



Control Number: 44805



Item Number: 46

Addendum StartPage: 0

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# OPEN MEETING COVER SHEET

**MEETING DATE:** March 24, 2016

**DATE DELIVERED:** March 17, 2016

**AGENDA ITEM NO.:** 20

**CAPTION:** Docket No. 44805; SOAH Docket No. 473-16-1839  
Application of El Paso Electric Company for Reasonableness and Public Interest Findings on the Disposition of Coal-Fired Generating Facilities in New Mexico, and Mine Closing Cost Adjustments

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

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46

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*Public Utility Commission of Texas*

TO: Chairman Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.  
Commissioner Brandy Marty Marquez

All Parties of Record

FROM: Lisa Carter, Commission Advising *LJC*

RE: March 24, 2016, Open Meeting Agenda Item No. 20  
Draft Preliminary Order, PUC Docket No. 44805; SOAH Docket No. 473-16-1839 – *Application of El Paso Electric Company for Reasonableness and Public Interest Findings on the Disposition of Coal-Fired Generating Facilities in New Mexico, and Mine Closing Cost Adjustments*

DATE: March 17, 2016

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 March 24, 2016 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 March 24, 2016 open meeting.

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**SOAH DOCKET NO. 473-16-1839  
PUC DOCKET NO. 44805**

<b>APPLICATION OF EL PASO ELECTRIC COMPANY FOR REASONABLENESS AND PUBLIC INTEREST FINDINGS ON THE DISPOSITION OF COAL-FIRED GENERATING FACILITIES IN NEW MEXICO, AND MINE CLOSING COST ADJUSTMENTS</b>	§ § § § § § §	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**DRAFT PRELIMINARY ORDER**

On June 10, 2015, El Paso Electric Company filed an application seeking the Commission's determination of the reasonableness of El Paso Electric's decision not to extend its participation in the coal-fired units 4 and 5 of the Four Corners power plant beyond July 2016. El Paso Electric also seeks rate- and accounting-related findings for decommissioning costs, coal mine reclamation costs, lease payments, under-funded pension and post-retirement benefit costs and certain operating and maintenance cost true-ups.<sup>1</sup> El Paso Electric agreed to file this application as part of the settlement in El Paso Electric's most recent fuel reconciliation case, Docket No. 41852.<sup>2</sup>

El Paso Electric currently owns 7% of Four Corners units 4 and 5, located in land leased from the Navajo Nation in northwestern New Mexico.<sup>3</sup> Units 4 and 5 are rated at 770 megawatts, and began operating in 1969 and 1970, respectively.<sup>4</sup> El Paso Electric's 7% share of the units equates to 108 megawatts.<sup>5</sup> Several contracts regarding El Paso Electric's interest in the Four Corners' units will expire in July of 2016. The contracts set to expire include the fuel supply agreement, the operating agreement among the co-owners, the co-tenancy agreement among the co-owners, the lease agreement among the co-owners and the Navajo Nation, and the

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<sup>1</sup> Application at 8.  
<sup>2</sup> *Application of El Paso Electric Company to Reconcile Fuel Costs*, Docket No. 41852 (Jul. 11, 2014).  
<sup>3</sup> Application at 5.  
<sup>4</sup> *Id.*  
<sup>5</sup> *Id.*

federal grant right-of-way and easement.<sup>6</sup> The co-owners and other parties entered into discussions about extending the contracts to allow for operation of the facilities through 2031.<sup>7</sup>

In November 2013, El Paso Electric declined to enter into the contracts that would extend its participation in the Four Corners plant.<sup>8</sup> After informing the co-owners of this decision, Arizona Public Service Company, a co-owner of the plant, expressed an interest in purchasing El Paso Electric's 7% ownership interest.<sup>9</sup> A purchase and sale agreement between El Paso Electric and Arizona Public Service Company was signed on February 17, 2015, with an expected closing date of July 6, 2016.<sup>10</sup>

The city of El Paso and the Texas Industrial Energy Consumers were granted intervention in this docket, and those parties filed a request for a hearing on November 19, 2015. This docket was referred to the State Office of Administrative Hearings (SOAH) on January 11, 2016. On January 25, 2016, Commission Staff and El Paso Electric timely filed lists of issues. At the February 11, 2016 open meeting, the Commission questioned whether it was appropriate for the Commission to evaluate this application under PURA § 14.101. The Commission requested briefing on whether this docket should be dismissed. On February 22, Commission Staff, El Paso Electric, and the city of El Paso filed briefs urging that the Commission hear this docket.

### **I. Threshold Legal/Policy Determinations**

Parties filed briefs addressing the following legal and policy questions. The following statements of position were reached in consideration of arguments of the parties. Accordingly, pursuant to the Administrative Procedure Act<sup>11</sup> § 2001.058(c), the Commission states its position on the following threshold issues:

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<sup>6</sup> *Id.*

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

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001-.902 (West 2008 & Supp. 2014).

**1. Should the Commission dismiss this docket?**

PURA § 14.101(a)(1) states that unless a public utility reports the transaction to the Commission within a reasonable time, the utility may not “sell, acquire, or lease a plant as an operating unit or system in this state for a total consideration of more than \$10 million.” At the February 11, 2016 open meeting, the question was raised whether the transaction described in EPE’s application falls within the jurisdiction of this statute, as the assets at issue are not located in the state of Texas.

Commission Staff and El Paso Electric noted, and the Commission agrees, that the Commission can assert jurisdiction over the application in this docket under its general power to regulate and supervise the business of each public utility within its jurisdiction.<sup>12</sup> The Commission finds that it is appropriate to apply a public interest standard to the application at issue in this docket.

**II. 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>13</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Was El Paso Electric’s decision to decline to extend its ownership interest in the Four Corners project consistent with the public interest?
2. Since deciding to decline to extend its ownership interest in the Four Corners project, did El Paso Electric continue to evaluate whether this decision is in the public interest?
3. How will the decision to decline to extend its ownership interest in the Four Corners project impact the rates of Texas customers? Will this decision result in a decline of service for Texas customers?

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<sup>12</sup> PURA § 14.001.

<sup>13</sup> Tex. Gov’t Code Ann. § 2003.049(e) (West 2011).

4. Is the sale of El Paso Electric's 7% share of the Four Corners units to Arizona Public Service Company consistent with the public interest?
5. Will El Paso Electric receive consideration equal to the reasonable value of its 7% share of the Four Corners units?
6. How will the sale of El Paso Electric's 7% share of the Four Corners impact the rates of Texas customers? Will the sale result in a decline of service for Texas customers?
7. What will be the result if there is a gain on the sale?
8. What conditions, reporting requirements, or reviews, if any, should the Commission impose if it conditionally approves the proposed sale of El Paso Electric's 7% share of the Four Corners units?
9. From what other regulatory authorities has El Paso Electric sought approval for the transaction?
10. Has the applicant made any commitments to any other regulatory authority? If so, would it be appropriate to condition any approval in this docket on similar commitments?

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).

### **III. Issue Not to be Addressed**

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

1. Should the Commission approve El Paso Electric's requested rate- and accounting-related findings for decommissioning costs, coal mine reclamation costs, lease payments, underfunded pension and post-retirement benefit costs and certain operating and maintenance cost true-ups?

The Commission finds that El Paso Electric's requested rate- and accounting-related findings are more appropriately addressed in a rate-making proceeding, and should not be addressed in this docket.

#### **IV. Effect of Preliminary Order**

The Commission's discussion and conclusions in this Order regarding threshold legal and policy issues and issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding threshold legal and policy issues and 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 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 March 2016.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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

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**BRANDY D. MARTY, COMMISSIONER**

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