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Addendum StartPage: 0

**PUC DOCKET NO. 49148  
SOAH DOCKET NO. 473-19-2303**

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**APPLICATION OF EL PASO  
ELECTRIC COMPANY FOR A  
TRANSMISSION COST RECOVERY  
FACTOR**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

FILED CLERK

**ORDER**

This Order addresses the application of El Paso Electric Company (EPE) for a transmission cost recovery factor (TCRF). EPE filed an unopposed agreement between the parties. The Commission approves EPE's TCRF, as modified by the agreement, to the extent provided in this Order.

**I. Discussion**

As the Commission previously stated in Docket No. 49507, the Commission may only allow a TCRF to recover on an annual basis the costs for new transmission infrastructure improvements if it finds that the costs are reasonable and necessary.<sup>1</sup> This finding does not address, however, the prudence of these costs or whether they should be included in base rates prospectively. Consistent with its practice, the Commission will address the prudence of the investments included in the TCRF approved by this order in EPE's next base-rate proceeding.

**II. Findings of Fact**

The Commission makes the following findings of fact.

**Applicant**

1. EPE is a domestic for-profit corporation registered with the Texas secretary of state under file number 1073400.
2. EPE provides electric generation, transmission, and distribution services in Texas under certificate of convenience and necessity number 30050. EPE's service area is outside of the Electric Reliability Council of Texas region in an area of Texas located in the Western Electricity Coordinating Council.

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<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. § 36.209(b) (West 2019) (PURA).



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3. The Federal Energy Regulatory Commission regulates EPE's wholesale electric operations.

**Application**

4. On January 25, 2019, EPE filed an application for its first TCRF.
5. In the original application, EPE sought a TCRF revenue requirement of \$8,156,570 for transmission costs not currently being recovered through base rates.
6. The application affects all of EPE's retail customers in its Texas service area.
7. The Commission established EPE's TCRF baseline values in EPE's last comprehensive base-rate proceeding, Docket No. 46831.<sup>2</sup>
8. After the final order in Docket No. 46831, the Tax Cuts and Jobs Act of 2017 was passed, effective January 1, 2018. That act reduced the corporate federal income tax rate from 35% to 21%.
9. The rates set in Docket No. 46831 used the then-current 35% federal income tax rate.
10. To develop its proposed TCRF rates in this docket, EPE calculated the additional revenues requested using the new 21% federal income tax rate, in accordance with the Commission's directive in the final order in Docket No. 46831 and with the federal income tax refund tariff approved in Docket No. 48124.<sup>3</sup>
11. EPE proposed in this docket to adjust the TCRF baseline values from Docket No. 46831 to reflect the 21% federal income tax rate.
12. EPE also proposed in this docket to adjust the TCRF baseline values to correct an error in the transmission service revenues reflected in the TCRF baseline values established in Docket No. 46831. The error involved applying the 80% Texas jurisdictional allocation factor twice, which resulted in an effective Texas jurisdictional allocation factor of 64%. Thus, the incorrect amount of transmission service revenues was included in the TCRF baseline values established in Docket No. 46831. However, the rates approved in Docket

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<sup>2</sup> *Application of El Paso Electric Company to Change Rates*, Docket No. 46831, Order (Dec. 18, 2017).

<sup>3</sup> *Application of El Paso Electric Company to Implement a Refund Tariff for Federal Income Tax Rate Decrease in Compliance with Docket No. 46831*, Docket No. 48124, Order (Dec. 10, 2018).

No. 46831 were correctly calculated and did not result in an over-recovery of EPE's transmission expense.

13. In the application, EPE used the weighted average cost of capital of 7.725% that was established in Docket No. 46831.
14. EPE does not have a comprehensive base-rate proceeding pending before the Commission.
15. No party contended that EPE's application was insufficient.
16. On April 9, 2019, EPE filed errata to the application to correct errors made in calculating the amounts of federal income tax and Texas gross receipts tax. In the errata, EPE reduced its requested TCRF revenue requirement to \$8,089,416.
17. On May 13, 2019, EPE filed its second errata to the application to reflect the reclassification of \$936,000 of investment in facilities as distribution-related rather than transmission-related. In the errata, EPE reduced its requested TCRF revenue requirement to \$8,010,407.
18. As updated by the errata, EPE's requested TCRF revenue requirement comprised the following:

Return on transmission invested costs	\$2,529,667
Depreciation expense	\$1,252,223
Income tax expense	\$445,493
Other associated taxes	\$536,447
Revenue credits	\$2,779,059
<b>Transmission revenue requirement</b>	<b>\$7,542,889</b>
Approved transmission charges	\$467,518
<b>TCRF Revenue Requirement</b>	<b>\$8,010,407</b>

19. Based on the errata filed on May 13, 2019, from October 1, 2016 (the day after the end of the test year in Docket No. 46831) through September 30, 2018, EPE invested a net amount of \$52,117,883 in its transmission plant in service in Texas.

**Notice**

20. EPE provided notice of the application by bill insert notices to all affected customers. The direct mailing of the notices was completed on April 10, 2019.
21. On January 25, 2019, EPE hand-delivered a copy of the application to each of the eight municipalities within EPE's Texas service area.
22. On January 25, 2019, EPE mailed individual notice to all parties that had participated in Docket No. 46831.
23. In an affidavit filed by EPE on May 3, 2019, Curtis Hutcheson, the supervisor of regulatory case management for EPE's regulatory affairs department, attested that notice was provided as described in findings of fact 20, 21, and 22.
24. EPE published notice once a week for four consecutive weeks in English and Spanish in the *El Paso Times*, the *Hudspeth County Herald*, and the *Van Horn Advocate*, which are newspapers that have general circulation in El Paso, Hudspeth, and Culberson counties, respectively. In an affidavit filed by EPE on May 3, 2019, Mr. Hutcheson attested that notice was provided as described in this finding of fact. Attached to Mr. Hutcheson's affidavit were also publishers' affidavits from the newspapers.

**Intervenors**

25. In State Office of Administrative Hearings (SOAH) Order No. 5 filed on March 12, 2019, the SOAH administrative law judge (ALJ) granted the motions to intervene filed by Texas Industrial Energy Consumers; the City of El Paso; Vinton Steel, LLC; and Freeport-McMoRan, Inc.
26. In SOAH Order No. 9 filed on September 13, 2019, the SOAH ALJ granted the motion to intervene filed by the City of Socorro.

**Testimony**

27. As part of the application filed on January 25, 2019, EPE included the direct testimonies of James Schichtl, EPE's vice president of regulatory affairs; Jennifer Borden, EPE's manager of regulatory accounting and compliance; and R. (Clay) Doyle, EPE's vice president of transmission and distribution.

28. On April 16, 2019, the City of El Paso filed the direct testimony of Karl Nalepa, the president of ReSolved Energy Consulting, LLC, an independent utility consulting company. Mr. Nalepa testified that EPE had failed to adequately support the \$16.8 million right-of-way renewal agreement with the Isleta tribe that is described in findings of fact 52 through 55. Mr. Nalepa recommended that the Commission find the right-of-way agreement imprudent and as a result that the Commission disallow \$1.2 million of EPE's requested TCRF revenue requirement. In the alternative, Mr. Nalepa recommended disallowing \$780,000 of EPE's requested TCRF revenue requirement to account for the estimated value of the land based on offers for sale in Valencia and Bernalillo counties, New Mexico.
29. On April 23, 2019, Commission Staff filed the direct testimonies of Brian Murphy and Frederick Quijano. Mr. Murphy testified that a load-growth adjustment should be applied to EPE's requested TCRF. Mr. Quijano did not make any adjustments to EPE's requested TCRF.
30. On April 30, 2019, EPE filed the rebuttal testimonies of Mr. Schichtl and Mr. Doyle. Mr. Doyle defended the reasonableness, necessity, and prudence of the \$16.8 million right-of-way renewal agreement with the Isleta tribe, and Mr. Schichtl testified against the application of a load-growth adjustment. Messrs. Schichtl and Doyle also testified that EPE had incorrectly classified \$936,000 of investment in facilities as transmission-related instead of as distribution-related.
31. On May 13, 2019, EPE filed errata to the direct testimonies of Mr. Schichtl and Ms. Borden to reflect the reclassification of \$936,000 of investment in facilities, as described in the rebuttal testimonies of Messrs. Schichtl and Doyle.
32. On September 12, 2019, EPE filed the supplemental direct testimony of Mr. Schichtl in support of the parties' agreement.
33. On September 12, 2019, Commission Staff filed the affidavit of Brian Murphy in support of the parties' agreement.

**Referral to SOAH**

34. On January 28, 2019, the Commission referred this proceeding to SOAH.

35. In SOAH Order No. 4 filed on February 20, 2019, the SOAH ALJ set a hearing on the merits for 10:00 a.m. on May 13, 2019 at SOAH's hearing facility in Austin, Texas.
36. On February 28, 2019, the Commission filed a preliminary order listing the issues to be addressed in this proceeding.
37. In SOAH Order No. 6 filed on May 2, 2019, the SOAH ALJ suspended the procedural schedule for settlement discussions.
38. In SOAH Order No. 7 filed on June 26, 2019, the SOAH ALJ lifted the abatement of the procedural schedule.
39. On September 12, 2019, EPE filed an unopposed agreement on behalf of itself, Commission Staff, the City of El Paso, Texas Industrial Energy Consumers, the City of Socorro, and Vinton Steel, LLC. Freeport-McMoRan, Inc. did not sign, but does not oppose, the agreement.
40. In SOAH Order No. 9 filed on September 13, 2019, the SOAH ALJ dismissed the case from SOAH's docket and remanded it to the Commission.

**Evidentiary Record**

41. In SOAH Order No. 9 filed on September 13, 2019, the SOAH ALJ admitted the following evidence into the record:
  - (a) EPE's application filed on January 25, 2019;
  - (b) the direct testimonies of EPE witnesses James Schichtl, Jennifer Borden, and R. (Clay) Doyle, filed on January 25, 2019;
  - (c) EPE's errata to the application, filed on May 9, 2019;
  - (d) the City of El Paso's direct testimony of Karl Nalepa, filed on April 16, 2019;
  - (e) Commission Staff's direct testimonies of Brian Murphy and Frederick Quijano, filed on April 23, 2019;
  - (f) EPE's rebuttal testimonies of James Schichtl and R. (Clay) Doyle, filed on April 30, 2019;
  - (g) EPE's errata to the direct testimonies of James Schichtl and Jennifer Borden, filed on May 13, 2019;

- (h) the affidavit of Curtis Hutcheson regarding notice of the application, filed on May 3, 2019;
- (i) the agreement, including attachments, filed on September 12, 2019;
- (j) the testimony of James Schichtl in support of the agreement, filed on September 12, 2019; and
- (k) Commission Staff's affidavit of Brian Murphy in support of the agreement, filed on September 12, 2019.

**Agreement**

- 42. The agreement includes a black-box reduction of \$500,000 to EPE's requested TCRF revenue requirement, as modified by the errata filed on April 9, 2019 and May 13, 2019. Under the agreement, EPE's TCRF revenue requirement is \$7,510,407.
- 43. It is reasonable for the Commission to approve the agreed TCRF revenue requirement of \$7,510,407.
- 44. The signatories agreed that, except for the costs related to the right-of-way renewal agreement with the Isleta tribe that are described in findings of fact 52 through 55 (project TL249), the costs that EPE is seeking to recover for transmission infrastructure improvement as listed in exhibit RCD-3R to the rebuttal testimony of R. (Clay) Doyle are reasonable and necessary for inclusion in its TCRF.
- 45. The costs that EPE is seeking to recover for transmission infrastructure improvement as listed in exhibit RCD-3R to Mr. Doyle's rebuttal testimony are reasonable and necessary for inclusion in its TCRF.
- 46. The signatories agreed for the modified TCRF baseline as presented in exhibit JS-3 to the direct testimony of James Schichtl to be used in future TCRF applications until the TCRF baseline is modified in EPE's next comprehensive base-rate proceeding.
- 47. It is reasonable for the Commission to approve the modified TCRF baseline as presented in exhibit JS-3 to the testimony of James Schichtl for use in future TCRF applications until the TCRF baseline is modified in EPE's next comprehensive base-rate proceeding.



48. It is reasonable for EPE to adjust the TCRF baseline values from Docket No. 46831 to reflect the 21% federal income tax rate.
49. It is reasonable for EPE to adjust the TCRF baseline values from Docket No. 46831 to correct an error in the transmission service revenues reflected in those baseline values caused by incorrectly applying the Texas jurisdictional allocation factor twice.
50. The signatories agreed to the rates in the tariff schedule attached to the agreement as attachment A.
51. It is reasonable for the Commission to approve the tariff schedule attached to the agreement as attachment A.

**Right-of-Way Renewal Agreement with the Isleta Tribe**

52. EPE's Arroyo-to-West Mesa 345-kV transmission line is one of three 345-kV transmission lines that connect EPE with its neighboring utilities and the Western Electricity Coordinating Council. The 202-mile line crosses the Isleta Pueblo Indian Reservation for 8.4 miles.
53. In 1967, EPE entered into a 50-year right-of-way agreement with the Isleta tribe. That right-of-way agreement expired in 2017.
54. EPE entered a 25-year renewal right-of-way agreement with the Isleta tribe for \$16.82 million.
55. The shortest rebuild path around the Isleta tribe's lands would be a 29.7-mile line that would cross lands owned by another tribe and, according to EPE's estimates, would cost between \$1 million and \$1.5 million per mile.
56. Regarding the costs related to the right-of-way renewal agreement with the Isleta tribe, the signatories agreed for a determination of the prudence, reasonableness, and necessity of those costs to be made in EPE's next comprehensive base-rate proceeding, not this docket. The parties also agreed that, when a determination is made regarding the costs related to the right-of-way renewal agreement with the Isleta tribe, that determination will be applied prospectively in base rates without retroactive application or a reconciliation.

57. It is appropriate for a determination of the prudence, reasonableness, and necessity of the costs related to the right-of-way renewal agreement with the Isleta tribe to be made in EPE's next comprehensive base-rate proceeding. The Commission at the time of that proceeding will decide how to apply its determination regarding the costs related to the right-of-way renewal agreement with the Isleta tribe.
58. To address any issues in future proceedings concerning the costs of the right-of-way renewal agreement with the Isleta tribe, the signatories agreed to a continuing credit adjustment of \$500,000 to the TCRF revenue requirement in any TCRF proceeding that EPE may file before its next comprehensive base-rate proceeding.
59. It is appropriate for EPE to include a continuing credit adjustment of \$500,000 to the TCRF revenue requirement in its application for any TCRF proceeding that EPE may file before its next comprehensive base-rate proceeding. The Commission at the time of each proceeding will decide the merits of the credit adjustment in each docket.

**Effective Date and Interim Rates**

60. In SOAH Order No. 1 filed on February 4, 2019, the SOAH ALJ suspended EPE's proposed effective date of March 1, 2019 for 120 days. The resulting suspended effective date was Saturday, June 29, 2019, which became Monday, July 1, 2019 under 16 Texas Administrative Code (TAC) § 22.4(a).
61. In SOAH Order No. 4 filed on February 20, 2019, the SOAH ALJ ordered that, if the Commission did not file this Order by July 30, 2019, EPE's existing TCRF rates would become interim rates beginning on July 30, 2019, subject to a refund or surcharge to the extent that the interim rates differed from the rates approved in this Order.
62. The interim rates went into effect July 30, 2019.
63. It is appropriate for the agreed TCRF rates to be effective for consumption on and after July 30, 2019.
64. It is appropriate, as the signatories agreed, for EPE to make a compliance filing within 30 days of the date of this Order for approval of a surcharge tariff to address the true-up of interim rates.

**Informal Disposition**

65. More than 15 days have passed since completion of the notice provided in this docket.
66. No hearing is necessary in this docket.
67. The decision in this docket is not adverse to any party.
68. Commission Staff recommended approval of the application.

**III. Conclusions of Law**

The Commission makes the following conclusions of law.

1. EPE is a public utility as defined in PURA<sup>4</sup> § 11.004(1) and an electric utility as defined in PURA § 31.002(6).
2. EPE may seek approval of a TCRF under PURA § 36.209 because it owns and operates transmission facilities and operates solely outside of the Electric Reliability Council of Texas region in an area of Texas located in the Western Electricity Coordinating Council.
3. The Commission has jurisdiction over this matter under PURA §§ 14.001 and 36.209.
4. SOAH exercised jurisdiction over this matter under PURA § 14.053 and Texas Government Code § 2003.049(b).
5. The Commission processed this docket in accordance with the requirements of PURA, the Administrative Procedure Act,<sup>5</sup> and Commission rules.
6. EPE's provision of notice of the application was in accordance with 16 TAC § 22.51.
7. Using the billing determinants for calendar year 2018 complies with 16 TAC § 25.239(d).
8. The rates established by this Order are just and reasonable under PURA § 36.003(a).
9. In accordance with PURA § 36.003(b), the rates established by this Order are not unreasonably preferential, prejudicial, or discriminatory and are sufficient, equitable, and consistent in application to each class of customer.

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<sup>4</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

<sup>5</sup> Tex. Gov't Code §§ 2001.001–.902.

10. The rates approved in this Order comply with PURA § 36.209(b) and 16 TAC § 25.239(c) by allowing EPE to recover its reasonable and necessary costs for transmission infrastructure improvement costs as well as changes in wholesale transmission charges to EPE under a tariff approved by the Federal Energy Regulatory Commission to the extent those costs or charges have not otherwise been recovered.
11. EPE's TCRF approved in this Order complies with PURA § 36.209 and 16 TAC § 25.239.
12. Under PURA § 36.209, the Commission may only allow a TCRF to recover on an annual basis the costs for new transmission infrastructure improvements if it finds that the costs are reasonable and necessary. This finding does not address, however, the prudence of these costs or whether they should be included in base rates prospectively.
13. In accordance with 16 TAC § 22.125(e), the interim rates granted in this proceeding are subject to surcharge to the extent the rates ultimately established are higher than the interim rates.
14. This proceeding meets the requirements for informal disposition in 16 TAC § 22.35.

#### **IV. Ordering Paragraphs**

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

1. The Commission approves EPE's TCRF, as modified by the agreement, to the extent provided in this Order.
2. The Commission approves the TCRF tariff schedules in attachment A to the agreement, effective with usage on and after July 30, 2019.
3. EPE must use the modified TCRF baseline as presented in exhibit JS-3 to the direct testimony of James Schichtl in future TCRF applications until the baseline is modified in EPE's next comprehensive base-rate proceeding.

4. Within 30 days of the date of this Order, EPE must file a surcharge tariff in Docket No. 50256.<sup>6</sup> The surcharge tariff must account for the undercollection under the interim rates granted by SOAH in this docket.
5. The Commission must determine whether the infrastructure improvement costs and wholesale transmission charges included in the TCRF approved in this order are prudent before the costs and charges may be included in EPE's base rates. The Commission will make these prudence determinations during EPE's next base-rate proceeding.
6. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.
7. Within ten days of the date of this Order, EPE must provide a clean copy of the TCRF tariff schedules approved in this Order to central records to be marked *Approved* and filed in the Commission's tariff books.
8. The Commission denies all other motions and any other requests for general or specific relief that the Commission has not expressly granted.

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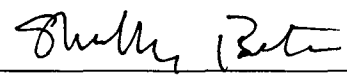
<sup>6</sup> *Compliance Filing of El Paso Electric Company for a Surcharge Tariff Ordered in Docket No. 49148, Docket No. 50256 (pending).*

Signed at Austin, Texas the 16<sup>th</sup> day of December 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

  
DEANN T. WALKER, CHAIRMAN

  
ARTHUR C. D'ANDREA, COMMISSIONER

  
SHELLY BOTKIN, COMMISSIONER

