

to identify the resources to best fit EPE's load profile, its operating system and transmission facilities, and EPE planning did not rely upon Four Corners past July 2016. Continuation of ownership and participation in the Four Corners remote generation facility is not necessary for the public convenience and necessity, and abandonment and sale will benefit EPE and its customers. EPE Ex. 1 (App.) at 2-3; EPE Ex. 3 (Acosta Dir. Test.) at 2; EPE Ex. 2 (Powell Dir.) at 19; EPE Ex. 7 (Stip.) at 2-3.

## **VI. EPE'S ECONOMIC ANALYSIS SUPPORTING EXIT DECISION**

EPE witness David Carpenter testified that at the time of EPE's decision in 2013 to not participate in a life-extension project for Four Corners, he was a member of EPE's senior management. He participated in the discussions and analyses that management and the Board of Directors undertook with respect to EPE's continued participation in Four Corners. EPE Ex. 4 (Carpenter Dir.) at 5. Factors considered included:

1. The economic analysis by EPE witness Scott Wilson showing no clear advantage to continuing with Four Corners versus alternative generation. This analysis took into account the Four Corners expected future capital and operating costs, including costs to install SCR required to comply with existing environmental regulations.
2. The risks associated with potential future environmental regulations and litigation that could ensue if EPE continued as a co-owner. These risks have become particularly acute over the last several years as coal has become an embattled resource. This factor clearly favored alternatives to the coal-fired Four Corners.

3. The addition of locally-located generation capacity that EPE has built and is planning that will allow EPE to continue to provide reliable service absent the remote Four Corners capacity. This factor supported a decision to exit Four Corners because reliability would not be impaired, and operational flexibility would be enhanced.
4. After Four Corners was constructed, the Company added a 15.8 percent or 633 MW ownership interest in the Palo Verde Nuclear Generating Station ("PVNGS") in Arizona, which provides the Company and its customers with a substantial base load generating resource that provides fuel diversity. In addition, EPE had contracted for the purchase of almost 100 MW of solar photovoltaic generation, which provides additional fuel diversity. Generation from PVNGS in 2014 represented over 50% of the energy generated by the Company in 2014.

EPE Ex. 4 (Carpenter Dir.) at 6-7; and EPE Ex. 2 (Powell Dir.) at 4.

Mr. Carpenter further testified that EPE reasonably identified and weighed the various factors to be considered in a decision such as this. EPE's analyses not only looked at the foreseeable economic impact of not participating in the life extension but also included extensive analysis of the potential environmental regulations and litigation, transmission impacts, and other litigation risks. These risks not only included the potential for increases in costs to comply with environmental regulations but also included the financial and legal risk of having to shut-down the plant prior to the end of the proposed life extension. The conclusion of this extensive analysis was that there was a high risk of incurring significant increased costs and litigation and environmental risks if the Company continued to participate in Four Corners beyond July 6, 2016. *Id.* at 6-7.

EPE's senior management and its Board of Directors requested that EPE

witness Scott Wilson perform an independent economic analysis of the proposed life extension project using EPE-specific information over the 15-year life of the proposed extension project. As explained in his direct testimony, Mr. Wilson conducted two analyses in 2013 that supported EPE's decision not to participate in the proposed life extension of Four Corners.

The first economic analysis was conducted using the proprietary Strategist corporate planning model and the Present Value of Revenue Requirements model ("PVRR"), with the goal being to measure changes in total system generating costs (revenue requirements) both with and without Four Corners. This output data was exported to the PVRR spreadsheet model for the purpose of computing and, ultimately, comparing the revenue requirements for total system generation costs with and without Four Corners.

The second economic analysis was conducted using a discreet spreadsheet model: the Discrete Model. In this modeling effort, the cost of extending Four Corners was compared to the cost of replacing Four Corners with the best or most likely available alternative; namely a natural gas-fired combined cycle combustion turbine ("CCCT"). EPE Ex. 3 (Wilson Dir.) at 4-10. EPE provided Mr. Wilson with key input data for both models with forecasted natural gas prices being the single most important input in both models.

The Direct Testimony of EPE witness Ricardo Acosta explains the

methodology and resulting gas price forecast. EPE Ex. 3 (Wilson Dir.) at 8.

Both the Strategist and Discrete models included a base scenario (forecasted gas prices) with a low scenario (30 percent below forecasted gas prices) and a high scenario (30 percent above forecasted gas prices). Both the Strategist and Discrete model analyses produced consistent results, directionally, as to the desirability of extending the life of Four Corners for another 15 years. In both model analyses, the low gas case and base case results favored retiring Four Corners in July 2016 (an approximate \$10.8 million benefit to retirement in the Base Case Discrete Model, and a \$24.1 million benefit to retirement in the Base Case Strategist Model), while the high gas case favored extending Four Corner's life to 2031. Three scenarios were run for each model, and in all six cases the costs and risks associated with potential environmental externalities and other unquantified costs/risks were not considered as part of the base economic analyses. Tr. at 25-26; EPE Ex. 3 (Wilson Dir.) at 11; and in Exhibit SDW-1.

As a result of EPE's deliberative process and economic analyses, the Company decided not to participate in the proposed life extension of Four Corners. EPE Ex. 4 (Carpenter Dir.) at 7-8.

## **VII. THE PURCHASE AND SALE AGREEMENT**

On February 17, 2015, EPE and APS executed the PSA, with an expected

closing of July 6, 2016, subject to Commission approval. EPE Ex. 2 (Powell Dir.)

at 6. The PSA defines an Initial Purchase Price or sale price, as the original cost less accumulated depreciation (net book value) of Four Corners at the date of closing, plus the book value of equipment, materials inventory, and fuel inventory.

APS will also reimburse EPE for capital expenditures not closed to plant in service or construction work in progress ("CWIP") on its books as of the sale closing date. The Initial Purchase Price will be reduced by EPE's share of estimated decommissioning costs and EPE's share of estimated mine reclamation costs through the date of closing. The PSA specifies that the net book value will not include FERC Plant Account 317, Asset Retirement Obligations, and that APS will assume EPE's share of the post-closing date liability for future decommissioning of Four Corners and for mine reclamation. EPE's liability is limited to paying for the estimated costs of decommissioning and final mine reclamation as of the July 2016 closing date.

In addition, the PSA states that the Initial Purchase Price will be reduced by the amount of any underfunded pension and other post-employment benefit ("OPEB") liabilities that exist as of the closing date. The Initial Purchase Price will also be reduced by the present value as of the date of closing of EPE's pro-rata share of the payments due to the Navajo Nation for the period from July 2031 through July 2041 pursuant to a land lease being assumed by APS. Finally, the

Initial Purchase Price will be adjusted for a number of true-ups known as of the closing and those occurring after the closing for certain operating costs of Four Corners including operating and maintenance expenses, insurance, and taxes other than income taxes in order to determine the final purchase price. The PSA includes an estimated Initial Purchase Price for Four Corners at closing of \$19,722,729 plus \$10,303,000 of reimbursable capital expenditures or CWIP. EPE Ex. 4 (Carpenter Dir.) at 10-11.

Under the PSA, APS will assume responsibility for all capital expenditures made after closing, and with certain exceptions, any pre-2016 capital expenditures to be put in service following the closing, including selective catalytic reduction technology SCR, which are required to meet Federal Haze Rules and are scheduled to be installed on the units by July 31, 2018. In addition, APS has agreed to indemnify EPE against liabilities and costs related to the future operation of Four Corners. EPE Ex. 2 (Powell Dir.) at 8; and EPE Ex. 4 (Carpenter Dir.) at 14.

### **VIII. COST RECOVERY APPLICATION REQUEST**

The Application requested regulatory accounting orders for deferral and future ratemaking treatment of decommissioning costs, incremental coal mine reclamation costs, limited Navajo Nation lease payments, and unfunded pension and post-employment benefit costs, which--as EPE explained--are all costs associated with EPE's operation and ownership of Four Corners and are all costs

which reduce the Initial Purchase Price under the PSA.

EPE has also committed to file a historic test year rate case using the 12-month period ending September 30, 2016, to reflect the sale of Four Corners and its attendant impacts, including replacement power in rate base and cost of service. This will occur at the end of the first quarter after the sale of Four Corners. EPE Ex. 4 (Carpenter Dir.) at 17.

EPE Witnesses Powell and Carpenter filed extensive direct testimony explaining and supporting the basis of the four cost categories for which EPE sought regulatory accounting orders.

**A. Decommissioning Costs**

Under GAAP and the FERC Uniform System of Accounts, the Company calculated an asset retirement obligation that included some decommissioning costs. The present value at the time of the estimate was recorded as plant in service, FERC Account 317, Asset Retirement Costs for Steam Production Plant, and a liability for asset retirement obligation was recorded in FERC Account 230, Asset Retirement Obligations ("ARO"). Each year the Company recognizes accretion expense equal to the increase in the present value of the ARO liability. For New Mexico rate making purposes, the Company removes the asset retirement obligation and accumulated depreciation from plant in service included in rate base and also excludes the annual depreciation expense and accretion expense

associated with the ARO from cost of service. As a result, EPE has not recovered any amounts for the estimated cost of decommissioning through rates. When the Four Corners plant retires, it must be decommissioned. Decommissioning will require the plant to be removed and restoration and remediation of the plant site completed. As a result of the Company's ownership and use of the plant, EPE is responsible for a pro rata portion of the decommissioning expenses. EPE Ex. 4 (Carpenter Dir.) at 21-22.

The PSA required an updated decommissioning study be conducted. This study, dated December 19, 2014, was performed by independent third party Shaw Environmental Inc. ("Shaw") and established the basis for EPE's total company decommissioning liability of \$6,992,622 as of July 6, 2016. EPE performed a comparison of the December 19, 2014 study to the previous study performed by Shaw in December 2009 and determined the increases to be minimal and reasonable. EPE Ex. 2 (Powell Dir.) at 7.

EPE's application requested an accounting order from the Commission establishing the costs of the decommissioning liability as a regulatory asset to be recovered over a seven-year period beginning in the rate case to be filed after closing with the full annual amount of the expense to be included on an adjusted test year expense. The Company proposed that interest would be accrued on the unamortized balance at a rate equal to the Company's average cost of capital as



determined in the Company's most recent rate order. EPE Ex. 4 (Carpenter Dir.) at 22-23. The New Mexico jurisdictional share of this cost is \$1,400,433.

### **B. Final Mine Reclamation Costs**

As coal is mined for use at the plant, a reclamation liability is created. After coal is mined in an area, it is reclaimed. The Company pays for mine reclamation costs as they occur. However, an area at the coal mine cannot be reclaimed until mining is completed. As a result, there is always a lag between the use of the coal and the associated mine reclamation. The mine reclamation costs that will occur after the plant ceases operation are referred to as final mine reclamation costs. The current coal supply agreement provides for final mine reclamation costs to be estimated and recovered over the two-year period prior to the termination of the mining agreement. The Company anticipated paying these costs beginning in July 2014. However, since the other participants have extended the coal supply agreement, these payments have been deferred. EPE Ex. 4 (Carpenter Dir.) at 18-19.

The PSA quantifies EPE's obligation as of July 2016 and ends EPE's liability for any further final mine reclamation costs incurred in extended mining and operation of Four Corners. The purchase price of Four Corners under the PSA will be adjusted for EPE's share of the final coal mine reclamation cost through the closing date, and APS will assume the post-closing date liability for final coal mine

reclamation. A study performed in 2014 for a 2016 closure of the Navajo Mine conducted by Golder Associates Inc., a recognized expert in mine reclamation, established the basis of EPE's share of final coal mine reclamation costs. The Signatories agree that the Company has already recovered a substantial portion of this cost through base fuel rates and the fuel and purchased power cost adjustment clause ("FPPCAC") pursuant to Final Orders in Case Nos. 06-00258-UT and 09-00171-UT and as of June 2016 will have collected \$10.2 million for these costs. The additional costs determined by the 2014 study were negotiated by EPE to leave a total of \$9,093,851 unfunded on a total company basis, or \$1,092,752 unfunded on a New Mexico jurisdictional basis. Carpenter Stipulation Testimony at 12.

EPE requested that the increase in final mine reclamation costs be recovered through base fuel and the FPPCAC over a seven-year period. The incremental regulatory asset should be amortized over a seven-year period beginning with the rate case to be filed after the closing. The seven-year period is reflective of the period that will be required to reclaim the mine.

### **C. Navajo Nation Lease Payments**

A Supplemental and Additional Indenture of Lease ("Lease Agreement" or "Lease") sets out the terms under which the Co-owners lease from the Navajo Nation certain lands such as right-of-ways, and communication sites, originally

required for the construction and continued operation of Units 4 and 5 and related common facilities and required to deliver power from the Palo Verde Nuclear Plant. EPE Ex. 2 (Powell Dir.) at 12-13; EPE Ex. 4 (Carpenter Dir.) at 23 and Tr. at 58 (Gunter). EPE agreed to an extension of the Lease Agreement, along with the other participants in November 2011, in order to ensure the extension of the lease necessary for the continued operation of the plant. Under the PSA, EPE's lease obligations and share of lease payments are being assumed by APS, and the purchase price of Four Corners will be adjusted by EPE's pro rata share of the present value of lease payments of \$207,553 on a company basis and approximately \$41,658 on a New Mexico jurisdictional basis from July 2031 until July 2041. EPE Ex. 4 (Carpenter Dir.) at 23. The Application requested an accounting order from the Commission establishing the costs of the future lease payment liability as a regulatory asset to be amortized commencing with the closing date over a seven-year period, effective in the rate case to be filed after closing with the full annual amount of the expense included as an adjusted test year expense. The Company proposed that interest will be accrued on the unamortized balance at a rate equal to the Company's average cost of capital as determined in the Company's most recent rate order. Id. at 24.

#### **D. Pension and OPEB Liability**

The pension and OPEB liability is associated with retirement benefits that

employees at Four Corners have earned during the time of EPE's ownership of Four Corners but will not be paid until after they retire. Under GAAP and the FERC Uniform System of Accounts, these liabilities are charged to operating expenses over the working life of employees. The PSA provides for the amount of liability that has accrued but has not been expensed or paid by the Company to be paid when the plant is sold. The Company has recovered expenses for these employee benefits, but only as they were charged by APS and recorded as expense. The purchase price adjustment for this liability of \$756,208 on a company basis or approximately \$151,448 on a New Mexico jurisdictional basis, which consists of costs not currently in rates or recovered from customers. The Company requested an accounting order from the Commission recognizing these costs as a regulatory asset to be recovered as an expense amortized over a seven-year period beginning with the rate case filed after closing. The full annual expense will be included as an adjusted test year expense in the Company's rate case filed after the closing. The Company proposed that interest will be accrued on the unamortized balance at a rate equal to the Company's average cost of capital as determined in the Company's most recent rate order. EPE Ex. 4 (Carpenter Dir.) at 17-18.

## **IX. JOINT STIPULATION**

The Joint Stipulation resolves all issues in contention on an overall basis and demonstrates the net public benefit of the Joint Stipulation and the underlying

transaction. The unopposed Joint Stipulation provides for Commission approval of the abandonment and sale of EPE's seven percent interest in the Four Corners Units 4 and 5. The PSA results in APS paying EPE the net book value of EPE's Four Corners investment costs at closing. The estimated purchase price at closing is \$19,722,729 plus \$10,303,000 of reimbursable capital expenditures or CWIP. EPE at the same time will pay its existing obligations to APS for final coal reclamation, decommissioning, and certain unfunded APS pension and benefit amounts, and its share of certain Navajo Nation lease payments.

The Joint Stipulation provides EPE will forego New Mexico recovery of two requested regulatory assets; the unfunded APS pension costs and the Navajo Nation lease costs. The Joint Stipulation would approve two regulatory assets: decommissioning costs and final coal reclamation costs. As part of the overall resolution in the Joint Stipulation, EPE also agreed to forego rate recovery of 40 percent of the New Mexico incremental amount of the final mine reclamation cost recovery. Both regulatory assets will be recovered in the next filed rate case over seven years without carrying costs.

#### **A. Preamble Clauses**

The Joint Stipulation contains seven preamble paragraphs, which provide factual background for the Joint Stipulation and reflect the Signatories intent and agreements to resolve all matters in this case. EPE witness Carpenter testified at

hearing as to the factual accuracy of these paragraphs. Tr. 14.

The first clause recites the approvals EPE seeks in its Application in this case. The second clause provides the regulatory background for EPE's interest in Four Corners, including reference to Case No. 824 where the CCN for Four Corners was granted by the Commission, and where the Commission determined that EPE's interest would be governed by the various contractual agreements for participation in Four Corners, which were subsequently filed in that docket and which provided for an initial 50-year term for the Four Corner Project ending in July 2016. When the project's initial 50-year term was near its end, EPE gave serious consideration to potential issues surrounding participation in a life extension of the project and explored the alternative of selling its interest through a competitive bidding process or to other co-owners, but at that time no party showed interest.

The third clause explains the EPE independent economic analysis conducted in 2013 prior to a decision on whether to participate in a life extension for Four Corners beyond 2016. That analysis quantified the net public benefit at that time in the range of \$10.8 to \$24.1 million in favor of exiting Four Corners. Also considered were various non-quantifiable benefits that would accrue in an exit from Four Corners. In 2013, EPE notified APS of its decision to exit Four Corners and thereafter was able to enter into the PSA with APS. The subsequent PSA adds

significant quantifiable as well as non-quantifiable benefits. An update to EPE's 2013 economic analysis, based on current gas prices, shows a net benefit of approximately \$124.6 million associated with exiting Four Corners.

The fourth clause describes the Company's planning process to exit Four Corners. In EPE's 2009 and 2012 Commission-accepted IRPs, EPE did not plan power from the Four Corners Units after 2016. During this period, EPE filed CCN cases in which the Commission found the addition of certain generating resources, including 50 MW of solar energy, to be in the public interest. With that planning, EPE is in a position to exit from Four Corners in July 2016 with a substantial benefit for its customers and the public.

The fifth clause states the Joint Stipulation is intended to resolve all issues pending in this docket, including EPE's proposed regulatory asset treatment and deferral of certain costs associated with EPE's ownership and use of Four Corners specifically decommissioning costs and coal mine reclamation costs. The requests for recovery of the limited Navajo Nation lease payments, unfunded pension, and post-employment benefit costs are withdrawn.

The sixth clause recites the agreement that the intent and result of the Stipulation is to serve the public interest through benefits to the public, both quantifiable net benefits but also through the avoidance of future non-quantifiable issues including future increased costs, risks and liability of coal-fired generation,

and additional environmental regulation of coal. Abandonment and sale is consistent with EPE's Commission-accepted 2009 and 2012 IRPs. EPE has Commission approved resources in place that will allow the company to continue to provide cost-effective, safe, and reliable utility services after EPE's ownership interest in Four Corners is terminated.

### **B. Joint Stipulation Provisions**

EPE witness David Carpenter provided testimony in support of the Joint Stipulation to explain and address each section. EPE Ex. 6 (Carpenter Stip.) Mr. Carpenter summarized the Joint Stipulation as follows:

#### ***Section 1. Abandonment and Sale***

The Joint Stipulation provides for the approval of the abandonment and sale of Four Corners. In this section, the Stipulating Parties agree that the abandonment of Four Corners meets the Commission's regulatory standards for approval of abandonment using the Commuters' Committee Factors, and that abandonment provides a net public benefit and is in the public interest. In addition, the Stipulating Parties agree that the sale of Four Corners not only provides a net benefit but increases the economic net benefit, avoids future cost responsibilities and extended obligations, and is in the public interest. Joint Stipulation Section 1 and EPE Ex. 6 (Carpenter Stip.) at 6.



## ***Section 2. Final Coal Reclamation Costs***

EPE agrees to forego 40 percent of the New Mexico incremental final mine reclamation costs and to limit later recovery of final coal reclamation costs to 60 percent of those costs. The New Mexico jurisdictional total is \$1,821,253 of which 60% is \$1,092,752. The amortization of the incremental amount of final mine reclamation costs will be without carrying costs over seven years. The cost will be included in base fuel in EPE's next rate case proceeding and will be subject to true-up in the FPPCAC consistent with prior treatment of final mine reclamation costs. Customers will not be responsible for final mine reclamation costs beyond July 2016.

The amount of final mine reclamation costs is fixed in the PSA and will not be subject to adjustment at closing. The Signatories agree that a 2014 study by Golder Associates, Inc. established the basis of EPE's company-wide share of final coal mine reclamation costs of \$9,093.851 or \$1,092,572 for New Mexico Customers. The Company previously recovered \$10.2 million through base fuel rates and the FPPCAC pursuant to Final Orders in Case Nos. 06-00258-UT and 09-00171-UT. The Signatories also agree final coal mine reclamation is a reasonable and necessary cost of operating Four Corners during the period it was owned by EPE and provided services to EPE's customers. Joint Stipulation Section 2 and EPE Ex. 6 (Carpenter Stip.) at 12.

### ***Section 3. Decommissioning Costs***

When the Four Corners plant retires, it must be decommissioned. Decommissioning will require the plant to be removed and it will also require remediation of the plant site. As a result of the Company's ownership and use of the plant, the Company is responsible for a pro rata portion of the decommissioning expenses. EPE Ex. 6 (Carpenter Stip.) at 12-13. The Joint Stipulation reflects the agreement for EPE to recover its pro rata share as of July 6, 2016, for decommissioning; an amount determined by a study by independent third party Shaw Environmental, Inc. The total company amount is \$6,992,622, and the New Mexico allocated amount of the agreed decommissioning expenses is \$1,400,433. The Joint Stipulation provides for this amount to be recovered over the seven-year period with no carrying costs. Decommissioning is a reasonable and necessary cost of operating Four Corners during the period it was owned by EPE and provided services to EPE's customers. The Signatories agree EPE shall be authorized to create a regulatory asset for this cost for deferral and full recovery in EPE's next general rate case. The Signatories further agree that this later recovery shall be limited to no more than \$1,400,433 in New Mexico rates. Joint Stipulation Section 3 and EPE Ex. 6 (Carpenter Stip.) at 12-13.

### ***Section 4. Navajo Nation Lease Payments***

Under the PSA, EPE's lease obligations and share of lease payments are

being assumed by APS, and the purchase price of Four Corners will be adjusted by EPE's pro rata share of the present value of lease payments from July 2031 until July 2041. In the Joint Stipulation, EPE agrees to forego New Mexico recovery of these prepayments and to forego its regulatory asset request for later recovery of its prepayments to APS under the PSA. Joint Stipulation Section 4 and EPE Ex. 6 (Carpenter Stip.) at 13.

### ***Section 5. Pension and Post-Retirement Benefit Liability***

EPE agreed to forego its New Mexico regulatory asset request for later recovery of its underfunded pension and post-retirement benefit liability cost paid to APS under the PSA. Joint Stipulation Section 5 and EPE Ex. 6 (Carpenter Stip.) at 14.

### ***Section 6. Amortization and Carrying Costs***

The Joint Stipulation provides the agreement that EPE will recover the two stipulated regulatory assets over a seven-year period but will not earn a return on the unamortized balance of the regulatory assets. Joint Stipulation Section 6 and EPE Ex. 6 (Carpenter Stip.) at 14.

### ***Section 7. Stipulation Effect and Section 8 Execution of Stipulation***

Sections 7 and 8 provide provisions regarding the intended effect of the Joint Stipulation. The Joint Parties agree and intend the two regulatory assets created for later rate recovery shall be recovered beginning in EPE's next rate case with no

return on the unrecovered balances. Otherwise, the Joint Stipulation shall not prejudice, bind, or affect any Signatory, or be viewed as an admission -except to the extent necessary- to give effect or to enforce the terms of the Joint Stipulation.

The Joint Stipulation is subject to the approval of the Commission. Should the Joint Stipulation be modified or rejected or rendered inoperable by law, any Signatory shall have the right to withdraw from the Joint Stipulation and declare it void. In that instance, nothing in the Joint Stipulation or negotiations leading up to its execution shall be construed as an admission of a Signatory's position on any issue or used or offered into evidence in this or any other proceeding.

#### **X. ADDENDUM TO THE JOINT STIPULATION**

The Addendum to the Joint Stipulation was executed after discussions with all parties, especially non-signatory parties, regarding the Joint Stipulation. The Addendum delineates EPE's commitment to file its next general rate case in New Mexico in the first quarter of 2017, using a historical test year for the twelve months ending September 30, 2016. Additionally in that case, EPE agrees to remove from New Mexico rates the investment and operating costs associated with Four Corners, except for rate recovery of the two regulatory assets as agreed in the Joint Stipulation and in the amounts as compromised in the Joint Stipulation.

The Addendum also includes EPE's agreement to not seek future rate recovery in New Mexico of any portion of the NSR Settlement costs addressed in

Section 2.5 of the PSA. This litigation alleges violation of the Clean Energy Act. EPE has identified in discovery that the Consent Decree civil penalty is \$1.5 million and the agreed cost of the Environmental Mitigation Projects is \$6.7 million, of which EPE's proportionate shares are approximately \$105,000 and \$469,000, respectively. EPE will forego rate recovery of the New Mexico portion of these costs.

## **XI. TESTIMONY IN SUPPORT OF THE JOINT STIPULATION**

### **A. Staff Testimony**

Staff and NMAG signed and support the Joint Stipulation. The NMAG did not file testimony in support. Staff witness Gunter addressed his opinion that the Joint Stipulation met the regulatory principles for abandonment and sale and provided a net public benefit. Staff Ex. 5 at 8-9. He cited the statement in the Joint Stipulation that a driving factor favoring abandonment and sale is the avoidance of continuing and future environmental restrictions and increased costs, avoidance of environmental and other litigation, and avoidance of cost increases due to continued plant operation including cost increases for additional decommissioning and final mine reclamation costs over the extended operations. Staff Ex. 5 at 13. Mr. Gunter testified the Joint Stipulation met the standard for stipulations for approval by the Commission. He further testified the Joint Stipulation as a whole provides quantifiable and non-quantifiable benefits to customers and is in the

public interest. Staff Ex. 5 at 15. At the hearing, Mr. Gunter stated that the Addendum to the Joint Stipulation creates a further net benefit. Tr. 48. He also testified the regulatory standards for approval were met and he recommended the Commission adopt the Joint Stipulation without modification. Tr. 49.

Staff witness Reynolds testified Staff supports EPE's updated economic analysis that reflects current natural gas market conditions. Staff Ex. 4 at 5. He recognized a clear quantifiable net benefit and the non-quantifiable benefits to support the Joint Stipulation and approve abandonment and sale of EPE's Four Corners interest. Staff Ex. 4 at 6, Tr. 43.

#### **B. EPE Testimony**

EPE witness Carpenter addressed the standards for stipulation approvals and addressed each element. He explained the terms of the Joint Stipulation and specifically addressed the net benefits of abandonment and sale. In his revenue requirements analysis of the Four Corners sale, Mr. Carpenter demonstrated a net present value savings from abandonment and sale quantified in the amount of \$170.4 million net of regulatory asset amortization and \$33.2 million in savings on a New Mexico jurisdiction basis. EPE Ex. 6 at 16.

EPE witness Wilson addressed EPE's Strategist modeling and his Discrete modeling, which estimates a net economic public benefit of \$124.6 million. Mr. Wilson further addressed that, in addition to the quantifiable net benefit, there are

non-quantifiable benefits of the abandonment and sale. These include the avoidance of risks of increasing and unpredictable environmental costs and related litigation for coal-fired power. EPE Ex. 9 at 6. He also testified as to operating needs and conditions for EPE, which are more optimally met with load following generation resources rather than a remote base load resource like Four Corners. Mr. Wilson also testified that EPE would avoid operating risk and would mitigate costs by ending its decommissioning and final mine reclamation obligations in July 2016. EPE Ex. 9 at 6. Mr. Wilson and Mr. Carpenter both demonstrate the Joint Stipulation meets the stipulation standards, that EPE meets the regulatory standards for abandonment and sale, and that approval of this transaction will result in substantial net public benefits in the range of \$124.6 million to \$170.4 million.

Finally, EPE witness Acosta addressed the updated gas price forecasts and testified why gas supplies are expected to be abundant in the longer term. EPE Ex. 10.

Based on the evidence at hearing, the parties agreed that EPE has met the regulatory standards for approval of abandonment and sale, and that there will be quantifiable net benefits in the range of \$124.6 million to \$170.4 million, in addition to significant non-quantifiable benefits related to unknown future costs. The Joint Stipulation results in an overall resolution of the requested ratemaking principles to be applied to the sale that is the result of compromise and negotiation

between expert parties. They concur that Joint Stipulation benefits customers and is in the public interest.

## **XII. DISCUSSION**

### **A. Standard of Review**

The Commission's rules of procedure state that in the submission of an uncontested stipulation, "[t]he proponents of the stipulation have the burden of supporting the stipulation with sufficient evidence and legal argument to allow the Commission to approve it." Subsection 1.2.2.20A (3) NMAC.

The Commission applies the following standard when reviewing uncontested stipulations: (a) whether the settlement is a product of serious bargaining among capable, knowledgeable parties; (b) whether the settlement, as a whole, benefits ratepayers and the public interest; and (c) whether the settlement, as a whole, violates any important regulatory principle or practice. Certification of Stipulation, Case No. 13-00390-UT (Nov. 16, 2015) at fn 1, adopted by Final Order (Dec. 16, 2015), citing Final Order Partially Approving Stipulation, Case No. 10-00086-UT, p. 8, citing Case No. 08-00273-UT, Final Order Conditionally Approving Stipulation at 10.

The Commission also applies a "net benefit to the public" standard to stipulations involving consideration of both Section 62-9-5 abandonment and Section 62-6-12, 13 sales transactions. *In re Public Service Co. of New Mexico*,



Certification of Stipulation, Case No. 13-00390-UT (Nov. 16, 2015) at 65-67, adopting by Final Order (Dec. 16, 2015).

The statutory standard for abandonment of a facility is whether the “present and future public convenience and necessity” requires the continued use of the facility. NMSA 1978, § 62-9-5. The statutory standard for the sale of a public utility operating unit or system is whether the proposed transaction is “unlawful or is inconsistent with the public interest”. NMSA 1978, § 62-6-12, 13.

In the 13-00390-UT Final Order, the Commission stated: “the ‘public convenience and necessity standard’ has been interpreted as requiring the showing of a ‘net benefit to the public’ . . . The ‘inconsistent with the public interest standard’ is normally interpreted as requiring that the applicant show that the transaction will not present a ‘net public detriment’ . . . When a stipulation contains proposals that involve both standards, the practical result is that the Commission will require a ‘net benefit to the public.’ A stipulation that satisfies a ‘net benefit to the public’ standard will necessarily satisfy the ‘no net public detriment’ test, and a stipulation that satisfies that ‘no net public detriment test’ will still have to satisfy the ‘net benefit to the public’ standard. This case involves both standards, and the Commission accordingly, will require that the Stipulation here provide a ‘net benefit to the public’.” *Id.* at pp. 65-66 [citations omitted].

In the 13-00390-UT Final Order, the Commission further stated: “[a]

stipulation provides net benefits if the benefits provided by the stipulation outweigh the costs or detriments of the stipulation. Benefits do not have to be quantifiable to be considered in the weighing process. Unquantifiable benefits may be even more important than quantifiable benefits. Unquantifiable benefits can include cost mitigation provisions in that they provide assurance against detriments. *Id.* at 67 citing *In re TECO Energy Inc.*, Certification of Stipulation, Case No. 13-00231-UT, March 12, 2014, p. 79, approved in Final Order, August 13, 2014, *In re Public Service Co. of New Mexico and New Mexico Gas Co.*, Certification of Stipulation, Case No. 08-00078-UT, November 24, 2008, pp. 101-102, approved in Final Order Partially Approving Certification of Stipulation, December 11, 2008.

The Commission has historically used the *Commuters' Committee* factors to determine whether a proposed abandonment meets the “present and future public convenience and necessity” standard in Section 62-9-5. *Id.* at p. 120 citing *Commuters' Committee v. Pennsylvania Public Utility Commission*, 170 Pa. Superior Ct. 596, 604-605, 88 A.2d 420, 424 (1952). The four decertification factors articulated therein include: (1) the extent of the carrier’s loss on the particular branch or portion of the service, and the relation of that loss to the carrier’s operation as a whole; (2) the use of the service by the public and prospects for future use; (3) a balancing of the carrier’s loss with the inconvenience and

hardship to the public upon discontinuance of service; and (4) the availability and adequacy of substitute service.

**B. Customer Rates and Revenue Requirements Analysis**

Mr. Carpenter testified that because the Company's investment in Four Corners is currently included in rate base, the sale of the plant will result in a reduction in rate base. The sales price will be the same as the Company's net investment in electric plant in service included in rate base, at the time of closing of the sale, so there will be no unrecovered investment to be recovered from customers. In addition, the Company will no longer incur operation and maintenance expenses, depreciation, payroll taxes, or property taxes on the plant after the sale. The elimination of these costs in the next rate case will reduce the Company's revenue requirements along with the lower return on invested capital and income taxes.

Mr. Carpenter further testified that if Four Corners was retired in 2016 rather than sold in 2016, EPE's customers would see a higher cost of service, other things equal. Customers would see the reduction in operation and maintenance expenses and taxes other than income taxes. However, to the extent that the Company has unrecovered investment that provided benefits to customers, the Company would seek recovery of those undepreciated investments (the estimated net book value of \$19.7 million and CWIP of \$10.3 million at July 6, 2016) through rates over a

period of time determined to be appropriate by the Commission. This would occur because depreciation rates for generating plant typically lag new plant investment, meaning that new plant investment subsequent to a particular rate case will not be reflected in depreciation rates until the next rate case. While the Company has sought to recover its investments in Four Corners by the planned July 2016 retirement date, new capital investments have been and will be required to replace equipment at the plant and, as a consequence, have not been fully reflected in depreciation expense or recovered from customers. EPE Ex. 4 (Carpenter Dir.) at 24-25.

EPE prepared a revenue requirements forecast from 2016 through 2031 to compare the impacts on revenue requirements of selling Four Corners with EPE's requested rate treatments and the revenue requirements of participating in the life extension of Four Corners with the other participants. As explained by Mr. Carpenter, the Revenue Requirements Model was based on EPE's annual 10-year forecast of operating results for financial planning purposes, using an Excel based model developed by Financo, Inc. ("Financo"). The 10-year financial model was expanded to 20 years in order to develop a projection through 2031 of revenue requirements and included operating revenues at current rates projected based upon a long-term (20-year) load and sales forecast developed by EPE's Economic Forecasting Group. The Model included: (1) fuel expenses and generating plant

operating expenses developed using a PROMOD production cost simulation and a 10-year schedule of generating plant maintenance outages; (2) other operation and maintenance expense projections based upon an annual operating budget and projections of future cost increases; (3) depreciation expense based upon the depreciation rates developed in a depreciation study that was filed in EPE's 2015 rate case; (4) amortization of the regulatory assets for under-funded pension and OPEB costs, decommissioning expenses, and prepaid land lease costs recovered over a 7-year period beginning in July 2016; (5) taxes other than income taxes projected using current tax rates, revenues, net plant investment, and projected increases in salaries and wages; (6) income taxes reflected current tax rates and tax law and projected using revenues, operating expenses, plant investments previously developed, and projections for other tax deductions; (7) future debt and equity financing based upon achievement of a consistent debt and equity ratio; (8) interest costs reflected the financing requirements and an assumed cost of debt; and (9) a 9.95 percent cost of equity. EPE Ex. 4 (Carpenter Dir.) at 27-28.

Mr. Carpenter testified that EPE calculated projected revenue requirements based on reasonable cost of service principles and Mr. Carpenter's analyses was uncontested in the record in this case. *Id.* at 28-32. The following table summarizes the net present value benefit on a total Company and New Mexico

jurisdictional basis of selling EPE's ownership interest in Four Corners.

<u>Description</u>	<u>Sale Four Corners (1)</u> (000)	<u>Four Corners Life Extension (1)</u> (000)	<u>Difference</u> (000)
<b><u>Total Company</u></b>			
Non-fuel revenue requirements	\$8,253,369	\$8,446,368	(\$192,199)
Fuel and purchased power recovery	<u>\$2,889,371</u>	<u>\$2,806,040</u>	<u>\$83,331</u>
Total revenue requirements	\$11,142,740	\$11,252,408	(\$109,668)
<b><u>New Mexico Jurisdiction</u></b>			
Non-fuel revenue requirements	\$1,675,262	\$1,713,703	(\$38,441)
Fuel and purchased power recovery	<u>\$760,272</u>	<u>\$742,358</u>	<u>\$17,914</u>
Total revenue requirements	\$2,435,534	\$2,456,061	(\$20,527)

### C. Commuters' Committee Factors

EPE witness Nadia Powell provided uncontested testimony that EPE's proposed abandonment meets the Commuter Committee Factors historically used by the Commission to evaluate whether a proposed abandonment meets the public convenience and necessity standard set out in Section 62-9-5. These factors are: (1) extent of utility's loss on the particular service and relation of that loss to the utility's operation as a whole; (2) use of the service by the public and prospects for future use; (3) balancing of the utility's loss with inconvenience and hardship to the

public upon discontinuance of service; and (4) availability and adequacy of substitute service. EPE Ex. 2 (Powell Dir.) at 17-23. Ms. Powell's analysis concludes that EPE does not require the continued use of Four Corners beyond its original 50-year term or any substitute service due to EPE's planning efforts and Commission approval of new generation resources; that the proposed transaction substantially benefits EPE's customers from both a cost perspective and a reliability of service perspective; and that there will be no service loss to the general public due to the continued operation of Four Corners by the remaining co-owners; and no loss of service to EPE. *Id.* Staff witness Jack Sidler also filed testimony that EPE's proposed transaction meets the Commuters' Committee Factors, providing a benefit to EPE and EPE's customers. Staff Ex. 1 (Sidler Dir.) at 9-10.

At the hearing of the Joint Stipulation, Mr. Carpenter testified that "EPE now projects net present value savings from the abandonment and sale of Four Corners of \$170.4 million net of regulatory asset amortization on a total company basis and \$33.2 million on a New Mexico jurisdictional basis. EPE is requesting a total of \$2.5 million of regulatory assets be approved in this proceeding. This compares to \$36.6 million of net present value savings for New Mexico customers before regulatory asset amortization. In other words, customers will save over 14 times the requested amount of regulatory assets." EPE Ex.6 (Carpenter Stip.) at.

17, Tr. at 62.

### **XIII. RECOMMENDATION**

Based upon the record and evidence, the stipulation satisfies all requirements for abandonment and sale of EPE's ownership in the Four Corners facility. Accordingly, the Hearing Examiner recommends that the Commission approve the Joint Stipulation regarding EPE's Application and enter the following Findings of Fact and Conclusions of Law.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Hearing Examiner recommends that the Commission **FIND** and **CONCLUDE** as follows:

1. The Statement of the Case and Discussion contained in the Recommended Decision of the Hearing Examiner are incorporated by reference herein as Findings of Fact and Conclusions of Law.

2. EPE is certified and authorized to conduct the business of providing public utility service within the State of New Mexico, and is a public utility subject to the jurisdiction of the Commission under the New Mexico Public Utility Act ("NMPUA").

3. EPE generates, transmits, and distributes electricity through an interconnected system to customers in southern New Mexico and Texas. EPE owns, operates, and leases or controls the plant, property, and facilities used by it



for the generation, transmission, distribution, sale, or furnishing of electricity to or for the public within New Mexico and Texas. EPE provides retail electric service to approximately 90,000 customers within its New Mexico service area.

4. EPE received a CCN to own and operate its minority interest in Four Corners Units 4 and 5 in NMPSC Case No. 824 in 1966. The Final Order granting the CCN acknowledged that the ownership and participation by EPE would be governed by various contractual agreements subsequently filed in the CCN docket. The term for operation and participation was for 50 years, which expires in July 2016. The coal supply agreement, to which EPE was a party, expires July 6, 2016.

5. The Commission has jurisdiction over the parties and the subject matter of this case.

6. Due and proper notice of this case has been provided.

7. The Joint Stipulation provides substantial net benefits to the public in the range of \$124.6 million to \$170.4 million in addition to significant non-quantifiable benefits, and it should be approved without modification.

8. The abandonment and sale of Four Corners, through the PSA, should be approved to provide all necessary approvals for EPE to sell its interest in Four Corners to APS with anticipated closing on July 6, 2016.

9. The Joint Stipulation satisfies the Commission's standards for

adoption of stipulations, meets the regulatory standards for abandonment and approval, and adoption of the Joint Stipulation is in the public interest.

10. EPE should be authorized to create an incremental regulatory asset for final coal mine reclamation costs limited to the amount of \$1,092,572 on a New Mexico jurisdictional basis, amortized on a seven-year basis without carrying costs, for recovery through EPE's FPPCAC and base fuel rates starting with rates effective after next general rate proceeding. This regulatory asset in the specified amount should be collected effective with rates approved in EPE's next rate case.

11. EPE should be authorized to create a regulatory asset for decommissioning costs limited to the amount of \$1,400,433 on a New Mexico jurisdictional basis, amortized on a seven-year basis without carrying costs, for recovery with rates effective after EPE's next general rate proceeding. This regulatory asset in the specified amount should be collected effective with rates approved in EPE's next rate case in the amount agreed.

12. EPE will file its next rate case in the first quarter of 2017, using a historical test year for the twelve-month period ending September 30, 2016. EPE will remove the Four Corners investment and operating costs from New Mexico rates in this next rate case.

13. The Addendum to the Joint Stipulation provides additional net benefit, and EPE will forego recovery of environmental and litigation costs, on a New

Mexico basis, of NSR environmental litigation addressed in Section 2.5 of the PSA.

#### **XIV.        DECRETAL PARAGRAPHS**

The Hearing Examiner recommends that the Commission **ORDER** as follows:

A.    The Joint Stipulation and Addendum to Joint Stipulation are approved without modification.

B.    EPE's proposed abandonment and sale of Four Corners through the PSA is approved.

C.    EPE is authorized to create regulatory asset for incremental final coal reclamation costs limited to the amount of \$1,092,572 on a New Mexico jurisdictional basis, amortized on a seven-year basis without carrying costs, for recovery through EPE's FPPCAC and base fuel rates starting with rates effective after EPE's next general rate proceeding.

D.    EPE is authorized to create a regulatory asset for decommissioning costs limited to the amount of \$1,400,433 on a New Mexico jurisdictional basis, amortized on a seven-year basis without carrying costs, for recovery with rates effective after the next general rate proceeding.

E.    The environmental and litigation costs of the NSR environmental litigation addressed in Section 2.5 of the PSA shall not be recovered from New

Mexico ratepayers.

F. The costs of the Navajo Nation Lease payment and the other post-retirement benefits paid to APS under the PSA shall not be recovered from New Mexico ratepayers.

G. EPE shall file its next rate case in the first quarter of 2017, using a historical test year for the twelve-month period ending September 30, 2016. EPE shall remove the Four Corners investment and operating costs from New Mexico rates in this next rate case.

H. This Order is effective immediately.

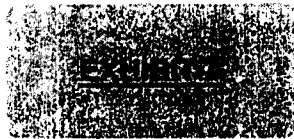
I. Copies of this Order shall be served on all parties to this case or their counsel.

J. This Docket is closed.

**ISSUED** at Santa Fe, New Mexico this 22nd day of April 2016.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

  
\_\_\_\_\_  
**FRANCES I. SUNDHEIM**  
**HEARING EXAMINER**



**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF EL PASO ELECTRIC )  
COMPANY'S APPLICATION FOR APPROVAL )  
OF ABANDONMENT AND SALE OF ITS )  
SEVEN PERCENT FOUR CORNERS UNITS 4 )  
AND 5 OWNERSHIP INTEREST )

EL PASO ELECTRIC COMPANY,  
Applicant.

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NM PUBLIC REG COM.

FEB - 2 2016

Case No. 15-00109-UT

**JOINT STIPULATION**

El Paso Electric Company ("EPE"), the Staff of the Utility Division ("Staff") of the New Mexico Public Regulation Commission ("Commission" or "NMPRC"), and the New Mexico Attorney General ("NMAG") (collectively "the Signatories" or "Joint Parties"), through their authorized representatives, state as follows:

**WHEREAS**, EPE seeks all necessary regulatory approvals to sell its seven percent ownership interest in Four Corners Units 4 and 5 ("Four Corners") to Arizona Public Service Company ("APS"), the majority owner and operator of Four Corners, pursuant to a Purchase and Sale Agreement executed February 17, 2015 ("PSA"), with an anticipated closing date of July 6, 2016 (the "Closing Date"). EPE has requested timely prior approval for abandonment and sale, determination of certain ratemaking principles, and any other approvals required.

**WHEREAS**, EPE's ownership interest and participation were approved by the Commission in 1966 when it granted EPE a Certificate of Convenience and Necessity ("CCN") in NMPSC Case No. 824. The Commission found that EPE's interest would be

governed by various contractual agreements for participation in Four Corners, subsequently filed in the CCN docket. The original 50-year term for the project terminates in July 2016. With upcoming expiration of key contracts, EPE and the other co-owners faced a variety a decisions regarding the future of this coal plant. EPE gave serious consideration to potential issues surrounding any new obligations or commitments to an extended term of operation beyond 2016. EPE explored alternatives through a competitive bidding process to sell its ownership interest without finding a potential buyer who would submit a bid for purchase. EPE also offered its ownership interest to the other co-participants in Four Corners, but none of these parties showed interest.

**WHEREAS**, EPE conducted an independent economic analysis in 2013 to determine whether to participate in an extended operating life of Four Corners beyond 2016 or whether to exit. That analysis quantified the benefit at that time in the range of \$10.8 to \$24.1 million in favor of exiting in 2016 in addition to numerous non-quantified benefits to exit Four Corners. The non-quantifiable benefits of risk avoidance and cost mitigation were significant and warranted retiring Four Corners. EPE notified APS of its decision in late 2013. The other owners agreed to extend operations for an additional operating term without EPE's participation, and EPE was subsequently able to enter a sale agreement to sell its ownership to APS in July 2016. The sale adds significant additional quantifiable benefits as well as non-quantifiable benefits. EPE updated its original 2013 economic analysis for the benefits of the sale and updated gas prices, and EPE shows the net benefit of approximately \$124.6 million. This abandonment/sale approval is the final step to achieve EPE's planned exit from coal-fired generation.

**WHEREAS**, EPE planned for its July 2016 exit from Four Corners through its 2009 and 2012 Commission-accepted Integrated Resource Plans ("IRPs") and through numerous CCN cases in which the Commission found the addition of certain generating resources, including 50 MW of solar energy, to be in the public interest and granted CCN approval. With that planning and Commission previous final orders, EPE is in position to exit from Four Corners in July 2016 with a substantial net benefit for its customers and the public.

**WHEREAS**, through this Stipulation, the Signatories intend to resolve all issues in this proceeding including the timely approval of abandonment and sale of Four Corners and the regulatory treatment of certain costs associated with EPE's ownership and use of Four Corners to serve New Mexico customers, including decommissioning, final mine reclamation, limited Navajo lease payments and APS unfunded pension and post-retirement benefit costs. The Signatories have agreed to this resolution to avoid timely and expensive contested litigation, and to accommodate the timely closing to EPE's exit from Four Corners and sale to APS of EPE's ownership interest because the approved transactions will result in substantial net benefits to New Mexico customers and the public.

**WHEREAS**, the Signatories agree that the intent and result of this Stipulation is to serve the public interest because the abandonment and sale of Four Corners will benefit the public not just by quantifiable net benefits but will allow EPE and its customers to avoid future increased costs, risks and liability of coal-fired generation; is consistent with EPE's Commission-accepted 2009 and 2012 IRPs, and EPE has Commission approved resources in place that will allow the Company to continue to provide cost-effective, safe and reliable utility service after EPE's ownership interest in Four Corners is terminated;

and the recovery of the reasonable and necessary costs of the operation of Four Corners will be limited and resolved. The Signatories also intend to avoid re-litigation of previous Commission final orders.

**WHEREAS**, resolution on a stipulated basis of the matters set forth herein will conserve resources, avoid the uncertainties, costs, and dedication of resources inherent in litigation and provide for termination of EPE's ownership of coal-fired generation by way of sale of that interest to APS. The agreements set forth in this Stipulation reflect good faith negotiations, with reasonable "give and take" on issues by all Signatories, and result in a bargained-for resolution of the entire case in a manner that fairly benefits the parties, ratepayers, and EPE.

**NOW**, in consideration of the mutual promises, obligations and benefits contained herein, the Joint Parties stipulate and agree as follows:

#### **SECTION 1. ABANDONMENT AND SALE.**

EPE shall be authorized to abandon and sell its seven percent ownership interest in Four Corners to APS pursuant to the PSA, with an anticipated closing date of July 6, 2016, and shall permanently cease providing service from it as an owner participant after closing. EPE meets the abandonment standard of NMSA 1978 Section 62-9-5 and Commission standards using the Commuters' Committee factors and demonstrates that abandonment is in the public interest and produces a net quantifiable economic benefit to customers and the public. EPE meets the standard for sale of NMSA 1978 62-6-13 and Commission public interest standards. EPE's sale transaction creates additional net benefits and is in the public interest. EPE's proprietary STRATEGIST© analysis and discrete analysis performed in 2013 showed a net benefit of between \$10.8 million to \$24.1 million to exit Four Corners in July 2016. When updated to take into account the



benefits of the sale and lower gas prices and forecasts, the updated economic analysis shows a net benefit of \$124.6 million. EPE also performed a revenue requirement analysis showing the net benefit to customers of abandonment and sale to be in the range of \$110 million to \$170 million, net of the regulatory assets addressed below. The Signatories also recognize the Commission has determined unquantifiable benefits should be considered and may be even more important than quantifiable benefits, and can include cost and risk mitigation. EPE provided substantial evidence in its direct case and its 2013 economic analysis and updates that a driving factor favoring abandonment and sale is the avoidance of continuing and future environmental restrictions and increased costs, avoidance of environmental and other litigation, and avoidance of cost increases due to continued plant operation including cost increases and liability for additional decommissioning and final mine reclamation costs over the extended operations. The Signatories agree there are significant quantifiable and non-quantifiable benefits from abandonment and sale to complete EPE's exit from coal generation. EPE's exit from Four Corners was planned and considered in IRPs accepted in 2009 and 2012 and other resources have been approved in CCN cases. All of the Commission-approved resources are in service except the last two Montana Power Station ("MPS") units 3 and 4, scheduled to enter service in May 2016 and December 2016, respectively. The Commission's standard to issue a CCN has been equated by the Commission to be the public interest requiring a "net public benefit." The CCN cases approving EPE's recent generating units were litigated, and the Commission issued final orders determining the CCNs to be in the public interest. Approval of EPE's proposed sale to APS should be timely approved because it is in the public interest with substantial net benefits to the public.

## **SECTION 2. FINAL COAL MINE RECLAMATION COSTS.**

The PSA quantifies EPE's obligation as of July 2016 and ends EPE's liability for any further final mine reclamation costs incurred in extended mining and operation of Four Corners. The purchase price of Four Corners under the PSA will be adjusted for EPE's share of the final coal reclamation cost through the Closing Date, and APS will assume the post-Closing Date liability for coal mine reclamation. A study performed in 2014 for a 2016 closure of the Navajo Mine was conducted by Golder Associates Inc., a recognized expert in mine reclamation, established the basis of EPE's share of final coal mine reclamation cost. The Signatories agree that the Company has already recovered a substantial portion of this cost through base fuel rates and the fuel and purchased power cost adjustment clause ("FPPCAC") pursuant to Final Orders in Case Nos. 06-00258-UT and 09-00171-UT and as of June 2016 will have collected \$10.2 million for these costs. The additional costs determined by the 2014 study would leave a total of \$9,093,851 unfunded on a total company basis, or \$1,821,253 unfunded on a New Mexico jurisdictional basis.

The Signatories further agree that final coal mine reclamation is a reasonable and necessary cost of operating Four Corners during the period it was owned by EPE and provided service to EPE's customers, but the Signatories do not agree as to the reasonableness of all cost increases shown in the 2014 study. The Signatories submit it is in the public interest to avoid litigation as to the cost increase but instead resolves this issue by EPE's agreement to forego later rate recovery of 40 percent of these 2014 study cost increases. The Signatories submit this to be a fair and just resolution in the public interest while still maintaining substantial net benefits to the public. The Signatories further agree that it is reasonable and in the public interest to limit EPE's New Mexico rate recovery of

the identified unfunded portion of final mine reclamation to 60 percent and that EPE shall be authorized to create a regulatory asset for this cost for deferral and recovery in EPE's next general rate case. The Stipulated amount to be authorized as a regulatory asset to be fully recovered through base fuel and the FPPCAC beginning in EPE's next rate case is 60 percent of \$1,821,253, which is \$1,092,752. The Signatories agree that later rate recovery shall be limited to no more than \$1,092,752 in New Mexico. The Signatories also recognize the non-quantifiable benefit of the approved sale to APS to end EPE's liabilities for these costs past July 2016 and that EPE or its customers will not be responsible for final coal mine reclamation costs beyond July 2016.

### **SECTION 3. DECOMMISSIONING COSTS.**

The PSA quantifies EPE's decommissioning obligation as of July 2016 and ends EPE's liability for any further decommissioning costs. The purchase price of Four Corners under the PSA will be adjusted for EPE's share of future decommissioning costs through the Closing Date, and APS will assume the post-Closing Date liability for future decommissioning of Four Corners. An analysis of decommissioning costs was conducted by an independent third party, Shaw Environmental, Inc., to establish the decommissioning liability and a Decommissioning Report was issued. The scope of the Decommissioning Report was to estimate EPE's share of decommissioning costs for the plant as of July 6, 2016. The Signatories agree that decommissioning is a reasonable and necessary cost of operating Four Corners during the period it was owned by EPE and provided service to EPE's customers. The Signatories further agree that it is reasonable for EPE to recover the decommissioning costs specified in the PSA for Four Corners. The Signatories recognize the non-quantified benefit to ending EPE and its customers' obligation for any further decommissioning costs beyond July 2016. EPE shall be authorized to create a regulatory

asset for this cost for deferral and full recovery in EPE's next general rate case. The Signatories agree that later rate recovery shall be limited to no more than \$1,400,433 in New Mexico.

#### **SECTION 4. NAVAJO LEASE PAYMENTS**

EPE and the other Four Corners participants have contracted with the Navajo Nation to lease land used for the operation of Four Corners including the plant site, substation and transmission rights of way for a term ending in 2041. Under the PSA, EPE's lease obligations and share of lease payments are being assumed by APS, and the purchase price of Four Corners will be adjusted by EPE's pro rata share of the present value of lease payments from July 2031 until July 2041. The Signatories agree as part of this overall resolution that EPE will forego recovery of these costs and will forego creation of a regulatory asset in New Mexico for these costs as part of the overall benefits of this Stipulation for the public.

#### **SECTION 5. PENSION AND POST-RETIREMENT BENEFIT LIABILITY.**

The purchase price of Four Corners also will be adjusted by the amount of any APS unfunded pension and other post-retirement benefit liabilities that exist as of the Closing Date. As part of the negotiated resolution of this case, the Signatories agree that EPE shall forego recovery of these costs in New Mexico, and EPE will not be authorized to create a regulatory asset for later rate recovery of any of these amounts at the Closing Date. The Stipulating parties agree that this resolution is part of the overall benefits of this Stipulation for the public.

#### **SECTION 6. AMORTIZATION PERIOD AND CARRYING COSTS.**

EPE shall be authorized to amortize each approved regulatory asset over a seven-year period beginning in the next rate case to be filed after the Closing Date with

the full annual amounts of the agreed costs to be included as an adjusted test year expense. The Signatories agree as part of this overall resolution that EPE shall not accrue a carrying cost on the unamortized balances of each regulatory asset to be recovered.

#### **SECTION 7. STIPULATION EFFECT.**

It is recognized and agreed by the Signatories that this Stipulation is made and filed solely in connection with the negotiation, compromise, settlement, and accommodation among the Signatories with respect to the issues contained in EPE's filed abandonment and sale case and resolves all such issues. This Stipulation is made to accommodate timely approval for EPE to sell its interest in Four Corners to APS in July 2016. The Signatories seek a prompt resolution of this case to complete EPE's planned exit from Four Corners with a result that balances the interests of customers and shareholders and creates a substantial net benefit for the public.

This Stipulation shall not prejudice, bind, or affect any Signatory, or be viewed as an admission, except to the extent necessary to give effect to or to enforce the terms of the Stipulation or unless otherwise specifically stated herein. It is the intention of the parties that the regulatory assets agreed to be created for later rate recovery should be included and fully recovered beginning in EPE's next rate case. This Stipulation is the overall resolution of a unique fact situation, except as otherwise stated herein, and its resolution is unique to the circumstances presented.

This Stipulation is subject to the approval of the Commission of the matters stipulated. The Signatories agree that they will use their best efforts to obtain expeditious approval of this Stipulation by appropriate final order of the Commission in this proceeding. This Stipulation assumes the legality and enforceability of the rates, methodologies and agreements set forth in the Stipulation. Should any rate, methodology,

or agreement set forth in this Stipulation be rejected, modified or be directly or indirectly rendered inoperable by either the Commission, a court, or by an act of the New Mexico Legislature, any Signatory who is a party to this case shall have the right to withdraw from the Stipulation and declare it void.

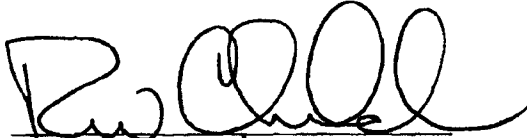
In the event that the Commission does not approve the Stipulation in its entirety without modification, the Stipulation shall be voidable by any Signatory. In order to void the Stipulation and the agreements made herein, a Signatory must file a formal statement to void the Stipulation within 10 days of the rejection or modification of any or all portions of the Stipulation by the Commission. In the event a Signatory seeks to void the Stipulation, the Signatories agree to work together in good faith towards approval of abandonment and sale with equivalent economic terms.

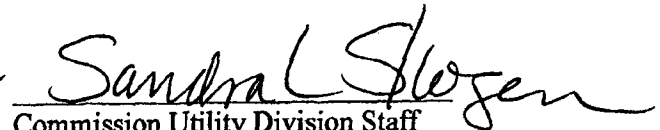
In the event this Stipulation is not approved by the Commission and thereafter implemented, nothing in the Stipulation or negotiations leading up to its execution shall be construed as an admission of a Signatory's position on any issue and shall not be used or offered into evidence in this or any other proceeding consistent with the provisions of Commission procedural rules.

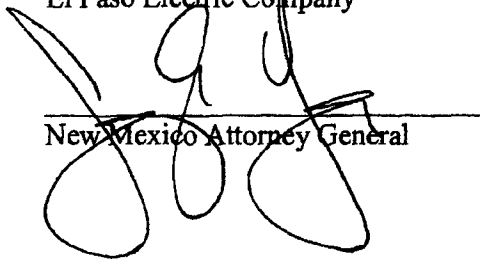
#### **SECTION 8. EXECUTION OF STIPULATION.**

The Signatories may agree to the terms of this Stipulation through the execution of a separate signature page.

DATED this 2<sup>nd</sup> day of February, 2016.

  
El Paso Electric Company

  
Commission Utility Division Staff

  
New Mexico Attorney General

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF EL PASO ELECTRIC )  
COMPANY'S APPLICATION FOR APPROVAL )  
OF ABANDONMENT AND SALE OF ITS )  
SEVEN PERCENT FOUR CORNERS UNITS 4 )  
AND 5 OWNERSHIP INTEREST )**

**EL PASO ELECTRIC COMPANY, )  
Applicant. )**

**Case No. 15-00109-UT**

**ADDENDUM TO JOINT STIPULATION**

El Paso Electric Company ("EPE"), the Staff of the Utility Division ("Staff") of the New Mexico Public Regulation Commission ("Commission" or "NMPRC"), and the New Mexico Attorney General ("NMAG") (collectively "the Signatories" or "Joint Parties"), through their authorized representatives, filed a Joint Stipulation on February 2, 2016. The Joint Parties hereby file this Addendum to the Joint Stipulation and request that the Commission consider and approve the Joint Stipulation as modified by this Addendum.

The other non-stipulating parties (collectively "the Unopposed Parties"), through counsel or pro se, have reviewed the filed Joint Stipulation and Addendum and met with Joint Parties collectively, individually and/or by telephone. The Joint Parties agree to this Addendum to Joint Stipulation. The Unopposed Parties agree not to oppose the Stipulation with Addendum or agree not to take any position. Unopposed Parties will not seek to delay the hearing on the unopposed Stipulation and Addendum scheduled for February 16, 2016.



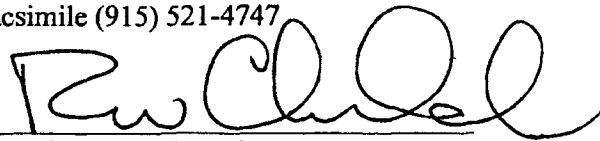
### **ADDENDUM AGREEMENT**

EPE has committed in this case to file its next general rate case in New Mexico in the first quarter of 2017, using a historical test year for the twelve months ending September 30, 2016. In that rate case, EPE will remove from New Mexico rates the investment and operating costs associated with Four Corners, except for rate recovery of the two regulatory assets as agreed in the Joint Stipulation and in the amounts as compromised in the Joint Stipulation. With respect to the NSR Settlement addressed in Section 2.5 of the PSA, EPE has identified in discovery that the Consent Decree civil penalty is \$1.5 million and the agreed cost of the Environmental Mitigation Projects is \$6.7 million, of which EPE's proportionate shares are approximately \$105,000 and \$469,000, respectively. EPE agrees not to seek future rate recovery of any portion of these costs or any other costs associated with the NSR Litigation in New Mexico.

DATED this 12th day of February, 2016.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Randall W. Childress", written over a horizontal line.

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**ATTORNEYS FOR EL PASO  
ELECTRIC COMPANY**