



Control Number: 39590



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# OPEN MEETING COVER SHEET

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**MEETING DATE:** September 29, 2011

**DATE DELIVERED:** September 22, 2011

**AGENDA ITEM NO.:** 11

**CAPTION:** Docket No. 39590; SOAH Docket No. 473-11-9468 - Petition of El Paso Electric Company for Approval to Revise Military Base Discount Recovery Factor Tariff Pursuant to PURA § 36.354

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

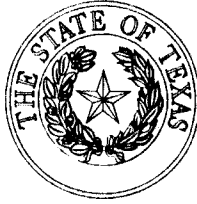
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## *Public Utility Commission of Texas*

11 SEP 22 PM 12:21  
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TO: Chairman Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.

All Parties of Record

FROM: Katherine Lengieza Gross, Commission Advising *KS*

RE: Draft Preliminary Order, September 29, 2011, Open Meeting, Agenda Item No. 11

Docket No. 39590; SOAH Docket No. 473-11-9468 – *Application of El Paso Electric Company for Approval of Military Base Discount Recovery Factor Tariff Pursuant to PURA § 36.354*

DATE: September 22, 2011

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 September 29, 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 September 29, 2011 open meeting.

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**SOAH DOCKET NO. 473-11-9468**  
**PUC DOCKET NO. 39590**

<b>PETITION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO REVISE MILITARY BASE DISCOUNT RECOVERY FACTOR TARIFF PURSUANT TO PURA § 36.354</b>	<b>§ § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**DRAFT PRELIMINARY ORDER**

On July 15, 2011, El Paso Electric Company filed a petition for approval to revise its Military Base Discount Recovery Factor (MBDRF) tariff pursuant to § 36.354 of the Public Utility Regulatory Act (PURA).<sup>1</sup> In El Paso Electric's last rate case, Docket No. 37690,<sup>2</sup> El Paso Electric implemented two rate schedules pursuant to PURA § 36.354: Rate Schedule No. 95, which provides a discount of 20% of the base commercial rate that El Paso Electric would otherwise charge military installations, and Rate Schedule No. 96, which assesses a surcharge to all of El Paso Electric's retail customers to recover the discount provided to military installations resulting from Rate Schedule No. 95. Rate Schedule No. 96 also provides that El Paso Electric's MBDRF surcharge shall be based on actual historic usage and adjusted in September of each year to include any over- or under-recovery from the previous year. Both Rate Schedule Nos. 95 and 96 had an effective date of July 1, 2010. In its application, El Paso Electric requests that its MBDRF be adjusted to reconcile an under-recovery of \$761,274 from calendar year 2010 and to recover revenue equal to an expected discount of \$3,515,390 for calendar year 2011, for a total requested recovery of \$4,276,664.

This case was referred to the State Office of Administrative Hearings (SOAH) on August 29, 2011. El Paso Electric and the City of El Paso filed lists of issues on September 13, 2011.

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<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 – 66.016 (Vernon 2007 & Supp. 2010).

<sup>2</sup> *Application of El Paso Electric Company to Change Rates, to Reconcile Fuel Costs, to Establish Formula-Based Fuel Factors, and to Establish an Energy Efficiency Cost Recovery Factor*, Docket No. 37690 (July 30, 2010).

### **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.<sup>3</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Did El Paso Electric correctly calculate its 2010 under-recovery resulting from the difference between the actual discount provided under Rate Schedule No. 95 and the actual revenues collected under Rate Schedule No. 96?
2. Is El Paso Electric's 2011 Military Base Discount reasonably calculated?
3. Has El Paso Electric correctly calculated its MBDRF?

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 this order, 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. Issues Not to be Addressed**

The Commission takes the position that the following issues need not be addressed in this proceeding for the reasons stated.

1. Does the Commission have primary jurisdiction in this docket?

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<sup>3</sup> TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2008).

PURA § 33.001 states that the governing body of a municipality has exclusive jurisdiction over the rates, operations, and services of an electric utility in areas in the municipality, subject to the limitations imposed by PURA.<sup>4</sup> However, PURA § 36.354 requires El Paso Electric to discount charges for electric service provided to a military base<sup>5</sup> and to “file a tariff with the commission reflecting the discount.”<sup>6</sup> Additionally, the Commission is directed to approve the tariff.<sup>7</sup> Use of the term Commission in PURA § 36.354 rather than regulatory authority (defined as either the Commission or the governing body of a municipality<sup>8</sup>) shows the clear legislative intent that jurisdiction under PURA § 36.354 over MBDRF is reserved exclusively in the Commission. Further, PURA § 36.354 (d) specifically states that a MBDRF proceeding is not a rate change for purposes of subchapter C of chapter 36 of the PURA. Thus, whether El Paso Electric’s action to revise its tariff must first be filed with the municipalities with original jurisdiction within El Paso Electric’s service area shall not be addressed.

### III. Effect of Preliminary Order

The Commission’s discussion and conclusions in this Order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, 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 the non-dispositive rulings of 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

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<sup>4</sup> PURA § 33.001(a).

<sup>5</sup> *Id.* § 36.354(a).

<sup>6</sup> *Id.* § 36.354(d).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* § 11.003(18).

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 September 2011.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**