

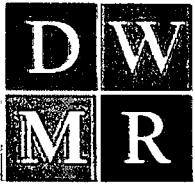


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May 18, 2020

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Hunter Burkhalter  
Administrative Law Judge  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, TX 78711-3326

Re: 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*

**Agreed Proposed Order**

Dear Judge Burkhalter:

Order No. 2 in this proceeding set a deadline of today for the filing of an agreed proposed order if no party requested a hearing. El Paso Electric Company (EPE), on behalf of itself and the Staff of the Public Utility Commission (Staff), submits the attached proposed order in compliance with Order No. 2. Contemporaneously with this filing, EPE and the Staff are also filing an agreed motion for admission of evidence. Pending consideration by the City Council of the City of El Paso, the City has no position at this time on either the proposed order or the motion.

Very truly yours,

*/s/ Bret J. Slocum*

Bret J. Slocum  
ATTORNEY FOR EL PASO ELECTRIC  
COMPANY

cc: All Parties of Record

**DOCKET NO. 50575**

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

**PARTIES' AGREED PROPOSED ORDER**

This Order addresses the application of El Paso Electric Company (EPE) to implement a second update to its refund tariff for the federal income tax rate decrease in compliance with Docket No. 46831.<sup>1</sup> The Commission approves EPE's Schedule No. FTRF Update – Federal Tax Refund Factor Update.

**I. 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 on August 30, 1901 under file number 1073400.
2. EPE 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 EPE 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 file the refund factor in each subsequent year until EPE's next comprehensive base rate proceeding.

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<sup>1</sup> *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. 47945<sup>2</sup> required EPE 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, EPE made the first required compliance filing after the TCJA became law in Docket No. 48124.<sup>3</sup>
6. In Docket No. 48124, the Commission approved EPE'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,<sup>4</sup> the Commission approved EPE's application to update the expiring refund factor and update to EPE's FTRF Update – Federal Tax Refund Factor Update tariff schedule.

#### Application

8. On February 20, 2020, EPE filed an application for 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. EPE 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, EPE did not propose any changes to the current refund factor, but proposed addition of language to the tariff to clarify that the refund factor does not apply

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<sup>2</sup> *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).

<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. 18, 2018).

<sup>4</sup> *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).

to riders, such as the Transmission Cost Recovery Factor (TCRF) or the Distribution Cost Recovery Factor (DCRF).

10. EPE stated in its application that EPE implemented in customer billing a DCRF on October 1, 2019, and a TCRF on January 1, 2020. Both the DCRF and TCRF incorporated reduced federal income tax rates within the calculation of the applicable billing factors.
11. EPE 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 EPE's last base rate case (Docket No. 46831). The tax refund factors will not apply to any new non-fuel base rates, such as the DCRF and TCRF, which EPE may implement in the future.
12. EPE'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 EPE's last base rate proceeding, Docket No. 46831.
13. EPE will implement the refund as a tax credit line item and calculated tax factors for each rate class of retail customers.
14. EPE 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 issued on March 18, 2020, the administrative law judge (ALJ) found the application administratively complete.

**Notice of Application**

16. In Order No. 2 issued on March 18, 2020, the ALJ approved the notice.
17. On April 9, 2020, EPE filed the affidavit of Judith M. Parsons, Regulatory Case Manager for EPE'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 EPE served a copy of its filing by electronic mail or mail to each party to EPE'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, issued on March 18, 2020, the ALJ granted the City of El Paso's motion to intervene.

### **Tax Refund**

20. EPE 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. EPE 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 EPE'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 income tax rate reduction from 35% to 21%.

### **Interim Rates**

24. EPE'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 EPE's proposed interim rates were filed.
26. On March 17, 2020, Commission Staff supported EPE's request that interim rates be granted, subject to final approval.
27. In Order No. 2 issued on March 18, 2020, the ALJ approved EPE's FTRF update on an interim basis.

### **Informal Disposition**

28. More than 15 days have passed since completion of notice provided in this docket.
29. EPE, Commission Staff, and the City of El Paso are the only parties to this proceeding.
30. No party requested a hearing and no hearing is needed.
31. Commission Staff recommended approval of the application.
32. This decision is not adverse to any party.

**Evidentiary Record**

33. On May 18, 2020, EPE, Commission Staff, and the City of El Paso filed an agreed order, and EPE and the Staff filed a joint motion to admit evidence in support of the agreed order. The City took no position on the joint motion.
34. In Order No. \_\_\_ issued on May \_\_, 2020, the ALJ admitted the following evidence into the record: (a) EPE's application and attachments filed on February 20, 2020; (b) EPE's proof of notice filed on April 30, 2019; and (c) Commission's Staff's final recommendation and attachments filed on May 11, 2020.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this application under PURA<sup>5</sup> §§ 14.001, 32.001, 36.003, and 39.552.
2. 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).
3. Notice of the application was provided in compliance with PURA § 36.103 and 16 Texas Administrative Code (TAC) § 22.51(b).
4. EPE 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,<sup>6</sup> 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. EPE allocated the refund amount in accordance with the allocation provided by the agreement and order in Docket No. 46831.

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<sup>5</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

<sup>6</sup> Administrative Procedure Act, Tex. Gov't Code §§ 2001.001–.902.

9. EPE’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 EPE’s Schedule No. FTRF Update – Federal Tax Refund Factor Update.
2. EPE must reimburse EPE’s municipal regulatory authorities for their reasonable and necessary rate-case expenses related to this proceeding.
3. EPE may request, in a future case, the recovery of EPE’s rate-case expenses incurred in this proceeding including the reimbursement of municipal authorities for their expense 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.
4. 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 [month] 2020.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHAIRMAN**

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**ARTHUR C. D’ANDREA, COMMISSIONER**

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**SHELLY BOTKIN, COMMISSIONER**