

Control Number: 48332



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APPLICATION OF EL PASO ELECTRIC §  
COMPANY TO ADJUST ITS ENERGY §  
EFFICIENCY COST RECOVERY §  
FACTOR AND ESTABLISH REVISED §  
COST CAP §

BEFORE THE PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY COMMISSION  
OF TEXAS

**CITY OF EL PASO’S OBJECTION TO PORTIONS OF THE REBUTTAL TESTIMONY  
OF EL PASO ELECTRIC COMPANY**

Comes now the City of El Paso, Intervenor (“City”) in the above styled and numbered docket, and pursuant to SOAH Order No. 2 in this docket, the Commission’s procedural rules, and the Texas Rules of Evidence and files this objection to portions of the Rebuttal Testimony of El Paso Electric Company (“EPE”) witness Rene F. Gonzalez filed August 15, 2018.

**I. Objection**

Specifically, the City objects to the portion of Rebuttal Testimony of Rene F Gonzalez beginning on Page 4, line 33 through Page 5 line 28, and Exhibit RFG-01-R on the basis of basic relevance, TRE 401, settlement discussions, TRE 408, and inadmissible hearsay TRE 802.

**II. Discussion**

In the portion of Mr. Gonzalez’ testimony which is the subject of this objection, Mr. Gonzalez offers for the apparent purpose of affecting the outcome of this case, statements of Commissioners that were made during a Commission final order meeting in another case. The statements referenced, and exhibit attached in a final order of the Commission. Specifically, Mr. Gonzalez offers an opinion on what may have been on the mind of individual Commissioners, what they may have been thinking of a possible decision in the case. The statements are not relevant to a material issue in this docket. First, Docket 45885 was not decided at the meeting. The only decision was a remand. Second, Docket 45885 was a settled case. Other than the fact

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of a settlement, which was not offered, if that were relevant, no evidence of the settlement discussions, offers of settlement, and statements made during negotiations are not admissible. (TRE 408). Third, the Courts have held that statements made by Commissioners, during discussions are not relevant evidence. In *City of Frisco v. Texas Water Rights Commission*, 579 S.W.2d 66, 72 (Tex. Civ. App.—Austin, 1979, writ ref'd, n.r.e.) the Court of Appeals admissibility of statements of commissioners. The opinion said, “It is immaterial what a commissioner may have said or thought in the process of arriving at his decision *United States v Morgan*, 313 U.S. 409, 61 S. Ct. 999, 85 L. Ed 1429 (1940).” The thoughts or inclinations of the Commissioners, not material even in a decided case. In Docket 48332. The Commissioners did not make a decision, other than to remand the case. Finally, the portions are clearly offered for the truth of the out of court statements, which makes the statements hearsay. They do not fall within any exception to the hearsay rule TRE 802.

WHEREFORE, PREMISES CONSIDERED the City of El Paso prays that this Motion be granted, that the portion of the Rebuttal Testimony of Rene F Gonzalez, beginning on page 4, line 33 and continuing through page 5 line 20, and Exhibit RFG-01-R not admitted and be stricken and for such other and further relief to which the City may be entitled.

### **III. Prayer**

WHEREFORE, PREMISES CONSIDERED the City of El Paso prays that this Motion be granted, that the portion of the Rebuttal Testimony of Rene F Gonzalez, beginning on page 4, line 33 and continuing through page 5 line 20, and Exhibit RFG-01-R not admitted and be stricken and for such other and further relief to which the City may be entitled.

Respectfully submitted,

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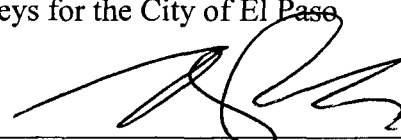
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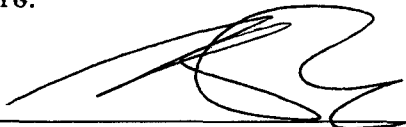
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By: \_\_\_\_\_

  
Norman J. Gordon

**Certificate of Service**

I certify that a true and correct copy of this document was served by facsimile on all parties of record in this proceeding on August 20, 2018.

By:   
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