



Control Number 45885



Item Number 32

Addendum StartPage 0

SOAH DOCKET NO. 473-16-4000  
PUC DOCKET NO. 45885

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STATE OFFICE  
PUBLIC UTILITY COMMISSION  
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APPLICATION OF EL PASO	§	BEFORE THE STATE OFFICE
ELECTRIC COMPANY FOR	§	
APPROVAL TO REVISE ITS	§	
ENERGY EFFICIENCY COST	§	OF
RECOVERY FACTOR AND	§	
REQUEST TO ESTABLISH REVISED	§	
COST CAP	§	ADMINISTRATIVE HEARINGS

**STIPULATION AND SETTLEMENT AGREEMENT**

This Stipulation and Settlement Agreement (Agreement), dated August 16, 2016 is entered into by and between El Paso Electric Company (EPE or the Company), the Public Utility Commission of Texas (Commission) Staff (Staff), and the City of El Paso (City) through their duly authorized representatives (collectively, the Signatories). Texas Industrial Energy Consumers (TIEC), which is a party to this proceeding, has indicated that it will not be a signatory to the Agreement, but does not oppose it. TIEC has authorized the Signatories to inform the State Office of Administrative Hearings and the Commission that TIEC does not oppose the Agreement. The Signatories request approval of this Stipulation and entry of Findings of Fact and Conclusions of Law consistent with that approval.

**I. BACKGROUND**

1. On April 29, 2016, EPE filed an application with the Commission requesting authority to revise its Energy Efficiency Cost Recovery Factor (EECRF) to recover \$4,765,446 in Program Year 2017 and to establish a revised cost cap applicable to its energy efficiency programs for the year 2017.
2. EPE requested a revised cost cap because its EECRF, if approved, would exceed the cost cap set out in 16 Tex. Admin. Code (TAC) § 25.181(f)(7). This request was made pursuant to 16 TAC § 25.181(e)(2), which allows the Commission to establish a higher cost cap than the cap specified in 16 TAC § 25.181(f)(7) if the utility demonstrates that compliance with that goal or cap is not reasonably possible and that good cause supports the lower goal or higher cap.

3. On June 30, 2016, EPE filed supplemental testimony of Araceli G. Perea addressing a minor correction to the 30 percent goal metric found in Table 1 of the 2016 Energy Efficiency Plan and Report (EEPR). That correction had no impact on the calculation of the EECRF. Also on June 30, 2016, EPE filed a revised EEPR in Project No. 45675 reflecting the correction to Table 1.
4. The Signatories believe that a negotiated resolution of this proceeding is desirable and in the public interest because the result is reasonable under the circumstances, as it will conserve the public's and the Signatories' resources and eliminate controversy.

## II. AGREEMENT

The Signatories have reached agreement on the issues as set out below and agree that the Commission should enter an order consistent with this Agreement:

1. **Notice.** The Signatories agree that EPE's Notice was adequate and in compliance with 16 TAC § 25.181(f)(3).
2. **Approval of Application.** The Company's application is approved.
3. **Agreed Amount to be Recovered Through EPE's 2017 EECRF.** The Signatories agree that the total amount to be collected through EPE's 2017 EECRF is \$4,765,446, consisting of the following elements: a) \$4,394,650 in projected energy efficiency program costs for 2016; b) a \$667,545 performance bonus based on the Company's 2015 energy efficiency program performance; c) EPE's prior year EECRF proceeding expenses of \$83,290; and d) a return to customers, through a true-up adjustment, by rate class, of EPE's net over-recovery for 2015 of \$380,039.
4. **Evaluation, Measurement, and Verification Costs.** As of the date of this Agreement, the Commission has not assigned to EPE any costs of evaluation, measurement, and verification, the recovery of which is permitted by 16 TAC § 25.181(f)(1). The Signatories agree that EPE can seek to include those costs, if the Commission assigns any to EPE in the future, in a future true-up of the EECRF.
5. **Establishment of Revised Cost Cap.** The Signatories agree that the Commission should establish a higher cost cap for commercial customers pursuant to 16 TAC § 25.181(e)(2) as requested by EPE because EPE has shown that attainment of the cost cap required by the rule is not reasonably possible and good cause exists for granting EPE's request. The Signatories

agree that based on direct testimony provided by EPE, EPE's commercial cost cap should be revised to a level that would allow it to maintain its existing programs, with only minor necessary adjustments, at the same level of funding and demand savings goals as set for 2015.

- 6. Allocations and Resulting EECRF.** The Signatories agree that the allocation to the rate classes of the component amounts and the resulting EECRF for each of the classes are reasonable as shown in the attached Exhibit A.
- 7. Reconciliation of 2015.** The Signatories agree that EPE's energy efficiency program costs, EECRF proceeding expenses, and adjusted performance bonus for 2015 are reasonable.
- 8. Evidence and Proposed Order.** The Signatories agree that the Commission should issue the proposed order, attached as Exhibit B, which is consistent with the terms of this Agreement. The Signatories agree to waive a hearing on the merits and agree to the admission into evidence of the following documents:
  - a. EPE's Application, which includes the testimony of Araceli G. Perea and Rene F. Gonzales and the affidavit of Bret J. Slocum;
  - b. EPE's Proof of Notice filed on May 10, 2016;
  - c. the supplemental testimony of Araceli G. Perea filed on June 30, 2016;
  - d. the affidavits of Norman J. Gordon and Karl J. Nalepa filed on June 6, 2016, in support of the City's rate case expenses in the 2015 EECRF proceeding;
  - e. the Staff Memoranda in Support of the Stipulation filed August 16, 2016 from Adrian Narvaez, Ruth Stark, and Therese Harris; and
  - f. this Agreement and its attachments.
- 9. Effect of Stipulation and Settlement Agreement.**
  - a. This Agreement is binding on each Signatory only for the purpose of settling the issues as set out herein and for no other purpose. Except to the extent that this Agreement expressly governs a Signatory's rights and obligations for future periods, and except for a proceeding to enforce the terms of this Agreement, this Agreement shall not be binding or precedential on a Signatory outside of this case. The Signatories acknowledge and agree that a Signatory's support of the matters contained in this Agreement may differ from its position or testimony in other proceedings not referenced in this Agreement. To the extent that there is a difference, a Signatory

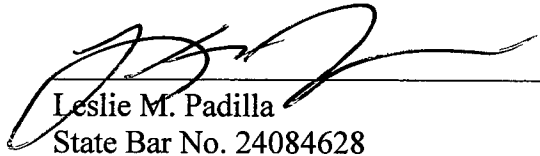
does not waive its position in such other proceedings. Because this is a settlement agreement, a Signatory is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement, whether those proceedings present the same or a different set of circumstances. A Signatory's agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.

- b. The Signatories agree that their request that the Commission enter an order consistent with the Agreement is the result of negotiation and is not intended to have precedential value with respect to any particular principle, treatment, or methodology that may underlie the Agreement.
- c. The Signatories agree that the terms and conditions herein are interdependent and not severable, and no Signatory shall be bound by any portion of this Agreement outside the context of the Agreement as a whole. The Signatories agree that none of the provisions of this Agreement shall become fully operative unless the Commission shall have entered a final order approving this Agreement. If the Commission does not accept this Agreement as presented, or issues an interim or final order inconsistent with any term or provision of this Agreement, the Signatories agree that any Signatory adversely affected by that modification or inconsistency has the right to withdraw its consent from this Agreement, thereby becoming released from all commitments and obligations, and to proceed to hearing on all issues, present evidence, advance any position it desires as if it had not been a Signatory, and exercise all rights available under law.
- d. If the Commission does not adopt appropriate orders consistent with the terms of this Agreement, the Signatories agree that neither oral nor written statements made during the course of the settlement negotiations, nor the terms of this Agreement may be used as an admission or concession of any sort or as evidence in any proceeding. This obligation shall continue and be enforceable, even if this Agreement is terminated.

- e. This Agreement contains the entire understanding and agreement of the Signatories, supersedes all other written and oral exchanges, or negotiations among them or their representatives with respect to the subjects contained herein; and neither this Agreement, nor any of the terms of this Agreement, may be altered, amended, waived, terminated, or modified, except by a writing properly executed by the Signatories.
  - f. The Signatories mutually agree that they enter into this Agreement for their exclusive benefit and the benefit of their respective lawful successors. Signatories agree that nothing in this Agreement shall be construed to confer any right, privilege or benefit on any person or entity other than the Signatories and their respective lawful successors.
- 10. Execution.** Each signing representative warrants that he or she is duly authorized to sign this Agreement on behalf of the Signatory he or she represents. Facsimile and PDF copies of signatures are valid for purposes of evidencing execution. The Signatories may sign individual signature pages to facilitate the circulation and filing of the original of this Agreement. The Signatories agree that they will use their best efforts to obtain expeditious implementation of this Agreement by entry of appropriate orders.

Signatures on the following pages.

AGREED:



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Leslie M. Padilla

State Bar No. 24084628

Duggins Wren Mann & Romero, LLP

P.O. Box 1149

Austin, Texas 78767

Attorney for El Paso Electric Company

AGREED:



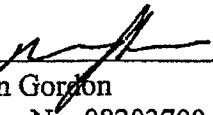
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Public Utility Commission of Texas Staff



AGREED:

  
\_\_\_\_\_  
Norman Gordon  
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El Paso, Texas 79901

Attorney for the City of El Paso

EL PASO ELECTRIC COMPANY  
 EPE's Settlement Rate Calculation to  
 2017 Energy Efficiency Cost Recovery Factor (EECRF)  
 Applicable January through December 2017

Ltr No.	Rate	Applicable Rate	Rate Class	2017 Projected Metered kWh	2017 Proposed Program Budget	2015 Energy Efficiency Budget	2015 Total EECRF Program Expenditures	2015 (Over)/Under Recovery	2017 EM&V Expenditures	Total Energy Efficiency Costs to be Recovered	2017 Total Rate per kWh
1	01	Residential Service		2,193,936,324	1,205,238	266,562	33,259	39,136		1,544,186	0.000704
2	02	Small Commercial Service		271,923,752	627,276	100,582	12,551	390,685		1,131,104	0.004160
3	07	Outdoor Residential Lighting		5,733,203				(2,332)		(2,332)	(0.000407)
4	08	Commercial Street Lighting Service		29,420,588				(3,224)		(3,224)	(0.000110)
5	09	Commercial Traffic Signal Service (a)		3,041,534							
6	11	Municipal Pumping Service		181,002,778				(202,872)		(202,872)	(0.001121)
7	15	Electrolytic Refining Service									
8	21	Waste Heating Service		9,615,998				(1,806)		(1,806)	(0.000188)
9	22	Irrigation Service		5,656,849				(5,956)		(5,956)	(0.001053)
10	24	General Service		1,546,603,072	1,418,976	158,662	19,796	(572,311)		1,025,123	0.000663
11	25	Large Power Service - See Pn		660,412,473	760,785	91,988	11,478	(46,352)		817,899	0.001238
12	25T	Large Power Service- Trans.									
13	26	Petroleum Refining Service									
14	28	Power Generation Lighting									
15	30	Electric Furnace Service									
16	31	Military Reservation Service									
17	34	College Service		2,219,982				(316)		(316)	(0.000142)
18	38	Interruptible Service									
19	41	City/County Service		289,494,652	382,375	49,740	6,206	25,309		463,631	0.001602
20	43	University Service (b)									
21	46/47	Cogeneration (c)									
22		Total		5,199,061,405	4,394,650	667,545	83,290	(390,039)		4,765,446	0.000917

(a) Rate 09 above reflects the new rate class that EPE has proposed in its pending rate case, Docket 44941, which has been entitled and filed at the PUC to its side action.  
 (b) Note that the EPE's pending rate class (which has been entitled and filed at the PUC to its side action), EPE has proposed that Rate 43 - University Service be combined with Rate 25-Large Power Service. See Pn  
 (c) Rate combined with Rate 34 - College - City/County Service in accordance with P.U.C. Title 16 of the Texas Administrative Code ("16 TAC") § 25.181(f)(2).

P.U.C. DOCKET NO. 45885  
 SOAH DOCKET NO. 473-16-4000

APPLICATION OF EL PASO	§	
ELECTRIC COMPANY FOR	§	
APPROVAL TO REVISE ITS	§	BEFORE THE PUBLIC UTILITY
ENERGY EFFICIENCY COST	§	COMMISSION OF TEXAS
RECOVERY FACTOR AND	§	
REQUEST TO ESTABLISH REVISED	§	
COST CAP	§	

**PROPOSED ORDER**

This Order addresses the application of El Paso Electric Company (EPE) for approval to revise its Energy Efficiency Cost Recovery Factor (EECRF) and related relief pursuant to PURA<sup>1</sup> § 39.905 and 16 Tex. Admin. Code (TAC) § 25.181. A Stipulation and Settlement Agreement (Agreement) was executed that resolves all of the issues in this proceeding. All of the parties to this proceeding are signatories of the Agreement except for Texas Industrial Energy Consumers (TIEC), which does not oppose the Agreement. The Agreement and EPE’s application, to the extent it is consistent with the Agreement, are approved.

The Public Utility Commission of Texas (Commission) adopts the following findings of fact and conclusions of law:

**I. Findings of Fact**

**Procedural History**

1. On April 29, 2016, EPE filed an application for authority to revise its Energy Efficiency Cost Recovery Factor (EECRF) tariff, beginning with the first billing cycle of EPE’s January 2017 billing month, and to establish a revised cost cap applicable to EPE for 2017.
2. EPE’s application included projected energy efficiency program costs for calendar year 2017; calculations of its performance bonus and over-recovery of costs for 2015; and EPE’s prior year (2015) EECRF proceeding expenses. Because the Commission has not

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<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (West 2007 & Supp. 2014) (PURA).

assigned 2017 evaluation, measurement and verification (EM&V) costs to EPE, EPE's application did not include any EM&V costs.

3. On May 2, 2016, this proceeding was referred to the State Office of Administrative Hearings (SOAH) for assignment of an administrative law judge (ALJ) to conduct a hearing and issue a proposal for decision, if necessary.
4. The City of El Paso (City) and TIEC filed for and were granted intervenor party status in this docket. The Commission Staff also participated in this proceeding.
5. On May 4, 2016, SOAH issued Order No. 1, scheduling a deadline for Commission Staff to file comments on the sufficiency of EPE's application and notice, adopting a procedural schedule, giving notice of the prehearing conference, and adopting a protective order.
6. On May 10, 2016, EPE filed proof that notice was provided.
7. EPE provided notice to all parties to what, at the time of filing, was EPE's last decided rate proceeding, *Application of El Paso Electric Company to Change Rates and to Reconcile Fuel Costs*, Docket No. 40094, Order (May 23, 2012), which included all parties that participated in EPE's last EECRF proceeding, *Application of El Paso Electric Company for Approval to Revise its Energy Efficiency Cost Recovery Factor and Request to Establish Revised Cost Cap*, Docket No. 44677, Order (Nov. 6, 2015). EPE also provided notice to the Texas Department of Housing and Community Affairs, the state agency that administers the federal weatherization program, and to Rockney Bacchus, who is a *pro se* intervenor in EPE's recently-settled rate case, Docket No. 44941.
8. On May 23, 2016, the Commission issued the Preliminary Order in this matter, identifying the issues to be addressed by SOAH.
9. On May 26, 2016, the City filed a request for hearing.
10. On June 6, 2016, in response to Requests for Information from Commission Staff, the City filed affidavits of Norman J. Gordon and Karl J. Nalepa regarding the City's rate case expenses for the 2015 EECRF proceeding.

11. On June 9, 2016, SOAH issued Order No. 2, which granted the motions of the City and TIEC to intervene, revised the procedural schedule, and gave notice of the hearing on the merits.
12. On June 30, 2016, EPE filed the Supplemental Testimony of Araceli G. Perea and anerrata to its 2016 Energy Efficiency Plan and Report (EEPR) in Project 45675 addressing a minor correction to the 30 percent goal metric found in Table 1 of the EEPR.
13. On July 11, 2016, EPE filed a motion, supported by the other parties, to suspend the procedural schedule.
14. On July 13, 2016, SOAH issued Order No. 3, granting the motion to suspend the procedural schedule.
15. On August 16, 2016, EPE filed a Stipulation and Settlement Agreement (Agreement) executed by all parties to this proceeding other than TIEC that resolves all issues in this proceeding. TIEC does not oppose the Agreement. Also on August 16, 2016, EPE filed a joint motion to admit evidence and remand the proceeding from SOAH to the Commission consistent with the Agreement among EPE, the City, and Commission Staff.
16. On \_\_\_\_\_, 2016, SOAH filed Order No. 5, granting the joint motion to admit evidence, cancelling the hearing, and remanding the docket to the Commission.

**Application**

17. EPE's EECRF application complies with 16 TAC § 25.181(f), contains the testimony and schedules required by 16 TAC § 25.181(f)(10), and addresses the factors required by 16 TAC § 25.181(f)(11).
18. In addition, EPE requested in its application a revised cost cap for commercial customers.

**Agreement**

19. There were no contested issues in this proceeding.
20. Under the Agreement, the parties agree that EPE's application should be granted as amended by the Supplemental Testimony of Araceli G. Perea.

21. Under the terms of the Agreement, the total amount to be included in EPE's 2017 EECRF is \$4,765,446 consisting of the following elements: 1) \$4,394,650 in projected energy efficiency program costs for 2017; 2) a \$667,545 performance bonus based on the Company's 2015 energy efficiency program performance; 3) EPE's 2015 EECRF proceeding expenses of \$83,290; and 4) a true-up adjustment, by rate class, of EPE's net over-recovery for 2015 of \$380,039.
22. The parties agree that EPE can seek to include EM&V costs for 2017 if the Commission assigns any such costs to EPE in the future, in a future true-up of the EECRF.

**2017 Program Year**

23. Consistent with 16 TAC § 25.181(e), EPE's appropriate demand reduction goal and energy savings goal for program year 2017 are 11.16 MW and 19,552 MWh, respectively.
24. EPE did not request a lower demand reduction goal under 16 TAC § 25.181(e)(2).
25. The appropriate amount of 2017 projected energy efficiency program costs to be recovered through EPE's 2017 EECRF is \$4,394,650, which is a reasonable estimate of the costs necessary to provide energy efficiency programs and to meet EPE's goals under 16 TAC § 25.181.
26. EPE does not currently recover any energy efficiency costs in its base rates.
27. EPE's projected costs of administration and costs of research and development represent 5.25% of its projected program costs and, therefore, comply with the 20% administrative spending caps in 16 TAC § 25.181(i).
28. The Commission had not assigned any EM&V costs to EPE for program year 2017 at the time of the Agreement.

**Revised cost cap**

29. EPE requests, under 16 TAC § 25.181(e)(2), that the Commission establish a revised cost cap for the commercial classes.

30. If EPE's energy efficiency programs are to continue at the same level, the rates for the commercial customers will continue to exceed the cost cap set by 16 TAC § 25.181(f)(7).
31. In order to stay within the cost cap, it would be necessary to re-allocate funds to different programs that may not perform as well as current programs.
32. It is not in the best interest of EPE's energy efficiency programs or the affected customer classes to make such changes.
33. EPE has shown that attainment of the cost cap required by 16 TAC § 25.181(f)(7) is not reasonably possible and good cause exists for granting EPE's request.

**2015 Program Year**

34. The costs recovered by EPE through its EECRF for 2015 complied with PURA § 39.905 and 16 TAC § 25.181 and were reasonable and necessary to reduce energy and demand costs.
35. The actual costs of administration and costs of research and development for program year 2015 were in compliance with the administrative spending caps in 16 TAC § 25.181(i). No costs for program year 2015 resulted from payments to an affiliate.
36. The reasonable and necessary municipal rate case expenses for EPE's 2015 EECRF proceeding in Docket No. 44677 were \$26,903.
37. The reasonable and necessary rate case expenses for EPE for EPE's 2015 EECRF proceeding in Docket No. 44677 were \$56,387.
38. Consistent with 16 TAC § 25.181, EPE correctly calculated for each EECRF rate class the appropriate amount of under or over-recovered EECRF costs for program year 2015.
39. EPE recovered no energy efficiency costs through base rates for program year 2015.
40. The total over-recovery in 2015 was \$380,039.
41. EPE earned a performance bonus of \$667,545 for having achieved demand savings that exceeded its goal for 2015.

**EECRF Design**

42. EPE correctly calculated the appropriate 2017 EECRF for each rate class consistent with 16 TAC § 25.181(f).
43. The appropriate EECRF rate classes for EPE's 2017 EECRF were not contested and are those listed in EPE's proposed tariff.
44. No party challenged EPE's costs.
45. The costs, including the performance bonus, assigned or allocated to rate classes are reasonable and consistent with 16 TAC § 25.181.
46. EPE's program costs are directly assigned to each EECRF rate class that receives services under the programs to the maximum extent reasonably possible.
47. EPE's administrative costs, including rate case expenses, and research and development costs are allocated consistent with 16 TAC § 25.181(i).
48. EPE's under- and over-recovered EECRF costs are allocated to the rate classes consistent with 16 TAC § 25.181(f)(2).
49. EPE's performance bonus is allocated to the rate classes consistent with 16 TAC § 25.181(h)(6).
50. EPE does not propose an EECRF for any commercial customers as a demand charge.
51. EPE calculated the appropriate estimate of billing determinants for the 2017 program year.
52. EPE did not propose using new calculations or estimates of line losses for purposes of calculating the 2017 EECRF charges.
53. The incentive payments for each customer class in program year 2017 comply with 16 TAC § 25.181(g).

**II. Conclusions of Law**

1. EPE is a public utility as that term is defined in PURA § 11.004(1) and an electric utility as that term is defined in PURA § 31.002(6).



2. The Commission exercises regulatory authority over EPE and the subject matter of this application pursuant to PURA §§ 14.001, 36.204, and 39.905 and 16 TAC § 25.181.
3. This docket was processed in accordance with the requirements of PURA and the Texas Administrative Procedure Act, Tex. Gov't Code Ann. Chapter 2001 (West 2008 & Supp. 2014), and Commission rules.
4. EPE provided notice in accordance with 16 TAC § 25.181.
5. Under PURA § 39.905(b) and 16 TAC § 25.181(f), an electric utility may request an EECRF. and, under PURA § 39.905(b-1) and 16 TAC § 25.181(f)(8), a utility shall apply to adjust the EECRF each year to reflect changes in costs and bonuses and minimize any over- or under-collection of energy efficiency costs resulting from the use of the EECRF.
6. 16 TAC § 25.181(f)(7) sets cost caps on the amount that can be charged to customers for recovery of costs related to energy efficiency.
7. There is good cause to establish for 2017 a revised commercial cost cap consistent with EPE's proposal.
8. The amounts for the 2017 projected energy efficiency program costs, the true-up amount for net over-collections of energy efficiency costs for 2015, EPE's performance bonus for its 2015 performance and EPE's 2015 EECRF proceeding expenses are consistent with PURA § 39.905 and 16 TAC § 25.181.
9. EPE's line loss of 8.72% is reasonable and in accordance with 16 TAC § 25.181.
10. EPE has met its burden of proof in demonstrating that it is entitled to the level of energy efficiency program costs set forth in its application.
11. EPE's allocation of energy efficiency costs is consistent with PURA § 39.905 and 16 TAC § 25.181.
12. The requirements for informal disposition under 16 TAC § 22.35(b)(2) have been met in this proceeding.

### **III. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Agreement and EPE's application to revise its EECRF tariff, to the extent that it is consistent with the Agreement, are approved.
2. EPE's energy efficiency costs cap for 2017 is established at a revised level consistent with EPE's application.
3. EPE is authorized to apply the approved EECRF. effective with January 2017 billings.
4. Within 10 days of the date of this Order, EPE shall file a clean copy of the EECRF tariff reflecting its approved EECRF consistent with this Order.
5. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Entry of this Order shall not be regarded as binding holding or precedent as to the appropriateness of any principle underlying the Agreement.
6. All other motions, requests for entry of specific findings of fact, conclusions of law, and ordering paragraphs, and any other requests for general or specific relief, if not expressly granted herein, are denied.

**SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of \_\_\_\_\_ 2016.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

\_\_\_\_\_  
**DONNA L. NELSON, CHAIRMAN**

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

\_\_\_\_\_  
**BRANDY MARTY MARQUEZ, COMMISSIONER**