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Participating Pharmacy means an independent retail Pharmacy, chain of retail Pharmacies, mail-order Pharmacy or specialty drug Pharmacy which has entered into an agreement to provide pharmaceutical services to Participants under the Pre-65 Retiree Medical Plan.

Pharmacy means a state and federally licensed establishment where the practice of pharmacy occurs, that is physically separate and apart from any Provider's office, and where Legend Drugs and devices are dispensed under Prescription Orders to the general public by a pharmacist licensed to dispense such drugs and devices under the laws of the state in which he practices.

Physical Medicine Services means those modalities, procedures, tests, and measurements listed in the Physicians' Current Procedural Terminology Manual (Procedure Codes 97010-97799), whether the service or supply is provided by a Physician or Professional Other Provider, and includes, but is not limited to, physical therapy, occupational therapy, hot or cold packs, whirlpool, diathermy, electrical stimulation, massage, ultrasound, manipulation, muscle or strength testing, and orthotics or prosthetic training.

Physician means a person, when acting within the scope of his license, who is a Doctor of Medicine or Doctor of Osteopathy.

Plan Administrator means the Benefits Oversight Committee of EPE or other named administrator of the Pre-65 Retiree Medical Plan having fiduciary responsibility for its operation. BCBSTX and EnvisionRX are not the Plan Administrator.

Plan Anniversary Date means the day, month, and year of the 12-month period following the Plan Effective Date and corresponding date in each year thereafter for as long as this SPD is in force.

Plan Effective Date means the effective date on the Pre-65 Retiree Medical Plan coverage described in this SPD which is January 1, 2020.

Plan Month means each succeeding calendar month period, beginning on the Plan Effective Date.

Plan Service Area means the geographical area(s) or areas in which a Network of Providers is offered and available and is used to determine eligibility for **Managed Health Care Plan** benefits.

Post-65 Retiree Medical Plan means the program of medical and prescription drug benefits provided under the Plan for Participants who have attained age 65 as described in this SPD.

Preauthorization means the process that determines in advance the Medical Necessity or Experimental/Investigational nature of certain care and services under the Pre-65 Retiree Medical Plan.

Pre-existing Condition means a condition for which medical advice, diagnosis, care, or treatment was recommended or received during the 3 months before the effective date of coverage.

Prescription Order means a written or verbal order from an authorized Health Care Practitioner to a pharmacist for a drug or device to be dispensed. Orders written by an authorized Health

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Pre-65 Retiree Medical Benefit Plan means the medical and prescription drug benefits provided under the Plan for Participants who have not attained age 65 the terms of which are described in this SPD.

Proof of Loss means written evidence of a claim including:

1. The form on which the claim is made;
2. Bills and statements reflecting services and items furnished to a Participant and amounts charged for those services and items that are covered by the claim, and
3. Correct diagnosis code(s) and procedure code(s) for the services and items.

Prosthetic Appliances means artificial devices including limbs or eyes, braces or similar prosthetic or orthopedic devices, which replace all or part of an absent body organ (including contiguous tissue) or replace all or part of the function of a permanently inoperative or malfunctioning body organ (excluding dental appliances and the replacement of cataract lenses). For purposes of this definition, a wig or hairpiece is not considered a Prosthetic Appliance.

Prosthetics/Orthotics Provider means a certified prosthetist that supplies both standard and customized prostheses and orthotic supplies.

Provider means a Hospital, Physician, Behavioral Health Practitioner, Other Provider, or any other person, company, or institution furnishing to a Participant an item of service or supply listed as Eligible Expenses.

Psychiatric Day Treatment Facility means an institution which is appropriately licensed and is accredited by the Joint Commission on Accreditation of Healthcare Organizations as a Psychiatric Day Treatment Facility for the provision of Mental Health Care and Serious Mental Illness services to Participants for periods of time not to exceed eight hours in any 24-hour period. Any treatment in a Psychiatric Day Treatment Facility must be certified in writing by the attending Physician or Behavioral Health Practitioner to be in lieu of hospitalization.

Renal Dialysis Center means a facility which is Medicare certified as an end-stage renal disease facility providing staff assisted dialysis and training for home and self-dialysis.

Residential Treatment Center for Children and Adolescents means a child-care institution which is appropriately licensed and accredited by the Joint Commission on Accreditation of Healthcare Organizations or the American Association of Psychiatric Services for Children as a residential treatment center for the provisions of Mental Health Care and Serious Mental Illness services for emotionally disturbed children and adolescents.

Retired Employee means an Employee of EPE who

1. is covered under the Employee Medical Plan and voluntarily terminates employment with EPE on or after attaining at least age 55 and completing at least 5 years of "Vesting Service," as that term is defined in the Retirement Plan, before such termination of employment, and
2. elects to commence benefits or receive a lump sum distribution of benefits under the Retirement Plan at the time of such termination of employment.

Retiree Welfare Plan means the El Paso Electric Corporation Retiree Welfare Benefits Plan which provides the medical and prescription drug benefits described in this SPD.

Retirement Plan means the Retirement Income Plan for Employees of El Paso Electric Company.

Serious Mental Illness means the following psychiatric illnesses defined by the *American Psychiatric Association in the Diagnostic and Statistical Manual (DSM)*:

1. Bipolar disorders (hypomanic, manic, depressive, and mixed);
2. Depression in childhood and adolescence;
3. Major depressive disorders (single episode or recurrent);
4. Obsessive-compulsive disorders;
5. Paranoid and other psychotic disorders;
6. Schizo-affective disorders (bipolar or depressive); and
7. Schizophrenia.

Skilled Nursing Facility means a facility primarily engaged in providing skilled nursing services and other therapeutic services and which is:

1. Licensed in accordance with state law (where the state law provides for licensing of such facility); or
2. Medicare or Medicaid eligible as a supplier of skilled inpatient nursing care.

Specialty Care Provider means a Physician or Professional Other Provider who has entered into an agreement with Claim Administrator (and in some instances with other participating Blue Cross and/or Blue Shield Plans) to participate as a managed care Provider of specialty services with the exception of a family practitioner, obstetrician/gynecologist, pediatrician, Behavioral Health Practitioner, an internist or a physician assistant or advanced practice nurse who works under the supervision of one of these.

Specialty Copayment Amount means the payment, as expressed in dollars, that must be made by or on behalf of a Participant for each office visit charge you incur when services are rendered by a Specialty Care Provider.

Spouse means your legal spouse including a same sex spouse, except that such term will not include (i) a spouse who is a Retired or Disabled Employee, or (ii) a common law spouse unless you have filed a Declaration and Registration of Informal Marriage with the County Clerk and provided a copy of the same to the Plan Administrator. If you marry or remarry after you become a Retired Employee or Disabled Employee your new spouse will not qualify as a Spouse under this Pre-65 Retiree Medical Plan and will not be eligible for enrollment.

Surviving Spouse means your Spouse who is married to you on the date of your death and a Participant in the Employee Medical Plan, Pre-65 Retiree Medical Plan or Post-65 Retiree Medical Plan and whose coverage continues under the Pre-65 Retiree Medical Plan or Post-65 Retiree Medical Plan.

Therapeutic Center means an institution which is appropriately licensed, certified, or approved by the state in which it is located and which is:

1. An ambulatory (day) surgery facility;
2. A freestanding radiation therapy center; or
3. A freestanding birthing center.

CLAIM FILING PROCEDURES

Who Files Claims

Medical Claims

The Claims Administrator must receive claims prepared and submitted in the proper manner and form, in the time required, and with the information requested before it can consider any claim for payment of benefits. Network Providers and some other health care Providers (such as ParPlan Providers) will submit your medical claims directly to the Claims Administrator for services provided to you. At the time services are provided, inquire if they will file claim forms for you. To assist Providers in filing your claims, you should carry your Identification Card with you.

- **Network Providers** .When you receive medical treatment or care from a Network Provider, you will generally not be required to file claim forms. The Provider will usually submit the claims directly to the Claims Administrator for you.
- **Non-Network Providers**. When you receive medical treatment or care from a Non-Network Provider, you may be required to file your own claim forms. Some Providers, however, will do this for you. If the Provider does not submit claims for you, refer to the subsection entitled **Participant- filed claims** below for instruction on how to file your own claim forms.
- **Participant- filed Medical claims**. If your Provider does not submit your claims, you will need to submit them to the Claims Administrator using a claim form provided by the Pre-65 Retiree Medical Plan. EPE should have a supply of claim forms or you can obtain copies from the Claims Administrator's website. Follow the instructions on the reverse side of the form to complete the claim. Remember to file each Participant's expenses separately because any Deductibles, maximum benefits, and other provisions are applied to each Participant separately. Include itemized bills from the health care Providers, labs, etc., printed on their letterhead and showing the services performed, dates of service, charges, and name of the Participant involved.

Prescription Drug Claims

- **Participating Pharmacy Claims**. When you receive Covered Drugs from a Participating Pharmacy, you will not be required to file claim forms. You are responsible for paying any Copayment Amounts and any pricing differences, when applicable. You may be required to pay for limited or non-covered items.

Also, if you elect to use a Participating Pharmacy and pay the claim in full, you may submit a request for reimbursement from the Plan using a *Prescription Claim Form*. This form can be obtained from EnvisionRX or the Plan Administrator. This claim form, accompanied by an itemized bill obtained from the Pharmacy showing the prescription services you received, should be mailed to the address shown below or on the claim form:

Instructions for completing the claim form are provided on the back of the form. You may need to obtain additional information, which is not on the receipt from the pharmacist, to complete the claim form.

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Bills for Covered Drugs should show the name, address and telephone number of the pharmacy, a description and quantity of the drug, the prescription number, the date of purchase and most importantly, the name of the Participant using the drug.

- **Mail-Order Program.** When you receive Covered Drugs dispensed through the mail-order program, you must complete and submit the mail service prescription drug claim form to the address on the claim form. Additional information may be obtained from the Plan Administrator, EnvisionRX, off of the EnvisionRX website, or by calling the EnvisionRX Customer Service Helpline, at 1- 800-595-8531.

You may not fill a Medicare Part B medication, such as diabetes testing supplies, respiratory medications and supplies, immunosuppressive medications, anti-cancer medications, and anti-nausea medications, through the mail-order program and in most cases will need to fill such prescriptions as a Participating Pharmacy claim. **Please note:** Some Medicare Part B supplies may not be available at retail pharmacies or our home delivery pharmacy.

VISIT THE BCBSTX AND EnvisionRX WEBSITES FOR SUBSCRIBER CLAIM FORMS AND OTHER USEFUL INFORMATION:

www.bcbstx.com

www.envisionrx.com

Where to Mail Completed Claim Forms

Medical Claims

Blue Cross and Blue Shield of Texas
Claims Division
P. O. Box 660044
Dallas, TX 75266—0044
1-800-521-2227

Pharmacy Benefit Claims

EnvisionRX
2181 E. Aurora Rd. Suite 201
Twinsburg, OH 44087
1- 800-595-8531

Who Receives Payment

Medical benefit payments will be made directly to contracting Providers when they bill the Claims Administrator. Written agreements between the Claims Administrator and some Providers may require payment directly to them.

Any benefits payable to you, if unpaid at your death, will be paid to your Surviving Spouse, as beneficiary. If there is no Surviving Spouse, then the benefits will be paid to your estate.

Except as provided in the section **Assignment and Payment of Benefits**, rights and benefits under the Pre-65 Retiree Medical Plan are not assignable, either before or after services and supplies are provided.

Benefit Payments to a Managing Conservator

Medical benefits for services provided to your minor Dependent Child may be paid to a third party if:

- the third party is named in a court order as managing or possessory conservator of the Child; and
- the Claims Administrator has not already paid any portion of the claim.

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In order for benefits to be payable to a managing or possessory conservator of a Child, the managing or possessory conservator must submit to the Claims Administrator, with the claim form, proof of payment of the expenses and a certified copy of the court order naming that person the managing or possessory conservator.

The Claims Administrator may deduct from its benefit payment any amounts it is owed by the recipient of the payment. Payment to you or your Provider, or deduction by the Pre-65 Retiree Medical Plan from benefit payments of amounts owed to it, will be considered in satisfaction of its obligations to you under the Retiree Welfare Plan.

An Explanation of Benefits summary is sent to you so you will know what has been paid.

When to Submit Claims

All claims for medical benefits under the Pre-65 Retiree Medical Plan must be properly submitted to the Claims Administrator within 12 months of the date you receive the services or supplies. Claims submitted and received by the Claims Administrator after that date will not be considered for payment of benefits except in the absence of legal capacity.

All claims for pharmacy benefits under the Pre-65 Retiree Medical Plan must be properly submitted to EnvisionRX within 365 days of the date you receive the services or supplies. Claims submitted and received by EnvisionRX after that date will not be considered for payment of benefits except in the absence of legal capacity.

Receipt of Claims by the Claim Administrator

A claim will be considered received by the Claims Administrator for processing upon actual delivery to the Claims Administrator at the address set forth above in the proper manner and form and with all of the information required. If the claim is not complete, it may be denied or the Claims Administrator may contact either you or the Provider or pharmacy, as applicable, for the additional information.

After processing the claim, the Claims Administrator will notify the Participant by way of an *Explanation of Benefits* summary.

REVIEW OF CLAIM DETERMINATIONS

Claim Determinations

When the Claims Administrator receives a properly submitted claim, it has authority and discretion under the Pre-65 Retiree Medical Plan to interpret and determine benefits in accordance with the plan provisions. The Claims Administrator will receive and review claims for benefits and will accurately process claims consistent with the terms of the Pre-65 Retiree Medical Plan and administrative practices and procedures established in writing between the Claims Administrator and the Plan Administrator. You have the right to seek and obtain a full and fair review by the Claims Administrator of any determination of a claim, any determination of a request for Preauthorization, or any other determination made by the Claims Administrator in accordance with the benefits and procedures detailed in this SPD.

On occasion, the Claims Administrator may deny all or part of your claim. There are a number of reasons why this may happen. We suggest that you first read the Explanation of Benefits summary prepared by the Claims Administrator; then review this SPD to see whether you understand the reason for the determination. If you have additional information that you believe could change the decision, send it to the Claims Administrator and request a review of the decision. Include your full name, and the group and identification numbers with the request.

If a claim for medical or prescription drug benefits is denied in whole or in part, you will receive a notice from the Claims Administrator within the following time limits:

1. **Concurrent Claims.** For benefit determinations relating to care that is being received at the same time as the determination, such notice will be provided no later than 24 hours after receipt of your claim for benefits.
2. **Urgent Care Claims.** For benefit determinations relating to urgent care/expedited clinical appeal (as defined below), such notice will be provided no later than 24 hours after the receipt of your claim for benefits, unless you fail to provide sufficient information. You will be notified of the missing information and will have no less than 48 hours to provide the information. A benefit determination will be made within 48 hours after the missing information is received.

An "urgent care/expedited clinical claim" is any pre-service claim for benefits for medical care or treatment with respect to which the application of regular time periods for making health claim decisions could seriously jeopardize the life or health of the claimant or the ability of the claimant to regain maximum function or, in the opinion of a Physician with knowledge of the claimant's medical condition, would subject the claimant to severe pain that cannot be adequately managed without the care or treatment.

3. **Pre-Service Claims.** For non-urgent pre-service claims, within 15 days after receipt of the claim by the Claims Administrator.

A "pre-service claim" is any non-urgent request for benefits or a determination with respect to which the terms of the benefit plan condition receipt of the benefit on approval of the benefit in advance of obtaining medical care.

4. **Post-Service Claims.** For post-service claims within 30 days after receipt of the claim by the Claims Administrator.

A "post-service claim" is a request for benefits after the service or prescription drug has been rendered or furnished to you. Your request for benefits must include full details of the service received, including your name, age, sex, identification number, the name and address of the Provider, an itemized statement of the service or prescription drug rendered or furnished, the date of service, the diagnosis, the claim charge, and any other information which the Claims Administrator may request in connection with services rendered or prescription drug benefit provided to you.

For post-stabilization care after an Emergency, a determination will be made within the time appropriate to the circumstance not to exceed one hour after the time of request.

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If the Claims Administrator determines that special circumstances require an extension of time for processing a non-urgent pre-service or post-service claim, the Claims Administrator will within the initial period for responding to the claim notify you or your authorized representative in writing of the need for an extension, the reason for the extension, and the expected date of decision. In no event will such extension exceed 15 days from the end of such initial period. If an extension is necessary because additional information is needed from you, the notice of extension will also specifically describe the missing information, and you will have at least 45 days from receipt of the notice within which to provide the requested information.

If the claim is denied in whole or in part, you will receive a written notice from the Claims Administrator with the following information, if applicable:

- The reasons for determination including the opportunity to request the diagnostic and treatment codes and their meanings;
- A reference to the Pre-65 Retiree Medical Plan provisions on which the determination is based, or the contractual, administrative or protocol for the determination;
- A description of additional information which may be necessary to perfect an appeal and an explanation of why such material is necessary;
- The identification of the claim, date of service, health care provider, claim amount (if applicable), diagnosis, treatment and denial codes with their meanings and the standards used to deny the claim;
- An explanation of the Claims Administrator internal review/appeals (and how to initiate a review/appeal) and a statement of your right, if any, to bring a civil action under Section 502(a) of ERISA following a final denial on internal review/appeal;
- In certain situations, a statement in non-English language(s) that future notices of claim denials and certain other benefit information may be available in such non-English language(s);
- The right to request, free of charge, reasonable access to and copies of all documents, records and other information relevant to the claim for benefits;
- Any internal rule, guideline, protocol or other similar criterion relied on in the determination, and a statement that a copy of such rule, guideline, protocol or other similar criterion will be provided free of charge on request;
- In the case of a decision based on medical necessity, experimental; treatment or a similar exclusion or limit an explanation of the scientific or clinical judgment relied on in the determination as applied to claimant's medical circumstances;
- In the case of a denial of an urgent care/expedited clinical claim, a description of the expedited review procedure applicable to such claims. An urgent care/expedited claim decision may be provided orally, so long as a written notice is furnished to the claimant within 3 days of oral notification
- Contact information for applicable office of health insurance consumer assistance or ombudsman.

Claim Appeal Procedures

An appeal of an Adverse Benefit Determination may be filed by you or a person authorized to act on your behalf. In some circumstances, a health care provider may appeal on his/her own behalf. An authorized representative means a person you authorize, in writing to act on your behalf. The Pre-65 Retiree Medical Plan will also recognize a court order giving a person authority to submit claims on your behalf. In case of a medical claim involving urgent care, a healthcare professional with knowledge of your condition may always act as your authorized

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representative. To obtain an Authorized Representative Form, you or your representative may call the Claim Administrator at the number on the back of your ID card.

Claim Appeal Procedures – Definitions

An “**Adverse Benefit Determination**” means a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate. If an ongoing course of treatment had been approved by the Claims Administrator or EPE and that treatment is reduced or terminated (other than by amendment or termination of the Pre-65 Retiree Medical Plan) before the end of the approved treatment period, that is also an Adverse Benefit Determination. A rescission of coverage is also an Adverse Benefit Determination. A rescission does not include a termination of coverage for reasons related to nonpayment of premium.

A “**Final Internal Adverse Benefit Determination**” means an Adverse Benefit Determination that has been upheld by the Claims Administrator or EPE at the completion of the internal review/appeal process. The Pre-65 Retiree Medical Plan is not subject to the external review procedures under the Patient Protection and Affordable Care Act.

Urgent Care/Expedited Clinical Appeals or Concurrent Appeals

If your situation meets the definition of an urgent care/expedited clinical appeal or a concurrent appeal, you may be entitled to an appeal on an expedited basis. An **urgent care/expedited clinical appeal** is an appeal of a clinically urgent nature related to health care services, including but not limited to, procedures or treatments ordered by a health care provider, as well as continued hospitalization. Before authorization of benefits for an ongoing course of treatment/continued hospitalization is terminated or reduced, the Claims Administrator will provide you with notice at least 24 hours before the previous benefits authorization ends and an opportunity to appeal. For the ongoing course of treatment, coverage will continue during the appeal process.

Upon receipt of an urgent care/expedited pre-service or concurrent appeal, the Claims Administrator will notify the party filing the appeal, as soon as possible, but no more than 24 hours after submission of the appeal, of all the information needed to review the appeal. Additional information must be submitted within 24 hours of request. The Claims Administrator will issue a decision on the appeal within 24 hours after it receives the requested information, but no later than 72 hours after the appeal has been received by the Claims Administrator.

How to Appeal an Adverse Benefit Determination

You have the right to seek and obtain a full and fair review of any determination of a claim, any determination of a request for Preauthorization, or any other determination made by the Claims Administrator in accordance with the benefits and procedures detailed in this SPD.

If you believe the Claims Administrator incorrectly denied all or part of your benefits, you may have your claim reviewed. The Claims Administrator will review its decision in accordance with the following procedure:

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- Within 180 days after you receive notice of a denial or partial denial, you may call or write to the Claims Administrator. The Claims Administrator will need to know the reasons why you do not agree with the denial or partial denial. Send your request to:

| Pre-65 Retiree Medical Plan Medical Claims | Pre-65 Medical and Prescription Drug Benefit g Benefit Program Prescription Drug Claims |
|--|---|
| Claim Review Section Blue Cross and Blue Shield of Texas P. O. Box 660044 Dallas, Texas 75266—0044 1-800-521-2227 | EnvisionRx Pharmacy Appeals 2181 E. Aurora Rd., Suite 201 Twinsburg, OH 44087 1-800-595-8531 |

- You may also designate a representative to act for you in the review procedure as noted above. Your designation of a representative must be in writing as it is necessary to protect against disclosure of information about you except to your authorized representative.
- The Claims Administrator may honor telephone requests for information. However, such inquiries will not constitute a request for review.
- In support of your claim review, you may have the option of presenting evidence and testimony to the Claims Administrator, by phone or in person at a location of the Claims Administrator's choice. You and your authorized representative may ask to review your file and any relevant documents and may submit written issues, comments and additional medical information within 180 days after you receive notice of an Adverse Benefit Determination or at any time during the claim review process.

The Claims Administrator will provide you or your authorized representative with any new or additional evidence or rationale and any other information and documents used in the review of your claim without regard to whether such information was considered in the initial determination. Such new or additional evidence or rationale will be provided to you or your authorized representative sufficiently in advance of the date a final decision on appeal is made in order to give you a chance to respond.

The appeal determination will be made by a Physician associated or contracted with the Claims Administrator and/or by external advisors, but who were not involved in making the initial denial of your claim. The reviewer will fully and fairly review your claim, taking into account any additional information you submit, and will not give deference to any prior benefits decision. No decisions regarding hiring, compensation, termination, promotion, or other similar matters with respect to the reviewer will be based on the likelihood that the reviewer will support a denial of benefits.

Before you or your authorized representative may bring any action to recover benefits you must exhaust the appeal process and must raise all issues with respect to a claim and must file an appeal or appeals and the appeals must be finally decided by the Claims Administrator or EPE.

If you have any questions about the claims procedures or the review procedure, write to the Claims Administrator or call the toll-free Customer Service Helpline number shown in this SPD or on your Identification Card.

Upon receipt of a non-urgent pre-service appeal, the Claims Administrator will issue a decision on the appeal as soon as practical, but in no event more than 30 days after the appeal has been received by the Claims Administrator.

Upon receipt of a non-urgent post-service appeal, the Claims Administrator will issue a decision on the appeal as soon as practical, but in no event more than 60 days after the appeal has been received by the Claims Administrator.

Notice of Appeal Determination

The Claims Administrator will notify the party filing the appeal, you, and, if a clinical appeal, any health care provider who recommended the services involved in the appeal, orally of its determination followed-up by a written notice of the determination. The written notice will include:

1. A reason for the determination including the opportunity to request the diagnostic and treatment codes and their meanings;
2. A reference to the Pre-65 Retiree Medical Plan provisions on which the determination is based, or the contractual, administrative or protocol for the determination;
3. The identification of the claim, date of service, health care provider, claim amount (if applicable), and information about how to obtain diagnosis, treatment and denial codes with their meanings;
4. A statement of your right, if any, to bring a civil action under Section 502(a) of ERISA following a final denial on external appeal;
5. In certain situations, a statement in non-English language(s) that future notices of claim denials and certain other benefit information may be available in such non-English language(s);
6. The right to request, free of charge, reasonable access to and copies of all documents, records and other information relevant to the claim for benefits;
7. Any internal rule, guideline, protocol or other similar criterion relied on in the determination, or a statement that a copy of such rule, guideline, protocol or other similar criterion will be provided free of charge on request;
8. In the case of a decision based on medical necessity, experimental; treatment or a similar exclusion or limit, an explanation of the scientific or clinical judgment relied on in the determination;
9. A description of the standard that was used in denying the claim and a discussion of the decision; and
10. To the extent deemed necessary, the following statement: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency."

If You Need Assistance

If you have any questions about the claims procedures or the review procedure, write or call the Claims Administrator. If you need assistance with the internal claims and appeals, you may call the number on the back of your ID card for contact information. In addition, for questions about your appeal rights or for assistance, you can contact the Employee Benefits Security Administration at 1-866-444-EBSA (3272).

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You will be deemed to have exhausted the internal review process if the Claims Administrator waives the internal review process or the Claims Administrator has failed to comply with the internal claims and appeals process. In such event, you have the right to pursue any available remedies under 502(a) of ERISA or under State law provided that you do so within two years of your exhaustion or deemed exhaustion of the internal review process.

Interpretation of Pre-65 Retiree Medical Plan Provisions

The Plan Administrator has given the Claims Administrator the initial authority to establish or construe the terms and conditions of the Pre-65 Retiree Medical Plan and the discretion to interpret and determine benefits in accordance with the Pre-65 Retiree Medical Plan's provisions.

The Plan Administrator has all powers and authority necessary or appropriate to control and manage the operation and administration of the Pre-65 Retiree Medical Plan.

All powers to be exercised by the Claims Administrator or the Plan Administrator will be exercised in a non-discriminatory manner and will be applied uniformly to assure similar treatment to persons in similar circumstances.

GENERAL PROVISIONS

Amendments

EPE may amend or terminate the Retiree Welfare Plan and the benefits provided under such plan at any time without prior notice to or consent by any Participant. Any material amendment or termination will be communicated to Participants as required by ERISA and will be effective on the date specified in such communication.

Assignment and Payment of Benefits

Rights and benefits under the Retiree Welfare Plan will not be assignable, either before or after services and supplies are provided; provided, that a Participant may direct that benefit payments be made directly to a medical provider. Further, in the absence of a written agreement with a Provider, BCBSTX reserves the right to make benefit payments to the provider or the Retired Employee or Disabled Employee. Payment to either party discharges the Retiree Welfare Plan's responsibility to the Retired Employee or Disabled Employee or Dependents for medical and prescription drug benefits available under the Retiree Welfare Plan. The fact that benefit payment is directed or made directly to the Provider will not give the Provider status as a Participant and any dispute regarding the amount of such payment must be resolved by the Participant through the Retiree Welfare Plan's internal claims procedure (i.e., the Provider may not invoke the internal claims procedure on behalf of the Participant). In addition, once Covered Services have been rendered by a Provider, the Covered Person has no right to request that BCBSTX not pay such provider.

Disclosure Authorization

If you file a claim for medical and prescription drug benefits, it will be necessary that you authorize any health care provider, insurance carrier, or other entity to furnish the Claim Administrator all information and records or copies of records relating to the diagnosis, treatment, or care of any individual included under your coverage. If you file a claim for medical

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and prescription drug benefits under the Retiree Welfare Plan, you and your Dependents will be considered to have waived all requirements forbidding the disclosure of this information and records.

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Participant/Provider Relationship

The choice of a health care provider should be made solely by you or your Dependents. The Claim Administrator does not furnish services or supplies but only makes payment for eligible expenses incurred by Participants. The Claim Administrator is not liable for any act or omission by any health care provider. The Claim Administrator does not have any responsibility for a health care provider's failure or refusal to provide services or supplies to you or your Dependents. Care and treatment received are subject to the rules and regulations of the health care provider selected and are available only for sickness or injury treatment acceptable to the health care provider.

The Claim Administrator, network providers, and/or other contracting providers are independent contractors with respect to each other. The Claim Administrator in no way controls, influences, or participates in the health care treatment decisions entered into by said providers. The Claim Administrator does not furnish medical, surgical, hospitalization, or similar services or supplies, or practice medicine or treat patients. The providers, their employees, their agents, their ostensible agents, and/or their representatives do not act on behalf of BCBSTX nor are they employees of BCBSTX.

Refund of Benefit Payments

If the Claim Administrator pays medical and prescription drug benefits for eligible expenses incurred by you or your Dependents and it is found that the payment was more than it should have been, or was made in error, the Retiree Welfare Plan has the right to a refund from the person to or for whom such benefits were paid, any other insurance company, or any other organization. If no refund is received, the Claim Administrator may deduct any refund due it from any future benefit payment.

Termination of the Plan

The coverage of all Participants will terminate if the Retiree Welfare Plan is terminated by EPE.

COBRA Continuation - Federal

Under the provisions of COBRA, you and/or your covered Dependents may have the right to continue medical and prescription drug coverage under the Retiree Welfare Plan after the date coverage would otherwise end.

Right and Duration of COBRA Continuation Coverage

You may elect to continue medical and prescription drug coverage until your death in the unlikely event EPE is subject of a bankruptcy proceeding under Title 11 of the United States Code.

A covered Spouse may elect to continue coverage:

- for 36 months from the date medical and prescription drug coverage would otherwise cease if coverage under the Retiree Welfare Plan terminates as the result of divorce from the covered Retired Employee or Disabled Employee; or

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- in the unlikely event of the bankruptcy of EPE until the earlier of (i) death, or (ii) 36 months from the death of the Covered Retired Employee or Disabled Employee.

A covered Dependent Child may elect to continue coverage:

- for thirty-six (36) months from the date medical and prescription drug coverage would otherwise cease if coverage under the Retiree Welfare Plan terminates as the result of the Child no longer meeting the Dependent eligibility requirements, or
- in the unlikely event of the bankruptcy of EPE until the earlier of (i) death, or (ii) 36 months from the death of the Covered Retired Employee or Covered Disabled Employee.

Termination of COBRA Continuation Coverage

COBRA continuation under the Retiree Welfare Plan ends at the earliest of the following events:

1. The last day of the applicable continuation period (e.g., death or 36 months).
2. The first day for which timely payment of contribution is not made to the Retiree Welfare Plan with respect to the qualified beneficiary.
3. The Retiree Welfare Plan is canceled.
4. The date, after the date of the election, upon which the Participant first becomes covered under any other group health plan that does not contain any pre-existing condition limitation applicable to the Participant.

Notice of COBRA Continuation Rights

EPE is responsible for providing the necessary notification to Participants as required by COBRA. In addition, you are responsible for providing notice to EPE of a loss of medical and prescription drug coverage due to your divorce or loss of Dependent Child status.

For additional information regarding your rights under COBRA continuation, refer to the Continuation Coverage Rights Notice in the **NOTICES** section of this SPD.

Plan Administrator's Powers and Duties

The Retiree Welfare Plan is administered by a Plan Administrator. The Plan Administrator may delegate such duties and responsibilities which in the opinion of the Plan Administrator can be properly supervised.

The Plan Administrator has the duties and powers necessary to carry out its responsibilities under the Plan, including, but in no way limited to:

1. Discretionary authority to construe and interpret the Retiree Welfare Plan, to decide all questions of eligibility, to determine the amount, manner and time of payment of any benefits under the Retiree Welfare Plan, and to resolve any ambiguities with respect to any terms and provisions of the Retiree Welfare Plan, either as written or as applied in the operation of the Retiree Welfare Plan;
2. To prescribe procedures to be followed in an application for benefits;
3. To prepare and distribute information explaining the Retiree Welfare Plan in such a manner as the Plan Administrator determines appropriate;

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4. To receive from EPE and covered participants in the Retiree Welfare Plan the information necessary for the proper administration of the Plan;
5. To furnish EPE and covered participants, on request, such annual reports as are reasonable and appropriate with respect to the administration of the Retiree Welfare Plan;
6. To receive, review and keep on file such reports on receipts and disbursements of the Retiree Welfare Plan as the Plan Administrator considers appropriate; and
7. To appoint or employ agents, subcontractors, and representatives to assist in the administration of the Retiree Welfare Plan and such other agents, including claims processors, administrators, accounts, actuaries and legal counsel.

The Plan Administrator will exercise the authority and responsibility that is appropriate in the opinion of the Plan Administrator in order to comply with ERISA and governmental regulations issued thereunder.

The Plan Administrator may act in writing and keep a record of all its acts. All decisions of the Plan Administrator will be made by the Plan administrator or by the duly authorized agents and employees of the Plan Administrator.

Plan Name

The name of the Plan is the El Paso Electric Company Retiree Welfare Benefits Plan. This SPD describes the medical and prescription drug benefits provided under the Pre-65 Retiree Medical Plan provided under the Retiree Welfare Plan.

Plan Number

The plan number used for purposes of filing documents with the Internal Revenue Service is 511.

Plan Sponsor

El Paso Electric Company is the Plan Sponsor and its contact information is as follows:

El Paso Electric Company
P.O. Box 982
El Paso, TX 79960
(915) 543-4116
Tax Identification number: 74-0607870

Plan Administrator

The Benefits Oversight Committee of EPE is the Plan Administrator and its contact information is as follows:

Benefits Oversight Committee
El Paso Electric Company
P.O. Box 982
El Paso, TX 79960
(915) 543-4116

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The benefits under the Retiree Welfare Plan are self-funded; however, EPE has established certain trusts and a section 401(h) account under the Retirement Plan to pay benefits under the Retiree Welfare Plan. Specifically, EPE has established three trusts – (a) one that funds post-retirement medical benefits for non-collectively bargained Retired Employees and Disabled Employees who are age 60 or older (and their eligible Dependents), non-collectively bargained Retired Employees and Disabled Employees (and their eligible Dependents) who terminate employment on or after January 1, 2020 after attaining age sixty (60) and the Surviving Spouses and Dependent Children of active non-collectively bargained Employees who die during the course of their employment with EPE, (b) one that funds post-retirement medical benefits for collectively bargained Retired Employees and Disabled Employees (and their eligible Dependents) and the Surviving Spouses and Dependents of active collectively bargained Employees who die during the course of their employment with EPE and (c) one that funds post-retirement life benefits for non-collectively bargained and collectively bargained Retired Employees and Disabled Employees and active non-collectively bargained and collectively bargained Employees who die during the course of their employment with EPE and a section 401(h) account under the Retirement Plan that funds post-retirement medical benefits for non-collectively bargained Retired Employees (and their eligible Dependents) who terminate employment on or after January 1, 2020 before attaining age 60 and are eligible for coverage under the Retiree Welfare Plan. Contributions for medical benefits are determined by EPE and include contributions by you and EPE. Your contributions are based on the level and type of benefit coverages that you elect, and the cost of providing the benefits. These contributions are deposited in the applicable trust. EPE is responsible for funding the 401(h) account. With respect to the benefits, EPE has obtained reinsurance policies with insurance companies for protecting against certain large, unexpected medical claims.

Trustee

The Trustee of each of the trusts and the Retiree Income Plan is Wells Fargo Institutional Retirement and Trust. You may reach the Trustee at the following:

Wells Fargo Institutional Retirement and Trust
MAC T0002-060
1000 Louisiana Street, Suite 630
Houston, TX 77002
(713) 319-1656

Plan Administration

The Retiree Welfare Plan is self-administered by the Plan Administrator. The Plan Administrator has, however, by contract secured the services of BCBSTX and EnvisionRX to serve as Claims Administrator for the purpose of handling certain administrative functions with respect to the medical and prescription drug benefits provided under the Pre-65 Retiree Medical Plan, including the review, processing, and payment of claims.

FOR THE TEST YEAR ENDED DECEMBER 31, 2020

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The name address and telephone number of the Claims Administrators for the medical and prescription drug benefits under the Pre-65 Retiree Medical Plan are:

| | |
|--|--|
| Blue Cross Blue Shield of Texas Claims Division P.O. Box 660044 Dallas, Texas 75266-0044 1-800-521-2227 | EnvisionRx Pharmacy Appeals 2181 E. Aurora Rd., Suite 201 Twinsburg, OH 44087 1- 800-595-8531 |
|--|--|

The Claims Administrators only provide administrative services to the Retiree Welfare Plan. The Claims Administrators do not insure or otherwise guarantee the medical and prescription drug benefits under the Retiree Welfare Plan.

Agent for Service of Legal Process

Legal Process for the Retiree Welfare Plan may be served on EPE.

Your ERISA Rights

As a participant in the Retiree Welfare Plan, you're entitled to certain rights and protections under ERISA. ERISA is a law that applies to certain kinds of employer-sponsored benefit plans.

| | |
|---|---|
| ERISA Provides That You'll Be Entitled to ... | <ul style="list-style-type: none">▶ Receive information about your Retiree Welfare Plan benefits.▶ Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites, all documents governing the Retiree Welfare Plan, including insurance contracts and a copy of the plan's latest annual report (Form 5500 series) filed by the Retiree Welfare Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.▶ Obtain copies of all documents governing the operation of the Retiree Welfare Plan, including insurance contracts and copies of the latest annual report (Form 5500 Series) and updated SPDs upon written request to the Plan Administrator. The Plan Administrator may make a reasonable charge for the copies.▶ Receive a summary of the Retiree Welfare Plan's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.▶ Continue healthcare coverage for yourself, Spouse, or Dependents if there is a loss of medical and prescription drug coverage under the Retiree Welfare Plan as a result of a qualifying event. You or your Dependents may have to pay for such coverage. Review this SPD and the documents governing the Retiree Welfare Plan on the rules governing your COBRA continuation coverage rights. |
|---|---|

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the Retiree Welfare Plan. The people who operate the

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Retiree Welfare Plan, called "fiduciaries," have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries.

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Here are some of ERISA's requirements:

No one, including EPE, may discriminate against you in any way to prevent you from obtaining a benefit as provided for in this plan or from exercising your rights under ERISA.

If your claim for benefits is denied in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge and to appeal any denial, all within certain time schedules.

Under ERISA, you can take steps to enforce your rights. For instance, if you request a copy of the plan documents or latest annual report from the Plan Administrator and don't receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator.

If you have a claim for benefits that has been denied improperly or ignored in whole or in part, you may file suit in a federal court.

If you disagree with the Plan Administrator's decision or lack thereof concerning the qualified status of a Medical Child Support Order ("QMCSO"), you may file suit in federal court.

If plan fiduciaries misuse the plan's money or if you're discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you're successful, the court may order the person you've sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees — if, for example, it finds that your claim is frivolous.

If you have any questions about the Retiree Welfare Plan, you should contact the Plan Administrator. If you have any questions about this statement or your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest area office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in the telephone directory, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

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NOTICES

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NOTICE

Other Blue Cross and Blue Shield Plans Separate Financial Arrangements with Providers

BlueCard

Blue Cross and Blue Shield of Texas ("BCBSTX") hereby informs you that other Blue Cross and Blue Shield Plans outside of Texas ("Host Blues") may have contracts similar to the contracts described above with certain Providers ("Host Blue Providers") in their service areas.

When you access health care services through BlueCard outside of Texas and from a Provider which does not have a contract with Blue Cross and Blue Shield of Texas, the amount you pay for Covered Services is calculated on the **lower of**:

- The billed charges for your covered services, or
- The negotiated price that the Host Blue passes on to Blue Cross and Blue Shield of Texas.

Often, this "negotiated price" will consist of a simple discount which reflects the actual price paid by the Host Blue. Sometimes, however, it is an estimated price that takes into consideration the actual price increased or reduced to reflect aggregate payment from expected settlements, withholds, any other contingent payment arrangements and non-claims transactions with your health care provider or with a specified group of providers. The negotiated price may also be charged as a billed charge reduced to reflect an average expected savings with your health care provider or with a specified group of providers. The price that reflects average savings may result in greater variation (more or less) from the actual price paid than will the estimated price. The negotiated price will also be adjusted in the future to correct for over- or underestimation of past prices. However, the amount you pay is considered a final price.

Statutes in a small number of states may require the Host Blue to use a basis for calculating your liability for covered services that does not reflect the entire savings realized or expected to be realized on a particular claim or to add a surcharge. Should any state statutes mandate your liability calculation methods that differ from the usual BlueCard method noted above or require a surcharge, Blue Cross and Blue Shield of Texas would then calculate your liability for any covered health care services in accordance with the applicable state statute in effect at the time you received your care.

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NOTICE

SPECIAL REQUIREMENTS REGARDING MATERNITY AND NEWBORN CARE

The Pre-65 Retiree Medical Plan generally may not, under federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery or less than 96 hours following a cesarean section. However, federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours, as applicable). In any case, plans and issuers may not, under federal law, require that a provider obtain authorization from the plan or the insurance issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

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**NOTICE
YOUR RIGHTS AFTER A MASTECTOMY**

In the case of a Participant receiving benefits under the Pre-65 Retiree Medical Plan in connection with a mastectomy and who elects breast reconstruction, coverage will be provided in a manner determined in consultation with the attending physician and the patient for:

1. Reconstruction of the breast on which the mastectomy was performed;
2. Surgery and reconstruction of the other breast to produce a symmetrical appearance; and
3. Prostheses and treatment of physical complications at all stages of the mastectomy, including lymphedemas.

Deductibles, Out-of-Pocket Maximum and copayment amounts will be the same as those applied to other similarly covered medical services, such as surgery and prostheses.

**NOTICE
PAYMENT FOR SERVICES PERFORMED BY NON-NETWORK PROVIDERS**

Although health care services may be or have been provided to you at a health care facility that is a member of the provider network used by your Pre-65 Retiree Medical Plan, other professional services may be or have been provided at or through the facility by physicians and other health care practitioners who are not members of that network. You may be responsible for payment of all or part of the fees for those professional services that are not paid or covered by the Pre-65 Retiree Medical Plan.

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**NOTICE OF PRIVACY PRACTICES FOR EL PASO ELECTRIC COMPANY EMPLOYEE
WELFARE PLAN AND RETIREE WELFARE BENEFIT PLAN PARTICIPANTS AND THEIR
COVERED SPOUSES AND DEPENDENTS**

**THIS NOTICE DESCRIBES HOW HEALTH INFORMATION ABOUT YOU MAY BE USED
AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION**

PLEASE REVIEW IT CAREFULLY

EFFECTIVE JUNE 2012

The privacy provisions of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") protect the manner in which your protected health information ("PHI") may be used and disclosed by the El Paso Electric Company Employee Welfare Benefit Plan and the El Paso Electric Company Retiree Welfare Benefit Plan (collectively the "Plan"). The purpose of this notice is to provide you with information regarding your PHI privacy rights.

GENERAL RULES REGARDING HEALTH INFORMATION

Information about you and your health is personal. The Plan is committed to protecting health information about you (i.e., PHI) which is obtained in connection with the operation and administration of the Plan. This notice will tell you about the ways in which the Plan and its Business Associates (e.g. the third party administrators such as Blue Cross Blue Shield of Texas and EnvisionRX (referred to as the "Business Associate")) may use and disclose PHI about you. It also describes your rights regarding and certain obligations the Plan has regarding the use and disclosure of PHI.

The Plan is required by law to:

- make sure that health information that identifies you is kept private;
- give you this notice of the Plan's legal duties and privacy practices with respect to your PHI;
- notify you following a breach of unsecured PHI; and
- follow the terms of the notice that is currently in effect.

HOW THE PLAN MAY USE AND DISCLOSE HEALTH INFORMATION ABOUT YOU

The following categories describe different ways that the Plan may use and disclose PHI. Except as described below, authorization or an opportunity to object is not required for these uses or disclosures. In most cases, the Plan tries not to use, disclose, or request more than the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request. For each category of uses or disclosures this notice will give some examples. Not every use or disclosure in a category will be listed. In addition, many of the uses and disclosures may be performed on the Plan's behalf by a Business Associate. However, all of the ways the Plan is permitted to use and disclose PHI will fall within one of the categories described below.

- **For Treatment.** The Plan may receive, use and disclose PHI about you to provide you with or help you to obtain health treatment or services. For example, the Business Associate may request and receive from your doctor information about the health condition for which you are seeking treatment in order to determine if the treatment you are seeking is covered by the Plan. The Plan may also contact you to provide information about treatment alternatives or other health-related benefits that may be of interest to you.

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- **For Payment.** The Plan may receive, use and disclose PHI about you so that the bills for health treatment and services you have received may be paid by the Plan. For example, the Business Associate may need to have information about a surgery which you have received to determine payment for services. Similarly, the Plan may receive use and disclose PHI to the claims administrator to provide it with information necessary to process an appeal that you file.
- **For Health Care Operations.** The Plan may receive, use and disclose PHI about you for purposes of the Plan's operations such as underwriting, premium rating or other activities relating to the creation, renewal or replacement of a contract of health insurance, for legal or auditing functions or for general management and administrative activities. For instance, the Business Associate or an outside auditing firm on behalf of the Plan may perform a claims audit. The Plan is prohibited from using or disclosing your genetic information for underwriting purposes.
- **Plan Sponsor Information Request.** The Plan may disclose to El Paso Electric Company (the "Company") summary health information (i.e., de-identified statistical information that summarizes the claims history, claims expenses or type of claims experienced by covered persons under the Plan) for the purpose of obtaining premium bids for providing health insurance coverage under the Plan or determining Plan design.

The Plan may also disclose to the Company information on whether a person is participating in the Plan and his or her benefit elections.

Plan may also disclose PHI to the Company for specific plan administration purposes such as treatment, payment or health care operations, as described above.

The Company can only be provided PHI regarding covered persons as provided in the Plan document and consistent with this notice.

- **Individuals Involved in Your Care or Payment for Your Care.** Unless you advise the Plan otherwise by completing the attached Disclosure Objection Form and returning a copy of such completed form to the Plan's Contact Person, the Plan will be entitled to disclose PHI to a close family member or other person you identify that is directly relevant to such individual's involvement in your health care treatment or payment for your health care treatment as follows: (i) if you are married, to your spouse and (ii) if you are covered by the Plan as a child (regardless of whether you have attained age 18), to either of your parents (which may include a stepparent). The Plan will have the right to make such disclosures as long as you are covered by the Plan (including coverage following reenrollment should you discontinue coverage and reenroll in the Plan) or have claims pending under the Plan following your termination of coverage. However, if you are age 18 or older, you may file a Disclosure Objection Form at any time if you want the Plan to cease making family member disclosures as described above. Your Disclosure Objection Form should be returned to the Plan's Contact Person.

In rare circumstances, the Plan may release a limited amount of PHI to aid your family members, close friends, or disaster relief personnel in locating you in an emergency or in case of your incapacity. Whenever possible, you will be given an opportunity to agree or object before the Plan makes such use or disclosure.

- **Pursuant to Your Authorization.** Other uses and disclosures of PHI not covered by this notice or the laws that apply to the Plan, such as uses and disclosures for

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marketing or the sale of your PHI, will be made only with your written permission.
If you sign an authorization giving the Plan permission to use or disclose PHI about you, you may revoke that authorization, in writing, at any time effective with respect to future uses and disclosures of your PHI.

SPECIAL SITUATIONS

The Plan will use or disclose PHI about you in the following special situations as follows:

- As required by federal, state or local law.
- To avert a serious threat to the health or safety of you, someone else or the public.
- If you are a member of the military or a veteran, to military command authorities.
- In connection with national security or intelligence activities or protective services for government officials.
- For workers' compensation or similar programs.
- To respond to a court or administrative order, a subpoena, discovery request or other lawful process.
- As requested by federal, state and local law enforcement officials or a correctional institution.
- For public health activities, such as disease control, child abuse or neglect or the Federal Food and Drug Administration with respect to adverse events or product defects.
- To government authorities for victims of abuse, neglect or domestic violence.
- With respect to a decedent, to a coroner or medical examiner.
- To organ procurement organizations to facilitate organ, eye or tissue donations or transplants.
- To facilitate medical research, subject to special rules and restrictions under HIPAA.
- For activities authorized by law for oversight of the health care system or government benefit programs.
- To the Department of Health and Human Services to investigate or determine the Plan's compliance with the HIPAA privacy rules.

YOUR RIGHTS REGARDING HEALTH INFORMATION ABOUT YOU

You have the following rights regarding PHI the Plan has about you:

- **Right to Inspect and Copy.** You have the right to inspect and obtain a copy of PHI that the Plan or the Business Associates have about you.¹ Usually, this includes health and billing records. You must submit your request in writing to the Plan's Contact Person or the Business Associate. The Plan may charge a fee for producing and mailing the copies and, in certain limited circumstances, may deny your request. To the extent that the Plan maintains your PHI electronically, you may elect to receive a copy of such information in an electronic format, and if you

¹ If you are a participant in a fully insured health maintenance organization ("HMO") or other insured health benefit, you need to contact the HMO or insurer. This applies to all of the individual rights described in this notice.

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choose to have the copy directly transmitted to a person you designate. The Plan may charge a fee for the labor costs of responding to your request.

- **Right to Amend.** If you feel that PHI the Plan has about you is incorrect or incomplete, you may ask the Plan to amend the information. Your request must be made in writing and submitted to the Plan's Contact Person or Business Associate. If the Plan denies your request, you may file a written statement of disagreement.
- **Right to an Accounting of Disclosures.** You have the right to request an "accounting of disclosures." This is a list of the disclosures the Plan made of PHI about you for reasons other than treatment, payment or health care operations or pursuant to your authorization. Your request must be in writing to the Plan's Contact Person or Business Associate. If you request such an accounting more than once in a 12-month period, the Plan may charge a reasonable fee.
- **Right to Request Restrictions.** You have the right to request a restriction or limitation on the PHI the Plan uses or discloses about you for treatment, payment or health care operations. You also have the right to request a limit on the PHI the Plan discloses about you to someone who is involved in the payment for your care, like a family member or friend. For example, you could ask that the Plan not use or disclose information about a surgery you had. Generally, the Plan is not required to agree to your request for restrictions. To request restrictions, you must make your request in writing to the Plan's Contact Person or Business Associate.
- **Right to Request Confidential Communications.** You have the right to request that the Plan communicate with you about health matters in a certain way or at a certain location. For example, you can ask that the Plan only contact you at work or by mail. Your request must be made in writing to the Plan's Contact Person or Business Associate. The Plan will accommodate all reasonable requests.
- **Right to a Copy of This Notice.** You may ask us to give you a copy of this notice at any time. Even if you have agreed to receive this notice electronically, you are still entitled to a paper copy of this notice. You may obtain a copy of this notice by logging onto the company intranet under the Human Resources – Benefits section.

WHO WILL FOLLOW THIS NOTICE

The privacy practices described in this notice will be followed by (i) the Plan with respect to its health care components (i.e., the medical, dental, vision, health care reimbursement account, and employee assistance program),² and its fiduciaries (such as the Plan Administrator), (ii) the Plan's Business Associates and (iii) to the extent they are involved in the operation and administration of the health care components of the Plan, by the Company and its employees.

The non-health care components of the Plan (i.e., life insurance, disability, accidental death and dismemberment and the dependent care assistance program) are not subject to the HIPAA privacy rules and the terms of this notice.

CHANGES TO THIS NOTICE

The Plan reserves the right to change this notice, effective for PHI the Plan already has about you as well as any information it receives in the future.

² This notice covers the self-insured health care components under the Plan. If you are a participant in a fully insured HMO or other insured health benefit component, you should receive a separate privacy notice directly from the HMO.

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If you have questions regarding this notice or your privacy rights, you may contact the Plan's Contact Person or Privacy Officer. The Plan's Contact Person is Benefits Manager (915) 543-5985. The Plan's Privacy Officer is William Stiller (915) 521-4452.

COMPLAINTS

If you believe your privacy rights have been violated, you may file a complaint with the Plan's Contact Person or Privacy Officer. All complaints must be submitted in writing. A copy of such procedures can be obtained from the Plan's Contact Person without charge upon written request. You also may file a complaint with the Secretary of the Department of Health and Human Services. If you believe that your privacy rights have been violated. You will not be penalized for filing a complaint.

HEALTH PROVIDERS AND YOUR HEALTH INFORMATION

Health providers (such as doctors, medical clinics, health maintenance organizations, insurers, hospitals, etc.) may also use and disclose PHI about you. You also have rights regarding the PHI which they obtain and have about you. You should consult the notices of privacy practices which you receive from health care providers for information regarding how and under what circumstances they may use and release your PHI and what rights you have with respect to their practices regarding your PHI.

[Attachment Objection to Notification Disclosure Form]

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DISCLOSURE OBJECTION FORM
FOR THE EL PASO ELECTRIC EMPLOYEE BENEFIT PLAN
(To be completed only if you object to family member disclosures)

I have read the "Notice of Privacy Practices for the El Paso Electric Company Employee Welfare Benefit Plan and Retiree Welfare Benefit Plan Participants and Their Covered Spouses and Dependents" (the "Notice") and I understand that with respect to the health care components (i.e., medical, dental, vision, health care spending account, and employee assistance program),³ the Plan will be entitled to disclose my protected health information ("PHI") as described in the Notice in the section titled "Individuals Involved in Your Care or Payment for Your Care" unless I object to such disclosures. I hereby object to such disclosures and direct the health care components of the Plan, identified below, to disclose only to me, at the following address, my PHI that is relevant to my health care under the Plan:

Name: _____
Address: _____
City, State, ZIP: _____
Social Security Number: _____
Date of Birth: _____
Telephone Number: _____
Relation to Employee: _____
Employee Name: _____
Employee's Social Security Number: _____

Affected Health Care Components (check only the health care components in which you are enrolled, as applicable):

- ☐ Medical
- ☐ Dental
- ☐ Vision
- ☐ Health Care Spending Account
- ☐ Employee Assistance Program

Signature: _____ Date: _____
Return your completed and executed Disclosure Objection Form to:

Benefits Manager
El Paso Electric Company
100 N. Stanton Street -- Location 091
El Paso, Texas 79901
Telephone No.: (915) 543-5985
Facsimile No.: (915) 521-4787

THIS OBJECTION DOES NOT RESTRICT THE PLAN'S USE OR DISCLOSURE OF PHI AS DESCRIBED IN THE NOTICE EXCEPT WITH RESPECT TO THE SECTION "INDIVIDUALS INVOLVED IN YOUR CARE OR PAYMENT FOR YOUR CARE"

³ If you are a participant in a fully insured HMO or other insured health benefit component, you will receive a separate notice with instructions regarding the filing of a disclosure objection directly from the HMO.

**Important Notice from El Paso Electric
About Your Prescription Drug Coverage and Medicare**

If you are Medicare eligible, please read this notice carefully and keep it where you can find it. This notice has information about your current prescription drug coverage with El Paso Electric and about your options under Medicare's prescription drug coverage. This information can help you decide whether or not you want to join a Medicare drug plan. If you are considering joining, you should compare your current coverage, including which drugs are covered at what cost, with the coverage and costs of the plans offering Medicare prescription drug coverage in your area. Information about where you can get help to make decisions about your prescription drug coverage is at the end of this notice.

There are two important things you need to know about your current coverage and Medicare's prescription drug coverage:

1. Medicare prescription drug coverage became available in 2006 to everyone with Medicare. You can get this coverage if you join a Medicare Prescription Drug Plan or join a Medicare Advantage Plan (like an HMO or PPO) that offers prescription drug coverage. All Medicare drug plans provide at least a standard level of coverage set by Medicare. Some plans may also offer more coverage for a higher monthly premium.
2. El Paso Electric has determined that the prescription drug coverage offered by EnvisionRX is, on average for all plan participants, expected to pay out as much as standard Medicare prescription drug coverage pays and is therefore considered "**Creditable Coverage**." Because your existing coverage is Creditable Coverage, you can keep this coverage and not pay a higher premium (a penalty) if you later decide to join a Medicare drug plan.

When Can You Join A Medicare Drug Plan?

You can join a Medicare drug plan when you first become eligible for Medicare and each year from October 15th to December 7th.

However, if you lose your current creditable prescription drug coverage, through no fault of your own, you will also be eligible for a two (2) month Special Enrollment Period (SEP) to join a Medicare drug plan.

What Happens To Your Current Coverage If You Decide to Join A Medicare Drug Plan?

If you decide to join a Medicare drug plan not sponsored by El Paso Electric, your current El Paso Electric coverage will be affected. For those individuals who elect Part D coverage through another plan, coverage under the El Paso Electric Prescription Plan will end for the individual and all covered dependents.

If you do decide to join a Medicare drug plan and drop your current El Paso Electric Prescription coverage, be aware that you and your dependents may not be allowed to re-enroll at a later date. However, if you choose to join the El Paso Electric Medicare drug plan, you may be eligible to reenroll in a non-Medicare drug plan sponsored by El Paso Electric.

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When Will You Pay A Higher Premium (Penalty) To Join A Medicare Drug Plan?

You should also know that if you drop or lose your current coverage with El Paso Electric and don't join a Medicare drug plan within 63 continuous days after your current coverage ends, you may pay a higher premium (a penalty) to join a Medicare drug plan later.

If you go 63 continuous days or longer without creditable prescription drug coverage, your monthly premium may go up by at least 1% of the Medicare base beneficiary premium per month for every month that you did not have that coverage. For example, if you go nineteen months without Creditable Coverage, your premium may consistently be at least 19% higher than the Medicare base beneficiary premium. You may have to pay this higher premium (a penalty) as long as you have Medicare prescription drug coverage. In addition, you may have to wait until the following November to join.

For More Information About This Notice Or Your Current Prescription Drug Coverage...

Contact the number listed below for further information. **NOTE:** You'll get this notice each year. You will also get it before the next period you can join a Medicare drug plan, and if this coverage through El Paso Electric changes. You also may request a copy of this notice at any time.

For More Information About Your Options Under Medicare Prescription Drug Coverage...

More detailed information about Medicare plans that offer prescription drug coverage is in the "Medicare & You" handbook. You'll get a copy of the handbook in the mail every year from Medicare. You may also be contacted directly by Medicare drug plans.

For more information about Medicare prescription drug coverage:

- Visit www.medicare.gov
- Call your State Health Insurance Assistance Program (see the inside back cover of your copy of the "Medicare & You" handbook for their telephone number) for personalized help
- Call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048.

If you have limited income and resources, extra help paying for Medicare prescription drug coverage is available. For information about this extra help, visit Social Security on the web at www.socialsecurity.gov, or call them at 1-800-772-1213 (TTY 1-800-325-0778).

Remember: Keep this Creditable Coverage notice. If you decide to join one of the Medicare drug plans, you may be required to provide a copy of this notice when you join to show whether or not you have maintained Creditable Coverage and, therefore, whether or not you are required to pay a higher premium (a penalty).

| | |
|--------------------------|-------------------------------|
| Date: | September 13, 2014 |
| Name of Entity/Sender: | El Paso Electric |
| Contact-Position/Office: | Benefits Department |
| Address: | PO Box 982, El Paso, TX 79960 |
| Phone Number: | 915-543-4116 |

CMS Form 10182-CC

Updated April 1, 2011

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0990. The time required to complete this information collection is estimated to average 8 hours per response initially, including the time to

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review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

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NOTICE

CONTINUATION COVERAGE RIGHTS UNDER COBRA

INTRODUCTION

You are receiving this notice because you have recently become covered under your employer's group health plan (the Plan). This notice contains important information about your right to COBRA continuation coverage, which is a temporary extension of coverage under the Plan. This notice generally explains COBRA continuation coverage, when it may become available to you and your family, and what you need to do to protect the right to receive it.

The right to COBRA continuation coverage was created by a federal law, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). COBRA continuation coverage may be available to you when you would otherwise lose your group health coverage. It can also become available to other members of your family who are covered under the Plan when they would otherwise lose their group health coverage.

For additional information about your rights and obligations under the Plan and under federal law, you should review the Plan's SPD or contact the Plan Administrator.

WHAT IS COBRA CONTINUATION COVERAGE?

COBRA continuation coverage is a continuation of Plan coverage when coverage would otherwise end because of a life event known as a "qualifying event." Specific qualifying events are listed later in this notice. After a qualifying event, COBRA continuation coverage must be offered to each person who is a "qualified beneficiary." You, your spouse, and your dependent children could become qualified beneficiaries if coverage under the Plan is lost because of the qualifying event. Under the Plan, qualified beneficiaries who elect COBRA continuation coverage must pay for COBRA continuation coverage.

If you are an employee, you will become a qualified beneficiary if you lose your coverage under the Plan because either

one of the following qualifying events happens:

- Your hours of employment are reduced; or
- Your employment ends for any reason other than your gross misconduct.

If you are the spouse of an employee, you will become a qualified beneficiary if you lose your coverage under the Plan because any of the following qualifying events happens:

- Your spouse dies;
- Your spouse's hours of employment are reduced;
- Your spouse's employment ends for any reason other than his or her gross misconduct;
- Your spouse becomes enrolled in Medicare benefits (under Part A, Part B, or both); or
- You become divorced or legally separated from your spouse.

Your dependent children will become qualified beneficiaries if they will lose coverage under the Plan because any of the following qualifying events happens:

- The parent-employee dies;
- The parent-employee's hours of employment are reduced;
- The parent-employee's employment ends for any reason other than his or her gross misconduct;
- The parent-employee becomes enrolled in Medicare (Part A, Part B, or both);
- The parents become divorced or legally separated; or
- The child stops being eligible for coverage under the Plan as a "dependent child."

If the Plan provides health care coverage to retired employees, the following applies: Sometimes, filing a proceeding in bankruptcy under title 11 of the United States Code can be a qualifying event. If a proceeding in bankruptcy is filed with

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respect to your employer, and that bankruptcy results in the loss of coverage of any retired employee covered under the Plan, the retired employee will become a qualified beneficiary with respect to the bankruptcy. The retired employee's spouse, surviving spouse, and dependent children will also become qualified beneficiaries if bankruptcy results in the loss of their coverage under the Plan.

WHEN IS COBRA COVERAGE AVAILABLE?

The Plan will offer COBRA continuation coverage to qualified beneficiaries only after the Plan Administrator has been notified that a qualifying event has occurred. When the qualifying event is the end of employment or reduction of hours of employment, death of the employee, in the event of retired employee health coverage, commencement of a proceeding in bankruptcy with respect to the employer, or the employee's becoming entitled to Medicare benefits (under Part A, Part B, or both), the employer must notify the Plan Administrator of the qualifying event.

YOU MUST GIVE NOTICE OF SOME QUALIFYING EVENTS

For the other qualifying events (divorce or legal separation of the employee and spouse, or a dependent child's losing eligibility for coverage as a dependent child), you must notify the Plan Administrator within 60 days after the qualifying event occurs. Contact your employer and/or COBRA Administrator for procedures for this notice, including a description of any required information or documentation.

HOW IS COBRA COVERAGE PROVIDED?

Once the Plan Administrator receives notice that a qualifying event has occurred, COBRA continuation coverage will be offered to each of the qualified beneficiaries. Each qualified beneficiary will have an independent right to elect COBRA continuation coverage. Covered employees may elect COBRA continuation coverage on behalf of their spouses, and parents may

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elect COBRA continuation coverage on behalf of their children.

COBRA continuation coverage is a temporary continuation of coverage. When the qualifying event is the death of the employee, the employee's becoming entitled to Medicare benefits (under Part A, Part B, or both), your divorce or legal separation, or a dependent child's losing eligibility as a dependent child, COBRA continuation coverage lasts for up to 36 months.

When the qualifying event is the end of employment or reduction of the employee's hours of employment, and the employee became entitled to Medicare benefits less than 18 months before the qualifying event, COBRA continuation coverage for qualified beneficiaries other than the employee lasts until 36 months after the date of Medicare entitlement. For example, if a covered employee becomes entitled to Medicare 8 months before the date on which his employment terminates, COBRA continuation coverage for his spouse and children can last up to 36 months after the date of Medicare entitlement, which is equal to 28 months after the date of the qualifying event (36 months minus 8 months). Otherwise, when the qualifying event is the end of employment or reduction of the employee's hours of employment, COBRA continuation coverage generally lasts for only up to a total of 18 months. There are two ways in which this 18-month period of COBRA continuation coverage can be extended.

DISABILITY EXTENSION OF 18-MONTH PERIOD OF CONTINUATION COVERAGE

If you or anyone in your family covered under the Plan is determined by the Social Security Administration to be disabled and you notify the Plan Administrator in a timely fashion, your entire family may be entitled to an additional 11 months of COBRA continuation coverage, for a total maximum of 29 months. The disability would have to have started at some time before the 60th day of COBRA continuation coverage and

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must last at least until the end of the 18-
month period of continuation coverage.

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Contact your employer and/or the COBRA Administrator for procedures for this notice, including a description of any required information or documentation.

**SECOND QUALIFYING EVENT
EXTENSION OF 18-MONTH PERIOD OF
CONTINUATION
COVERAGE**

If your family experiences another qualifying event while receiving 18 months of COBRA continuation coverage, the spouse and dependent children in your family can get up to 18 additional months of COBRA continuation coverage, for a maximum of 36 months if notice of the second qualifying event is properly given to the Plan. This extension may be available to the spouse and dependent children receiving continuation coverage if the employee or former employee dies, becomes entitled to Medicare benefits (under Part A, Part B, or both), or gets divorced or legally separated or if the dependent child stops being eligible under the Plan as a dependent child, but only if the event would have caused the spouse or dependent child to lose coverage under the Plan had the first qualifying event not occurred.

IF YOU HAVE QUESTIONS

Questions concerning your Plan or your COBRA continuation coverage rights should be addressed to your Plan Administrator. For more information about your rights under ERISA, including COBRA, the Health Insurance Portability and Accountability Act (HIPAA), and other laws affecting group health plans, contact the nearest Regional or District Office of the U. S. Department of Labor's Employee Benefits Security Administration (EBSA) in your area or visit the EBSA website at www.dol.gov/ebsa. (Addresses and phone numbers of Regional and District EBSA Offices are available through EBSA's website.)

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KEEP YOUR PLAN INFORMED OF
ADDRESS CHANGES**

In order to protect your family's rights, you should keep the Plan Administrator informed of any changes in the addresses of family members. You should also keep a copy, for your records, of any notices you send to the Plan Administrator.

PLAN CONTACT INFORMATION

Contact your employer for the name, address and telephone number of the party responsible for administering your COBRA continuation coverage

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FOURTH AMENDMENT

TO

RETIREMENT INCOME PLAN FOR EMPLOYEES OF
EL PASO ELECTRIC COMPANY

WHEREAS, the Retirement Income Plan for Employees of El Paso Electric Company (the "Plan") was amended and restated effective January 1, 2016, except as provided therein, and was subsequently amended from time to time thereafter;

WHEREAS, the Plan is intended to be a qualified defined benefit pension plan within the meaning of Internal Revenue Code ("Code") Section 401(a) and shall be construed and administered in a manner consistent with applicable provisions of the Code and the Employee Retirement Income Security Act of 1974;

WHEREAS, under Section 11.14 of the Plan, El Paso Electric Company (the "Employer") reserves the right to amend the Plan in whole or in part at any time and from time to time, without the consent of any other party, except as provided therein; and

WHEREAS, the Employer desires to amend the Plan to establish separate accounts in accordance with Code Section 401(h) to provide for the payment of post-retirement health benefits and related administrative expenses for certain retired employees under the Plan (and their eligible spouses and dependents);

NOW, THEREFORE, in accordance with Section 11.14 of the Plan, effective February 1, 2020, the Plan is hereby amended to add a new Article 14, entitled RETIREE HEALTH CARE SEPARATE ACCOUNTS, to read as follows:

ARTICLE 14
RETIREE HEALTH CARE SEPARATE ACCOUNTS

14.1 Establishment. Effective February 1, 2020, a separate account within the meaning of Code Section 401(h) ("Separate Account") is established and maintained under the Plan to provide post-retirement medical, hospital, vision care and prescription drug benefits that are considered sickness, accident, hospitalization and medical expenses under Code Section 401(h) (hereinafter, "post-retirement health benefits") to participants under the El Paso Electric Company Retiree Welfare Benefits Plan ("Retiree Medical Plan") (and their eligible spouses and dependents) who are Members under the Plan and who satisfy the eligibility requirements set forth in Section 14.2. In no event shall the Plan discriminate in favor of officers, shareholders, supervisory employees or highly compensated employees with respect to post-retirement health benefits provided under this Article 14 or with respect to contributions to the Separate Account or any Key Employee Separate Accounts established

under Section 14.3 (collectively, the "Separate Accounts"). The benefits and time periods with respect to which post-retirement health benefits provided under the Separate Accounts will be paid shall be determined under the Retiree Medical Plan, without Employer discretion as to the timing or amount of benefit payments. As used in this Article 14, "dependent" shall mean a child, as defined in Code Section 152(f)(1)), of an eligible retiree, as determined under Section 14.2, who as of the end of the calendar year has not attained age 27; provided, however, that under the current terms of the Retiree Medical Plan, in general, dependents who have attained age 26 are not eligible.

14.2 Eligible Retirees. The Separate Accounts will be available to provide post-retirement health benefits under the Retiree Medical Plan for Members under the Plan (and their eligible spouses and dependents) (a) who are eligible for coverage under the Retiree Medical Plan, (b) who are non-collectively bargained employees who retire under the terms of the Plan and are eligible to receive retirement benefits under the Plan, (c) who are under age 60 as of January 1, 2020, and (d) who terminate employment on or after January 1, 2020. Post-retirement health benefits under the Retiree Medical Plan for all other retired employees will not be covered or funded by the Separate Accounts. Notwithstanding the foregoing, no amounts shall be payable from the Separate Accounts to the extent that such liabilities are funded by the Employer under a voluntary employees' beneficiary association or any other funding arrangement.

14.3 Key Employees. No amount shall be payable from the assets of the Separate Account established under Section 14.1 for post-retirement health benefits for an individual (or his eligible spouse and dependents) who at any time has been a Key Employee (as defined in Code Section 416(i)), and post-retirement health benefits for Key Employees shall be payable directly from the general assets of the Employer or another funding vehicle established by the Employer. The preceding provisions of this Section 14.3 notwithstanding, the Employer may establish and maintain "Key Employee Separate Accounts" under the Plan for the payment of post-retirement health benefits under the Retiree Medical Plan for Members who are Key Employees and who satisfy the eligibility requirements set forth in Section 14.2 (and their eligible spouses and dependents), and post-retirement health benefits shall be payable from each such Key Employee Separate Account only to such Key Employee for whom the Key Employee Separate Account is established (and his eligible spouse and dependents).

14.4 Funding.

(a) **Reasonable and Ascertainable.** Amounts contributed to the Separate Accounts shall be reasonable and ascertainable. Contributions to the Separate Accounts shall be determined using reasonable actuarial assumptions, which include consideration of the terms and coverage of the

Retiree Medical Plan, the Retiree Medical Plan's funding, and any forfeitures arising due to employee turnover, deaths or items of like nature. In determining how much may be contributed to the Plan to provide post-retirement health benefits, the Plan's enrolled actuary may take into account reasonably projected increases in health care costs due to inflation and other factors. In no case shall Separate Account forfeitures prior to termination of the Plan serve to increase the benefits payable under the Retiree Medical Plan. Forfeitures of individual interests in Separate Accounts maintained under this Article 14 that occur prior to termination of the Plan must be applied as soon as possible to reduce Employer contributions to fund post-retirement health benefits under this Article 14.

(b) Subordinate Benefits. Post-retirement health benefits paid by the Separate Accounts shall be subordinate to the Plan's retirement benefits. Accordingly, subject to Section 14.4(a), the aggregate actual contributions to the Separate Accounts for providing post-retirement health benefits under the Retiree Medical Plan shall not exceed 25 percent of the total aggregate actual contributions made to the Plan (other than contributions to fund past service credits) after the date on which the Separate Account is established under Section 14.1. The amount of any contribution returned to the Employer under Section 4.5 shall not be taken into account in applying the 25 percent limit on contributions to provide post-retirement health benefits.

14.5 Separate Account Contributions. The Employer shall designate which contributions to the Plan are being made for post-retirement health benefits at the time the contributions are made, and these contributions shall be credited to the Separate Accounts established under this Article 14. Although contributions to the Separate Accounts are currently provided entirely from Employer contributions, the Employer may, in the future, require Members to make contributions to the Separate Accounts established under this Article 14.

14.6 Commingling of Separate Account Assets for Investment Purposes. All contributions to the Separate Accounts may be commingled with Plan assets held for retirement benefits for investment and custody purposes, but, for recordkeeping purposes, all contributions to the Separate Accounts and earnings thereon, if any, together with all disbursements from the Separate Accounts, shall be recorded and accounted for in one or more Separate Accounts relating solely to the provision of post-retirement health benefits under the Retiree Medical Plan. If the Employer makes a contribution to the Trust that includes amounts allocable both to retirement benefits under the Plan and post-retirement health benefits under the Plan's Separate Accounts, the Employer shall clearly specify the portion of such contribution allocable to such retirement benefits and the portion allocable to such post-retirement health benefits allocable to each the Plan's Separate Accounts.

14.7 Post-retirement Health Benefits Not Vested. Neither Retiree Medical Plan nor Separate Account benefits (a) constitute any portion of a Member's "accrued benefit" under the Plan, (b) are subject to the vesting requirements of Code Section 411 or the vesting schedules set forth under Section 5.1, (c) are subject to protection under Code Section 411(d)(6) from reduction or elimination, or (d) are protected by corresponding provisions of ERISA. The Employer expressly reserves the right to change, reduce or eliminate the benefits provided under the Retiree Medical Plan (and the corresponding post-retirement health benefits provided under the Separate Accounts) at any time and in any fashion, and no person may rely on the future continuation of the Retiree Medical Plan (or the corresponding post-retirement health benefits provided under the Separate Accounts). Post-retirement health benefits shall be provided under the Plan only to the extent they can be paid from assets then credited to the Separate Accounts.

14.8 Exclusive Benefit. Separate Account assets shall be used solely for the purpose of (a) providing post-retirement health benefits for Members under the Plan who satisfy the eligibility requirements set forth in Section 14.2, and (b) paying any necessary or appropriate expenses attributable to the administration of the Separate Accounts. No part of the corpus or income of the Separate Accounts shall be used for, or diverted to, any purpose other than the provision of post-retirement health benefits at any time prior to the satisfaction of all liabilities for post-retirement health benefits under this Article 14. Notwithstanding Code Section 401(a)(2), upon the satisfaction of all post-retirement health benefit liabilities incurred with respect eligible retirees, as determined under Section 4.2, any amounts that remain in the Separate Accounts shall be returned to the Employer by the Trustee. If the Separate Accounts in their entirety are ever terminated (even though the Plan continues in existence) or if the Plan in its entirety is ever terminated, upon the satisfaction of all liabilities arising out of the operation of the Separate Accounts, any surplus remaining in the Separate Accounts shall be returned to the Employer to the extent required by Code Section 401(h).

14.9 Modification, Amendment and Termination. The Employer reserves the right to modify, amend or terminate the Retiree Medical Plan at any time. The establishment and operation of the Separate Accounts do not obligate the Employer in any way to continue to maintain any health care plans of any nature or to provide post-retirement health care coverage of any kind. In the event that the Employer terminates post-retirement health coverage, this Plan shall have no liability to provide further health coverage for current or future retirees, for purposes of determining the amount to be returned to the Employer under Section 14.8. No amendment, modification or termination of the Retiree Medical Plan, nor change in Employer contributions under this Article 14, shall retroactively, adversely affect any

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participant's benefit under the Retiree Medical Plan.

EXECUTED this 21 day of January, 2020.

EL PASO ELECTRIC COMPANY

By: Myrna A. Ortiz
Officer

**EL PASO ELECTRIC COMPANY
POST-RETIREMENT LIFE INSURANCE TRUST**

FIRST AMENDED AND RESTATED TRUST AGREEMENT

This Trust Agreement is amended and restated as of August 1, 2020 by and between El Paso Electric Company (the "**Company**"), and Wells Fargo Bank, N.A., a national banking association, as trustee (the "**Trustee**");

WITNESSETH:

WHEREAS, in order to provide retiree medical and life benefits for certain of its retired and disabled employees, the Company has established the El Paso Electric Company Retiree Welfare Benefits Plan (the "**Plan**") which provides post-retirement life and health benefits to non-collectively bargained and collectively bargained retired and disabled employees and active non-collectively bargained and collectively bargained employees of the Company who die during the course of their employment with the Company (collectively referred to as "**Retirees**"), the proceeds of which shall be payable to their eligible surviving spouses and dependents; and

WHEREAS, the Company and the Trustee had previously entered into a trust arrangement entitled "Second Amended and Restated Trust Agreement" (the "**Original Trust**") with respect to the funding of post-retirement life and health benefits payable to Retirees under the terms of the Plan; and

WHEREAS, pursuant to efforts to restructure the funding arrangements involving the Company and its post-retirement life and health benefits, the Company previously established separate trust arrangements for its collectively bargained post-retirement health benefits, its non-collectively bargained and collectively bargained post-retirement life insurance benefits, and its non-collectively bargained post-retirement health benefits, effective February 1, 2020; and

WHEREAS, the Company and the Trustee previously established the El Paso Electric Company Post-Retirement Life Insurance Trust (the "**Trust**"), effective February 1, 2020, to provide for the receipt of post-retirement life insurance assets to be transferred from the Original Trust to this Trust and for the payment of post-retirement life insurance benefits to Retirees under the terms of the Plan; and

WHEREAS, in view of the expected timing of the transfer of post-retirement life insurance assets for Retirees, the Company desires to amend and restate the Trust to include the approximate date by when assets will be transferred to the Trust; and

WHEREAS, the Company and the Trustee agree that the transfer of post-retirement life insurance assets from the Original Trust to this Trust will not permit the Company to recapture any such assets or permit the Company to receive a reversion of Original Trust or Trust assets at any time; and

WHEREAS, the Company intends that this Trust continue to be a welfare benefit fund that is to provide post-retirement life insurance benefits to eligible Retirees; and

WHEREAS, the parties wish to document the terms of the trust relationship by amending and restating this Trust agreement ("Trust Agreement"); and

WHEREAS, this Trust Agreement sets forth the rights and duties of the Company and Trustee and the terms and conditions under which the post-retirement life insurance plan assets shall be held, administered, invested, reinvested, and disbursed;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties agree as follows:

ARTICLE I

GENERAL

Sec. 1.1 Establishment. The Company hereby continues the El Paso Electric Company Post-Retirement Life Insurance Trust (the "Trust"). The Trust shall constitute a voluntary employees' beneficiary association ("VEBA") as defined in Section 501(c)(9) of the Internal Revenue Code of 1986, as amended (the "Code"), and shall be administered and interpreted so as to comply with the requirements of Section 501(c)(9) of the Code.

Sec. 1.2 Acceptance of Trust. The Trustee accepts its continued appointment as such, effective as of the date set forth above.

Sec. 1.3 Part of Plan. This Trust incorporates and forms a part of the El Paso Electric Company Retiree Welfare Benefits Plan (the "Plan") for which funds are held hereunder to provide post-retirement life insurance benefits for the benefit of non-collectively bargained and collectively bargained retired and disabled employees and active non-collectively bargained and collectively bargained employees of the Company who die during the course of their employment with the Company (collectively referred to as "Retirees"), the proceeds of which will be payable to their eligible surviving spouses and dependents. The Company warrants that promptly upon the adoption of any amendment to the Plan it will furnish the Trustee with a copy of the executed amendment. The Company further agrees that no amendment of the Plan shall have the effect of changing the rights, duties, and liabilities of the Trustee without its written consent. The Trustee may rely on the latest Plan documents furnished it as above provided without further inquiry or verification. In the event of any conflict between the Plan and this Trust Agreement, with respect to the duties of the Trustee this Trust Agreement shall govern and control.

Sec. 1.4 Certification of Fiduciaries and Administrator. The Secretary or an Assistant Secretary of the Company will advise the Trustee in writing of the name of the person or persons who have authority to act on behalf of the Company under this Trust Agreement, including the right to direct the Trustee as to investments of and disbursements from the "Trust Fund," as such term is defined in Section 2.1 of this Trust Agreement. The Trustee shall recognize the "Committee," as such term is defined in Section 1.7 of this Trust Agreement, as the administrator of the Plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), with the authority to direct the Trustee as to the investments of and disbursements from the Trust Fund. The Company shall provide the Trustee with a specimen signature of each of the persons referred to above. The Trustee may rely on such designations and delegated authority until the Company advises it otherwise in writing.

Sec. 1.5 Construction and Applicable Law. The Trust is intended to constitute an organization defined under Section 501(c)(9) of the Code and to be entitled to tax-exemption under section 501(a) of the Code. The Trustee may assume until advised to the contrary that the Trust is so recognized and entitled to tax exemption. It is also intended that the Trust be in full compliance with the applicable requirements of ERISA and other applicable federal law. To the extent federal law is inapplicable, this Trust Agreement shall be construed and administered under the laws of the State of Texas, without reference to its conflicts of law or choice of law rules. This Trust Agreement shall be construed and administered consistent with said intent.

Sec. 1.6 Board of Directors. The "Board of Directors" is the board of directors of the Company and any executive committee thereof authorized to act for such body.

Sec. 1.7 Committee. The "Committee" means the person(s) appointed by the Board of Directors to carry out certain duties and responsibilities related to the Plan and the Trust. The Committee shall serve at the pleasure of the Company. The name of the Committee shall be the Benefits Oversight Committee or any successor committee appointed by the Board. The Secretary or an Assistant Secretary of the Company shall provide the Trustee with the names of each member of the Committee and the Trustee may rely on such notice without further inquiry or verification, unless the Trustee has actual knowledge to the contrary.

ARTICLE II

TRUST FUND

Sec. 2.1 Composition. All assets, other sums of money, securities, and other property reasonably acceptable to the Trustee and received by it from whatever source as evidenced by its receipts, together with all investments made herewith, the proceeds thereof and all earnings and accumulations thereon, shall be held and administered by the Trustee, in trust, in a fund referred to herein as the "Trust Fund",

in accordance with the terms and provisions hereof. The Trust Fund shall be held, administered, and disbursed by the Trustee without distinction between principal and income.

Sec. 2.2 Contributions. The Company shall make contributions to the Trust Fund from time to time as it shall determine in its sole discretion. The Trustee shall have no duty to require any contributions to be made to it, to determine that the contributions received by it comply with the provisions of the Plan or with any applicable resolution of the Board of Directors, or to collect any contributions payable to it pursuant to the Plan. The Trustee shall be responsible only for those sums of money, securities, and other property actually received by it.

Sec. 2.3 Segregation of Trust Fund. If directed by the Committee, the Trustee shall hold and maintain the Trust Fund in a segregated account and invest and administer the Trust Funds separately from the assets of the Trustee or other trusts.

Sec. 2.4 Exclusive Benefit of Participants and Beneficiaries. The Trust Fund shall be used for the exclusive benefit of the members and their respective beneficiaries, as defined in and covered by the Plan. Nothing herein, however, shall be construed to restrict the use of such assets for the payment of taxes, expenses of administration, or other charges properly assessed against the Trust Fund under the Plan and pursuant to this Trust Agreement. In addition, the Trust Fund may be used as a source of financing for other welfare benefit plans established by the Committee to the extent permitted by ERISA and the Code.

Sec. 2.5 Transfer to and Receipt of Original Trust Assets. The Trust Fund shall also include those assets transferred from the Original Trust to this Trust attributable to the post-retirement life insurance benefits for Retirees entitled to such benefits under the Plan which assets will be held and administered under this Trust to provide post-retirement life insurance benefits and pay related administrative expenses under the Plan for Retirees who are entitled to such benefits under the Plan. At no time shall the Company have a right to recapture such assets or receive a reversion with respect to the assets transferred from the Original Trust to this Trust. It is anticipated that such transfer of assets will be made on or about September 1, 2020, although contributions to this Trust may be made before such date.

ARTICLE III

THE TRUSTEE

Sec. 3.1 General Responsibility. The general responsibilities of the Trustee shall be as follows:

- (a) The Trustee shall hold, administer, invest and reinvest, and disburse the Trust Fund in accordance with the powers and subject to the restrictions stated in the Plan and this Trust Agreement. Notwithstanding anything in

this Trust Agreement to the contrary, unless prior approval is obtained from the Secretary of Labor or a statutory or class exemption applies, the Trustee shall not engage in any transaction prohibited by Section 406 of ERISA. Nothing herein obligates the Trustee to monitor compliance by the Company, the Committee or any duly appointed investment manager with any of the duties or limitations imposed on those parties under the Code or ERISA; provided, however, that the Trustee shall abide with the fiduciary requirements applicable to a directed trustee under Department of Labor Field Assistance Bulletin 2004-03.

- (b) The Trustee shall disburse monies and other properties from the Trust Fund on direction of the Committee pursuant to the provisions of the Plan at the time or times to the payee or payees specified in directions to the Trustee in such form as the Trustee may reasonably require. The Trustee shall be under no liability for any distribution made by it in accordance with such directions and shall be under no duty to make inquiry as to whether any distribution made by it pursuant to any such direction is made pursuant to the provisions of the Plan unless it has clear reason to know otherwise. The receipt of the payee shall constitute a full acquittance of the Trustee.
- (c) The Trustee shall have the responsibilities, if any, expressly allocated to it by the Plan and this Trust Agreement. Except as responsibilities may be expressly so allocated, the Trustee, in its capacity as such shall have no responsibility or authority with respect to the operation and administration of the Plan, and the rights, powers, and duties of the Trustee shall be governed solely by the terms of this Trust Agreement without reference to the provisions of the Plan.

Sec. 3.2. Powers of the Trustee. Subject to the provisions of the Code and ERISA, including, without limitation the prohibited transaction rules thereof, the Trustee shall have the following powers; however, all powers regarding the investment of the Trust shall be exercised solely pursuant to the direction of the Committee or, if applicable, an investment manager, unless the Trustee has been properly delegated investment authority pursuant to section 4.3 below:

- (a) To hold securities and other properties in bearer form or in the name of a nominee or nominees without disclosing any fiduciary relationship; provided, however, that on the books and records of the Trustee such securities and properties shall constantly be shown to be a part of the Trust Fund, and no such registration or holding by the Trustee shall relieve it from liability for the safe custody and proper disposition of such securities and properties in accordance with the terms and provisions hereof.

- (b) To sell, grant options to buy, transfer, assign, convey, exchange, mortgage, pledge, lease or otherwise dispose of any of the properties comprising the Trust Fund at such prices and on such terms and in such manner as determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs, and for terms within or extending beyond the duration of the Trust Agreement.
- (c) To manage, administer, operate, lease for any number of years, regardless of any restrictions on leases made by fiduciaries, develop, improve, repair, alter, demolish, mortgage, pledge, grant options with respect to, or otherwise deal with any real property or interest therein at any time held by it; and to cause to be formed a corporation or trust to hold title to any such real property with the aforesaid powers; all upon such terms and conditions determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs.
- (d) To renew or extend or participate in the renewal or extension of any note, bond or other evidence of indebtedness, or any other contract or lease, or to exchange the same, or to agree to a reduction in the rate of interest or rent thereon or to any other modification or change in the terms thereof, or of the security therefor, or any guaranty thereof, in any manner and to any extent that it may deem advisable in its absolute discretion; to waive any default, whether in the performance of any covenant or condition of any such note, bond or other evidence of indebtedness, or any other contract or lease, or of the security therefor, and to carry the same past due or to enforce any such default as it may in its absolute discretion deem advisable; to exercise and enforce any and all rights to foreclose, to bid in property on foreclosure; to exercise and enforce in any action, suit, or proceeding at law or in equity any rights or remedies in respect to any such note, bond or other evidence of indebtedness or any other contract or lease, or the security therefor; to pay, compromise, and discharge with the funds of the Trust Fund any and all liens, charges, or encumbrances upon the same; all as determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs; and to make, execute, and deliver any and all instruments, contracts, or agreements necessary or proper for the accomplishment of any of the foregoing powers.
- (e) To borrow such sums of money for the benefit of the Trust Fund from any lender upon such terms, for such period of time, at such rates of interest, and upon giving such collateral as it may determine; to secure any loan so made by pledge or mortgage of the trust property; and to renew existing loans; all as determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs.

- (f) To use the assets of the Trust Fund, whether principal or income, for the purpose of improving, maintaining, or protecting property acquired by the Trust Fund; and to pay, compromise, and discharge with the assets of the Trust Fund any and all liens, charges, or encumbrances at any time upon the same; all as determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs.
- (g) To hold uninvested such cash funds as may appear reasonably necessary to meet the anticipated cash requirements of the Plan from time to time and to deposit the same or any part thereof, either separately or together with other trust funds under the control of the Trustee, in its own deposit department or to deposit the same in its name as Trustee in such other depositories as it may select.
- (h) To receive, collect, and give receipts for every item of income or principal of the Trust Fund.
- (i) Upon prior written notice to Company and the Committee, to institute, prosecute, maintain, or defend any proceeding at law or in equity concerning the Trust Fund or the assets thereof, at the sole cost and expense of the Trust Fund, and to compromise, settle, and adjust any claims and liabilities asserted against or in favor of the Trust Fund or of the Trustee; but the Trustee shall be under no duty or obligation to institute, maintain or defend any action, suit, or other legal proceeding unless it shall have been indemnified to its satisfaction against any and all loss, cost, expense, and liability it may sustain or reasonably anticipate by reason thereof.
- (j) To vote all stocks and to exercise all rights incident to the ownership of stocks, bonds, or other securities or properties held in the Trust Fund and to issue proxies to vote such stocks; to enter into voting trusts for such period and upon such terms as it may determine; to give general or special proxies or powers of attorney, with or without substitution; to sell or exercise any and all subscription rights and conversion privileges; to sell or retain any and all stock dividends; to oppose, consent to, or join in any plan of reorganization, readjustment, merger, or consolidation in respect to any corporation whose stocks, bonds, or other securities are a part of the Trust Fund, including becoming a member of any stockholders' or bondholders' committee; to accept and hold any new securities issued pursuant to any plan of reorganization, readjustment, merger, consolidation, or liquidation; to pay any assessments on stocks or securities or to relinquish the same; and to otherwise exercise any and all rights and powers to deal in and with the securities and properties held in the Trust Fund in the same manner and to the same extent as any individual owner and holder thereof might do; all as

determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs.

- (k) To make application for any contract issued by an insurance company to be purchased under the Plan, to accept and hold any such contract, and to sign and deliver any such contract; all as determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs.
- (l) To employ such agents, experts, counsel, and other persons (any of whom may also represent the Company) deemed by the Trustee to be necessary or proper for the administration of the Trust; to rely and act on information and advice furnished by such agents, experts, counsel, and other persons; and to pay their reasonable expenses and compensation for services to the Trust from the Trust Fund. Notwithstanding the foregoing, no person so serving may receive compensation from the Trust Fund for fiduciary services if such person, natural or otherwise, is employed by or affiliated with the Company.
- (m) To pay out of the Trust Fund all real and personal property taxes, income taxes, and other taxes of any and all kinds levied or assessed under existing or future laws against the Trust Fund.
- (n) To pay any estate, inheritance, income, or other tax, charge, or assessment attributable to any benefit which, in the Trustee's opinion, it shall be or may be required to pay out of such benefit; and to require, before making any payment, such release or other document from any taxing authority and such indemnity from the intended payee as the Trustee shall deem necessary for its protection.
- (o) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.
- (p) Upon the prior written request or consent of Company and/or the Committee, to provide ancillary services to the Trust for not more than reasonable compensation.
- (q) To participate in and use the Federal Book-entry Account System (a service provided by the Federal Reserve Bank for its member banks for deposit of Treasury securities), or to use the Depository Trust Company, Midwest Trust Company or other generally accepted central depositories.

- (r) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted to the Trustee.
- (s) Upon prior written notice to Company and the Committee to bring action before any court of competent jurisdiction for instructions with respect to any matter pertaining to the interpretation of this Trust Agreement or the administration of the Trust Fund.

Sec. 3.3 Appointment of Ancillary Trustees. In the event that any property which is or may become a part of the Trust Fund is situated in a state or states in which the Trustee acting hereunder is prohibited from holding real estate as trustee, or in a foreign country, the Trustee is hereby empowered to name an individual or corporate trustee qualified to act in any such state or foreign country in connection with the property situated therein as ancillary trustee of such property and to require such security of the ancillary trustee as may be designated by the Trustee. Naming of such ancillary trustee shall be subject to formal appointment thereof by the Committee. Any ancillary trustee so appointed shall have such rights, powers, discretions, responsibilities, and duties as are delegated to it by the Trustee, but shall exercise and discharge the same and subject to such limitations or directions of the Trustee as shall be specified in the instrument evidencing the appointment. Any such ancillary trustee shall be answerable to the Trustee for all monies, assets, or other property entrusted to it or received by it in connection with the administration of the Trust. The Trustee may remove any such ancillary trustee and may appoint a successor at any time or from time to time as to any or all of the assets, in each case subject to formal appointment of the successor by the Committee. Any instrument designating an ancillary trustee may contain such provisions with respect to payment of income and principal to the Trust Fund, payment of expenses with respect to property administered by the ancillary trustee, termination of the ancillary trustee, and administrative powers of the ancillary trustee, in each instance as the Trustee hereunder, in the exercise of its discretion, may deem appropriate and consistent with the provisions of this Trust Agreement.

Sec. 3.4 Compensation and Expenses. The Trustee shall be entitled to receive such reasonable compensation for its services as Trustee or in any other capacity in connection with the Plan as may be agreed upon with the Company in writing. The Trustee shall be entitled to reimbursement for all documented reasonable and necessary costs, expenses, and disbursements actually incurred by it in the performance of such services. Such compensation and reimbursements shall be paid directly by the Company, but if not so paid within ninety (90) days after invoices for such fees are received by the Company shall be paid directly from the Trust Fund if the Plan so permits.

Sec. 3.5 Records and Accountings. The Trustee shall keep accurate and detailed records and accounts of all investments, receipts, and disbursements, and

other transactions hereunder, and all records, books, and accounts relating thereto shall be open to inspection by any person designated by the Company or the Committee at all reasonable times. Within sixty (60) days following the close of each annual accounting period of the Trust, and as soon as reasonably practicable after the resignation or removal of the Trustee has become effective, the Trustee shall file with the Committee a written account setting forth all (i) investments, receipts, disbursements, and other transactions effected by it during such year, or during the part of the year to the date the resignation or removal is effective, as the case may be, and containing a description of all securities purchased and sold, the cost or net proceeds of sale, the securities and investments held at the end of such period, and the cost of each item thereof as carried on the books of the Trustee; (ii) the net income or loss of the Trust Fund; (iii) the gains or losses realized by the Trust Fund upon sales or other disposition of its assets; and (iv) the increase or decrease in the value of the Trust Fund. The accounting shall also furnish the Committee such other information as the Trustee may possess and as may be necessary for them to comply with the reporting requirements of ERISA. Except as provided in Section 4.3(l), the Trustee shall determine the fair market value of publicly traded assets of the Trust Fund where such assets have a readily ascertainable market value no less often than annually. If the fair market value of an asset in the Trust Fund is not available, when necessary for accounting or reporting purposes the fair value of the asset shall be determined in good faith by the Committee, assuming an orderly liquidation at the time of such determination. If there is a disagreement between the Trustee and anyone as to any act or transaction reported in an accounting, the Trustee shall have the right to have its account settled by a court of competent jurisdiction. The Trustee shall make such other reports as may be required by the Plan or agreed upon in writing with the Company and/or Committee.

Set. 3.6 Record Retention. The Trustee shall retain its records and accountings relating to the Trust as long as necessary for the proper administration thereof and at least for any period required by ERISA or other applicable law but with respect to each record and account for not less than six (6) years following the creation thereof.

Sec. 3.7 Trustee's Protection. The Trustee shall enjoy the following protections in connection with the performance of its duties herein.

- (a) Except to the extent the Trustee has actual knowledge to the contrary, the Trustee shall be fully protected in relying upon the existence of any fact or state of facts represented to it in writing by the Company or the Committee or other duly appointed investment manager.
- (b) Except with respect to liability or fiduciary responsibility for any error or loss that may result by reason of the exercise or non-exercise of the duties, obligations, and/or fiduciary responsibility which are allocated to the Trustee herein which is determined to be the result of the Trustee's own negligence or willful misconduct, the Company shall indemnify the

Trustee, directly from the Company's own assets (including the proceeds of any insurance policy the premiums of which are paid from the Company's own assets), from and against any and all claims, demands losses, damages, expenses (including, by way of illustration and not limitation, reasonable attorneys' fees and other legal and litigation costs), judgments and liabilities arising from, out of, or in connection with the administration or investment of the Plan or the Trust Fund. The Trustee shall not be liable for any action taken by the Trustee or any failure to act by the Trustee if the action taken or the failure to act was directed by the Company, the Committee or other duly appointed investment manager, if the Trustee reasonably relied on such direction. This paragraph shall survive the termination of this Trust Agreement.

- (c) The Trustee shall be under no obligation to determine the amount of benefits to which members or their beneficiaries will be entitled or to keep any records of the respective interest of any individual member or beneficiary of the Plan. The Trustee shall make payments to or on behalf of a member or beneficiary upon the written direction of the Committee and, if made in accordance with such direction, the Trustee shall have no liability to the Company or any other person in making such payments. The Trustee shall not be required to determine or make any investigation to determine the identity or mailing address of any person entitled to benefits and shall have discharged its obligation in that respect when it shall have sent checks, securities and other papers by ordinary mail to such person or persons and addresses as may be certified to it in writing by the Committee. Notwithstanding the provisions of the preceding sentence, the Trustee shall promptly inform the Committee in writing of the return of any such items.
- (d) The parties recognize that the Trustee does not guarantee the assets of the Trust Fund from loss or depreciation.

The Trustee shall not be liable, responsible, or required to account to the Company for the acts of any prior trustee of this Trust Fund and shall be entitled to the indemnity set forth in Section 3.7(h) hereof therefor.

ARTICLE IV

INVESTMENTS

Sec. 4.1 General. Except to the extent that the Committee, pursuant to Section 1.4 of this Trust Agreement, appoints an investment manager, including the Trustee, in accordance with Section 4.3 of this Trust Agreement, the Committee shall act as the fiduciary with respect to the entire Trust Fund. The Trustee shall invest and reinvest the principal and income of the Trust Fund with the care, skill, prudence, and

diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Without limiting the generality of the foregoing, the investments and reinvestments of the Trust Fund shall be subject to the following:

- (a) Investments shall be as consistent as reasonably possible with any funding policy communicated to the Trustee in writing by the Committee pursuant to the Plan. Unless the Trustee has actual knowledge to the contrary, the Trustee may rely on the latest such communication received by it without further inquiry or verification.
- (b) The Trustee may invest and reinvest principal and income of the Trust Fund in common, preferred, and other stocks of any corporation (but in the case of the Company, solely as prescribed by Section 4.1(g)); voting trust certificates; interests in investment trusts, including, without limiting the generality thereof, participations issued by an investment company as defined in the Investment Company Act of 1940, as from time to time amended; bonds, notes, and debentures, secured or unsecured; mortgages on real or personal property; conditional sales contracts; real estate and leases; limited partnerships; and units or shares in limited liability companies, including, without limiting the generality thereof, limited liability companies that are not registered under the Investment Company Act of 1940, as from time to time amended.
- (c) Subject to the provisions of Section 2.3 of this Trust Agreement, the Trustee may invest and reinvest the principal and income of the Trust Fund through any common or collective trust fund or pooled investment fund maintained by the Trustee, any of its affiliates, or any other entity through which such investment is properly authorized for the collective investment of funds held by it in a fiduciary capacity. The provisions of the document governing any such common or collective trust fund as it may be amended from time to time shall govern any investment therein and are hereby made a part of this Trust Agreement, including any provisions for the lending of any securities or security from time to time constituting a part of the common or collective trust fund in exchange for such consideration and upon such terms and conditions as the trustee of the common or collective trust fund deems appropriate. In any such transaction the trustee of such trust fund may transfer legal title to the securities being loaned to the obligor, and may permit the obligation to return to the trust fund securities that are identical (but not necessarily evidenced by the same certificates) to those transferred to it by the trustee thereunder.
- (d) The Trustee may invest and reinvest the principal and income of the Trust Fund by investing in an annuity contract or contracts (including any

agreement or agreements supplemental thereto) issued by an insurance company.

- (e) The Trustee may engage in the writing, sale and buying in, of covered call option contracts; and the Trustee may acquire and may exercise options to purchase or sell securities or other assets.
- (f) Subject to applicable law, the Trustee may invest and reinvest the principal and income of the Trust Fund in qualifying employer securities or qualifying employer real property.
- (g) If qualifying employer securities or qualifying employer real property are purchased or sold as an investment of the Trust Fund from or to a disqualified person or party in interest, as those terms are used in the ERISA, and if there is no generally recognized market for such securities or property, the purchase shall be for not more than fair market value and the sale shall be for not less than fair market value, as determined in good faith by the Trustee. In no event may a commission be charged to the Trust Fund for the private purchase or sale of such securities or real property.
- (h) The Trustee may invest and reinvest principal and income of the Trust Fund in deposits (including savings accounts, savings certificates, and similar interest-bearing instruments or accounts) in itself or its affiliates, provided such deposits bear a reasonable rate of interest.
- (i) The Trustee may purchase or sell financial futures contracts in transactions executed through a generally recognized commodities or securities exchange.
- (j) The Trustee may lend any securities or security from time to time constituting a part of the Trust Fund in exchange for such consideration and upon such terms and conditions as the Trustee deems appropriate. In any such transaction the Trustee may transfer legal title to the securities being loaned to the obligor, and may permit the obligor to return to the Trust Fund securities that are identical (but not necessarily evidenced by the same certificates) to those transferred to it by the Trustee hereunder.

Sec. 4.2 Purchase of Insurance Policies on Lives of Members. If the Plan provides for the purchase of a life insurance policy or annuity contract on the life of any member(s), the Trustee shall make such purchases on written direction of the Committee. Each such direction shall be complete with respect to the terms of the purchase. The Committee shall give written direction as to any subsequent action to be taken with respect to each such policy or contract, it being intended that the Trustee shall have no discretion with respect thereto.

Sec. 4.3 Appointment of Investment Manager. The Committee may appoint one or more parties that qualify as an "investment manager" as such term is defined in Section 3(38) of ERISA to serve as an investment manager of a portion of the Trust Fund. The appointment of any such investment manager and investment of the Trust Fund pursuant to such appointment shall be subject to the following, notwithstanding any provisions hereof to the contrary:

- (a) Written notice of each such appointment shall be given to the Trustee a reasonable time in advance of the effective date of this appointment. The notice shall state what portion of the Trust Fund is to be invested by the investment manager and shall direct the Trustee to segregate such portion of the Trust Fund into a separate account for the investment manager. Each such separate account is referred to in this Section 4.3 as an "Investment Account."
- (b) The Trustee shall not act on any direction or instruction of the investment manager until the Trustee has been furnished with an acknowledgement in writing by the investment manager that it is a fiduciary with respect to the Plan and the Trust.
- (c) There shall be a written agreement between the Committee and each investment manager. The Trustee shall receive a copy of each such agreement and all amendments thereto and shall give written acknowledgement of receipt of same. Each agreement with an investment manager may provide that:
 - (1) All directions given by an investment manager to the Trustee shall be in writing, signed by an officer or partner of the investment manager or by such other person as may be designated in writing by the investment manager, provided that the Trustee may accept oral directions for the purchase or sale of securities, which shall be confirmed by such authorized personnel of the investment manager in writing and the Trustee shall be fully protected in acting in strict accordance thereto;
 - (2) All settlements of purchases and sales shall be in the city where the Trustee is located, or such other place as the Trustee may reasonably direct;
 - (3) In all events the Trustee is to retain physical custody of or title to all assets included in an Investment Account; and
 - (4) The Committee, by written notice to the investment manager and the Trustee, may modify or terminate the authority of the investment manager.

- (5) The investment manager shall pay the Trustee reasonable and customary charges of the Trustee for any transaction that results in an overdraft. To the extent that any overdraft is not cured within three (3) days of its occurrence, the investment manager shall be solely liable as a fiduciary and shall file such reports and pay such fees and penalties as are necessary to correct any prohibited transaction which may result.
- (d) Payment of the cost of the acquisition, sale, or exchange of any security or other property for an Investment Account shall be charged to that Investment Account unless the agreement between the Company and investment manager provides otherwise.
- (e) So long as the appointment of an investment manager is in effect, the investment manager shall have full power and authority to direct the Trustee as to, and full responsibility for, investment of its Investment Account and for the retention and disposition of any assets in its Investment Account. Subject to any limitations in the agreement between the Company and the investment manager, the investment manager shall have exclusive authority and discretion to invest and reinvest the principal and interest of that portion of the Trust Fund which comprises the Investment Account, subject to the provisions of Section 4.1. The Trustee may invest any portion of an Investment Account that would otherwise be held in cash but has no obligation to do so.
- (f) Unless the written agreement between the Company and investment manager expressly provides that the Company or Committee shall have the voting power with respect to all stocks and other securities in the Investment Account, the investment manager shall have voting power with respect to all such stocks and other securities.
- (g) The Trustee shall make available to an investment manager copies of or extracts from such portions of its accounts, books, or records relating to the Investment Account of such investment manager as the Trustee may deem necessary or, appropriate in connection with the exercise of the investment manager's function, or as the Company or the Committee may direct.
- (h) All charges (other than those covered in subsection (d) above) against each Investment Account shall be made in such proportions as the Company or the Committee may direct in writing from time to time.
- (i) If the authority of an investment manager is terminated and successor investment manager is not appointed, the assets held in its Investment Account may or may not continue to be segregated as the Committee

may determine. Until receipt of written notice of the termination of the authority of an investment manager, the Trustee shall be fully protected in relying upon the continuing authority of such investment manager.

- (j) Any direction by an investment manager shall be complete as to the terms with respect thereto, it being intended that the Trustee shall have no obligation whatsoever to invest (other than as directed by an investment manager) or otherwise manage any asset of an Investment Account.
- (k) The Company agrees to indemnify the Trustee for and to hold it harmless against any and all liabilities, losses, costs, or expenses (including legal fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against the Trustee at any time by reason of action taken in accordance with directions of an investment manager or action omitted because no such directions are given. However, no such indemnification shall be required in any case in which such liabilities, losses, costs, or expenses are incurred by the Trustee because it participated knowingly in, or knowingly undertook to conceal, an act or omission of an investment manager, knowing such act or omission was a breach of fiduciary duty by said investment manager or in any case to the proportional extent to which such liabilities, losses, costs or expenses are attributable to the Trustee's failure to act in strict accordance with the directions of an Investment Manager.
- (l) The investment manager shall determine the fair market value of assets held in an Investment Account no less often than annually. If the fair market value of an asset in an Investment Account is not available when necessary for accounting and reporting purposes, the fair value of the asset shall be determined in good faith by the investment manager, assuming an orderly liquidation at the time of such determination.

ARTICLE V

CHANGE IN TRUSTEE

Sec. 5.1 Resignation. The Trustee may resign at any time by giving sixty (60) days advance written notice to the Company.

Sec. 5.2 Removal. The Company may remove the Trustee by giving thirty (30) days advance written notice to the Trustee.

Sec. 5.3 Successor. In the event of the resignation or removal of the Trustee, the Company shall promptly appoint a successor. If no appointment of a successor is made by the Company within a reasonable time after resignation or removal of the

Trustee, any court of competent jurisdiction may appoint a successor, after such notice, if any, solely to the Company and the retiring Trustee, as such court may deem proper and suitable. The retiring Trustee shall be furnished with written notice from the Company or the court, as the case may be, of the appointment of the successor, and shall be furnished with written evidence of the successor's acceptance of the trusteeship. Only then shall the retiring Trustee cease to be such.

Sec. 5.4 Duties on Succession. Every successor Trustee accepting a trusteeship under this Trust Agreement shall have all the right, title, powers, duties, exemptions, and limitations of the predecessor Trustee hereunder. No predecessor Trustee shall have any right, title, or interest in the Trust Fund except as hereinafter provided. The Trustee shall, upon the appointment and acceptance of a successor Trustee, transfer and deliver the assets of the Trust Fund and copies of all of Trustee's records pertaining to the Trust and the Trust Fund to the successor Trustee, after reserving (if the Plan so permits) such reasonable amount as it shall deem necessary to provide for its fees and expenses and any sums chargeable against the Trust Fund for which it reasonably believes it will be liable. Any predecessor Trust shall do all acts necessary to vest title of record in the successor Trustee. If any assets in the Trust Fund have been invested in a common or collective trust fund, the predecessor Trustee shall cause such investment to be liquidated at the earliest practical time after notice has been given or received by the predecessor Trustee of its resignation or removal. No person or entity becoming a Trustee hereunder shall be in any way liable or responsible for anything done or omitted to be done by any predecessor Trustee prior to such person's acceptance of the trusteeship, nor shall such person or entity have any duty to examine the administration of the Trust prior to such acceptance; provided, however, the provisions of this sentence shall not apply to changes in organization referenced in Section 5.5.

Sec. 5.5 Changes in Organization of Trustee. If any corporate Trustee acting hereunder is merged with another corporation or association, or is succeeded by another corporation or association, through consolidation or otherwise, the acquiring corporation or association shall thereupon become Trustee hereunder. If any corporate Trustee acting hereunder sells and transfers substantially all of its assets and business to another corporation or association, the acquiring corporation or association shall thereupon become Trustee hereunder. When authorized by statute or court order any corporate Trustee acting hereunder may permit itself to be succeeded as such corporate Trustee by another corporation or association in which case the acquiring corporation or association shall thereupon become Trustee hereunder. In each case the acquiring corporation or association shall be Trustee of the Trust as though specifically so named herein. Notwithstanding the foregoing provision of this Section 5.5, an acquiring corporation or association shall become Trustee hereunder only if it has trust powers and is formed under the laws of the United States of America or any subdivision thereof.

ARTICLE VI

MISCELLANEOUS

Sec. 6.1 Benefits May Not Be Assigned or Alienated. Except as otherwise expressly permitted by the Plan or required by law, the interests of members and their respective beneficiaries under the Plan or this Trust Agreement may not in any manner whatsoever be assigned or alienated, whether voluntarily or involuntarily, or directly or indirectly.

Sec. 6.2 Incompetent Payee. If a person to whom the Trustee is directed to make one or more payments is disabled from caring for his or her affairs because of mental condition, physical condition, or age, payment due such person may be made to such person's legally appointed guardian, conservator, or other legally appointed personal representative upon the Trustee's receipt of written notice from the Committee of such legal appointment. The Trustee shall have no liability with respect to payment so made. The Trustee shall have no duty to make inquiry as to the competence of any person to whom it is directed to make payment.

Sec. 6.3 Evidence. Evidence required of anyone under this Trust Agreement may be by certificate, affidavit, document, or other instrument which the person acting in reliance thereon considers to be pertinent and reliable, and to be signed, made, or presented by the proper party.

Sec. 6.4 Dealings of Others With Trustee. No person (corporate or individual) dealing with the Trustee shall be required to see to the application of any money paid or property delivered to the Trustee or to determine whether the Trustee is acting pursuant to any authority granted to it under this Trust Agreement.

Sec. 6.5 Insurance Company Not Party. No insurance company that issues a contract held by the Trustee shall be construed to be a party to this Trust Agreement, nor shall it have any responsibility for the validity of this Trust Agreement. An insurance company to which an application may be submitted by the Trustee may accept such application and shall have no duty to make any investigation or inquiry regarding the authority of the Trustee to make such application or any amendment thereto or to inquire as to whether a person on whose life any contract is to be issued is entitled to such contract under the Plan.

Sec. 6.6 Audits.

- (a) The Company or the Committee shall have the right to cause the books, records, and accounts of the Trustee that relate to the Trust to be examined and audited by independent auditors designated by the Company or the Committee at such times as the Company or the Committee may determine, and the Trustee shall make such books,

records, and accounts available for such purposes at all reasonable times.

- (b) If an audit of the Plan shall be required by ERISA and the regulations thereunder for any Plan year, the Committee shall engage or shall direct the Trustee to engage, on behalf of all members and beneficiaries of the Plan, an independent qualified public accountant (selected by the Committee) for such purpose. At the conclusion of an audit in accordance with generally accepted auditing standards, such account shall, within a reasonable period after the close of the Plan year, furnish to the Committee and the Trustee a report of such audit setting forth the accountant's opinion as to whether the financial statements and schedules that are required to be included in the Plan's annual reports by Section 103 of ERISA or the Secretary of Labor are presented fairly in conformity with generally accepted accounting principles.

All auditing and accounting fees shall be an expense of and may, at the election of the Committee, be paid from the Trust Fund.

- (c) In accordance with ERISA Section 103(a)(2), if some or all of the information necessary to enable the Committee to comply with ERISA Section 103 is maintained by a bank, insurance company, or similar institution, regulated and supervised and subject to periodic examination by a state or federal agency, such bank, insurance company or institution shall transmit and certify the accuracy of that information to the Committee within one hundred twenty (120) days after the end of the Plan year or such other date as may be prescribed under regulations of the Secretary of Labor.

Sec. 6.7 Trustee Warranty Against Conviction. A person accepting trusteeship hereunder warrants that such person has not been convicted of or imprisoned for a crime preventing such person under the provisions of the ERISA from serving as Trustee hereunder.

Sec. 6.8 Successor Company. The provisions of this Trust Agreement shall be binding on the Company and its successors. If a successor to the Company or a purchaser of all or substantially all of its assets elects to continue the Trust, such successor or purchaser shall be substituted for the Company under this Trust Agreement.

Sec. 6.9 Notices.

- (a) Except as otherwise provided in this Trust Agreement, all notices under this Agreement shall be in writing and be effective upon receipt if delivered by (i) hand, (ii) certified or registered United States Mail postage prepaid, or (iii) facsimile, provided that service by facsimile after

5:00 p.m. local time of the recipient(s) shall be deemed delivered on the following business day, as follows:

If notice is to the Trustee:

Wells Fargo Bank, N.A.
Attention: Lisa Keckler
MAC T7534-021
40 NE Loop 410, Suite 201
San Antonio, Texas 78216
Facsimile (210) 856-8822

If notice is to Company or the Committee:

El Paso Electric Company
Attention: Victor Rueda, Vice President of Human Resources
P.O. Box 982
El Paso, Texas 79960
Facsimile (915) 521-4728

and, if the notice is sent for the purposes described in Section 3.2(i), 3.2(s), 5.1, and 6.9(b), with a copy to:

El Paso Electric Company
Office of the General Counsel
P.O. Box 982
Location 167
El Paso, Texas 79960
Facsimile (915) 521-4412

- (b) Each party may change its address for purposes of notice under this Trust Agreement by notice complying with Section 6.9(a).

Sec. 6.10 Waiver of Notice. Any notice required under this Trust Agreement may be waived in writing by the person entitled thereto.

Sec. 6.11 Headings. Headings at the beginning of articles and sections are for convenience of reference, shall not be considered a part of this Trust Agreement, and shall not influence its construction.

Sec. 6.12 Use of Compounds of Word "Here". Use of the words "hereof", "herein", "hereunder", or similar compounds of the word "here" shall mean and refer to the entire Trust Agreement unless the context clearly indicates otherwise.

Sec. 6.13 Construed as a Whole. The provisions of this Trust Agreement shall be construed as a whole in such manner as to carry out the provisions thereof and shall not be construed separately without relation to the context.

Sec. 6.14 Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by any one counterpart.

Sec. 6.15 Key Employees. If any Retiree entitled to post-retirement life insurance benefits under the Plan is a "key employee", as defined in Section 416(i) of the Code, the Committee may direct the Trustee to establish a separate account to which shall be credited amounts to be applied for any post-retirement life insurance benefits to be provided with respect to such Retiree and the post-retirement life insurance benefits provided with respect to such Retiree will be charged to and paid from only such Retiree's separate account, all in accordance with the directions from the Committee. Assets credited to such a separate account may be invested on a commingled basis, but if so invested, the separate account must be adjusted on a yearly basis to reflect its proportionate share of the appreciation, depreciation, income, expenses, gains or losses of the Trust for the year. Any such account shall be maintained and administered in accordance with the requirements of Section 419A of the Code.

ARTICLE VII

AMENDMENT AND TERMINATION

Sec. 7.1 Prohibition on Diversion. General. Except as expressly provided in herein, at no time shall any part of the corpus or income of the Trust Fund be used for, or diverted to, purposes other than for the benefit of the members or their respective beneficiaries. The assets of the Trust Fund shall never inure to the benefit of the Company and shall be held for the exclusive purpose of providing benefits to such members and their respective beneficiaries and defraying reasonable expenses of administering the Plan and the Trust. No part of the net earnings of the Trust Fund shall inure to the benefit of any shareholder or individual other than through the payment of benefits under the Plan.

In the case of a contribution that is made by the Company by a mistake of fact, this Section shall not prohibit, at the written direction of the Company, the return to the Company of such contribution within one year after the payment of the contribution, but only to the extent the amount so returned is not subject to penalty under Section 4976 of the Code.

Sec. 7.2 Amendment. Subject to the provisions of Section 7.1 hereof, this Trust Agreement may be amended at any time or from time to time and in any manner by written agreement of the Trustee and the Company, and the provisions of any such

Sec. 7.4 Transfer to Other Fund. If pursuant to directions under Section 3.1(b) hereof the entire Trust Fund is transferred to a funding agency for the Plan that is not a trustee, this Trust shall thereupon terminate.

IN WITNESS WHEREOF, the Company and Trustee have caused this Trust Agreement to be executed by their duly authorized officers as of the day and year first above written.

EL PASO ELECTRIC COMPANY

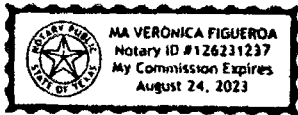
By *Victor F. Rueda*
Its VP HR

WELL FARGO BANK, N.A.

By *Jose L. Caceres*
Its Vice President

STATE OF TEXAS
COUNTY OF EL PASO

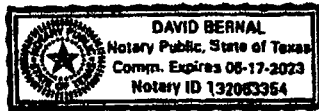
On this 7th day of July, 2020, before me appeared Victor Toledo to me personally known, who being by me duly sworn, did say that he/she is the VP HR of EL PASO ELECTRIC COMPANY, the corporation named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and he/she acknowledged said instrument to be the free act and deed of said corporation.



MA Verónica Figueroa
Notary Public El Paso County, Texas
My commission expires 8-24, 2023

STATE OF TEXAS
COUNTY OF BEXAR

On this 7th day of July, 2020, before me personally appeared Lisa Keckler to me personally known, who being by me duly sworn, did say that he/she is the Vice President of WELLS FARGO BANK, N.A., the national banking association named in the foregoing instrument, and that said instrument was signed in behalf of said association by authority of its Board of Directors, and he/she acknowledged said instrument to be the free act and deed of said association.



David Bernal
Notary Public, Bexar County, Texas
My commission expires 6-17, 2023

**EL PASO ELECTRIC COMPANY COLLECTIVELY BARGAINED POST-
RETIREMENT HEALTH BENEFITS TRUST**

FIRST AMENDED AND RESTATED TRUST AGREEMENT

This Trust Agreement is amended and restated as of August 1, 2020 by and between El Paso Electric Company (the "**Company**"), and Wells Fargo Bank, N.A., a national banking association, as trustee (the "**Trustee**");

WITNESSETH:

WHEREAS, in order to provide retiree medical and life benefits for certain of its retired and disabled employees, the Company has established the El Paso Electric Company Retiree Welfare Benefits Plan (the "**Plan**") which provides post-retirement life and health benefits to collectively bargained and non-collectively bargained retired and disabled employees (and their eligible spouses and dependents) (collectively referred to as "**Retirees**") and the eligible surviving spouses and dependents of active non-collectively bargained and collectively bargained employees of the Company who die during the course of their employment with the Company (collectively "**Surviving Dependents**"); and

WHEREAS, the Company and the Trustee had previously entered into a trust arrangement entitled "Second Amended and Restated Trust Agreement" (the "**Original Trust**") with respect to the funding of post-retirement life and health benefits payable to Retirees and Surviving Dependents under the terms of the Plan; and

WHEREAS, pursuant to efforts to restructure the funding arrangements involving the Company and its post-retirement life and health benefits, the Company previously established separate trust arrangements for its collectively bargained post-retirement health benefits, non-collectively bargained and collectively bargained post-retirement life insurance benefits, and its non-collectively bargained post-retirement health benefits, effective February 1, 2020; and

WHEREAS, the Company and the Trustee previously established the El Paso Electric Company Collectively Bargained Post-Retirement Health Benefits Trust (the "**Trust**"), effective February 1, 2020, to provide for the receipt of collectively bargained post-retirement health assets to be transferred from the Original Trust to this Trust and for the payment of post-retirement health benefits to collectively bargained Retirees (and their eligible spouses and dependents) (collectively "**Collectively Bargained Retirees**") and the eligible surviving spouses and dependents of active collectively bargained employees of the Company who die during the course of their employment with the Company (collectively "**Collectively Bargained Surviving Dependents**") who are entitled to post-retirement health benefits under the terms of the Plan; and

WHEREAS, in view of the expected timing of the transfer of post-retirement health assets for Collectively Bargained Retirees and Collectively Bargained Surviving

Dependents, the Company desires to amend and restate the Trust to include the approximate date by when assets will be transferred to the Trust; and

WHEREAS, the Company and the Trustee agree that the transfer of collectively bargained post-retirement health assets from the Original Trust to this Trust will not permit the Company to recapture any such assets or permit the Company to receive a reversion of Original Trust or Trust assets at any time; and

WHEREAS, the Company intends that this Trust continue to be a welfare benefit fund that is maintained pursuant to a collective bargained agreement under Sections 419 and 419A of the Internal Revenue Code; and

WHEREAS, the parties wish to document the terms of the trust relationship by amending and restating this Trust agreement ("**Trust Agreement**"); and

WHEREAS, this Trust Agreement sets forth the rights and duties of the Company and Trustee and the terms and conditions under which the collectively bargained post-retirement health plan assets shall be held, administered, invested, reinvested, and disbursed;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties agree as follows:

ARTICLE I

GENERAL

Sec. 1.1 **Establishment**. The Company hereby continues the El Paso Electric Company Collectively Bargained Post-Retirement Health Benefits Trust (the "**Trust**"). The Trust shall constitute a voluntary employees' beneficiary association ("**VEBA**") as defined in Section 501(c)(9) of the Internal Revenue Code of 1986, as amended (the "**Code**"), that is maintained pursuant to a collective bargaining agreement under Sections 419 and 419A of the Code and shall be administered and interpreted so as to comply with the requirements of Section 501(c)(9) of the Code.

Sec. 1.2 **Acceptance of Trust**. The Trustee accepts its continued appointment as such, effective as of the date set forth above.

Sec. 1.3 **Part of Plan**. This Trust incorporates and forms a part of the El Paso Electric Company Retiree Welfare Benefits Plan (the "**Plan**") for which funds are held hereunder to provide post-retirement health benefits for the benefit of collectively bargained retired and disabled employees (and their eligible spouses and dependents) (collectively referred to as "**Collectively Bargained Retirees**") and the eligible surviving spouses and dependents of active collectively bargained employees of the Company who die during the course of their employment with the Company (collectively "**Collectively Bargained Surviving Dependents**") who are entitled to

post-retirement health benefits under the Plan. The Company warrants that promptly upon the adoption of any amendment to the Plan it will furnish the Trustee with a copy of the executed amendment. The Company further agrees that no amendment of the Plan shall have the effect of changing the rights, duties, and liabilities of the Trustee without its written consent. The Trustee may rely on the latest Plan documents furnished it as above provided without further inquiry or verification. In the event of any conflict between the Plan and this Trust Agreement, with respect to the duties of the Trustee this Trust Agreement shall govern and control.

Sec. 1.4 Certification of Fiduciaries and Administrator. The Secretary or an Assistant Secretary of the Company will advise the Trustee in writing of the name of the person or persons who have authority to act on behalf of the Company under this Trust Agreement, including the right to direct the Trustee as to investments of and disbursements from the "Trust Fund," as such term is defined in Section 2.1 of this Trust Agreement. The Trustee shall recognize the "Committee," as such term is defined in Section 1.7 of this Trust Agreement, as the administrator of the Plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), with the authority to direct the Trustee as to the investments of and disbursements from the Trust Fund. The Company shall provide the Trustee with a specimen signature of each of the persons referred to above. The Trustee may rely on such designations and delegated authority until the Company advises it otherwise in writing.

Sec. 1.5 Construction and Applicable Law. The Trust is intended to constitute an organization defined under Section 501(c)(9) of the Code and to be entitled to tax-exemption under section 501(a) of the Code as a trust maintained pursuant to a collective bargaining agreement under Sections 419 and 419A of the Code. The Trustee may assume until advised to the contrary that the Trust is so recognized and entitled to tax exemption. It is also intended that the Trust be in full compliance with the applicable requirements of ERISA and other applicable federal law, such as the Health Insurance Portability and Accountability Act. To the extent federal law is inapplicable, this Trust Agreement shall be construed and administered under the laws of the State of Texas, without reference to its conflicts of law or choice of law rules. This Trust Agreement shall be construed and administered consistent with said intent.

Sec. 1.6 Board of Directors. The "Board of Directors" is the board of directors of the Company and any executive committee thereof authorized to act for such body.

Sec. 1.7 Committee. The "Committee" means the person(s) appointed by the Board of Directors to carry out certain duties and responsibilities related to the Plan and the Trust. The Committee shall serve at the pleasure of the Company. The name of the Committee shall be the Benefits Oversight Committee or any successor committee appointed by the Board. The Secretary or an Assistant Secretary of the Company shall provide the Trustee with the names of each member of the Committee

and the Trustee may rely on such notice without further inquiry or verification, unless the Trustee has actual knowledge to the contrary.

ARTICLE II

TRUST FUND

Sec. 2.1 Composition. All assets, other sums of money, securities, and other property reasonably acceptable to the Trustee and received by it from whatever source as evidenced by its receipts, together with all investments made herewith, the proceeds thereof and all earnings and accumulations thereon, shall be held and administered by the Trustee, in trust, in a fund referred to herein as the "Trust Fund", in accordance with the terms and provisions hereof. The Trust Fund shall be held, administered, and disbursed by the Trustee without distinction between principal and income.

Sec. 2.2 Contributions. The Company shall make contributions to the Trust Fund from time to time as it shall determine in its sole discretion. The Trustee shall have no duty to require any contributions to be made to it, to determine that the contributions received by it comply with the provisions of the Plan or with any applicable resolution of the Board of Directors, or to collect any contributions payable to it pursuant to the Plan. The Trustee shall be responsible only for those sums of money, securities, and other property actually received by it.

Sec. 2.3 Segregation of Trust Fund. If directed by the Committee, the Trustee shall hold and maintain the Trust Fund in a segregated account and invest and administer the Trust Funds separately from the assets of the Trustee or other trusts.

Sec. 2.4 Exclusive Benefit of Participants and Beneficiaries. The Trust Fund shall be used for the exclusive benefit of the members and their respective beneficiaries, as defined in and covered by the Plan. Nothing herein, however, shall be construed to restrict the use of such assets for the payment of taxes, expenses of administration, or other charges properly assessed against the Trust Fund under the Plan and pursuant to this Trust Agreement. In addition, the Trust Fund may be used as a source of financing for other welfare benefit plans established by the Committee to the extent permitted by ERISA and the Code.

Sec. 2.5 Transfer to and Receipt of Original Trust Assets. The Trust Fund shall also include those assets transferred from the Original Trust to this Trust attributable to the post-retirement health benefits for Collectively Bargained Retirees and Collectively Bargained Surviving Dependents entitled to such benefits under the Plan which assets will be held and administered under this Trust to provide post-retirement health benefits and pay related administrative expenses provided under the Plan for Collectively Bargained Retirees and Collectively Bargained Surviving Dependents who are entitled to such benefits under the Plan. At no time shall the Company have a right to recapture such assets or receive a reversion with respect to

the assets transferred from the Original Trust to this Trust. It is anticipated that such transfer of assets will be made on or about September 1, 2020, although contributions to this Trust may be made before such date.

ARTICLE III

THE TRUSTEE

Sec. 3.1 General Responsibility. The general responsibilities of the Trustee shall be as follows:

- (a) The Trustee shall hold, administer, invest and reinvest, and disburse the Trust Fund in accordance with the powers and subject to the restrictions stated in the Plan and this Trust Agreement. Notwithstanding anything in this Trust Agreement to the contrary, unless prior approval is obtained from the Secretary of Labor or a statutory or class exemption applies, the Trustee shall not engage in any transaction prohibited by Section 406 of ERISA. Nothing herein obligates the Trustee to monitor compliance by the Company, the Committee or any duly appointed investment manager with any of the duties or limitations imposed on those parties under the Code or ERISA; provided, however, that the Trustee shall abide with the fiduciary requirements applicable to a directed trustee under Department of Labor Field Assistance Bulletin 2004-03.
- (b) The Trustee shall disburse monies and other properties from the Trust Fund on direction of the Committee pursuant to the provisions of the Plan at the time or times to the payee or payees specified in directions to the Trustee in such form as the Trustee may reasonably require. The Trustee shall be under no liability for any distribution made by it in accordance with such directions and shall be under no duty to make inquiry as to whether any distribution made by it pursuant to any such direction is made pursuant to the provisions of the Plan unless it has clear reason to know otherwise. The receipt of the payee shall constitute a full acquittance of the Trustee.
- (c) The Trustee shall have the responsibilities, if any, expressly allocated to it by the Plan and this Trust Agreement. Except as responsibilities may be expressly so allocated, the Trustee, in its capacity as such shall have no responsibility or authority with respect to the operation and administration of the Plan, and the rights, powers, and duties of the Trustee shall be governed solely by the terms of this Trust Agreement without reference to the provisions of the Plan.

Sec. 3.2. Powers of the Trustee. Subject to the provisions of the Code and ERISA, including, without limitation the prohibited transaction rules thereof, the

Trustee shall have the following powers; however, all powers regarding the investment of the Trust shall be exercised solely pursuant to direction of the Committee or, if applicable, an investment manager, unless the Trustee has been properly delegated investment authority pursuant to section 4.3 below:

- (a) To hold securities and other properties in bearer form or in the name of a nominee or nominees without disclosing any fiduciary relationship; provided, however, that on the books and records of the Trustee such securities and properties shall constantly be shown to be a part of the Trust Fund, and no such registration or holding by the Trustee shall relieve it from liability for the safe custody and proper disposition of such securities and properties in accordance with the terms and provisions hereof.
- (b) To sell, grant options to buy, transfer, assign, convey, exchange, mortgage, pledge, lease or otherwise dispose of any of the properties comprising the Trust Fund at such prices and on such terms and in such manner as determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs, and for terms within or extending beyond the duration of the Trust Agreement.
- (c) To manage, administer, operate, lease for any number of years, regardless of any restrictions on leases made by fiduciaries, develop, improve, repair, alter, demolish, mortgage, pledge, grant options with respect to, or otherwise deal with any real property or interest therein at any time held by it; and to cause to be formed a corporation or trust to hold title to any such real property with the aforesaid powers; all upon such terms and conditions determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs.
- (d) To renew or extend or participate in the renewal or extension of any note, bond or other evidence of indebtedness, or any other contract or lease, or to exchange the same, or to agree to a reduction in the rate of interest or rent thereon or to any other modification or change in the terms thereof, or of the security therefor, or any guaranty thereof, in any manner and to any extent that it may deem advisable in its absolute discretion; to waive any default, whether in the performance of any covenant or condition of any such note, bond or other evidence of indebtedness, or any other contract or lease, or of the security therefor, and to carry the same past due or to enforce any such default as it may in its absolute discretion deem advisable; to exercise and enforce any and all rights to foreclose, to bid in property on foreclosure; to exercise and enforce in any action, suit, or proceeding at law or in equity any rights or remedies in respect to any such note, bond or other evidence of indebtedness or any other contract or lease, or the security therefor; to pay, compromise, and discharge with the funds of the Trust Fund any

and all liens, charges, or encumbrances upon the same; all as determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs; and to make, execute, and deliver any and all instruments, contracts, or agreements necessary or proper for the accomplishment of any of the foregoing powers.

- (e) To borrow such sums of money for the benefit of the Trust Fund from any lender upon such terms, for such period of time, at such rates of interest, and upon giving such collateral as it may determine; to secure any loan so made by pledge or mortgage of the trust property; and to renew existing loans; all as determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs.
- (f) To use the assets of the Trust Fund, whether principal or income, for the purpose of improving, maintaining, or protecting property acquired by the Trust Fund; and to pay, compromise, and discharge with the assets of the Trust Fund any and all liens, charges, or encumbrances at any time upon the same; all as determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs.
- (g) To hold uninvested such cash funds as may appear reasonably necessary to meet the anticipated cash requirements of the Plan from time to time and to deposit the same or any part thereof, either separately or together with other trust funds under the control of the Trustee, in its own deposit department or to deposit the same in its name as Trustee in such other depositories as it may select.
- (h) To receive, collect, and give receipts for every item of income or principal of the Trust Fund.
- (i) Upon prior written notice to Company and the Committee, to institute, prosecute, maintain, or defend any proceeding at law or in equity concerning the Trust Fund or the assets thereof, at the sole cost and expense of the Trust Fund, and to compromise, settle, and adjust any claims and liabilities asserted against or in favor of the Trust Fund or of the Trustee; but the Trustee shall be under no duty or obligation to institute, maintain or defend any action, suit, or other legal proceeding unless it shall have been indemnified to its satisfaction against any and all loss, cost, expense, and liability it may sustain or reasonably anticipate by reason thereof.
- (j) To vote all stocks and to exercise all rights incident to the ownership of stocks, bonds, or other securities or properties held in the Trust Fund and to issue proxies to vote such stocks; to enter into voting trusts for such period and upon such terms as it may determine; to give general or special proxies or powers of attorney, with or without substitution; to sell

or exercise any and all subscription rights and conversion privileges; to sell or retain any and all stock dividends; to oppose, consent to, or join in any plan of reorganization, readjustment, merger, or consolidation in respect to any corporation whose stocks, bonds, or other securities are a part of the Trust Fund, including becoming a member of any stockholders' or bondholders' committee; to accept and hold any new securities issued pursuant to any plan of reorganization, readjustment, merger, consolidation, or liquidation; to pay any assessments on stocks or securities or to relinquish the same; and to otherwise exercise any and all rights and powers to deal in and with the securities and properties held in the Trust Fund in the same manner and to the same extent as any individual owner and holder thereof might do; all as determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs.

- (k) To make application for any contract issued by an insurance company to be purchased under the Plan, to accept and hold any such contract, and to sign and deliver any such contract; all as determined by the Trustee or in the manner the Committee or a duly appointed investment manager directs.
- (l) To employ such agents, experts, counsel, and other persons (any of whom may also represent the Company) deemed by the Trustee to be necessary or proper for the administration of the Trust; to rely and act on information and advice furnished by such agents, experts, counsel, and other persons; and to pay their reasonable expenses and compensation for services to the Trust from the Trust Fund. Notwithstanding the foregoing, no person so serving may receive compensation from the Trust Fund for fiduciary services if such person, natural or otherwise, is employed by or affiliated with the Company
- (m) To pay out of the Trust Fund all real and personal property taxes, income taxes, and other taxes of any and all kinds levied or assessed under existing or future laws against the Trust Fund.
- (n) To pay any estate, inheritance, income, or other tax, charge, or assessment attributable to any benefit which, in the Trustee's opinion, it shall be or may be required to pay out of such benefit; and to require, before making any payment, such release or other document from any taxing authority and such indemnity from the intended payee as the Trustee shall deem necessary for its protection.
- (o) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.

- (p) Upon the prior written request or consent of Company and/or the Committee, to provide ancillary services to the Trust for not more than reasonable compensation.
- (q) To participate in and use the Federal Book-entry Account System (a service provided by the Federal Reserve Bank for its member banks for deposit of Treasury securities), or to use the Depository Trust Company, Midwest Trust Company or other generally accepted central depositories.
- (r) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted to the Trustee.
- (s) Upon prior written notice to Company and the Committee to bring action before any court of competent jurisdiction for instructions with respect to any matter pertaining to the interpretation of this Trust Agreement or the administration of the Trust Fund.

Sec. 3.3 Appointment of Ancillary Trustees. In the event that any property which is or may become a part of the Trust Fund is situated in a state or states in which the Trustee acting hereunder is prohibited from holding real estate as trustee, or in a foreign country, the Trustee is hereby empowered to name an individual or corporate trustee qualified to act in any such state or foreign country in connection with the property situated therein as ancillary trustee of such property and to require such security of the ancillary trustee as may be designated by the Trustee. Naming of such ancillary trustee shall be subject to formal appointment thereof by the Committee. Any ancillary trustee so appointed shall have such rights, powers, discretions, responsibilities, and duties as are delegated to it by the Trustee, but shall exercise and discharge the same and subject to such limitations or directions of the Trustee as shall be specified in the instrument evidencing the appointment. Any such ancillary trustee shall be answerable to the Trustee for all monies, assets, or other property entrusted to it or received by it in connection with the administration of the Trust. The Trustee may remove any such ancillary trustee and may appoint a successor at any time or from time to time as to any or all of the assets, in each case subject to formal appointment of the successor by the Committee. Any instrument designating an ancillary trustee may contain such provisions with respect to payment of income and principal to the Trust Fund, payment of expenses with respect to property administered by the ancillary trustee, termination of the ancillary trustee, and administrative powers of the ancillary trustee, in each instance as the Trustee hereunder, in the exercise of its discretion, may deem appropriate and consistent with the provisions of this Trust Agreement.

Sec. 3.4 Compensation and Expenses. The Trustee shall be entitled to receive such reasonable compensation for its services as Trustee or in any other capacity in connection with the Plan as may be agreed upon with the Company in writing. The Trustee shall be entitled to reimbursement for all documented reasonable and necessary costs, expenses, and disbursements actually incurred by it in the performance of such services. Such compensation and reimbursements shall be paid directly by the Company, but if not so paid within ninety (90) days after invoices for such fees are received by the Company shall be paid directly from the Trust Fund if the Plan so permits.

Sec. 3.5 Records and Accountings. The Trustee shall keep accurate and detailed records and accounts of all investments, receipts, and disbursements, and other transactions hereunder, and all records, books, and accounts relating thereto shall be open to inspection by any person designated by the Company or the Committee at all reasonable times. Within sixty (60) days following the close of each annual accounting period of the Trust, and as soon as reasonably practicable after the resignation or removal of the Trustee has become effective, the Trustee shall file with the Committee a written account setting forth all (i) investments, receipts, disbursements, and other transactions effected by it during such year, or during the part of the year to the date the resignation or removal is effective, as the case may be, and containing a description of all securities purchased and sold, the cost or net proceeds of sale, the securities and investments held at the end of such period, and the cost of each item thereof as carried on the books of the Trustee; (ii) the net income or loss of the Trust Fund; (iii) the gains or losses realized by the Trust Fund upon sales or other disposition of its assets; and (iv) the increase or decrease in the value of the Trust Fund. The accounting shall also furnish the Committee such other information as the Trustee may possess and as may be necessary for them to comply with the reporting requirements of ERISA. Except as provided in Section 4.3(l), the Trustee shall determine the fair market value of publicly traded assets of the Trust Fund where such assets have a readily ascertainable market value no less often than annually. If the fair market value of an asset in the Trust Fund is not available, when necessary for accounting or reporting purposes the fair value of the asset shall be determined in good faith by the Committee, assuming an orderly liquidation at the time of such determination. If there is a disagreement between the Trustee and anyone as to any act or transaction reported in an accounting, the Trustee shall have the right to have its account settled by a court of competent jurisdiction. The Trustee shall make such other reports as may be required by the Plan or agreed upon in writing with the Company and/or Committee.

Set. 3.6 Record Retention. The Trustee shall retain its records and accountings relating to the Trust as long as necessary for the proper administration thereof and at least for any period required by ERISA or other applicable law but with respect to each record and account for not less than six (6) years following the creation thereof.

Sec. 3.7 Trustee's Protection. The Trustee shall enjoy the following protections in connection with the performance of its duties herein.

- (a) Except to the extent the Trustee has actual knowledge to the contrary, the Trustee shall be fully protected in relying upon the existence of any fact or state of facts represented to it in writing by the Company or the Committee or other duly appointed investment manager.
- (b) Except with respect to liability or fiduciary responsibility for any error or loss that may result by reason of the exercise or non-exercise of the duties, obligations, and/or fiduciary responsibility which are allocated to the Trustee herein which is determined to be the result of the Trustee's own negligence or willful misconduct, the Company shall indemnify the Trustee, directly from the Company's own assets (including the proceeds of any insurance policy the premiums of which are paid from the Company's own assets), from and against any and all claims, demands losses, damages, expenses (including, by way of illustration and not limitation, reasonable attorneys' fees and other legal and litigation costs), judgments and liabilities arising from, out of, or in connection with the administration or investment of the Plan or the Trust Fund. The Trustee shall not be liable for any action taken by the Trustee or any failure to act by the Trustee if the action taken or the failure to act was directed by the Company, the Committee or other duly appointed investment manager, if the Trustee reasonably relied on such direction. This paragraph shall survive the termination of this Trust Agreement.
- (c) The Trustee shall be under no obligation to determine the amount of benefits to which members or their beneficiaries will be entitled or to keep any records of the respective interest of any individual member or beneficiary of the Plan. The Trustee shall make payments to or on behalf of a member or beneficiary upon the written direction of the Committee and, if made in accordance with such direction, the Trustee shall have no liability to the Company or any other person in making such payments. The Trustee shall not be required to determine or make any investigation to determine the identity or mailing address of any person entitled to benefits and shall have discharged its obligation in that respect when it shall have sent checks, securities and other papers by ordinary mail to such person or persons and addresses as may be certified to it in writing by the Committee. Notwithstanding the provisions of the preceding sentence, the Trustee shall promptly inform the Committee in writing of the return of any such items.
- (d) The parties recognize that the Trustee does not guarantee the assets of the Trust Fund from loss or depreciation.

The Trustee shall not be liable, responsible, or required to account to the Company for the acts of any prior trustee of this Trust Fund and shall be entitled to the indemnity set forth in Section 3.7(b) hereof therefor.

ARTICLE IV

INVESTMENTS

Sec. 4.1 General. Except to the extent that the Committee, pursuant to Section 1.4 of this Trust Agreement, appoints an investment manager, including the Trustee, in accordance with Section 4.3 of this Trust Agreement, the Committee shall act as the fiduciary with respect to the entire Trust Fund. The Trustee shall invest and reinvest the principal and income of the Trust Fund with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Without limiting the generality of the foregoing, the investments and reinvestments of the Trust Fund shall be subject to the following:

- (a) Investments shall be as consistent as reasonably possible with any funding policy communicated to the Trustee in writing by the Committee pursuant to the Plan. Unless the Trustee has actual knowledge to the contrary, the Trustee may rely on the latest such communication received by it without further inquiry or verification.
- (b) The Trustee may invest and reinvest principal and income of the Trust Fund in common, preferred, and other stocks of any corporation (but in the case of the Company, solely as prescribed by Section 4.1(g)); voting trust certificates; interests in investment trusts, including, without limiting the generality thereof, participations issued by an investment company as defined in the Investment Company Act of 1940, as from time to time amended; bonds, notes, and debentures, secured or unsecured; mortgages on real or personal property; conditional sales contracts; real estate and leases; limited partnerships; and units or shares in limited liability companies, including, without limiting the generality thereof, limited liability companies that are not registered under the Investment Company Act of 1940, as from time to time amended
- (c) Subject to the provisions of Section 2.3 of this Trust Agreement, the Trustee may invest and reinvest the principal and income of the Trust Fund through any common or collective trust fund or pooled investment fund maintained by the Trustee, any of its affiliates, or any other entity through which such investment is properly authorized for the collective investment of funds held by it in a fiduciary capacity. The provisions of the document governing any such common or collective trust fund as it may be amended from time to time shall govern any investment therein and are hereby made a part of this Trust Agreement, including any

provisions for the lending of any securities or security from time to time constituting a part of the common or collective trust fund in exchange for such consideration and upon such terms and conditions as the trustee of the common or collective trust fund deems appropriate. In any such transaction the trustee of such trust fund may transfer legal title to the securities being loaned to the obligor, and may permit the obligation to return to the trust fund securities that are identical (but not necessarily evidenced by the same certificates) to those transferred to it by the trustee thereunder.

- (d) The Trustee may invest and reinvest the principal and income of the Trust Fund by investing in an annuity contract or contracts (including any agreement or agreements supplemental thereto) issued by an insurance company.
- (e) The Trustee may engage in the writing, sale and buying in, of covered call option contracts; and the Trustee may acquire and may exercise options to purchase or sell securities or other assets.
- (f) Subject to applicable law, the Trustee may invest and reinvest the principal and income of the Trust Fund in qualifying employer securities or qualifying employer real property.
- (g) If qualifying employer securities or qualifying employer real property are purchased or sold as an investment of the Trust Fund from or to a disqualified person or party in interest, as those terms are used in the ERISA, and if there is no generally recognized market for such securities or property, the purchase shall be for not more than fair market value and the sale shall be for not less than fair market value, as determined in good faith by the Trustee. In no event may a commission be charged to the Trust Fund for the private purchase or sale of such securities or real property.
- (h) The Trustee may invest and reinvest principal and income of the Trust Fund in deposits (including savings accounts, savings certificates, and similar interest-bearing instruments or accounts) in itself or its affiliates, provided such deposits bear a reasonable rate of interest.
- (i) The Trustee may purchase or sell financial futures contracts in transactions executed through a generally recognized commodities or securities exchange.
- (j) The Trustee may lend any securities or security from time to time constituting a part of the Trust Fund in exchange for such consideration and upon such terms and conditions as the Trustee deems appropriate. In any such transaction the Trustee may transfer legal title to the

securities being loaned to the obligor, and may permit the obligor to return to the Trust Fund securities that are identical (but not necessarily evidenced by the same certificates) to those transferred to it by the Trustee hereunder.

Sec. 4.2 Purchase of Insurance Policies on Lives of Members. If the Plan provides for the purchase of a life insurance policy or annuity contract on the life of any member(s), the Trustee shall make such purchases on written direction of the Committee. Each such direction shall be complete with respect to the terms of the purchase. The Committee shall give written direction as to any subsequent action to be taken with respect to each such policy or contract, it being intended that the Trustee shall have no discretion with respect thereto.

Sec. 4.3 Appointment of Investment Manager. The Committee may appoint one or more parties that qualify as an "investment manager" as such term is defined in Section 3(38) of ERISA to serve as an investment manager of a portion of the Trust Fund. The appointment of any such investment manager and investment of the Trust Fund pursuant to such appointment shall be subject to the following, notwithstanding any provisions hereof to the contrary:

- (a) Written notice of each such appointment shall be given to the Trustee a reasonable time in advance of the effective date of this appointment. The notice shall state what portion of the Trust Fund is to be invested by the investment manager and shall direct the Trustee to segregate such portion of the Trust Fund into a separate account for the investment manager. Each such separate account is referred to in this Section 4.3 as an "Investment Account."
- (b) The Trustee shall not act on any direction or instruction of the investment manager until the Trustee has been furnished with an acknowledgement in writing by the investment manager that it is a fiduciary with respect to the Plan and the Trust.
- (c) There shall be a written agreement between the Committee and each investment manager. The Trustee shall receive a copy of each such agreement and all amendments thereto and shall give written acknowledgement of receipt of same. Each agreement with an investment manager may provide that:
 - (1) All directions given by an investment manager to the Trustee shall be in writing, signed by an officer or partner of the investment manager or by such other person as may be designated in writing by the investment manager, provided that the Trustee may accept oral directions for the purchase or sale of securities, which shall be confirmed by such authorized personnel

of the investment manager in writing and the Trustee shall be fully protected in acting in strict accordance thereto;

- (2) All settlements of purchases and sales shall be in the city where the Trustee is located, or such other place as the Trustee may reasonably direct;
- (3) In all events the Trustee is to retain physical custody of or title to all assets included in an Investment Account; and
- (4) The Committee, by written notice to the investment manager and the Trustee, may modify or terminate the authority of the investment manager.
- (5) The investment manager shall pay the Trustee reasonable and customary charges of the Trustee for any transaction that results in an overdraft. To the extent that any overdraft is not cured within three (3) days of its occurrence, the investment manager shall be solely liable as a fiduciary and shall file such reports and pay such fees and penalties as are necessary to correct any prohibited transaction which may result.
- (d) Payment of the cost of the acquisition, sale, or exchange of any security or other property for an Investment Account shall be charged to that Investment Account unless the agreement between the Company and investment manager provides otherwise.
- (e) So long as the appointment of an investment manager is in effect, the investment manager shall have full power and authority to direct the Trustee as to, and full responsibility for, investment of its Investment Account and for the retention and disposition of any assets in its Investment Account. Subject to any limitations in the agreement between the Company and the investment manager, the investment manager shall have exclusive authority and discretion to invest and reinvest the principal and interest of that portion of the Trust Fund which comprises the Investment Account, subject to the provisions of Section 4.1. The Trustee may invest any portion of an Investment Account that would otherwise be held in cash but has no obligation to do so.
- (f) Unless the written agreement between the Company and investment manager expressly provides that the Company or Committee shall have the voting power with respect to all stocks and other securities in the Investment Account, the investment manager shall have voting power with respect to all such stocks and other securities.

- (g) The Trustee shall make available to an investment manager copies of or extracts from such portions of its accounts, books, or records relating to the Investment Account of such investment manager as the Trustee may deem necessary or, appropriate in connection with the exercise of the investment manager's function, or as the Company or the Committee may direct.
- (h) All charges (other than those covered in subsection (d) above) against each Investment Account shall be made in such proportions as the Company or the Committee may direct in writing from time to time.
- (i) If the authority of an investment manager is terminated and successor investment manager is not appointed, the assets held in its Investment Account may or may not continue to be segregated as the Committee may determine. Until receipt of written notice of the termination of the authority of an investment manager, the Trustee shall be fully protected in relying upon the continuing authority of such investment manager.
- (j) Any direction by an investment manager shall be complete as to the terms with respect thereto, it being intended that the Trustee shall have no obligation whatsoever to invest (other than as directed by an investment manager) or otherwise manage any asset of an Investment Account.
- (k) The Company agrees to indemnify the Trustee for and to hold it harmless against any and all liabilities, losses, costs, or expenses (including legal fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against the Trustee at any time by reason of action taken in accordance with directions of an investment manager or action omitted because no such directions are given. However, no such indemnification shall be required in any case in which such liabilities, losses, costs, or expenses are incurred by the Trustee because it participated knowingly in, or knowingly undertook to conceal, an act or omission of an investment manager, knowing such act or omission was a breach of fiduciary duty by said investment manager or in any case to the proportional extent to which such liabilities, losses, costs or expenses are attributable to the Trustee's failure to act in strict accordance with the directions of an Investment Manager.
- (l) The investment manager shall determine the fair market value of assets held in an Investment Account no less often than annually. If the fair market value of an asset in an Investment Account is not available when necessary for accounting and reporting purposes, the fair value of the asset shall be determined in good faith by the investment manager, assuming an orderly liquidation at the time of such determination.

ARTICLE V

CHANGE IN TRUSTEE

Sec. 5.1 Resignation. The Trustee may resign at any time by giving sixty (60) days advance written notice to the Company.

Sec. 5.2 Removal. The Company may remove the Trustee by giving thirty (30) days advance written notice to the Trustee.

Sec. 5.3 Successor. In the event of the resignation or removal of the Trustee, the Company shall promptly appoint a successor. If no appointment of a successor is made by the Company within a reasonable time after resignation or removal of the Trustee, any court of competent jurisdiction may appoint a successor, after such notice, if any, solely to the Company and the retiring Trustee, as such court may deem proper and suitable. The retiring Trustee shall be furnished with written notice from the Company or the court, as the case may be, of the appointment of the successor, and shall be furnished with written evidence of the successor's acceptance of the trusteeship. Only then shall the retiring Trustee cease to be such.

Sec. 5.4 Duties on Succession. Every successor Trustee accepting a trusteeship under this Trust Agreement shall have all the right, title, powers, duties, exemptions, and limitations of the predecessor Trustee hereunder. No predecessor Trustee shall have any right, title, or interest in the Trust Fund except as hereinafter provided. The Trustee shall, upon the appointment and acceptance of a successor Trustee, transfer and deliver the assets of the Trust Fund and copies of all of Trustee's records pertaining to the Trust and the Trust Fund to the successor Trustee, after reserving (if the Plan so permits) such reasonable amount as it shall deem necessary to provide for its fees and expenses and any sums chargeable against the Trust Fund for which it reasonably believes it will be liable. Any predecessor Trust shall do all acts necessary to vest title of record in the successor Trustee. If any assets in the Trust Fund have been invested in a common or collective trust fund, the predecessor Trustee shall cause such investment to be liquidated at the earliest practical time after notice has been given or received by the predecessor Trustee of its resignation or removal. No person or entity becoming a Trustee hereunder shall be in any way liable or responsible for anything done or omitted to be done by any predecessor Trustee prior to such person's acceptance of the trusteeship, nor shall such person or entity have any duty to examine the administration of the Trust prior to such acceptance; provided, however, the provisions of this sentence shall not apply to changes in organization referenced in Section 5.5.

Sec. 5.5 Changes in Organization of Trustee. If any corporate Trustee acting hereunder is merged with another corporation or association, or is succeeded by another corporation or association, through consolidation or otherwise, the acquiring corporation or association shall thereupon become Trustee hereunder. If any

corporate Trustee acting hereunder sells and transfers substantially all of its assets and business to another corporation or association, the acquiring corporation or association shall thereupon become Trustee hereunder. When authorized by statute or court order any corporate Trustee acting hereunder may permit itself to be succeeded as such corporate Trustee by another corporation or association in which case the acquiring corporation or association shall thereupon become Trustee hereunder. In each case the acquiring corporation or association shall be Trustee of the Trust as though specifically so named herein. Notwithstanding the foregoing provision of this Section 5.5, an acquiring corporation or association shall become Trustee hereunder only if it has trust powers and is formed under the laws of the United States of America or any subdivision thereof.

ARTICLE VI

MISCELLANEOUS

Sec. 6.1 Benefits May Not Be Assigned or Alienated. Except as otherwise expressly permitted by the Plan or required by law, the interests of members and their respective beneficiaries under the Plan or this Trust Agreement may not in any manner whatsoever be assigned or alienated, whether voluntarily or involuntarily, or directly or indirectly.

Sec. 6.2 Incompetent Payee. If a person to whom the Trustee is directed to make one or more payments is disabled from caring for his or her affairs because of mental condition, physical condition, or age, payment due such person may be made to such person's legally appointed guardian, conservator, or other legally appointed personal representative upon the Trustee's receipt of written notice from the Committee of such legal appointment. The Trustee shall have no liability with respect to payment so made. The Trustee shall have no duty to make inquiry as to the competence of any person to whom it is directed to make payment.

Sec. 6.3 Evidence. Evidence required of anyone under this Trust Agreement may be by certificate, affidavit, document, or other instrument which the person acting in reliance thereon considers to be pertinent and reliable, and to be signed, made, or presented by the proper party.

Sec. 6.4 Dealings of Others With Trustee. No person (corporate or individual) dealing with the Trustee shall be required to see to the application of any money paid or property delivered to the Trustee or to determine whether the Trustee is acting pursuant to any authority granted to it under this Trust Agreement.

Sec. 6.5 Insurance Company Not Party. No insurance company that issues a contract held by the Trustee shall be construed to be a party to this Trust Agreement, nor shall it have any responsibility for the validity of this Trust Agreement. An insurance company to which an application may be submitted by the Trustee may accept such application and shall have no duty to make any investigation or inquiry

regarding the authority of the Trustee to make such application or any amendment thereto or to inquire as to whether a person on whose life any contract is to be issued is entitled to such contract under the Plan.

Sec. 6.6 Audits.

- (a) The Company or the Committee shall have the right to cause the books, records, and accounts of the Trustee that relate to the Trust to be examined and audited by independent auditors designated by the Company or the Committee at such times as the Company or the Committee may determine, and the Trustee shall make such books, records, and accounts available for such purposes at all reasonable times.
- (b) If an audit of the Plan shall be required by ERISA and the regulations thereunder for any Plan year, the Committee shall engage or shall direct the Trustee to engage, on behalf of all members and beneficiaries of the Plan, an independent qualified public accountant (selected by the Committee) for such purpose. At the conclusion of an audit in accordance with generally accepted auditing standards, such accountant shall, within a reasonable period after the close of the Plan year, furnish to the Committee and the Trustee a report of such audit setting forth the accountant's opinion as to whether the financial statements and schedules that are required to be included in the Plan's annual reports by Section 103 of ERISA or the Secretary of Labor are presented fairly in conformity with generally accepted accounting principles.

All auditing and accounting fees shall be an expense of and may, at the election of the Committee, be paid from the Trust Fund.

- (c) In accordance with ERISA Section 103(a)(2), if some or all of the information necessary to enable the Committee to comply with ERISA Section 103 is maintained by a bank, insurance company, or similar institution, regulated and supervised and subject to periodic examination by a state or federal agency, such bank, insurance company or institution shall transmit and certify the accuracy of that information to the Committee within one hundred twenty (120) days after the end of the Plan year or such other date as may be prescribed under regulations of the Secretary of Labor.

Sec. 6.7 Trustee Warranty Against Conviction. A person accepting trusteeship hereunder warrants that such person has not been convicted of or imprisoned for a crime preventing such person under the provisions of the ERISA from serving as Trustee hereunder.

Sec. 6.8 Successor Company. The provisions of this Trust Agreement shall be binding on the Company and its successors. If a successor to the Company or a purchaser of all or substantially all of its assets elects to continue the Trust, such successor or purchaser shall be substituted for the Company under this Trust Agreement.

Sec. 6.9 Notices.

- (a) Except as otherwise provided in this Trust Agreement, all notices under this Agreement shall be in writing and be effective upon receipt if delivered by (i) hand, (ii) certified or registered United States Mail postage prepaid, or (iii) facsimile, provided that service by facsimile after 5:00 p.m. local time of the recipient(s) shall be deemed delivered on the following business day, as follows:

If notice is to the Trustee:

Wells Fargo Bank, N.A.
Attention: Lisa Keckler
MAC T7534-021
40 NE Loop 410, Suite 201
San Antonio, Texas 78216
Facsimile (210) 856-8822

If notice is to Company or the Committee:

El Paso Electric Company
Attention: Victor Rueda, Vice President of Human Resources
P.O. Box 982
El Paso, Texas 79960
Facsimile (915) 521-4728

and, if the notice is sent for the purposes described in Section 3.2(i), 3.2(s), 5.1, and 6.9(b), with a copy to:

El Paso Electric Company
Office of the General Counsel
P.O. Box 982
Location 167
El Paso, Texas 79960
Facsimile (915) 521-4412

- (b) Each party may change its address for purposes of notice under this Trust Agreement by notice complying with Section 6.9(a).

Sec. 6.10 Waiver of Notice. Any notice required under this Trust Agreement may be waived in writing by the person entitled thereto.

Sec. 6.11 Headings. Headings at the beginning of articles and sections are for convenience of reference, shall not be considered a part of this Trust Agreement, and shall not influence its construction.

Sec. 6.12 Use of Compounds of Word "Here". Use of the words "hereof", "herein", "hereunder", or similar compounds of the word "here" shall mean and refer to the entire Trust Agreement unless the context clearly indicates otherwise.

Sec. 6.13 Construed as a Whole. The provisions of this Trust Agreement shall be construed as a whole in such manner as to carry out the provisions thereof and shall not be construed separately without relation to the context.

Sec. 6.14 Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by any one counterpart.

Sec. 6.15 Key Employees. If any Collectively Bargained Retiree entitled to post-retirement health benefits under the Plan is a "key employee", as defined in Section 416(i) of the Code, the Committee may direct the Trustee to establish a separate account to which shall be credited amounts to be applied for any post-retirement health benefits to be provided with respect to such Collectively Bargained Retiree after retirement, and post-retirement health benefits provided with respect to such Collectively Bargained Retiree will be charged to and paid from only such employee's separate account, all in accordance with the directions from the Committee. Assets credited to such a separate account may be invested on a commingled basis, but if so invested, the separate account must be adjusted on a yearly basis to reflect its proportionate share of the appreciation, depreciation, income, expenses, gains or losses of the Trust for the year. Any such account shall be maintained and administered in accordance with the requirements of Section 419A of the Code.

ARTICLE VII

AMENDMENT AND TERMINATION

Sec. 7.1 Prohibition on Diversion. General. Except as expressly provided in herein, at no time shall any part of the corpus or income of the Trust Fund be used for, or diverted to, purposes other than for the benefit of the members or their respective beneficiaries. The assets of the Trust Fund shall never inure to the benefit of the Company and shall be held for the exclusive purpose of providing benefits to such members and their respective beneficiaries and defraying reasonable expenses of administering the Plan and the Trust. No part of the net earnings of the Trust Fund

amendment may be made applicable to the Trust Fund as constituted at the time of the amendment as well as to the part of the Trust Fund subsequently acquired. Amendments shall be approved on behalf of the Company by the Board of Directors, or by the Committee if so authorized by the Board of Directors.

Sec. 7.3 Termination of Plan. If the Plan is terminated, this Trust Agreement shall nevertheless continue in effect until the Trust Fund has been distributed in accordance with the provisions of the Plan pursuant to directions under Section 3.1(b) hereof. In the event any assets remain after the satisfaction of all liabilities under the Plan, such assets shall be used for the exclusive benefit of employees of the Company and their beneficiaries. By way of example, and not limitation, any assets remaining in the Trust Fund after the payment of all benefits under the Plan may be used to provide other health and welfare benefits to employees, to provide a premium holiday to employees with respect to other Company health and welfare plans or distributed to participants. The Trust Fund shall terminate when no such assets remain.

Sec. 7.4 Transfer to Other Fund. If pursuant to directions under Section 3.1(b) hereof the entire Trust Fund is transferred to a funding agency for the Plan that is not a trustee, this Trust shall thereupon terminate.

IN WITNESS WHEREOF, the Company and Trustee have caused this Trust Agreement to be executed by their duly authorized officers as of the day and year first above written.

EL PASO ELECTRIC COMPANY

By

Its

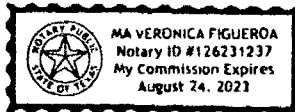
WELL FARGO BANK, N.A.

By

Its

STATE OF TEXAS
COUNTY OF EL PASO

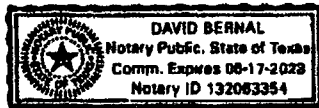
On this 7th day of July, 20 20, before me appeared Victor Kiedig to me personally known, who being by me duly sworn, did say that he/she is the VP HR of EL PASO ELECTRIC COMPANY, the corporation named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and he/she acknowledged said instrument to be the free act and deed of said corporation.



MA Veronica Figueroa
Notary Public El Paso County, Texas
My commission expires 8-24- 20 23

STATE OF TEXAS
COUNTY OF BEXAR

On this 7th day of July, 20 20, before me personally appeared Lisa Keckler to me personally known, who being by me duly sworn, did say that he/she is the Vice President of WELLS FARGO BANK, N.A., the national banking association named in the foregoing instrument, and that said instrument was signed in behalf of said association by authority of its Board of Directors, and he/she acknowledged said instrument to be the free act and deed of said association.



David Bernal
Notary Public, Bexar County, Texas
My commission expires 8-17- 20 23

SECOND AMENDED AND RESTATED TRUST AGREEMENT

Amendment Two

This Second Amended and Restated Trust Agreement was made and entered into as of October 19, 2015 by and between El Paso Electric Company (the "**Company**"), and Wells Fargo Bank, N.A., a national banking association, as trustee (the "**Trustee**");

WITNESSETH:

WHEREAS, in order to provide retiree medical and life benefits for certain of its retired and disabled employees, the Company has established the El Paso Electric Company Retiree Welfare Benefits Plan (the "**Plan**") which provides post-retirement life and health benefits to non-collectively bargained and collectively bargained retired and disabled employees, and their eligible spouses and dependents, (collectively referred to as "**Retirees**") and the eligible surviving spouses and dependents of active employees of the Company who die during the course of their employment with the Company (collectively "**Surviving Dependents**"); and

WHEREAS, the Company and the Trustee had previously entered into this trust arrangement ("**Trust**") with respect to the funding of post-retirement life and health benefits payable to Retirees and Surviving Dependents under the terms of the Plan; and

WHEREAS, pursuant to efforts to restructure the funding arrangements involving the Company and its post-retirement life and health benefits, the Company previously established separate trust arrangements for its non-collectively bargained post-retirement health benefits, its non-collectively bargained and collectively bargained post-retirement life insurance benefits and its collectively bargained post-retirement health benefits, effective February 1, 2020, and

WHEREAS, the Company and the Trustee previously established the El Paso Electric Company Post-Retirement Life Insurance Trust and the El Paso Electric Company Collectively Bargained Post-Retirement Health Benefits Trust (collectively, the "**Transfer Trusts**"), effective February 1, 2020, to which the assets attributable to post-retirement life insurance benefits and collectively bargained post-retirement health benefits, respectively, in this Trust will be transferred and pursuant to which the payment of post-retirement life insurance benefits and collectively bargained post-retirement health benefits will be made; and

WHEREAS, in view of the expected timing of the transfer of post-retirement life insurance assets and post-retirement health assets for collectively bargained retirees from this Trust to the appropriate Transfer Trusts, the Company desires to amend the Trust effective August 1, 2020, to include the approximate date by when assets will be transferred to the Transfer Trusts; and

WHEREAS, the Company and the Trustee agree that the transfer of post-retirement life insurance assets and post-retirement health assets for collectively bargained retirees from this Trust to the appropriate Transfer Trusts shall not permit the Company to recapture any such assets or permit the Company to receive a reversion of Trust assets at any time; and

WHEREAS, the Company intends that this Trust will continue to be a welfare benefit fund that is to provide post-retirement health benefits under the terms of the Plan for non-collectively bargained Retirees and non-collectively bargained Surviving Dependents;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties agree to amend the Trust as follows, effective August 1, 2020:

1. Section 1.3 of the Trust is amended and restated in its entirety to read as follows:

Sec. 1.3 Part of Plan. Following the transfer of Trust assets to the El Paso Electric Company Post-Retirement Life Insurance Trust (the "**Post-Retirement Life Insurance Trust**") and the El Paso Electric Company Collectively Bargained Post-Retirement Health Benefits Trust (the "**Post-Retirement Collectively Bargained Health Benefits Trust**") which is expected to occur on or about September 1, 2020, this Trust shall incorporate and form a part of the Plan for which funds are held hereunder to provide post-retirement health benefits for the benefit of (a) current non-collectively bargained retired and disabled employees (and their eligible spouses and dependents) who are entitled to benefits under the Plan as of December 31, 2019, (b) eligible spouses and dependents of active non-collectively bargained employees who died while performing service for the Company on or before December 31, 2019, and (c) non-collectively bargained employees (and their eligible spouses and dependents) who (i) are age 60 or older on January 1, 2020, (ii) terminate their employment, and (iii) are eligible for coverage under the Plan as retiree or disabled employee (collectively referred to as "**Non-Collectively Bargained Retirees**"). The Company warrants that promptly upon the adoption of any amendment to the Plan it will furnish the Trustee with a copy of the executed amendment. The Company further agrees that no amendment of the Plan shall have the effect of changing the rights, duties, and liabilities of the Trustee without its written consent. The Trustee may rely on the latest Plan documents furnished it as above provided without further inquiry or verification. In the event of any conflict between the Plan and this

Trust Agreement, with respect to the duties of the Trustee this Trust Agreement shall govern and control.

2. Section 2.5 of the Trust is added to read as follows:

Sec. 2.5 Transfer of Trust Assets. The assets of the Trust Fund attributable to (i) post-retirement life insurance benefits for non-collectively bargained and collectively bargained retired and disabled employees (and their eligible spouses and dependents) (collectively referred to as "**Retirees**") and the eligible surviving spouses and dependents of active non-collectively bargained and collectively bargained employees of the Company who die during the course of their employment with the Company (collectively "**Surviving Dependents**") who are entitled to post-retirement life insurance benefits under the Plan, and (ii) post-retirement health benefits for collectively bargained disabled and retired employees (and their eligible spouses and dependents) (collectively "**Collectively Bargained Retirees**") and the eligible surviving spouses and dependents of active collectively bargained employees of the Company who die during the course of their employment with the Company (collectively "**Collectively Bargained Surviving Dependents**") who are entitled to post-retirement health benefits under the Plan, shall be transferred from this Trust to Post-Retirement Life Insurance Trust and the Post-Retirement Collectively Bargained Health Benefits Trust (collectively the "**Transfer Trusts**"), respectively, following the establishment of the Transfer Trusts and approval of such transfers by the Company and the respective trustees of those trusts, which transfer date is expected to be September 1, 2020. At no time shall the Company have a right to recapture such assets or receive a reversion with respect to the assets transferred from this Trust to the Transfer Trusts. The Post-Retirement Life Insurance Trust shall fund post-retirement life insurance benefits for current and future Retirees and Surviving Dependents who are entitled to such benefits under the Plan and the Post-Retirement Collectively Bargained Health Benefits Trust shall fund the post-retirement health benefits for current and future Collectively Bargained Retirees and Collectively Bargained Surviving Dependents who are entitled to such benefits under the terms of the Plan.

IN WITNESS WHEREOF, the Company and Trustee have caused this Amendment Two to the Trust Agreement to be executed by their duly authorized officers as of this ____ day of _____ 2020.

EL PASO ELECTRIC COMPANY

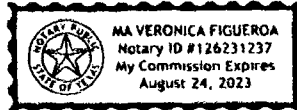
By Nita Huel
Its VP HR

WELL FARGO BANK, N.A.

By Gisa Keckem
Its Vice President

STATE OF TEXAS
COUNTY OF EL PASO

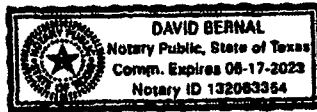
On this 7th day of July, 2020, before me appeared Victoria Keckler to me personally known, who being by me duly sworn, did say that he/she is the V.P. of EL PASO ELECTRIC COMPANY, the corporation named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and he/she acknowledged said instrument to be the free act and deed of said corporation.



MA Veronica Figueroa
Notary Public El Paso County, Texas
My commission expires 8-24, 2023

STATE OF TEXAS
COUNTY OF BEXAR

On this 7th day of July, 2020, before me personally appeared Lisa Keckler to me personally known, who being each by me duly sworn, did say that he/she is the V.P. of WELLS FARGO BANK, N.A., the national banking association named in the foregoing instrument, and that said instrument was signed in behalf of said association by authority of its Board of Directors, and he/she acknowledged said instrument to be the free act and deed of said association.



David Bernal
Notary Public, Bexar County, Texas
My commission expires 6-17, 2023

EL PASO ELECTRIC COMPANY
2021 TEXAS RATE CASE FILING
SCHEDULE G-2: GENERAL EMPLOYEE BENEFIT INFORMATION
SPONSOR: CYNTHIA S. PRIETO
PREPARER: MYRNA A. ORTIZ
FOR THE TEST YEAR ENDED DECEMBER 31, 2020

WP/G-2h
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EL PASO ELECTRIC COMPANY
EXCESS BENEFIT PLAN

Effective as of April 1, 2014

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EL PASO ELECTRIC COMPANY
2021 TEXAS RATE CASE FILING
SCHEDULE G-2: GENERAL EMPLOYEE BENEFIT INFORMATION
SPONSOR: CYNTHIA S. PRIETO
PREPARER: MYRNA A. ORTIZ
FOR THE TEST YEAR ENDED DECEMBER 31, 2020

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EL PASO ELECTRIC COMPANY
EXCESS BENEFIT PLAN

WHEREAS, the El Paso Electric Company Excess Benefit Plan (the "Plan") was established by El Paso Electric Company (the "Company") effective January 1, 2004 and has since been maintained as an unfunded plan primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees of the Company who participate in the Retirement Income Plan for Employees of El Paso Electric Company (the "Qualified Plan"), which Plan consists, in part, of an "excess benefit plan," as defined in Section 3(36) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA");

WHEREAS, it is the intention of the Company that the Plan be unfunded for tax purposes and for purposes of Title I of ERISA;

WHEREAS, the Plan, which is subject to the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), was amended to comply with the provisions of Code Section 409A effective January 1, 2009, and was later amended and construed to resolve certain inconsistencies in the provisions of the Plan, to provide additional details with respect to certain Code Section 409A issues then addressed in the Plan, and to correct certain references in the Plan provisions;

WHEREAS, benefits provided under the Plan are not considered to be grandfathered for purposes of Code Section 409A;

WHEREAS, the benefits provided to a participant under the Plan are generally determined as the benefits that would be provided to the participant under the Qualified Plan if the participant's Qualified Plan benefits were calculated without giving effect to any limitation on benefits or compensation imposed by the Code with respect to qualified plans, and as if the participant's compensation, considered for purposes of calculating the participant's benefits under the Qualified Plan, included bonuses paid under the Company's short term bonus plan (which bonuses are not considered under the Qualified Plan for purposes of calculating Qualified Plan benefits), *reduced by* the participant's Qualified Plan benefits;

WHEREAS, in connection with amendments being made to the Qualified Plan, effective April 1, 2014, to introduce cash balance account benefits under the Qualified Plan for employment with the Company with respect to periods beginning or after April 1, 2014 for some, but not all, Qualified Plan participants, the Company wishes to amend the Plan to be consistent with the existing final average pay benefit provisions of the Qualified Plan (based primarily on a participant's average monthly earnings and benefit accrual service under the Qualified Plan) and the new cash balance account benefits under the Qualified Plan; and

WHEREAS, as provided in this amendment and restatement of the Plan, although a participant's benefits under the Plan will be based on the participant's benefits under the Qualified Plan (whether such benefits are final average pay benefits, cash balance account benefits, or a combination of both), the time and form of payment for a participant's benefits

under the Plan will continue to be established and governed solely by the provisions of the Plan, with the Plan benefits of individuals who become participants in the Plan before April 1, 2014 being paid as annuities beginning at the later of Separation from Service, as defined in Section 1.16 ("Separation from Service") or attainment of "early retirement age," as hereinafter defined (consistent with the Plan provisions in effect prior to April 1, 2014), and with the Plan benefits of individuals who become participants in the Plan on or after April 1, 2014 being paid as lump sum distributions on the first day of the second month following Separation from Service, all as determined under the provisions of the Plan:

NOW, THEREFORE, the Plan is amended and restated, effective April 1, 2014, as follows:

ARTICLE I DEFINITIONS

Wherever used herein, the following terms shall have the meanings hereinafter set forth:

1.1 "Beneficiary" means (a) in the case of benefits commencing during a Participant's life, the Spouse or other individual designated by the Participant, in accordance with Section 3.2(a), to receive monthly annuity payments following the Participant's death, as well as (b) in the case of benefits not paid or commencing during a Participant's life, the Spouse or other individual designated by the Participant, in accordance with Section 4.3, to receive any Post Death Cash Balance Account Excess Benefit that may be payable with respect to the Participant under Article 4. "Beneficiary" shall include any Surviving Spouse entitled to a benefit hereunder, any individual designated by the Participant under Section 3.6, and any beneficiary of the former Spouse of a Participant. Any beneficiary designation shall be on a form approved by the Committee and will be effective only when such form is filed with the Committee during the life of the Participant or other individual making the beneficiary designation. If the Participant fails to designate a Beneficiary and the Participant's Surviving Spouse is not entitled to the Participant's benefit hereunder, any benefit payable with respect to the Participant shall be paid to the Participant's executor or administrator.

1.2 "Board" means the Board of Directors of the Company.

1.3 "Cash Balance Account Excess Benefit" is calculated as provided in Section 3.1(b).

1.4 "Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations relating thereto.

1.5 "Committee" means the Compensation Committee of the Board or its designee charged with the administration of the Plan.

1.6 "Company" means El Paso Electric Company or, to the extent provided in Section 8.13, any successor corporation or other entity resulting from a merger or consolidation into or with the Company or a transfer or sale of substantially all of the assets of the Company.

1.7 "Early Retirement Age" means the date on which a Participant has attained age 55 and is fully vested in a benefit under the Qualified Plan.

1.8 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

1.9 "Final Average Pay Excess Benefit" is calculated as provided in Section 3.1(a).

1.10 "Normal Retirement Date" means the first day of the month coincident with or next following a Participant's Separation from Service with the Company after the date such Participant has attained (a) age 65, or (b) if later, his fifth anniversary of joining the Qualified Plan.

1.11 "Participant" means an employee who becomes a participant in the Plan pursuant to Article 2 hereof, and any former employee who is entitled to benefits under the Plan.

1.12 "Plan" means the El Paso Electric Company Excess Benefit Plan, as set forth herein and as amended from time to time.

1.13 "Post-Death Cash Balance Account Excess Benefit" is calculated as provided in Section 4.2(b).

1.14 "Post-Death Final Average Pay Excess Benefit" is calculated as provided in Section 4.2(a).

1.15 "Qualified Plan" means the Retirement Income Plan for Employees of El Paso Electric Company, as amended from time to time, and any successor or replacement thereto.

1.16 "Separation from Service" means

(a) with respect to an employee, the employee's ceasing to provide services to the Company as a result of the employee's death, retirement or termination of employment. For purposes of determining whether a separation from service has occurred, a "termination of employment" shall mean that the surrounding facts and circumstances indicate that the Company and the employee reasonably anticipate that no further services will be performed after a certain date, or that the level of bona fide services the employee would perform after such date (whether as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed (whether as an employee or an independent contractor) over the immediately preceding 36-month period (or the full period of services to the employer if the employee has been providing services to the employer less than 36 months).

Notwithstanding the foregoing, the employment relationship will be treated as continuing intact while an individual is on military leave, sick leave, or other bona fide leave of absence if the period of such leave does not exceed six months, or if longer, so long as the

individual retains a right to reemployment with the Company under an applicable statute or by contract. If the period of a military leave, sick leave, or other bona fide leave of absence exceeds six months and the Participant does not have a right to reemployment under an applicable statute or by contract, the employment relationship will be considered to be terminated for purposes of this Plan as of the first day immediately following the end of such six-month period. In applying the provisions of this paragraph, a leave of absence will be considered a bona fide leave of absence only if there is a reasonable expectation that the Participant will return to perform services for the Company.

(b) For a Participant who provides services to the Company as both an employee and an independent contractor, a Separation from Service generally will not occur until the Participant has ceased providing services for the Company both as an employee and as an independent contractor as determined in accordance with the provisions set forth in paragraphs (a) and (b) of this Section 1.16, respectively. Except as otherwise provided herein, in the case of an independent contractor, a Separation from Service will occur upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the Company, provided that the expiration of such contract or contracts is determined by the Company to constitute a good faith and complete termination of the contractual relationship between the Participant and the Company. If a Participant ceases providing services for the Company as an employee and begins providing services for the Company as an independent contractor, the Participant will not be considered to have experienced a Separation from Service until the Participant has ceased providing services for the Company in both capacities, as determined in accordance with the applicable provisions set forth in paragraphs (a) and (b) of this Section 1.16.

Notwithstanding the foregoing provisions in this paragraph (b), if a Participant provides services for the Company as both an employee and as a member of the Board, to the extent permitted by Regulation Section 1.409A-1(h)(5), the services provided by the Participant as a director will not be taken into account in determining whether the Participant has experienced a Separation from Service as an employee.

(c) Notwithstanding the provisions of this Section 1.16, where, as part of a sale or other disposition of substantial assets by the Company to an unrelated buyer, a Participant would otherwise experience a Separation from Service as defined above, the Company and the buyer shall retain the discretion to specify, and may specify, that a Participant performing services for the Company immediately before the asset purchase transaction and providing services to the buyer after and in connection with the asset purchase transaction shall not experience a Separation from Service for purposes of the Plan and the Participant shall be bound by same, provided that such transaction and the specification meet the requirements of Code Section 409A and the Treasury Regulations and other guidance thereunder.

(d) For purposes of this definition, "Company" means (1) the entity for which the Participant performs services and with respect to which the legally binding right to benefits under the Plan arises; and (2) all other entities with which the entity described in paragraph (d)(1) of this Section 1.16 would be aggregated and treated as a single employer under Code Section 414(b) (controlled group of corporations) and Code Section 414(c) (group of trades or