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Addendum StartPage: 0

**PUC DOCKET NO. 52195**  
**SOAH DOCKET NO. 473-21-2606**

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**APPLICATION OF EL PASO  
ELECTRIC COMPANY TO CHANGE  
RATES**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**COMMISSION STAFF'S LIST OF ISSUES**

On June 1, 2021, El Paso Electric Company (EPE) filed its application for approval to change base rates with the Commission.

On June 10, 2021, the Commission issued an Order of Referral, referring this docket to the State Office of Administrative Hearings (SOAH) and establishing a deadline of June 16, 2021 for the parties to provide a list of issues to address in this docket. Therefore, this pleading is timely filed.

**I. LIST OF ISSUES**

1. Did EPE comply with the form and instructions for the Commission's rate-filing package?
2. Is EPE's application administratively complete?
3. Did EPE provide notice that was adequate and consistent with the requirements of PURA §§ 36.102 and 36.103?
4. What revenue requirement will give EPE a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses?
5. What is EPE's reasonable and necessary cost of providing service calculated in accordance with PURA and Commission rules?
6. What adjustments, if any, should be made to EPE's proposed test-year and updated-period data?

**Invested Capital – Rate Base and Return**

7. What is the appropriate debt-to-equity capital structure for EPE?

8. What is the appropriate overall rate of return, return on equity, and cost of debt for EPE? When answering this issue please address how the factors specified in PURA § 36.052 and 16 TAC § 25.231(c)(1) should affect EPE's rate of return.
9. Are any protections, such as financial protections, appropriate to protect the utility's financial integrity and ability to provide reliable service at just and reasonable rates?
10. What are the reasonable and necessary components of EPE's rate base?
11. What is the original cost of EPE's property used and useful in providing service to the public at the time the property was dedicated to public use? In answering this issue, please address the following items.
12. What is the amount, if any, of accumulated depreciation on that property?
13. Does EPE's requested invested capital or revenue requirement include any amounts no longer used and useful in the provision of electric service?
14. What is EPE's transmission cost of service determined in accordance with PURA and Commission rules?
15. What amount, if any, of EPE's invested capital has not previously been subject to a prudence review by the Commission? If there are any such amounts, what are the amounts; for what facilities, property, or equipment was the investment made; and were the amounts prudently incurred? What amount, if any, of allowance for funds used during construction (AFUDC) is being transferred to invested capital in this proceeding? If AFUDC is being transferred, for what facilities and at what rate was the AFUDC accrued?
16. Did any of EPE's invested capital arise from payments made to an affiliate? If so, for each item or class of items, does the payment conform to the requirements in PURA § 36.058?
17. Is EPE seeking the inclusion of construction work in progress? If so:
  - a. what is the amount sought and for what facilities, and
  - b. has EPE proven that the inclusion is necessary to the financial integrity of the electric utility, and that major projects under construction have been efficiently and prudently planned and managed; or

- c. for transmission investment required by the Commission under PURA § 39.203(e), do conditions warrant the inclusion of construction work in progress for such transmission investment?
- 18. What is the reasonable and necessary cash working capital allowance for EPE, calculated in accordance with Commission rules?
  - a. Does EPE's lead-lag study for its proposed allowance for cash working capital comply with Commission rules?
  - b. If not, should cash working capital be set at a negative one-eighth of operations and maintenance expenses?
- 19. Does EPE have a self-insurance plan approved by the Commission? If so, please address the following issues.
  - a. What is the approved target amount for the reserve account, and is it appropriate to change that amount?
  - b. What is the amount, if any, of any shortage or surplus for the reserve account for the approved plan, and what actions, if any, should be taken to return the reserve account to the approved target amount?
- 20. What is the reasonable and necessary amount, if any, of EPE's accumulated reserve for deferred federal income taxes, excess deferred federal income taxes, unamortized investment tax credits, contingency reserves, property insurance reserves, contributions in aid of construction, customer deposits, and other sources of cost-free capital? What other items, if any, should be deducted from EPE's rate base?
- 21. What regulatory assets, if any, are appropriately included in EPE's rate base? If included, what is the appropriate treatment of such regulatory assets?
- 22. What regulatory liabilities, if any, are appropriately included in EPE's rate base? If included, what is the appropriate treatment of such regulatory liabilities?
- 23. What post-test-year adjustments for known and measurable rate-base changes to historical test-year data, if any, should be made? Do any such adjustments comply with the requirements of 16 TAC § 25.231(c)(2)(F)?

- a. Does each addition equal at least 10% of EPE's requested rate base, exclusive of post-test-year adjustments and construction work in progress?
- b. Will each plant addition be in service before the rate year begins?
- c. Have the attendant impacts on all aspects of EPE's operations (including, but not limited to, revenue, expenses, and invested capital) been identified, quantified, and matched?
- d. For any post-test-year adjustments, what future filings, if any, should EPE be required to make to verify that the plant was placed in service before the rate year begins?

**Expenses**

- 24. What are EPE's reasonable and necessary operations and maintenance expenses?
- 25. What are EPE's reasonable and necessary administrative and general expenses?
- 26. What are EPE's reasonable and necessary rate case expenses in accordance with PURA § 36.061(b)(2) and 16 TAC § 25.245? Does this amount include any anticipated expenses to appeal this proceeding or a prior rate case proceeding? Is it appropriate to recover expenses associated with appeals of prior Commission orders before the appeals are completed?
- 27. What are the intervening cities' reasonable rate case expenses in accordance with PURA § 33.023(b) and 16 TAC § 25.245? Does this amount include any anticipated expenses to appeal this docket or a prior rate case proceeding?
- 28. If it is appropriate for EPE to recover rate-case expenses incurred in this proceeding after an agreed cut-off date in the manner proposed in its application?
- 29. What is EPE's reasonable and necessary depreciation expense? For each class of property, what are the proper and adequate rates and methods for depreciation, including service lives and salvage value?
- 30. What is the reasonable and necessary amount for assessments and taxes, other than federal income taxes, for EPE?
- 31. What is the reasonable and necessary amount for municipal franchise fees? What is the appropriate amount to be included in base rates?

32. What is the reasonable and necessary amount of EPE's federal income tax expense under PURA and the Commission substantive rules?
33. Is EPE's proposed treatment of federal income taxes consistent with PURA, the Commission's substantive rules, and the Commission's amended order in Docket No. 47945?<sup>1</sup>
- a. Has EPE appropriately addressed the impact of the Tax Cuts and Jobs Act of 2017 on its rates?
  - b. Has EPE returned to customers any excess revenue collected due to the reduction in the corporate federal income tax rate from 35% to 21% from January 25, 2018 through the date final rates are set in this proceeding? If not, should EPE return the excess revenue to customers and what interest rate should apply to the over-collected amount?
34. Will EPE realize any tax savings derived from liberalized depreciation and amortization, investment tax credits, or similar methods? If so, are they apportioned equitably between consumers and the utility, and are the interests of present and future customers equitably balanced as required by PURA § 36.059?
35. What is the reasonable and necessary amount for EPE's advertising expense, contributions, and donations?
36. What is EPE's reasonable and necessary amount for nuclear decommissioning expenses, if any, calculated in accordance with Commission rules?
37. Is EPE seeking approval of a self-insurance plan or changes to an existing plan? If so,
- a. Is the coverage provided by the plan in the public interest?
  - b. What property and liability losses will EPE charge to the reserve account? Are these losses that cannot be reasonably anticipated and included in operating and maintenance expenses?
  - c. What is the reasonable and necessary target amount for EPE's self-insurance reserve account?

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<sup>1</sup> *Proceeding to Investigate and Address the Effects of Tax Cuts and Jobs Act of 2017 on the Rates of Texas Investor-Owned Utility Companies*, Amended Order Related to Changes in Federal Income Tax Rates, Project No. 47945 (Feb. 15, 2018).

- d. What is the reasonable and necessary amount of annual accruals to properly fund the self-insurance reserve account?
- e. Should EPE's annual accruals for the reserve account meet or exceed the target amount, how will EPE treat the excess balance of the reserve account?
- f. Has EPE filed a cost-benefit analysis performed by a qualified independent insurance consultant? If so, please address the follow issues.
  - i. Does the cost-benefit analysis present a detailed analysis of the appropriate limits of self-insurance, an analysis of the appropriate annual accruals to build a reserve account for self-insurance, and the level at which further accruals should be decreased or terminated?
  - ii. Does the cost-benefit analysis demonstrate that, in consideration of all costs, self-insurance is a lower-cost alternative than commercial insurance?
  - iii. Does the cost-benefit analysis demonstrate that EPE's ratepayers will receive the benefits of the self-insurance plan?

38. What are EPE's reasonable and necessary expenses for pension and other post-retirement benefits, if any, calculated in accordance with PURA § 36.065 and 16 TAC § 25.231(b)(1)(H)? What is the reasonable baseline level of pension and other post-employment benefits for purposes of the expense tracker under PURA § 36.065?

- a. Has EPE established under PURA § 36.065(b) any reserve accounts for pension and other post-employment benefits?
- b. If so, has EPE recorded the proper amounts in the reserve account?
- c. Are the amounts recorded in the reserve account reasonable expenses in accordance with PURA § 36.065(d)(1)?
- d. Does the reserve account have a surplus or shortage? PURA § 36.065(c) and (d)(2). If so, how should EPE's rate base be modified to amortize, over a reasonable time, any surplus or shortage in the reserve account? PURA § 36.065(d)(3).

39. Has EPE made any payments for expenses to affiliates? If so, for each item or class of items:

- a. Are costs appropriately assigned to EPE and its affiliates?

- b. Has EPE met the standard of recovery of affiliate costs under PURA § 36.058 and Commission rules?
40. Does EPE have any competitive affiliates, as defined by 16 TAC § 25.272(c)(2)? If so, has EPE conducted any transactions with its competitive affiliates? If so, what are these transactions, have all transactions with any competitive affiliates been conducted at arm's length, and has EPE met all of the requirements of 16 TAC § 25.272 regarding such transactions? If not, what amount of expenses should be disallowed?
41. Are any of EPE's expenditures unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines?
42. What post-test-year adjustments for known and measurable changes to historical test-year-data for expenses, if any, should be made? For any such adjustments, have all the attendant impacts on all aspects of EPE's operations (including, but not limited to, revenue, expenses, and invested capital) been identified with reasonable certainty, quantified, and matched?
43. What are the appropriate amounts, if any, for transmission expenses and revenues under Federal Energy Regulatory Commission (FERC)-approved tariffs to be recovered?

**Deferred Costs**

44. Is EPE seeking to include in rates any costs previously deferred by an order of the Commission? If so, in what docket did the Commission approve deferral of the costs? Is inclusion of such deferred costs in rates necessary to carry out a provision of PURA? What is the appropriate standard by which to make this determination, and is the proposed assignment and allocation of that recovery appropriate?
45. Is EPE seeking to defer any costs, including any rate-case expenses, in this proceeding for recovery in a future proceeding? If so, what is the amount of such costs, and why were those costs incurred (or why will they be incurred)? Is deferral of those costs necessary to carry out a provision of PURA? If not, why is it necessary to defer these costs? What are the appropriate standards to make these determinations?



**Rate Design and Tariffs**

46. What are the just and reasonable rates, calculated in accordance with PURA and Commission rules? Do the rates comply with the requirements of PURA § 36.003?
47. What are the appropriate rate classes for which rates should be determined? Is EPE proposing any new rate classes? If so, why are these new rate classes needed?
48. What are the appropriate billing and usage data for EPE's test year?
- a. What known and measurable changes, if any, should be used to adjust the test-year data?
  - b. What changes, if any, are necessary to reflect abnormal weather conditions or other aberrant conditions?
49. What are the appropriate allocations of EPE's revenue requirement to jurisdictions, functions, and rate classes?
- a. Does EPE have any customer-specific contracts for the provision of transmission or distribution service? If so, identify each customer, and state whether the contract has been presented to the Commission for approval, and if so, in what docket. In addition, has EPE appropriately allocated revenues and related costs associated with such contracts? Do all allocation factors properly reflect the types of costs allocated?
  - b. What are the appropriate allocations of EPE's transmission investment, expenses, and revenues, including transmission expenses and revenues under FERC-approved tariffs, among jurisdictions?
  - c. Does EPE have any FERC-approved tariffs? If so, identify each tariff and the FERC docket in which the tariff was approved. What are the appropriate allocations of EPE's transmission investment, expenses, and revenues, including transmission expenses and revenues under those tariffs? Has EPE made appropriate allocations for import to and exports from the Electric Reliability Council of Texas (ERCOT)?

- d. What are the appropriate allocations of revenues and related costs associated with contracts that EPE enters into with wholesale customers?
50. What are the appropriate rates for exports of power from ERCOT, calculated in accordance with 16 TAC § 25.192(e) and ERCOT protocols?
51. Does EPE provide wholesale transmission service at distribution voltage to any customers? If so, has EPE properly allocated costs to, and designed rates for, those customers as required under PURA § 35.004(c)?
52. Are all rate classes at unity? If not, what is the magnitude of the deviation, and what, if anything, should be done to address the lack of unity?
53. Has EPE proposed any rate riders? If so, should any of the proposed riders be adopted? If so, what are the appropriate costs to be recovered through the riders, and what are the appropriate terms and conditions of the riders?
54. Does EPE have any existing rate riders that should be modified or terminated? What regulatory assets or other items are currently being recovered through rate riders?
55. What tariff revisions, if any, are appropriate as a result of this proceeding?
56. Are EPE's proposed changes to its rules and rate tariffs reasonable?

**Baselines for Cost-Recovery Factors**

57. Should baseline amounts be determined in this proceeding for future EPE TCRF, DCRF, PCRF, GCRR, or interim transmission cost of service filings? If so, what are the investment and expense components and amounts?

**Additional Issues**

58. Has EPE requested any exceptions to any requirements in any Commission rules? If so, what are those rule requirements, and has EPE demonstrated good cause for the exception? Should the Commission grant the exception?
59. Should the Commission approve EPE's requests for waivers of requirements, if any, in the Commission's rate filing package?

60. Has EPE complied with the Commission's final order in Docket No. 46831?<sup>2</sup>

61. Has EPE complied with the Commission's final order in Docket No. 49849?<sup>3</sup>

This proposed list of issues is not intended to be exhaustive; Staff reserves the right to raise and address other issues in the proceeding.

## **II. ISSUES NOT TO BE ADDRESSED**

Staff has not identified any issues not to be addressed in this docket.

## **III. CONCLUSION**

Staff requests that its list of issues be among the issues that will be considered by the Commission in this proceeding.

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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> *Joint Report and Application of El Paso Electric Company, Sun Jupiter Holdings LLC, and IIF US Holding 2 LP For Regulatory Approvals Under PURA §§ 14.101, 39.262, and 39.915*, Docket No. 49849, Order (Jan. 28, 2020).

Dated: June 16, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**PUC DOCKET NO. 52195  
SOAH DOCKET NO. 473-21-2606**

**CERTIFICATE OF SERVICE**

I hereby certify that, unless otherwise ordered by the presiding officer, a true and correct copy of the foregoing document was transmitted by electronic mail to the parties of record on March 16, 2020 in accordance with the Order Suspending Rules issued in Docket No. 50664.

/s/ Robert Dakota Parish  
Robert Dakota Parish