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OPEN MEETING COVER SHEET

DRAFT PRELIMINARY ORDER

MEETING DATE: June 24, 2021

DATE DELIVERED: June 17, 2021

AGENDA ITEM NO.: 22

CAPTION: **Docket No. 52195; SOAH No. 473-21-2606**
Application of El Paso Electric Company to
Change Rates

DESCRIPTION: Draft Preliminary Order

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Governor

Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

TO: Chairman Peter M. Lake
Commissioner Will McAdams

All Parties of Record

FROM: John Kelly
Commission Advising

RE: *Application of El Paso Electric Company to Change Rates*, Docket No. 52195,
SOAH Docket No. 473-21-2606, Draft Preliminary Order, June 24, 2021 Open
Meeting, Item No. 22.

DATE: June 17, 2021

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the June 24, 2021 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the June 24, 2021 open meeting.

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

APPLICATION OF EL PASO	§	PUBLIC UTILITY COMMISSION
ELECTRIC COMPANY TO CHANGE	§	
RATES	§	OF TEXAS

DRAFT PRELIMINARY ORDER

El Paso Electric Company filed an application to change its base rates and obtain other approvals. This preliminary order identifies the issues that must be addressed.

I. Overview

El Paso Electric filed a statement of intent under Public Utility Regulatory Act (PURA)¹ § 36.102 to change its rates. El Paso Electric seeks an overall increase in annual retail base rate and miscellaneous revenues of \$69.7 million that would affect all Texas retail customers. This would result in an increase of 13.55% over its adjusted test year base rate revenues. El Paso Electric asserts that this increase would be offset by the approximately \$27.9 million in combined transmission cost recovery factor (TCRF) and distribution cost recovery factor (DCRF) revenues that El Paso Electric has been collecting but would no longer collect if the DCRF and TCRF are set at zero in this proceeding. The test year for this application is January 1, 2020 through December 31, 2020. El Paso Electric proposes that the new rates be made effective July 6, 2021. El Paso Electric requests that if rates are suspended beyond the requested date, then new rates would relate back under PURA § 36.211 and be effective for consumption on and after the 155th day after the statement of intent and rate filing package was filed which would be November 3, 2021.

El Paso Electric states that it does not elect to determine its revenue requirement based on the updated test year approach allowed by PURA § 36.112(b)(2) and 16 Texas Administrative Code (TAC) § 25.246(b)(2)(B). El Paso Electric does not seek to reconcile fuel and purchased power costs in this case. In addition, El Paso Electric does not request a fuel factor change in this case.

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

The requested overall rate of return on rate base of 7.985% reflects an equity capitalization of 51% and a return on equity of 10.3%. El Paso Electric asserts that its total company rate base is \$2.04 billion, reflecting new investment in utility plant in service of \$953.3 million from October 2016, the month following the end of the test year in Docket No. 46831,² through December 30, 2020, the end of the test year in this 2021 rate case. El Paso Electric states that its increase in net plant is approximately \$425.0 million, after reflecting increases in accumulated depreciation and other plant adjustments. El Paso Electric seeks to include in rate base its investments in other capital additions made from October 2017 through December 2020, including its investment in the Palo Verde generating station as of February 1996.

II. Additional Issues

For all customer classes, El Paso Electric proposes to rename the time-of-use rate to time-of-day rate because time-of-day better describes the rate structure for customers. El Paso Electric proposes to modify the current federal tax refund factor tariff and create a new surcharge tariff for COVID-19 expenses. El Paso Electric seeks to set baseline factors for a future generation cost recovery rider, under 16 TAC § 25.248, and to potentially address its new gas-fired generation unit Newman Unit 6, which El Paso Electric expects will come online in early 2023. El Paso Electric further requests recovery of its actual rate case expenses amortized over four years.

El Paso Electric proposes the following revisions to its tariff. El Paso Electric proposes to reopen and expand the existing interruptible rate tariff, to set customer and demand charges to be closer to full cost of service and to shorten the summer period for standard rate tariffs; thereby, modifying the cost differential between on-peak period and off-peak period for time-of-day rates. El Paso Electric also describes a new service it plans to propose to support the deployment of electric vehicle charging stations consistent with the program mandated in New Mexico. El Paso Electric does not seek cost recovery related to the new electric vehicle charging station service in its application.³

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

³ Direct Testimony of James Schichtl at 35:8–9 (Jun. 1, 2021).

El Paso Electric stated that its rate filing package does not include schedule S. El Paso Electric excluded schedule S from its rate filing package consistent with the notice of approval in Docket No. 51780.⁴

III. Procedural History

El Paso Electric filed its application on June 1, 2021. On June 10, 2021, this docket was referred to the State Office of Administrative Hearings (SOAH). The City of El Paso, the Office of Public Utility Counsel, the University of Texas at El Paso, and the Texas Cotton Ginners Association filed motions to intervene.

In the order of referral to SOAH, El Paso Electric was directed and Commission Staff and other interested persons were allowed to file, by June 16, 2021, a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed. Commission Staff, El Paso Electric, and the City of El Paso each timely filed a list of issues.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the State Office of Administrative Hearings (SOAH).⁵ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Did El Paso comply with the form and instructions for the Commission's rate-filing package?
2. Is El Paso Electric's application administratively complete?
3. Did El Paso Electric provide notice that was adequate and consistent with the requirements of PURA § 36.102 and 36.103?

⁴ *Application of El Paso Electric Company for Waiver of Certain Rate Filing Package Schedules in its 2021 Rate Application*, Docket No. 51780, Notice of Approval (May 17, 2021).

⁵ Tex. Gov't Code § 2003.049(e).

4. What revenue requirement will give El Paso Electric 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 El Paso Electric'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 El Paso Electric's proposed test-year and update-period data?

Invested Capital – Rate Base and Return

7. What is the appropriate debt-to-equity capital structure for El Paso Electric?
8. What is the appropriate overall rate of return, return on equity, and cost of debt for El Paso Electric? When answering this issue, please address how the factors specified in PURA § 36.052 and 16 TAC § 25.231(c)(1) should affect El Paso Electric'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 El Paso Electric's rate base?
11. What is the original cost of El Paso Electric'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 El Paso Electric's requested invested capital or revenue requirement include any amounts no longer used and useful in the provision of electric service?
14. What is El Paso Electric's transmission cost of service determined in accordance with PURA and Commission rules?
15. What amount, if any, of El Paso Electric'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 were the investments 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 El Paso Electric's invested capital arise from payment 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 El Paso Electric seeking the inclusion of construction work in progress? If so,
- a. what is the amount sought and for what facilities; and
 - b. has El Paso Electric 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 El Paso Electric, calculated in accordance with Commission rules?
- a. Does El Paso Electric'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 negative one-eighth of operations and maintenance expenses?
19. Does El Paso Electric currently 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 El Paso Electric'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 El Paso Electric's rate base?

21. What regulatory assets are appropriately included in El Paso Electric's rate base? If included, what is the appropriate treatment of such regulatory assets?
22. What regulatory liabilities, if any, are appropriately included in El Paso Electric'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 El Paso Electric'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 all the attendant impacts on all aspects of El Paso Electric'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 El Paso Electric be required to make to verify that the plant was placed in service before the rate year begins?

Expenses

24. What are El Paso Electric's reasonable and necessary operations and maintenance expenses?
25. What are El Paso Electric's reasonable and necessary administrative and general expenses?
26. What are El Paso Electric'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 proceeding or a prior rate-case proceeding?
28. What is El Paso Electric'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?
29. What is the reasonable and necessary amount for assessments and taxes, other than federal income taxes, for El Paso Electric?
30. What is the reasonable and necessary amount for municipal franchise fees?
31. What is the reasonable and necessary amount of El Paso Electric's federal income tax expense?
32. Is El Paso Electric'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?⁶
 - a. Has El Paso Electric appropriately addressed the impact of the Tax Cuts and Jobs Act of 2017 on its rates?
 - b. Has El Paso Electric 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 El Paso Electric return the excess revenue to customers and what interest rate should apply to the over-collected amount?
33. Will El Paso Electric 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?
34. What is the reasonable and necessary amount for El Paso Electric's advertising expense, contributions, and donations?

⁶ *Proceeding to Investigate and Address the Effects of Tax Cuts and Jobs Act of 2017 on the Rates of Texas Investor-Owned Utility Companies*, Project No. 47945, Amended Order Related to Changes in Federal Income Tax Rates (Feb. 15, 2018).

35. Is El Paso Electric seeking approval of a self-insurance plan? If so, please address the following issues.

- a. Is the coverage to be provided by the plan in the public interest?
- b. What property and liability losses will El Paso Electric 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 El Paso Electric's self-insurance reserve account?
- d. What is the reasonable and necessary amount of annual accruals to properly fund the self-insurance reserve account?
- e. Should El Paso Electric's annual accruals for the reserve account meet or exceed the target amount, how will El Paso Electric treat the excess balance of the reserve account?
- f. How will El Paso Electric allocate the cost of the annual accruals to its Texas retail rate classes?
- g. Has El Paso Electric filed a cost-benefit analysis performed by a qualified independent insurance consultant? If so, please address the following 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 El Paso Electric's ratepayers will receive the benefits of the self-insurance plan?

36. What are El Paso Electric'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 El Paso Electric established under PURA § 36.065(b) any reserve accounts for pension and other post-employment benefits?
 - b. If so, has El Paso Electric recorded the proper amounts in each reserve account?
 - c. Are the amounts recorded in each reserve account reasonable expenses in accordance with PURA § 36.065(d)(1)?
 - d. Does any reserve account have a surplus or shortage under PURA § 36.065(c)? If so, how should El Paso Electric's rate base be modified to amortize, over a reasonable time, any surplus or shortage in each affected reserve account? PURA § 36.065(d)(3).
37. Has El Paso Electric made any payments for expenses to affiliates? If so, for each item or class of items,
 - a. are costs appropriately assigned to El Paso Electric and its affiliates, and
 - b. has El Paso Electric met the standard of recovery of affiliate costs under PURA § 36.058 and Commission rules?
38. Does El Paso Electric have any competitive affiliates, as defined by 16 TAC § 25.272(c)(2)? If so, has El Paso Electric 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 El Paso Electric met all of the requirements of 16 TAC § 25.272 regarding such transactions? If not, what amount of expenses should be disallowed?
39. Are any of El Paso Electric'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?
40. 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 El Paso Electric's operations (including, but not limited to, revenue, expenses, and invested capital) been identified with reasonable certainty, quantified, and matched?
41. What are the appropriate amounts, if any, for transmission expenses and revenues under Federal Energy Regulatory Commission (FERC)-approved tariffs to be recovered?
42. What is the appropriate value of bundled renewable energy credits?

43. Should the Commission approve El Paso Electric's proposed treatment of renewable energy credits sales?

Deferred Costs

44. Is El Paso Electric 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 El Paso Electric 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 by which 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 comport with the requirements in PURA § 36.003?
47. What are the appropriate rate classes for which rates should be determined? Is El Paso Electric proposing any new rate classes? If so, why are these new rate classes needed?
48. What are the appropriate billing and usage date for El Paso Electric'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 appropriate allocations of El Paso Electric's revenue requirement to jurisdictions, functions, and rate classes?
- a. What is the appropriate allocation of El Paso Electric's expenses, invested capital, and revenue to Texas retail customers?
 - b. Does El Paso Electric 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 El Paso Electric appropriately allocated revenues and related costs associated with such contracts? Do all allocation factors properly reflect the types of costs allocated?
- c. What are the appropriate allocations of El Paso Electric's transmission investment, expenses, and revenues, including transmission expenses and revenues under FERC-approved tariffs, among jurisdictions?
 - d. Does El Paso Electric 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 El Paso Electric's transmission investment, expenses, and revenues, including transmission expenses and revenues under those tariffs? Has El Paso Electric made appropriate allocations for import to and exports from the Electric Reliability Council of Texas (ERCOT)?
50. What is the appropriate amount of El Paso Electric municipal franchise fees to include in base rates? Is it appropriate to recover a portion of the municipal franchise fees through direct charges to customers in the applicable municipal jurisdictions?
51. Does El Paso Electric provide wholesale transmission service at distribution voltage to any customers? If so, has El Paso Electric 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 El Paso Electric 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 El Paso Electric 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 El Paso Electric'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 TCRF, DCRF, generation recovery factor, or interim transmission cost of service filings? If so, what are the investment and expense components and amounts?

Additional Issues

58. What changes does El Paso Electric propose to make to its interruptible rate tariff? Are the proposed changes reasonable?

59. What changes does El Paso Electric propose for setting customer and demand charges closer to full cost of service? Are the proposed changes reasonable?

60. How does El Paso Electric propose to shorten its summer period for standard rate tariffs? Are the changes reasonable?

61. How does El Paso Electric propose to modify its current federal tax refund factor tariff? Are the modifications reasonable?

62. What is the new surcharge tariff El Paso Electric proposes for COVID-19 expenses? Is the new surcharge reasonable?

63. Does El Paso Electric's request to relate the final rates in this proceeding back to usage on and after the date temporary rates are effective comply with PURA §§ 36.109 and 36.211?

64. Has El Paso Electric requested in this docket any exceptions to any requirements in any Commission rules? If so, what are those rule requirements, and has El Paso Electric demonstrated good cause for the exception? Should the Commission grant the exception?

65. Has El Paso Electric requested in this docket waivers of requirements in the Commission's rate filing package? If so, are such requests appropriate and should they be approved?

66. Has El Paso Electric complied with all requirements of the Commission's final orders in Docket Nos. 46831⁷ and 49849?⁸

⁷ *Application of El Paso Electric Company to Change Rates*, Docket No. 46831, Order (Dec. 18, 2017).

⁸ *Joint Report and Application of El Paso Electric Company, Sun Jupiter Holdings LLC, and IIF US Holding LP for Regulatory Approvals under PURA §§ 14.101, 39.262, and 39.915*, Docket No. 49849, Order (Jan. 28, 2020).

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

II. Effect of Preliminary Order

This order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of June 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER