



Control Number: 38717



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OPEN MEETING COVER SHEET

MEETING DATE: January 20, 2011

DATE DELIVERED: January 13, 2011

AGENDA ITEM NO.: 9

CAPTION: Docket No. 38717; SOAH Docket No. 473-11-1919 - Application of El Paso Electric Company for an Amendment to its Certificate of Convenience and Necessity for a Peaking Generating Unit at the Rio Grande Site in New Mexico

ACTION REQUESTED: Discussion and possible action with respect to Preliminary Order

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Kenneth W. Anderson, Jr.
Commissioner

Brian H. Lloyd
Executive Director



Public Utility Commission of Texas

TO: Chairman Barry T. Smitherman
Commissioner Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.

All Parties of Record

FROM: Heidi Jackson, Commission Advising *HJ*

RE: Draft Preliminary Order, Docket No. 38717, SOAH Docket No. 473-191-191
Application of El Paso Electric Company for an Amendment to its Certificate of
Convenience and Necessity for a Peaking Generating Unit at the Rio Grande Site
in New Mexico

DATE: January 13, 2011

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Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the January 20, 2011 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the January 20, 2011 open meeting.

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**SOAH DOCKET NO. 473-11-1919
PUC DOCKET NO. 38717**

APPLICATION OF EL PASO ELECTRIC	§	PUBLIC UTILITY COMMISSION
COMPANY FOR AN AMENDMENT TO	§	
ITS CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY FOR A PEAKING	§	
GENERATING UNIT AT THE RIO	§	
GRANDE SITE IN NEW MEXICO	§	

DRAFT PRELIMINARY ORDER

On September 30, 2010, El Paso Electric Company (EPE) filed an application for a certificate of convenience and necessity (CCN) for an 87 megawatt natural gas-fueled power generating unit at EPE's existing Rio Grande generation station in Sunland Park, New Mexico pursuant to the Public Utility Regulatory Act (PURA)¹ §§ 37.053 and 37.056 and P.U.C. SUBST. R. 25.101(b).

On December 21, 2010, the Commission referred the case to the State Office of Administrative Hearings (SOAH) and issued an order requesting lists of issues to be discussed in this docket. On January 5, 2011 Commission Staff timely filed a list of issues to be addressed in this docket and EPE concurred with Staff's proposed issues.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.² After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. (Vernon 2007 & Supp. 2009).

² TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2000).

1. Is the CCN necessary for the service, accommodation, convenience or safety of the public under PURA § 37.056, taking into account the following factors:
 - a. The adequacy of existing service;
 - b. The need for additional service;
 - c. The effect of granting the CCN on SPS and any electric utility serving the proximate area;
 - d. Other factors such as:
 - i. Community values;
 - ii. Recreational and park areas;
 - iii. Historical and aesthetic values;
 - iv. Environmental integrity;
 - v. The probable improvements of service or lowering of cost to consumers in the area if the certificate is granted; and
 - vi. To the extent applicable, the effect of granting the certificate on the ability of this state to meet PURA's goals of adding renewable energy resources established by PURA § 39.904(a).

2. What effect, if any, would approval of the CCN have on the implementation of customer choice in EPE's service territory, especially the effect on mitigating market power, auctioning rights to generation capacity, and divesting generation capacity? See PURA § 39.402 (c).

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket.

The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under TEX. GOV'T CODE ANN. § 2003.049(e).

II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the _____ day of January, 2011

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER