arising from, out of, or in connection with the administration or investment of the Funds. Decommissioning Trustee shall not be liable for any

action taken by Decommissioning Trustee or any failure to act by Decommissioning Trustee if the action taken or the failure to act was directed by El Paso or a Fiduciary Investment Manager, if Decommissioning Trustee reasonably relied on such direction. This Section 8 shall survive the termination of this Agreement.

#### **SECTION 9. Payments and Distributions from the Funds.**

(A) Subject to the other provisions of this Section 9, Decommissioning Trustee shall make payments out of the Funds upon presentation by El Paso of (A) a certificate signed by El Paso (i) instructing Decommissioning Trustee to disburse amounts in the Funds in a manner designated in such certificate for purposes of paying for Decommissioning and (ii) certifying that disbursements, if any, directed to be made from assets of the Decommissioning Trust Fund are for payment of only those costs, liabilities, and expenses of Decommissioning that qualify as "nuclear decommissioning costs" under Applicable Tax law, and (B) documentation reasonably acceptable to Decommissioning Trustee that such payment for Decommissioning is due and payable.

(B) Upon termination of the Decommissioning Trust Fund under Applicable Tax Law, El Paso may direct Decommissioning Trustee to transfer all property remaining in the Decommissioning Trust Fund to El Paso for disbursement or distribution as may then be provided by law. In addition, upon its receipt of a certificate signed by El Paso certifying that Decommissioning has been completed under Applicable Law and all costs of Decommissioning have been paid in full, all property then held in both Funds shall be paid by Decommissioning Trustee to El Paso for disbursement or distribution as may then be provided by law and the Funds shall terminate.

(C) At any time and from time to time El Paso may direct Decommissioning Trustee in writing to, and upon receipt of such direction Decommissioning Trustee shall, subject to the applicable provisions of Section 9.(D), distribute to El Paso for disbursement or distribution as then may be provided or permitted by law or transfer from the Decommissioning Trust Fund to the Second Fund any:

(i) Deemed Distribution Amount that El Paso certifies in writing is deemed distributed under Applicable Tax Law;

(ii) Excess Contribution that El Paso certifies in writing (a) has occurred under Applicable Tax Law, and (b) is being transferred within the time permitted for withdrawal or transfer of such Excess Contribution by Applicable Tax Law; and

(iii) amount that El Paso certifies in writing may be transferred to the Second Fund in accordance with Applicable Law and Applicable Tax Law by reason of the disposition of all or a part of El Paso's interest in or license to possess Unit 2.

(D) Notwithstanding any other provision in this Agreement, except for (i) payments made under Section 8 for Expenses, (ii) to the extent allowed by Applicable Law, Deemed Distribution Amounts and Excess Contributions transferred to the Second Fund or distributed to



El Paso under Section 9.(C), and (iii) withdrawals made pursuant to 10 C.F.R. 50.82(a)(8) no disbursement or payment from the Funds shall be made unless (a) thirty (30) business days prior written notice of the intention to make such disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, and (b) Decommissioning Trustee has not received written notice of an objection during such thirty (30) business day period from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards. The notices required by this Section 9.(D) may be made by or on behalf of Decommissioning Trustee.

(E) Unless Decommissioning Trustee has actual knowledge to the contrary, Decommissioning Trustee shall be fully protected in relying upon any certificate described in Section 9 without further inquiry or verification.

**SECTION 10. Further Assurances.** El Paso agrees that it will, at its sole expense, do all such further acts and things and execute and deliver all such additional conveyances, assignments, agreements, and instruments, as may be necessary or desirable or as Decommissioning Trustee may at any time reasonably request in connection with the administration and enforcement of this Agreement, or relative to the Funds or any part thereof, or in order to assure and confirm unto Decommissioning Trustee its rights, powers, and remedies hereunder.

El Paso may provide general investment policies in writing to Decommissioning Trustee or a Fiduciary Investment Manager, but may not engage in the day-to-day management of the Funds or mandate, or itself make individual investment decisions except to the extent that El Paso retains the right under this Agreement to approve investments in time deposits, demand deposits, or money market accounts of Decommissioning Trustee, in mutual funds and exchange-traded funds that contain securities issued by Decommissioning Trustee (subject to the limitations elsewhere herein set forth), or in mutual funds and exchange-traded funds that contain securities issued by El Paso, its subsidiaries or affiliates or their successors or assigns (subject to the limitations elsewhere herein set forth).

El Paso will regularly supply to Decommissioning Trustee and to each Fiduciary Investment Manager, and regularly update, essential information about Unit 2, including its description, useful life, the Decommissioning plan that El Paso intends to follow, El Paso's anticipated liquidity needs once Decommissioning begins, and any other information that Decommissioning Trustee and a Fiduciary Investment Manager need to construct and maintain, over time, a sound investment plan for the Funds. El Paso will monitor the performance of the Decommissioning Trustee and each Fiduciary Investment Manager and, if necessary, replace those entities that are not properly performing assigned responsibilities.

**SECTION 11. Irrevocability and Modification.** This Agreement is irrevocable and may not be amended or modified except by a writing signed by the parties hereto and approved, to the extent required by Applicable Law, by applicable regulatory authority(s). The parties agree that they will execute any amendments requested by El Paso that are necessary to secure and maintain the qualification of the Decommissioning Trust Fund as a "Nuclear Decommissioning Reserve Fund" under Applicable Tax Law and the deduction of contributions to such Fund as provided by such law, or to comply with Applicable Law.

Not in limitation of the foregoing, if and to the extent that, now or in the future, federal tax law may extend certain tax benefits to a trust fund or funds that are created and maintained by El Paso for creation of a reserve or funds for costs associated with Decommissioning (hereinafter in this Section 11 referred to as such "**other trusts**") which such other trusts would qualify as a "Nuclear Decommissioning Reserve Fund" under Applicable Tax Law, including without limitation, Internal Revenue Code section 468A, only if established and maintained pursuant to a single trust agreement for a particular nuclear power plant, the parties hereto, upon the creation of such other trusts may amend this Agreement by attaching hereto as an allonge the governing instruments by which such other trusts may be created. In such event, such other trusts shall be administered under the terms of this Agreement to the extent not inconsistent with the governing instruments by which such other trusts may be created and such other trusts shall thereafter be administered as separate funds under the terms of this Agreement.

**SECTION 12. Obligation for Decommissioning.** Nothing in this Agreement and no act or omission relating to the Funds shall be read, construed, understood, or interpreted to place any obligation whatsoever on Decommissioning Trustee or a Fiduciary Investment Manager relating to Decommissioning or any Decommissioning Cost, all of which shall at all times remain the sole obligation of El Paso.

**SECTION 13. Governing Law.** This Agreement shall be deemed to be a contract made in Texas for all purposes and shall be construed in accordance with and governed by the laws of such State, including the provisions of the Texas Trust Code, with respect to all matters of construction, validity, and performance.

**SECTION 14. Resignation and Replacement of Decommissioning Trustee or Fiduciary Investment Manager.**

(A) Decommissioning Trustee may resign at any time without cause by giving at least 90 days prior written notice to El Paso, and El Paso may remove Decommissioning Trustee at any time with or without cause by giving written notice to Decommissioning Trustee, such resignation or removal to be effective on the acceptance of appointment by a successor Decommissioning Trustee under this Section 14. In case of the resignation or removal of Decommissioning Trustee, El Paso may appoint a successor Decommissioning Trustee by an instrument signed by El Paso. If a successor Decommissioning Trustee shall not have been appointed by El Paso within 90 days after the giving of such written notice of resignation or removal, Decommissioning Trustee or El Paso may apply to any court of competent jurisdiction to appoint a successor Decommissioning Trustee to act until such time, if any, as a successor Decommissioning Trustee shall have been appointed by El Paso and shall have accepted its appointment under this Section 14. Any successor Decommissioning Trustee so appointed by such court shall immediately and without further act be superseded by any successor Decommissioning Trustee appointed by El Paso as provided above.

(i) In appointing a Decommissioning Trustee, El Paso shall have the following duties which will be of a continuing nature:

- (a) a duty to determine whether Decommissioning Trustee's fee schedule for administering the trust is reasonable when compared to other institutional trustees rendering similar services;
- (b) a duty to investigate and determine whether the past administration of trusts by Decommissioning Trustee has been reasonable;
- (c) a duty to investigate and determine whether the financial stability and strength of Decommissioning Trustee is adequate;
- (d) a duty to investigate and determine whether Decommissioning Trustee is in compliance with the requirements of this Agreement; and
- (e) a duty to investigate any other factors which may bear on whether Decommissioning Trustee is suitable.

(ii) Any successor Decommissioning Trustee, however appointed, shall execute and deliver to the predecessor Decommissioning Trustee an instrument accepting such appointment, and thereupon such successor Decommissioning Trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties, and trusts of the predecessor Decommissioning Trustee with like effect as if originally named as Decommissioning Trustee herein; and such predecessor Decommissioning Trustee shall duly assign, transfer, deliver, and pay over to such successor Decommissioning Trustee all moneys or other property then held by such predecessor Decommissioning Trustee upon the trusts expressed in this Agreement, shall do all acts necessary to vest title of record in such successor Decommissioning Trustee, and shall transfer and deliver to such successor Decommissioning Trustee copies of all records pertaining to the Funds and this Agreement. In addition, upon the written request of such successor Decommissioning Trustee, such predecessor Decommissioning Trustee shall execute and deliver to such successor Decommissioning Trustee an instrument transferring to such successor Decommissioning Trustee, upon the trusts expressed in this Agreement, all the estates, properties, rights, power, duties, and trusts of such predecessor Decommissioning Trustee.

(iii) Any successor Decommissioning Trustee, however appointed, shall be a bank or trust company with trust powers incorporated and doing business in the United States of America and having net worth of at least \$150,000,000, if there be such an institution willing, able and legally qualified to perform the duties of Decommissioning Trustee hereunder upon reasonable or customary terms; provided however, that in calculating the \$150,000,000 net worth requirement, the net worth of the Decommissioning Trustee's parent corporation and/or affiliates

may be taken into account only if such entities guarantee Decommissioning Trustee's responsibilities to the Funds.

(iv) Any corporation into which Decommissioning Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Decommissioning Trustee shall be a party, or any corporation to which substantially all the corporate trust business of Decommissioning Trustee may be transferred, shall, subject to the terms of subsection 14(A)(iii), be Decommissioning Trustee under this Agreement without further act.

(v) No successor Decommissioning Trustee (other than a successor by reason of an event described in Section 14(A)(iv)) shall be liable for any act, omission or breach of trust by a predecessor Decommissioning Trustee, whether or not such successor Decommissioning Trustee knows or should have known of such act, omission, or breach of trust, and shall have no duty to compel redress of any breach of trust by a predecessor Decommissioning Trustee.

(B) If a Fiduciary Investment Manager is appointed by El Paso hereunder, such appointment shall be made in writing; however, El Paso may not serve as a Fiduciary Investment Manager. A Fiduciary Investment Manager may resign at any time without cause by giving at least ninety (90) days prior written notice to El Paso, and El Paso may remove a Fiduciary Investment Manager at any time with or without cause by giving written notice to such Fiduciary Investment Manager. The resignation or removal of a Fiduciary Investment Manager is not conditioned on the acceptance of appointment by a successor Fiduciary Investment Manager under this Section 14; provided, however, that if a Fiduciary Investment Manager other than the Decommissioning Trustee resigns or is removed and is not replaced by El Paso, Decommissioning Trustee shall, at that time, assume all investment responsibilities of such Fiduciary Investment Manager.

(i) In appointing a Fiduciary Investment Manager, El Paso shall have the following duties which will be of a continuing nature:

- (a) a duty to determine whether such Fiduciary Investment Manager's fee schedule for investment management services is reasonable when compared to other such managers;
- (b) a duty to investigate and determine whether the past performance of such Fiduciary Investment Manager in managing investments has been reasonable;
- (c) a duty to investigate and determine whether the financial stability and strength of such Fiduciary Investment Manager is adequate for purposes of liability;
- (d) a duty to investigate and determine whether such Fiduciary Investment Manager is in compliance with the requirements of its

investment management agreement and this Agreement as it relates to investments and to such Fiduciary Investment Manager; and

- (e) a duty to investigate any other factors which may bear on whether such Fiduciary Investment Manager is suitable.

**SECTION 15. Successors and Assigns; Additional Parties.** This Agreement shall be binding upon and inure to the benefit of each party and its successors and permitted assigns.

**SECTION 16. Termination of Funds.** If not otherwise terminated sooner in accordance with the terms of this Agreement, each Fund shall end on the earlier of (A) the date specified in a written agreement between El Paso and Decommissioning Trustee and (B) the date that is twenty-one (21) years less one day after the death of the last survivor of the descendants of Joseph P. Kennedy, the father of President John F. Kennedy, that were living on April 1, 1986. Upon such termination, all of the assets of the Funds shall be distributed to El Paso or its successor. Notwithstanding the foregoing provisions of this Section 16, if one or both of the Funds shall be or become valid under Applicable Law for a period subsequent to the date set out in Section 16(B) (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the creation of such a fund for a period in gross exceeding the period for which such Fund is hereinabove stated to extend and be valid), then such Fund shall not terminate as aforesaid but shall extend to and continue in effect until (but only if such nontermination and extension shall then be valid under Applicable Law) such time as such Fund shall, under Applicable Law, cease to be valid.

**SECTION 17. Accountings; Tax Returns and Reports; Audits.** Decommissioning Trustee shall keep accurate and detailed records and accounts of all investments, receipts, disbursements and other transactions of the Funds. All accounts, books, and records relating to the Funds shall be open to inspection and audit at all reasonable times by El Paso, its designee or an applicable governmental agency having jurisdiction over the Funds.

Within thirty (30) business days after the end of each calendar month and within thirty (30) business days after the close of each annual accounting period of each Fund, and as soon as reasonably practicable after the resignation or removal of a Decommissioning Trustee has become effective, Decommissioning Trustee shall furnish to El Paso a written account setting forth all (A) investments, receipts, disbursements, and other transactions effected by it during such month or year, as applicable, or during the part of the month or year to the date any such resignation or removal is effective, as applicable, and containing a description of all assets, including but not limited to all securities, purchased and sold (the description of the securities purchased must state the price at which each individual security was purchased), the cost or net proceeds of sale, and the securities and investments held at the end of such period, (B) the gains or losses realized by each Fund upon sales or other disposition of its assets, (C) the increase or decrease in the value of each Fund, (D) the fair market values of each Fund, and (E) the liabilities (excluding liability for Decommissioning) of the Funds incurred or unpaid at the end of such period. Within three (3) business days after the end of each calendar month and within three (3) business days after the close of each annual accounting period of each Fund, and as soon as reasonably practicable after the resignation or removal of a Decommissioning Trustee has become effective, Decommissioning

Trustee shall also provide El Paso secured web-based access to the information described in clauses (A)-(E) of this Section 17. The accounting shall also furnish El Paso such other information as Decommissioning Trustee may possess and as may be necessary for El Paso, Decommissioning Trustee and/or a Fiduciary Investment Manager to comply with any reporting requirements applicable to any of such parties and/or the Funds. If the fair market value of an asset in a Fund is not available, when necessary for accounting or reporting purposes the fair market value of the asset shall be determined in good faith by Decommissioning Trustee, assuming an orderly liquidation at the time of such determination. In addition, upon the written request of El Paso, which may be at any time and from time to time, Decommissioning Trustee shall provide El Paso the fair market value of the assets in a Fund as of a date other than the last day of a month or an annual accounting period of a Fund. If there is a disagreement between the Decommissioning Trustee, a Fiduciary Investment Manager and/or any other party as to any act or transaction reported in an accounting, Decommissioning Trustee or the Fiduciary Investment Manager, as applicable, shall have the right to have such disagreement settled by a court of competent jurisdiction. Decommissioning Trustee shall make such other reports as may be agreed upon in writing with El Paso.

Decommissioning Trustee shall retain its records and accountings related to the Funds as long as necessary for the proper administration thereof and at least for any period required by any applicable law, but with respect to each record and account for not less than six (6) years following the creation thereof.

El Paso shall have the right to cause the books, records, and accounts of Decommissioning Trustee that relate to the Funds to be examined and audited by independent auditors designated by El Paso at such times as El Paso may determine, and Decommissioning Trustee shall make such books, records, and accounts available for such purposes at all reasonable times.

El Paso shall, with the cooperation of Decommissioning Trustee, prepare or, upon agreement of Decommissioning Trustee, authorize Decommissioning Trustee to prepare, such tax returns and other reports for or with respect to each Fund as may be required from time to time by Applicable Law.

#### **SECTION 18. Rights of Decommissioning Trustee.**

(A) Decommissioning Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Agreement or required by the Texas Trust Code, and no implied duties or obligations shall be read into this Agreement against Decommissioning Trustee except such as are required by the Texas Trust Code.

(B) Decommissioning Trustee shall not have any obligation to invest, manage, control, make any payment from, or otherwise deal with, the Funds except as expressly provided herein or in written guidelines or instructions received pursuant to the terms hereof.

(C) Decommissioning Trustee may rely and shall be protected in acting upon any certificate, statement, notice, or other writing believed by it to be genuine and to have been signed or presented by the proper party or parties, and unless it has actual knowledge to the contrary,



Decommissioning Trustee shall not be bound to make any investigation into the facts or matters stated in any certificate, statement, notice, or other writing received by it.

(D) In the administration of the Funds hereunder, Decommissioning Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled persons to be selected and employed by it, and Decommissioning Trustee shall not be liable for anything done or omitted by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons to the extent permitted by law and to the extent no such action or omission constitutes negligence or willful misconduct by Decommissioning Trustee.

(E) With respect to any obligation of El Paso hereunder to indemnify Decommissioning Trustee, Decommissioning Trustee shall look solely to El Paso and shall not have any lien upon the assets of the Funds to secure such obligation.

#### **SECTION 19. Notices.**

(A) Except as otherwise provided in this Agreement, all notices under this Agreement shall be in writing and be effective upon receipt if delivered by (1) hand, (2) certified or registered United States Mail postage prepaid, or (3) facsimile, provided that service by facsimile after 5:00 p.m. local time of the recipient shall be deemed delivered on the following business day, as follows:

If notice is to the Trustee:

State Street Global Advisors Trust Company  
1 Iron Street  
Boston, MA 02210  
Attn: Terrence Bertrand  
Email: [terrence\\_bertrand@ssga.com](mailto:terrence_bertrand@ssga.com)

With a copy to:

State Street Global Advisors Trust Company  
1 Iron Street  
Boston, MA 02210  
Attn: General Counsel  
Email: [sean\\_o'malley@ssga.com](mailto:sean_o'malley@ssga.com)

If notice is to the Grantor:

El Paso Electric Company  
Attention Controller  
100 N. Stanton  
El Paso, Texas 79901  
email: [ndt.committee@epelectric.com](mailto:ndt.committee@epelectric.com)



and, if the notice is sent for the purposes described in Sections 5, 14(A), 14(B), and 19(B), with a copy to:

El Paso Electric Company  
Attention Controller  
100 N. Stanton  
El Paso, Texas 79901  
email: ndt.committee@epelectric.com

(B) Each person may change its address for purposes of notice under this Agreement by notice complying with Section 19(A).

Any notice required under this Agreement may be waived in writing by the party entitled thereto.

**SECTION 20. Counterpart Execution.** This Agreement may be executed in any number of counterparts and by each of the parties hereto on separate counterparts; all such counterparts shall together constitute but one and the same instrument.

**SECTION 21. Effective Date.** This Agreement shall become effective on the "Effective Date" as defined herein.

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be duly executed as of the day and year above written.

EL PASO:

EL PASO ELECTRIC COMPANY

By: Cynthia Prieto  
Cynthia S. Prieto  
Title: VP Controller, NDT Committee Chair

DECOMMISSIONING TRUSTEE:

STATE STREET GLOBAL ADVISORS TRUST  
COMPANY

By: [Signature]  
Title: Global Head of Strategic Relationships  
Senior Managing Director

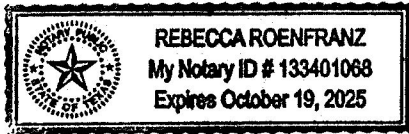
APPROVED AS TO FORM  
OFFICE OF THE GENERAL COUNSEL [Signature]

STATE OF TEXAS §

§

COUNTY OF EL PASO §

The foregoing instrument was acknowledged before me this 14 day of August, 2024 by Cynthia Prieto, VP Controller of EL PASO ELECTRIC COMPANY, a Texas corporation, on behalf of said corporation.



Rebecca RoenFranz  
Notary Public

My commission expires: 10-19-25

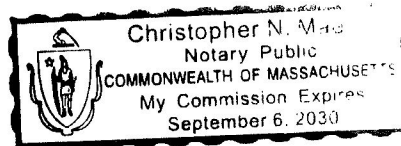
COMMONWEALTH OF MASSACHUSETTS     §  
   §  
COUNTY OF SUFFOLK§

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of August, 2024 by David Ireland,  
State Street Global Advisors Trust Company, a Massachusetts non-depository trust company, on behalf of such company.

Christopher N. Mac  
Notary Public

My commission expires: September 6<sup>th</sup> 2030

On this 20th day of August 2024, before me, the undersigned notary public, David Ireland personally appeared, proved to me through satisfactory evidence of identification, which was his employee identification card, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily as an authorized signer for State Street Global Advisors Trust Company, a Massachusetts non-depository trust company, on behalf of such company.



**Appendix A**  
**to**  
**Decommissioning Trust Agreement**

**for El Paso Electric Company Palo Verde Unit 2 Decommissioning**  
**DEFINITION OF TERMS**

**ANPP Participation Agreement** shall mean the Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, as amended, among Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Public Service Company of New Mexico, Southern California Public Power Authority, Department of Water and Power of The City of Los Angeles, and El Paso.

**Applicable Law** shall mean all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, permits, certificates, orders, interpretations, licenses, and permits of any federal, state, county, municipal, foreign, international, regional, or other governmental authority, agency, board, body, instrumentality, or court, and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator, or other judicial or quasi-judicial tribunal (including those pertaining to health, safety, the environment, or otherwise).

**Applicable Tax Law** shall mean Code Section 468A, any comparable subsequent provisions of the Code, the United States Treasury regulations promulgated under such section or provisions, and other provisions of the Code relating to the federal taxation of the Funds.

**Code** shall mean the Internal Revenue Code of 1986, as amended, or any successor law.

**Decommissioning** shall mean the decommissioning and retirement from service of Unit 2, and the related possession, maintenance, and disposal of material, radioactive or otherwise used in or produced by or relating to Unit 2, including, without limitation: (i) placement and maintenance in a state of protective storage; (ii) in-place entombment and maintenance; (iii) dismantlement; (iv) removal, decontamination and disposition of equipment and fixtures; (v) razing; (vi) removal and disposition of debris related to Unit 2 from the PVNGS Site; (vii) restoration of the PVNGS Site related to Unit 2 for unrestricted use; (viii) any other actions relating to decommissioning and retirement from service of Unit 2 required by the NRC; and (ix) all activities undertaken incident to the implementation thereof.

**Decommissioning Cost** shall mean El Paso's pro-rata share, under the ANPP Participation Agreement, of the greater of (i) the latest estimate of Termination Costs (as that term is defined by the ANPP Participation Agreement) for Unit 2 or (ii) the minimum amount required by the NRC to be funded for the decommissioning of Unit 2.

**Deemed Distribution Amount** shall mean an amount in the Decommissioning Trust Fund that is treated by Applicable Tax Law as having been distributed by reason of the disqualification of all or a part of such Fund.

**Excess Contribution** shall mean the amount by which cash payments made (or deemed made) by El Paso into the Decommissioning Trust Fund during any taxable year of El Paso exceeds the payment limitation imposed by Applicable Tax Law.

**Expenses** shall mean: (a) in the case of the Decommissioning Trust Fund, (i) the tax imposed by Code Section 468A(e)(2); (ii) any state or local tax imposed on the income or the assets of such Fund; and (iii) legal, accounting, and actuarial fees and expenses, trustee's fees and expenses, and all other ordinary administrative costs and incidental expenses, incurred by Decommissioning Trustee, a Fiduciary Investment Manager, or El Paso in connection with the operation of such Fund, but in each case only to the extent permitted by Code Section 468A(e)(4)(B) or other Applicable Tax Law to be paid from the assets of a "Nuclear Decommissioning Reserve Fund," as that term is used in Applicable Tax Law; and (b) in the case of the Second Fund, (i) any federal, state, or local tax actually paid by El Paso with respect to the income or the assets of such Fund including a payment to El Paso of the federal income tax (at the statutory rate) with respect to the taxable income of such Fund required to be included on El Paso's federal income tax return; and (ii) legal, accounting and actuarial expenses, trustee's fees and expenses, and all other ordinary administrative costs and incidental expenses, incurred by Decommissioning Trustee, a Fiduciary Investment Manager, or El Paso in connection with the operation of such Fund; provided, however, Expenses shall not include taxes on or with respect to fees paid to Decommissioning Trustee or a Fiduciary Investment Manager and taxes that Code Section 4951 requires be paid by Decommissioning Trustee; and further provided that the total trustee and investment manager fees paid on an annual basis for the entire portfolio including commingled funds shall not exceed 0.7% of the entire portfolio's average annual balance.

**Fiduciary Investment Manager** shall mean any institution or professional appointed by El Paso, other than Decommissioning Trustee, who is responsible for the investment and reinvestment of the Funds.

**License** shall mean NRC Facility Operating License No. NPF-41, issued December 31, 1984, as the same may be amended, modified, extended, renewed or superseded from time to time.

**NRC** shall mean the Nuclear Regulatory Commission of the United States of America or any successor agency.

**PVNGS** shall mean the Palo Verde Nuclear Generating Station, which is located on the PVNGS Site.

**PVNGS Site** shall mean the real property located in Maricopa County, Arizona, approximately 36 miles west of the City of Phoenix, Arizona and approximately 16 miles west of the City of Buckeye, Arizona, which legal description is contained in Appendix B to the ANPP Participation Agreement.

**Qualified Investments** shall mean investments that meet the intent, standards, liabilities, and general and specific requirements and conditions on investments as set forth in Section 7 herein.

**Unit 2** shall mean the 1336 megawatt unit, commonly known as Unit 2, at PVNGS.

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**DECOMMISSIONING TRUST AGREEMENT**

Dated as of August 30, 2024

Between

EL PASO ELECTRIC COMPANY

And

STATE STREET GLOBAL ADVISORS TRUST COMPANY

As Decommissioning Trustee

For

El Paso Electric Company Palo Verde Unit 3 Decommissioning Trust



DECOMMISSIONING TRUST AGREEMENT  
FOR EL PASO ELECTRIC COMPANY PALO VERDE UNIT 3 DECOMMISSIONING TRUST

This Decommissioning Trust Agreement (the "**Agreement**"), to be effective as of August 30, 2024 (the "**Effective Date**"), between State Street Global Advisors Trust Company, a Massachusetts non-depository trust company ("**Decommissioning Trustee**") and El Paso Electric Company, a Texas corporation ("**El Paso**").

The Nuclear Regulatory Commission ("**NRC**"), an agency of the United States of America, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, has promulgated regulations codified in Title 10, Chapter 1 of the Code of Federal Regulations, Part 50, as amended. These regulations, applicable to El Paso, require that each holder of a license issued pursuant thereto must provide assurance that funds will be available for Decommissioning.

El Paso and others entered into the Arizona Nuclear Power Project Participation Agreement executed as of August 23, 1973 (the "**ANPP Participation Agreement**"). Amendment 13 to the ANPP Participation Agreement, effective June 15, 1991, requires El Paso to establish and maintain funds for the accumulation, over a period not in excess of the remaining term of the operating license for Unit 3 and the period thereafter until completion of Decommissioning, of funds sufficient to pay Decommissioning Cost.

In addition, El Paso is required by the Public Utility Commission of Texas ("**PUCT**"), the New Mexico Public Regulation Commission ("**NMPRC**"), the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission to establish a source of funds to pay for Decommissioning.

Under Applicable Tax Law, certain federal income tax benefits are available to El Paso from establishing and making contributions to a "Nuclear Decommissioning Reserve Fund" for Unit 3. In order to satisfy its obligations under the ANPP Participation Agreement, to comply with the requirements of the governmental authorities referred to above, and to obtain such federal income tax benefits, on April 1, 1986, El Paso entered into a Decommissioning Trust Agreement, which was amended by Amendment No. 1 dated September 1, 1991 (the "**Original Agreement**"), creating two decommissioning trust funds to provide external funds for Decommissioning, for purposes of this Agreement designated as the Decommissioning Trust Fund and the Second Fund. The Decommissioning Trust Fund is intended at all times to qualify as a "Nuclear Decommissioning Reserve Fund" under Applicable Tax Law.

On January 9, 1996, in Cause No. 92-10148-FM, styled In re: El Paso Electric Company, the United States Bankruptcy Court for the Western District of Texas (Austin Division) entered an order confirming the Fourth Amended Plan of Reorganization of El Paso (the "**Plan**"). In accordance with the Plan, which became effective on February 12, 1996, El Paso and Decommissioning Trustee restated and amended the Original Agreement to ensure that the Decommissioning Trust Fund and the Second Fund would continue to be held, managed and distributed, without interruption, in accordance with the terms of the Original Agreement, Applicable Law, and Applicable Tax Law.

This Agreement, in turn, amends and restates the Original Agreement, as restated and amended effective February 12, 1996, as further restated and amended effective December 24, 2003, and as further restated and amended effective April 1, 2006, to read in its entirety as follows and continues the Decommissioning Trust Fund and the Second Fund.

Therefore, in consideration of the foregoing premises, the acceptance by Decommissioning Trustee of the trusts created, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto restate and amend the Original Agreement, as restated and amended effective April 1, 2006, as follows:

**SECTION 1. Definitions; References to Sections.** All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth in Appendix A hereto. Unless otherwise stated, references to a "Section" are to a section of this Agreement.

**SECTION 2. Creation of Trust Funds.** El Paso has established and hereby confirms the establishment with Decommissioning Trustee of the Decommissioning Trust Fund and the Second Fund (each a "**Fund**" and together the "**Funds**"). Each Fund shall include: (A) all cash and investments thereof, as more specifically described in Section 7; (B) all dividends, interest, cash, instruments, and other property from time to time received, receivable, or otherwise distributed or distributable in respect of or in exchange for any or all such investments; (C) all rights and privileges with respect to such investments; and (D) all proceeds of any of the foregoing and any property of any character whatsoever into which any of the foregoing may be converted. El Paso and Decommissioning Trustee intend that no third party shall have access to the Funds except as provided herein.

**SECTION 3. Purpose of Trust Funds; Tax Qualification.** The Funds are for the accumulation and funding of amounts to pay costs, liabilities, and expenses of Decommissioning, including the accumulation, over a period not in excess of the remaining term of the operating license for Unit 3 and the period thereafter until completion of Decommissioning, of amounts which are sufficient to pay Decommissioning Cost. The Decommissioning Trust Fund, but not the Second Fund, is intended at all times to qualify as a "**Nuclear Decommissioning Reserve Fund**" under Applicable Tax Law. El Paso and the applicable Fiduciary Investment Manager(s), if any, and Decommissioning Trustee (but with respect to Decommissioning Trustee only as to those assets of the Funds that are not under the direction of a Fiduciary Investment Manager) shall seek to obtain the best possible tax treatment of amounts collected for nuclear plant decommissioning; and in this regard, El Paso and the applicable Fiduciary Investment Manager(s), if any, and Decommissioning Trustee (but with respect to Decommissioning Trustee only as to those assets of the Funds that are not under the direction of a Fiduciary Investment Manager) shall take maximum advantage of tax deductions and credits when it is consistent with sound business practices to do so. The assets of the Decommissioning Trust Fund must be used as authorized by section 468A of the Code and shall be used exclusively:

(A) subject to the limitations and conditions of Section 9, to satisfy, in whole or in part, El Paso's obligation to pay for Decommissioning;

(B) subject to the limitations and conditions of Section 8, to pay Expenses; and

(C) to the extent not currently required for the uses described in (A) and (B) above, and subject to the limitations and conditions of Section 7, for investment in Qualified Investments.

The Funds shall be used exclusively for Decommissioning of Unit 3. This Agreement may not be amended so as to violate section 468A of the Code or the regulations thereunder.

**SECTION 4. Declaration and Acceptance of Trust.** Decommissioning Trustee accepts the trusts created hereby and declares that it will hold and administer all estate, right, title, and interest in and to each Fund upon the trusts set forth herein, but only on the terms of this Agreement, and agrees to receive and disburse all moneys and investments constituting any part of each Fund in accordance with this Agreement. No implied duties or obligations shall be read into this Agreement against Decommissioning Trustee. Decommissioning Trustee shall not commit any act, enter into any transaction, or permit any act or transaction to occur that is an "act of self-dealing" between the Decommissioning Trust Fund and "a disqualified person" as those terms are defined by Applicable Tax Law, and, if such an act occurs, Decommissioning Trustee shall promptly take all necessary steps to correct it as soon as it has knowledge of the occurrence.

**SECTION 5. Ownership of Funds.** Not in limitation of its fiduciary duty hereunder, title to any and all property held in each Fund shall be held by Decommissioning Trustee in its name as trustee as owner of record. At all times, Decommissioning Trustee shall follow the directives of (A) the applicable Fiduciary Investment Manager, if any, with respect to exercising any and all corresponding voting, consensual, and other rights accruing to the owner of such property in connection with such property, and, except as provided in this subsection 5.(A), (B) El Paso with respect to exercising any and all such voting, consensual, and other rights. Decommissioning Trustee shall have the right, in its name, as trustee upon prior written notice to El Paso, to settle, compromise, prosecute, or defend any action, claim, or proceeding with respect to any and all property held in each Fund. Subject to the provisions of this Agreement, Decommissioning Trustee may sell, assign, endorse, pledge, transfer, and make any agreement respecting, or otherwise deal with, any and all property held in each Fund; provided, however, that except as required by Section 7, nothing herein contained shall be construed as requiring or obligating Decommissioning Trustee to make any inquiry as to the nature or sufficiency of any payment received by it, to present or file any claim or notice, or to take any action with respect to any of the property held in each Fund. It is not the duty of Decommissioning Trustee or a Fiduciary Investment Manager to ensure that the Funds are adequate to pay for Decommissioning.

**SECTION 6. Payments into the Funds.** From time to time, but not less than quarter annually, El Paso shall pay amounts into one or both of the Funds. El Paso may deposit all or any part of any payment entirely into the Decommissioning Trust Fund, entirely into the Second Fund, or partly into each in whatever proportion El Paso shall determine in its discretion; except that, if a deduction is allowed under Applicable Tax Law for payments into the Decommissioning Trust Fund, El Paso shall not make, and Decommissioning Trustee shall not accept, any payment into such Fund unless such payment (a) is in cash, to the extent Applicable Tax Law requires the payment to be in cash, and (b) complies with the amount limitation imposed by Applicable Tax Law and a deduction pursuant to Applicable Tax Law is allowed for the entire payment.

Decommissioning Trustee may accept from El Paso, as proof that these conditions are satisfied, a certificate executed by El Paso as to compliance with the amount limitation and deductibility of such payment, and, unless Decommissioning Trustee has actual knowledge to the contrary, Decommissioning Trustee may rely on such certificate without further inquiry or verification.

#### **SECTION 7. Investment of Funds.**

(A) Decommissioning Trustee. Any amounts held by Decommissioning Trustee in each Fund shall be invested and reinvested by it from time to time, but only in Qualified Investments; provided, however, if El Paso has delivered to Decommissioning Trustee a copy of an order of a state or federal regulatory agency that El Paso certifies is binding on El Paso and limits the investments in which all or a part of either Fund may be invested, the investment of such Fund shall not violate such order. A Fiduciary Investment Manager appointed by El Paso may direct investments and reinvestments of the Funds by written direction which shall certify that the directed investment qualifies as an investment in Qualified Investments and is within the limitation set forth in the preceding sentence. Decommissioning Trustee may rely upon such direction and certification without further inquiry or verification unless Decommissioning Trustee has actual knowledge that the directed investment does not satisfy the conditions and limitations of this Section 7.

In performing its duties and exercising its powers as Decommissioning Trustee hereunder, and in performing any investment management functions hereunder, Decommissioning Trustee shall comply with the following:

- (i) it shall add all income, including interest, earned on the corpus of each Fund to such corpus as a part thereof, and shall owe the same duties with regard to such income as it owes with regard to such corpus;
- (ii) it shall have the continuing duty to review the assets of each Fund to determine the appropriateness of the investments consistent with all terms, provisions and limitations of this Agreement, including without limitation to ensure compliance with the provisions of the investment guidelines of this Section 7, any order of a state or regulatory agency limiting investments that El Paso has delivered and certified to Decommissioning Trustee as provided above, and any other applicable governing regulations;
- (iii) it shall not lend all or any part of either Fund to itself or to any of its officers or directors or permit any act of "self-dealing" prohibited by Applicable Tax Law;
- (iv) it shall not invest or reinvest amounts in either Fund with, or in any instrument or security issued by, itself or any of its officers or directors, except that it may invest or reinvest amounts in the Funds in time deposits, demand deposits, or money market accounts of Decommissioning Trustee, and except that it may invest amounts in the Funds in mutual funds and exchange-traded funds that contain securities issued by Decommissioning Trustee provided such securities constitute no more than five percent (5%) of the fair market value of the assets of such funds at the time of the investment;

(v) it shall not invest or reinvest amounts in either Fund with, or in any instrument or security issued by, El Paso, its subsidiaries or affiliates or their successors or assigns, except that it may invest or reinvest amounts in the Funds in mutual funds and exchange-traded funds that contain securities issued by El Paso provided such securities constitute no more than five percent (5%) of the fair market value of the assets of such funds at the time of the investment; and

(vi) Notwithstanding anything to the contrary in this Agreement, if directed by El Paso, Decommissioning Trustee shall hold and maintain one or both of the Funds in a segregated account and invest and administer such Fund(s) separately from the assets of Decommissioning Trustee or other trusts.

(B) Fiduciary Investment Manager. Any amount of each Fund directed to be invested by a Fiduciary Investment Manager shall be invested and reinvested by Decommissioning Trustee as directed by such Fiduciary Investment Manager from time to time, but only in Qualified Investments; provided, however, if El Paso has delivered to a Fiduciary Investment Manager a copy of an order of a state or federal regulatory agency that El Paso certifies is binding on El Paso and limits the investments in which all or a part of a Fund may be invested, the investment of such Fund shall not violate such order. A Fiduciary Investment Manager appointed by El Paso may direct investments and reinvestments of the Funds by written direction which shall certify that the directed investment qualifies as an investment in Qualified Investments and is within the limitation set forth in the preceding sentence. Decommissioning Trustee may rely upon such written direction and certification without further inquiry or verification unless Decommissioning Trustee has actual knowledge that the directed investment does not satisfy the conditions and limitations of this Section 7.

In performing its duties and exercising its powers as a Fiduciary Investment Manager hereunder, a Fiduciary Investment Manager shall comply with the following:

(i) it shall direct the addition of all income, including interest, earned on the corpus of each Fund subject to its direction to such corpus as a part thereof, and shall owe the same duties with regard to such income as it owes with regard to such corpus;

(ii) it shall have a continuing duty to review the assets of each Fund subject to its direction to determine the appropriateness of the investments consistent with all terms, provisions and limitations of this Agreement, including without limitation to ensure compliance with the provisions of the investment guidelines of this Section 7, any order of a state or regulatory agency limiting investments that El Paso has delivered to such Fiduciary Investment Manager as hereinabove provided and any other applicable governing regulations;

(iii) it shall not direct the lending of all or any part of either Fund to itself or to any of its officers or directors or permit any act of "self-dealing" prohibited by Applicable Tax Law;



(iv) it shall not direct the investment or reinvestment of amounts in either Fund with, or in any instrument or security issued by, itself or any of its officers or directors;

(v) it shall not invest or reinvest amounts in either Fund with, or in any instrument or security issued by, Decommissioning Trustee or any of Decommissioning Trustee's officers or directors, except that it may invest or reinvest amounts in the Funds in time deposits, demand deposits, or money market accounts of Decommissioning Trustee, and except that it may invest amounts in the Funds in mutual funds and exchange-traded funds that contain securities issued by Decommissioning Trustee provided such securities constitute no more than five percent (5%) of the fair market value of the assets of such funds at the time of the investment;

(vi) it shall not direct the investment or reinvestment of amounts in either Fund with, or in any instrument or security issued by El Paso, its subsidiaries or affiliates or associates or their successors or assigns of El Paso, except that it may direct the investment or reinvestment of amounts in the Funds in mutual funds and exchange-traded funds that contain securities issued by El Paso provided such securities constitute no more than five percent (5%) of the fair market value of the assets of such funds at the time of the investment; and

(vii) it shall provide Decommissioning Trustee directives concerning voting, consensual, and other rights and powers accruing in connection with assets of the Funds subject to such Fiduciary Investment Manager's direction.

(C) General. It is the intent of El Paso that neither Decommissioning Trustee nor a Fiduciary Investment Manager shall have any powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations that are set out in this Section 7.

(D) Investments Standards. To the extent not inconsistent with the other provisions of this Section 7 and to the extent that Decommissioning Trustee does not currently require the assets of the Funds for the purpose of satisfying the liability of El Paso for Decommissioning and to pay Expenses:

(i) Decommissioning Trustee shall, in connection with investing and reinvesting assets of the Funds, exercise the same standard of care that a reasonable person would exercise in the same circumstances; provided, however, that this subsection 7.(D)(i) shall apply only as to those assets of the Funds that are not subject to the direction of a Fiduciary Investment Manager; and

(ii) a Fiduciary Investment Manager appointed to direct the investment and reinvestment of all or any portion of the assets of the Funds shall, with respect to such assets subject to its direction, exercise the same degree of care that a reasonable person would exercise in the same circumstances.

For purposes of this subsection entitled "Investment Standards", a "**reasonable person**" means a prudent investor as described in the Federal Energy Regulatory Commission's "Regulations Governing Nuclear Plant Decommissioning Trust Funds" at 18 CFR 35.32(a)(3), or any successor regulation and *Restatement of the Law, (Third), Trusts*, Section 227, including the general comments and reporter's notes with respect thereto.

(E) Qualified Investments. Qualified Investments include those investments meeting the investment standards, limitations, conditions, and requirements prescribed in the foregoing subsections of this Section 7 and the following criteria which may be amended by El Paso upon written notice to Decommissioning Trustee and each Fiduciary Investment Manager.

(i) Investment Portfolio Goals. The Funds shall be invested consistent with the goals set forth in this subsection 7.(E)(i).

- (a) Assets of the Decommissioning Trust Fund shall be invested only as permitted for a "Nuclear Decommissioning Reserve Fund" under Applicable Tax Law.
- (b) Assets of the Funds shall be invested with a goal of earning a reasonable return commensurate with the need to preserve the value of the assets of the Funds.
- (c) In keeping with prudent investment practices, the portfolio of securities held in the Funds shall be diversified to the extent reasonably feasible given the size of the Funds.
- (d) Asset allocation and the acceptable risk level of the assets of the Funds should take into account market conditions, the time horizon remaining before the commencement and completion of Decommissioning, and the funding status of the Funds. While maintaining an acceptable risk level consistent with the goal referenced in subsection 7.(E)(i)(b) of this Section 7, the investment emphasis when the remaining life of the liability, as defined in subsection 7.(E)(ii)(d)(4) of this subsection, exceeds five years should be to maximize net long-term earnings. The investment emphasis in the remaining investment period of the Funds should be on current income and the preservation of each Fund's assets.
- (e) In selecting investments, the impact of the investment on the volatility and expected return of the assets of the Funds, net of fees, commissions, expenses, and taxes should be considered.

(ii) General Requirements. The restrictions contained in this subsection 7.(E)(ii) apply to the Decommissioning Trust Fund and Second Fund in the aggregate. For purposes of this subsection 7.(E)(ii), a commingled funds is defined as a



professionally managed investment fund of fixed-income or equity securities established by an investment company regulated by the Securities Exchange Commission or a bank regulated by the Office of the Comptroller of the Currency.

- (a) Diversification. For the purpose of this subsection 7.(E)(ii)(a), a commingled or mutual fund or exchange-traded fund is not considered a security; rather, the diversification standard applies to all securities, including the individual securities held in such funds. Once the portfolio of securities (including those held in commingled or mutual or exchange-traded funds) held in the Funds contains securities with an aggregate value in excess of \$20 million, it shall be diversified such that:
  - (1) no more than five percent (5%) of the securities held may be issued by one entity, with the exception of the federal government, its agencies and instrumentalities; and
  - (2) the portfolio shall contain at least 20 different issues of securities, and municipal securities and real estate investments shall be diversified as to geographic region.
- (b) Derivatives. The use of derivative securities in the Funds is limited to those whose purpose is to enhance returns of the Funds without a corresponding increase in risk or to reduce risk of the assets of the Funds. Derivatives may not be used to increase the value of the assets of the Funds by any amount greater than the value of the underlying securities. Prohibited derivative securities include, but are not limited to, mortgage strips; inverse floating rate securities; leveraged investments or internally leveraged securities; residual and support tranches of collateralized mortgage obligations; tiered index bonds or other structured notes whose return characteristics are tied to non-market events; uncovered call/put options; large counter-party risk through over-the-counter options, forwards and swaps; and instruments with similar high-risk characteristics.
- (c) Leverage. The use of leverage (borrowing) to purchase securities or the purchase of securities on margin for a Fund is prohibited.
- (d) Investment limits in equity securities. The following investment limits shall apply to the percentage of the aggregate market value of all non-fixed income investments relative to the total portfolio market value:
  - (1) except as noted in subsection 7.(E)(2)(b), when the weighted average remaining life of the liability exceeds 5 years, the equity cap shall be sixty percent (60%);

- (2) when the weighted average remaining life of the liability ranges between 5 years and 2.5 years, the equity cap shall be thirty percent (30%). Additionally, during all years in which expenditures for Decommissioning occur, the equity cap shall also be thirty percent (30%);
- (3) when the weighted average remaining life of the liability is less than 2.5 years, the equity cap shall be zero percent (0%);
- (4) for purposes of this subsection 7.(E)(ii)(4), the weighted average remaining life in any given year is defined as the weighted average of years between the given year and the years of each Decommissioning outlay, where the weights are based on each year's expected Decommissioning expenditures divided by the amount of the remaining liability in that year; and
- (5) should the market value of non-fixed income investments, measured monthly, exceed the appropriate cap due to market fluctuations, the market value of the non-fixed income investments shall be reduced below the cap as soon as practicable. Such reductions may be accomplished by investing all future contributions to a Fund in debt securities as is necessary to reduce the market value of the non-fixed income investments below the cap, or if prudent, by the sale of equity securities.

(iii) Specific Investment Restrictions. The restrictions contained in this subsection 7.(E)(iii). apply to the Decommissioning Trust Fund and the Second Fund in the aggregate.

- (a) Fixed-income investments. Assets of the Funds shall not be invested in corporate or municipal debt securities that have a bond rating below investment grade "BBB-" by Standard & Poor's Corporation or "Baa3" by Moody's Investor's Service) at the time that the securities are purchased. If the debt rating of a company or municipality issuing the particular debt security falls below investment grade at some time after the security was purchased, the appropriateness of continuing to hold such security shall be reexamined. The overall portfolio of debt instruments shall have a quality level, measured quarterly not below an "AA" grade by Standard & Poor's Corporation or "Aa2" by Moody's Investor's Service. In calculating the quality of the overall portfolio, debt securities issued by the federal government shall be considered as having an "AAA" rating.

(b) Equity Investments.

- (1) At least seventy percent (70%) of the aggregate market value of the equity assets of the Funds, including the individual securities in commingled funds, shall have a quality ranking from a major rating service such as the earnings and dividend ranking for common stock by Standard and Poor's or the quality rating of Ford Investor Services. Further, the overall portfolio of ranked equities shall have a weighted average quality rating equivalent to the composite rating of the Standard and Poor's 500 Index assuming equal weighting of each ranked security in the Index. If the quality rating, measured quarterly, falls below the minimum quality standard, the quality level of the equity assets of the Funds shall be increased to the required level as soon as is practicable and prudent; and
- (2) assets of the Funds shall not be invested in equity securities if the issuer has a capitalization of less than \$100 million.

(c) Commingled funds. The following guidelines shall apply to the investments made through commingled funds. Examples of commingled funds appropriate for investment by nuclear decommissioning trust funds include United States equity-indexed funds, actively managed United States equity funds, balanced funds, bond funds, real estate investment trusts, and international funds.

- (1) The commingled funds should be selected consistent with the investment goals specified in subsection 7.(E)(i) and the general requirements in subsection 7.(E)(ii);
- (2) in evaluating the appropriateness of a particular commingled fund, the following duties shall be of a continuing nature:
  - (I) a duty to determine whether the fund manager's fee schedule for managing the fund is reasonable, when compared to fee schedules of other such managers;
  - (II) a duty to investigate and determine whether the past performance of the investment manager in managing the commingled fund has been reasonable relative to prudent investment and utility decommissioning trust practices and standards; and

- (III) a duty to investigate the reasonableness of the net after-tax return and risk of the commingled fund relative to similar funds, and the appropriateness of the commingled fund within all of the assets of the Funds;
- (3) the payment of load fees shall be avoided; and
- (4) commingled funds focused on specific market sectors or concentrated in a few holdings shall be used only as necessary to balance the Funds' overall investment portfolio mix.

Notwithstanding any other provision of this Section 7, nothing in this Section 7 shall be construed to permit any investment otherwise prohibited by any other provision of this Agreement, Applicable Law, or Applicable Tax Law. This Agreement and the investments of the Funds shall be interpreted and construed in a manner consistent with the parties' intention that this Agreement and the Funds at all times comply with all requirements of the Nuclear Regulatory Commission and other applicable governmental regulations and rules, including without limitation the rules of the PUCT, the NMPPRC, and the Federal Energy Regulatory Commission, including but not limited to the "Final Rule" regarding the formation, organization and purposes of nuclear plant decommissioning trust funds and for fund investments issued June 16, 1995, as may be amended from time to time.

**SECTION 8. Expenses; Indemnification.** El Paso shall pay all Expenses and, subject to Section 9.(D), may direct Decommissioning Trustee, in writing, to pay specified Expenses of a Fund from such Fund. El Paso shall certify in writing to Decommissioning Trustee whether and the extent to which an item is an Expense of a specified Fund and whether Applicable Tax Law permits its payment out of the assets of the Fund; and Decommissioning Trustee may, unless it has actual knowledge to the contrary, rely upon such certification without further inquiry or verification.

Except to the extent Decommissioning Trustee has actual knowledge to the contrary, Decommissioning Trustee shall be fully protected in relying upon the existence of any fact or state of facts represented to it in writing by El Paso or a duly appointed Fiduciary Investment Manager.

Except with respect to liability or fiduciary responsibility for any error or loss that may result by reason of the exercise or nonexercise of the duties, obligations, and/or fiduciary responsibility that are allocated to Decommissioning Trustee herein and that is finally determined by a court of competent jurisdiction to be the result of Decommissioning Trustee's own negligence or willful misconduct, El Paso shall indemnify Decommissioning Trustee, directly from El Paso's own assets (including the proceeds of any insurance policy the premiums of which are paid from El Paso's own assets), from and against any and all claims, demands, losses, damages, expenses (including, by way of illustration and not limitation, reasonable attorneys' fees and other legal and litigation costs), judgments, and liabilities arising from, out of, or in connection with the administration or investment of the Funds. Decommissioning Trustee shall not be liable for any

action taken by Decommissioning Trustee or any failure to act by Decommissioning Trustee if the action taken or the failure to act was directed by El Paso or a Fiduciary Investment Manager, if Decommissioning Trustee reasonably relied on such direction. This Section 8 shall survive the termination of this Agreement.

#### **SECTION 9. Payments and Distributions from the Funds.**

(A) Subject to the other provisions of this Section 9, Decommissioning Trustee shall make payments out of the Funds upon presentation by El Paso of (A) a certificate signed by El Paso (i) instructing Decommissioning Trustee to disburse amounts in the Funds in a manner designated in such certificate for purposes of paying for Decommissioning and (ii) certifying that disbursements, if any, directed to be made from assets of the Decommissioning Trust Fund are for payment of only those costs, liabilities, and expenses of Decommissioning that qualify as "nuclear decommissioning costs" under Applicable Tax law, and (B) documentation reasonably acceptable to Decommissioning Trustee that such payment for Decommissioning is due and payable.

(B) Upon termination of the Decommissioning Trust Fund under Applicable Tax Law, El Paso may direct Decommissioning Trustee to transfer all property remaining in the Decommissioning Trust Fund to El Paso for disbursement or distribution as may then be provided by law. In addition, upon its receipt of a certificate signed by El Paso certifying that Decommissioning has been completed under Applicable Law and all costs of Decommissioning have been paid in full, all property then held in both Funds shall be paid by Decommissioning Trustee to El Paso for disbursement or distribution as may then be provided by law and the Funds shall terminate.

(C) At any time and from time to time El Paso may direct Decommissioning Trustee in writing to, and upon receipt of such direction Decommissioning Trustee shall, subject to the applicable provisions of Section 9.(D), distribute to El Paso for disbursement or distribution as then may be provided or permitted by law or transfer from the Decommissioning Trust Fund to the Second Fund any:

(i) Deemed Distribution Amount that El Paso certifies in writing is deemed distributed under Applicable Tax Law;

(ii) Excess Contribution that El Paso certifies in writing (a) has occurred under Applicable Tax Law, and (b) is being transferred within the time permitted for withdrawal or transfer of such Excess Contribution by Applicable Tax Law; and

(iii) amount that El Paso certifies in writing may be transferred to the Second Fund in accordance with Applicable Law and Applicable Tax Law by reason of the disposition of all or a part of El Paso's interest in or license to possess Unit 3.

(D) Notwithstanding any other provision in this Agreement, except for (i) payments made under Section 8 for Expenses, (ii) to the extent allowed by Applicable Law, Deemed Distribution Amounts and Excess Contributions transferred to the Second Fund or distributed to

El Paso under Section 9.(C), and (iii) withdrawals made pursuant to 10 C.F.R. 50.82(a)(8) no disbursement or payment from the Funds shall be made unless (a) thirty (30) business days prior written notice of the intention to make such disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, and (b) Decommissioning Trustee has not received written notice of an objection during such thirty (30) business day period from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards. The notices required by this Section 9.(D) may be made by or on behalf of Decommissioning Trustee.

(E) Unless Decommissioning Trustee has actual knowledge to the contrary, Decommissioning Trustee shall be fully protected in relying upon any certificate described in Section 9 without further inquiry or verification.

**SECTION 10. Further Assurances.** El Paso agrees that it will, at its sole expense, do all such further acts and things and execute and deliver all such additional conveyances, assignments, agreements, and instruments, as may be necessary or desirable or as Decommissioning Trustee may at any time reasonably request in connection with the administration and enforcement of this Agreement, or relative to the Funds or any part thereof, or in order to assure and confirm unto Decommissioning Trustee its rights, powers, and remedies hereunder.

El Paso may provide general investment policies in writing to Decommissioning Trustee or a Fiduciary Investment Manager, but may not engage in the day-to-day management of the Funds or mandate, or itself make individual investment decisions except to the extent that El Paso retains the right under this Agreement to approve investments in time deposits, demand deposits, or money market accounts of Decommissioning Trustee, in mutual funds and exchange-traded funds that contain securities issued by Decommissioning Trustee (subject to the limitations elsewhere herein set forth), or in mutual funds and exchange-traded funds that contain securities issued by El Paso, its subsidiaries or affiliates or their successors or assigns (subject to the limitations elsewhere herein set forth).

El Paso will regularly supply to Decommissioning Trustee and to each Fiduciary Investment Manager, and regularly update, essential information about Unit 3, including its description, useful life, the Decommissioning plan that El Paso intends to follow, El Paso's anticipated liquidity needs once Decommissioning begins, and any other information that Decommissioning Trustee and a Fiduciary Investment Manager need to construct and maintain, over time, a sound investment plan for the Funds. El Paso will monitor the performance of the Decommissioning Trustee and each Fiduciary Investment Manager and, if necessary, replace those entities that are not properly performing assigned responsibilities.

**SECTION 11. Irrevocability and Modification.** This Agreement is irrevocable and may not be amended or modified except by a writing signed by the parties hereto and approved, to the extent required by Applicable Law, by applicable regulatory authority(s). The parties agree that they will execute any amendments requested by El Paso that are necessary to secure and maintain the qualification of the Decommissioning Trust Fund as a "Nuclear Decommissioning Reserve Fund" under Applicable Tax Law and the deduction of contributions to such Fund as provided by such law, or to comply with Applicable Law.



Not in limitation of the foregoing, if and to the extent that, now or in the future, federal tax law may extend certain tax benefits to a trust fund or funds that are created and maintained by El Paso for creation of a reserve or funds for costs associated with Decommissioning (hereinafter in this Section 11 referred to as such "**other trusts**") which such other trusts would qualify as a "Nuclear Decommissioning Reserve Fund" under Applicable Tax Law, including without limitation, Internal Revenue Code section 468A, only if established and maintained pursuant to a single trust agreement for a particular nuclear power plant, the parties hereto, upon the creation of such other trusts may amend this Agreement by attaching hereto as an allonge the governing instruments by which such other trusts may be created. In such event, such other trusts shall be administered under the terms of this Agreement to the extent not inconsistent with the governing instruments by which such other trusts may be created and such other trusts shall thereafter be administered as separate funds under the terms of this Agreement.

**SECTION 12. Obligation for Decommissioning.** Nothing in this Agreement and no act or omission relating to the Funds shall be read, construed, understood, or interpreted to place any obligation whatsoever on Decommissioning Trustee or a Fiduciary Investment Manager relating to Decommissioning or any Decommissioning Cost, all of which shall at all times remain the sole obligation of El Paso.

**SECTION 13. Governing Law.** This Agreement shall be deemed to be a contract made in Texas for all purposes and shall be construed in accordance with and governed by the laws of such State, including the provisions of the Texas Trust Code, with respect to all matters of construction, validity, and performance.

**SECTION 14. Resignation and Replacement of Decommissioning Trustee or Fiduciary Investment Manager.**

(A) Decommissioning Trustee may resign at any time without cause by giving at least 90 days prior written notice to El Paso, and El Paso may remove Decommissioning Trustee at any time with or without cause by giving written notice to Decommissioning Trustee, such resignation or removal to be effective on the acceptance of appointment by a successor Decommissioning Trustee under this Section 14. In case of the resignation or removal of Decommissioning Trustee, El Paso may appoint a successor Decommissioning Trustee by an instrument signed by El Paso. If a successor Decommissioning Trustee shall not have been appointed by El Paso within 90 days after the giving of such written notice of resignation or removal, Decommissioning Trustee or El Paso may apply to any court of competent jurisdiction to appoint a successor Decommissioning Trustee to act until such time, if any, as a successor Decommissioning Trustee shall have been appointed by El Paso and shall have accepted its appointment under this Section 14. Any successor Decommissioning Trustee so appointed by such court shall immediately and without further act be superseded by any successor Decommissioning Trustee appointed by El Paso as provided above.

(i) In appointing a Decommissioning Trustee, El Paso shall have the following duties which will be of a continuing nature:



- (a) a duty to determine whether Decommissioning Trustee's fee schedule for administering the trust is reasonable when compared to other institutional trustees rendering similar services;
- (b) a duty to investigate and determine whether the past administration of trusts by Decommissioning Trustee has been reasonable;
- (c) a duty to investigate and determine whether the financial stability and strength of Decommissioning Trustee is adequate;
- (d) a duty to investigate and determine whether Decommissioning Trustee is in compliance with the requirements of this Agreement; and
- (e) a duty to investigate any other factors which may bear on whether Decommissioning Trustee is suitable.

(ii) Any successor Decommissioning Trustee, however appointed, shall execute and deliver to the predecessor Decommissioning Trustee an instrument accepting such appointment, and thereupon such successor Decommissioning Trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties, and trusts of the predecessor Decommissioning Trustee with like effect as if originally named as Decommissioning Trustee herein; and such predecessor Decommissioning Trustee shall duly assign, transfer, deliver, and pay over to such successor Decommissioning Trustee all moneys or other property then held by such predecessor Decommissioning Trustee upon the trusts expressed in this Agreement, shall do all acts necessary to vest title of record in such successor Decommissioning Trustee, and shall transfer and deliver to such successor Decommissioning Trustee copies of all records pertaining to the Funds and this Agreement. In addition, upon the written request of such successor Decommissioning Trustee, such predecessor Decommissioning Trustee shall execute and deliver to such successor Decommissioning Trustee an instrument transferring to such successor Decommissioning Trustee, upon the trusts expressed in this Agreement, all the estates, properties, rights, power, duties, and trusts of such predecessor Decommissioning Trustee.

(iii) Any successor Decommissioning Trustee, however appointed, shall be a bank or trust company with trust powers incorporated and doing business in the United States of America and having net worth of at least \$150,000,000, if there be such an institution willing, able and legally qualified to perform the duties of Decommissioning Trustee hereunder upon reasonable or customary terms; provided however, that in calculating the \$150,000,000 net worth requirement, the net worth of the Decommissioning Trustee's parent corporation and/or affiliates

may be taken into account only if such entities guarantee Decommissioning Trustee's responsibilities to the Funds.

(iv) Any corporation into which Decommissioning Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Decommissioning Trustee shall be a party, or any corporation to which substantially all the corporate trust business of Decommissioning Trustee may be transferred, shall, subject to the terms of subsection 14(A)(iii), be Decommissioning Trustee under this Agreement without further act.

(v) No successor Decommissioning Trustee (other than a successor by reason of an event described in Section 14(A)(iv)) shall be liable for any act, omission or breach of trust by a predecessor Decommissioning Trustee, whether or not such successor Decommissioning Trustee knows or should have known of such act, omission, or breach of trust, and shall have no duty to compel redress of any breach of trust by a predecessor Decommissioning Trustee.

(B) If a Fiduciary Investment Manager is appointed by El Paso hereunder, such appointment shall be made in writing; however, El Paso may not serve as a Fiduciary Investment Manager. A Fiduciary Investment Manager may resign at any time without cause by giving at least ninety (90) days prior written notice to El Paso, and El Paso may remove a Fiduciary Investment Manager at any time with or without cause by giving written notice to such Fiduciary Investment Manager. The resignation or removal of a Fiduciary Investment Manager is not conditioned on the acceptance of appointment by a successor Fiduciary Investment Manager under this Section 14; provided, however, that if a Fiduciary Investment Manager other than the Decommissioning Trustee resigns or is removed and is not replaced by El Paso, Decommissioning Trustee shall, at that time, assume all investment responsibilities of such Fiduciary Investment Manager.

(i) In appointing a Fiduciary Investment Manager, El Paso shall have the following duties which will be of a continuing nature:

- (a) a duty to determine whether such Fiduciary Investment Manager's fee schedule for investment management services is reasonable when compared to other such managers;
- (b) a duty to investigate and determine whether the past performance of such Fiduciary Investment Manager in managing investments has been reasonable;
- (c) a duty to investigate and determine whether the financial stability and strength of such Fiduciary Investment Manager is adequate for purposes of liability;
- (d) a duty to investigate and determine whether such Fiduciary Investment Manager is in compliance with the requirements of its

investment management agreement and this Agreement as it relates to investments and to such Fiduciary Investment Manager; and

- (e) a duty to investigate any other factors which may bear on whether such Fiduciary Investment Manager is suitable.

**SECTION 15. Successors and Assigns; Additional Parties.** This Agreement shall be binding upon and inure to the benefit of each party and its successors and permitted assigns.

**SECTION 16. Termination of Funds.** If not otherwise terminated sooner in accordance with the terms of this Agreement, each Fund shall end on the earlier of (A) the date specified in a written agreement between El Paso and Decommissioning Trustee and (B) the date that is twenty-one (21) years less one day after the death of the last survivor of the descendants of Joseph P. Kennedy, the father of President John F. Kennedy, that were living on April 1, 1986. Upon such termination, all of the assets of the Funds shall be distributed to El Paso or its successor. Notwithstanding the foregoing provisions of this Section 16, if one or both of the Funds shall be or become valid under Applicable Law for a period subsequent to the date set out in Section 16(B) (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the creation of such a fund for a period in gross exceeding the period for which such Fund is hereinabove stated to extend and be valid), then such Fund shall not terminate as aforesaid but shall extend to and continue in effect until (but only if such nontermination and extension shall then be valid under Applicable Law) such time as such Fund shall, under Applicable Law, cease to be valid.

**SECTION 17. Accountings; Tax Returns and Reports; Audits.** Decommissioning Trustee shall keep accurate and detailed records and accounts of all investments, receipts, disbursements and other transactions of the Funds. All accounts, books, and records relating to the Funds shall be open to inspection and audit at all reasonable times by El Paso, its designee or an applicable governmental agency having jurisdiction over the Funds.

Within thirty (30) business days after the end of each calendar month and within thirty (30) business days after the close of each annual accounting period of each Fund, and as soon as reasonably practicable after the resignation or removal of a Decommissioning Trustee has become effective, Decommissioning Trustee shall furnish to El Paso a written account setting forth all (A) investments, receipts, disbursements, and other transactions effected by it during such month or year, as applicable, or during the part of the month or year to the date any such resignation or removal is effective, as applicable, and containing a description of all assets, including but not limited to all securities, purchased and sold (the description of the securities purchased must state the price at which each individual security was purchased), the cost or net proceeds of sale, and the securities and investments held at the end of such period, (B) the gains or losses realized by each Fund upon sales or other disposition of its assets, (C) the increase or decrease in the value of each Fund, (D) the fair market values of each Fund, and (E) the liabilities (excluding liability for Decommissioning) of the Funds incurred or unpaid at the end of such period. Within three (3) business days after the end of each calendar month and within three (3) business days after the close of each annual accounting period of each Fund, and as soon as reasonably practicable after the resignation or removal of a Decommissioning Trustee has become effective, Decommissioning

Trustee shall also provide El Paso secured web-based access to the information described in clauses (A)-(E) of this Section 17. The accounting shall also furnish El Paso such other information as Decommissioning Trustee may possess and as may be necessary for El Paso, Decommissioning Trustee and/or a Fiduciary Investment Manager to comply with any reporting requirements applicable to any of such parties and/or the Funds. If the fair market value of an asset in a Fund is not available, when necessary for accounting or reporting purposes the fair market value of the asset shall be determined in good faith by Decommissioning Trustee, assuming an orderly liquidation at the time of such determination. In addition, upon the written request of El Paso, which may be at any time and from time to time, Decommissioning Trustee shall provide El Paso the fair market value of the assets in a Fund as of a date other than the last day of a month or an annual accounting period of a Fund. If there is a disagreement between the Decommissioning Trustee, a Fiduciary Investment Manager and/or any other party as to any act or transaction reported in an accounting, Decommissioning Trustee or the Fiduciary Investment Manager, as applicable, shall have the right to have such disagreement settled by a court of competent jurisdiction. Decommissioning Trustee shall make such other reports as may be agreed upon in writing with El Paso.

Decommissioning Trustee shall retain its records and accountings related to the Funds as long as necessary for the proper administration thereof and at least for any period required by any applicable law, but with respect to each record and account for not less than six (6) years following the creation thereof.

El Paso shall have the right to cause the books, records, and accounts of Decommissioning Trustee that relate to the Funds to be examined and audited by independent auditors designated by El Paso at such times as El Paso may determine, and Decommissioning Trustee shall make such books, records, and accounts available for such purposes at all reasonable times.

El Paso shall, with the cooperation of Decommissioning Trustee, prepare or, upon agreement of Decommissioning Trustee, authorize Decommissioning Trustee to prepare, such tax returns and other reports for or with respect to each Fund as may be required from time to time by Applicable Law.

#### **SECTION 18. Rights of Decommissioning Trustee.**

(A) Decommissioning Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Agreement or required by the Texas Trust Code, and no implied duties or obligations shall be read into this Agreement against Decommissioning Trustee except such as are required by the Texas Trust Code.

(B) Decommissioning Trustee shall not have any obligation to invest, manage, control, make any payment from, or otherwise deal with, the Funds except as expressly provided herein or in written guidelines or instructions received pursuant to the terms hereof.

(C) Decommissioning Trustee may rely and shall be protected in acting upon any certificate, statement, notice, or other writing believed by it to be genuine and to have been signed or presented by the proper party or parties, and unless it has actual knowledge to the contrary,

Decommissioning Trustee shall not be bound to make any investigation into the facts or matters stated in any certificate, statement, notice, or other writing received by it.

(D) In the administration of the Funds hereunder, Decommissioning Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled persons to be selected and employed by it, and Decommissioning Trustee shall not be liable for anything done or omitted by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons to the extent permitted by law and to the extent no such action or omission constitutes negligence or willful misconduct by Decommissioning Trustee.

(E) With respect to any obligation of El Paso hereunder to indemnify Decommissioning Trustee, Decommissioning Trustee shall look solely to El Paso and shall not have any lien upon the assets of the Funds to secure such obligation.

#### **SECTION 19. Notices.**

(A) Except as otherwise provided in this Agreement, all notices under this Agreement shall be in writing and be effective upon receipt if delivered by (1) hand, (2) certified or registered United States Mail postage prepaid, or (3) facsimile, provided that service by facsimile after 5:00 p.m. local time of the recipient shall be deemed delivered on the following business day, as follows:

If notice is to the Trustee:

State Street Global Advisors Trust Company  
1 Iron Street  
Boston, MA 02210  
Attn: Terrence Bertrand  
Email: [terrence\\_bertrand@ssga.com](mailto:terrence_bertrand@ssga.com)

With a copy to:

State Street Global Advisors Trust Company  
1 Iron Street  
Boston, MA 02210  
Attn: General Counsel  
Email: [sean\\_o'malley@ssga.com](mailto:sean_o'malley@ssga.com)

If notice is to the Grantor:

El Paso Electric Company  
Attention Controller  
100 N. Stanton  
El Paso, Texas 79901  
email: [ndt.committee@epelectric.com](mailto:ndt.committee@epelectric.com)

and, if the notice is sent for the purposes described in Sections 5, 14(A), 14(B), and 19(B), with a copy to:

El Paso Electric Company  
Attention Controller  
100 N. Stanton  
El Paso, Texas 79901  
email: [ndt.committee@epelectric.com](mailto:ndt.committee@epelectric.com)

(B) Each person may change its address for purposes of notice under this Agreement by notice complying with Section 19(A).

Any notice required under this Agreement may be waived in writing by the party entitled thereto.

**SECTION 20. Counterpart Execution.** This Agreement may be executed in any number of counterparts and by each of the parties hereto on separate counterparts; all such counterparts shall together constitute but one and the same instrument.

**SECTION 21. Effective Date.** This Agreement shall become effective on the "Effective Date" as defined herein.

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be duly executed as of the day and year above written.

EL PASO:

EL PASO ELECTRIC COMPANY

By: Cynthia S. Prieto  
Cynthia S. Prieto  
Title: VP Controller, NDT Committee Chair

DECOMMISSIONING TRUSTEE:

STATE STREET GLOBAL ADVISORS TRUST  
COMPANY

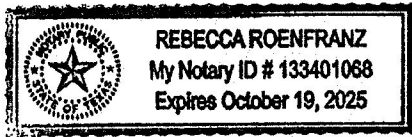
By: [Signature]  
Title: Global Head of Strategic Relationships  
Senior Managing Director

APPROVED AS TO FORM  
OFFICE OF THE GENERAL COUNSEL [Signature]



STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

The foregoing instrument was acknowledged before me this 14 day of August, 2024 by Cynthia Prieto, VP Controller  
EL PASO ELECTRIC COMPANY, a Texas corporation, on behalf of said corporation.



Rebecca RoenFranz  
Notary Public

My commission expires: 10-19-25

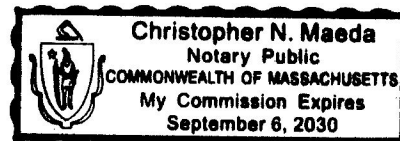
COMMONWEALTH OF MASSACHUSETTS     §  
   §  
COUNTY OF SUFFOLK§

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of August, 2024 by David Ireland,  
\_\_\_\_\_, State Street Global Advisors Trust Company, a Massachusetts non-depository trust company, on behalf of such company.

Christopher N. Maeda  
\_\_\_\_\_  
Notary Public

My commission expires: September 6<sup>th</sup> 2030

On this 20th day of August 2024, before me, the undersigned notary public, David Ireland personally appeared, proved to me through satisfactory evidence of identification, which was his employee identification card, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily as an authorized signer for State Street Global Advisors Trust Company, a Massachusetts non-depository trust company, on behalf of such company.



**Appendix A**  
**to**  
**Decommissioning Trust Agreement**

**for El Paso Electric Company Palo Verde Unit 3 Decommissioning Trust**  
**DEFINITION OF TERMS**

**ANPP Participation Agreement** shall mean the Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, as amended, among Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Public Service Company of New Mexico, Southern California Public Power Authority, Department of Water and Power of The City of Los Angeles, and El Paso.

**Applicable Law** shall mean all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, permits, certificates, orders, interpretations, licenses, and permits of any federal, state, county, municipal, foreign, international, regional, or other governmental authority, agency, board, body, instrumentality, or court, and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator, or other judicial or quasi-judicial tribunal (including those pertaining to health, safety, the environment, or otherwise).

**Applicable Tax Law** shall mean Code Section 468A, any comparable subsequent provisions of the Code, the United States Treasury regulations promulgated under such section or provisions, and other provisions of the Code relating to the federal taxation of the Funds.

**Code** shall mean the Internal Revenue Code of 1986, as amended, or any successor law.

**Decommissioning** shall mean the decommissioning and retirement from service of Unit 3, and the related possession, maintenance, and disposal of material, radioactive or otherwise used in or produced by or relating to Unit 3, including, without limitation: (i) placement and maintenance in a state of protective storage; (ii) in-place entombment and maintenance; (iii) dismantlement; (iv) removal, decontamination and disposition of equipment and fixtures; (v) razing; (vi) removal and disposition of debris related to Unit 3 from the PVNGS Site; (vii) restoration of the PVNGS Site related to Unit 3 for unrestricted use; (viii) any other actions relating to decommissioning and retirement from service of Unit 3 required by the NRC; and (ix) all activities undertaken incident to the implementation thereof.

**Decommissioning Cost** shall mean El Paso's pro-rata share, under the ANPP Participation Agreement, of the greater of (i) the latest estimate of Termination Costs (as that term is defined by the ANPP Participation Agreement) for Unit 3 or (ii) the minimum amount required by the NRC to be funded for the decommissioning of Unit 3.

**Deemed Distribution Amount** shall mean an amount in the Decommissioning Trust Fund that is treated by Applicable Tax Law as having been distributed by reason of the disqualification of all or a part of such Fund.

**Excess Contribution** shall mean the amount by which cash payments made (or deemed made) by El Paso into the Decommissioning Trust Fund during any taxable year of El Paso exceeds the payment limitation imposed by Applicable Tax Law.

**Expenses** shall mean: (a) in the case of the Decommissioning Trust Fund, (i) the tax imposed by Code Section 468A(e)(2); (ii) any state or local tax imposed on the income or the assets of such Fund; and (iii) legal, accounting, and actuarial fees and expenses, trustee's fees and expenses, and all other ordinary administrative costs and incidental expenses, incurred by Decommissioning Trustee, a Fiduciary Investment Manager, or El Paso in connection with the operation of such Fund, but in each case only to the extent permitted by Code Section 468A(e)(4)(B) or other Applicable Tax Law to be paid from the assets of a "Nuclear Decommissioning Reserve Fund," as that term is used in Applicable Tax Law; and (b) in the case of the Second Fund, (i) any federal, state, or local tax actually paid by El Paso with respect to the income or the assets of such Fund including a payment to El Paso of the federal income tax (at the statutory rate) with respect to the taxable income of such Fund required to be included on El Paso's federal income tax return; and (ii) legal, accounting and actuarial expenses, trustee's fees and expenses, and all other ordinary administrative costs and incidental expenses, incurred by Decommissioning Trustee, a Fiduciary Investment Manager, or El Paso in connection with the operation of such Fund; provided, however, Expenses shall not include taxes on or with respect to fees paid to Decommissioning Trustee or a Fiduciary Investment Manager and taxes that Code Section 4951 requires be paid by Decommissioning Trustee; and further provided that the total trustee and investment manager fees paid on an annual basis for the entire portfolio including commingled funds shall not exceed 0.7% of the entire portfolio's average annual balance.

**Fiduciary Investment Manager** shall mean any institution or professional appointed by El Paso, other than Decommissioning Trustee, who is responsible for the investment and reinvestment of the Funds.

**License** shall mean NRC Facility Operating License No. NPF-41, issued December 31, 1984, as the same may be amended, modified, extended, renewed or superseded from time to time.

**NRC** shall mean the Nuclear Regulatory Commission of the United States of America or any successor agency.

**PVNGS** shall mean the Palo Verde Nuclear Generating Station, which is located on the PVNGS Site.

**PVNGS Site** shall mean the real property located in Maricopa County, Arizona, approximately 36 miles west of the City of Phoenix, Arizona and approximately 16 miles west of the City of Buckeye, Arizona, which legal description is contained in Appendix B to the ANPP Participation Agreement.

**Qualified Investments** shall mean investments that meet the intent, standards, liabilities, and general and specific requirements and conditions on investments as set forth in Section 7 herein.

**Unit 3** shall mean the 1336 megawatt unit, commonly known as Unit 3, at PVNGS.

**FIDUCIARY INVESTMENT MANAGER AGREEMENT**  
By and Between SSGATC and EPEC for EPEC NDTs for PV Units 1, 2, and 3

This **FIDUCIARY INVESTMENT MANAGER AGREEMENT** (the “Agreement”) is made and effective as of the 30<sup>th</sup> day of August 2024 (the “Effective Date”) by and between State Street Global Advisors Trust Company, a Massachusetts chartered trust company (“SSGATC”), and El Paso Electric Company, a Texas Corporation (“EPEC”) (each a “Party” and collectively, “Parties”), on behalf of the El Paso Electric Company Palo Verde Unit 1 Decommissioning Trust, El Paso Electric Company Palo Verde Unit 2 Decommissioning Trust and El Paso Electric Company Palo Verde Unit 3 Decommissioning Trust (each a “Trust” and collectively, the “Trusts”).

**WITNESSETH:**

**WHEREAS**, EPEC established three Trusts for the accumulation and funding of amounts to pay costs, liabilities and expenses related to decommissioning obligations for Palo Verde Nuclear Generating Units 1, 2, and 3 respectively;

**WHEREAS**, each of the three Trusts establishes two Funds, a “Decommissioning Trust Fund” and a “Second Fund” (each a “Fund” and, collectively, the “Funds”), for the purpose of segregating assets and investments within each of the Trusts that qualify as “Nuclear Decommissioning Reserve Funds” under applicable tax law, including Section 468A of the Internal Revenue Code;

**WHEREAS**, EPEC, as Trustor for each of the three Trusts, is authorized under the terms of each Trust to appoint “Fiduciary Investment Manager(s)” as that term is defined in the relevant Decommissioning Trust Agreement to manage the investment of assets in the trust Funds of the respective Trusts, including the power to acquire and dispose of such assets or any portion thereof as designated by EPEC; and

**WHEREAS**, EPEC desires to engage SSGATC to manage all of the assets of each Trust and respective Funds established therein (such assets as to the relevant Trust, the “Assets”), and SSGATC desires to accept such appointment in accordance with and subject to the terms and conditions set forth in this Agreement and the respective Trusts.

**NOW, THEREFORE**, the Parties hereto hereby agree as follows:

**1. Appointment**

(a) Pursuant to its authority, EPEC, as of the Effective Date, hereby appoints SSGATC as a Fiduciary Investment Manager to manage, supervise, direct and monitor the investment and reinvestment of the Assets in the Trusts and their respective Funds, consistent with the guidelines, benchmarks and objectives (“Guidelines”) set forth in Exhibit 1 hereto and in accordance with the terms of this Agreement. SSGATC hereby accepts such appointment as a Fiduciary Investment Manager and acknowledges it is a fiduciary with respect to the Assets.

(b) SSGATC hereby agrees to provide the services specified herein (the "Services") commencing on the dates specified herein until such time as this Agreement may be terminated.

## **2. Asset Allocation**

(a) EPEC has determined the Target Asset Allocation percentages of Assets (and permitted actual variances therefrom) (the "Allocations") for each Trust by Asset Class. The Allocations on the Effective Date shall be set forth in Exhibit 2, unless or until otherwise agreed to by EPEC in a separate Asset allocation schedule executed in a manner acceptable to both Parties.

(b) Notwithstanding the foregoing, EPEC acknowledges that the Allocations are targets and that SSGATC may be unable to achieve any or all of such Allocations within the permitted relevant actual variances during any period (including as of the Effective Date) due to (1) general market conditions; (2) the unavailability of suitable investment opportunities within the relevant period; and (3) other events beyond SSGATC's control. Accordingly, EPEC understands and acknowledges that, subject to compliance with the standard of care contained in Section 11(b) of the Agreement, at any point in time and for temporary periods, the allocation of the Assets may vary from the respective Allocations and permitted actual variances, and attainment thereof will be within such time frames and in the manner that SSGATC determines to be appropriate in its discretion.

(c) EPEC shall promptly notify SSGATC should EPEC decide to change the Guidelines and/or Allocations. In such case, SSGATC shall have a reasonable amount of time to bring the Assets into compliance with any such changes within such time frames and in the manner SSGATC determines to be appropriate in its sole discretion.

## **3. Discretionary Investment Management Services**

(a) Commencing on the Effective Date, subject to Section 2, SSGATC (i) shall have full authority to invest and reinvest all of the Assets in such strategies and holdings as it determines to be appropriate in its discretion (including without limitation in any and all commingled, common or collective trust funds and funds registered under the Investment Company Act of 1940, as amended (the "1940 Act"), managed or advised by SSGATC or its affiliates) but in all cases subject to the Allocations and permitted variance therefrom, any applicable Guidelines and this Agreement, and (ii) without limiting the foregoing, shall provide such services as are generally described in Appendix A hereto. Failure by SSGATC to perform any single service listed on Appendix A shall not constitute a material breach of this Agreement. In this respect, EPEC acknowledges and represents that Appendix A is a substantially complete list of the services to be performed by SSGATC hereunder.

(b) In furtherance of clause (a), EPEC shall (1) ensure that SSGATC is promptly provided with all such information reasonably requested by SSGATC, including without limitation any such information from EPEC's consulting actuaries, and (2) instruct the Trustee, each investment

manager of Assets as of the Effective Date (each, an "Existing Submanager") and any other relevant service provider to cooperate directly with and provide assistance to SSGATC in connection with the services provided hereunder. SSGATC shall not be responsible for any costs associated with the provision of any such information.

(c) EPEC represents that as of the Effective Date, it shall have amended the governing documents by and between EPEC and the Existing Submanagers to permit SSGATC to act on behalf of each Trust in all matters related to the Existing Submanagers. Any Existing Submanager that SSGATC in its sole discretion elects to retain as an investment manager of Assets as of or subsequent to the Effective Date shall be considered an Underlying Manager (as such term is defined in Section 4(a) below).

(d) SSGATC shall have the power (i) to compromise or settle any claim, debt, or obligation due to any Trust relating to the Assets as it determines, and deposit any Asset with any protective, reorganization, or similar committee, (ii) to pay or agree to pay part of the expenses and compensation of any such committee and any assessments levied with respect to any Asset so deposited, and (iii) to take such action on behalf of a Trust with respect to the Assets as SSGATC determines to be in the best interest of such Trust.

(e) In connection with SSGATC's ability to invest in funds registered under the 1940 Act and managed by an affiliate, EPEC agrees that SSGATC may exercise such power at any time or times without license of court or notice to or consent of anyone.

(f) EPEC understands and acknowledges that SSGATC may, in its discretion, engage third parties, including but not limited to outside counsel, accountants, consultants, investment partners, finders, brokers, service and/or data providers and other agents and advisors (collectively, "Experts") in connection with the identification, underwriting, negotiation, transacting, monitoring, management, retention and/or disposition of any investment made or proposed to be made by SSGATC on behalf of any Trust pursuant to this Agreement. The reasonable expenses of all such Experts (collectively, "Expert Expenses") shall be the responsibility of the Trust, and payment shall be made as described in Section 14 regardless of whether any such investment is actually made. Unless initially borne by SSGATC on behalf of the Trust and invoiced in accordance with Section 14, SSGATC shall have the authority to coordinate and direct the payment of all Expert Expenses by the Custodian on behalf of the Trust.

#### **4. Underlying Managers**

(a) In furtherance of Section 3, SSGATC may engage investment sub-managers to provide certain discretionary investment management services to any or all of the Trusts with respect to certain of the Assets (each, an "Underlying Manager"), which may include investments and reinvestments in a separate account or pooled fund or other collective investment vehicle (as such terms are generally understood). Underlying Managers may include SSGATC, and investments in pooled funds or other collective investment vehicles may include those managed by SSGATC



or an affiliate. For the avoidance of doubt, no investment of Assets by SSGATC in any publicly traded commingled fund or similar vehicle (such as a mutual fund or exchange traded fund) shall result in the manager thereof being deemed an "Underlying Manager" hereunder. In connection with any appointment of an Underlying Manager, EPEC acknowledges that it has designated SSGATC as a fiduciary with authority to appoint (and subsequently terminate) in its sole discretion any Underlying Manager as an investment manager with respect to the Assets that are allocated thereto. Notwithstanding any provision of this Agreement to the contrary, SSGATC will not be responsible for the acts or omissions of any Underlying Manager so long as SSGATC appoints and exercises general oversight of such Underlying Manager in accordance with the standard of care set forth in Section 11(b).

(b) EPEC will be responsible for bearing the management fees of all Underlying Managers as described in the Consolidated Fee Schedule dated of even date herewith by and between SSGATC and EPEC (the "Fee Schedule").

## **5. Documents**

Upon the Effective Date, SSGATC shall have full discretionary power and authority, as the agent and attorney-in-fact for EPEC, to negotiate and execute on behalf of each of the Trusts (or to direct the Trustee to execute) any and all documents determined by SSGATC to be necessary or desirable to provide the services contemplated hereunder, including but not limited to subscription agreements, limited partnership agreements, investment management agreements, brokerage and/or commodity account agreements, International Swap Dealer Agreements and Credit Support Annexes, customary securities lending documentation, futures/options documentation, and related agreements (each, a "Document" and collectively, the "Documents"). For the avoidance of doubt, SSGATC shall not be required to re-negotiate, modify or amend any Documents entered into by EPEC or any Trust prior to the Effective Date. SSGATC shall have no obligation to submit any Document to EPEC for approval or authorization prior to execution by SSGATC on behalf of a Trust.

## **6. Brokerage**

(a) Where SSGATC places orders for the purchase or sale of securities for the Assets, in selecting brokers or dealers to execute such orders, SSGATC is authorized to the extent permitted by Section 28(e) of the Securities Exchange Act of 1934, as amended, to consider the fact that a broker or dealer has furnished statistical, research or other information or services which enhance SSGATC's investment research and portfolio management capabilities generally.

(b) SSGATC may enter into arrangements with brokers to open "average price" accounts wherein orders during a trading day are placed on behalf of a Trust and other customers and are allocated (along with an equivalent portion of the expenses related thereto) among such Trust and the account of other customers using an average price.

## **7. Proxies, Tender Offers and Exchanges**

SSGATC shall vote all proxies and exercise all rights appurtenant to any securities held in any Trust in accordance with SSGATC's proxy voting policies and guidelines. Notwithstanding the foregoing, SSGATC shall (a) be entitled to delegate such responsibilities to any Underlying Manager who may vote or exercise rights in respect of Assets managed by such Underlying Manager in accordance with such Underlying Manager's proxy voting policy and (b) other than, upon written request from EPEC, providing such information relating to securities held by the Trusts as is in its possession, have no obligation or responsibility with respect to any class action for which a Trust or EPEC may be a class member or claimant solely as a result of its status as an investor in a security held in the Trust.

## **8. Custody of the Assets**

(a) EPEC has appointed by way of a custody addendum to each Trust Agreement (the "Custody Addendum") a custodian in relation to the Assets, which at the date of this Agreement is State Street Bank and Trust Company (the "Custodian").

(b) The Parties hereby confirm that between them (i) EPEC shall retain ultimate responsibility for ensuring that any custodial services and the Custody Addendum are suitable and appropriate for each Trust and the Assets; and (ii) SSGATC shall have no responsibility for any activities of the Custodian or have any liability with respect to the acts, omissions, fraud, performance or breach of duty of the Custodian.

(c) SSGATC shall have discretion to establish one or more accounts at the Custodian that may hold U.S. Treasuries, cash, and cash equivalents. SSGATC may, using such of the securities and other property comprising the Assets as it determines, direct the Custodian to deposit for each Trust original and maintenance brokerage and margin deposits and otherwise direct payments of cash, cash equivalents and securities and other property into such brokerage accounts.

(d) EPEC will instruct the Custodian to comply with any instructions of SSGATC (including instructions provided on behalf of SSGATC by an Underlying Manager) given in accordance with this Agreement and in performing its functions pursuant to this Agreement. SSGATC shall have no responsibility for any loss arising to a Trust as a result of conflicting instructions given to the Custodian by any third party in relation to the Assets.

(e) To the extent EPEC subsequently decides to terminate the Custodian or make any changes to the Custody Agreement that could impact the services provided by SSGATC under this Agreement, EPEC will notify SSGATC as soon as practicable.

## 9. Valuation

The value of any investment held in a Trust and managed internally by SSGATC or externally by an Underlying Manager shall be determined in accordance with SSGATC's valuation policies and procedures. SSGATC may rely on valuations/pricing provided by any Underlying Manager with respect to the Assets allocated thereto.

## 10. Representations, Warranties and Covenants of EPEC

(a) EPEC hereby represents, warrants and covenants to SSGATC that:

(1) a true and complete copy of each Trust Agreement, including all amendments thereto, has been delivered to SSGATC;

(2) true and complete copies of each and every amendment thereto will be delivered to SSGATC as promptly as practicable after the adoption thereof;

(3) it is authorized to appoint and discharge fiduciary investment manager(s) to manage and control each Trust's assets under the terms of this Agreement;

(4) all actions necessary for SSGATC to undertake the activities described herein on behalf of EPEC and each Trust have been properly effected;

(5) it has the power to enter into and perform its obligations under this Agreement and has duly executed this Agreement so as to constitute a valid and binding obligation of each Trust;

(6) to the best of its knowledge, neither the execution and delivery nor the performance of this Agreement by EPEC or any Trust will violate any law, statute, order, rule or regulation or judgment, order or decree by any court or governmental authority to which EPEC or Trust is subject, nor will the same constitute a breach of, or default under, provisions of any agreement or contract to which any of them is a party or by which any of them is bound;

(7) EPEC possesses or has available to it such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks to each Trust of investments made in accordance with the Guidelines, the Guidelines are consistent with the terms and investment objectives of each Trust, and such investments are prudent, suitable and appropriate for such Trust;

(8) EPEC has the express authority under the terms of each Trust Agreement to designate, and has properly designated, SSGATC as a fiduciary with the power to appoint investment managers;

(9) all restrictions or limitations on securities or other instruments in which each Trust may invest, directly or indirectly, are outlined in Exhibit 1 of this Agreement, and SSGATC shall be entitled to rely on any such information unless and until superseded by a written instrument duly and validly executed by each Party hereto;

(10) all restrictions or limitations on counterparties with which each Trust may transact are outlined in Exhibit 1 of this Agreement, and SSGATC shall be entitled to rely on any such information unless and until superseded by law or a written instrument duly and validly executed by each Party hereto;

(11) no Trust includes assets of any (i) Trust described in Code Section 403 or (ii) individual retirement account described in Code Section 408 or 408A;

(12) the assets of each Trust are not proceeds of a municipal security offering or municipal escrow investments; and

(13) each Trust is a "qualified institutional buyer" as defined in Rule 144A under the Securities Act of 1933, as amended (the "1933 Act"), acting for its own account, a Qualified Purchaser as defined in Section 2(a)(51)(A) under the 1940 Act and an "accredited investor" as defined in Rule 501 of Regulation D under the 1933 Act.

EPEC further warrants that the foregoing representations, warranties and covenants shall be deemed to be continuing and that EPEC and SSGATC shall notify one another in writing before or, if advance notice is not feasible, promptly after the occurrence of any event that causes a change to such representations, warranties and covenants made to the other Party. In addition, EPEC hereby agrees to furnish SSGATC with such further authorizations and documentation as SSGATC may from time to time reasonably require to carry out its obligations under this Agreement.

(b) To help the U.S. government fight the funding of terrorism and money laundering activities, U.S. federal law requires financial institutions, including SSGATC, to obtain, verify, and record information that identifies each client who opens and maintains an account. In connection therewith, EPEC acknowledges and agrees to provide SSGATC, prior to the time of investment under this Agreement and at such other times as SSGATC may reasonably determine, with any information and organizational documentation SSGATC may reasonably require to allow it to identify EPEC and each Trust and any directors, controllers or beneficial owners. EPEC represents and warrants that the information that it provides (or causes to be provided) to SSGATC on which SSGATC relies in carrying out its responsibilities hereunder will be accurate and complete in all material respects.

## **11. Representations, Warranties and Covenants of SSGATC**

SSGATC represents, warrants and covenants to EPEC that:

(a) It is, and will remain, a bank, as defined in the U.S. Investment Advisers Act of 1940, as amended.

(b) With respect to the Assets, it is a fiduciary and that it will discharge its fiduciary obligations hereunder with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

## 12. Confidentiality

(a) EPEC and SSGATC expressly undertake to protect and to preserve the confidentiality of: (i) all nonpublic information concerning the affairs of each Trust and EPEC; (ii) all other information and know-how made available under or in connection with this Agreement, including but not limited to, all decisions, advice and other work product of SSGATC; and (iii) the Parties' activities hereunder that are either designated as being confidential, or that, by the nature of the circumstances surrounding the disclosure, ought in good faith be treated as proprietary or confidential (collectively the "Confidential Information"). EPEC and SSGATC shall take reasonable security precautions to keep confidential the Confidential Information. Neither EPEC nor SSGATC shall disclose Confidential Information except: (iv) to its employees, consultants, legal advisors, affiliates, third party service providers, regulators or other governmental entities of competent jurisdiction, or auditors, which may be located outside of the United States, having a need to know such Confidential Information; (v) in accordance with a judicial or other governmental order or when such disclosure is required by law, provided that prior to such disclosure, the Party in receipt of Confidential Information of the other Party (the "Receiving Party") shall, so long as permitted by applicable law and regulation, provide the other Party (the "Disclosing Party") with written notice and shall comply with any protective order or equivalent; or (vi) in accordance with an audit or inquiry by a regulatory entity or self-regulatory agency, without prior notice to the Disclosing Party, provided that the Receiving Party shall endeavor to take commercially reasonable measures to safeguard the confidentiality of Confidential Information to the extent possible. Neither EPEC nor SSGATC may make use of any Confidential Information except as expressly authorized in this Agreement or as agreed to in writing between the Parties. However, the Receiving Party shall have no obligation to maintain the confidentiality of information that: (vii) it received rightfully from another non-party prior to its receipt from the Disclosing Party; (viii) the Disclosing Party discloses generally without any obligation of confidentiality; (ix) is or subsequently becomes publicly available without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (x) is independently developed by the Receiving Party without reliance upon or use of any Confidential Information. EPEC and SSGATC acknowledge and agree that the use or disclosure of the Confidential Information in any manner inconsistent with this Agreement may cause the Disclosing Party irreparable damage. The Disclosing Party shall have the right to seek equitable and injunctive relief to prevent any unauthorized, negligent or inadvertent use or disclosure in addition to its other remedies, without proof of actual damages. The obligations under this clause shall survive for a period of two (2) years following the expiration or termination of this Agreement.

(b) Notwithstanding the foregoing, SSGATC shall be permitted to disclose the name and logo of EPEC and each Trust as a client and the size of the Assets and the general services provided by SSGATC hereunder in all one-on-one marketing presentations to prospective clients or consultants and all one-on-one presentations to existing clients individually in materials prepared specifically for such prospective or existing client.

### 13. Investment Adviser Conflicts of Interest and Other Disclosures

(a) EPEC understands and acknowledges that SSGATC performs investment advisory services for various clients. Nothing herein shall limit or prevent SSGATC from performing services for other clients even if its investment selections shall be substantially similar or identical to the selections. EPEC agrees that SSGATC may give advice and take action with respect to any of its other clients, which may differ from action taken with respect to the Assets, or the timing or nature of actions taken with respect to the Assets.

(b) Nothing in this Agreement shall impose upon SSGATC the obligation to purchase or sell or to recommend for purchase or sale, for a Trust, any security that SSGATC or its principals, affiliates or employees may purchase or sell for its or their own accounts or for the account of any other client if in the discretion of SSGATC such investment would be unsuitable for the Trust or if SSGATC determines in the best interest of the Trust it would be impractical or undesirable.

(c) EPEC acknowledges receipt of *Essential SSGA - A summary of State Street Global Advisors' U.S.-domiciled commingled funds and U.S.-managed separately managed accounts and related conflicts of interest*.

### 14. Fees and Expenses

(a) Commencing on the Effective Date, the compensation of SSGATC shall be calculated in accordance with the Fee Schedule. Each fee invoice submitted by SSGATC to EPEC shall also include detailed charges for Expert Expenses, if any, to the extent the same have been borne by SSGATC and are to be reimbursed by a Trust.

(b) Each Trust shall be responsible for the payment of the management fees and performance fees (i.e., variable fees determined based on performance of the Assets compared with a reference hurdle rate or index, if applicable) of all Underlying Managers. In the case of commingled funds or similar investment vehicles, such management fees may be paid through a reduction in the net asset value of units or shares. In addition, management fees and performance fees (i.e., variable fees determined based on performance of the Assets compared to a reference hurdle rate or index, if applicable) accrued and in existence prior to the Effective Date, if any, of all Underlying Managers remain the responsibility of each Trust.

(c) SSGATC shall direct the Trustee to pay out of the relevant Assets the Expert Expenses payable directly by each Trust and the total transaction costs including all reasonable broker's commissions with respect to transactions associated with the Assets, if applicable, and all taxes or governmental fees, domestic or foreign, attributable to such transactions. These expenses shall be paid as described above whether incurred at the direction of SSGATC or any Underlying Manager. EPEC shall instruct the Custodian to act on proper directions from SSGATC or Underlying Manager, as applicable, regarding the payments described above.



(d) Each Trust shall be responsible for the payment of any reasonable fees of any entity (each, a "Transition Manager") engaged by SSGATC to provide transition services with respect to the Trust's Assets. Transition Managers are expected to be used from time to time should SSGATC believe their services to be in the best interest of a Trust. SSGATC may pay the fees of any Transition Manager and then invoice such fees to the Trust or provide the invoice of such Transition Manager to the Trust.

(e) With respect to each of the Trusts, the total trustee and investment manager fees paid on an annual basis by each such Trust including with respect to investments in commingled funds shall not exceed 0.7% of such Trust's average annual balance.

## **15. Liability**

SSGATC and its affiliates, officers, directors, employees, shareholders and agents shall not be liable to any of EPEC or any Trust and any of their agents or legal representatives for any act or omission by SSGATC under this Agreement so long as SSGATC shall not have materially breached its contractual obligations, committed negligence, or violated applicable law. Notwithstanding the foregoing, SSGATC shall have no liability for any loss or damage resulting from any action or inaction taken by any Underlying Manager provided that SSGATC has complied with the standard of care contained in Section 11(b) in choosing and monitoring such Underlying Manager. To the extent permitted by law, neither SSGATC nor any of its affiliates, officers, directors, employees, shareholders or agents shall be liable hereunder to EPEC, any Trust or any of their agents or legal representatives for any indirect, incidental, consequential, special, speculative or punitive losses, damages, costs or expenses of any kind (collectively, "Damages"), including, without limitation, loss of opportunity, loss of anticipated profits or savings and loss of goodwill or reputation, regardless of the form of action and regardless of whether SSGATC has been advised of the possibility of such Damages. The provisions of this Section 15 shall survive the termination of this Agreement.

## **16. Termination**

(a) This Agreement shall continue in effect for a term beginning on the Effective Date and ending on the fifth anniversary of the Effective Date (the "Initial Term") provided that this Agreement shall automatically be extended for subsequent five-year periods (each, a "Renewal Term" and including the Initial Term, each period a "Term") unless terminated.

(b) This Agreement may be terminated for convenience by EPEC upon the giving of not less than ninety (90) days' notice prior to the end of the applicable Term and upon notice of changes in ownership that result in assignment to a successor entity; provided that EPEC may terminate immediately for cause ("cause" being understood as legally necessary reasons, including without limitation, SSGATC's disqualifications, or upon SSGATC's bankruptcy,



gross negligence, fraud, or willful misconduct in providing investment Services hereunder, or its material breach of this Agreement; provided that SSGATC shall have thirty (30) days from notice of any such material breach to cure such material breach to the reasonable satisfaction of EPEC, in which case "cause" shall not be deemed to have occurred). SSGATC will be entitled to continue to receive pro-rated fees pursuant to the then existent Fee Schedule through the effective date of termination of this Agreement for Services provided under this Agreement prior to the effective date of termination.

(c) SSGATC shall have the right to terminate this Agreement at the end of a Term (but subject to the remainder of this clause, not during a Term) for any reason in which case SSGATC shall provide notice of such termination not less than ninety (90) days before the end of the relevant Term. In addition to the foregoing, this Agreement may be terminated by SSGATC in the case of a change in law or regulation (including but not limited to a change in accounting rules or principles) that would materially and adversely affect SSGATC's ability to provide services hereunder provided, however, that in such event that Investment Adviser will reasonably assist with the transition of its services to EPEC or another investment adviser. Furthermore, if EPEC implements a material change to the Guidelines or Allocations or the size of the Assets materially decreases or materially increases, in each case due to reasons other than performance, SSGATC shall be able to propose an amended Fee Schedule by providing at least thirty (30) days advance written notice to EPEC. To the extent EPEC agrees to accept the amended Fee Schedule, the Fee Schedule shall be replaced effective as of the date specified in the written notice of the amended Fee Schedule. If EPEC rejects such amended Fee Schedule, SSGATC may continue to provide the services hereunder in accordance with the then current Fee Schedule or terminate this Agreement subject to its obligation to provide reasonable transition assistance services.

#### **17. Delegation; Non-Assignability**

(a) SSGATC may perform and conduct any administrative, management, trading or ancillary services required under this Agreement through its affiliates or subsidiaries and may provide information about any Trust and the Assets to its affiliates or subsidiaries in order for it to provide such services; provided that SSGATC shall remain responsible for any acts or omissions taken by its affiliates or subsidiaries to the same extent as if SSGATC had engaged in such acts or omissions itself.

(b) No assignment of this Agreement shall be made by either Party without the prior written consent of the other Party, and failure to obtain such consent shall render any such assignments null and void. Notwithstanding the foregoing, assignments resulting from changes in the ownership of SSGATC or EPEC shall be permitted with reasonable notice to the other Party.

#### **18. Notices; Authorized Persons**

(a) All notices and other communications hereunder must be in writing and given by personal

delivery, by certified or U.S. registered mail (postage paid, return receipt requested) by U.S. Express mail or a nationally recognized overnight delivery service, or by facsimile transmission as follows (or to such other address as any Party may give in a notice given in accordance with the provisions hereof), via email or other appropriately secure means of electronic communication and verification as agreed upon by the Parties; provided that upon request, such emails or electronic notices must be followed by a hard copy notice as set forth in this Section 18. Email communication is not sufficient for providing a notice of Termination required under Section 16:

(1) To SSGATC:

State Street Global Advisors Trust Company  
ATTN: Terrence Bertrand  
One Iron Street  
Boston, MA 02210  
[Terrence\\_Bertrand@ssga.com](mailto:Terrence_Bertrand@ssga.com)

(2) To EPEC:

El Paso Electric Company  
ATTN: NDT Committee  
100 North Stanton Street, Loc.175  
El Paso, Texas 79901  
[ndt.committee@epelectric.com](mailto:ndt.committee@epelectric.com)

(b) EPEC shall provide a list to SSGATC of the person(s) authorized to give instructions or directions on its behalf and designated to be informed of notices sent by SSGATC. Each Party shall be entitled to good faith reliance upon any notice, designation, instruction, direction, request or other communication from the other Party that is compliant with the agreed verification and security protocols for such notice (whether given in writing by letter, fax, electronic means (including email), order or other document, or orally by telephone or in person) without being required to determine the authenticity or correctness thereof, provided such Party reasonably believes such notice, designation, instruction, direction, request or other communication to be genuine and from a person duly authorized to provide such notice to the other Party.

## **19. Entire Agreement; Amendment**

This Agreement, including all attachments thereto, states the entire agreement of the Parties and supersedes and replaces all prior agreements between the Parties, written or oral, with respect to the subject matter it addresses. Except as provided herein, this Agreement may not be modified or amended except by a writing signed by the Parties hereto. To the extent any portion of this Agreement is found to be unenforceable by a court of competent jurisdiction, it does not invalidate the remaining portions, and should be construed or amended to the extent necessary to effectuate the mutual intent of the Parties.

## **20. Governing Law**

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without giving effect to any conflict of law principles that would result in the application of the laws of any other jurisdiction.

## **21. Counterparts and Electronic Signatures**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be signed using electronic signatures, and any such electronic signature is intended to signify a Party's agreement to be bound by this Agreement with the same force and effect as a manual signature for the purposes of validity, enforceability, and admissibility.

[Signature page follows]

IN WITNESS WHEREOF, EPEC and SSGATC have executed this Fiduciary Investment Manager Agreement as of the day and year first above written.

**STATE STREET GLOBAL ADVISORS TRUST COMPANY**

By: Barry F.X. Smith

Name: Barry F.X. Smith

Title: Executive Vice President

**EL PASO ELECTRIC COMPANY, ON BEHALF OF THE TRUSTS**

By: Cynthia S. Prieto

Name: Cynthia S. Prieto

Title: EPEC VP-Controller & NDT Committee Chair

## **Exhibit 1**

### **Investment Guidelines for Funds in the Trusts**

#### **Performance Objective**

It is expected that the returns achieved will be accompanied by capital market risk, but that the returns, adjusted for this risk, will compare to the return of the capital markets. Over a complete market cycle, generally defined as a three- to five-year time period, the Assets should be invested with the objective of generating a return greater than that of the benchmark index. The benchmark index will consist of a combination of benchmarks weighted in approximately the same proportions as each Trust's strategic asset allocations (as set forth in **Exhibit 2**). There is no assurance that the portfolio will meet its investment objective.

#### **Strategic Asset Allocation**

El Paso Electric Company has adopted the strategic asset allocation targets set forth in this **Exhibit 2** (the "Target Asset Allocations"). Any changes to the Target Asset Allocations must be made in a written amendment to this Agreement.

#### **Individual Security and Portfolio Guidelines – Separate Accounts**

##### **Individual Security Guidelines**

- No commodity trading
- No letter stock
- No short selling
- No option trading
- No margin trading
- No foreign stocks trading on foreign exchanges
- Less than 30% in any one industry, determined at the time of investment
- Equities market capitalization greater than \$5 billion at the time of purchase
- Equities market capitalization greater than \$1 billion at all times
- No fixed derivatives
- No mortgage strips
- No inverse floating rate securities
- No residual and support tranches of collateralized mortgage obligations
- No tiered index bonds or other structural notes whose return characteristics are tied to non-market events
- No large counterparty risk through over-the-counter options
- No forwards and swaps
- No investments with high-risk characteristics similar to derivatives
- No non-Dollar foreign debt securities
- No direct real estate mortgages
- No private placements
- No guaranteed investment contracts (GICs)
- "BBB" by S&P / "Baa" by Moody's or better credit ratings at time of purchase
- No securities of State Street Corporation (STT)

***Portfolio Guidelines***

70% of equities ranked

Weighted average equal or better than S&P 500

Equities market capitalization greater than \$100 million

No more than 5% in one company at the time of purchase, with the exception of the U.S. Federal Government

Portfolio shall contain at least 20 different issues of securities

Equity cap is 60% when weighted average remaining life of liability exceeds five years

Equity cap is 30% when weighted average remaining life of liability ranges between five and 2.5 years and during all years in which expenditures for decommissioning occurs

Equity cap is 0% when weighted average life of liability is less than 2.5 years

Overall portfolio of debt instruments not below "AA" grade by S&P or "Aa2" by Moody's

**Individual Security and Portfolio Guidelines – Commingled Funds****Individual Security Guidelines**

No option trading

No margin trading

No fixed derivatives

No mortgage strips

No inverse floating rate securities

No residual and support tranches of collateralized mortgage obligations

No tiered index bonds or other structural notes whose return characteristics are tied to non-market events

No large counterparty risk through over-the-counter options

No forwards and swaps

No investments with high-risk characteristics similar to derivatives

"BBB" by S&P / "Baa" by Moody's or better credit ratings at time of purchase

Securities of State Street Corporation (STT) cannot exceed 5% of fair market value of funds

***Portfolio Guidelines***

70% of equities ranked

Weighted average equal or better than S&P 500

Equities market capitalization greater than \$100 million

No more than 5% in one company at the time of purchase, with the exception of the U.S. Federal Government

Portfolio shall contain at least 20 different issues of securities

Equity cap is 60% when weighted average remaining life of liability exceeds five years

Equity cap is 30% when weighted average remaining life of liability ranges between five and 2.5 years and during all years in which expenditures for decommissioning occurs

Equity cap is 0% when weighted average life of liability is less than 2.5 years

Overall portfolio of debt instruments not below "AA" grade by S&P or "Aa2" by Moody's

## **El Paso Electric Company Disclosures in response to Section 10(a)(10) of the Agreement**

Edward Escudero is the chair of El Paso Electric Company's (EPEC's) Board of Directors, and the President and CEO of High Desert Capital, LLC, a finance company that specializes in providing capital to small and mid-sized companies. He is also a director on the Board of WestStar Bank, a locally owned, member FDIC, community bank with \$2.7 billion in assets serving El Paso, Texas, Las Cruces, New Mexico, and the Borderplex region. L. Frederick "Rick" Francis is also a member of EPEC's Board and the Chairman and CEO of WestStar Bank. Mr. Francis also serves on the Community Depository Institutions Advisory Council of the Federal Reserve Bank of Dallas. Andrew "Landy" Gilbert is also a member of EPEC's Board of Directors and the Managing Director in the Infrastructure Investments Group (IIG) at J.P. Morgan, IIG is the entity that advises EPEC's parent company, the Infrastructure Investments Fund, a private equity fund that invests in critical infrastructure assets. Preston T. Scherer is also a member of El Paso Electric Company's Board of Directors, and an Executive Director in the Infrastructure Investment Group.



## EXHIBIT 2

### Target Asset Allocations\*

Asset Class	Benchmark	Target Allocations	Allowable Investment Ranges
Equity		55%	50%-60%
Global Equity	65% Russell 3000 Index 35% MSCI EAFE IMI Net Index	55%	50%-60%
Fixed Income		45%	40%-50%
Core Fixed Income	60% Bloomberg Municipal Bond Index 40% Bloomberg US Aggregate Bond Index	45%	40%-50%
Cash	ICE BofA ML 3-Month US Treasury Bill Index	0%	0%-1%

\* Target Asset Allocations for the “Decommissioning Trust Fund” and the “Second Fund” created within each Trust to be monitored as to each Fund and Trust separately

## **APPENDIX A**

### **Services**

This Appendix A sets forth generally the Services to be provided by SSGATC. EPEC acknowledges and agrees that this is a substantially complete list of the services to be performed by SSGATC under the Agreement.

#### **Strategy**

1. Asset/Liability Analysis – periodically review each Trust’s funding status and prepare an asset/liability analysis as mutually agreed between EPEC and SSGATC. At a minimum, SSGATC will prepare an asset/liability analysis for the Trusts within a reasonable time after a new cost study and a subsequent annual funding status report become available or at least once every three (3) years.
2. Strategic Asset Allocation Recommendations – recommend for adoption by EPEC a strategic asset allocation policy along with applicable targets and ranges. Monitor and review on an ongoing basis, and at least annually report to EPEC whether there are any recommended changes.
3. Portfolio Structuring – provide portfolio structure design, manager selection services and implementation in line with goals and objectives of each Trust.
4. Draft Investment Policy Statement and Investment Guidelines – prepare written summary of the objectives, goals, asset allocation policies, constraints and governance into a draft Investment Policy Statement (“IPS”) for EPEC to consider potentially adopting, as well as Investment Guidelines. Monitor changes and make recommendations to amend the Investment Guidelines as circumstances dictate (and, in any event, report to EPEC at least annually whether there are any recommended changes). If EPEC decides to adopt an IPS, then make recommendations to amend the IPS as appropriate (and, in any event, report to EPEC at least annually whether there are any recommended changes).

#### **Manager Research**

1. Manager Selection and Terminations – SSGATC shall have the authority to retain one or more investment managers to provide investment management services to each Trust in accordance with the Investment Guidelines. SSGATC shall (i) perform due diligence, negotiate, and execute agreements and related documentation, on behalf of EPEC as EPEC’s agent and attorney-in-fact; (ii) have the responsibility to oversee the investment managers and assess their performance against the relevant benchmarks; and (iii) have the authority to terminate any investment manager.
2. Manager Contracting, Onboarding and Fee Negotiations

3. Manager Searches – to include a universe of fund managers not limited to SSGATC and its affiliates, and with respect to “active manager” (as opposed to index manager) searches at a minimum a deep dive on at least three finalist managers.
4. Manager Due Diligence and ongoing regular monitoring of all managers
5. Manager Transitions

### **Implementation**

1. Cash flows, Rebalancing and Cash Management – make periodic rebalancing decisions with respect to each Trust’s liquidity needs and capital gains/losses, and otherwise, within the Trust’s Investment Guidelines.
2. Market Exposure Management – manage market exposure on an ongoing basis using the defined target asset allocations (weights) and allowable ranges set forth in the Investment Guidelines.

### **Ongoing Client Support**

1. Company Support, including with material and in-person meetings – prepare quarterly Company books. The content of the quarterly Company books will be mutually agreed upon by the Parties hereto, and may include, among other relevant information and materials: (a) investment performance and total Trust performance analysis; (b) capital gains/losses; and (c) economic and market commentary. Participate in periodic meetings with EPEC and/or staff to report investment results, compliance with established Investment Guidelines, review of market outlook and other mutually agreed upon topics.
2. Attend all regularly scheduled Company meetings (in person or remotely, as agreed between the Parties).
3. Performance Reporting – prepare a monthly report on each Trust’s investment performance, including without limitation each investment manager’s performance versus its benchmark and any material changes in management, style or otherwise.

### **Operations**

1. Financial Reporting Support – coordinate inputs and deliver to preparer in a timely manner-including all investment manager direct and indirect compensation.
2. Send monthly asset and performance reports to internal stakeholders.
3. Reconcile Monthly Accounting with Custodian.
4. Support Audit Requests – coordinate inputs and deliver to preparer in a timely manner.
5. Reconcile Performance and Values between Managers and Custodian.