

### **9.3. Morongo Indian Reservation**

The Morongo Band of Indians is one of several linguistically related tribal groups in south-central California collectively referred to as the *Cahuilla*. The Morongo Reservation was created in 1877 by Executive Order. The size of the Morongo Reservation got larger and smaller with subsequent Executive Orders and allotment activity. In 2003, the Reservation encompassed 32,402 acres, of which 31,115 acres were tribal lands. The Morongo Band did not organize under the IRA.

The Morongo Reservation possesses no oil, gas, or mineral resources. Nevertheless, the Morongo Band has numerous energy ROWs. The Reservation's location in southern California is an ideal east-west corridor for the transmission of natural gas, oil, and electricity. Beginning in 1995, the 50-year term of some electric and transmission line ROWs began to expire, and renewal negotiations are currently under way.

The degree of tribal involvement in negotiations for the initial energy ROWs is unclear from BIA and Morongo Band records. Appraisals were used to determine compensation for some ROWs, but there are also instances of the Morongo Band exploring alternative forms of compensation.

#### **a. Right-of-Way No. 372-Morongo-15**

In 1946, the Southern California Gas Company and the Southern Counties Gas Company of California were granted a ROW for a 30-inch gas pipeline at a rate of \$99.75 per acre for the 8.02-mile easement.<sup>205</sup> In 1966, the Band requested that Southern California Gas Company provide gas service to the Reservation. The company did so in 1968, in exchange for obtaining renewals of the 30-inch pipeline in addition to another ROW and for receiving a new ROW for a 36-inch natural gas pipeline. The estimated cost of the gas system installed by Southern California Gas Company was \$82,078.

#### **b. Right-of-Way No. 378-Morongo-143**

In April 1945, representatives from the BIA and Southern California Edison (SCE) attended a general meeting of the Morongo Band to discuss SCE's plans to build a transmission line connecting Boulder Dam to Los Angeles. Two months after the meeting, DOI granted SCE authority to construct the line. The Morongo Band, BIA, and SCE were negotiating compensation for the ROW as the transmission line was being built. The Morongo Band contested BIA's appraisal of \$25 per acre.

In November 1945, SCE requested permission for two transmission lines and a road across the Morongo Reservation. Damages were estimated at \$6,421.50, and the BIA required an annual payment of \$5 per mile. SCE agreed to pay the damages fee but balked at the annual fee. The Morongo Band pushed for payment of the annual fee and continued to protest the \$25 per acre appraisal, at one point suggesting to DOI that \$100 per acre was the appropriate land value.

The final compensation schedule for the transmission lines totaled \$6,421.50 (39 towers at \$25 per tower; \$25 per acre for dry land; \$637.50 for 2.49 acres of irrigated land) and a \$5 per mile

annual rental for an unspecified number of years. In May 1950, SCE submitted a license application to FERC's predecessor, the Federal Power Commission (FPC), for the transmission line. The 50-year license was issued in April 1954 but had a starting date of July 1, 1945.

SCE initiated the renewal process in 1992, 3 years before the ROW expiration date. The Morongo Band asserted that the FPC license, which also had a 1995 expiration date, could not be renewed by FERC, the successor agency to FPC, because the line was no longer a primary line and therefore no longer under FERC's jurisdiction. The Morongo Band reported that it had to threaten SCE with litigation to remove the line before SCE would agree to enter negotiations. Both parties have since entered into an agreement that calls for negotiations to begin in 2008 and conclude by 2010.

#### **c. Right-of-Way No. 378-Morongo-47**

In 1959, when the California Electric Power Company (CEPC) applied for a 150-foot ROW for two 115 kV transmission lines on 4.73 miles of the Reservation, the Morongo Band suggested that the company provide electric service to Reservation homes in addition to a damage fee.<sup>206</sup> CEPC was amenable to this and offered payment of \$21,000 and the provision of a distribution system to allotted lands, on the condition of receiving ROWs for the distribution lines. CEPC's \$21,000 payment was based on an appraisal of \$400 per acre, which the appraiser reduced by 40 percent on the basis that the land did not have potential for subdivision or commercial development. BIA's appraisal valued the land at \$13,250, which was 50 percent of appraised market value of the fee title. The Morongo Band accepted the company's offer.

In 1963, SCE acquired CEPC's power lines and increased the voltage of one line to 230 kV, apparently with the approval of BIA. At some point, SCE installed fiber optic lines on the ROW for its own use. In the late 1990s, SCE requested a ROW amendment to allow it to sell its excess fiber optic capacity. The amendment was agreed to for a lump sum payment of \$535,000.

#### **d. Right-of-Way No. 378-Morongo-277**

SCE's 33 kV Banning-Palm Springs electric distribution line had been licensed by FPC since 1929. After the FPC determined that the line was no longer a primary line, SCE applied for a 25-foot, 4.02-mile ROW for the line in 1969. In keeping with its BIA-approved practice of valuing easements at 50 percent of market value for lines with voltages of less than 220 kV, SCE offered \$7,155 for about 12.19 acres. It also estimated severance damages at \$1,500. The BIA stated that the appraisal was adequate compensation but noted that nothing was constraining the Morongo Band's free-bargaining position.

In a special election, the Morongo Band approved granting SCE 50-year ROWs for a 220 kV transmission line and 12 kV and 33 kV distribution lines. The lump sum payment was \$153,660.

### **9.4. Navajo Nation**

The Navajo Nation covers more than 16 million acres on the Colorado Plateau of northeast Arizona, southeast Utah, and northwest New Mexico. The Tribal Council, the legislative branch of the Navajo Nation, is composed of 88 popularly elected members.

The bulk of the Navajo Nation tribal income in the 20th century derived from energy-related mineral leases for its natural gas, oil, coal, and uranium resources. Income from oil and gas averaged \$70,000 per year from 1921 to 1937 and rose to \$1 million per year from 1938 to 1956. In the 1960s, annual averages for oil and gas income were \$18 million. In the 1970s, the Navajo started moving away from fixed royalties as the price of fossil fuels increased worldwide.

The Navajo Nation Oil and Gas Company (NOG) was chartered through DOI as a Federal corporation under Section 17 of the IRA and ratified by the Navajo Nation Council in 1998.<sup>207</sup> Five years later, NOG began developing energy resources on tribal lands by granting new oil and gas leases.<sup>208</sup>

As energy ROWs came up for renewal in the 1970s and 1980s, the Navajo Nation and energy companies negotiated consolidated easements that incorporated a number of ROWs into one package. Since the 1980s, it has been the Navajo Nation's practice to negotiate directly with ROW applicants.

#### **a. Four Corners Pipeline**

Four Corners Pipe Line Company (Four Corners) applied to BIA and the Navajo for an easement for a 16-inch oil pipeline in April 1957 and received it in May 1959. The Navajo participated in the application approval process and, at one point, withdrew its consent to the application until stipulations that had been agreed upon earlier were included in the agreement. One of the stipulations called for damages of \$1 per lineal rod. The payment of damages for the 20-year easement for 230 miles of pipeline and other facilities totaled \$199,796.

Twenty-six miles of the pipeline fell across lands subject to a land dispute between the Hopi Indians and the Navajo. Four Corners paid each tribe \$10,000 for the 26-mile segment. In April 1976, Four Corners applied to renew the ROW, set to expire in May 1977. The BIA, indicating that current market value was \$3 per rod, rejected the company's initial offer of \$2 per rod. Although Four Corners responded with an offer at the higher rate, the ROW was not renewed.

In February 1980, Four Corners requested an easement consolidating all of its ROWs on Navajo Nation lands. The subsequent 1981 agreement between the Navajo and Four Corners renewed all of the company's prior ROWs, both expired and unexpired.

Payment for the consolidated renewals was primarily based on throughput of hydrocarbons in the main line at \$0.03 per barrel, adjusted annually on the basis of the CPI. The first year's payment was not to be less than \$250,000 for 1981. Four Corners also paid \$900,000 for the period in which the mainline was in use but the ROW had expired. In return, the Navajo released the company from liability during that trespass. Four Corners further agreed to pay for actual damages caused by pipeline construction or operation.

In 1998, Questar Southern Trails Pipeline Company (Questar) purchased the Four Corners pipeline with the intent to convert it from oil to natural gas. Since this change required

additional construction, the 2001 agreement between Questar and the Navajo Nation to re-renew the 1981 ROW also included Navajo consent to additional ROWs for the necessary construction. The 2001 20-year ROW agreement called for undisclosed compensation in the form of 20 annual installments, with all payments after the first adjusted annually according to the CPI, annual contributions to the Navajo Nation Scholarship Program, and installation of up to six taps for delivery of gas on the Reservation.

**b. Arizona Public Service 500 kV Line**

The Arizona Public Service (APS) transmission line described in this case study runs from the Four Corners steam generating plant in New Mexico to a substation near Boulder City, Nevada. The line runs across Navajo land and passes through the Hopi Reservation before running again on Navajo land.

Final approvals for the Navajo sections of the line were granted in March 1967 for a 25-year term with an option to renew for a “like term.”<sup>209</sup> The Navajo were involved in the approval process.

In December 1991, consistent with the ROW terms, APS submitted a payment of \$108,176.47 (\$6.98 per rod) to BIA for the Navajo Nation to renew the ROW associated with the 500 kV line, but it also indicated its willingness to discuss other considerations for renewal. The Navajo Nation rejected that payment and asked the BIA to return the check to APS. The payment was resubmitted to BIA in March 1992; the check was cashed without being returned to APS.<sup>210</sup>

The Navajo rejected compensation at the same rate as the initial grant and appointed a negotiation team to seek different terms. The BIA suggested that the APS appraisal of \$4.73 to \$4.76 per rod was significantly short of the “going rate,” which was a minimum of \$45 per rod.<sup>211</sup>

By late December 1993, the Hopi Nation and Navajo Nation were part of a confidentiality agreement with SCE to negotiate the ROW renewal. SCE was involved because it had the right to use the entire capacity of the transmission line. A task force was established in 1994 to negotiate the ROW renewal with APS, SCE, the City of Los Angeles Department of Water and Power, and the Public Service Company of New Mexico.

The Navajo Nation requested BIA to return to APS any payments it had made for the ROW renewal because they were not acceptable. The ROW has not yet been renewed.<sup>212</sup>

**c. Transwestern Pipeline Company, San Juan Line**

Transwestern Pipeline Company (Transwestern) began operation of a 30-inch natural gas pipeline on the Navajo Reservation in 1960, added compression facilities in 1967, and began building loop lines in 1969. By 1980, the capacity of the Transwestern system on Navajo land was 750,000 mcf per day. Information on the initial ROW grant is not available, but it was set to expire in October 1979.

Transwestern's ROW renewal application was submitted to BIA without Navajo Nation consent. The BIA rejected the application determining that the Navajo Nation's consent was required by the Navajo Treaty of 1868 and applicable Federal regulations. Transwestern sued in Federal court to have the rejection of its application overturned, but the Navajo Nation's right to consent was upheld, and Transwestern returned to negotiations with the Navajo Nation.<sup>213</sup>

In 1984, Transwestern and the Navajo Nation developed a memorandum of understanding (MOU) that allowed Transwestern to renew its expired ROWs and extend its unexpired ROWs to a new expiration date of December 2003. The parties also reached agreement on an undisclosed settlement amount.

Transwestern and the Navajo Nation agreed to a subsequent MOU in 1991 that gave the company an option to acquire 79.5 miles of additional ROWs. Under the MOU, 25 percent of the consideration would be paid as a nonrefundable payment with the remainder (of the fee), paid when Transwestern exercised its option to acquire ROWs, adjusted according to the CPI and the actual size of the ROWs. The MOU committed Transwestern to sell and deliver up to 3,000 mcf of natural gas to the Navajo Nation upon completion of a service agreement.

In 1998, Transwestern began the process of renewing its easements scheduled to expire at the end of 2003. The company sought one grant to cover all its easements on Navajo Nation trust land. An independent appraiser estimated that the market value of the affected land ranged from \$10.69 to \$14.40 per rod. The BIA recommended instead that the market value of the land was \$25 per lineal rod.

Transwestern and the Navajo Nation agreed to an extension of the ROWs to November 2009. Transwestern's other rights would expire at that time, and the parties wanted all ROWs to have the same renewal and expiration dates.<sup>214</sup> Payment for the extension was to be made in an initial installment followed by six annual payments based on the CPI and adjusted upward but not decreased. The 2001 agreement was amended in 2004 to allow Transwestern to construct a new 36-inch, 21,415-rod pipeline, the easement for which will also expire in 2009.

#### **d. El Paso Natural Gas Company, San Juan Line**

The EPNG pipeline system on the Navajo Nation land may be the largest network of energy ROWs on tribal land. The company's pipelines also cross lands of the Southern Ute, Laguna Pueblo, Acoma Pueblo, Gila River, Tohono O'odham, and San Carlos Apache.

EPNG's first ROW on Navajo land was for a 218-mile, 24-inch natural gas pipeline. The application filed in July 1950 offered \$1 per rod (\$320 per mile) in damages, in addition to any actual damages caused by construction on agricultural or forested lands. No additional information is available on that transaction.

EPNG expanded its operations in the 1950s and 1960s to include sections of loop line that were 24, 30, and 34 inches in diameter. In 1971, EPNG applied for renewal of the main line and the loop lines in addition to other ROWs. The company sought to combine the ROWs even though expiration dates ranged from 1972 to 1986.

An appraiser for EPNG established the fee simple market value at \$25 to \$670 per acre, depending on the land type. The appraiser then discounted those values by 50 percent on the basis that the ROWs accounted for only about 50 percent of the land's value. The appraiser also stated that 8 percent of the value of the land taken would be a just rental rate for the land. These calculations put the value of the ROWs at \$50,769. The BIA recommended a value of \$125,272 after reviewing that appraisal.

The ROWs in question were eventually renewed as two consolidated ROWs. Total compensation for the renewals was \$260,000 for tribal and allotted land. One of the new ROWs had a 14-year term, expiring in 1986, with an option to renew for an additional 20 years. Consideration for the 20-year renewal would be \$276,000, adjusted every 5 years on the basis of the CPI. The other new ROW did not include similar renewal provisions.

Negotiations to renew these ROWs began in January 1982, 4 years before their expiration date. The Navajo sought an agreement based on throughput, which EPNG opposed. At some point, the parties seemed to agree to a payment of \$600,000, but they disagreed as to what the payment covered. The Navajo claimed that the \$600,000 covered only one ROW, but EPNG asserted that it covered both. The Navajo further believed that EPNG had agreed to renegotiate consideration for all its ROWs.

The final agreement to resolve these issues required an initial \$2 million payment to the Navajo Nation and 20 annual payments of \$1.35 million, adjusted every 3 years on the basis of the CPI. Under the agreement, EPNG was allowed to acquire 15 miles of gathering lines. Rather than consolidating all of EPNG's ROWs into one easement, the agreement divided the renewals into several different easements. However, all the easements shared the same expiration date. The agreement states that this was done to ease the administrative burdens on both parties.<sup>215</sup>

When EPNG submitted the official renewal applications in 1985, it included appraisal information estimating the value of the land at \$15 per rod. The BIA noted that the rate for other pipelines ranged from \$20 to \$40 per rod but that the per rod rate under the recent renewal agreement came to almost \$78.

In the ensuing years, EPNG and the Navajo have negotiated amendments to the 1985 agreement, which expired in October 2005. The easements were extended to December 31, 2006.

## **9.5. Survey Information**

EEI and INGAA conducted surveys on their members' experiences in negotiating energy ROWs on tribal lands.

### **9.5.1. Edison Electric Institute**

EEI is a trade association for shareholder-owned electric utility companies. EEI reported that its members provide electric service to 71 percent of all electric utility customers in the country and generate almost 60 percent of the electricity produced by the Nation's generators.

In its survey, EEI sought (a) information about the costs, terms, and conditions of energy ROW renewals; (b) data on the appraised value of lands included in the ROW; (c) comparative data on the terms and conditions of the ROW contract that immediately preceded the renewed ROW contract; and (d) information on the methodology used to determine the renewal cost. Member companies were asked to concentrate on energy ROW renewal transactions occurring within the past 5 years. EEI aggregated the survey results to protect the confidentiality of all parties involved.

At the request of EEI, findings from the surveys were independently verified against source documents provided by energy companies. This verification consisted of comparing source documents, supplied by the companies, to the companies' survey responses and the aggregated survey data that EEI used as the basis for its comments dated May 15, 2006. It was not feasible to verify the accuracy or completeness of the source documents provided by the energy companies.

Following this verification, EEI corrected the few differences that were found and then reaggregated the data and submitted a survey addendum dated June 21, 2006. Since several of the energy ROW renewals included in the survey had occurred more than 5 years ago, EEI revised its report to present findings of the full data set (which included all energy ROW renewals) and the 2001–2005 data set (which included only renewals that occurred during that time span).

The following data were extracted from the revised comments dated June 21, 2006, unless otherwise noted. Information presented in the following tables and in the text that expands on the information in those tables has been verified as accurately reported by EEI, unless specifically noted below.

A preliminary EEI screening survey of its 75-member base revealed that 28 companies had jurisdictional territories that overlapped tribal reservation lands, and 20 of those 28 companies had ROWs on tribal land. Eight of the 20 companies had completed renewal transactions within the past 5 years, and only one of the eight declined participation in the survey. Information was gathered on 20 energy ROWs, seven of which were renewed before 2001.

The EEI survey data showed that, on average, energy ROWs are being renewed for a shorter term of years than the ROWs that preceded them. As shown in Table 1, this was true for ROWs renewed since 2001 and for the ROWs in the entire data set.

TABLE 1 Term of Years of Energy ROW Renewals and Prior Term of Years				
Data Set	No. of ROWs	No. of Years in Duration		
		Avg.	Median	Range
2001–2005				
Term of expiring ROW	12	48	50	20–50
Term of renewed ROW	12	31	25	20–50
Full				
Term of expiring ROW	20	43	50	20–50
Term of renewed ROW	20	28	25	10–50

In Table 2, EEI compares the fair market value of land associated with existing ROWs to the cost paid for that ROW. EEI defines *fair market value* as the “economic (i.e., competitive) value of the land.”<sup>216</sup> To arrive at this fair market value, EEI calculated the market value of the land. In that calculation, EEI took into account the variation in terms of years of the renewals and whether the market value of the energy ROW was presented in a survey response as fee simple or easement.

Energy ROW prices were adjusted by EEI to reflect a usable life of 50 years. For example, a 25-year renewal compensated at \$2 million was normalized to \$4 million for 50 years. When land value was presented in a survey as fee simple, it was discounted by 50 percent in one calculation and 70 percent in another to obtain the easement value.

On the basis of a 50 percent discount, EEI calculated that the average multiple of market value was 31 for energy ROWs renewed within the last 5 years; the average multiple was 21 on the basis of a 70 percent discount. The average multiples for the full data set were 115 on the basis of the 50 percent discount and 83 on the basis of the 70 percent discount. When an outlier (1,624 times the market value) was dropped from the full data set, the average multiples were 31 and 23, respectively. These averages, medians, and ranges of multiples of market value for energy ROW renewals are presented in Table 2.

TABLE 2 ROW Renewal Compensation as Multiple of Market Value				
Data Set	No. of ROWs	Multiple of Market Value of 50%/70%		
		Avg.	Median	Range
2001–2005	12	31/22	8/6	1–150/1–107
Full	19	115/83	12/8	1–1,625/ 1–1,161
Full minus outlier	18	31/23	10/7	1–150/1–107

EEI reported that of the 12 energy ROW renewals completed within the past 5 years, when easements were assessed at 50 percent of the fee simple value, the market value was (a) paid in two cases, (b) between 2 and 4 times the market value in four cases, and (c) between 11 and 25

times in three cases; also, in three cases, compensation was between 65 and 150 times market value. When the easement value was assessed at 50 percent of the fee simple value for the full data set, the market value was (a) paid in two cases, (b) between 2 and 4 times in five cases, and (c) between 11 and 25 times in five cases; also, in five cases, compensation was between 65 and 1,625 times market value.

The EEI survey requested information on the methodologies used to establish the value of the ROW renewal. In the full data set, EEI reported that (a) tribal negotiators sought renewal fees that were based on build-around costs in five cases; (b) throughput was used in one instance; and (c) in three cases, the valuation sought was based on other recent ROW renewals. For the ROWs renewed in the 2001–2005 period, build-around costs were sought in two cases, throughput was requested once, and recent ROW renewals were used as the basis in two cases.

Another measure of energy ROW renewals used by EEI was per mile cost. EEI reported that the traditional all-inclusive costs (i.e., ROW and construction) of high-voltage, overhead transmission facilities are about \$500,000 per mile for rural land and about \$1 million per mile for suburban land. Lower-voltage transmission and distribution lines generally are hundreds of thousands of dollars per mile.<sup>217</sup> EEI clarified that the all-inclusive cost estimates are based on easements in perpetuity and not temporary permits on tribal land.<sup>218</sup>

EEI reported that the average per mile cost of ROW renewals was \$893,700 for respondents in the 2001–2006 data set and \$727,400 for respondents in the full data set. When per mile costs are normalized over a 50-year term, the average is \$1,494,900 for renewals in the past 5 years and \$1,366,000 for renewals in the full data set. Additional data on per mile costs of renewals are provided in Table 3.

TABLE 3 ROW Renewal Costs on a Per Mile Basis				
Data Set	No. of ROWs	Per Mile Cost (\$)		
		Avg.	Median	Range
2001–2005				
Unadjusted	11	893,700	140,500	12,800–7,300,000
Normalized	11	1,494,900	280,900	12,800–10,400,000
Full				
Unadjusted	18	727,400	146,200	12,800–7,300,000
Normalized	18	1,366,000	318,900	12,800–10,400,000

When information was available on the compensation paid for the energy ROW preceding the renewal described in the survey response, EEI calculated the multiple of the renewal price to the preceding price. Table 4 conveys the results of that analysis; however, note that (as EEI pointed out in its report) the Table 4 findings are based on relatively few data points.

TABLE 4 ROW Renewal Cost as Multiple of Previous ROW Cost				
Data Set	No. of ROWs	Multiple		
		Avg.	Median	Range
2001–2005	5	779	227	18–2,767
Full	11	863	227	10–3,812

EEI also surveyed its members on the length of time that negotiations took to reach agreements on ROW renewals. Table 5 presents those findings.

TABLE 5 ROW Renewal Negotiation Periods				
Data Set	No. of ROWs	No. of Months		
		Avg.	Median	Range
2001–2005	12	23	13	6–102
Full	20	25	14	6–102

The following qualitative information was included in EEI's May 15, 2006, comments, but it was not verified by comparing it to source documents.

EEI members noted two main reasons for the length of renewal negotiations: frequent turnover in tribal governance and long lead times for BIA actions on land appraisals. EEI observed that lengthy negotiations increase administrative costs to companies and tribes and can place companies in the position of operating beyond a ROW expiration date. Shorter terms (in years) for ROW renewals can also contribute to increased ROW administrative costs for tribes and companies.

In its report, EEI noted that if energy ROW costs increase by a factor of 227 (the median escalation over previous ROWs), total electricity costs will rise by 4 percent because of those increases.

### 9.5.2. Interstate Natural Gas Association of America

INGAA is a national, nonprofit trade association that represents the interstate natural gas pipeline industry. According to INGAA, its members account for virtually all of the natural gas transported and sold in interstate commerce.

INGAA reports that several members chose not to become involved in the survey, either out of concern that their participation could have an impact on present or future negotiations with tribes or because there was not sufficient time to gather the requested information. INGAA also states that members were reluctant to participate in the survey because the information sought either was highly sensitive business information, was subject to a confidentiality agreement, or could be used by tribes as a starting point for negotiations.

Six INGAA companies and one non-INGAA member (a products pipeline company) submitted survey information on a total of 20 energy ROWs on tribal land involving 15 different tribes in 11 States.

At INGAA's request, the Departments verified its use of survey data. As in the case of the EEI survey, this verification consisted of comparing INGAA's survey responses with information in the source documents submitted by participating companies. It was also not feasible to verify the accuracy or completeness of the source documents. In addition, because of concerns regarding the confidentiality of data, not all the companies that submitted survey information supplied source documents for the independent assessment.

The verification of the relevant documents confirmed the following findings that INGAA included in its report:

- All respondents that provided data indicated that they were paying compensation in excess of market value.
- In addition to the per rod ROW payment, many companies contributed to tribes in various forms (scholarships, recreational funds, etc.).
- The average term of years for initial and renewed ROWs was 20 years.
- Two respondents reported that ROW negotiations took at least 2 years; others reported significantly longer periods; and one reported that they took more than 10 years.

Three of the five case studies volunteered by EPNG for the INGAA report are summarized below. The information in these case studies has been verified through source documents provided by El Paso. The two remaining El Paso case studies described in the INGAA comments were summarized previously in Sections 9.2 and 9.4.

In 1993, the easement for the Plains to Gallup Crossover Line—two 30-inch, 56-mile natural gas pipelines that cross the Laguna Indian Reservation and move gas from the Permian Basin to the San Juan Basin—was appraised at a value of \$300 per acre. The negotiated settlement for a 20-year ROW renewal was approximately \$7,000 per acre.

Similarly, EPNG's negotiated settlement for a 20-year ROW renewal for 23 miles of the Crossover Line that crosses the Acoma Indian Reservation reached almost \$7,000 per acre. EPNG reported the land was appraised at \$300 per acre.

Since it began its business relationship with the Gila River Indian Community (GRIC) of Arizona in the 1930s with a 10-inch pipeline that covered 20 miles of GRIC land, EPNG acquired additional easements and now has more than 100 miles of pipeline on the land. In 1987, EPNG and GRIC negotiated an easement that would renew the ROWs for all EPNG facilities on the tribal land with a common expiration date of December 31, 1994. An approved

GRIC appraiser initially appraised the easement at \$130,000 but modified it to \$260,000. The final negotiated agreement was \$3.2 million.

When the ROW was renewed in 1994, EPNG paid \$3.588 million for a 10-year renewal. In 2004, the company paid \$5.2 million for an additional 10-year renewal in addition to payments for administrative costs, a scholarship fund, and an education fund.

INGAA included the following comment, which was not verified through source documents, in its May 15, 2006, submission: tribes generally began negotiations by requesting terms of less than 20 years, and few respondents were satisfied with the negotiations.

INGAA also included the results of a 1998 survey in its submission for the Section 1813 study. That survey is not described here because it did not differentiate between tribal and allotted lands and it included data from Canada and from ROWs other than those for oil and natural gas pipelines and electric transmission lines—the subjects of this report. Similarly, the case studies included in the INGAA report that were volunteered by a non-INGAA member are not summarized here because the company is a products pipeline company.

## **9.6. Other Case Study Reports Submitted by the Participants**

The following examples illustrating historic rates of compensation for energy ROWs on tribal land were selected from several submissions by tribes and the Federal power marketing administrations. These case studies were chosen because either they were fairly complete or they addressed issues raised in the Section 1813 study, including valuation methods and conflict adjudication processes.

Because of limited time and resources available, only the Bonneville Power Administration (BPA) case was verified. For the other cases included in this section, only summaries are provided; these cases were not verified by the Departments.

### **9.6.1. Bonneville Power Administration**

In 1978, DOE's BPA entered into an agreement with the Confederated Tribes of the Warm Springs Reservation of Oregon that provides BPA with perpetual easements for an additional-width energy ROW as well as opportunities for two future ROWs totaling a width of not more than 747.5 feet. Documentation indicates that BPA paid at least 5 times market value for the additional-width ROW.

One of the future ROWs would accommodate moving BPA's existing transmission line approximately 12 miles if the Confederated Tribes exercised that option. Compensation for the future corridors would be negotiated to be consistent with prevailing economic conditions and market values.

Pursuant to the terms of the 1978 agreement, if BPA and the Confederated Tribes were unable to agree on the proper compensation for the ROW, it would be determined by arbitration. Each party would select an arbitrator, and then these two arbitrators would select a third one. If the two arbitrators were unable to agree on a third, either party could request the Chief Judge of the

U.S. District Court for the District of Oregon to appoint the third impartial arbitrator. Thereafter, the three arbitrators would meet in formal session to hear and receive evidence from the parties concerning the compensation for the ROW. The decision of the arbitrators as to the amount of compensation would be binding on both parties.

### **9.6.2. Hopi Tribe**

The Hopi Reservation has the second-lowest percentage of households with access to electricity in the United States: 29 percent of Reservation residents live without electricity, as opposed to the national average of approximately 1 percent.<sup>219</sup>

The major provider of electric services in Arizona has a 500 kV transmission line ROW across the Hopi Reservation. Under the original 25-year term of the agreement, the Hopi Tribe was paid a total of \$755 for an approximately 50-mile ROW. In their submittal, the Hopi state, “Though there is some debate between the Tribe and the electrical provider whether the original agreement was automatically renewable at the same compensation at the end of the first 25 years, the electricity has continued to flow uninterrupted.”<sup>220</sup>

The transmission line does not provide any electricity to Hopi Reservation residents. However, the Hopi Tribe, to encourage electrification, foregoes compensation from the electric provider for ROWs providing electrical service to the Reservation. Often the Hopi Tribe pays to have these distribution lines extended pursuant to the energy provider’s policy that extensions can be charged to users on a per foot basis.

Thus, the Hopi Tribe reported that it has been paid a total of \$1,510 for a 50-year, 50-mile transmission ROW that supplies electric power to millions while supplying none to the Hopi, foregoes fees on other ROWs to supply power to its residents’ homes, and sometimes pays for the necessary extension for those distribution lines.<sup>221</sup>

APS, the holder of the ROW for the 500 kV line, stated that ROW is 97.53 miles in length and that it paid the Hopi Tribe \$755 per mile for a total payment of \$36,818.33. The resolutions approving the ROW and payment state that the second payment for the second 25-year term will be an amount equal to the first payment. APS subsequently sent payments totaling \$38,137.17.<sup>222</sup>

APS also stated that the 500 kV line does not provide electricity to any Arizona residents because 100 percent of the capacity of the line is owned by SCE.

### **9.6.3. Pueblo of Santa Ana**

In the 1980s, the Pueblo of Santa Ana negotiated 20-year ROWs for a 12-inch natural gas pipeline and a 30-inch gas pipeline at an acre per year compensation of about \$356.42 and \$143.65, respectively. Both ROWs included terms for an automatic renewal for an additional 20-year term, with compensation based on the rate of inflation. When the renewals occurred, the ROW compensations came to approximately \$697.56 and \$271.66, respectively.<sup>223</sup>

#### **9.6.4. San Xavier District of the Tohono O'Odham Nation**

In 1992, the Bureau of Reclamation acquired an easement in the City of Tucson for a high-voltage power line to connect to the Central Arizona Project pumping station. The easement crosses the San Xavier District for a distance of about 1 mile. Land to the east of the San Xavier District and land to its west were acquired from the City of Tucson and Pima County for \$7.50 per square foot.

The San Xavier District and its allottees were offered \$1.76 per square foot for the land between those easements, and the width of the easement was reduced from 60 to 30 feet. The power line has been constructed, but negotiations for appropriate compensation continue.<sup>224</sup>

#### **9.6.5. Shoshone-Bannock Tribes of the Fort Hall Reservation**

The Fort Hall Reservation has 19 electric transmission lines and 3 natural gas pipelines on its 545,000 acres. One of the earliest energy ROWs was the 50-year, 1941 grant to the Utah Power Company for a 26-mile transmission line. BIA and the company conducted negotiations for the ROW, which led to a damage assessment of \$6 per pole and a proposed \$5 per mile annual rental fee. The Shoshone-Bannock Tribes received \$177 in damages; records do not confirm that the per mile annual rental fee was ever paid.

The transmission line ROW expired in 1991. The company did not request its renewal until 2001 when, in response to an Idaho Public Utilities Commission hearing on Utah Power's proposed merger with another company, the Shoshone-Bannock Tribes testified that the company was in trespass. Within a week of the hearing, after a brief period of negotiations, the company filed a renewal that was approved for a 20-year term for an undisclosed fee.<sup>225</sup>

Two electric transmission line ROWs on the Reservation are held in perpetuity. The fees for these ROWs were \$15,050 for a 138 kV line and \$33,950 for a 345 kV line. The former ROW is 15.28 acres, and the latter is 183.56 acres.<sup>226</sup>

#### **9.6.6. Ute Indian Tribe of the Uintah and Ouray Reservation**

In addition to the case studies prepared by HRA and summarized in Section 9.1, the Northern Ute submitted additional examples of its more recent practices in consenting to energy ROWs.<sup>227</sup> Each of the case studies involved situations in which energy companies had existing energy facilities on a ROW but conducted new negotiations for access. Negotiations were needed to resolve disputed instances of trespass or remedy disputes over past performance under existing agreements. All negotiations resulted in agreements on renewals or replacement agreements. In addition, the agreements expanded the scale and the scope of the Northern Ute's and companies' energy-related activities on the Reservation.

In one case, the Northern Ute and an energy company developed several incentives to accomplish their mutual business objectives: (1) throughput fees of \$0.05 per mcf for a ROW renewal, (2) capacity priority position for the Northern Ute's royalty in-kind gas, (3) an overriding royalty to provide a ROW for each well location; (4) a commercial right for the Northern Ute to participate in any pipeline expansion and a right for it to participate in any new drilling in the area, and (5) preferential transportation cost for any third-party commercial gas.

In another case, the Northern Ute offered an energy company a concession agreement that would allow the company to manage all its ROWs on the Reservation under one master agreement. The fee for the concession agreement had a floor and ceiling to be reset on the basis of a specified index. The parties agreed that binding arbitration would be used for certain disputes if they could not resolve them amicably. The Northern Ute granted a limited waiver of sovereign immunity and agreed to submit to jurisdiction of outside legal courts for enforcement of arbitration awards.

Through negotiations in a third case, the Northern Ute was able to resolve several long-standing disputes, maintain throughput as the basis for a ROW renewal, and increase its energy development opportunities. Though characterized as tough negotiations, the outcomes created partnerships and aligned the parties' economic interests.

#### **9.6.7. Rosebud Sioux Tribe**

In 1974 and 1976, BIA signed easements for a 15-mile, 115 kV transmission line through the Rosebud Sioux Reservation. Despite statutory provisions<sup>228</sup> that ROWs over reservation lands are not to exceed a period of 50 years, the ROWs were granted in perpetuity.

The Tribal Council consented to the ROWs on the basis of the understanding that the transmission line would supply an additional source of electric energy throughout the area that would benefit the Reservation. The fees for the 1974 and 1976 ROWs were \$14,484 and \$10,520, respectively, to be paid to the Rosebud Sioux and the individual land owners whose property the ROWs crossed. The Rosebud Sioux does not have any documentation on the appraisals made for the ROWs or the distribution of payments for them.<sup>229</sup>

## Endnotes

- <sup>1</sup> See, e.g., Comments of the Edison Electric Institute 5–6 (Sept. 4, 2006); Comments of the Fair Access to Energy Coalition (FAIR) 19 (Sept. 4, 2006).
- <sup>2</sup> Comments of FAIR 19 (Sept. 4, 2006).
- <sup>3</sup> Id.
- <sup>4</sup> Comments of the Edison Electric Institute 6 (Sept. 4, 2006).
- <sup>5</sup> Id.
- <sup>6</sup> Id.
- <sup>7</sup> Comments of FAIR 21 (Sept. 4, 2006).
- <sup>8</sup> Comments of the Isleta, Zia, and Sandia Pueblos 6 (Sept. 1, 2006).
- <sup>9</sup> Id. (emphasis in the original).
- <sup>10</sup> Public Testimony of the Jicarilla Apache Nation 1 (Mar. 7–8, 2006).
- <sup>11</sup> Id.; Comments of the Jicarilla Apache Nation 9 (May 12, 2006).
- <sup>12</sup> Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 19 (May 11, 2006) (emphasis was in the original).
- <sup>13</sup> Comments of the Pueblo of Isleta, the Mandan, Hidatsa and Arikara Nation, the Pueblo of Sandia, the Shoshone-Bannock Tribes, and the Pueblo of Zia 13 (Jan. 20, 2006).
- <sup>14</sup> Id. (citing U.S. Dep’t of Energy, Energy Consumption and Renewable Energy Development Potential on Indian Lands ix (April 2000) (*available at* <http://www.eia.doe.gov/cneaf/solar.renewables/lands/lands.pdf>) (using information from the 1990 Decennial Census).
- <sup>15</sup> Id. at 14 (citing U.S. Dep’t of Commerce, Bureau of the Census, Statistical Brief, Housing of American Indians on Reservations — Equipment and Fuels 3, table (April 1995) (*available at* [http://www.census.gov/apspd/www/statbrief/sb95\\_11.pdf](http://www.census.gov/apspd/www/statbrief/sb95_11.pdf)).
- <sup>16</sup> Id. at 12.
- <sup>17</sup> National Energy Policy Development Group, National Energy Policy viii (May 2001).
- <sup>18</sup> Id. at vii.
- <sup>19</sup> Id. at 7-1.
- <sup>20</sup> Id.
- <sup>21</sup> Id. at 7-7 and 7-8.
- <sup>22</sup> Id. at 7-5.
- <sup>23</sup> Id.
- <sup>24</sup> Id. at 7-6.
- <sup>25</sup> Id. at 7-7 and 7-8.
- <sup>26</sup> Id. at 7-12.
- <sup>27</sup> Id.
- <sup>28</sup> Id.
- <sup>29</sup> Id.
- <sup>30</sup> Id. at 7-9.
- <sup>31</sup> Id. at 7-8 to 7-9.
- <sup>32</sup> Id. at 7-9.
- <sup>33</sup> 16 U.S.C. § 824p.
- <sup>34</sup> 16 U.S.C. § 824p (a) (2).
- <sup>35</sup> 42 U.S.C. § 15926 (a).
- <sup>36</sup> 42 U.S.C. § 15926 (b).
- <sup>37</sup> 42 U.S.C. § 15926 (d).
- <sup>38</sup> 16 U.S.C. § 824p (e).
- <sup>39</sup> 25 U.S.C. § 3502.
- <sup>40</sup> 25 U.S.C. § 3504 (e).
- <sup>41</sup> 25 U.S.C. § 3504 (b).
- <sup>42</sup> 25 U.S.C. § 3504 (a) and (b).
- <sup>43</sup> 71 Fed. Reg. 48626.
- <sup>44</sup> 25 U.S.C. § 3504 (c).
- <sup>45</sup> Indian Right-of-Way Act of 1948, 62 Stat. 17, codified at 25 U.S.C. §§ 323–328.
- <sup>46</sup> The primary allotment act, which was the General Allotment Act of 1887 (also known as the Dawes Act), 24 Stat. 388, authorized the President to allot portions of tribal lands to individual Indians. Individual allotments

were to remain in trust for a period of years, allowing the individual time to assimilate, and were then to be conveyed in fee to the individual. Tribal lands not assigned to individuals were to be sold as surplus lands. The primary effect of the General Allotment Act was a reduction in Indian-held land, for a variety of reasons. It decreased from 138 million acres in 1887 to 48 million in 1934. Federal policy reversed this course with the passage of the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461 *et seq.*, which ended allotment and restored the status of tribal lands. See William C. Canby, Jr., *AMERICAN INDIAN LAW IN A NUTSHELL* 19–25 (2nd ed., 1988).

<sup>47</sup> See, e.g., 25 U.S.C. § 321; 43 U.S.C. § 961; the Act of August 5, 1882 (22 Stat. 299) (granting a ROW to Arizona Southern Railroad Co. through the Papago Indian Reservation in Arizona); Section 3 of the Act of March 2, 1889 (25 Stat. 852) (granting a ROW to Forest City and Watertown Railroad Co. through the Sioux Indian Reservation); Section 2 of the Act of June 6, 1894 (28 Stat. 87) (granting a ROW to Albany and Astoria Railroad Co. through the Grand Ronde Indian Reservation in Oregon).

<sup>48</sup> See generally COHEN's HANDBOOK OF FEDERAL INDIAN LAW 204–220 (2005 ed.).

<sup>49</sup> Comments of the Manzanita Band of Diegueno Mission Indians, St. Regis Mohawk Tribe, and Mandan, Hidatsa, and Arikara Nation 6 (April 29, 2006).

<sup>50</sup> See, e.g., Comments of the Isleta, Zia, and Sandia Pueblo (May 15, 2006); Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation cover letter (May 11, 2006).

<sup>51</sup> See, e.g., Comments of the Council of Energy Resource Tribes and National Congress of American Indians 2 (Jan. 20, 2006).

<sup>52</sup> See, e.g., Statement of the New Mexico Oil & Gas Association 2 (April 18, 2006); Comments of the Edison Electric Institute 2 (May 15, 2006).

<sup>53</sup> See, e.g., Comments of the Manzanita Band of Diegueno Mission Indians, St. Regis Mohawk Tribe, and Mandan, Hidatsa, and Arikara Nation 3–6 (April 29, 2006) (citations omitted).

<sup>54</sup> See, e.g., Comments of the Manzanita Band of Diegueno Mission Indians, St. Regis Mohawk Tribe, Mandan, Hidatsa, and Arikara Nation 6 (April 29, 2006) (citing to *Cotton Petroleum v. New Mexico*, 490 U.S. 163 (1989)); Comments Pueblo of Isleta, the Mandan, Hidatsa and Arikara Nation, the Pueblo of Sandia, the Shoshone-Bannock Tribes, and the Pueblo of Zia 24 (Jan. 20, 2006).

<sup>55</sup> See, e.g., Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 67 (May 11, 2006).

<sup>56</sup> Comments of the Confederated Tribes of the Umatilla Indian Reservation 4 (Jan. 6, 2006).

<sup>57</sup> Comments of the Pueblo of Santa Ana 5 (May 15, 2006).

<sup>58</sup> See, e.g., Comments of the Leech Lake Band of the Ojibwe 1–2 (Jan. 9, 2006); Comments of the Pueblo of Jemez 4 (Jan. 20, 2006); Comments of the Pechanga Band of Luiseño Mission Indians 7 (May 15, 2006).

<sup>59</sup> Comments of the Manzanita Band of Diegueno Mission Indians, St. Regis Mohawk Tribe, and Mandan, Hidatsa, and Arikara Nation 5 (Sept. 4, 2006).

<sup>60</sup> Indian Right-of-Way Act of 1948, Vol. 62, p. 17, 62 Stat. 17, codified at 25 U.S.C. §§ 323–328.

<sup>61</sup> Historical Research Associates, Inc., *Historic Rates of Compensation for Rights-of-Way Crossing Indian Lands, 1948–2006*, 4 n. 3, 4, and 5 (July 7, 2006).

<sup>62</sup> Act of March 2, 1899 (30 Stat. 990).

<sup>63</sup> *Id.*

<sup>64</sup> 25 U.S.C. § 321.

<sup>65</sup> *Id.*

<sup>66</sup> Act of March 4, 1911, codified at 43 U.S.C. § 961.

<sup>67</sup> *Id.*

<sup>68</sup> 25 U.S.C. § 323.

<sup>69</sup> For purposes of this discussion, the Indian Reorganization Act (25 U.S.C. § 476) and the Oklahoma Indian Welfare Act (25 U.S.C. § 503) are referred to as the “tribal organization statutes.”

<sup>70</sup> 25 U.S.C. § 324.

<sup>71</sup> 25 U.S.C. § 326.

<sup>72</sup> Historical Research Associates, Inc., *Historic Rates of Compensation for Rights-of-Way Crossing Indian Lands, 1948–2006*, 4 n. 3, 4, and 5 (July 7, 2006).

<sup>73</sup> S. Rep. No. 80-823, (Jan. 14, 1948), reprinted in 1948, U.S.C.C.A.N. 1033, pp. 1034–1036.

<sup>74</sup> *Id.* at 1036 (preserving existing statutory authority for specific types of ROWs “avoid[s] any possible confusion which may arise, particularly in the period of transition from the old system to the new”).

<sup>75</sup> 25 C.F.R. § 256.83 (1939) (although this regulation is entitled “Consent of Allottees or Tribe,” its terms only required that ROW applications be “presented” or “submitted” to tribal governments, and did not explicitly require the consent of the tribal government following such presentation or submission).

<sup>76</sup> 16 Fed. Reg. 8578 (1951).

<sup>77</sup> 25 C.F.R. § 169.3 (a) (originally this regulation was published at 25 C.F.R. Part 256. In 1957, DOI reorganized ROW regulations and placed them under Part 161 of Chapter 25).

<sup>78</sup> In 1967, DOI published a proposal to allow the Secretary to grant rights-of-way over lands of tribes that had not organized under the tribal organization statutes, without tribal consent. The House of Representatives Committee on Government Operations issued a report which concluded, “[T]he Secretary’s proposal for granting rights-of-way over tribal land without consent of the tribe which owns it violates property rights, democratic principles, and the pattern of modern Indian legislation.” HOUSE COMMITTEE ON GOVERNMENT OPERATIONS, DISPOSAL OF RIGHTS IN INDIAN TRIBAL LANDS WITHOUT TRIBAL CONSENT. H. Rep. No. 91-78, at 304 (1969). The proposal was subsequently withdrawn.

<sup>79</sup> 25 U.S.C. § 461.

<sup>80</sup> 25 U.S.C. § 450a.

<sup>81</sup> 25 U.S.C. § 450 (a) (2).

<sup>82</sup> 25 U.S.C. § 3502.

<sup>83</sup> Presidential Proclamation 7500, 66 Fed. Reg. 57641 (Nov. 12, 2001).

<sup>84</sup> Presidential Proclamation 7956, 70 Fed. Reg. 67635 (Nov. 7, 2005).

<sup>85</sup> Executive Order No. 13175, 65 Fed. Reg. 67429 (Nov. 9, 2000).

<sup>86</sup> BLACK’S LAW DICTIONARY 1402 (7th ed. 1999).

<sup>87</sup> COHEN’S HANDBOOK OF FEDERAL INDIAN LAW 205 (Aug. 2005 ed.).

<sup>88</sup> See *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832).

<sup>89</sup> COHEN’S HANDBOOK OF FEDERAL INDIAN LAW 390 (Aug. 2005 ed.).

<sup>90</sup> *United States v. Lara*, 541 U.S. 193, 200 (2004), citing *Washington v. Confederated Bands and tribes of Yakima Nation*, 439 U.S. 463, 470–71 (1979); *Negonsott v. Samuels*, 507 U.S. 99, 103 (1993); and *United States v. Wheeler*, 435 U.S. 313, 323 (1978).

<sup>91</sup> COHEN’S HANDBOOK OF FEDERAL INDIAN LAW 398 (AUG. 2005 ed.).

<sup>92</sup> *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329 (1998).

<sup>93</sup> In *Santa Clara Pueblo et al. v. Martinez et al.*, 436 U.S. 49 (1978), the Court stated that Title I of the Indian Civil Rights Act represented an exercise of Congress’ “plenary authority to limit, modify, or eliminate the powers of local self-government which the tribes otherwise possess.” *Id.* at 57-58.

<sup>94</sup> See, e.g., *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 412–13 (1968); *Santa Clara Pueblo et al. v. Martinez et al.*, 436 U.S. 49, 58 (1978); *United States v. Dion*, 476 U.S. 734, 738–39 (1986); and *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998).

<sup>95</sup> COHEN’S HANDBOOK OF FEDERAL INDIAN LAW 214 (Aug. 2005 ed.).

<sup>96</sup> COHEN’S HANDBOOK OF FEDERAL INDIAN LAW 104 (1941) (footnotes omitted) (citing to 25 U.S.C. §§ 311–322 and historical regulations at 25 C.F.R. §§ 256.24, 256.53, and 256.83).

<sup>97</sup> A trust relationship may arise when the United States is required by statute to manage or operate Indian lands or resources. See *United States v. Mitchell*, 463 U.S. 206 (1983) (specific duties defined by statute and regulation). In order for a trust to exist, the three common-law elements of a trust must be present: a trustee (the United States), a beneficiary, and a corpus (timber, lands, funds, etc.).

<sup>98</sup> 25 C.F.R. § 169.12.

<sup>99</sup> Comments of the Confederated Salish and Kootenai Tribes of the Flathead Nation 2 (April 25, 2006).

<sup>100</sup> Comments of the Shoshone-Bannock Tribes 8 (May 12, 2006).

<sup>101</sup> For the case of the Ute Indian Tribe of the Uintah and Ouray Reservation, HRA prepared the request memorandum during the site visit. For the other reservations, the request was circulated prior to HRA’s visit.

<sup>102</sup> 33 Fed. Reg. 19807 (Section 161.12).

<sup>103</sup> Comments of the Interstate Natural Gas Association of America 7 (May 15, 2006).

<sup>104</sup> Comments of the Edison Electric Institute 9 (Feb. 5, 2007).

<sup>105</sup> See, e.g., Comments of FAIR 2 (May 15, 2006); Comments of the Edison Electric Institute 14 (May 15, 2006); Comments of the Interstate Natural Gas Association of America 12 (May 15, 2006).

<sup>106</sup> Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 2 (Feb. 5, 2007).

<sup>107</sup> See, e.g., Comments of the Interstate Natural Gas Association of America 2 (May 15, 2006).

<sup>108</sup> Comments of the Edison Electric Institute 14 (May 15, 2006).

<sup>109</sup> Comments of FAIR 2 (May 15, 2006).

<sup>110</sup> Comments of Idaho Power Company 3 (Feb. 15, 2006).

<sup>111</sup> Comments of FAIR 5 (May 15, 2006).

<sup>112</sup> See, e.g., Comments of the Edison Electric Institute 10–11 (May 15, 2006); Comments of the Interstate Natural Gas Association of America 2 (May 15, 2006).

- <sup>113</sup> Comments of FAIR 2–3 (May 15, 2006).
- <sup>114</sup> *Id.* at 7–10.
- <sup>115</sup> *See, e.g.*, Comments of the Idaho Power Company 4 (Feb. 15, 2006); Comments of the Edison Electric Institute 14 (May 15, 2006).
- <sup>116</sup> *See, e.g.*, Comments of the Idaho Power Company 4 (Feb. 15, 2006); Comments of the Edison Electric Institute 10 (May 15, 2006).
- <sup>117</sup> Comments of the Interstate Natural Gas Association of America 9 (May 15, 2006).
- <sup>118</sup> *See* Comments of the Williams Company (Feb. 5, 2007).
- <sup>119</sup> *Id.*
- <sup>120</sup> *See, e.g.*, Comments of the Quechan Indian Tribe 1–2 (May 15, 2006); Comments of the Confederated Tribes of the Warm Springs Reservation of Oregon 7 (May 15, 2006).
- <sup>121</sup> *See generally* Comments of the Jicarilla Apache Nation 17–21 (May 12, 2006).
- <sup>122</sup> *See, e.g.*, Comments of the Isleta, Zia, and Sandia Pueblos 3 (May 15, 2006); Comments of the Jicarilla Apache Nation 18–19 (May 12, 2006); Comments of Pueblo of Isleta, the Mandan, Hidatsa and Arikara Nation, the Pueblo of Sandia, the Shoshone-Bannock Tribes, and the Pueblo of Zia 3–7 (Jan. 20, 2006).
- <sup>123</sup> *See, e.g.*, *Id.*; Comments of the Confederated Tribes of the Warm Springs Reservation of Oregon 3 (May 15, 2006).
- <sup>124</sup> *See, e.g.*, Comments of Pueblo of Isleta, the Mandan, Hidatsa and Arikara Nation, the Pueblo of Sandia, the Shoshone-Bannock Tribes, and the Pueblo of Zia 3–7 (Jan. 20, 2006).
- <sup>125</sup> *See, e.g.*, Comments of the Pechanga Band of Luiseño Mission Indians 5 (May 15, 2006).
- <sup>126</sup> *See generally* Seneca Leasing Act of 1950, 64 Stat. 442 (Act of Aug. 14, 1950), and Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. § 1774.
- <sup>127</sup> *See, e.g.*, Comments of the Isleta, Zia, and Sandia Pueblos 16 (May 15, 2006).
- <sup>128</sup> Comments of the Manzanita Band of Diegueno Mission Indians, St. Regis Mohawk Tribe, and Mandan, Hidatsa, and Arikara Nation 5 (Sept. 4, 2006).
- <sup>129</sup> Municipal Administrative Services, Inc., 5 and 7 (May 12, 2006) (submitted with comments of the Navajo Nation (May 13, 2006)).
- <sup>130</sup> *Id.*
- <sup>131</sup> *Id.* at 2.
- <sup>132</sup> *See, e.g.*, Comments of the Manzanita Band of Diegueno Mission Indians, St. Regis Mohawk Tribe, and Mandan, Hidatsa, and Arikara Nation 6 (April 29, 2006) (citing *Cotton Petroleum v. New Mexico*, 490 U.S. 163 (1989); Comments of the Pueblo of Isleta, the Mandan, Hidatsa and Arikara Nation, the Pueblo of Sandia, the Shoshone-Bannock Tribes, and the Pueblo of Zia 24 (Jan. 20, 2006).
- <sup>133</sup> *See, e.g.*, Comments of the Pechanga Band of Luiseño Mission Indians 7 (May 15, 2006); Comments of the Shoshone-Bannock Tribes 15 (May 12, 2006); Comments of the Isleta, Zia, and Sandia Pueblos 3 (May 15, 2006); Comments of the Jicarilla Apache Nation 13–14 (May 12, 2006).
- <sup>134</sup> *See, e.g.*, Comments of the Southern Ute Indian Tribe 5–6 (May 15, 2006); Comments of the Affiliated Tribes of Northwest Indians Economic Development Corporation 8 (May 14, 2006).
- <sup>135</sup> *See, e.g.*, Comments of the Isleta, Zia, and Sandia Pueblos 6–7 (May 15, 2006); Comments of the Jicarilla Apache Nation 18–19 (May 12, 2006); Comments of the Shoshone-Bannock Tribes 9 (May 12, 2006).
- <sup>136</sup> *See, e.g.*, Comments of the Southern Ute Indian Tribe 5–6 (May 15, 2006); Comments of the Isleta, Zia, and Sandia Pueblos 9 (May 15, 2006).
- <sup>137</sup> WINNING NEGOTIATIONS THAT PRESERVE RELATIONSHIPS 3 (Harvard Business School Press, 2004).
- <sup>138</sup> Uniform Appraisal Standards for Federal Land Acquisitions 30 (5th ed., 2000).
- <sup>139</sup> *See generally* Uniform Standards of Professional Appraisal Practice, Standard 1: “Real Property Appraisal, Development” (July 1, 2006) (*available at* <http://commerce.appraisalfoundation.org/html/2006%20USPAP/toc.htm>).
- <sup>140</sup> 16 U.S.C. § 803 (e).
- <sup>141</sup> *Id.*
- <sup>142</sup> 18 C.F.R. § 11.4 (a).
- <sup>143</sup> Comments of Sempra Energy 2 (May 15, 2006).
- <sup>144</sup> Comments of the Edison Electric Institute 5 (May 15, 2006).
- <sup>145</sup> *See generally* Comments of the Interstate Natural Gas Association of America (May 15, 2006); Comments of the Edison Electric Institute (May 15, 2006).
- <sup>146</sup> Comments of the Edison Electric Institute 12 (May 15, 2006 and Sept. 4, 2006).

- <sup>147</sup> Comments of the Edison Electric Institute 8 (June 21, 2006); Comments of the Interstate Natural Gas Association of America 8–10 (May 15, 2006).
- <sup>148</sup> Comments of the Edison Electric Institute 8 (May 15, 2006).
- <sup>149</sup> Comments of the Shoshone-Bannock Tribes 9 and 15 (May 12, 2006); Comments of the Isleta, Zia, and Sandia Pueblos 6–7 (May 15, 2006); Comments of the Ute Mountain Ute Tribe 2 (May 15, 2006); Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 87 (May 11, 2006).
- <sup>150</sup> Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 67 (May 11, 2006).
- <sup>151</sup> Comments of the Ute Mountain Ute Tribe 3 (May 15, 2006).
- <sup>152</sup> Dale M. Nesbitt, Altos Management Partners, Inc., Impacts on Natural Gas Markets of Charges Assessed for Tribal Rights-of-Way in the Southwestern United States 4 (May 15, 2006) (submitted with comments of the Southern Ute Indian Tribe (May 15, 2006)).
- <sup>153</sup> *Id.*
- <sup>154</sup> Charles J. Cicchetti, Pacific Economics Group, The Economic Implications of Navajo Right of Way Fees 8 (May 15, 2006) (submitted with comments of the Navajo Nation (May 13, 2006)).
- <sup>155</sup> Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 36–46 (May 11, 2006).
- <sup>156</sup> *Id.*
- <sup>157</sup> Comments of FAIR 9 (June 16, 2006).
- <sup>158</sup> Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 47–50 (May 11, 2006).
- <sup>159</sup> Testimony of Federal Energy Regulatory Comm’n Chairman Joseph Kelliher, House Committee on Energy and Commerce, Subcommittee on Energy and Air Quality, Summary and 6 (Nov. 2, 2005).
- <sup>160</sup> Energy Information Administration, U.S. Dep’t of Energy, Annual Energy Outlook 147 (2006).
- <sup>161</sup> Testimony of Philip D. Wright, Williams Pipeline Company, House Committee on Energy and Commerce, Subcommittee on Energy and Air Quality, 2 (Nov. 2, 2005).
- <sup>162</sup> The Brattle Group, Why Are Electricity Prices Increasing? 10 (June 2006) (percentages calculated from operation and maintenance costs shown in Figure 2-1) (*available at* <http://www.eei.org>).
- <sup>163</sup> *See* Federal Energy Regulatory Comm’n, Docket No. RP05-442.
- <sup>164</sup> *See* Federal Energy Regulatory Comm’n, Docket No. RP06-72; settlement approved *see* 117 F.E.R.C. ¶ 61,217 (Nov. 21, 2006).
- <sup>165</sup> *See* 95 F.E.R.C. ¶ 61,059.
- <sup>166</sup> Comments of the Edison Electric Institute 5 (May 15, 2006).
- <sup>167</sup> *See, e.g.,* Comments of the Shoshone-Bannock Tribes 15 (May 12, 2006).
- <sup>168</sup> *See, e.g.,* Comments of the Edison Electric Institute 2 (May 15, 2006); Comments of the Interstate Natural Gas Association of America 3 (May 15, 2006); Comments of Idaho Power Company 2 (May 15, 2006).
- <sup>169</sup> Comments of Idaho Power Company 2 (May 15, 2006).
- <sup>170</sup> Comments of the Interstate Natural Gas Association of America 3 (May 15, 2006).
- <sup>171</sup> Comments of the Edison Electric Institute 5 (May 15, 2006).
- <sup>172</sup> *Id.* At 5 n. 2 (citing 5 U.S.C. §§ 551(8) and 558(c), as interpreted by *Swinomish Tribal Community v. Federal Energy Regulatory Comm’n*, 627 F.2d 499, 506 (D.C. Cir. 1980); *Miami MDS Co. v. Federal Communications Comm’n* 14 F.3d 658, 659–60 (D.C. Cir. 1994); and *Natural Resources Defense Council, Inc. v. United States Envtl. Protection Agency*, 859 F.2d 156, 213 (D.C. Cir. 1988)).
- <sup>173</sup> *See, e.g.,* Comments of the Isleta, Zia, and Sandia Pueblos 8 (May 15, 2006); Comments of the Jicarilla Apache Nation 13 (May 15, 2006).
- <sup>174</sup> *See, e.g.,* Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 74 (May 11, 2006).
- <sup>175</sup> Comments of the Edison Electric Institute 3 (Sept. 4, 2006).
- <sup>176</sup> *See, e.g.,* Comments of Questar Southern Trails Pipeline Company 2 (May 15, 2006); Comments of the Bill Barrett Corporation 1 (March 8, 2006).
- <sup>177</sup> The Brattle Group, Why Are Electricity Prices Increasing? (June 2006) (*available at* <http://www.eei.org>).
- <sup>178</sup> National Commission on Energy Policy, Siting Critical Energy Infrastructure (June 2006) (*available at* <http://www.energycommission.org>).
- <sup>179</sup> The Brattle Group, Why Are Electricity Prices Increasing? 9 (June 2006) (*available at* <http://www.eei.org>).
- <sup>180</sup> *Id.*
- <sup>181</sup> *Id.* at 52.
- <sup>182</sup> *Id.* at 52–55.
- <sup>183</sup> *Id.* at 64.
- <sup>184</sup> National Commission on Energy Policy, Siting Critical Energy Infrastructure 18 (June 2006) (*available at* <http://www.energycommission.org>).

- <sup>185</sup> *Id.*  
<sup>186</sup> *Id.*  
<sup>187</sup> *Id.*  
<sup>188</sup> Comments of the Edison Electric Institute 12 (May 15, 2006).  
<sup>189</sup> See, e.g., Comments of Western Business Roundtable 1 (Jan. 20, 2006); Comments of Idaho Power Company 2 (May 15, 2006); Comments of the Edison Electric Institute 13 (May 15, 2006); Comments of the Interstate Natural Gas Association of America 3 (May 15, 2006).  
<sup>190</sup> Comments of the Edison Electric Institute 5 (Sept. 4, 2006).  
<sup>191</sup> Comments of the New Mexico Oil and Gas Association 1 (Jan. 20, 2006).  
<sup>192</sup> Comments of the Bill Barrett Corporation 2 (Mar. 8, 2006).  
<sup>193</sup> Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 61–62 (May 11, 2006).  
<sup>194</sup> Comments of the Southern Ute Indian Tribe 4 (May 15, 2006).  
<sup>195</sup> *Id.* at 8.  
<sup>196</sup> Comments of the Edison Electric Institute 4 (Sept. 4, 2006).  
<sup>197</sup> Comments of the Interstate Natural Gas Association 4 (Sept. 3, 2006).  
<sup>198</sup> Comments of the Edison Electric Institute 10 (Sept. 4, 2006).  
<sup>199</sup> Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 109 (May 11, 2006).  
<sup>200</sup> Comments of Greenberg Traurig 2 (Oct. 11, 2006).  
<sup>201</sup> See *Lone Wolf v. Hitchcock*, 187 U.S. 553, 564–67 (1903); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56–57 (1978); *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989) (“the central function of the Indian Commerce Clause is to provide Congress with plenary power to legislate in the field of Indian affairs.”)  
<sup>202</sup> See *United States v. Celestine*, 215 U.S. 278, 285 (1909); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56–57 (1978); *United States v. Dion*, 476 U.S. 734, 738–39 (1986); and *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998).  
<sup>203</sup> See *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 412–13 (1968); *United States v. Dion*, 476 U.S. 734, 738–39 (1986); and *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998).  
<sup>204</sup> Page 50 of the HRA Report states that the Southern Ute assigned operation of 21 acquired wells to Red Willow and retained royalty interests in 30 other wells. The Southern Ute states that it retained royalty interests in all wells on the Reservation operated by Red Willow. Comments of the Southern Ute Indian Tribe 6 (Sept. 2, 2006).  
<sup>205</sup> Comments of the Morongo Band of the Mission Indians 6 (Sept. 3, 2006) (the unit of measure stated in the HRA Report is acres, but it should be miles).  
<sup>206</sup> Comments of the Morongo Band of the Mission Indians 6 (Sept. 3, 2006) (the unit of measure stated in the HRA Report is acres, but it should be miles).  
<sup>207</sup> Comments of the Navajo Nation 8 (Sept. 1, 2006).  
<sup>208</sup> *Id.* at 9. Page 113 of the HRA Report states that the Navajo Nation had refused all offers to develop its energy reserves from 1978 to 2003. The Navajo Nation states that it granted rights to 254,000 acres to Chuska Energy Company for oil and gas exploration and development under an operating agreement signed in 1987 and that it had prior agreements with the company in 1983 and 1984.  
<sup>209</sup> HRA (Historical Research Associates, Inc.), *Historic Rates of Compensation for Rights-of-Way Crossing Indian Lands, 1948–2006* 127 (July 7, 2006).  
<sup>210</sup> Comments of Arizona Public Service Company 2–3 (Sept. 3, 2006).  
<sup>211</sup> HRA (Historical Research Associates, Inc.), *Historic Rates of Compensation for Rights-of-Way Crossing Indian Lands, 1948–2006* 129 (July 7, 2006).  
<sup>212</sup> *Id.* at 131. The HRA Report states that the easement has not been renewed. APS states that it considered the ROW renewed when the check it submitted was cashed. Comments of Arizona Public Service Company 2–3 (Feb. 5, 2007).  
<sup>213</sup> Comments of the Navajo Nation 7–8 (Sept. 1, 2006).  
<sup>214</sup> *Id.* at 8.  
<sup>215</sup> *Id.*  
<sup>216</sup> Comments of the Edison Electric Institute 6 (May 15, 2006).  
<sup>217</sup> *Id.* at 9 (May 15, 2006).  
<sup>218</sup> Comments of the Edison Electric Institute 17 (Sept. 4, 2006).  
<sup>219</sup> U.S. Department of Energy, *Energy Consumption and Renewable Energy Development Potential on Indian Lands* (2000) (*available at* <http://www.eia.doe.gov/cneaf/solar.renewables/ilands/toc.html>).  
<sup>220</sup> Comments of the Hopi Tribe 3 (May 14, 2006).  
<sup>221</sup> *Id.*

- <sup>222</sup> Comments of Arizona Public Service Company 3–4 (Sept. 3, 2006).  
<sup>223</sup> Comments of the Pueblo of Santa Ana 3 (May 15, 2006).  
<sup>224</sup> Comments of the San Xavier District of the Tohono O’odham Nation 1 (May 15, 2006).  
<sup>225</sup> Comments of the Shoshone-Bannock Tribes of the Fort Hall Reservation 9 (May 12, 2006).  
<sup>226</sup> Comments of the Shoshone-Bannock Tribes of the Fort Hall Reservation attachment (May 12, 2006).  
<sup>227</sup> Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 77–85 (May 11, 2006).  
<sup>228</sup> 43 U.S.C. § 961.6.  
<sup>229</sup> Comments of the Rosebud Sioux Tribe 3–6 (May 15, 2006).

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## **Appendix A**

The 2006 HRA document, *Historic Rates of Compensation for Rights-of-Way Crossing Indian Lands, 1948–2006*, is an appendix to this report. The HRA document is available on the included CD.

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## Appendix B

### EPAct Section 1813 Study Commenters

(*Commenter* is defined here as someone who submitted a comment in writing to the Departments. It does not include verbal comments made in pre-scoping telephone calls or at public meetings or government-to-government meetings.)

Affiliated Tribes of Northwest Indians  
Agua Caliente Band of Cahuilla Indians  
Ak Chin Indian Community Council  
Andrews Davis Corporation  
Appraisal Institute  
Arizona Corporation Commission  
Arizona Public Service Company  
Arizona Tribal Energy Association  
Arkansas Riverbed Authority  
Association of Oil Pipe Lines  
Association of Property Owners and Residents of the Port Madison Area  
Augustine Band of Cahuilla Indians  
Avista Utilities  
Bill Barret Corporation  
Birdbear, C.  
Blackfeet Nation  
Blackfeet Tribal Business Council  
Brooks, Steve  
Burton, Steven  
Chambers, Reid  
Cheyenne River Sioux Tribe  
Chickasaw Nation  
City of Toppenish (William Rogers)  
Colorado Office of Consumer Counsel  
Colorado River Indian Tribes  
Confederated Salish and Kootenai Tribes of the Flathead Nation  
Confederated Tribes of the Colville Reservation  
Confederated Tribes of the Goshute Reservation  
Confederated Tribes of the Umatilla Indian Reservation  
Confederated Tribes of the Warm Springs Reservation of Oregon  
Coquille Indian Tribe  
Cornell, Stephen  
Council of Energy Resource Tribes  
Dawson, Marlene  
Eastern Shoshone Tribe  
Edison Electric Institute  
El Paso Natural Gas Company  
Fair Access to Energy Coalition

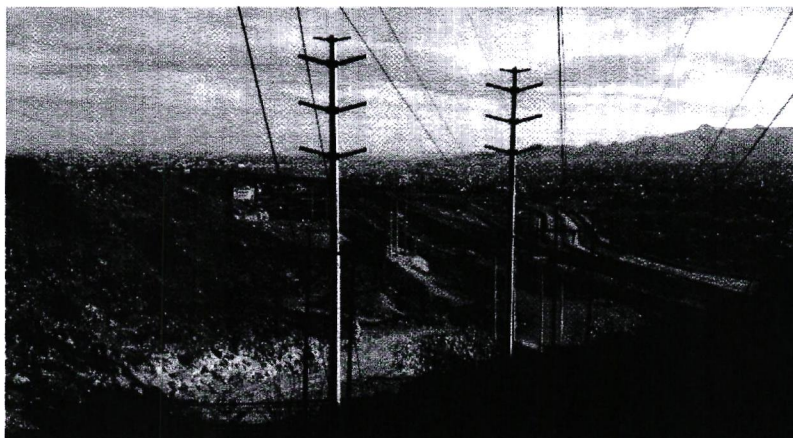
Fallon Paiute-Shoshone Tribe  
Fond du Lac Band of Lake Superior Chippewa Indians  
Fond du Lac Reservation Business Committee  
Fuelleman, Lisa  
Frye, Paul  
Governor Bill Owens (Colorado)  
Governor Bill Richardson (New Mexico)  
Hardy, Rogers and Antonia  
Harvey, Carol  
Havens, Bill  
Honorable Ben Nighthorse Campbell  
Hopi Tribe  
Hualapai Nation  
Idaho Power Company  
Interstate Natural Gas Association of America  
Inter Tribal Council of Arizona  
Intertribal Monitoring Association on Indian Trust Funds  
Jemez Pueblo  
Jicarilla Apache Nation  
Kinder Morgan Energy Partners  
Kiowa Tribe  
Kooros, Ahmed  
Lac Courte Oreilles Band of Lake Superior Ojibwe  
Leech Lake Band of Ojibwe  
Mandan, Hidatsa and Arikara Nation  
Manzanita Band of Diegueno Mission Indians  
Marek, Joanna F.  
Meloy, Charles  
Montana Wyoming Tribal Leaders Council  
Morongo Band of Mission Indians  
National Congress of American Indians  
Navajo Nation  
New Mexico Oil and Gas Association  
Nez Perce Tribe  
Oneida Tribe  
Organized Village of Kake  
Paul, Chris A.  
Pechanga Band of Luiseno Mission Indians  
Plains Pipeline  
Public Service Company of New Mexico  
Pueblo de San Ildefonso  
Pueblo of Acoma  
Pueblo of Isleta  
Pueblo of Jemez  
Pueblo of Laguna  
Pueblo of San Felipe

Pueblo of Sandia  
Pueblo of Santa Ana  
Pueblo of Zia  
Quechen Indian Tribe  
Questar Southern Trails Pipeline Company  
Quileute Indian Tribe  
Rosebud Sioux Tribe  
Sac and Fox Nation  
Sachau, B.  
Salt River Pima-Maricopa Indian Community  
Salt River Project  
San Diego Gas & Electric/Southern Cal Gas Co  
San Xavier District of the Tohono O'odham Nation  
Santa Clara Pueblo  
Sempra Energy  
Senate Chamber, State of Colorado  
Senator Wayne Allard (Colorado)  
Seneca Nation of Indians  
Severud, Timm  
Shipps, Thomas H.  
Shoshone Business Council  
Shoshone-Bannock Tribes  
Skokomish Indian Tribe  
Southern Ute Indian Tribe  
St. Regis Mohawk Tribe  
Tanana Chiefs Council  
Taos Pueblo  
TDX Power (Ron Philemonoff)  
Tohono O'odham Nation  
Town of Aurelius (Edward Ide)  
Tribal Council of the Northern Cheyenne Tribe  
Tribes of the Mni Sose Intertribal Water Rights Coalition  
Tulalip Tribes  
Ute Energy  
Ute Indian Tribe of the Uintah and Ouray Reservation  
Ute Mountain Ute  
Western Business Roundtable  
White Mountain Apache Tribe  
Williams Energy  
Williams Four Corners LLC  
Yakima Nation  
Yazzie, Vincent  
Zuni Tribe

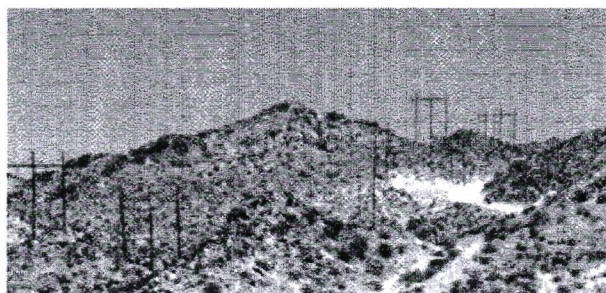
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## TL101 PROJECT PHOTOS

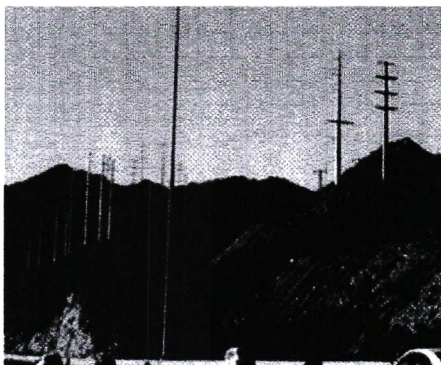
View from the mountainous portion of the rebuild showing new structures and old structures before transferring conductors.

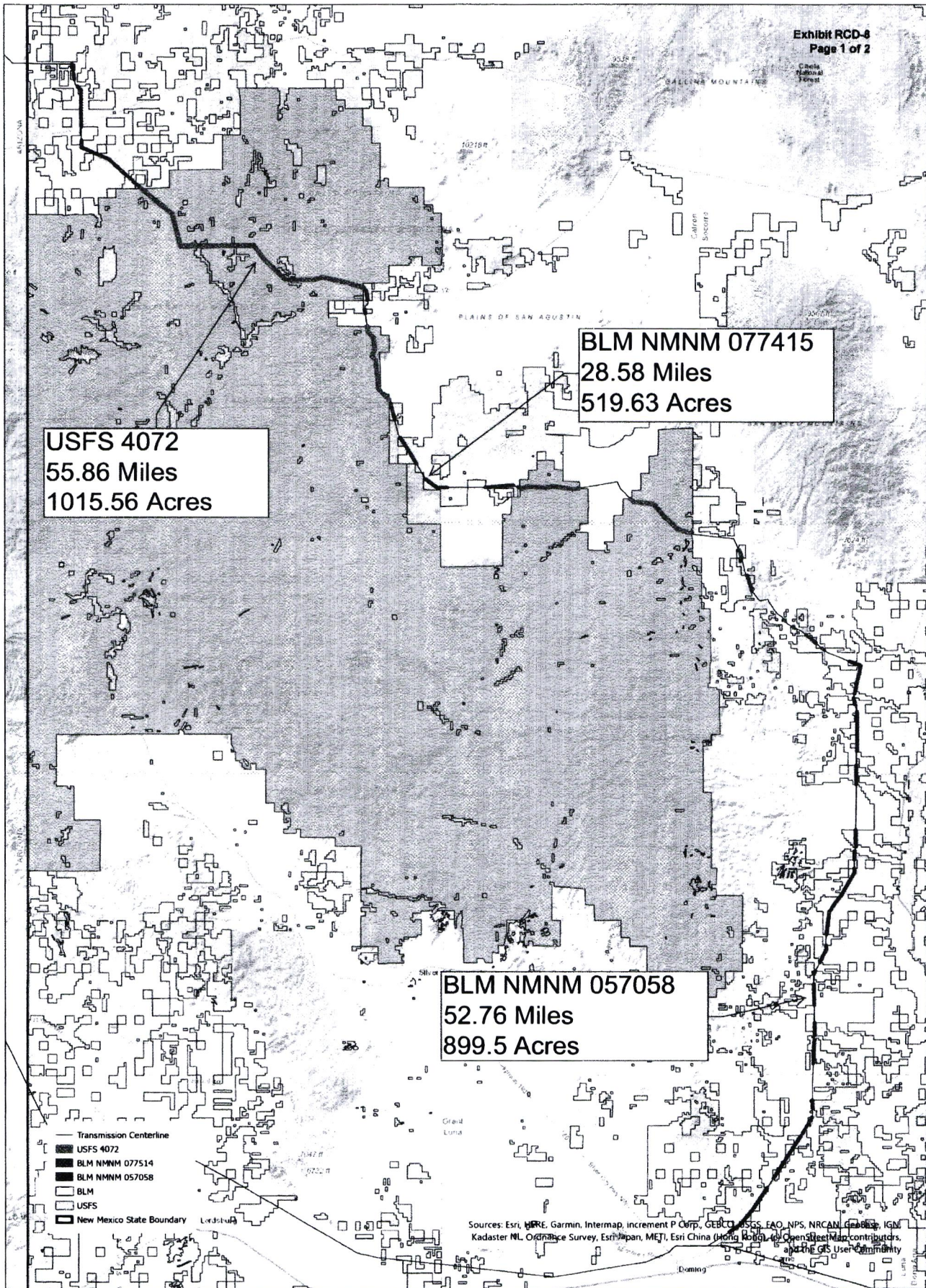


View from Interstate 10 prior to UTEP/Mountain rebuild phase of project.



View from Interstate 10 after completion of UTEP/Mountain rebuild phase of project.



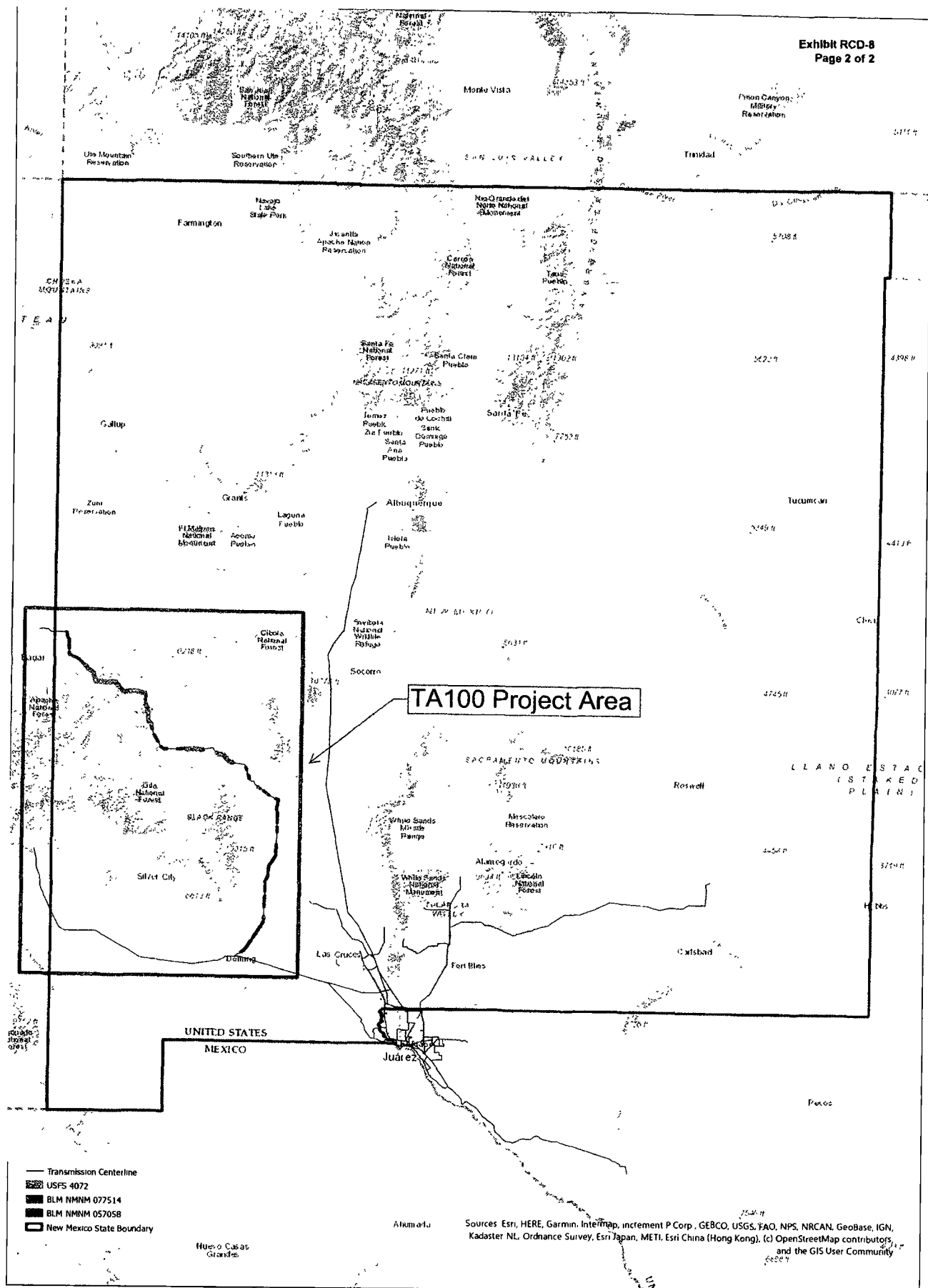


# **TA100 Project** **EPE - BLM / USFS ROW**

0 5 10 20 Miles

This product is for informational purposes only and may not have been prepared for or be suitable for legal engineering or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property from Series.

This product has been produced by El Paso Electric Company for the sole purpose of geographic reference. No warranty is made by El Paso Electric Company regarding specific accuracy or completeness.



# TA100 Project EPE - BLM / USFS ROW

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), and the GIS User Community

Exhibit RCD-9

Project Number	Description	In Service Date	Total Company Amount
TL015	TRANSMISSION LINES IMPROVEMENTS AND UPGRADES - Blanket project used for recurring transmission line improvements. This includes steel channel additions, timber replacements, structure replacements resulting from inspections, and other capital investments related to transmission lines or corridors.	Multi Year	\$ 5,039,804
TP100	PALO VERDE TRANSMISSION BLANKET - Project is used to capture allocated capital costs associated with EPE's ownership of Palo Verde transmission assets.	Multi Year	\$ 4,890,475
TL239	DURAZNO-ASCARATE 115KV TRANSMISSION LINE REBUILD - A transmission system improvement project to reconductor, for additional capacity, the 115kV transmission line between EPE's Durazno and Ascarate substations.	Multi Year	\$ 4,378,604
TH166	ARROYO-WEST MESA 345 KV LINE REPLACEMENTS/IMPROVEMENTS - Transmission blanket project to replace structures, timbers, and add line grounding to the Arroyo-West Mesa 345kV transmission line.	Multi Year	\$ 4,125,494
TL247	TXDOT TRANSMISSION LINE MODIFICATIONS - Transmission line adjustments requested by TXDOT for the Montana widening phase one project.	Multi Year	\$ 4,057,641
TL181	MONTANA SUBSTATION AND TRANSMISSION LINES - Multi-year project to construct five new 115kV lines per System Expansion Plan to carry load from new LMS100 generators at Montana Power Station.	Multi Year	\$ 3,544,863
TL293	FABENS TO FELIPE TRANSMISSION LINE UPGRADES - A transmission system improvement project to reconductor, for additional capacity, the 69 kV transmission line between EPE's Fabens and Felipe substations.	12/15/2020	\$ 3,288,981
TL240	SUNSET NORTH-DURZNO 115KV LINE UPGRADES - Project required by System Planning to upgrade the 115 kV transmission line to increase the capacity to 230 MVA for emergency rating.	9/30/2018	\$ 3,055,978
TS123	CALIENTE AUTOTRANSFORMER AND CIRCUIT BREAKER REPLACEMENT - Replacement of a 345/115 kV autotransformer and the related circuit breaker at Caliente substation. These replacements were due to age and on-going maintenance issues.	8/15/2017	\$ 2,920,232
TL189	SOL TO VISTA 115kV TRANSMISSION LINE RECONDUCTOR AND REBUILD - System Planning identified project need based on N-1 conditions. Upgrade of the Sol-Vista 115kV transmission line to 954 ACSR conductor for additional capacity. The new conductor required replacement of wood structures to steel on about 2 miles of the line.	6/3/2017	\$ 2,596,460
TS063	TRANSMISSION SUBSTATION IMPROVEMENTS BLANKET - Blanket project used to record recurring or comparatively small replacements or additions to transmission substation equipment. This equipment can include circuit breakers, switches, battery banks, relays, and other substation improvements.	Multi Year	\$ 2,390,466
TH760	SOUTHWEST NEW MEXICO TRANSMISSION BLANKET - MIXED COSTS - Original blanket project for capital costs at Greenlee, Hidalgo, and Luna 345kV substations and the transmission lines that connect them. The majority of costs included in this rate case are related to the replacement of the 200 MVAR shunt reactor and related circuit breakers at Luna substation. These replacements were due to age and on-going maintenance issues.	Multi Year	\$ 2,291,248
TE100	EMERGENCY TRANSMISSION STRUCTURE REPLACEMENT - A project to record the emergency replacement of transmission structures due to damage by the public, weather events, and aging infrastructure.	Multi Year	\$ 2,029,022
TL135	APOLLO-COX TRANSMISSION LINE REBUILD - This project was to rebuild, reinsulate, and reconductor the 69 kV transmission line between EPE's Cox and Apollo Substations to have 115kV operating capabilities. This line will be part of a larger 115 kV transmission loop system serving the Las Cruces area.	9/8/2017	\$ 1,451,173
TH360	SOUTHWEST NEW MEXICO TRANSMISSION BLANKET - SHARED - Blanket to record transmission work on facilities jointly owned at Greenlee, Hidalgo, and Luna substations. Work included necessary equipment upgrades and replacement of structures.	Multi Year	\$ 1,444,352
TS126	NEWMAN SUBSTATION T3 AND T4 REPLACEMENTS - Replacement of two transformers at Newman substation due to age and criticality of this equipment.	Multi Year	\$ 1,418,975
TL233	MONTOYA TO NUWAY TRANSMISSION LINE REROUTE - This project was to install structures and conductor into the new Nuway substation, bisecting the old Anthony to Montoya 115 kV transmission line. New structures were also installed to reroute an existing 69 kV line that was passing through the planned substation site.	3/31/2018	\$ 1,416,162
TL259	SUNSET-SANTA FE TRANSMISSION LINE UPGRADES - A transmission system improvement project to reconductor, for additional capacity, the 69 kV transmission line between EPE's Sunset and Santa Fe substations.	3/19/2019	\$ 1,357,197
TH167	AMRAD TO EDDY RIGHT OF WAY ACQUISITION AND RENEWALS - This project acquired permanent access rights from the BLM, Department of Defense, and Bureau of Reclamation for EPE's Amrad to Eddy 345 kV transmission line.	10/19/2018	\$ 1,208,067
Various	Project totals less than \$1,000,000		\$ 7,179,207

RCD - 10			
Project Number	Description	In Service Date	Total Company Amount
DT382	RIPLEY T2 TRANSFORMER, SWITCHGEAR, AND VOLTAGE REGULATOR ADDITIONS - Maintain or improve system reliability and serve load growth. Upgrades and additions to Ripley substation equipment to serve growing load	7/18/2019	\$ 3,897,918
DT379	PENDALE T2 TRANSFORMER, SWITCHGEAR, AND VOLTAGE REGULATOR ADDITIONS - Maintain or improve system reliability and serve load growth. Upgrades and additions to Pendale substation equipment to serve growing load.	12/6/2019	\$ 3,718,450
DT389	SUNSET NORTH AUTO TRANSFORMER REPLACEMENT - Maintain or improve system reliability and serve load growth. Replacement of Sunset North T1 and T3 transformers and related equipment that are at the end of their useful lives. This substation supports load for critical customers (hospitals).	Multi Year	\$ 3,656,864
DT291	GLOBAL REACH T2 AND SWITCHGEAR - Maintain or improve system reliability and serve load growth. Upgrades to Global Reach substation to serve growing load in the area.	8/2/2018	\$ 3,439,982
DT194	SUNSET 69KV-4KV TRANSFORMER, REGULATORS, AND FEEDER REPLACEMENTS - Maintain or improve system reliability. Replacement of 69kv-4kv Sunset substation switchgear and related equipment due to the breakdown of switchgear insulation resulting in gassing	Multi Year	\$ 3,020,849
DT383	PELLICANO T2 TRANSFORMER ADDITION - Maintain or improve system reliability and serve load growth. Upgrades to Pellicano substation to serve growing load in the area.	3/9/2018	\$ 2,996,995
DT184	RIO BOSQUE CAPACITOR BANK ADDITION - Provide voltage support. Installation of 2 stage 15 MVar Capacitor Banks at Rio Bosque distribution substation to stabilize voltage in the far east area of EPE service territory	5/15/2019	\$ 2,855,028
DT218	SUNSET 14KV SWITCHGEAR AND NETWORK FEEDER REPLACEMENTS - Maintain or improve system reliability. Replacement of the old 14kv switchgear and the downtown network feeders coming out of the new switchgear up to the first junctions of each feeder.	5/22/2020	\$ 2,809,949
DT416	DISTRIBUTION DUAL VOLTAGE MOBILE TRANSFORMER - Maintain or improve system reliability. Purchase of a new dual voltage mobile transformer to use as backup for transformer replacements with limited back feed options. Existing fleet of mobile transformers is from the 1950's and not sized to adequately handle each voltage in our system.	Multi Year	\$ 2,313,824
DT439	SUNSET T4 SWITCHGEAR REPLACEMENT - Maintain or improve distribution system reliability. The switchgear connected off T4 experienced equipment failure and a subsequent fire which required the replacement of the entire switchgear	9/10/2020	\$ 1,927,740
DT353	STREET CAR (TROLLEY) - CITY OF EL PASO - Replacement and relocation of distribution facilities to accommodate the City of El Paso's new downtown street car project.	Multi Year	\$ 1,850,161
DT300	FARMER 69KV 7.5 MVAR CAPACITOR BANK - Provide voltage support. Installation of 7 5MVAR capacitor bank to stabilize voltage in the far east area of EPE service territory	12/19/2016	\$ 1,841,131
DT361	SUBSTATION CIRCUIT BREAKER UPGRADES MPS - Maintain or improve system reliability and serve load growth. Replacement of circuit breakers and related equipment at distribution substations to accommodate power from the new Montana Power Station as per system studies.	Multi Year	\$ 1,742,713
DT417	MONTWOOD T1 TRANSFORMER UPGRADE TO 50 MVA - Maintain or improve system reliability and serve load growth. Upgrades transformer at Montwood substation to serve growing load and increase reliability in the event one transformer is out of service	4/15/2019	\$ 1,704,074
DT392	SOL & VISTA DISTRIBUTION SUBSTATION UPGRADES - Maintain or improve system reliability and serve load growth. Equipment upgrades at Sol and Vista substations to accommodate a new double circuit transmission line needed to support increased load capacity in the area.	6/3/2017	\$ 1,685,670
DT404	MONTWOOD SUBSTATION LAND & PRE-FAB WALL - Public safety and security. Construction of a pre-fab wall around Montwood substation as required by the land developer contract and purchase of the substation land to exit the existing lease contract.	Multi Year	\$ 1,662,443

RCD - 10			
Project Number	Description	In Service Date	Total Company Amount
DT354	NETWORK SYSTEM UPGRADE BY EATON - Maintain or improve distribution system reliability Replacement of network protectors and related equipment throughout the Downtown Network system due to equipment that has reached the end of its useful life	Multi Year	\$ 1,633,841
DT288	TRANSMOUNTAIN (NW-3) GETAWAYS/FEEDER - Maintain or improve system reliability and serve load growth Addition of feeders out of Nuway/Transmountain substation to serve growing load in the area.	Multi Year	\$ 1,613,192
DT368	RIPLEY GETAWAYS AND FEEDER ADDITIONS - Maintain or improve system reliability and serve load growth. Addition of feeders out of Ripley substation to serve growing load in the area.	Multi Year	\$ 1,568,587
DT430	FORT BLISS EMERGENCY TRANSFORMER REPLACEMENT - Emergency replacement of Fort Bliss transformer due to equipment failure Most of the substation equipment is over 50 years old and several pieces of equipment and portions of the bus had to be upgraded to accommodate the new transformer	9/29/2019	\$ 1,556,787
DT270	GLOBAL REACH SUB FEEDERS - Maintain or improve system reliability and serve load growth Addition and upgrades of feeders out of Global Reach substation to serve load growth in the area.	Multi Year	\$ 1,445,673
DT350	NEW SPARKS-T2 FEEDERS - Maintain or improve system reliability and serve load growth. Addition of feeders out of Sparks substation to serve load growth in the area.	Multi Year	\$ 1,437,027
DT377	PENDALE GETAWAYS AND FEEDER ADDITIONS - Maintain or improve system reliability and serve load growth Addition of feeders out of Pendale substation to serve growing load in the area.	Multi Year	\$ 1,431,289
DT402	TEXAS 4KV GROUNDING AND FENCING ADDITIONS - Public safety and security. Installation of grounding grid and perimeter fencing around existing 4kv substations in Texas to reduce touch potential.	Multi Year	\$ 1,385,936
DT314	TWO WAY DISTRIBUTION CAPACITOR COMMUNICATION - Provide voltage support. Replacement of the existing capacitor bank control system throughout EPE's Texas distribution system to accommodate two way communications and new capacitor bank controllers	Multi Year	\$ 1,252,972
DT203	FABENS CAPBANK ADDITION - Provide voltage support. Installation of capacitor bank at Fabens substation to stabilize voltage in the far east area of EPE service territory.	6/22/2018	\$ 1,187,305
DT369	PELLICANO T2 FEEDERS - Maintain or improve system reliability and serve load growth. Addition of new feeders out of Pellicano substation to serve growing load in the area.	Multi Year	\$ 1,151,442
DT370	EXECUTIVE (CE-1) NEW FEEDERS - Maintain or improve system reliability and serve load growth. Addition of feeders out of CE-1 temporary substation and Executive substation to serve growing load in the area.	Multi Year	\$ 1,140,587
DT230	MESA-18 RECONDUCTOR - Maintain or improve system reliability and serve load growth Replacement and installation of 336 ACSR conductor on select portions of area feeders for increased reliability in this area.	6/29/2018	\$ 1,070,441
DT437	SUNSET PERIMETER EXPANSION AND STRUCTURAL IMPROVEMENTS - Maintain or improve distribution system reliability. The perimeter of Sunset substation was expanded to allow for proper clearances between the wall and energized substation equipment, for heavy duty vehicles and equipment used during maintenance and replacement projects. In addition to a new wall, the driveways and drainage infrastructure were also replaced at Sunset. Without the expansion of the perimeter and new entry locations, sections of the wall would have to be removed and rebuilt for each future replacement of major equipment to allow enough working room for cranes to lift large equipment near energized sections of bus and transmission lines	8/1/2018	\$ 1,058,110
Various Distribution Texas	Project totals less than \$1,000,000	Multi Year	\$ 10,672,832

EL PASO ELECTRIC COMPANY

SECTION 3

LINE EXTENSION POLICY

AND

CONSTRUCTION CHARGES

**EL PASO ELECTRIC COMPANY**

**SECTION 3**

**LINE EXTENSION POLICY AND CONSTRUCTION CHARGES**

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**EL PASO ELECTRIC COMPANY**  
**STATE OF TEXAS SERVICE AREA**

Incorporated Cities and Towns

City of El Paso  
Town of Anthony  
Town of Clint  
Town of Horizon City  
City of Socorro  
Village of Vinton  
Town of Van Horn  
City of San Elizario

Unincorporated Service Areas

County of El Paso  
Portion of County of Culberson  
Portion of County of Hudspeth

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**EL PASO ELECTRIC COMPANY**

**Line Extension Policy and Construction Charges**

**PURPOSE**

It is the purpose of this document to set forth uniform and comprehensive policies concerning Line Extensions and construction charges for the entire Texas service area of El Paso Electric Company (hereinafter the "Company").

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**EL PASO ELECTRIC COMPANY**

**Line Extension Policy and Construction Charges**

**DEFINITIONS**

**A. Actual Revenue means**

The actual amount revenue received on account of the Line Extension by the Company from the Customer. The amount shall be based on monthly bills determined by the metered monthly kilowatt (kW) demand and kilowatt-hour (kWh) usage and applying the appropriate tariff schedule and riders, less the fixed fuel factor costs and taxes.

**B. Adequate Security means**

An irrevocable letter of credit, certificate of deposit, or withdrawal restricted savings account payable to the Company, in a manner acceptable to the Company, and in an amount equal to the Adjusted Revenue Obligation. Such Adequate Security shall be obtained by the Customer from or maintained by the Customer at a financial institution that is acceptable to the Company, insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA), and preferably located within the Company's service territory.

The terms and conditions of acceptable Adequate Security escrow agreements are as follows:

- (a) The Customer shall secure and maintain an escrow account at a financial institution acceptable to the Company and that is payable to the Company in the amount of the Adjusted Revenue Obligation.
- (b) The Customer's designated financial institution shall hold the escrow account in full force and effect on behalf of the Company until the Company has recovered the Extension Cost, which shall be no less than sixty (60) days after the final revenue calculations have been made.
- (c) The Company shall have the right to withdraw funds from the escrow account, only up to the Adjusted Revenue Obligation, to pay for any sums that may become due to the Company or for nonperformance of obligations under the terms of the Line Extension Agreement.
- d) For the term of the Line Extension Agreement, the Company will compute the Actual Revenue at the end of each of the Revenue Period's twelve- (12-) month periods. After the Actual Revenue calculations have been made, the Company shall recalculate the Adjusted Revenue Obligation and will promptly notify the Customer and the financial institution in writing.

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C. Adjusted Revenue Obligation means

The Revenue Guarantee Obligation reduced by any Actual Revenue earned in any of the Revenue Period's twelve- (12-) month periods.

D. Cash Advance for Construction means

A cash advance by a Customer for construction that is subject to refund either wholly or in part, depending on the amount of Actual Revenue generated over the Revenue Period.

E. Completion Date means

The date that the Company has completed its portion of the work on the Line Extension to include any electrical work, which does not necessarily include the Meter and service drop.

F. Construction Refund Cap means

The Company's design costs paid by the Customer plus the lesser of the Company's Estimated Extension Cost or the Customer's Company-approved actual costs for the construction of the Line Extension.

G. Cost of Capital Charges means

The over-all tax-effected PUCT approved cost of capital for either the Estimated Extension Cost or, upon the final accounting for the Line Extension's construction, the Extension Cost. The cost of capital shall be applied annually and based on the Company's weighted average cost of capital at the time construction of the Line Extension begins and so specified in the Line Extension Agreement.

H. Customer means

Any corporation, business establishment, institution, association, governmental entity, or individual currently being served or using electric energy supplied by the Company.

I. Customer Contribution means

A Cash Advance for Construction or a Revenue Guarantee to cover a Revenue Deficiency.

J. Ending Revenue Deficiency means

The amount by which the Extension Cost exceeds Actual Revenue received from Customers served from the Line Extension at the end of the Revenue Period.

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**Line Extension Policy and Construction Charges**

**K. Estimated Annual Revenue means**

The estimated revenue during any of the Revenue Period's twelve- (12-) month periods. The estimated revenue shall be calculated in a similar fashion as Estimated Revenue.

**L. Estimated Extension Cost means**

The Company's estimate of the Extension Cost calculated on the basis of current costs to install the same or a similar type of Line Extension.

**M. Estimated Revenue means**

The estimated revenue during the Revenue Period. The respective monthly kWh usage is determined by estimating the Customer's monthly demand, hours per day, days per week, and an average of 4.3 weeks per month, and calculated with the following formula:

$$\text{kWh} = \text{kW} * \text{hrs} * \text{days} * \text{weeks}$$

The above formula will be adjusted by a load factor and power factor, as applicable, based on the customer type and rate schedule for which the Customer qualifies. The monthly demand (kW) above is estimated based on operating and load information provided by the Customer and/or the average demand and operating characteristics of similar Customers.

The estimated revenue during the Revenue Period is determined by using the estimates of kWh and kW usage calculated by the above methods and applying the appropriate rate schedule and riders, less the fixed fuel factor costs and taxes.

**N. Extension or Line Extension means**

Depending on the context, Line Extension can mean an Overhead Line Extension, Underground Line Extension, Transmission Line Extension, or all.

**O. Extension Cost means**

The actual cost to the Company for the design, installation, acquisition of all rights of way and permits, and any other necessary costs for the Line Extension. The cost of the service drop, Meters, and metering equipment is not included in the cost of an Overhead Line Extension except for those Customers served at one of the Company's standard Transmission Voltages.

**P. Franchised Area means**

Those cities, towns, and villages in which the Company has been granted a franchise to provide electric utility service.

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**Line Extension Policy and Construction Charges**

**Q. Impaired Clearance means**

The condition where a structure(s), including, but not limited to, buildings, signs, towers, poles, fencing, and swimming pools, is located in a position or manner in which insufficient clearance, as specified by any applicable law, regulation, and local codes and the National Electric Safety Code, as may be amended, exists between the structure and the Company's existing transmission, substation, express feeder, streetlight, or distribution line facilities, or any combination thereof.

**R. Line Extension Agreement means**

The agreement entered into between the Customer and the Company in which either (1) the Company agrees to build a Line Extension in exchange for the Customer providing a Customer Contribution or (2) the Company grants the Customer a Refund Credit, subject to any reductions or refunds as outlined Sheet 6, Paragraph B.11 of Option 2, in exchange for the Customer building the Line Extension.

**S. Maximum Run means**

The maximum amount of distance as determined by Company policy at the time of construction.

**T. Meter means**

A recording instrument of standard manufacture provided by the Company to measure energy consumption, demand, or both at a single Point of Delivery.

**U. Overhead Line Extension means**

The new pole line facilities (including without limitations, poles, anchors, conductors, insulators, arresters, cut-outs, transformers, breakers, and other miscellaneous hardware) necessary to provide electric service to the Point of Delivery.

**V. Permanent Customer means**

A Customer whose service is delivered to a Permanent Installation.

**W. Permanent Installation means**

Any structure that is constructed or placed on and permanently affixed to a foundation, and that is, or will be, used or occupied on a full-time basis. A manufactured home or a prefabricated structure shall qualify as a Permanent Installation if 1) the home or structure is installed on a foundation system according to regulations of the Texas Department of Labor and Standards or is otherwise impractical to move and has the wheels, axles, and

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**Line Extension Policy and Construction Charges**

hitch or towing device removed and 2) the home or structure is connected to a permanent water and sewer system.

**X. Point of Delivery means**

The point where the Company's wires or facilities are connected with those of the Customer. For overhead service, it is the point specified by the Company where the Company's and the Customer's conductors are connected. For underground service, see Sheet No. 5, Paragraph C.A.2.

**Y. Primary Service means**

Electric service provided to a Customer at a Primary Voltage.

**Z. Primary Voltage means**

One of the Company's standard voltages between 2,400 volts and 25,000 volts.

**A1. Revenue Credit means**

The Estimated Revenue for the Revenue Period that can be used to offset the Customer's monthly bill.

**B1. Revenue Deficiency means**

The amount by which the Estimated Revenue is less than the Estimated Extension Cost.

**C1. Revenue Guarantee means**

A written agreement entered into by the Company and the Customer providing Adequate Security.

**D1. Revenue Guarantee Obligation means**

The Estimated Extension Cost plus Cost of Capital Charges or, upon the final accounting for the Line Extension's construction, the Extension Cost as adjusted for Cost of Capital Charges.

**E1. Revenue Period means**

The forty-eight- (48) months that starts with the first full-billing month that begins after the Completion Date for a Company-built Line Extension and after the closing of the sale of the Line Extension to the Company for a Customer-built Line Extension. The Revenue Period shall be divided into four separate 12-month periods, the first of which begins on the first full-billing month that begins after the Completion Date. The Revenue Period may be extended in accordance with Sheet No. 5, Paragraph B.2(b)(2) of Option 1 for

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Company-built Line Extensions or Sheet No. 5, Paragraph B.11.c for Customer-built Line Extensions.

**F1. Secondary Service means**

Electric service provided to a Customer at a Secondary Voltage.

**G1. Secondary Voltage means**

One of the Company's standard service voltages below 600 volts.

**H1. Temporary Service means**

Electric service to a Customer that is not delivered to a Permanent Structure and, in the sole opinion of the Company, is otherwise not of a permanent nature (e.g., temporary sales stands or construction sites).

**I1. Transmission Line Extension means**

The new overhead Transmission Voltage facilities including, without limitation, poles, anchors, conductors, insulators, arresters, cut-outs, transformers, breakers, and other miscellaneous hardware) necessary to provide electric service to the Point of Delivery

**J1. Transmission Voltage means**

One of the Company's standard voltages greater than or equal to 69,000 volts.

**K.2 Underground Line Extension means**

The new underground Primary or Secondary Voltage facilities including, without limitation, conduit system, pullboxes, transformer enclosure(s), transformer(s), primary voltage cables, secondary voltage cables, arrestors, switches, cut-outs, pole risers, and miscellaneous hardware necessary to provide underground service to the Point of Delivery.

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**Line Extension Policy and Construction Charges**

**POLICIES**

**A. GENERAL**

1. The policies herein contained are subject to the terms and conditions in the Company tariff schedules, the rules and regulations of the Public Utility Commission of Texas and the Company's standard operating procedures.
2. The Company will extend its facilities and provide service in a uniform and nondiscriminatory manner to all Customers within its service territory under its standard applicable rate schedules and this policy. The Company will make Extensions within its territory required to serve any Customer on a basis equitable both to the Company and the Customer.

3. Meters:

The Company will provide the Meter and designate the location of all Meters and metering equipment.

4. Type of Service:

Either single phase or three phase electrical service shall be specified by the Company and service will be at one of the Company's standard voltages (i.e., Primary or Secondary Voltage). Customers requesting three phase service must meet Company requirements.

5. Rights-of-Way (Easements):

The Company will not construct a Line Extension for a Customer until the Company has secured all required firm rights of way and permits. All Extensions shall be constructed on private rights of way, except for within incorporated municipalities where private rights of way are not available, Line Extensions may be constructed on existing public roads, streets, alleys, or easements. New Customers shall furnish such rights of way as required, without charge to the Company, over property owned or leased by said new Customers, and, if possible, will assist the Company in securing other rights of way necessary to provide service. The Customer shall have all of the Customer's property corners surveyed and necessary property irons installed by licensed surveyors to permit the Company to properly install the Company's electrical facilities within said rights of way.

6. If the Customer decides to cancel the request for a Line Extension, the Company shall have the right to recover all Extension Costs incurred by the Company. The Customer shall secure a Revenue Guarantee or otherwise have available funds to cover the Adjusted Revenue Guarantee Obligation.

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**7. Renewable Energy and Distributed Generation Information:**

The Company will inform each Customer requesting a Line Extension of the availability of information concerning on-site renewable energy and distributed generation technology alternatives. The Company shall provide a Customer with such information:

- a. Upon request by the Customer,
- b. At the same time the estimate of any required Cash Advance for Construction or other such prepayment is provided to the Customer, or
- c. Prior to the Customer signing a Line Extension Agreement if the Customer is not required to provide a Cash Advance for Construction or other such prepayment.

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**B. LINE EXTENSIONS**

**OPTION 1: LINE EXTENSIONS BUILT BY THE COMPANY**

1. General:

The Company will provide, at its expense, Primary or Secondary Service to a Permanent Customer if the Estimated Revenue equals or exceeds the Estimated Extension Cost. No extension of overhead lines will be made from underground facilities or into areas designated or committed to underground facilities. If the Company determines the Estimated Revenue from the Primary or Secondary Service Line Extension does not equal or exceed the Estimated Extension Cost, the Company shall be allowed to require a Customer Contribution for the Extension pursuant to the terms and conditions of this Line Extension Policy.

2. Revenue Deficiencies:

- a. If the Estimated Revenue results in a Revenue Deficiency, the Company is not obligated to provide the Extension unless the Customer provides a Customer Contribution. The amount of the Customer Contribution shall be provided to the Customer and will be computed using the following formula:

(1)	Estimated Annual Revenue	\$	_____	
(2)	Estimated Extension Cost	\$	_____	
(3)	Revenue Credit, if any	\$	_____	(Line 1 x 4)
(4)	Customer Contribution	\$	_____	(Line 2 less Line 3)

- b. In cases of a Revenue Deficiency, the Customer must enter into a written agreement with the Company to cover the Revenue Deficiency through a Line Extension Agreement.

(1) Cash Advance for Construction:

The Customer may enter into a Line Extension Agreement for a term that begins upon the Customer providing a Cash Advance for Construction in the amount of the Estimated Extension Cost.

(a) Individual Customer Served:

If the Extension is to an individual Customer, the Actual Revenue from the Customer shall be deducted from the Cash Advance for Construction for the Revenue Period, or until the amount advanced has been exhausted. If a balance remains after the Revenue Period, the balance reverts to the Company as a Customer Contribution. All of the fixed fuel factor costs and taxes shall be paid monthly by the Customer.

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**Line Extension Policy and Construction Charges**

(b) More Than One Customer Served:

If the Extension is to serve a group of Customers, refunds of the Cash Advance for Construction will be made annually based upon Actual Revenue received from Customers served by the Extension. If additional Customers are served from additional Line Extensions, refunds may be given as set forth in paragraph (d), which is below.

(c) Revenue Credit Given – Partial Cash Advance Required:

If the Customer is given a Revenue Credit, the Customer then may be required to make a Cash Advance for Construction for the Revenue Deficiency. Refunds will then be made only from Actual Revenue received from other Customers served when additional Line Extensions are constructed. Refunds or appropriation of the advance will be made as set forth in the following paragraph (d).

(d) 
$$R = \frac{E - C}{48} \times (48 - M), \text{ where:}$$

- R = the amount of the refund,  
E = the Estimated Revenue from Permanent Customers served from additional Line Extensions,  
C = the Estimated Extension Cost for the additional Extensions,  
M = the number of months since the Completion Date.

Note that in no case will refunds from electric bill and one-time refunds exceed the Customer's Advance for Construction.

(e) The Company will reduce or waive the Customer Contribution when portions of a Line Extension are a service betterment for existing lines which constitute an upgrade or improvement that the Company would pursue even if the Customer had not requested the Line Extension.

Following the payment of a Customer Contribution, the Company will reconcile refund balances at the end of the first twelve (12) months of the Revenue Period and thereafter annually. The interest rate that will be applied to balances subject to refund will be the annual Commission-approved interest rate for customer deposits as determined under 16 Texas Administrative Code § 25.24(g) or its successor.

(2) Revenue Guarantee:

Customers may enter into a Line Extension Agreement for a term that commences upon the execution of the Revenue Guarantee and terminates at the end of the Revenue Period. At the end of the Revenue Period, the Company

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### Line Extension Policy and Construction Charges

will determine if there is an Ending Revenue Deficiency. If there is an Ending Revenue Deficiency, Cost of Capital Charges will be assessed. The Ending Revenue Deficiency and the Cost of Capital Charges will then be due within thirty (30) days of billing.

If additional Line Extensions are connected to the original Line Extension, any Actual Revenue received from Customers served from the additional Extensions must first cover the cost of the additional Extension, including transformers, before it can be applied to the original Customer's Customer Contribution. When a Customer enters into a Revenue Guarantee to offset the Extension Cost, the Actual Revenue can come from the Customer entering into the Line Extension Agreement and other Customers who are later served from the Line Extension. If at the end of a Line Extension's term there is an expectation that the Actual Revenue will equal or exceed the Extension Cost within an additional two- (2-) year period, at the Company's option, the Line Extension Agreement's term may be extended by two (2) years.

The above terms related to Revenue Guarantees apply to individual residential Customers, commercial and industrial Customers, land developers, residential subdivision developers, and commercial and industrial subdivision/park developers.

### OPTION 2: LINE EXTENSIONS BUILT BY THE CUSTOMER

#### 1. General

Customers desiring new Line Extensions to be built to their premises may choose to have the Extension constructed by a competent and qualified electrical contractor. After construction and acceptance, the Customer shall sell the Line Extension to the Company for \$1.00 for its use in serving end-users.

Customers may choose to have only the underground structural portion of the Underground Line Extension constructed by a competent and qualified contractor. The underground structural portion of an Underground Line Extension includes all trenching, bedding, backfilling and required compaction, duct, concrete pullboxes, pullbox lids, Secondary Service enclosures, transformer pad and pullbox and transformer protection from vehicular traffic. After construction and acceptance by the Company of the structural portion of the Underground Line Extension, the Customer shall sell the underground structural system to the Company for \$1.00 for its use in serving end-users.

In recognition of the need to protect the public from electrical hazards, and the need for structural and electrical systems that are useful and safely maintainable over a normal and customary service life, the following will govern the construction of customer built electrical systems.

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**Line Extension Policy and Construction Charges**

**2. Design and Construction Specifications**

The Company will design the Line Extension required to serve the Customer, in accordance with the Company's standards and specifications, and shall provide the design drawings and specifications to the Customer. The Customer shall pay the Company for applicable design costs at the time of the closing of the Line Extension sale, which are refundable to the Customer in accordance with Paragraph 11 of this Sheet 6.

**3. Material Specifications**

The Company shall specify all materials and equipment to be used in the Line Extension including, but not limited to, wire, cable, conduit, transformers, poles, fixtures, switchgear, relays, capacitors, and insulators. The Customer shall be free to acquire said materials from any source, provided that all materials shall be from Company approved manufacturers and meet the specifications as promulgated by the Company that are in effect at the time the Customer begins construction on the Line Extension.

**4. Quality Control and Assurance**

The Customer agrees to comply with Company specifications for materials, equipment, and construction standards. In order to assure compliance, the Company will select a construction inspector who will visit the construction site. The construction inspector shall have the authority to accept or reject the work and materials of the Customer or contractor and shall certify such acceptance or rejection at the time of inspection. The function of the construction inspector shall be to verify compliance with design, materials, equipment and installation specifications, and all other matters relating to the quality control of the Line Extension's construction.

The Customer agrees to pay the Company at the closing of the sale of the Line Extension for EPE's reasonable costs incurred in the inspection of the Line Extension. The inspections costs are refundable in accordance with Paragraph 11 of this Sheet 6.

**5. Easements and Rights of Way**

The Company will secure all required firm rights of way and permits for customer-built Line Extensions, and the Customer shall pay the Company for all costs incurred by the Company for right of way acquisition. The Customer, at its option, can secure all required firm rights of way and permits. In this case, the following will apply:

- a. The Customer shall provide to the Company easements and rights of way in a Company approved format that reflect the as built configuration and location of the Line Extension.
- b. The Company will assist the Customer in securing rights of way necessary for the Extension, if requested. The Customer shall pay the Company for such assistance.

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- c. The Customer shall pay the Company for its reasonable costs incurred to verify the easements and rights of way. Rights of way verification must be completed prior to the closing of the Line Extension sale.
- d. All rights of way costs incurred by the Company shall be paid by the Customer at the time of the closing of the Line Extension sale. Such rights of way costs are refundable in accordance with Paragraph 11 of this Sheet 6.

**6. Licensing Requirements and Compliance with Required Governmental Inspections**

The Customer shall only use those contractors that are properly qualified and licensed, in accordance with any applicable state and local law and regulation, to construct the Line Extension. The Customer shall also obtain from the contractor and transfer to EPE at the closing of the sale of the Line Extension a one-year workmanship warranty as well as any standard equipment warranties for the Line Extension's components. The Customer agrees to comply with all applicable state and local construction inspection requirements.

**7. Meters**

The purchase and installation of Meters will be the sole responsibility of the Company.

**8. Purchase of System and Resulting Tax Liability**

After the Line Extension has been constructed and accepted by the Company's construction inspector, the Customer agrees to sell to the Company and the Company agrees to buy the line extension for \$1.00. This sale shall be free of any liens or encumbrances.

Should any sales or use tax liability to the Company result from the sale, the Customer agrees to pay the cost of said tax liability.

The Company and the Customer shall execute an agreement (Customer Built Line Extension) to transfer the property and to make the Customer eligible for refunds in accordance with Paragraph 11 of this Sheet 6.

**9. Property Records at the Time of Sale**

The Customer agrees to supply to the Company its actual costs incurred in constructing the Line Extension so that proper accounting of the extension may be made by the Company. The Company will review the actual costs and may, at its sole discretion, request further documentation to support the submitted actual costs. Further, the Company may, at its sole discretion, reject such costs that after review it deems unreasonable. Those costs rejected by the Company shall reduce the Customer's total actual costs, which may affect the amount of the Construction Refund Cap. The Company agrees to keep the Line Extension costs incurred by the Customer confidential unless the Company is required to disclose this information to regulatory or other governmental agencies or bodies.

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**10. Liability for the Line Extension**

Commencing with the date of sale of the Line Extension to the Company, the Company will assume full and complete operating responsibility for the Extension. The Customer shall be liable for the direct and indirect consequences of any defects or failures of the Line Extension constructed by the Customer for a period of one (1) year from the date of acceptance, unless such defects or failures arise from the Company's design, specifications, or improper operation of the Extension.

**11. Refunds for Customer Built Line Extensions**

- a. At the time of sale of the Line Extension to the Company, the Customer may receive an initial refund payment based upon the installation of permanent Meters. The revenue refund payment is based on the Estimated Revenue from the Meters over the Revenue Period and cannot exceed the Construction Refund Cap. In such cases, the amount subject to refund will be computed using the following formula:

- |   |          |
|---|----------|
| (1) Construction Refund Cap   | \$ _____ |
| (2) Total Revenue Credits for the Revenue Period<br>(Estimated Revenue) | \$ _____ |
| (3) Amount Subject to Refund<br>(Line 1 less Line 2)                    | \$ _____ |

The Customer must enter into a Line Extension Agreement with the Company to make the Customer eligible for refunds.

- b. The Amount Subject to refund will be refunded by the Company as follows:

- (1) The Company will refund at the end of each of the Revenue Period's twelve- (12-) month periods to the Customer the Actual Revenue from such period above the Revenue Credit already given for the same twelve- (12-) month period or reduce the refundable portion by Actual Revenue from the twelve- (12-) month period below the Revenue Credit already given for such twelve- (12-) month period. At no time will the Company ever refund in total more than the Construction Refund Cap.
- (2) The Company must review the account at the end of each of the Revenue Period's twelve- (12-) month periods. If at the end of a twelve- (12-) month period or the Revenue Period the total Actual Revenue exceeds the Construction Refund Cap, the Company must refund the entire amount subject to refund to the Customer.
- (3) The Company will refund an amount equal to the Actual Revenue over the Revenue Period or the Estimated Revenue of each new customer connected to

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the customer-built Line Extension, less an amount equal to the Estimated Extension Cost of the additional Extensions, including transformers. No refund shall be made for Customers connected to a new Line Extension off the original Line Extension unless the new Extension and Customers are within the area exactly described in the original Line Extension Agreement. The total of all such refunds shall in no case exceed the Construction Refund Cap. Refunds will be made annually or at shorter intervals at the option of the Company.

- c. If the Line Extension is generating sufficient revenue in the fourth (4th) twelve- (12-) month period of the Revenue Period to cover the Company's fixed costs, the Company will extend the Line Extension Agreement for an additional two (2) years.

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**Line Extension Policy and Construction Charges**

**C. SPECIAL UNDERGROUND SERVICE PROVISIONS**

**A. Secondary Voltage Underground Extensions:**

**1. Permanent New Residential Customers:**

**(1) Overhead System:**

Where 120/240-volt service is readily available from an existing overhead system, the Company will install, own, and maintain a pole riser, riser base, secondary service enclosure, and service conductors up to the Maximum Run for providing single phase underground secondary service to a Customer. The cost of installing the service enclosure and the pole riser installation shall be borne by the Customer. The Customer will supply, install, own, and maintain the conduit system from service enclosure to the Meter enclosure. The Customer-supplied conduit system must meet Company specifications and local code requirements.

**(2) Underground System:**

Where 120/240-volt service is readily available from an existing underground system, the Company will install, own, and maintain service conductors up to the Maximum Run for single phase service, in a customer supplied, owned, and maintained conduit system, from the nearest Company transformer or service enclosure to the Point of Delivery. The location of both points will be designated by the Company. The Customer-supplied conduit system must meet Company specifications and local code requirements.

**2. Point of Delivery:**

The Point of Delivery for individually served and metered permanent residential Customers requesting underground service shall be the Meter enclosure.

When multiplex residential units (duplex and above) have their Meters grouped and connected into a common gutter, the Point of Delivery shall be at a Company-owned Secondary Service enclosure or transformer as designated by the Company.

The Point of Delivery for all other Customers requesting underground service shall be the low voltage terminals of the Company's transformation unless another Point of Delivery is specified by the Company.

Customers will provide, own, and maintain all facilities beyond the Point of Delivery.

**3. Residential Subdivisions:**

In a residential subdivision, normally Underground Line Extensions must be made before construction of houses begins. The Company will install an underground distribution

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### Line Extension Policy and Construction Charges

system in a filed, dedicated subdivision after the developer has met Company requirements pertaining to the installation of other utilities and has entered into a Line Extension Agreement covering the number of residential lots to be served, the location of any necessary overhead express feeder lines, the Revenue Guarantee Obligation, the Adequate Security, and other necessary conditions as determined by the Company. The developer's Revenue Guarantee Obligation for an underground residential system will be determined using then-current material and construction costs.

No overhead or underground Secondary Voltage services will be extended from the overhead express feeder lines.

4. Commercial and Industrial Customers:

The Company will install an underground Primary Voltage or Secondary Voltage Extension to serve a commercial or an industrial Customer after the Customer has entered into a Line Extension Agreement (if needed) covering the location of the Company's new Overhead and Underground Extensions, the amount of the Revenue Guarantee if applicable, and the method of securing payment of the Revenue Guarantee. Commercial areas designated or committed to underground facilities by the Company and/or the developer or any regulatory body will only be served underground.

5. Conversion of Overhead Facilities to Underground Facilities:

Residential Service Drops:

If a residential Customer requests conversion of the Customer's existing overhead service drop to underground service, the Company will, at the Customer's expense, install underground service conductors up to the Maximum Run if the following four (4) conditions are met:

- (1) The Company supplies and installs the pole riser, riser base, Secondary Service enclosure, and any conduit between the riser base and the service enclosure. After the installation of the above facilities, the Company will assume ownership and maintenance of these facilities. The Customer must also grant any needed firm easements for this installation and for future Underground Line Extensions from the service enclosure to adjacent lot(s) as required.
- (2) The Customer supplies, installs, owns, and maintains the conduit system from the riser base or service enclosure to the Meter enclosure. The conduit system must meet Company and local code requirements.
- (3) The Customer makes any changes to the Customer's own service entrance equipment necessary to accommodate the new underground service.
- (4) The Customer pays the Company the then-current estimated cost to install and remove the overhead service drop.

The cost of installing the service pedestal and the pole riser installation shall be borne by the Customer and the Company shall own and maintain the service pedestal and the pole riser installation.

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**B. Primary Voltage Distribution Facilities:**

If the Company, in response to a Customer request, agrees to replace the Company's existing overhead facilities with underground facilities, the Customer shall pay the Company in advance the estimated installed cost of the Company's new underground facilities plus the estimated cost to remove the existing overhead facilities less the estimated salvage of the removed overhead facilities.

Commercial and industrial Customers will provide, own, and maintain all facilities beyond the new Point of Delivery.

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**D. TEMPORARY SERVICE**

A Customer requesting Temporary Service shall pay the Company in advance the estimated cost of equipment plus installation and removal expenses, less the estimated salvage value. The cost of the equipment plus installation shall be calculated in the same manner as for permanent service. The removal expenses will be estimated based on the specific equipment and installation used for the Customer and the most current standard labor cost estimates. Salvage value will be based on the specific equipment and the market value of the equipment at the time the estimate is provided.

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**E. SPECIAL SERVICES**

**1. Dual Feeders:**

Any permanent customer requesting an alternate Primary Voltage line in addition to the regular main Primary Voltage line shall either make a Customer Contribution in the amount of the Estimated Cost of the Primary Voltage Extension (including substation facilities) or enter into a written agreement to pay a monthly facilities charge equal to the Company's fixed costs on the alternate Extension.

**2. Primary and Transmission Voltage Service:**

Electric service from the Company's Primary and Transmission Voltage system is available at the Company's option to Customers whose electrical load is of such magnitude or unusual character that it should not be served otherwise. The Customer shall be responsible for providing all transformation equipment, which must be in accordance with Company specifications. The total cost of the Transmission Line Extension (including metering) shall be subject to a monthly facilities charge. The Company, at its option, may require a Customer Contribution for all or a portion of the construction costs of the Extension.

**3. Private Security Lighting or Area Lighting:**

Dusk to dawn security lighting service is available in the Company's service area under the terms and conditions of the applicable rate schedule. If 240-volt overhead service is readily available within the Maximum Run, the Company will install a standard fixture on an existing wood pole or a new wood pole located as mutually agreed to by the Company and Customer. If 240-volt overhead service is not readily available within the Maximum Run, the Extension Cost will be borne by the Customer. All requests for service from an underground system must be negotiated separately with the Company as this lighting service is not available in all underground situations.

The Company retains the right to remove a security light if it is vandalized repeatedly.

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**F. PUBLIC STREET LIGHTING, FREEWAY LIGHTING  
AND TRAFFIC SIGNAL LIGHTS**

**1. Company-Owned Street Lighting:**

Street lighting systems are normally installed, owned, and maintained by the Company. Only Company specified standard street lighting components are used in the installations. Street lighting service is available to all city, town, village, county, and state governmental entities (hereinafter referred to as "City") and will be installed only after the appropriate installation and billing authorization is received by Company in writing. This lighting service is also available to public schools for street, parking, and area lighting. All lighting service will be provided and billed under the applicable rate schedules.

**a. Lights Served from Overhead Lines:**

In areas with overhead electric distribution lines, streetlights are installed on existing wood poles. If the desired location of the new light does not have an existing pole, the Company will install one additional pole for each street light at no cost. If additional facilities are required in order to provide service to the light, the City, state entity, or school shall pay the Extension Cost as a Customer Contribution.

**b. Lights Served from Underground Facilities:**

In areas with underground electric distribution lines, street lights (including a standard wood pole) will be installed at a location designated by the City and agreed to by the Company. The Company will also install the underground conduit, service wire, and related facilities as needed. Where street lights are requested to be served underground and are installed by the Company and the street light installation will be owned by the Company, the Customer shall make a Customer Contribution for the difference between the cost of the Underground Line Extension and the four-year estimated revenue if there is a difference. The Company will install street light poles only on streets or main thoroughfares that are paved and have curbs and gutters.

**2. City-Owned Street Lighting:**

If a City desires to own street lights that are to be installed by the Company, the City shall pay the Company the total installed cost incurred by the Company. The Company will operate and maintain the lights under the applicable rate schedule. If the City specifies the materials and installation standards, they must be agreed to by the Company.

**a. Lights Served from Overhead Lines:**

In overhead served areas, the Company shall install all requested lights and related facilities at the City's cost.

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b. Lights Served from Underground Facilities:

In underground distribution areas, the Company or the City may provide and install the street lights at the City's cost. If the City provides and installs the lights (or requires a third party to do so) the Company will not assume any responsibility for operation or maintenance until after the light is connected and in service. If the Company is asked to make a connection to a new City-installed light and is unable to do so because of a faulty installation by the City, a charge for the service call equal to the Company's actual cost will be made.

3. State or City-Owned Street or Freeway Lighting:

In Franchised Areas, the Company may contract with the City to operate and maintain street lighting installed and owned by the State of Texas ("State"). In some cases, the Company may contract with a county for Interstate Highway lighting only. In the absence of such a contract, electric service for State-owned street lighting systems shall be provided under the Company's standard practice for metered commercial services and billed under the applicable rate schedule. The same terms apply to State-owned traffic signals, sign lighting, etc.

4. Relocation of Street Lights:

Street lighting facilities will be relocated for the benefit or convenience of a Customer only when written approval of the new location is received from proper county or municipal authorities and when the Customer making the request bears all relocation cost.

5. Lights in New Subdivisions with Underground Electric Facilities:

If street lights are to be installed in a subdivision, the locations shall be mutually agreed to by the City and the Company before the Company designs its underground distribution system. The necessary conduit shall be installed from the nearest Company power source location to the proposed light pole location at the time of the subdivision development. Payment for these costs will be negotiated between the parties.

6. General Information

If the City or school desires to convert an existing Company-owned mercury vapor fixture to a high pressure sodium vapor fixture or LED fixture, the City or school shall pay all the labor costs associated with the conversion and purchase the old mercury vapor fixture from the Company at the un-depreciated value.

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**G. REMOVAL AND RELOCATION**

A Customer requesting removal and/or relocation of Company facilities shall bear all costs incurred by the Company in completing the removal and/or relocation. Should a request involve providing electric service simultaneously to new or additional electrical loads, the costs incurred by the Company in completing the removal and/or relocation shall be combined with the estimated cost to provide service. This applies to the removal and/or relocation of Company facilities that will physically interfere with the development of a property or construction of a new building(s), but does not apply to the removal and/or relocation of Company facilities simply as a matter of preference or for aesthetic reasons. If removal and/or relocation would cause operating problems for the Company or is objectionable to other parties, the Company may refuse to remove and/or relocate the facilities. Relocation of Company facilities is always contingent upon the Company's securing all necessary rights of way.

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H. AFTER HOURS RATE

A Customer requesting the Company to perform work on an overtime basis shall be required to pay the appropriate after-hours rate.

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**I. RENTAL OF COMPANY EQUIPMENT**

The Company will rent certain equipment to Customers on a short-term, emergency basis, provided the items of equipment are not immediately available from local suppliers and the Company has a sufficient supply of such items in stock to meet its operating requirements. The terms and conditions of the rental transaction shall be specified in writing.

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**J. SALE OF COMPANY INSTALLED FACILITIES**

The Company, in response to a Customer request, may sell Company facilities, in place, as is, for the estimated replacement cost less depreciation on replacement cost, if:

- (1) The facilities are solely for the purpose of serving the Customer, and
- (2) The Customer is changing or expanding the Customer's electrical facilities in a manner that will include the Company's facilities as an integral part of the Customer's facilities.

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**K. IMPAIRED LINE CLEARANCE**

Any Customer who installs or constructs any permanent or temporary structure(s) that constitutes an Impaired Clearance of the Company's existing transmission, substation, express, feeder, street light or distribution line facilities, or any combination thereof, shall bear all costs incurred by the Company in the reconstruction or relocation, or both, necessary to remove any and all Impaired Clearances. The Customer shall notify the Company as soon as possible of any existing or anticipated Impaired Clearances. In accordance with Section 2.III.4.c., of the Company's Texas Rules and Regulations approved by the Public Utility Commission of Texas (PUCT), the Company may discontinue utility service to a customer without prior notice in the event of a condition determined by the Company to be hazardous.

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# REDLINE VERSION OF LINE EXTENSION POLICY

EL PASO ELECTRIC COMPANY

SECTION 3

LINE EXTENSION POLICY

AND

CONSTRUCTION CHARGES

EL PASO ELECTRIC COMPANY

SECTION 3

LINE EXTENSION POLICY AND CONSTRUCTION CHARGES

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**STATE OF TEXAS SERVICE AREA**

Incorporated Cities and Towns

City of El Paso  
Town of Anthony  
Town of Clint  
Town of Horizon City  
City of Socorro  
Village of Vinton  
Town of Van Horn  
City of San Elizario

Unincorporated Service Areas

County of El Paso  
Portion of County of Culberson  
Portion of County of Hudspeth

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**EL PASO ELECTRIC COMPANY**  
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**PURPOSE**

It is the purpose of this document to set forth uniform and comprehensive policies concerning Line Extensions and construction charges for the entire Texas service area of El Paso Electric Company (hereinafter the "Company")

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**EL PASO ELECTRIC COMPANY**  
**Line Extension Policy and Construction Charges**

**DEFINITIONS**

~~A—Customer Advance for Construction means~~

~~A cash advance by a Customer for construction that is subject to refund either wholly or in part, depending on the amount of revenue generated over the forty-eight (48) month (four-year) revenue period.~~

~~B—Customer Contributions means~~

~~A Customer Advance for Construction or a Revenue Guarantee.~~

~~A. C—Estimated Forty-Eight Month Base Revenue or Estimated Four Year Base Actual Revenue means~~

~~The estimated base actual amount revenue received on account of the Line Extension by the Company from the anticipated first forty-eight (48) Customer. The amount shall be based on monthly bills to the Customer once service is established. The respective monthly kWh usage is determined by estimating the Customer's metered monthly kilowatt (kW) demand, hours per day, days per week, and an average of 4-3 weeks per month; kilowatt-hour (kWh) usage, and calculated with the following formula applying the appropriate tariff schedule and riders, less the fixed fuel factor costs and taxes.~~

$$\text{kWh} = \text{kW} \times \text{hrs} \times \text{days} \times \text{weeks}$$

~~The above formula will be adjusted by a load factor and power factor, as applicable, based on the customer type and rate schedule for which the Customer qualifies. The monthly demand (kW) above is estimated based on operating and load information provided by the Customer and/or the average demand and operating characteristics of similar Customers.~~

~~B Adequate Security means~~

~~An irrevocable letter of credit, certificate of deposit, or withdrawal restricted savings account payable to the Company, in a manner acceptable to the Company, and in an amount equal to the Adjusted Revenue Obligation. Such Adequate Security shall be obtained by the Customer from or maintained by the Customer at a financial institution that is acceptable to the Company, insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA), and preferably located within the Company's service territory.~~

~~The terms and conditions of acceptable Adequate Security escrow agreements are as follows.~~

~~The estimated forty-eight (48) month revenue is determined by using the estimates of kWh and kW usage calculated by the above methods, and applying the appropriate rate schedule, less the fixed fuel factor costs, and less taxes.~~

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- (a) The Customer shall secure and maintain an escrow account at a financial institution acceptable to the Company and that is payable to the Company in the amount of the Adjusted Revenue Obligation.
- (b) The Customer's designated financial institution shall hold the escrow account in full force and effect on behalf of the Company until the Company has recovered the Extension Cost which shall be no less than sixty (60) days after the final revenue calculations have been made.
- (c) The Company shall have the right to withdraw funds from the escrow account, only up to the Adjusted Revenue Obligation, to pay for any sums that may become due to the Company or for nonperformance of obligations under the terms of the Line Extension Agreement.

**D. Actual Annual Revenue means**

~~The revenue received from twelve (12) monthly bills rendered to the Customer, determined by the metered monthly kilowatt demand and kilowatt-hour usage, applied to the appropriate rate schedule, less the fixed fuel factor costs, and less taxes.~~

- d) For the term of the Line Extension Agreement, the Company will compute the Actual Revenue at the end of each of the Revenue Period's twelve- (12-) month periods. After the Actual Revenue calculations have been made, the Company shall recalculate the Adjusted Revenue Obligation and will promptly notify the Customer and the financial institution in writing.

**C. Adjusted Revenue Obligation means**

The Revenue Guarantee Obligation reduced by any Actual Revenue earned in any of the Revenue Period's twelve- (12-) month periods.

**D. Cash Advance for Construction means**

A cash advance by a Customer for construction that is subject to refund either wholly or in part, depending on the amount of Actual Revenue generated over the Revenue Period.

**E. Franchised-Area Completion Date means**

~~Those cities, towns and villages in which The date that the Company has been granted a franchise completed its portion of the work on the Line Extension to provide electric utility include any electrical work, which does not necessarily include the Meter and service drop.~~

**F. Overhead Line Extension Construction Refund Cap means**

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~~The new pole line facilities, including, without limitation, poles, anchors, conductors, insulators, arresters, cut-outs, transformers, breakers, and other miscellaneous hardware necessary to provide electric service to the Company-specified Point of Delivery. The Company's design costs paid by the Customer plus the lesser of the Company's Estimated Extension Cost or the Customer's Company-approved actual costs for the construction of the Line Extension.~~

G Cost of Capital Charges means

The over-all tax-effected PUCT approved cost of capital for either the Estimated Extension Cost or, upon the final accounting for the Line Extension's construction, the Extension Cost. The cost of capital shall be applied annually and based on the Company's weighted average cost of capital at the time construction of the Line Extension begins and so specified in the Line Extension Agreement.

H Customer means

Any corporation, business establishment, institution, association, governmental entity, or individual currently being served or using electric energy supplied by the Company.

I Customer Contribution means

A Cash Advance for Construction or a Revenue Guarantee to cover a Revenue Deficiency

J Ending Revenue Deficiency means

The amount by which the Extension Cost exceeds Actual Revenue received from Customers served from the Line Extension at the end of the Revenue Period.

K Estimated Annual Revenue means

The estimated revenue during any of the Revenue Period's twelve- (12-) month periods. The estimated revenue shall be calculated in a similar fashion as Estimated Revenue

L Estimated Extension Cost means

The Company's estimate of the Extension Cost calculated on the basis of current costs to install the same or a similar type of Line Extension.

M Estimated Revenue means

The estimated revenue during the Revenue Period. The respective monthly kWh usage.

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is determined by estimating the Customer's monthly demand, hours per day, days per week, and an average of 4.3 weeks per month, and calculated with the following formula

$$\text{kWh} = \text{kW} * \text{hrs} * \text{days} * \text{weeks}$$

The above formula will be adjusted by a load factor and power factor, as applicable, based on the customer type and rate schedule for which the Customer qualifies. The monthly demand (kW) above is estimated based on operating and load information provided by the Customer and/or the average demand and operating characteristics of similar Customers.

The estimated revenue during the Revenue Period is determined by using the estimates of kWh and kW usage calculated by the above methods and applying the appropriate rate schedule and riders, less the fixed fuel factor costs and taxes.

N. Extension or Line Extension means

Depending on the context, Line Extension can mean an Overhead Line Extension, Underground Line Extension, Transmission Line Extension, or all

Q. Extension Cost means

The actual cost to the Company for the design, installation, acquisition of all rights of way and permits, and any other necessary costs for the Line Extension. The cost of the service drop, Meters, and metering equipment is not included in the cost of an Overhead Line Extension except for those Customers served at one of the Company's standard Transmission Voltages.

P. Franchised Area means

Those cities, towns, and villages in which the Company has been granted a franchise to provide electric utility service.

Q. Impaired Clearance means

The condition where a structure(s) including, but not limited to, buildings, signs, towers, poles, fencing, and swimming pools, is located in a position or manner in which insufficient clearance as specified by any applicable law, regulation and local codes and the National Electric Safety Code, as may be amended, exists between the structure and the Company's existing transmission, substation, express feeder, streetlight, or distribution line facilities, or any combination thereof.

R. Line Extension Agreement means

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The agreement entered into between the Customer and the Company in which either (1) the Company agrees to build a Line Extension in exchange for the Customer providing a Customer Contribution or (2) the Company grants the Customer a Refund Credit, subject to any reductions or refunds as outlined Sheet 6, Paragraph B.11 of Option 2, in exchange for the Customer building the Line Extension

S. Maximum Run means

The maximum amount of distance as determined by Company policy at the time of construction

T. Meter means

A recording instrument of standard manufacture provided by the Company to measure energy consumption, demand, or both at a single Point of Delivery

U. Overhead Line Extension means

The new pole line facilities (including without limitations, poles, anchors, conductors, insulators, arresters, cut-outs, transformers, breakers, and other miscellaneous hardware) necessary to provide electric service to the Point of Delivery.

V. Permanent Customer means

A Customer whose service is delivered to a Permanent Installation.

W. Permanent Installation means

Any structure that is constructed or placed on and permanently affixed to a foundation and that is, or will be, used or occupied on a full-time basis. A manufactured home or a prefabricated structure shall qualify as a Permanent Installation if 1) the home or structure is installed on a foundation system according to regulations of the Texas Department of Labor and Standards or is otherwise impractical to move and has the wheels, axles, and hitch or towing device removed and 2) the home or structure is connected to a permanent water and sewer system.

X. Point of Delivery means

The point where the Company's wires or facilities are connected with those of the Customer. For overhead service, it is the point specified by the Company where the Company's and the Customer's conductors are connected. For underground service, see Sheet No. 5, Paragraph C.A.2

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Y Primary Service means

Electric service provided to a Customer at a Primary Voltage

Z Primary Voltage means

One of the Company's standard voltages between 2,400 volts and 25,000 volts.

A1 Revenue Credit means

The Estimated Revenue for the Revenue Period that can be used to offset the Customer's monthly bill.

B1 Revenue Deficiency means

The amount by which the Estimated Revenue is less than the Estimated Extension Cost.

C1 Revenue Guarantee means

A written agreement entered into by the Company and the Customer providing Adequate Security

D1 Revenue Guarantee Obligation means

The Estimated Extension Cost plus Cost of Capital Charges or, upon the final accounting for the Line Extension's construction, the Extension Cost as adjusted for Cost of Capital Charges

E1 Revenue Period means

The forty-eight- (48) months that starts with the first full-billing month that begins after the Completion Date for a Company-built Line Extension and after the closing of the sale of the Line Extension to the Company for a Customer-built Line Extension. The Revenue Period shall be divided into four separate 12-month periods, the first of which begins on the first full-billing month that begins after the Completion Date. The Revenue Period may be extended in accordance with Sheet No. 5, Paragraph B 2(b)(2) of Option 1 for Company-built Line Extensions or Sheet No. 5 Paragraph B 11.c for Customer-built Line Extensions.

F1 Secondary Service means

Electric service provided to a Customer at a Secondary Voltage

G1 Secondary Voltage means

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One of the Company's standard service voltages below 600 volts

H1 Temporary Service means

Electric service to a Customer that is not delivered to a Permanent Structure and, in the sole opinion of the Company, is otherwise not of a permanent nature (e.g., temporary sales stands or construction sites)

I1. Transmission Line Extension means

The new overhead Transmission Voltage facilities including, without limitation, poles, anchors, conductors, insulators, arresters, cut-outs, transformers, breakers, and other miscellaneous hardware) necessary to provide electric service to the Point of Delivery.

J1 Transmission Voltage means

One of the Company's standard voltages greater than or equal to 69,000 volts

K 2 Underground Line Extension means

The new underground Primary or Secondary Voltage facilities including, without limitation, conduit system, pullboxes, transformer enclosure(s), transformer(s), primary voltage cables, secondary voltage cables, arrestors, switches, cut-outs, pole risers, and miscellaneous hardware necessary to provide underground service to the Point of Delivery.

**EL PASO ELECTRIC COMPANY**  
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G. Cost of the Overhead Line Extension means

The actual cost to the Company to install new pole line facilities from existing overhead pole line facilities to the Company specified Point of Delivery. The Cost of the Overhead Extension includes storage charges, labor, overhead, transportation, right-of-way acquisition, and survey costs in addition to the cost of materials specified in Paragraph F. The cost of the service drop, Meters and metering equipment is not included in estimating the Cost of the Overhead Extension for revenue requirements, except for those Customers served at one of the Company's standard Transmission Voltages.

H Permanent Customer means

Any Customer whose service is delivered to any installation that is constructed or placed on and permanently affixed to a foundation, and that is, or will be, used or occupied on a full-time basis. A Customer whose service is delivered to a manufactured home, or a prefabricated structure shall qualify as a permanent Customer if: 1) the home or structure is installed on a

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foundation system according to regulations of the Texas Department of Labor and Standards or is otherwise impractical to move and has the wheels, axles, and hitch or towing device removed, and 2) if the home or structure is connected to a permanent water and sewer system.

~~I — Point of Delivery means~~

~~For overhead service, the point specified by the Company where the Company's and the Customer's conductors are connected. For underground Point of Delivery see Sheet No. 5, Section C (Special Underground Service Provisions), Paragraph 2.~~

~~J — Temporary Service means~~

~~Electric service to a Customer that, in the sole opinion of the Company, is not of a permanent nature, for example, construction purposes or temporary sales stands.~~

~~K — Underground Line Extension means~~

~~The new underground Primary or Secondary Voltage facilities including, without limitation, conduit system, pull boxes, transformer enclosure(s), transformer(s), primary voltage cables, secondary voltage cables, arrestors, switches, cut-outs, pole risers, and miscellaneous hardware necessary to provide underground service to the Company specified Point of Delivery.~~

~~L — Cost of the Underground Line Extension means~~

~~The cost to install new underground primary or secondary facilities from either existing overhead pole line facilities or existing underground Primary or Secondary Voltage facilities to the Company specified Point of Delivery. The Cost of the Underground Line Extension includes storage charges, labor, materials, transportation, right-of-way acquisition and secondary costs in addition to the cost of materials specified in Paragraph K. The cost of service of cables, Meters and metering equipment is not included in estimating the cost of the Underground Line Extension for revenue requirements, except for those Customers served at one of the Company's standard Transmission Voltages.~~

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~~M — Revenue Deficiency means~~

~~The amount by which the estimated forty-eight (48) month revenue is less than the estimated cost of an Overhead Line Extension or an Underground Line Extension.~~

~~N — Revenue Guarantee means~~

~~The process by which the Customer guarantees and secures in a manner acceptable to the Company an amount equal to the cost of a Line Extension, plus an additional charge for line construction based on the reflected cost of capital at the time of the completion of the Line Extension, as the process is further described in Section B(2)(b)(3).~~

~~O — Secondary Voltage means~~

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~~Any one of the Company's standard service voltages below 600 volts.~~

~~P—Primary Voltage means~~

~~Any one of the Company's standard voltages between 2,400 volts and 25,000 volts.~~

~~Q—Transmission Voltage means~~

~~Any one of the Company's standard voltages greater than or equal to 69,000 volts.~~

~~R—Meter means~~

~~A recording instrument of standard manufacture provided by the Company to measure energy consumption.~~

~~S—Impaired Clearance means~~

~~The condition in which structure(s) including, but not limited to, buildings, signs, towers, poles, fencing and swimming pools, is located in a position or manner in which insufficient clearance, as specified by any applicable local code(s) and the National Electric Safety Code, as such codes now exist or as such codes may be amended, exists between the structure and the Company's existing transmission, substation, express feeder, street light or distribution line facilities, or any combination thereof.~~

~~T—Extension or Line Extension, when those terms are used without modifiers, means~~

~~The additional facilities needed to extend service from the Company's existing facilities to the Point of Delivery of the Customer, including increases in capacity of any existing facilities, and include both Overhead Line Extensions and Underground Line Extensions as those terms are defined herein.~~

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POLICIES

A. GENERAL

1. The policies herein contained are subject to the terms and conditions ~~contained in the Company rate/tariff schedules, its other service Rules~~ the rules and Regulations, regulations of the Public Utility Commission of Texas and the Company's standard operating procedures.
2. The Company will extend its facilities and provide service in a uniform and nondiscriminatory manner to all ~~customers~~ Customers within its service territory under its standard applicable rate schedules and this policy. The Company will make Extensions within its territory required to serve any Customer on a basis equitable both to the Company and the Customer.
3. Meters:  
  
    \_\_\_ The Company will provide the Meter and designate the location of all Meters and metering equipment.
4. Type of Service:  
  
    \_\_\_ Either single phase or three phase electrical service shall be specified by the Company, and service will be at one of the Company's standard voltages- (i.e., Primary or Secondary Voltage). Customers requesting three phase service must meet Company requirements
5. Rights-of-Way (Easements):  
  
    \_\_\_ The Company will not construct a Line Extension for a Customer until the Company has secured all required firm rights-of-way and permits. All Extensions shall be constructed on private rights-of-way, except ~~that for~~ within incorporated municipalities where private rights-of-way are not available, Line Extensions may be constructed on existing public roads, streets, alleys, or easements. New ~~customers~~ Customers shall furnish such rights-of-way as required, without charge to the Company, over property owned or leased by said new Customers, and, if possible, will assist the Company in securing other rights-of-way necessary to provide service. The Customer shall have all of the Customer's property corners surveyed and necessary property irons installed by licensed surveyors to permit the Company to properly install the Company's electrical facilities within said rights-of-way.
6. If the Customer decides to cancel the request for a Line Extension, the Company shall have the right to recover all Extension Costs incurred by the Company. The Customer shall secure a Revenue Guarantee or otherwise have available funds to cover the Adjusted Revenue Guarantee Obligation.

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7 Renewable Energy and Distributed Generation Information

The Company will inform each Customer requesting a Line Extension of the availability of information concerning on-site renewable energy and distributed generation technology alternatives. The Company shall provide a Customer with such information.

- a. Upon request by the Customer.
- b. At the same time the estimate of any required Cash Advance for Construction or other such prepayment is provided to the Customer, or.
- c. Prior to the Customer signing a Line Extension Agreement if the Customer is not required to provide a Cash Advance for Construction or other such prepayment.

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**B. LINE EXTENSIONS**

**1. General**

The Company will provide at its expense, the Line Extension necessary to provide primary or secondary electric service to a Permanent Customer if the Estimated Four Year Base Revenue equals or exceeds the estimated cost of the Extension. No Extension of overhead lines will be made from underground facilities or into areas designated or committed to underground facilities. If the Company determines the Estimated Four Year Base Revenues from the primary or secondary electric service Extension do not equal or exceed the estimated cost of the Line Extension investment, the Company shall be allowed to require a Revenue Guarantee or contribution from the Customer for the actual cost of the Extension investment pursuant to the terms and conditions of this Line Extension Policy.

**2. Revenue Deficiencies:**

a. If the Estimated Four Year Base Revenue described in the preceding paragraph results in a Revenue Deficiency, the Company is not obligated to provide the Extension unless the Customer provides a Customer Contribution. The amount of the Customer Contribution will be computed using the following formula:

(1) Estimated Annual Base Revenue	\$ _____	
(2) Investment Required by Company	\$ _____	
(3) Revenue Credit, if any	\$ _____	(Line 1 x 4)
(4) Revenue Guarantee or Contribution	\$ _____	(Line 2 less Line 3)

The estimated annual revenue will be determined by estimating the Customer's expected annual usage multiplied by the applicable rate schedule rate charges.

The investment required by the Company to complete the Extension will be calculated on the basis of current costs to install the same or similar type of Line Extension required and will be provided to the Customer.

b. In cases of Revenue Deficiency, the Customer must enter into a written agreement with the Company to cover the Revenue Deficiency through a Customer Contribution, which, as described below, is either a Customer Advance for Construction or a Revenue Guarantee.

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**B. LINE EXTENSIONS**

**OPTION 1: LINE EXTENSIONS BUILT BY THE COMPANY**

~~(1) Customer Advance for Construction~~

~~The Customer may be required to make a Customer Advance for Construction in the amount of the estimated cost of the Line Extension.~~

**1. General:**

The Company will provide, at its expense, Primary or Secondary Service to a Permanent Customer if the Estimated Revenue equals or exceeds the Estimated Extension Cost. No extension of overhead lines will be made from underground facilities or into areas designated or committed to underground facilities. If the Company determines the Estimated Revenue from the Primary or Secondary Service Line Extension does not equal or exceed the Estimated Extension Cost, the Company shall be allowed to require a Customer Contribution for the Extension pursuant to the terms and conditions of this Line Extension Policy.

**2. Revenue Deficiencies**

a. If the Estimated Revenue results in a Revenue Deficiency, the Company is not obligated to provide the Extension unless the Customer provides a Customer Contribution. The amount of the Customer Contribution shall be provided to the Customer and will be computed using the following formula

<u>(1) Estimated Annual Revenue</u>	<u>\$</u>	
<u>(2) Estimated Extension Cost</u>	<u>\$</u>	
<u>(3) Revenue Credit, if any</u>	<u>\$</u>	<u>(Line 1 x 4)</u>
<u>(4) Customer Contribution</u>	<u>\$</u>	<u>(Line 2 less Line 3)</u>

b. In cases of a Revenue Deficiency, the Customer must enter into a written agreement with the Company to cover the Revenue Deficiency through a Line Extension Agreement

(1) Cash Advance for Construction

The Customer may enter into a Line Extension Agreement for a term that begins upon the Customer providing a Cash Advance for Construction in the amount of the Estimated Extension Cost

(a) Individual Customer Served.

If the Extension is to an individual Customer, the Customer's monthly bills, determined by applying the appropriate rate schedule, less all fixed fuel factor costs and taxes, Actual Revenue from the Customer shall be

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deducted from the ~~Customer~~Cash Advance for Construction for forty-eight ~~(48) months~~the Revenue Period, or until the amount advanced has ~~been exhausted. If a balance remains after forty-eight (48) months from the date the Line Extension was completed~~Revenue Period, the balance reverts to the Company as a Customer Contribution. ~~All of the fixed fuel factor costs and taxes shall be paid monthly by the Customer.~~

(b) More Than One Customer Served:

If the Extension is to serve a group of Customers, refunds of the ~~Customer~~Cash Advance for Construction will be made annually based upon ~~actual annual revenue~~Actual Revenue received from Customers served by the Extension. If additional Customers are served from additional Line Extensions, refunds may be given as set forth in paragraph (d), which follows below

(c) Revenue Credit Given ~~—~~ Partial Cash Advance Required:

If the Customer is given a ~~revenue credit~~Revenue Credit, the Customer then may be required to make a ~~Customer~~Cash Advance for Construction for the Revenue ~~Deficit amount~~Deficiency. Refunds will then be made only from ~~revenue~~Actual Revenue received from other Customers served when additional Line Extensions are constructed. Refunds or appropriation of the advance will be made as set forth in the following paragraph (d)

(d) 
$$R = \frac{E - C}{48} \times (48 - M), \text{ where:}$$

- R = the amount of the refund,  
E = the Estimated ~~48-Month Base~~ Revenue from Permanent Customers served from additional Line Extensions,  
C = the ~~estimated costs of~~Estimated Extension Cost for the additional Extensions, and  
M = the number of months since the Customer's Line Extension ~~was completed~~Completion Date.

\_\_\_\_ Note that in no case will refunds from electric bills~~bill~~ and one-time refunds exceed the ~~Customer's~~Customer's Advance for Construction

(e) ~~The Company will reduce or waive the Customer Contribution when portions of a Line Extension are a service betterment for existing lines~~

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~~which constitute an upgrade or improvement that the Company would pursue even if the Customer had not requested the Line Extension.~~

- (e) The Company will reduce or waive the Customer Contribution when portions of a Line Extension are a service betterment for existing lines which constitute an upgrade or improvement that the Company would pursue even if the Customer had not requested the Line Extension.

~~Following the payment of a Customer Contribution, the Company will reconcile refund balances at the end of the first twelve (12) month period months of the Revenue Period and thereafter annually. The interest rate that will be applied to balances subject to refund will be the annual Commission-approved interest rate for Customer Deposits customer deposits as determined under 16 Texas Administrative Code § 25.24(g) or its successor.~~

#### (32) Revenue Guarantee:

~~Customers may enter into a written agreement for a term of four (4) years with the Company that guarantees and secures payment to the Company of an amount equal to the cost of the Extension plus applicable interest charges as defined below. The four (4) year agreement period will begin for (i) Overhead Line Extensions on the completion date of the overhead line facilities or (ii) for Underground Line Extensions upon completion of the underground structural facilities. At the end of the four-year agreement period, actual revenues, less fixed fuel factor costs and taxes, received during the four-year agreement period from Customers served from the Line Extension will be compared to the cost of the Extension. If revenues have not equaled or exceeded the cost, additional charges will be computed on the deficit amount. The additional charge shall be based upon the overall tax-effected cost of capital to the Company at the time of the Line Extension construction and the amount so specified in the written agreement. The additional charge to municipalities shall be no more than the maximum interest rate for municipalities as set by law, whichever is less. The deficit amount and the additional charges will then be due within thirty (30) days of billing.~~

Customers may enter into a Line Extension Agreement for a term that commences upon the execution of the Revenue Guarantee and terminates at the end of the Revenue Period. At the end of the Revenue Period, the Company

will determine if there is an Ending Revenue Deficiency. If there is an Ending Revenue Deficiency, Cost of Capital Charges will be assessed. The Ending Revenue Deficiency and the Cost of Capital Charges will then be due within thirty (30) days of billing.

If additional Line Extensions are connected to the original Line Extension, any revenue Actual Revenue received from Customers served from the additional

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Extensions must first cover the cost of the additional facilitiesExtension, including transformers, before it can be applied to the original Customer's Customer agreementContribution. When a Customer enters into a Revenue Guarantee to offset the cost of a Line Extension, those revenues Cost the Actual Revenue can come from the Customer entering into the agreementLine Extension Agreement and also other Customers who are later served from the same facilities. Where Line Extension. If at the end of a Line Extension's term there is an expectation that the revenues from a Line Extension projectActual Revenue will equal or exceed the Extension costCost within an additional two-(2-) year period, at the Company's option, an extension of the Line Extension Agreement's term may be extended by two (2) years may be granted after the four-(4) year term of the original contract expires.

The above terms related to Revenue Guarantees apply to individual residential Customers, commercial and industrial Customers, land developers, residential subdivision developers, and commercial and industrial subdivision/park developers

**OPTION 2: LINE EXTENSIONS BUILT BY THE CUSTOMER**

**1 General**

Customers desiring new Line Extensions to be built to their premises may choose to have the Extension constructed by a competent and qualified electrical contractor. After construction and acceptance, the Customer shall sell the Line Extension to the Company for \$1.00 for its use in serving end-users.

Customers may choose to have only the underground structural portion of the Underground Line Extension constructed by a competent and qualified contractor. The underground structural portion of an Underground Line Extension includes all trenching, bedding, backfilling and required compaction, duct, concrete pullboxes, pullbox lids, Secondary Service enclosures, transformer pad and pullbox and transformer protection from vehicular traffic. After construction and acceptance by the Company of the structural portion of the Underground Line Extension, the Customer shall sell the underground structural system to the Company for \$1.00 for its use in serving end-users.

In recognition of the need to protect the public from electrical hazards, and the need for structural and electrical systems that are useful and safely maintainable over a normal and customary service life, the following will govern the construction of customer built electrical systems.

**2 Design and Construction Specifications**

The Company will design the Line Extension required to serve the Customer, in accordance with the Company's standards and specifications, and shall provide the

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design drawings and specifications to the Customer. The Customer shall pay the Company for applicable design costs at the time of the closing of the Line Extension sale, which are refundable to the Customer in accordance with Paragraph 11 of this Sheet 6.

**3. Material Specifications**

The Company shall specify all materials and equipment to be used in the Line Extension including, but not limited to, wire, cable, conduit, transformers, poles, fixtures, switchgear, relays, capacitors, and insulators. The Customer shall be free to acquire said materials from any source, provided that all materials shall be from Company approved manufacturers and meet the specifications as promulgated by the Company that are in effect at the time the Customer begins construction on the Line Extension.

**4. Quality Control and Assurance**

The Customer agrees to comply with Company specifications for materials, equipment, and construction standards. In order to assure compliance, the Company will select a construction inspector who will visit the construction site. The construction inspector shall have the authority to accept or reject the work and materials of the Customer or contractor and shall certify such acceptance or rejection at the time of inspection. The function of the construction inspector shall be to verify compliance with design, materials, equipment and installation specifications, and all other matters relating to the quality control of the Line Extension's construction.

The Customer agrees to pay the Company at the closing of the sale of the Line Extension for EPE's reasonable costs incurred in the inspection of the Line Extension. The inspections costs are refundable in accordance with Paragraph 11 of this Sheet 6.

**5. Easements and Rights of Way**

The Company will secure all required firm rights of way and permits for customer-built Line Extensions, and the Customer shall pay the Company for all costs incurred by the Company for right of way acquisition. The Customer, at its option, can secure all required firm rights of way and permits. In this case, the following will apply.

- a. The Customer shall provide to the Company easements and rights of way in a Company approved format that reflect the as built configuration and location of the Line Extension.
- b. The Company will assist the Customer in securing rights of way necessary for the Extension, if requested. The Customer shall pay the Company for such assistance.
- c. The Customer shall pay the Company for its reasonable costs incurred to verify the easements and rights of way. Rights of way verification must be completed prior to the closing of the Line Extension sale.

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d All rights of way costs incurred by the Company shall be paid by the Customer at the time of the closing of the Line Extension sale. Such rights of way costs are refundable in accordance with Paragraph 11 of this Sheet 6.

6 Licensing Requirements and Compliance with Required Governmental Inspections

The Customer shall only use those contractors that are properly qualified and licensed, in accordance with any applicable state and local law and regulation, to construct the Line Extension. The Customer shall also obtain from the contractor and transfer to EPE at the closing of the sale of the Line Extension a one-year workmanship warranty as well as any standard equipment warranties for the Line Extension's components. The Customer agrees to comply with all applicable state and local construction inspection requirements.

7. Meters

The purchase and installation of Meters will be the sole responsibility of the Company

8 Purchase of System and Resulting Tax Liability

After the Line Extension has been constructed and accepted by the Company's construction inspector, the Customer agrees to sell to the Company and the Company agrees to buy the line extension for \$1.00. This sale shall be free of any liens or encumbrances.

Should any sales or use tax liability to the Company result from the sale, the Customer agrees to pay the cost of said tax liability.

The Company and the Customer shall execute an agreement (Customer Built Line Extension) to transfer the property and to make the Customer eligible for refunds in accordance with Paragraph 11 of this Sheet 6.

(4) Renewable Energy Information

The Company will inform each Customer requesting a Line Extension of the availability of information concerning renewable resources. If the Customer requests the information, or if a Revenue Deficiency exists and the Customer declines to enter into a written agreement with the Company pursuant to Section 2.b. above to cover such deficiency, then the Company will provide the Customer with information regarding implementation of renewable energy resource options that may be feasible for the Customer. The Company will provide a list of vendors for renewable energy resource options and, when possible, the cost of such installations.

9 Property Records at the Time of Sale

The Customer agrees to supply to the Company its actual costs incurred in constructing the Line Extension so that proper accounting of the extension may be made by the

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Company. The Company will review the actual costs and may, at its sole discretion, request further documentation to support the submitted actual costs. Further, the Company may, at its sole discretion, reject such costs that after review it deems unreasonable. Those costs rejected by the Company shall reduce the Customer's total actual costs, which may affect the amount of the Construction Refund Cap. The Company agrees to keep the Line Extension costs incurred by the Customer confidential unless the Company is required to disclose this information to regulatory or other governmental agencies or bodies.

**10 Liability for the Line Extension**

Commencing with the date of sale of the Line Extension to the Company, the Company will assume full and complete operating responsibility for the Extension. The Customer shall be liable for the direct and indirect consequences of any defects or failures of the Line Extension constructed by the Customer for a period of one (1) year from the date of acceptance, unless such defects or failures arise from the Company's design, specifications, or improper operation of the Extension.

**11 Refunds for Customer Built Line Extensions**

- a At the time of sale of the Line Extension to the Company, the Customer may receive an initial refund payment based upon the installation of permanent Meters. The revenue refund payment is based on the Estimated Revenue from the Meters over the Revenue Period and cannot exceed the Construction Refund Cap. In such cases, the amount subject to refund will be computed using the following formula:

<u>(1) Construction Refund Cap</u>	<u>\$ _____</u>
<u>(2) Total Revenue Credits for the Revenue Period</u> <u>(Estimated Revenue)</u>	<u>\$ _____</u>
<u>(3) Amount Subject to Refund</u> <u>(Line 1 less Line 2)</u>	<u>\$ _____</u>

The Customer must enter into a Line Extension Agreement with the Company to make the Customer eligible for refunds.

- b The Amount Subject to refund will be refunded by the Company as follows:

(1) The Company will refund at the end of each of the Revenue Period's twelve- (12-) month periods to the Customer the Actual Revenue from such period above the Revenue Credit already given for the same twelve- (12-) month period or reduce the refundable portion by Actual Revenue from the twelve- (12-) month period below the Revenue Credit already given for such twelve- (12-) month period. At no time will the Company ever refund in total more than the Construction Refund Cap.

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- (2) The Company must review the account at the end of each of the Revenue Period's twelve- (12-) month periods. If at the end of a twelve- (12-) month period or the Revenue Period the total Actual Revenue exceeds the Construction Refund Cap, the Company must refund the entire amount subject to refund to the Customer.
- (3) The Company will refund an amount equal to the Actual Revenue over the Revenue Period or the Estimated Revenue of each new customer connected to the customer-built Line Extension, less an amount equal to the Estimated Extension Cost of the additional Extensions, including transformers. No refund shall be made for Customers connected to a new Line Extension off the original Line Extension unless the new Extension and Customers are within the area exactly described in the original Line Extension Agreement. The total of all such refunds shall in no case exceed the Construction Refund Cap. Refunds will be made annually or at shorter intervals at the option of the Company.
- c. If the Line Extension is generating sufficient revenue in the fourth (4th) twelve- (12-) month period of the Revenue Period to cover the Company's fixed costs, the Company will extend the Line Extension Agreement for an additional two (2) years.

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**C. SPECIAL UNDERGROUND SERVICE PROVISIONS**

**A. Secondary Voltage Underground Extensions:**

**1. Permanent New Residential Customers:**

**(1) Overhead System:**

~~Where 120/240-volt service is readily available from an existing overhead system, the Company will install, own, and maintain a pole riser, riser base, secondary service enclosure, and service conductors (maximum of 100 foot run at Company expense) up to the Maximum Run for providing single phase underground secondary service into a Customer-supplied, owned, and maintained conduit system. The Customer-supplied conduit system shall include, without limitation, the cost of installing the service enclosure and the pole riser installation and the installation of all necessary conduit shall be borne by the Customer. The Customer will supply, install, own, and maintain the conduit system from the Company-specified point on the nearest Company service pole enclosure to the Point of Delivery Meter enclosure. The Customer-supplied conduit system must meet Company specifications and local code requirements. The Customer shall make a Customer Contribution for the cost of any portion of the service conductor run in excess of 100 feet~~

~~If the Company has reason to believe that more than one Customer will be served underground from the Company's service pole, the Company will be responsible for the installation of the pole riser installation and a service pedestal. The cost of installing the service pedestal and the pole riser installation shall be borne by the Customer and the Company shall own and maintain the service pedestal and the pole riser installation.~~

~~Where 120/240-volt service is readily available from an existing overhead system, the Company will install, own, and maintain a pole riser, riser base, secondary service enclosure if needed and service conductors (maximum of 150 foot run at Company expense) for providing single phase underground secondary service to a Customer. The Customer will supply, install, own and maintain the conduit system from the riser base to service enclosure to the meter enclosure. The Customer-supplied conduit system must meet Company specifications and local code requirements~~

**(2) Underground System**

~~Where 120/240-volt service is readily available from an existing underground system, the Company will install, own, and maintain service conductors (maximum of 150 foot run at Company expense) up to the Maximum Run for single phase service, in a customer supplied, owned, and maintained conduit~~

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system, from the nearest Company transformer or service enclosure to the Point of Delivery. The location of both points will be designated by the Company. The Customer-supplied conduit system must meet Company specifications and local code requirements.

#### 2. Point of Delivery:

The Point of Delivery for individually served and metered permanent residential Customers requesting underground service shall be the meter enclosure.

When multiplex residential units (duplex and above) have their Meters grouped and connected into a common gutter, the Point of Delivery shall be at a Company-owned secondary-service enclosure or transformer as designated by the Company.

The Point of Delivery for all other Customers requesting underground service shall be the low voltage terminals of the Company's transformation; unless another Point of Delivery is specified by the Company.

Customers will provide, own, and maintain all facilities beyond the Point of Delivery.

#### 3. Residential Subdivisions:

In a residential subdivision, normally Underground Line Extensions must be made before construction of houses begins. The Company will install an underground distribution system in a filed, dedicated subdivision after the developer has met Company requirements pertaining to the installation of other utilities and has entered into a written Line Extension Agreement covering the number of residential lots to be served, the location of any necessary overhead express feeder lines, the amount of the Revenue Guarantee Obligation, the method of securing the Revenue Guarantee Adequate Security, and other necessary conditions as determined by the Company. The developer's Revenue Guarantee Obligation for an underground residential system will be determined using then-current material and construction costs.

~~The developer's Revenue Guarantee amount for an underground residential system will be determined using current material and construction costs.~~

No overhead or underground Secondary Voltage services will be extended from the overhead express feeder lines.

#### 4. Commercial and Industrial Customers:

The Company will install an underground Primary Voltage or Secondary Voltage extension to serve a ~~Commercial~~ commercial or an industrial customer industrial ~~Customer~~ after the Customer has entered into a written Line Extension Agreement (if needed) covering the location of the Company's new overhead and underground facilities. Underground Extensions, the amount of the Revenue Guarantee if applicable, and the method of securing payment of the Revenue Guarantee. Commercial areas designated or committed to underground facilities by the Company and/or the developer or any regulatory body will only be served underground.

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**5 Conversion of Overhead Facilities to Underground Facilities:**

**Residential Service Drops**

If a residential Customer requests conversion of the Customer's existing overhead service drop to underground service, the Company will, at ~~its~~the Customer's expense, install underground service conductors ~~a maximum run of 100 feet~~up to the Maximum Run if the following four (4) conditions are met:

- (1) The ~~Customer~~Company supplies and installs the pole riser, riser base, ~~secondary service~~Secondary Service enclosure ~~(if required by the Company)~~, and any conduit between the riser base and the service enclosure. After the installation of the above facilities, ~~inspection and approval by the Company~~, the Company will assume ownership and maintenance of these facilities. The Customer must also grant any needed firm easements for this installation and for future ~~underground~~Underground Line Extensions from the service enclosure to adjacent lot(s) as required.
- (2) The Customer supplies, installs, owns, and maintains the conduit system from the riser base or service enclosure to the ~~meter~~Meter enclosure. The conduit system must meet Company and local code requirements.
- (3) The Customer makes any changes to ~~his~~the Customer's own service entrance equipment necessary to accommodate the new underground service.
- (4) The Customer pays the Company the ~~then~~current estimated cost to install and remove the overhead service drop.

~~If the new underground service run is greater than 100 feet, the Customer shall make a Customer Contribution for the amount of the service run in excess of 100 feet.~~

~~If the Company has reason to believe that more than one Customer will be served underground from the Company's service pole, the Company will be responsible for the installation of the pole riser installation and a service pedestal. The cost of installing the service pedestal and the pole riser installation shall be borne by the Customer and the Company shall own and maintain the service pedestal and the pole riser installation.~~

**B Overhead Primary Voltage Distribution Facilities:**

If the Company, in response to a Customer request, agrees to replace the Company's existing overhead facilities with underground facilities, the Customer shall pay the Company in advance the estimated installed cost of the Company's new underground facilities plus the estimated cost to remove the existing overhead facilities less the estimated salvage of the removed overhead facilities.

Commercial and industrial Customers will provide, own, and maintain all facilities beyond the new Point of Delivery.

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**D. TEMPORARY SERVICE**

A Customer requesting Temporary Service shall pay the Company in advance the estimated cost of equipment plus installation and removal expenses, less the estimated salvage value. The cost of the equipment plus installation shall be calculated in the same manner as for permanent service. The removal expenses will be estimated based on the specific equipment and installation used for the Customer and the most current standard labor cost estimates. Salvage value will be based on the specific equipment and the market value of the equipment at the time the estimate is provided

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**E. SPECIAL SERVICES**

1 Dual Feeders:

Any permanent customer requesting an alternate Primary Voltage line in addition to the regular main Primary Voltage line shall either make a Customer Contribution in the amount of the ~~estimated cost to provide~~ Estimated Cost of the alternate ~~Primary Voltage line~~ Extension (including substation facilities) or enter into a written agreement to pay a monthly facilities charge equal to the Company's fixed costs on the additional ~~facilities~~ alternate Extension.

2 Primary and Transmission Voltage Service:

Electric service from the Company's Primary and Transmission Voltage system is available at the Company's option to Customers whose electrical load is of such magnitude or unusual character that it should not be served otherwise. The Customer shall be responsible for providing all transformation equipment, which must be in accordance with Company specifications. The total cost of the Transmission Line Extension (including metering) shall be subject to a monthly facilities charge. The Company, at its option, may require a Customer Contribution for all or a portion of the construction costs of the Extension.

3. Private Security Lighting or Area Lighting

Dusk to dawn security lighting service is available in the Company's service area under the terms and conditions of the applicable rate schedule. If 240-volt overhead service is readily available within ~~125 feet~~ the Maximum Run, the Company will install a standard fixture on an existing wood pole or a new 30-foot wood pole located as mutually agreed to by the Company and Customer. If 240-volt overhead service is not readily available within 125 feet, ~~the cost of any required additional facilities~~ the Maximum Run, the Extension Cost will be borne by the Customer, ~~including the total cost of all underground associated facilities if the installation is served from an underground system.~~ All requests for service from an underground system must be negotiated separately with the Company as this lighting service is not available in all underground situations.

The Company retains the right to remove a security light if it is vandalized repeatedly.

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**F. PUBLIC STREET LIGHTING, FREEWAY LIGHTING  
AND TRAFFIC SIGNAL LIGHTS**

1. Company-Owned Street Lighting.

Street lighting systems are normally installed, owned, and maintained by the Company. Only Company specified standard street lighting components are used in the installations. Street lighting service is available to all city, town, village, county, and state governmental entities (hereinafter referred to as "City") and will be installed only after the appropriate installation and billing authorization is received by Company in writing. This lighting service is also available to public schools for street, parking, and area lighting. All lighting service will be provided and billed under the applicable rate schedules.

a. Lights Served from Overhead Lines.

In areas with overhead electric distribution lines, ~~street lights~~ streetlights are installed on existing wood poles. If the desired location of the new light does not have an existing pole, the Company will install one additional pole for each street light at no cost. If additional facilities are required in order to provide service to the light, the City, ~~State~~ state entity, or school shall pay the additional cost of the facilities Extension Cost as a Customer Contribution.

b. Lights Served from Underground Facilities:

In areas with underground electric distribution lines, street lights, ~~including a standard wood pole,~~ will be installed at a location designated by the City and agreed to by the Company. The Company will also install the underground conduit, service wire, and related facilities as needed. Where street lights are requested to be served underground and are installed by the Company and the street light installation will be owned by the Company, the Customer shall make a Customer Contribution for the difference between the cost of the ~~underground installation~~ Underground Line Extension and the four-year estimated revenue if there is a difference. The Company will install street light poles only on streets or main thoroughfares that are paved and have curbs and gutters.

2. City-Owned Street Lighting.

If a ~~city~~ City desires to own street lights that are to be installed by the Company, the ~~city~~ City shall pay the Company the total installed cost incurred by the Company. The Company will operate and maintain the lights under the applicable rate schedule. If the ~~city~~ City specifies the materials and installation standards, they must be agreed to by the Company.

a. Lights Served from Overhead Lines

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In overhead served areas, the Company shall install all requested lights and related facilities at the ~~city's~~City's cost.

b Lights Served from Underground Facilities:

In underground distribution areas, the Company or the ~~city~~City may provide and install the street lights at the ~~city's~~City's cost. If the ~~city~~City provides and installs the lights (or requires a third party to do so) the Company will not assume any responsibility for operation or maintenance until after the light is connected and in service. If the Company is asked to make a connection to a new ~~city~~City-installed light and is unable to do so because of a faulty installation by the ~~city~~City, a charge for the service call equal to the Company's actual cost will be made.

3 State or City-Owned Street or Freeway Lighting:

In Franchised Areas, the Company may contract with the ~~city, town or village~~City to operate and maintain street lighting installed and owned by the State of Texas (~~"State,"~~). In some cases, the Company may contract with a county for Interstate Highway lighting only. In the absence of such a contract, electric service for State-owned street lighting systems shall be provided under the Company's standard practice for metered commercial services, and billed under the applicable rate schedule. The same terms apply to State-owned traffic signals, sign lighting, etc

4 Relocation of Street Lights

Street lighting facilities will be relocated for the benefit or convenience of a Customer only when written approval of the new location is received from proper county or municipal authorities, and when the Customer making the request bears all relocation cost

5 Lights in New Subdivisions with Underground Electric Facilities:

If street lights are to be installed in a subdivision, the locations shall be mutually agreed to by the ~~city~~City and the Company before the Company designs its underground distribution system. The necessary conduit shall be installed from the nearest Company power source location to the proposed light pole location at the time of the subdivision development. Payment for these costs will be negotiated between the parties.

6. General Information

If the ~~city~~City or school desires to convert an existing Company-owned mercury vapor fixture to a high pressure sodium vapor fixture or LED fixture, the ~~city~~City or school shall pay all the labor costs associated with the conversion and purchase the old mercury vapor fixture from the Company at the un-depreciated value.

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**G. REMOVAL AND RELOCATION**

A Customer requesting removal and/or relocation of Company facilities shall bear all costs incurred by the Company in completing the removal and/or relocation. Should a request involve providing electric service simultaneously to new or additional electrical loads, the cost incurred by the Company in completing the removal and/or relocation shall be combined with the estimated cost to provide service. This applies to the removal and/or relocation of Company facilities that will physically interfere with the development of a property or construction of a new building(s), but does not apply to the removal and/or relocation of Company facilities simply as a matter of preference or for aesthetic reasons. If removal and/or relocation causes operating problems for the Company or is objectionable to other parties, the Company may refuse to remove and/or relocate the facilities. Relocation of Company facilities is always contingent upon the Company's securing all necessary rights-of-way.

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**H. AFTER HOURS RATE**

A Customer requesting the Company to perform work on an overtime basis shall be required to pay the appropriate after-hours rate.

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