



Control Number: 50575



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DeAnn T. Walker
Chairman
Arthur C. D'Andrea
Commissioner
Shelly Botkin
Commissioner
John Paul Urban
Executive Director




Greg Abbott
Governor

Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Hunter Burkhalter 
Administrative Law Judge

RE: **Open Meeting of July 2, 2020**
Docket No. 50575 – Application of El Paso Electric Company to Implement Second Updated Refund Tariff for Federal Income Tax Rate Decrease in Compliance with Docket No. 46831

DATE: June 9, 2019

Because of the COVID-19 state of disaster, the Commission has moved to a work-at-home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change.

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Thursday, July 2, 2020, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Tuesday, June 23, 2020.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 50575

APPLICATION OF EL PASO	§	PUBLIC UTILITY COMMISSION
ELECTRIC COMPANY TO	§	
IMPLEMENT SECOND UPDATED	§	OF TEXAS
REFUND TARIFF FOR FEDERAL	§	
INCOME TAX RATE DECREASE IN	§	
COMPLIANCE WITH DOCKET	§	
NO. 46831	§	

PROPOSED ORDER

This Order addresses the application of El Paso Electric Company to implement a second update to its refund tariff for the federal income tax rate decrease in compliance with Docket No. 46831.¹ The Commission approves El Paso Electric’s Schedule No. FTRF Update – Federal Tax Refund Factor Update.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. El Paso Electric is a domestic for-profit corporation registered with the Texas secretary of state under file number 1073400.
2. El Paso Electric provides electric generation, transmission, and distribution services in Texas under certificate of convenience and necessity number 30050.

Background

3. The final order in Docket No. 46831 required El Paso Electric to file a refund tariff to provide a base rate reduction when the federal income tax rate was reduced as a result of the Tax Cuts and Jobs Act of 2017 (TCJA), and to update the refund factor in each subsequent year until El Paso Electric’s next comprehensive base rate proceeding.

¹ *Application of El Paso Electric Company to Change Rates*, Docket No. 46831, Order (Dec. 18, 2017).

4. The Commission's amended order in Project No. 47945² required El Paso Electric to record, as a regulatory liability, the balance of excess accumulated deferred federal income taxes that exist because of the tax rate decrease.
5. On March 1, 2018, El Paso Electric made the first required compliance filing after the TCJA became law in Docket No. 48124.³
6. In Docket No. 48124, the Commission approved El Paso Electric's calculation of a total reduction in income tax expense for the initial 12-month period of \$27,001,716, comprised of the following two amounts: (a) the prospective effect of the reduction in the federal income tax rates over the 12 months that the proposed tariff would be in effect (April 1, 2018 to March 31, 2019); and (b) a regulatory liability that had accrued during the first three months of 2018 to be amortized over the same 12-month period.
7. In Docket No. 49251,⁴ the Commission approved El Paso Electric's application to update the expiring refund factor and update to El Paso Electric's FTRF Update – Federal Tax Refund Factor Update tariff schedule.

Application

8. On February 20, 2020, El Paso Electric filed the application at issue in this proceeding in which it seeks expedited approval of its second update to the refund factor used to reduce its base rates to reflect the reduction in its federal income tax expense. El Paso Electric also filed the application with the municipal regulatory authorities with original jurisdiction over its rates: City of El Paso, Town of Anthony, Town of Horizon City, Town of Clint, Village of Vinton, Town of Van Horn, City of San Elizario, and City of Socorro.
9. In its application, El Paso Electric did not propose any changes to the current refund factor, but proposed the addition of language to the tariff to clarify that the refund factor does not apply to riders, such as the transmission cost recovery factor (TCRF) or the distribution

² *Proceeding to Investigate and Address the Effects of the Tax Cuts and Jobs Act of 2017 on the Rates of Texas Investor-Owned Utility Companies*, Project No. 47945, Amended Order (Feb. 15, 2018).

³ *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).

⁴ *Application of El Paso Electric Company to Implement First Updated Refund Tariff for Federal Income Tax Decrease in Compliance with Docket No. 46831*, Docket No. 49251, Order (June 27, 2019).

cost recovery factor (DCRF), which already incorporate the lower corporate income tax rate.

10. El Paso Electric stated in its application that it implemented, in customer billing, a DCRF on October 1, 2019, and a TCRF on January 1, 2020. Both the DCRF and TCRF incorporated the reduced federal income tax rates within the calculation of the applicable billing factors.
11. El Paso Electric therefore included language additions in the proposed Schedule No. FTRF Update – Federal Tax Refund Factor Update tariff to indicate that the tax refund factors apply only to the bill components of the non-fuel base rates that were approved in El Paso Electric’s last base rate case, Docket No. 46831. With approval of the application, the tax refund factors will not apply to any new non-fuel base rates, such as the DCRF and TCRF, which El Paso Electric may implement in the future.
12. El Paso Electric’s factor is designed to refund approximately \$22,713,700 to its Texas jurisdiction retail customers over a 12-month period beginning April 1, 2020, which amount is based on the annual base revenues from El Paso Electric’s last base rate proceeding, Docket No. 46831.
13. El Paso Electric will implement the refund as a tax credit line item and calculated tax factors for each rate class of retail customers.
14. El Paso Electric requested interim or final approval of its application effective April 1, 2020, because the only proposed change is minor and does not involve the changing of any rates.
15. In Order No. 2 filed on March 18, 2020, the administrative law judge (ALJ) found the application administratively complete.

Notice of Application

16. In Order No. 2 filed on March 18, 2020, the ALJ approved El Paso Electric’s proposed form and method of notice.
17. On April 9, 2020, El Paso Electric filed the affidavit of Judith M. Parsons, regulatory case manager for El Paso Electric’s regulatory service department, attesting that the complete rate filing package was emailed to each of the Texas municipalities that have retained

original jurisdiction, and that El Paso Electric served a copy of its filing by electronic mail or mail to each party in El Paso Electric's last general rate case, Docket No. 46831.

Intervenors

18. On March 10, 2020, the City of El Paso filed a motion to intervene.
19. In Order No. 2 filed on March 18, 2020, the ALJ granted the City of El Paso's motion to intervene.

Tax Refund

20. El Paso Electric calculated a total reduction in income tax expense of \$22,713,700 for the 12-month period beginning April 1, 2020, which is the prospective effect of the reduction in the federal income tax rates over the 12 months that the proposed tariff will be in effect.
21. El Paso Electric developed a tax credit factor for each rate class of retail customers based on the calculated annual tax expense reduction and the annual base revenues of \$499,040,200 from El Paso Electric's last base rate proceeding, Docket No. 46831.
22. The final rates approved in this proceeding are the same as the rates approved on an interim basis; therefore, no refunds or surcharges are necessary.
23. The rates established by this Order accurately reflect the federal corporate income tax rate reduction from 35% to 21%.

Interim Rates

24. El Paso Electric's February 20, 2020 application included a request that its FTRF update be implemented on an interim basis, effective April 1, 2020.
25. No objections to El Paso Electric's proposed interim rates were filed.
26. On March 17, 2020, Commission Staff supported El Paso Electric's request that interim rates be granted, subject to final approval.
27. In Order No. 2 filed on March 18, 2020, the ALJ approved El Paso Electric's FTRF update on an interim basis, effective April 1, 2020.

Evidentiary Record

28. On May 18, 2020, El Paso Electric and Commission Staff filed an agreed proposed order and a joint motion to admit evidence in support of the agreed proposed order. The City of El Paso took no position on the agreed proposed order and joint motion.
29. In Order No. 3 filed on June 8, 2020, the ALJ admitted the following evidence into the record of this proceeding: (a) El Paso Electric's application and attachments filed on February 20, 2020; (b) El Paso Electric's proof of notice filed on April 30, 2019; and (c) Commission's Staff's final recommendation and attachments filed on May 11, 2020.

Informal Disposition

30. More than 15 days have passed since completion of notice provided in this docket.
31. No person filed a protest, and no person other than the City of El Paso filed a motion to intervene.
32. El Paso Electric, Commission Staff, and the City of El Paso are the only parties to this proceeding.
33. No party requested a hearing and no hearing is needed.
34. Commission Staff recommended approval of the application.
35. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this application under PURA⁵ §§ 14.001, 32.001, 36.003, and 39.552.
2. El Paso Electric 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).
3. Notice of the application was provided in compliance with PURA § 36.103 and 16 Texas Administrative Code (TAC) § 22.51(b).

⁵ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

4. El Paso Electric filed this application in compliance with the final order in Docket No. 46831.
5. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,⁶ PURA, and Commission rules.
6. The rates established by this Order are just and reasonable under PURA § 36.003(a).
7. Under PURA § 36.003(b), the rates established by this Order are not preferential, prejudicial, or discriminatory and are sufficient, equitable, and consistent in application to each class of customer.
8. El Paso Electric allocated the refund amount in accordance with the allocation provided by the agreement and order in Docket No. 46831.
9. El Paso Electric's proposed refund complies with the agreement and order in Docket No. 46831.
10. The requirements for informal disposition in 16 TAC § 22.35 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 orders:

1. The Commission approves El Paso Electric's Schedule No. FTRF Update – Federal Tax Refund Factor Update as final.
2. El Paso Electric must reimburse its municipal regulatory authorities for their reasonable and necessary rate-case expenses related to this proceeding.
3. El Paso Electric may request, in a future case, the recovery of its rate-case expenses incurred in this proceeding including the reimbursement of municipal authorities for their rate-case expenses, but may not recover these expenses unless approved by the Commission in a future proceeding under PURA and the Commission's current rule regarding recovery of rate-case expenses.

⁶ Tex. Gov't Code ch. 2001.

4. Within ten days of the date of this Order, El Paso Electric must provide a clean copy of Schedule No. FTRF Update – Federal Tax Refund Factor Update to central records to be marked *Approved* and filed in the Commission’s tariff book.
5. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the _____ day of July 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D’ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER