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

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**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

**REDACTED  
DIRECT TESTIMONY  
OF  
KARL J. NALEPA**

**ON BEHALF OF  
THE CITY OF EL PASO**

**OCTOBER 22, 2021**

**REDACTED  
DIRECT TESTIMONY OF  
KARL J. NALEPA**

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Attachment A	Statement of Qualifications
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Attachment C	CEP Cost of Service Model (Confidential, Voluminous, Redacted)
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**I. INTRODUCTION AND QUALIFICATIONS**

1   **Q.   PLEASE STATE YOUR NAME, OCCUPATION, AND ADDRESS.**

2   A.   My name is Karl J. Nalepa. I am President of ReSolved Energy Consulting, LLC  
3       ("REC"), an independent utility consulting company. My business address is 11044  
4       Research Boulevard, Suite A-420, Austin, Texas 78759.

5   **Q.   PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND**  
6       **EDUCATIONAL BACKGROUND.**

7   A.   I am a partner in REC and have been a partner since acquiring the firm in July 2011. I  
8       joined R.J. Covington Consulting, REC's predecessor firm, in June 2003. I lead our  
9       firm's regulated market practice, where I represent the interests of clients in utility  
10      regulatory proceedings, prepare client cost studies, and develop client regulatory  
11      filings. Before joining REC, I served for more than five years as an Assistant Director  
12      at the Railroad Commission of Texas ("RRC"). In this position, I was responsible for  
13      overseeing the economic regulation of natural gas utilities in Texas, which included  
14      supervising staff casework, advising Commissioners on regulatory issues, and serving  
15      as a Technical Rate Examiner in regulatory proceedings. Prior to joining the  
16      Commission, I worked as an independent consultant advising clients on a broad range  
17      of electric and natural gas industry issues, and before that I spent five years as a  
18      supervising consultant with Resource Management International, Inc. I also served for  
19      four years as a Fuel Analyst at the Public Utility Commission of Texas ("Commission"),  
20      where I evaluated fuel issues in electric utility rate filings, participated in electric  
21      utility-related rulemaking proceedings, and participated in the review of electric utility

1 resource plans. My professional career began with eight years in the reservoir  
2 engineering department of Transco Exploration Company, which was an affiliate of  
3 Transco Gas Pipeline Company, a major interstate pipeline company.

4 I hold a Master of Science degree in Petroleum Engineering from the University  
5 of Houston, and a Bachelor of Science degree in Mineral Economics from The  
6 Pennsylvania State University. I am also a certified mediator. My Statement of  
7 Qualifications is included as Attachment A.

8 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

9 A. Yes, I have testified many times before the Commission, as well as the RRC, on a  
10 variety of regulatory issues. I have also provided testimony before the Louisiana Public  
11 Service Commission, Arkansas Public Service Commission, and Colorado Public  
12 Utilities Commission. A summary of my previously filed testimony is included as  
13 Attachment B. In addition, I have provided analysis and recommendations in numerous  
14 city-level regulatory proceedings that resulted in decisions without written testimony.

15 **Q. ON WHOSE BEHALF ARE YOU OFFERING TESTIMONY IN THIS**  
16 **PROCEEDING?**

17 A. I am offering testimony on behalf of the City of El Paso, Texas ("City" or "CEP").

18 **II. PURPOSE AND SCOPE**

19 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

20 A. The purpose of my testimony is twofold: first, to address an issue deferred from El Paso  
21 Electric Company's ("EPE" or "Company") previous Transmission Cost Recovery

1 Factor (“TCRF”) filing and second, to sponsor the class cost of service model presented  
2 by the City.

3 **Q. WHAT IS EPE REQUESTING IN THIS PROCEEDING?**

4 A. EPE requested in its application an increase in Texas retail base rate and miscellaneous  
5 revenues of \$68.968 million. After accounting for TCRF and Distribution Cost  
6 Recovery Factor (“DCRF”) revenue of \$27.871 million, the net revenue deficiency is  
7 \$41.097 million, or 7.28 percent over its adjusted test year total non-fuel revenues. This  
8 consists of a requested base rate increase of \$41.818 million and miscellaneous revenue  
9 reduction of \$0.721 million. The base rate increase is 7.79 percent over adjusted test  
10 year base revenues.<sup>1</sup>

11 **III. SUMMARY AND RECOMMENDATIONS**

12 **Q. WHAT ARE YOU RECOMMENDING IN THIS PROCEEDING?**

13 A. I have two recommendations:

14 First, I found that EPE has not provided adequate support for its \$16.8 million payment  
15 to the Pueblo of Isleta for renewal of its right of way (“ROW”) and recommend the  
16 payment be removed from rate base and the amount of the payment be reduced. This  
17 reduces the proposed revenue requirement by \$1.468 million.

18 Second, I recommend that the Commission adopt the City’s adjustments to  
19 EPE’s proposed revenue requirement.

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<sup>1</sup> Direct Testimony of James Schichtl at 3-4 and Schedule A-1.

1 **Q. HOW DOES THE CITY'S RECOMMENDATION COMPARE TO EPE'S**  
2 **REQUEST?**

3 A. The City recommends an overall Texas Retail base revenue reduction of \$10.059  
4 million. A comparison of EPE's request and the City's recommendation is shown in  
5 Table 1:

6 **Table 1**  
7 **(\$ million)**

	EPE Request <sup>2</sup>	City's Recommendation	Difference
Base Rate Increase	\$41.818	(\$10.059)	(\$51.877)
Misc. Service Revenues	(\$0.721)	(\$0.721)	-
Total Increase	\$41.097	(\$10.780)	(\$51.877)

8  
9 **IV. PUEBLO OF ISLETA LAND RIGHTS RENEWAL**

10 **Q. WHAT ARE YOU ADDRESSING IN THIS SECTION OF YOUR**  
11 **TESTIMONY?**

12 A. I am addressing the Company's request to include \$16,824,750 in transmission plant  
13 in service for the Pueblo of Isleta land rights renewal.<sup>3</sup>

14 **Q. WHY ARE YOU ADDRESSING THESE COSTS?**

15 A. This issue was raised in EPE's TCRF filing in Docket No. 49148. The Final Order in  
16 that case found it would be appropriate for a determination of the prudence,  
17 reasonableness, and necessity of the costs related to the right of way ("ROW") renewal  
18 agreement with the Isleta tribe to be made in EPE's next comprehensive base rate  
19 proceeding.<sup>4</sup> That proceeding is this case.

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<sup>2</sup> Schedule A-1.

<sup>3</sup> Direct Testimony of R. Clay Doyle at 20, Table RCD-3.

<sup>4</sup> Docket No. 49148, Order, FoF 57 (December 16, 2019).

1     **Q.     WHAT IS THE NATURE OF THESE COSTS?**

2     A.     EPE's Arroyo – West Mesa 345kW transmission line crosses the Pueblo of Isleta  
3           Reservation property near Los Lunas, New Mexico. The overall length of the  
4           transmission line is 202 miles and approximately 8.4 miles of the line is located on a  
5           100-foot-wide ROW easement on tribal land. At the time of the construction of this  
6           line in 1967, EPE entered into a fifty-year ROW agreement with the Pueblo of Isleta,  
7           which expired in 2017. The subject project is the renewal of that ROW agreement with  
8           the Pueblo. The term of the new ROW agreement for this portion of the Arroyo – West  
9           Mesa line is twenty-five years.<sup>5</sup>

10    **Q.     WHAT WAS THE LAND RIGHTS PAYMENT UNDER THE ORIGINAL ROW**  
11       **AGREEMENT?**

12    A.     The original land rights payment was \$4,398.75.<sup>6</sup>

13    **Q.     DID EPE EXPLAIN THE SUBSTANTIAL INCREASE IN THE ROW**  
14       **RENEWAL PAYMENT?**

15    A.     Not in my opinion. The only contemporaneous documentation that EPE could produce  
16           was a PowerPoint presentation prepared by EPE witness Doyle purported to be the  
17           basis for the EPE Board of Director's decision to approve the ROW renewal  
18           agreement.<sup>7</sup>

19    **Q.     WHAT SUPPORT FOR THE PAYMENT WAS REFLECTED IN THE**  
20       **PRESENTATION?**

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<sup>5</sup> Direct Testimony of R. Clay Doyle at 22.

<sup>6</sup> *Id.*

<sup>7</sup> Direct Testimony of R. Clay Doyle at 24 and response to CEP RFI 5-5.



1 A. EPE provided a copy of a Wall Street Journal article containing general anecdotal  
2 quotes regarding third-party ROW information.<sup>8</sup> This article did not address any  
3 negotiations related to the Isleta agreement.

4 The Company also provided a 2007 report prepared by the U.S. Departments of  
5 Energy and the Interior that addressed issues associated with grants, expansions, and  
6 renewals of energy rights-of-way on tribal lands.<sup>9</sup> But this report was issued ten years  
7 before the Isleta ROW agreement was renewed and at any rate did not specifically  
8 address the Isleta agreement. Furthermore, the report was not relied upon by EPE at the  
9 time its decision was made to make the \$16.8 million ROW renewal payment.<sup>10</sup>

10 **Q. DID THE COMPANY PRODUCE ANY OFFERS OR COUNTER-OFFERS**  
11 **LEADING UP TO THE \$16.8 MILLION PAYMENT?**

12 A.   
13  
14 <sup>11</sup> EPE produced no other negotiations  
15 before acknowledging the final payment amount.

16 **Q. DID THE COMPANY PROVIDE ANY OTHER SUPPORT FOR THE ROW**  
17 **PAYMENT?**

18 A. EPE witness Doyle also testified that the cost paid for the ROW was reasonable in light  
19 of similar agreements entered into by other utilities.<sup>12</sup> But when asked for the

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<sup>8</sup> Direct Testimony of R. Clay Doyle at 24 and response to CEP RFI 5-5.

<sup>9</sup> *Id.* at 23 and Exhibit RCD-6.

<sup>10</sup> Response to CEP RFI 5-4.

<sup>11</sup> Response to CEP RFI 5-12, Attachment 4 at 651 (Confidential).

<sup>12</sup> Direct Testimony of R. Clay Doyle at 26.

1 information gathered from other utilities, EPE responded that information obtained  
2 about other utilities was gathered through verbal conversations and was not  
3 documented.<sup>13</sup> Other than the documents already mentioned, EPE has no other  
4 documentation for the \$16.8 million ROW payment.<sup>14</sup>

5 **Q. DID THE COMPANY CONSIDER OTHER OPTIONS PRIOR TO RENEWAL**  
6 **OF THE ROW AGREEMENT?**

7 A. The Company claimed it did consider other options instead of renewing the ROW  
8 agreement, including:

- 9 • Acquisition of the ROW through condemnation was considered but EPE asserted  
10 it had no legal basis to do so on tribal lands;<sup>15</sup>
- 11 • Abandoning the ROW was considered but EPE determined it to have a negative  
12 impact on the system and on transmission revenues:<sup>16</sup>
- 13 a. Import capability would be reduced from 1,040 MW to 520 MW
- 14 b. Peak load serving capability would be reduced to 1,600 MW and EPE could  
15 not meet its peak transmission planning standards, and
- 16 c. Service agreements would require renegotiation and annual transmission  
17 revenues would be reduced.
- 18 • Rerouting the line was considered but EPE claims it would have been more costly  
19 than renewing the agreement. EPE estimated two reroute options of 29.7 miles to  
20 the west and 64.8 miles to the east. EPE relied on a “rule of thumb” of \$1 million  
21 per mile cost estimate to yield a replacement cost of \$29.8 to \$64.8 million.<sup>17</sup>

22 **Q. WHAT SUPPORT DID EPE PROVIDE FOR THESE OTHER OPTIONS?**

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<sup>13</sup> Response to CEP RFI 5-9.

<sup>14</sup> Response to CEP 5-12.

<sup>15</sup> Direct Testimony of R. Clay Doyle at 23.

<sup>16</sup> *Id.*, Exhibit RCD-5.

<sup>17</sup> *Id.* at 25.

1 A. Other than the testimony of Mr. Doyle, the support for these alternatives to the ROW  
2 payment consisted of the PowerPoint presentation previously described.

3 **Q. DID EPE PROVIDE ANY LEGAL ANALYSIS OF ITS ABILITY TO**  
4 **CONDEMN THE TRIBAL LANDS ROW?**

5 A. No.

6 **Q. DID EPE PROVIDE ANY ENGINEERING STUDIES OR ANALYSIS**  
7 **SUPPORTING ITS ESTIMATE OF THE IMPACT OF ABANDONING THE**  
8 **LINE ON IMPORT CAPABILITY OR MEETING PEAK LOAD**  
9 **REQUIREMENTS?**

10 A. No.

11 **Q. DID EPE PROVIDE ANY ECONOMIC STUDIES OR ANALYSIS**  
12 **SUPPORTING ITS ESTIMATE OF THE IMPACT OF ABANDONING THE**  
13 **LINE ON THE LOSS OF TRANSMISSION REVENUES?**

14 A. No.

15 **Q. DID EPE PROVIDE ANY ROUTE STUDIES OR ANALYSIS SUPPORTING**  
16 **ITS ESTIMATE OF THE COST OF REROUTING THE LINE?**

17 A. No.

18 **Q. YOU TESTIFIED THAT THE COMMISSION WOULD MAKE A**  
19 **DETERMINATION IF THE ROW PAYMENT WAS REASONABLE,**  
20 **NECESSARY AND PRUDENT IN THIS CASE. HOW SHOULD**  
21 **“REASONABLE, NECESSARY AND PRUDENT” BE MEASURED?**

1 A. A cost that is “reasonable and necessary” meets the prudence standard. Conversely, a  
2 cost that is not prudent cannot be “reasonable and necessary.”

3 **Q. WHAT PRUDENCE STANDARD SHOULD BE APPLIED?**

4 A. I am advised by Counsel that the most recent prudence standard was established in a  
5 Texas Supreme Court opinion delivered in March 2021.<sup>18</sup>

6 **Q. PLEASE SUMMARIZE THE SUPREME COURT DECISION.**

7 A. The Supreme Court approved the Commission’s articulation of prudence, “The  
8 standard for determining prudence is the exercise of that judgment or the choosing of  
9 one of a select range of options which a reasonable utility manager would exercise or  
10 choose given the same or similar circumstances given the information or alternatives  
11 available at the time such judgment is exercised or option chosen”<sup>19</sup> The Court  
12 discussed whether the Commission had to consider only independent expert testimony  
13 in a circumstance, such as this case in which contemporaneous documentation is  
14 lacking. The Court noted that the Commission could demand outside expert testimony  
15 but could decide not to demand such testimony.

16 **Q. CAN YOU POINT TO ANOTHER APPLICATION OF THE PRUDENCE**  
17 **STANDARD RELATED TO EPE?**

18 A. Yes. In Docket No. 6350, EPE had to address the prudence issue as part of a request  
19 for construction work in progress in rate base.<sup>20</sup> The Examiner’s Report addressed in  
20 great detail the prudence and efficiency of EPE’s planning and management pertaining

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<sup>18</sup> *Public Utility Commission of Texas et al. v. Texas Industrial Energy Consumers, et al., Respondents*,  
620 S.W. 3d (Tex. March 26, 2021).

<sup>19</sup> *Id.* at 428, quoting the Order on Rehearing in Docket 40443.

<sup>20</sup> Tex. Util. Code §36.054(b).

1 to its initial and continuing decisions to participate in the Palo Verde Nuclear  
2 Generating Station (“PVNGS”) and the prudence and efficiency of the planning and  
3 management at the PVNGS project itself.<sup>21</sup>

4 **Q. WHAT DID THE EXAMINER FIND IN THAT CASE?**

5 A. The Examiner found that the record in that docket did not support a finding that EPE’s  
6 initial decision to become involved with PVNGS was the result of prudent and efficient  
7 planning and management on the part of EPE. The Company witness’ testimony was  
8 “threadbare” on this issue and based upon the evidence presented concerning EPE’s  
9 decision to participate in PVNGS, the Examiner was unable to conclude that that  
10 decision was predicated by the type of reasoned and careful analysis one would expect  
11 prudent management to undertake before committing a business to a financial venture  
12 of such magnitude as PVNGS.<sup>22</sup>

13 The Examiner also found that EPE failed to demonstrate that the Company’s  
14 continued involvement in PVNGS at a 15.8 percent ownership level was prudent. As  
15 in the case of the Company’s witness’ testimony regarding the initial decision to  
16 participate in PVNGS, his testimony regarding EPE’s continued participation at a 15.8  
17 percent level was also sparse. The Examiner observed that that Company witness relied  
18 almost entirely on a number of studies as support for the prudence of EPE’s continued  
19 involvement in PVNGS at the Company’s originally subscribed level.<sup>23</sup> The Examiner  
20 found that the studies suffered from numerous analytical deficiencies, and the record

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<sup>21</sup> Docket No. 6350, *Application of El Paso Electric Company for Authority to Change Rates*, Examiner’s Report at 23 (January 9, 1986).

<sup>22</sup> *Id.* at 23.

<sup>23</sup> *Id.* at 25.

1 did not reflect that EPE's management critically evaluated those studies. The Examiner  
2 further concluded that the Company seemed to have had only minimal interest in  
3 questioning, analyzing, discussing, or verifying the results of those various studies.<sup>24</sup>

4 **Q. HOW DO THE FINDINGS OF THE SUPREME COURT AND DOCKET NO.**  
5 **6350 EXAMINER'S REPORT APPLY TO THE ROW RENEWAL PAYMENT**  
6 **IN THIS PROCEEDING?**

7 A. EPE has the burden to prove its Isleta ROW renewal payment was prudent. This burden  
8 requires that utility to prove, either through contemporaneous documentation or a  
9 rigorous retrospective analysis, demonstrating the decision-making of management  
10 was within the range of reasonable options available under the circumstances. In the  
11 case of the \$16.8 million ROW renewal payment, EPE was unable to provide any  
12 evidence supporting its decision. If EPE negotiated at all with the Pueblo, it should  
13 have retained related documents such as offers and counter offers. If EPE had no ability  
14 to negotiate, it should have made it a priority to document its conversations with other  
15 utilities about their experiences in negotiating ROW payments. None of which it did.

16 EPE's retrospective review was limited to general observations about  
17 negotiations of ROW agreements over tribal lands, but no analysis at all of how the  
18 final ROW payment was determined.

19 **Q. HOW SHOULD THE ALTERNATIVES TO RENEWING THE ROW**  
20 **AGREEMENT DESCRIBED BY EPE BE TAKEN INTO CONSIDERATION?**

21 A. Despite that fact that the cost of the alternatives was also unsupported by EPE, the  
22 alternatives tended to show that renewing the ROW agreement could be a better

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<sup>24</sup> Id. at 31-32.

1 alternative. However, that made it even more imperative that EPE be able to document  
2 or effectively explain how the payment was determined since it did not have a  
3 competitive alternative.

4 **Q. WHAT DO YOU CONCLUDE ABOUT THE ROW RENEWAL PAYMENT?**

5 A. Based on the lack of meaningful evidence supporting the \$16.8 million payment, I  
6 conclude that the payment was imprudent and does not meet the reasonable and  
7 necessary requirement to be included in rates.

8 **Q. DO YOU HAVE ANY OTHER ISSUES WITH THE ROW RENEWAL**  
9 **PAYMENT?**

10 A. Yes. EPE chose to capitalize the ROW payment and earn a return on the total payment  
11 while amortizing the payment over the term of the ROW agreement. This can be seen  
12 on EPE's Schedule D-4, where the Isleta payment is booked to Federal Energy  
13 Regulatory Commission ("FERC") electric plant account 350, Land and Land Rights,  
14 and depreciated over 25 years (or 4.0% per year).

15 **Q. IS THERE AN ALTERNATIVE TREATMENT FOR THIS PAYMENT?**

16 A. Yes. EPE could have treated the lease payment as an annual expense, charging  
17 operations & maintenance ("O&M") expense 1/25 of the total amount each year over  
18 the life of the ROW agreement.

19 **Q. DID EPE CONSIDER THIS ALTERNATIVE?**

20 A. Yes.

21

22

1

2

25

3 **Q. DO YOU HAVE A RECOMMENDATION REGARDING THE PAYMENT?**

4 A. Yes, I have two recommendations regarding the ROW payment. First, the payment  
5 should be removed from rate base and treated as an O&M expense. EPE had an  
6 opportunity to do this but chose to capitalize the payment instead which increased costs  
7 to its customers. Second, the annual expense should be no more than the annualized  
8 amount of EPE's initial ROW payment offer, as I discussed earlier, or [REDACTED]  
9 [REDACTED] per year. Other than a newspaper summary and dated DOE survey  
10 on ROW payments, EPE provided no evidence that supports the payment it made to  
11 renew the ROW agreement.

12 **Q. WHAT IS THE IMPACT ON RATES OF REMOVING THE ROW PAYMENT**  
13 **FROM RATE BASE AND REDUCING THE AMOUNT?**

14 A. Removing the \$16.8 million ROW payment from rate base reducing the annual  
15 payment amount reduces the Texas retail revenue requirement by approximately  
16 \$1.468 million.

17 **V. COST OF SERVICE MODEL**

18 **Q. IS THE CITY PROPOSING AN OVERALL REVENUE REQUIREMENT IN**  
19 **THIS PROCEEDING?**

20 A. Yes, the City's overall Texas revenue requirement is \$522.65 million. This represents  
21 a reduction of \$51.877 million to the Company's proposed revenue requirement.

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<sup>25</sup> Responses to CEP RFI 5-12, Attachment 4 at 837-838 (Confidential), CEP RFI 13-1 (Confidential) and CEP RFI 13-2 (Confidential).



1     **Q.     HOW WAS THE CITY’S REVENUE REQUIREMENT DEVELOPED?**

2     A.     The City’s revenue requirement is derived from a jurisdictional cost of service model  
3           based on the Company’s model. I am sponsoring the City’s model and have compiled  
4           adjustments to the Company’s proposed revenue requirement recommended by each of  
5           the City’s witnesses. The City’s cost of service model is included as Attachment C to  
6           my testimony.

7     **Q.     HOW WAS THE COST OF SERVICE MODEL CREATED?**

8     A.     The starting point for the cost of service model was a reproduction of the Company’s  
9           model. The City’s model incorporates all of the components of the Company’s model  
10          and generates the same results as the Company’s model prior to any adjustments by the  
11          City.

12    **Q.     ARE YOU SPONSORING THE CITY’S ADJUSTMENTS TO THE COST OF**  
13    **SERVICE MODEL?**

14    A.     I have compiled the adjustments to the cost of service model, and except for one  
15          adjustment, I am only sponsoring the City’s model and certain adjustments to the model  
16          I discuss later in my testimony.

17    **Q.     WHICH ADJUSTMENT ARE YOU SPONSORING?**

18    A.     I am sponsoring the City’s proposed adjustment to the Isleta ROW renewal payment,  
19          as described earlier in my testimony.

20    **Q.     WHO IS SPONSORING THE CITY’S OTHER ADJUSTMENTS?**

21    A.     Each of the City’s witnesses will sponsor their own adjustments, which I have  
22          incorporated into the City’s model. A summary of the adjustments proposed by the

1 City's witnesses and the corresponding base rate revenue requirement impact on a  
2 Texas retail basis is reflected in Attachment D.

3 **Q. PLEASE EXPLAIN THE ADJUSTMENTS TO THE MODEL YOU**  
4 **PREVIOUSLY MENTIONED.**

5 A. I added a tab labeled *CEP Adj* to the cost of service model that contains a summary of  
6 CEP's adjustments and the location in the model where each adjustment is made.  
7 Otherwise, the City's model is essentially the Company's model with the additional tab  
8 and adjustments described above.

9 **Q. IS THE CITY MAKING ANY OTHER ADJUSTMENTS TO THE COMPANY'S**  
10 **PROPOSED RATES?**

11 A. Yes. CEP witness Clarence Johnson has prepared adjustments to the class cost  
12 allocation and proposed revenue distribution that are reflected in his testimony.

13 **VI. RATE CASE EXPENSES**

14 **Q. WHAT IS THE PURPOSE OF ADDRESSING RATE CASE EXPENSES IN**  
15 **THIS PROCEEDING?**

16 A. The purpose of addressing rate case expenses in this proceeding is to comply with issue  
17 27 of the Preliminary Order, which states:

18  
19 27. What are the intervening cities' reasonable rate-case expenses, in  
20 accordance with PURA § 33.023(b) and 16 TAC § 25.245? Does this  
21 amount include any anticipated expenses to appeal this proceeding or a  
22 prior rate-case proceeding?

23 **Q. WHAT AMOUNT OF THE CITY'S REQUESTED RATE CASES EXPENSES**  
24 **ARE ATTRIBUTABLE TO REC?**

1 A. REC's actual fees through September 30, 2021 of \$8,982.00 correspond to time  
2 reviewing the application testimony, schedules and workpapers, developing and  
3 reviewing discovery, analyzing the filing and conferring with counsel. A copy of  
4 REC's invoices are provided with the testimony of CEP witness James Brazell.

5 **Q. PLEASE IDENTIFY THE REC STAFF WHO INCURRED EXPENSES IN THIS**  
6 **CASE, THEIR HOURLY RATES, AND TOTAL HOURS BILLED.**

7 A. I am leading the review for REC, and my billing rate is \$270 per hour. I billed 19.6  
8 hours for a total of \$5,292.00 through September 30, 2021. Assisting me on this project  
9 is Ms. Erin Cromleigh, who has billed 20.5 hours for a total of \$3,690.00 through  
10 September 30, 2021.

11 After September 30, 2021, we will have additional tasks to complete, including  
12 preparation of testimony, including development of the City's cost of service model,  
13 reviewing and potentially responding to discovery, preparation for hearing, settlement  
14 negotiations and post hearing filings. Based on the amount of work not yet billed, I  
15 estimate REC's expenses to complete our work on this case will be \$22,000.

16 **Q. WHAT CRITERIA MUST BE MET UNDER THE COMMISSION'S RATE**  
17 **CASE EXPENSE RULE (16 TAC § 25.245)?**

18 A. The following criteria are set out in the rule:  
19 1. Whether the fees paid to, tasks performed by, or time spent on a task by an  
20 attorney or other professional were extreme or excessive,  
21 2. Whether the expenses incurred for lodging, meals and beverages,  
22 transportation, or other services or materials were extreme or excessive,  
23 3. Whether there was duplication of services or testimony,  
24 4. Whether the utility's or municipality's proposal on an issue in the rate case  
25 had no reasonable basis in law, policy, or fact and was not warranted by any

reasonable argument for the extension, modification, or reversal of  
commission precedent,

5. Whether rate-case expenses as a whole were disproportionate, excessive, or  
unwarranted in relation to the nature and scope of the rate case addressed by  
the evidence pursuant to subsection (b)(5) of this section, or

6. Whether the utility or municipality failed to comply with the requirements for  
providing sufficient information pursuant to subsection (b) of this section.

**Q. IN LIGHT OF THE FIRST CRITERION SET OUT IN YOUR PREVIOUS  
ANSWER, IS YOUR BILLING RATE AND THE TIME SPENT ON THE  
TASKS IN THIS CASE REASONABLE?**

A. Yes. My billing rate is reasonable. This is my normal billing rate for services provided  
to similar clients. This rate is in the range of billing rates charged by other consultants  
with similar experience and is reasonable for a consultant providing these types of  
services before utility regulatory agencies in Texas. My hourly rate is especially  
reasonable given that I have more than 30 years of utility rate regulatory experience.  
Ms. Cromleigh's rate is also reasonable. She has over 15 years of auditing and utility  
regulatory experience, and her billing rate is reasonable given her experience with  
regulatory agencies in Texas.

**Q. IN LIGHT OF THE SECOND CRITERION, DO REC'S EXPENSES INCLUDE  
ANY TYPE OF IDENTIFIED CHARGES OR CHARGES THE COMMISSION  
HAS EXCLUDED IN THE PAST?**

A. No. REC's charges are entirely for professional fees. There are no other expenses  
included on our invoices.

**Q. IN LIGHT OF THE THIRD CRITERION, WAS THERE ANY DUPLICATION  
OF SERVICES OR TESTIMONY?**

1 A. No other city group is participating in this proceeding, so there has been no duplication  
2 of services and no duplication of testimony among CEP's consultants.

3 **Q. IN LIGHT OF THE FOURTH CRITERION, DID THE ISSUES YOU RAISED**  
4 **HAVE A REASONABLE BASIS IN LAW, POLICY, OR FACT?**

5 A. Yes. The issues raised in testimony focus directly on whether the rate increase  
6 requested by EPE is reasonable, and my proposed adjustment is consistent with the  
7 requirements of Commission rules and past precedent.

8 **Q. IN LIGHT OF THE FIFTH CRITERION, WHAT IS YOUR CONCLUSION**  
9 **REGARDING REC'S ACTUAL CHARGES?**

10 A. In my opinion, REC's actual fees of \$8,982.00 incurred through September 30, 2021  
11 are reasonable and necessary and are not disproportionate, excessive, or unwarranted  
12 in relation to the nature and scope of the rate filing. Furthermore, to the best of my  
13 knowledge, I have fully complied with the information requirements set out in the sixth  
14 criterion.

15 Q. Does this complete your direct testimony?

16 A. Yes, at this time.

ATTACHMENT A  
STATEMENT OF QUALIFICATIONS

## **KARL J. NALEPA**

Mr. Nalepa is an energy economist with more than 35 years of private and public sector experience in the electric and natural gas industries. He has extensive experience analyzing utility rate filings and resource plans with particular focus on fuel and power supply requirements, quality of fuel supply management, and reasonableness of energy costs. Mr. Nalepa developed peak demand and energy forecasts for public utilities and has forecast the price of natural gas in ratemaking and resource plan evaluations. He led a management and performance review of the Texas Public Utility Commission, and has conducted performance reviews and valuation studies of municipal utility systems. Mr. Nalepa previously directed the Railroad Commission of Texas' Regulatory Analysis & Policy Section, with responsibility for preparing timely natural gas industry analysis, managing ratemaking proceedings, mediating informal complaints, and overseeing consumer complaint resolution. He has prepared and defended expert testimony in both administrative and civil proceedings, and has served as a technical examiner in natural gas rate proceedings.

### **EDUCATION**

- 1998            Certificate of Mediation  
                 Dispute Resolution Center, Austin
- 1989            NARUC Regulatory Studies Program  
                 Michigan State University
- 1988            M.S. - Petroleum Engineering  
                 University of Houston
- 1980            B.S. - Mineral Economics  
                 Pennsylvania State University

### **PROFESSIONAL HISTORY**

- 2011 -           ReSolved Energy Consulting  
                 Partner
- 2003 - 2011    RJ Covington Consulting  
                 Managing Director
- 1997 – 2003    Railroad Commission of Texas  
                 Asst. Director, Regulatory Analysis & Policy
- 1995 – 1997    Karl J. Nalepa Consulting  
                 Principal
- 1992 – 1995    Resource Management International, Inc.  
                 Supervising Consultant
- 1988 – 1992    Public Utility Commission of Texas  
                 Fuels Analyst
- 1980 – 1988    Transco Exploration Company  
                 Reservoir and Evaluation Engineer

## **AREAS OF EXPERTISE**

### **Regulatory Analysis**

*Electric Power:* Analyzed electric utility rate, certification, and resource forecast filings. Assessed the quality of fuel supply management, and reasonableness of fuel costs recovered from ratepayers. Projected the cost of fuel and purchased power. Estimated the impact of environmental costs on utility resource selection. Participated in regulatory rulemaking activities. Provided expert staff testimony in a number of proceedings before the Texas Public Utility Commission.

As consultant, represent interests of municipal clients intervening in large utility rate proceedings through analysis of filings and presentation of testimony before the Public Utility Commission. Also assist municipal utilities in preparing and defending requests to change rates and other regulatory matters before the Public Utility Commission.

*Natural Gas:* Directed the economic regulation of gas utilities in Texas for the Railroad Commission of Texas. Responsible for monitoring, analyzing and reporting on conditions and events in the natural gas industry. Managed Commission staff representing the public interest in contested rate proceedings before the Railroad Commission, and acted as technical examiner on behalf of the Commission. Mediated informal disputes between industry participants and directed handling of customer billing and service complaints. Oversaw utility compliance filings and staff rulemaking initiatives. Served as a policy advisor to the Commissioners.

As consultant, represent interests of municipal clients intervening in large utility rate proceedings through analysis of filings and presentation of testimony before the cities and Railroad Commission. Also assist small utilities in preparing and defending requests to change rates and other regulatory matters before the Railroad Commission.

### **Litigation Support**

Retained to support litigation in natural gas contract disputes. Analyzed the results of contract negotiations and competitiveness of gas supply proposals considering gas market conditions contemporaneous with the period reviewed. Supported litigation related to alleged price discrimination related to natural gas sales for regulated customers. Provided analysis of regulatory and accounting issues related to ownership of certain natural gas distribution assets in support of litigation against a natural gas utility. Supported independent power supplier in binding arbitration regarding proper interpretation of a natural gas transportation contract. Provided expert witness testimony in administrative and civil court proceedings.



## **Utility System Assessment**

Led a management and performance review of the Public Utility Commission. Conducted performance reviews and valuation studies of municipal utility systems. Assessed ability to compete in the marketplace, and recommended specific actions to improve the competitive position of the utilities. Provided comprehensive support in the potential sale of a municipal gas system, including preparation of a valuation study and all activities leading to negotiation of contract for sale and franchise agreements.

## **Energy Supply Analysis**

Reviewed system requirements and prepared requests for proposals (RFPs) to obtain natural gas and power supplies for both utility and non-utility clients. Evaluated submittals under alternative demand and market conditions, and recommended cost-effective supply proposals. Assessed supply strategies to determine optimum mix of available resources.

## **Econometric Forecasting**

Prepared econometric forecasts of peak demand and energy for municipal and electric cooperative utilities in support of system planning activities. Developed forecasts at the rate class and substation levels. Projected price of natural gas by individual supplier for Texas electric and natural gas utilities to support review of utility resource plans.

## **Reservoir Engineering**

Managed certain reserves for a petroleum exploration and production company in Texas. Responsible for field surveillance of producing oil and natural gas properties, including reserve estimation, production forecasting, regulatory reporting, and performance optimization. Performed evaluations of oil and natural gas exploration prospects in Texas and Louisiana.

## **PROFESSIONAL MEMBERSHIPS**

Society of Petroleum Engineers  
International Association for Energy Economics  
United States Association for Energy Economics

## SELECT PUBLICATIONS, PRESENTATIONS, AND TESTIMONY

- “Summary of the USAEE Central Texas Chapter’s Workshop entitled ‘EPA’s Proposed Clean Power Plan Rules: Economic Modeling and Effects on the Electric Reliability of Texas Region,’” with Dr. Jay Zarnikau and Mr. Neil McAndrews, USAEE Dialogue, May 2015
- “Public Utility Ratemaking,” EBF 401: Strategic Corporate Finance, The Pennsylvania State University, September 2013
- “What You Should Know About Public Utilities,” EBF 401: Strategic Corporate Finance, The Pennsylvania State University, October 2011
- “Natural Gas Markets and the Impact on Electricity Prices in ERCOT,” Texas Coalition of Cities for Fair Utility Issues, Dallas, October 2008
- “Natural Gas Regulatory Policy in Texas,” Hungarian Oil and Gas Policy Business Colloquium, U.S. Trade and Development Agency, Houston, May 2003
- “Railroad Commission Update,” Texas Society of Certified Public Accountants, Austin, April 2003
- “Gas Utility Update,” Railroad Commission Regulatory Expo and Open House, October 2002
- “Deregulation: A Work in Progress,” Interview by Karen Stidger, *Gas Utility Manager*, October 2002
- “Regulatory Overview: An Industry Perspective,” Southern Gas Association’s Ratemaking Process Seminar, Houston, February 2001
- “Natural Gas Prices Could Get Squeezed,” with Commissioner Charles R. Matthews, *Natural Gas*, December 2000
- “Railroad Commission Update,” Texas Society of Certified Public Accountants, Austin, April 2000
- “A New Approach to Electronic Tariff Access,” Association of Texas Intrastate Natural Gas Pipeline Annual Meeting, Houston, January 1999
- “A Texas Natural Gas Model,” United States Association for Energy Economics North American Conference, Albuquerque, 1998
- “Texas Railroad Commission Aiding Gas Industry by Updated Systems, Regulations,” *Natural Gas*, July 1998
- “Current Trends in Texas Natural Gas Regulation,” Natural Gas Producers Association, Midland, 1998
- “An Overview of the American Petroleum Industry,” Institute of International Education Training Program, Austin, 1993
- Direct testimony in PUC Docket No. 10400 summarized in *Environmental Externality*, Energy Research Group for the Edison Electric Institute, 1992
- “God’s Fuel - Natural Gas Exploration, Production, Transportation and Regulation,” with Danny Bivens, Public Utility Commission of Texas Staff Seminar, 1992
- “A Summary of Utilities’ Positions Regarding the Clean Air Act Amendments of 1990,” Industrial Energy Technology Conference, Houston, 1992
- “The Clean Air Act Amendments of 1990,” Public Utility Commission of Texas Staff Seminar, 1992

**ATTACHMENT B**

**SUMMARY OF PREVIOUSLY FILED TESTIMONY**

**KARL J. NALEPA  
TESTIMONY FILED**

<b>DKT NO.</b>	<b>DATE</b>	<b>REPRESENTING</b>	<b>UTILITY</b>	<b>PHASE</b>	<b>ISSUES</b>
<u>Before the Public Utility Commission of Texas</u>					
52194	July 21	Cities	CenterPoint Energy Houston	EECRF	EECRF Methodology
52178	July 21	Cities	Oncor Electric Delivery	EECRF	EECRF Methodology
52081	July 21	City of El Paso	El Paso Electric	EECRF	EECRF Methodology
52067	July 21	Cities	Entergy Texas Inc.	EECRF	EECRF Methodology
51997	Aug 21	Office of Public Counsel	Entergy Texas, Inc.	System Restoration Costs	Cost Review
51802	Aug 21	Xcel Municipalities	Southwestern Public Service	Cost of Service	Cost Allocation
51415	Mar 21	CARD	SWEPCO	Cost of Service	Cost Allocation
51381	Dec 20	Entergy Cities	Entergy Texas Inc.	GCRR	GCRR Methodology
51345	Oct 20	Denton Municipal Electric	Denton Municipal Electric	Interim TCOS	Wholesale Transmission Rate
51215	Mar 21	Office of Public Counsel	Entergy Texas Inc.	CCN	Public Interest Review
51100	Nov 20	Office of Public Counsel	Lubbock Power & Light	TCOS	Wholesale Transmission Rate
50997	Jan 21	CARD	SWEPCO	Fuel Reconciliation	Fuel Cost Recovery
50790	Jul 20	Office of Public Counsel	Entergy Texas, Inc.	Sale, Transfer, Merger	Public Interest Review
50714	May 20	Cities	Entergy Texas Inc.	DCRF	DCRF Methodology
50110	Dec 19	Denton Municipal Electric	Denton Municipal Electric	Interim TCOS	Wholesale Transmission Rate
49831	Feb 20	Xcel Municipalities	Southwestern Public Service	Cost of Service	Cost Allocation
49737	Jan 20	Office of Public Counsel	SWEPCO	CCN	Public Interest Review
49594	Jul 19	Oncor Cities	Oncor Electric Delivery	EECRF	EECRF Methodology

<b>DKT NO.</b>	<b>DATE</b>	<b>REPRESENTING</b>	<b>UTILITY</b>	<b>PHASE</b>	<b>ISSUES</b>
49592	Jul 19	AEP Cities	AEP Texas Inc.	EECRF	EECRF Methodology
49586	Jul 19	TNMP Cities	Texas-New Mexico Power	EECRF	EECRF Methodology
49583	Aug 19	Gulf Coast Coalition	CenterPoint Energy Houston	EECRF	EECRF Methodology
49496	Jun 19	City of El Paso	El Paso Electric	EECRF	EECRF Methodology
49494	Jul 19	AEP Cities	AEP Texas Inc.	Cost of Service	Plant Additions
49421	Jun 19	Office of Public Counsel	CenterPoint Energy Houston	Cost of Service	Cost of Service
49395	May 19	City of El Paso	El Paso Electric	DCRF	DCRF Methodology
49148	Apr 19	City of El Paso	El Paso Electric	TCRF	TCRF Methodology
49042	Mar 19	SWEPCO Cities	SWEPCO	TCRF	TCRF Methodology
49041	Feb 19	SWEPCO Cities	SWEPCO	DCRF	DCRF Methodology
48973	May 19	Xcel Municipalities	Southwestern Public Service	Fuel Reconciliation	Fuel / Purch Power Costs
48963	Dec 18	Denton Municipal Electric	Denton Municipal Electric	Interim TCOS	Wholesale Transmission Rate
48420	Aug 18	Gulf Coast Coalition	CenterPoint Energy Houston	EECRF	EECRF Methodology
48404	Jul 18	Cities	Texas-New Mexico Power	EECRF	EECRF Methodology
48371	Aug 18	Cities	Entergy Texas Inc.	Cost of Service	Cost of Service
48231	May 18	Cities	Oncor Electric Delivery	DCRF	DCRF Methodology
48226	May 18	Gulf Coast Coalition	CenterPoint Energy Houston	DCRF	DCRF Methodology
48222	Apr 18	Cities	AEP Texas Inc.	DCRF	DCRF Methodology
47900	Dec 17	Denton Municipal Electric	Denton Municipal Electric	Interim TCOS	Wholesale Transmission Rate
47527	Apr 18	Xcel Municipalities	Southwestern Public Service	Cost of Service	Cost of Service
47461	Dec 17	Office of Public Counsel	SWEPCO	CCN	Public Interest Review

<b>DKT NO.</b>	<b>DATE</b>	<b>REPRESENTING</b>	<b>UTILITY</b>	<b>PHASE</b>	<b>ISSUES</b>
47236	Jul 17	Cities	AEP Texas	EECRF	EECRF Methodology
47235	Jul 17	Cities	Oncor Electric Delivery	EECRF	EECRF Methodology
47217	Jul 17	Cities	Texas-New Mexico Power	EECRF	EECRF Methodology
47032	May 17	Gulf Coast Coalition	CenterPoint Energy Houston	DCRF	DCRF Methodology
46936	Oct 17	Xcel Municipalities	Southwestern Public Service	CCN	Public Interest Review
46449	Apr 17	Cities	SWEPCO	Cost of Service	Cost of Service
46348	Sep 16	Denton Municipal Electric	Denton Municipal Electric	Interim TCOS	Wholesale Transmission Rate
46238	Jan 17	Office of Public Counsel	Oncor Electric Delivery	STM	Public Interest Review
46076	Dec 16	Cities	Entergy Texas Inc.	Fuel Reconciliation	Fuel Cost
46050	Aug 16	Cities	AEP Texas	STM	Public Interest Review
46014	Jul 16	Gulf Coast Coalition	CenterPoint Energy Houston	EECRF	EECRF Methodology
45788	May 16	Cities	AEP-TNC	DCRF	DCRF Methodology
45787	May 16	Cities	AEP-TCC	DCRF	DCRF Methodology
45747	May 16	Gulf Coast Coalition	CenterPoint Energy Houston	DCRF	DCRF Methodology
45712	Apr 16	Cities	SWEPCO	DCRF	DCRF Methodology
45691	Jun 16	Cities	SWEPCO	TCRF	TCRF Methodology
45414	Feb 17	Office of Public Counsel	Sharyland	Cost of Service	Cost of Service
45248	May 16	City of Fritch	City of Fritch	Cost of Service (water)	Cost of Service
45084	Nov 15	Cities	Entergy Texas Inc.	TCRF	TCRF Methodology
45083	Oct 15	Cities	Entergy Texas Inc.	DCRF	DCRF Methodology
45071	Aug 15	Denton Municipal Electric	Denton Municipal Electric	Interim TCOS	Wholesale Transmission Rate

<b>DKT NO.</b>	<b>DATE</b>	<b>REPRESENTING</b>	<b>UTILITY</b>	<b>PHASE</b>	<b>ISSUES</b>
44941	Dec 15	City of El Paso	El Paso Electric	Cost of Service	CEP Adjustments
44677	Jul 15	City of El Paso	El Paso Electric	EECRF	EECRF Methodology
44572	May 15	Gulf Coast Coalition	CenterPoint Energy Houston	DCRF	DCRF Methodology
44060	May 15	City of Frisco	Brazos Electric Coop	CCN	Transmission Cost Recovery
43695	May 15	Pioneer Natural Resources	Southwestern Public Service	Cost of Service	Cost Allocation
43111	Oct 14	Cities	Entergy Texas Inc.	DCRF	DCRF Methodology
42770	Aug 14	Denton Municipal Electric	Denton Municipal Electric	Interim TCOS	Wholesale Transmission Rate
42485	Jul 14	Cities	Entergy Texas Inc.	EECRF	EECRF Methodology
42449	Jul 14	City of El Paso	El Paso Electric	EECRF	EECRF Methodology
42448	Jul 14	Cities	SWEPCO	TCRF	Transmission Cost Recovery Factor
42370	Dec 14	Cities	SWEPCO	Rate Case Expenses	Rate Case Expenses
41791	Jan 14	Cities	Entergy Texas Inc.	Cost of Service	Cost of Service/Fuel
41539	Jul 13	Cities	AEP Texas North	EECRF	EECRF Methodology
41538	Jul 13	Cities	AEP Texas Central	EECRF	EECRF Methodology
41444	Jul 13	Cities	Entergy Texas Inc.	EECRF	EECRF Methodology
41223	Apr 13	Cities	Entergy Texas Inc.	ITC Transfer	Public Interest Review
40627	Nov 12	Austin Energy	Austin Energy	Cost of Service	General Fund Transfers
40443	Dec 12	Office of Public Counsel	SWEPCO	Cost of Service	Cost of Service/Fuel
40346	Jul 12	Cities	Entergy Texas Inc.	Join MISO	Public Interest Review
39896	Mar 12	Cities	Entergy Texas Inc.	Cost of Service/ Fuel Reconciliation	Cost of Service/ Nat Gas/ Purch Power

<b>DKT NO.</b>	<b>DATE</b>	<b>REPRESENTING</b>	<b>UTILITY</b>	<b>PHASE</b>	<b>ISSUES</b>
39366	Jul 11	Cities	Entergy Texas Inc.	EECRF	EECRF Methodology
38951	Feb 12	Cities	Entergy Texas Inc.	CGS Tariff	CGS Costs
38815	Sep 10	Denton Municipal Electric	Denton Municipal Electric	Interim TCOS	Wholesale Transmission Rate
38480	Nov 10	Cities	Texas-New Mexico Power	Cost of Service	Cost of Service/Rate Design
37744	Jun 10	Cities	Entergy Texas Inc.	Cost of Service/ Fuel Reconciliation	Cost of Service/ Nat Gas/ Purch Power/ Gen
37580	Dec 09	Cities	Entergy Texas Inc.	Fuel Refund	Fuel Refund Methodology
36956	Jul 09	Cities	Entergy Texas Inc.	EECRF	EECRF Methodology
36392	Nov 08	Texas Municipal Power	Texas Municipal Power	Interim TCOS	Wholesale Transmission Rate
35717	Nov 08	Cities Steering Committee	Oncor Electric Delivery	Cost of Service	Cost of Service/Rate Design
34800	Apr 08	Cities	Entergy Gulf States	Fuel Reconciliation	Natural Gas/Coal/Nuclear
16705	May 97	North Star Steel	Entergy Gulf States	Fuel Reconciliation	Natural Gas/Fuel Oil
10694	Jan 92	PUC Staff	Midwest Electric Coop	Revenue Requirements	Depreciation/ Quality of Service
10473	Sep 91	PUC Staff	HL&P	Notice of Intent	Environmental Costs
10400	Aug 91	PUC Staff	TU Electric	Notice of Intent	Environmental Costs
10092	Mar 91	PUC Staff	HL&P	Fuel Reconciliation	Natural Gas/Fuel Oil
10035	Jun 91	PUC Staff	West Texas Utilities	Fuel Reconciliation Fuel Factor	Natural Gas Natural Gas/Fuel Oil/Coal
9850	Feb 91	PUC Staff	HL&P	Revenue Req. Fuel Factor	Natural Gas/Fuel Oil/ETSI Natural Gas/Coal/Lignite
9561	Aug 90	PUC Staff	Central Power & Light	Fuel Reconciliation Revenue Requirements Fuel Factor	Natural Gas Natural Gas/Fuel Oil Natural Gas



<b>DKT NO.</b>	<b>DATE</b>	<b>REPRESENTING</b>	<b>UTILITY</b>	<b>PHASE</b>	<b>ISSUES</b>
9427	Jul 90	PUC Staff	LCRA	Fuel Factor	Natural Gas
9165	Feb 90	PUC Staff	El Paso Electric	Revenue Requirements Fuel Factor	Natural Gas/Fuel Oil Natural Gas
8900	Jan 90	PUC Staff	SWEPCO	Fuel Reconciliation Fuel Factor	Natural Gas Natural Gas
8702	Sep 89 Jul 89	PUC Staff	Gulf States Utilities	Fuel Reconciliation Revenue Requirements Fuel Factor	Natural Gas/Fuel Oil Natural Gas/Fuel Oil Natural Gas/Fuel Oil
8646	May 89 Jun 89	PUC Staff	Central Power & Light	Fuel Reconciliation Revenue Requirements Fuel Factor	Natural Gas Natural Gas/Fuel Oil Natural Gas
8588	Aug 89	PUC Staff	El Paso Electric	Fuel Reconciliation	Natural Gas

<b>DKT NO.</b>	<b>DATE</b>	<b>REPRESENTING</b>	<b>UTILITY</b>	<b>PHASE</b>	<b>ISSUES</b>
<u>Before the Railroad Commission of Texas</u>					
07061	Sep 21	Texas Cities Alliance	Multiple	Gas Cost Securitization	Prudence Determination
05509	Dec 20	LDC, LLC	LDC, LLC	Cost of Service	Cost of Service/Rate Design
10928	Mar 20	TGS Cities	Texas Gas Service	Cost of Service	Cost of Service/Rate Design
10920	Feb 20	East Texas Cities Coalition	CenterPoint Energy Entex	Cost of Service	Cost of Service/Rate Design
10900	Nov 19	Cities Steering Committee	Atmos Energy Triangle	Cost of Service	Cost of Service
10899	Sep 19	NatGas, Inc.	NatGas, Inc.	Cost of Service	Cost of Service/Rate Design
10737	Jun 18	T&L Gas Co.	T&L Gas Co.	Cost of Service	Cost of Service/Rate Design
10622	Apr 17	LDC, LLC	LDC, LLC	Cost of Service	Cost of Service/Rate Design
10617	Mar 17	Onalaska Water & Gas	Onalaska Water & Gas	Cost of Service	Cost of Service/Rate Design
10580	Mar 17	Cities Steering Committee	Atmos Pipeline Texas	Cost of Service	Cost of Service/Rate Design
10567	Feb 17	Gulf Coast Coalition	CenterPoint Energy Entex	Cost of Service	Cost of Service/Rate Design
10506	Jun 16	City of El Paso	Texas Gas Service	Cost of Service	Cost of Service/Energy Efficiency
10498	Feb 16	NatGas, Inc.	NatGas, Inc.	Cost of Service	Cost of Service/Rate Design
10359	Jul 14	Cities Steering Committee	Atmos Energy Mid Tex	Cost of Service	Cost of Service/Rate Design
10295	Oct 13	Cities Steering Committee	Atmos Pipeline Texas	Revenue Rider	Rider Renewal
10242	Jan 13	Onalaska Water & Gas	Onalaska Water & Gas	Cost of Service	Cost of Service/Rate Design
10196	Jul 12	Bluebonnet Natural Gas	Bluebonnet Natural Gas	Cost of Service	Cost of Service/Rate Design
10190	Jan 13	City of Magnolia, Texas	Hughes Natural Gas	Cost of Service	Cost of Service/Rate Design
10174	Aug 12	Cities Steering Committee	Atmos Energy West Texas	Cost of Service	Cost of Service/Rate Design
10170	Aug 12	Cities Steering Committee	Atmos Energy Mid Tex	Cost of Service	Cost of Service/Rate Design

<b>DKT NO.</b>	<b>DATE</b>	<b>REPRESENTING</b>	<b>UTILITY</b>	<b>PHASE</b>	<b>ISSUES</b>
10106	Oct 11	Gulf Coast Coalition	CenterPoint Energy Entex	Cost of Service	Cost of Service/Rate Design
10083	Aug 11	City of Magnolia, Texas	Hughes Natural Gas	Cost of Service	Cost of Service/Rate Design
10038	Feb 11	Gulf Coast Coalition	CenterPoint Energy Entex	Cost of Service	Cost of Service/Rate Design
10021	Oct 10	AgriTex Gas, Inc.	AgriTex Gas, Inc.	Cost of Service	Cost of Service/Rate Design
10000	Dec 10	Cities Steering Committee	Atmos Pipeline Texas	Cost of Service	Cost of Service/Rate Design
9902	Oct 09	Gulf Coast Coalition	CenterPoint Energy Entex	Cost of Service	Cost of Service/Rate Design
9810	Jul 08	Bluebonnet Natural Gas	Bluebonnet Natural Gas	Cost of Service	Cost of Service/Rate Design
9797	Apr 08	Universal Natural Gas	Universal Natural Gas	Cost of Service	Cost of Service/Rate Design
9732	Jul 08	Cities Steering Committee	Atmos Energy Corp.	Gas Cost Review	Natural Gas Costs
9670	Oct 06	Cities Steering Committee	Atmos Energy Corp.	Cost of Service	Affiliate Transactions/ O&M Expenses/GRIP
9667	Nov 06	Oneok Westex Transmission	Oneok Westex Transmission	Abandonment	Abandonment
9598	Sep 05	Cities Steering Committee	Atmos Energy Corp.	GRIP Appeal	GRIP Calculation
9530	Apr 05	Cities Steering Committee	Atmos Energy Corp.	Gas Cost Review	Natural Gas Costs
9400	Dec 03	Cities Steering Committee	TXU Gas Company	Cost of Service O&M Expenses/Capital Costs	Affiliate Transactions/

<b>DKT NO.</b>	<b>DATE</b>	<b>REPRESENTING</b>	<b>UTILITY</b>	<b>PHASE</b>	<b>ISSUES</b>
<u>Before the Louisiana Public Service Commission</u>					
U-35359	Feb 20 Nov 20	PSC Staff	Dixie Electric Membership Corporation	Cost of Service	Cost of Service / FRP Renewal / AMS Certification Stipulation
U-34344/ U-34717	Apr 18	PSC Staff	Dixie Electric Member Corporation	Formula Rate Plan	Stipulation
U-34344	Jan 18	PSC Staff	Dixie Electric Member Corporation	Formula Rate Plan	Adjusted Revenues
U-33633	Nov 15	PSC Staff Entergy Gulf States Louisiana	Entergy Louisiana, LLC/	Resource Certification	Prudence
U-33033	Jul 14	PSC Staff Entergy Gulf States Louisiana	Entergy Louisiana, LLC/	Resource Certification	Revenue Requirement
U-31971	Nov 11	PSC Staff Entergy Gulf States Louisiana	Entergy Louisiana, LLC/	Resource Certification	Certification/Cost Recovery
<u>Before the Arkansas Public Service Commission</u>					
O7-105-U	Mar 08	Arkansas Customers & pipelines serving CenterPoint	CenterPoint Energy, Inc.	Gas Cost Complaint	Prudence / Cost Recovery
<u>Before the Colorado Public Utilities Commission</u>					
18A-0791E	Mar 19	Pueblo County	Black Hills Colorado Electric	Economic Development Rate	Tariff Issues

ATTACHMENT C

CITY OF EL PASO  
COST OF SERVICE MODEL  
(Confidential, Voluminous, Electronic)

ATTACHMENT D

SUMMARY OF WITNESS ADJUSTMENTS

Consultant	Switch	Description	Adjustment Amount	Linked Location	Company Impact	Texas Impact
Lawton	1	Return on Equity	9.00%	<a href="#">Cost of Capital C13</a>	(\$22,286,265)	(\$17,445,616)
Lawton	1	Jurisdictional Allocation Factor Adjustments			\$0	(\$4,343,933)
		D1PROD	0.796346	<a href="#">Allocation Factor'!G10</a>		
		DPROD12	0.803176	<a href="#">Allocation Factor'!G15</a>		
		E1ENERGY	77.4153%	<a href="#">Allocation Factor'!E17</a>		
D. Garrett	1	Depreciation Adjustments		<a href="#">Adj-Adj 14 Depreciation Expense</a>	(\$9,883,147)	(\$7,571,787)
Norwood	1	Production O&M Expense Adjustments		<a href="#">CEP Adj'!Column AD</a>	(\$6,039,274)	(\$4,827,106)
Norwood	1	Transmission O&M Expense Adjustment (566.00 Misc Transmission Exp)	(\$2,389,050)	<a href="#">Adjustment Ledger'!X1014</a>	(\$2,389,050)	(\$1,901,446)
Norwood	1	Gas Turbine Spares Adjustment		<a href="#">Adj-RBA 01 PIS'!E11</a>	(\$724,637.00)	(\$587,560)
Norwood	1	Distribution Reliability Projects (TX Retail - FERC 362.00)	(\$19,849,603)	<a href="#">Jurisdiction Allocation'!J2471</a>	\$0.00	(\$1,884,708)
Nalepa		Isleta ROW Adjustments				
	1	350.00 Trans_Land & Land Rights (Plant)	(\$16,824,750)	<a href="#">Adj-RBA 01 PIS'!E12</a>	(\$1,597,500)	(\$1,271,451)
	1	350.00 Trans_Land & Land Rights (Accum Depr)	\$2,384,044	<a href="#">Adj-RBA 02 Accumulated Deprec'!E16</a>	\$226,364	\$180,163
	1	350.00 Trans_Land & Land Rights (Depr Exp)	(\$672,990)	<a href="#">Adj-Adj 14 Depreciation Expense'!E221</a>	(\$672,990)	(\$535,633)
	1	566.00 Trans_Misc Trns Exp (O&M Exp)	\$199,368	<a href="#">Adjustment Ledger'!X1014</a>	\$199,368	\$158,677
M. Garrett		Short Term Incentive Compensation Adjustment				
	1	Short Term Expense	(\$2,013,205)	<a href="#">Adj-Adj 04 Pension and Benefits'!E3</a>	(\$2,013,205)	(\$1,589,316)
	1	Capitalized STI	(\$2,018,577)	<a href="#">Adj-RBA 01 PIS'!E16</a>	(\$191,663)	(\$151,307)
M. Garrett	1	SERP Adjustment	(\$1,970,713)	<a href="#">Adj-Adj 04 Pension and Benefits'!E3</a>	(\$1,970,713)	(\$1,555,771)
M. Garrett	1	Palo Verde Incentive Adjustment	(\$2,636,894)	<a href="#">Adjustment Ledger'!P1138</a>	(\$2,636,894)	(\$2,081,685)
M. Garrett	1	Payroll Annualization Adjustment	(\$2,285,272)	<a href="#">Adj-Adj 03 Salaries and Wages'!E252</a>	(\$2,285,272)	(\$1,804,098)
M. Garrett	1	Payroll Tax Adjustment	(\$328,833)	<a href="#">Adj-Adj 16 Payroll'!E3</a>	(\$328,833)	(\$259,596)
M. Garrett	1	Charitable Contributions Adjustment	(\$1,260,720)	<a href="#">Adjustment Ledger'!X1142</a>	(\$1,260,720)	(\$995,270)
M. Garrett	1	Embedded Protected EDIT Amorization Adjustment	(\$1,245)	<a href="#">Adj-Adj 20 Federal Income Taxes'!E3</a>	(\$1,582)	(\$1,240)
Johnson	1	Interruptible Revenue Adjustment (TX)	(\$1,388,000)	<a href="#">Adj-Adj 01 Revenues'!E108</a>	(\$1,388,000)	(\$1,388,000)
Johnson	1	Existing Revenue Adjustment (TX)	(\$1,210,000)	<a href="#">Case Ledger'!K1544</a>	(\$1,210,000)	(\$1,210,000)
Johnson	1	Reverse Energy Efficiency Revenue Adjustment (TX)		<a href="#">Jurisdiction Allocation'!Column J</a>	\$0	(\$1,385,120)
Johnson	1	Transfer Existing Revenue Adjustment		<a href="#">Rate Class Allocation'!Column J</a>	-	-
Johnson	1	Rate Class Allocation Adjustments		<a href="#">Rate Class Allocation'!Column K</a>	-	-
Johnson	N/A	Allocation Factor Adjustments			-	-

ATTACHMENT E

RELIED UPONS  
( Public Redacted )

PUC Docket 49148 Final Order  
EPE Response to CEP RFI 5-4  
EPE Response to CEP RFI 5-5  
EPE Response to CEP RFI 5-9  
EPE Response to CEP RFI 5-12  
EPE Response to CEP RFI 13-1  
EPE Response to CEP RFI 13-2  
EPE Response to CEP RFI 13-3  
EPE Response to CEP RFI 13-4  
EPE Response to CEP RFI 13-6

*Public Util. Comm. v. TIEC*, 620 S.W. 3d 418(Tex., March 26, 2021)

Confidential Filed Separately

EPE Response to CEP RFI 5-5 Attachment 1  
EPE Response to CEP RFI 5-5 Attachment 2  
EPE Response to CEP RFI 5-5 Attachment 4  
EPE Response to CEP RFI 5-5 Attachment 5  
EPE Response to CEP RFI 5-12 Attachment 4 Page 651, Pages 837-838  
EPE Response to CEP RFI 13-1 Attachment 1  
EPE Response to CEP RFI 13-2 Attachment 1  
EPE Response to CEP RFI 13-2 Attachment 2





Control Number: 49148



Item Number: 89

Addendum StartPage: 0

**PUC DOCKET NO. 49148  
SOAH DOCKET NO. 473-19-2303**

RECEIVED

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**APPLICATION OF EL PASO  
ELECTRIC COMPANY FOR A  
TRANSMISSION COST RECOVERY  
FACTOR**

§  
§  
§  
§

**PUBLIC UTILITY COMMISSION  
OF TEXAS**

FILING CLERK

**ORDER**

This Order addresses the application of El Paso Electric Company (EPE) for a transmission cost recovery factor (TCRF). EPE filed an unopposed agreement between the parties. The Commission approves EPE's TCRF, as modified by the agreement, to the extent provided in this Order.

**I. Discussion**

As the Commission previously stated in Docket No. 49507, the Commission may only allow a TCRF to recover on an annual basis the costs for new transmission infrastructure improvements if it finds that the costs are reasonable and necessary.<sup>1</sup> This finding does not address, however, the prudence of these costs or whether they should be included in base rates prospectively. Consistent with its practice, the Commission will address the prudence of the investments included in the TCRF approved by this order in EPE's next base-rate proceeding.

**II. Findings of Fact**

The Commission makes the following findings of fact.

**Applicant**

1. EPE is a domestic for-profit corporation registered with the Texas secretary of state under file number 1073400.
2. EPE provides electric generation, transmission, and distribution services in Texas under certificate of convenience and necessity number 30050. EPE's service area is outside of the Electric Reliability Council of Texas region in an area of Texas located in the Western Electricity Coordinating Council.

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<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. § 36.209(b) (West 2019) (PURA).



3. The Federal Energy Regulatory Commission regulates EPE's wholesale electric operations.

**Application**

4. On January 25, 2019, EPE filed an application for its first TCRF.
5. In the original application, EPE sought a TCRF revenue requirement of \$8,156,570 for transmission costs not currently being recovered through base rates.
6. The application affects all of EPE's retail customers in its Texas service area.
7. The Commission established EPE's TCRF baseline values in EPE's last comprehensive base-rate proceeding, Docket No. 46831.<sup>2</sup>
8. After the final order in Docket No. 46831, the Tax Cuts and Jobs Act of 2017 was passed, effective January 1, 2018. That act reduced the corporate federal income tax rate from 35% to 21%.
9. The rates set in Docket No. 46831 used the then-current 35% federal income tax rate.
10. To develop its proposed TCRF rates in this docket, EPE calculated the additional revenues requested using the new 21% federal income tax rate, in accordance with the Commission's directive in the final order in Docket No. 46831 and with the federal income tax refund tariff approved in Docket No. 48124.<sup>3</sup>
11. EPE proposed in this docket to adjust the TCRF baseline values from Docket No. 46831 to reflect the 21% federal income tax rate.
12. EPE also proposed in this docket to adjust the TCRF baseline values to correct an error in the transmission service revenues reflected in the TCRF baseline values established in Docket No. 46831. The error involved applying the 80% Texas jurisdictional allocation factor twice, which resulted in an effective Texas jurisdictional allocation factor of 64%. Thus, the incorrect amount of transmission service revenues was included in the TCRF baseline values established in Docket No. 46831. However, the rates approved in Docket

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

<sup>3</sup> *Application of El Paso Electric Company to Implement a Refund Tariff for Federal Income Tax Rate Decrease in Compliance with Docket No. 46831*, Docket No. 48124, Order (Dec. 10, 2018).

No. 46831 were correctly calculated and did not result in an over-recovery of EPE's transmission expense.

13. In the application, EPE used the weighted average cost of capital of 7.725% that was established in Docket No. 46831.
14. EPE does not have a comprehensive base-rate proceeding pending before the Commission.
15. No party contended that EPE's application was insufficient.
16. On April 9, 2019, EPE filed errata to the application to correct errors made in calculating the amounts of federal income tax and Texas gross receipts tax. In the errata, EPE reduced its requested TCRF revenue requirement to \$8,089,416.
17. On May 13, 2019, EPE filed its second errata to the application to reflect the reclassification of \$936,000 of investment in facilities as distribution-related rather than transmission-related. In the errata, EPE reduced its requested TCRF revenue requirement to \$8,010,407.
18. As updated by the errata, EPE's requested TCRF revenue requirement comprised the following:

Return on transmission invested costs	\$2,529,667
Depreciation expense	\$1,252,223
Income tax expense	\$445,493
Other associated taxes	\$536,447
Revenue credits	\$2,779,059
<b>Transmission revenue requirement</b>	<b>\$7,542,889</b>
Approved transmission charges	\$467,518
<b>TCRF Revenue Requirement</b>	<b>\$8,010,407</b>

19. Based on the errata filed on May 13, 2019, from October 1, 2016 (the day after the end of the test year in Docket No. 46831) through September 30, 2018, EPE invested a net amount of \$52,117,883 in its transmission plant in service in Texas.

**Notice**

20. EPE provided notice of the application by bill insert notices to all affected customers. The direct mailing of the notices was completed on April 10, 2019.
21. On January 25, 2019, EPE hand-delivered a copy of the application to each of the eight municipalities within EPE's Texas service area.
22. On January 25, 2019, EPE mailed individual notice to all parties that had participated in Docket No. 46831.
23. In an affidavit filed by EPE on May 3, 2019, Curtis Hutcheson, the supervisor of regulatory case management for EPE's regulatory affairs department, attested that notice was provided as described in findings of fact 20, 21, and 22.
24. EPE published notice once a week for four consecutive weeks in English and Spanish in the *El Paso Times*, the *Hudspeth County Herald*, and the *Van Horn Advocate*, which are newspapers that have general circulation in El Paso, Hudspeth, and Culberson counties, respectively. In an affidavit filed by EPE on May 3, 2019, Mr. Hutcheson attested that notice was provided as described in this finding of fact. Attached to Mr. Hutcheson's affidavit were also publishers' affidavits from the newspapers.

**Intervenors**

25. In State Office of Administrative Hearings (SOAH) Order No. 5 filed on March 12, 2019, the SOAH administrative law judge (ALJ) granted the motions to intervene filed by Texas Industrial Energy Consumers; the City of El Paso; Vinton Steel, LLC; and Freeport-McMoRan, Inc.
26. In SOAH Order No. 9 filed on September 13, 2019, the SOAH ALJ granted the motion to intervene filed by the City of Socorro.

**Testimony**

27. As part of the application filed on January 25, 2019, EPE included the direct testimonies of James Schichtl, EPE's vice president of regulatory affairs; Jennifer Borden, EPE's manager of regulatory accounting and compliance; and R. (Clay) Doyle, EPE's vice president of transmission and distribution.

28. On April 16, 2019, the City of El Paso filed the direct testimony of Karl Nalepa, the president of ReSolved Energy Consulting, LLC, an independent utility consulting company. Mr. Nalepa testified that EPE had failed to adequately support the \$16.8 million right-of-way renewal agreement with the Isleta tribe that is described in findings of fact 52 through 55. Mr. Nalepa recommended that the Commission find the right-of-way agreement imprudent and as a result that the Commission disallow \$1.2 million of EPE's requested TCRF revenue requirement. In the alternative, Mr. Nalepa recommended disallowing \$780,000 of EPE's requested TCRF revenue requirement to account for the estimated value of the land based on offers for sale in Valencia and Bernalillo counties, New Mexico.
29. On April 23, 2019, Commission Staff filed the direct testimonies of Brian Murphy and Frederick Quijano. Mr. Murphy testified that a load-growth adjustment should be applied to EPE's requested TCRF. Mr. Quijano did not make any adjustments to EPE's requested TCRF.
30. On April 30, 2019, EPE filed the rebuttal testimonies of Mr. Schichtl and Mr. Doyle. Mr. Doyle defended the reasonableness, necessity, and prudence of the \$16.8 million right-of-way renewal agreement with the Isleta tribe, and Mr. Schichtl testified against the application of a load-growth adjustment. Messrs. Schichtl and Doyle also testified that EPE had incorrectly classified \$936,000 of investment in facilities as transmission-related instead of as distribution-related.
31. On May 13, 2019, EPE filed errata to the direct testimonies of Mr. Schichtl and Ms. Borden to reflect the reclassification of \$936,000 of investment in facilities, as described in the rebuttal testimonies of Messrs. Schichtl and Doyle.
32. On September 12, 2019, EPE filed the supplemental direct testimony of Mr. Schichtl in support of the parties' agreement.
33. On September 12, 2019, Commission Staff filed the affidavit of Brian Murphy in support of the parties' agreement.

**Referral to SOAH**

34. On January 28, 2019, the Commission referred this proceeding to SOAH.

35. In SOAH Order No. 4 filed on February 20, 2019, the SOAH ALJ set a hearing on the merits for 10:00 a.m. on May 13, 2019 at SOAH's hearing facility in Austin, Texas.
36. On February 28, 2019, the Commission filed a preliminary order listing the issues to be addressed in this proceeding.
37. In SOAH Order No. 6 filed on May 2, 2019, the SOAH ALJ suspended the procedural schedule for settlement discussions.
38. In SOAH Order No. 7 filed on June 26, 2019, the SOAH ALJ lifted the abatement of the procedural schedule.
39. On September 12, 2019, EPE filed an unopposed agreement on behalf of itself, Commission Staff, the City of El Paso, Texas Industrial Energy Consumers, the City of Socorro, and Vinton Steel, LLC. Freeport-McMoRan, Inc. did not sign, but does not oppose, the agreement.
40. In SOAH Order No. 9 filed on September 13, 2019, the SOAH ALJ dismissed the case from SOAH's docket and remanded it to the Commission.

**Evidentiary Record**

41. In SOAH Order No. 9 filed on September 13, 2019, the SOAH ALJ admitted the following evidence into the record:
  - (a) EPE's application filed on January 25, 2019;
  - (b) the direct testimonies of EPE witnesses James Schichtl, Jennifer Borden, and R. (Clay) Doyle, filed on January 25, 2019;
  - (c) EPE's errata to the application, filed on May 9, 2019;
  - (d) the City of El Paso's direct testimony of Karl Nalepa, filed on April 16, 2019;
  - (e) Commission Staff's direct testimonies of Brian Murphy and Frederick Quijano, filed on April 23, 2019;
  - (f) EPE's rebuttal testimonies of James Schichtl and R. (Clay) Doyle, filed on April 30, 2019;
  - (g) EPE's errata to the direct testimonies of James Schichtl and Jennifer Borden, filed on May 13, 2019;

- (h) the affidavit of Curtis Hutcheson regarding notice of the application, filed on May 3, 2019;
- (i) the agreement, including attachments, filed on September 12, 2019;
- (j) the testimony of James Schichtl in support of the agreement, filed on September 12, 2019; and
- (k) Commission Staff's affidavit of Brian Murphy in support of the agreement, filed on September 12, 2019.

**Agreement**

- 42. The agreement includes a black-box reduction of \$500,000 to EPE's requested TCRF revenue requirement, as modified by the errata filed on April 9, 2019 and May 13, 2019. Under the agreement, EPE's TCRF revenue requirement is \$7,510,407.
- 43. It is reasonable for the Commission to approve the agreed TCRF revenue requirement of \$7,510,407.
- 44. The signatories agreed that, except for the costs related to the right-of-way renewal agreement with the Isleta tribe that are described in findings of fact 52 through 55 (project TL249), the costs that EPE is seeking to recover for transmission infrastructure improvement as listed in exhibit RCD-3R to the rebuttal testimony of R. (Clay) Doyle are reasonable and necessary for inclusion in its TCRF.
- 45. The costs that EPE is seeking to recover for transmission infrastructure improvement as listed in exhibit RCD-3R to Mr. Doyle's rebuttal testimony are reasonable and necessary for inclusion in its TCRF.
- 46. The signatories agreed for the modified TCRF baseline as presented in exhibit JS-3 to the direct testimony of James Schichtl to be used in future TCRF applications until the TCRF baseline is modified in EPE's next comprehensive base-rate proceeding.
- 47. It is reasonable for the Commission to approve the modified TCRF baseline as presented in exhibit JS-3 to the testimony of James Schichtl for use in future TCRF applications until the TCRF baseline is modified in EPE's next comprehensive base-rate proceeding.



48. It is reasonable for EPE to adjust the TCRF baseline values from Docket No. 46831 to reflect the 21% federal income tax rate.
49. It is reasonable for EPE to adjust the TCRF baseline values from Docket No. 46831 to correct an error in the transmission service revenues reflected in those baseline values caused by incorrectly applying the Texas jurisdictional allocation factor twice.
50. The signatories agreed to the rates in the tariff schedule attached to the agreement as attachment A.
51. It is reasonable for the Commission to approve the tariff schedule attached to the agreement as attachment A.

**Right-of-Way Renewal Agreement with the Isleta Tribe**

52. EPE's Arroyo-to-West Mesa 345-kV transmission line is one of three 345-kV transmission lines that connect EPE with its neighboring utilities and the Western Electricity Coordinating Council. The 202-mile line crosses the Isleta Pueblo Indian Reservation for 8.4 miles.
53. In 1967, EPE entered into a 50-year right-of-way agreement with the Isleta tribe. That right-of-way agreement expired in 2017.
54. EPE entered a 25-year renewal right-of-way agreement with the Isleta tribe for \$16.82 million.
55. The shortest rebuild path around the Isleta tribe's lands would be a 29.7-mile line that would cross lands owned by another tribe and, according to EPE's estimates, would cost between \$1 million and \$1.5 million per mile.
56. Regarding the costs related to the right-of-way renewal agreement with the Isleta tribe, the signatories agreed for a determination of the prudence, reasonableness, and necessity of those costs to be made in EPE's next comprehensive base-rate proceeding, not this docket. The parties also agreed that, when a determination is made regarding the costs related to the right-of-way renewal agreement with the Isleta tribe, that determination will be applied prospectively in base rates without retroactive application or a reconciliation.

57. It is appropriate for a determination of the prudence, reasonableness, and necessity of the costs related to the right-of-way renewal agreement with the Isleta tribe to be made in EPE's next comprehensive base-rate proceeding. The Commission at the time of that proceeding will decide how to apply its determination regarding the costs related to the right-of-way renewal agreement with the Isleta tribe.
58. To address any issues in future proceedings concerning the costs of the right-of-way renewal agreement with the Isleta tribe, the signatories agreed to a continuing credit adjustment of \$500,000 to the TCRF revenue requirement in any TCRF proceeding that EPE may file before its next comprehensive base-rate proceeding.
59. It is appropriate for EPE to include a continuing credit adjustment of \$500,000 to the TCRF revenue requirement in its application for any TCRF proceeding that EPE may file before its next comprehensive base-rate proceeding. The Commission at the time of each proceeding will decide the merits of the credit adjustment in each docket.

**Effective Date and Interim Rates**

60. In SOAH Order No. 1 filed on February 4, 2019, the SOAH ALJ suspended EPE's proposed effective date of March 1, 2019 for 120 days. The resulting suspended effective date was Saturday, June 29, 2019, which became Monday, July 1, 2019 under 16 Texas Administrative Code (TAC) § 22.4(a).
61. In SOAH Order No. 4 filed on February 20, 2019, the SOAH ALJ ordered that, if the Commission did not file this Order by July 30, 2019, EPE's existing TCRF rates would become interim rates beginning on July 30, 2019, subject to a refund or surcharge to the extent that the interim rates differed from the rates approved in this Order.
62. The interim rates went into effect July 30, 2019.
63. It is appropriate for the agreed TCRF rates to be effective for consumption on and after July 30, 2019.
64. It is appropriate, as the signatories agreed, for EPE to make a compliance filing within 30 days of the date of this Order for approval of a surcharge tariff to address the true-up of interim rates.

**Informal Disposition**

- 65. More than 15 days have passed since completion of the notice provided in this docket.
- 66. No hearing is necessary in this docket.
- 67. The decision in this docket is not adverse to any party.
- 68. Commission Staff recommended approval of the application.

**III. Conclusions of Law**

The Commission makes the following conclusions of law.

- 1. EPE is a public utility as defined in PURA<sup>4</sup> § 11.004(1) and an electric utility as defined in PURA § 31.002(6).
- 2. EPE may seek approval of a TCRF under PURA § 36.209 because it owns and operates transmission facilities and operates solely outside of the Electric Reliability Council of Texas region in an area of Texas located in the Western Electricity Coordinating Council.
- 3. The Commission has jurisdiction over this matter under PURA §§ 14.001 and 36.209.
- 4. SOAH exercised jurisdiction over this matter under PURA § 14.053 and Texas Government Code § 2003.049(b).
- 5. The Commission processed this docket in accordance with the requirements of PURA, the Administrative Procedure Act,<sup>5</sup> and Commission rules.
- 6. EPE's provision of notice of the application was in accordance with 16 TAC § 22.51.
- 7. Using the billing determinants for calendar year 2018 complies with 16 TAC § 25.239(d).
- 8. The rates established by this Order are just and reasonable under PURA § 36.003(a).
- 9. In accordance with PURA § 36.003(b), the rates established by this Order are not unreasonably preferential, prejudicial, or discriminatory and are sufficient, equitable, and consistent in application to each class of customer.

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<sup>4</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

<sup>5</sup> Tex. Gov't Code §§ 2001.001–.902.

10. The rates approved in this Order comply with PURA § 36.209(b) and 16 TAC § 25.239(c) by allowing EPE to recover its reasonable and necessary costs for transmission infrastructure improvement costs as well as changes in wholesale transmission charges to EPE under a tariff approved by the Federal Energy Regulatory Commission to the extent those costs or charges have not otherwise been recovered.
11. EPE's TCRF approved in this Order complies with PURA § 36.209 and 16 TAC § 25.239.
12. Under PURA § 36.209, the Commission may only allow a TCRF to recover on an annual basis the costs for new transmission infrastructure improvements if it finds that the costs are reasonable and necessary. This finding does not address, however, the prudence of these costs or whether they should be included in base rates prospectively.
13. In accordance with 16 TAC § 22.125(e), the interim rates granted in this proceeding are subject to surcharge to the extent the rates ultimately established are higher than the interim rates.
14. This proceeding meets the requirements for informal disposition in 16 TAC § 22.35.

#### **IV. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission approves EPE's TCRF, as modified by the agreement, to the extent provided in this Order.
2. The Commission approves the TCRF tariff schedules in attachment A to the agreement, effective with usage on and after July 30, 2019.
3. EPE must use the modified TCRF baseline as presented in exhibit JS-3 to the direct testimony of James Schichtl in future TCRF applications until the baseline is modified in EPE's next comprehensive base-rate proceeding.

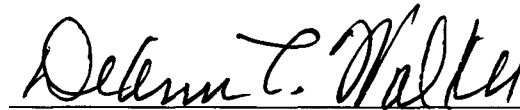
4. Within 30 days of the date of this Order, EPE must file a surcharge tariff in Docket No. 50256.<sup>6</sup> The surcharge tariff must account for the undercollection under the interim rates granted by SOAH in this docket.
5. The Commission must determine whether the infrastructure improvement costs and wholesale transmission charges included in the TCRF approved in this order are prudent before the costs and charges may be included in EPE's base rates. The Commission will make these prudence determinations during EPE's next base-rate proceeding.
6. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.
7. Within ten days of the date of this Order, EPE must provide a clean copy of the TCRF tariff schedules approved in this Order to central records to be marked *Approved* and filed in the Commission's tariff books.
8. The Commission denies all other motions and any other requests for general or specific relief that the Commission has not expressly granted.

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<sup>6</sup> *Compliance Filing of El Paso Electric Company for a Surcharge Tariff Ordered in Docket No. 49148, Docket No. 50256 (pending).*

Signed at Austin, Texas the 16<sup>th</sup> day of December 2019.

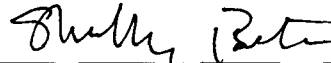
PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER

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

APPLICATION OF EL PASO	§	BEFORE THE STATE OFFICE
ELECTRIC COMPANY TO CHANGE	§	OF
RATES	§	ADMINISTRATIVE HEARINGS

EL PASO ELECTRIC COMPANY'S RESPONSE TO  
CITY OF EL PASO'S FIFTH REQUEST FOR INFORMATION  
QUESTION NOS. CEP 5-1 THROUGH CEP 5-42

CEP 5-4:

Reference the Direct Testimony of EPE witness Doyle at page 23, lines 11-20, please confirm that EPE did not rely on the report entitled "Energy Policy Act of 2005, Section 1813 Indian Land Rights-of-Way Study" attached as Exhibit RCD-6 at the time EPE's decision was made for the payment of S\$16.82 million for the right-of-way extension, project TL-249.

RESPONSE:

El Paso Electric Company ("EPE") did not rely on the report provided as Exhibit RCD-6 at the time of EPE's decision to pay \$16.82 million for the right-of-way renewal in project TL-249. While EPE did not rely upon this report at the time the decision was made, the report verifies that EPE's experience with the cost to acquire right of way across the Isleta Pueblo lands was not unusual or an outlier.

Preparer: Darcy Welch

Title: Supervisor – T&D Financial Analysis &  
Planning

Sponsor: R. Clay Doyle

Title: Vice President – Transmission &  
Distribution



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

APPLICATION OF EL PASO	§	BEFORE THE STATE OFFICE
ELECTRIC COMPANY TO CHANGE	§	OF
RATES	§	ADMINISTRATIVE HEARINGS

EL PASO ELECTRIC COMPANY'S RESPONSE TO  
CITY OF EL PASO'S FIFTH REQUEST FOR INFORMATION  
QUESTION NOS. CEP 5-1 THROUGH CEP 5-42

CEP 5-5:

Reference the Direct Testimony of EPE witness Doyle at Page 24, line 4—page 25, line 13, please identify who prepared the presentation to the EPE Board of Directors, who made the presentation, the date the presentation was made, and provide a copy of any recommendations made to the Board of Directors.

RESPONSE:

El Paso Electric Company (“EPE”) witness R. Clay Doyle prepared the presentation to El Paso Electric Company’s Board of Directors (“Board”), CEP 5-5, Attachment 1 – Confidential. Mr. Buraczyk made the presentation to the Board on January 26, 2017, as reflected on the Board meeting agenda attached as CEP 5-5, Attachment 2 - Confidential. The presentation was provided as Exhibit RCD-5 with EPE witness Doyle’s direct testimony. The Wall Street Journal article is provided as CEP 5-5, Attachment 3, and the meeting minutes from the January 26, 2017, meeting are attached as CEP 5-5 Attachment 4 – Confidential. The project was approved April 27, 2017, as reflected on the Board meeting agenda attached as CEP 5-5, Attachment 5 - Confidential and in the presentation of capital project updates presentation attached as CEP 5-5, Attachment 6 - Confidential. These attachments reflect the information provided to the Board.

Preparer: Darcy Welch

Title: Supervisor – T&D Financial Analysis &  
Planning

Sponsor: R. Clay Doyle

Title: Vice President – Transmission and  
Distribution

PUBLIC

CEP 5-5 Attachment 1 is CONFIDENTIAL and/or HIGHLY SENSITIVE PROTECTED MATERIALS attachment.

PUBLIC

CEP 5-5 Attachment 2 is CONFIDENTIAL and/or HIGHLY SENSITIVE PROTECTED MATERIALS attachment.

# THE WALL STREET JOURNAL.

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<http://www.wsj.com/articles/SB10001424052702304788404579523661972129936>

U.S.

## Indian Tribes' New Negotiating Power Costs Utilities

Governments Demand Much Higher Right-of-Way Fees on Reservations



Terry Aguilar says higher right-of-way fees are needed to provide for his 850-member reservation near Santa Fe, N.M. *RICK SCIBELLI JR. FOR THE WALL STREET JOURNAL*

By DAN FROSCH

April 28, 2014 7:04 p.m. ET

SAN ILDEFONSO PUEBLO, N.M.—When a local utility renewed its lease in the 1980s to continue running the power lines that stretch above the adobe homes and mesas on this small Indian reservation, it paid the tribe a total of \$114,000.

<http://www.wsj.com/articles/SB10001424052702304788404579523661972129936>

1/17/2017

But when it came time to extend the right-of-way deal again for 25 years, San Ildefonso Pueblo drove a much harder bargain. It secured nearly \$4.7 million from the utility, Jemez Mountains Electric Cooperative Inc., in a settlement finalized in February, and it is taking a similarly aggressive negotiating tack with other entities running pipelines and roads through its land.

"This is all we have," said Terry Aguilar, the 43-year-old governor of the 850-member pueblo at the base of the Jemez Mountains near Santa Fe. "We don't have gaming facilities. So this is how we get reoccurring revenue every year. It allows us to provide for our community."

Armed with lawyers and consultants—and emboldened by a federal law that prohibits the use of eminent domain to access Indian trust land—tribes across the West are commanding substantial payments from utilities and energy companies to renew right-of-way agreements.



John Tapia says his utility is struggling to afford the higher right-of-way fees. *RICK SCIBELLI JR. FOR THE WALL STREET JOURNAL*

For years, the federal Bureau of Indian Affairs negotiated such deals on behalf of tribes. But Indian land experts said the tribes, often unsophisticated and poor, wound up with compacts that generated little in return.

Now, legal experts say, tribes are leaving energy companies little choice but to pay the fees they request because rerouting power lines, pipelines and other infrastructure around reservations is prohibitively expensive. Last November, Arizona Public Service Co., a unit of Pinnacle West Capital Corp., agreed to pay about \$30 million to the Hopi Tribe for a 25-year renewal of an expired power line right-of-way, said a person familiar with the pact.

The utility had originally paid less than \$24,000 for the right-of-way in 1966 and sought to renew it at the same price, the tribe said after the settlement. Neither Arizona Public Service nor the tribe would comment on the agreement.

Tribal representatives say the higher payments are not only fair but overdue, arguing that many original easements on Indian land should have netted higher value and that appraisals were conducted haphazardly, if at all. Utilities have expressed frustration at the steep fee increases but say they recognize them as a cost of doing business in the West.

A spokeswoman for the Bureau of Indian Affairs said the agency had historically managed rights-of-way pacts based on federal regulations and treaties, and added that it was committed to ensuring tribes are justly compensated.

"What we have seen in Indian country is tribes becoming more aware of the marketplace and what they should be getting," said Cris Stainbrook, president of the Indian Land Tenure Foundation, which advises tribes on land issues. "Lots of these companies had sweetheart deals, and they're ending," he added.

The Indian Right-of-Way Act of 1948 required tribal consent on right-of-way deals and mandated that energy companies pay at least fair-market value. But until recently, many tribes didn't wield the law to their advantage.

Many tribal governments now retain law firms at the bargaining table, and they argue that their land should be valued at a higher rate than areas just off the reservation, partly because energy companies can't threaten condemnation, as they can with private landowners. Before 1990, Indian trust land was generally valued at \$10 to \$100 an acre a year, said Robby Robinson, co-founder for the Center for Applied Research, a Denver firm that helps tribes compute right-of-way fees. Now, tribes garner \$4,000 to \$7,000 an acre a year, he said.

"The past 20 years have been in sharp contrast to the prior 30," Mr. Robinson said. "Law firms and the tribes themselves have gone to the table and told energy companies that the tribes are now in the driver's seat."

As tribal right-of-way fees have risen, some utilities and energy companies have sought more uniformity in how they are determined. John Tapia, chairman of Jemez Mountains Electric, which serves 30,000 customers in Northern New Mexico, said the small utility was struggling to afford the new fees. Since its renegotiation with the San Ildefonso Pueblo, it has proposed adding about \$6 to customers monthly electric bills, a plan that drew criticism from residents at a meeting last week in Santa Fe.

Indian Tribes' New Negotiating Power Costs Utilities - WSJ

Page 4 of 4

"There is nobody regulating how much can be negotiated and what is fair," Mr. Tapia said, noting that his utility's infrastructure crosses nine different tribal entities. "We could be dealing with \$50 million for tribal easements for the next 25 years. It is going to affect a lot of people."

Troy Eid, a lawyer who has represented tribes, utilities and private energy companies in right-of-way agreements, said tribes had become such shrewd negotiators that many energy companies increasingly build around reservations.

"Companies will say 'they are being so unreasonable,' " Mr. Eid said. "On the other hand, it is inevitable, because tribes have to find ways to generate revenue. Casinos only provide so much."

Write to Dan Frosch at [Dan.Frosch@wsj.com](mailto:Dan.Frosch@wsj.com)

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CEP 5-5 Attachment 5 is CONFIDENTIAL and/or HIGHLY SENSITIVE PROTECTED MATERIALS attachment.

PUBLIC

CEP 5-5 Attachment 6 is CONFIDENTIAL and/or HIGHLY SENSITIVE PROTECTED MATERIALS attachment.

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

APPLICATION OF EL PASO	§	BEFORE THE STATE OFFICE
ELECTRIC COMPANY TO CHANGE	§	OF
RATES	§	ADMINISTRATIVE HEARINGS

EL PASO ELECTRIC COMPANY'S RESPONSE TO  
CITY OF EL PASO'S FIFTH REQUEST FOR INFORMATION  
QUESTION NOS. CEP 5-1 THROUGH CEP 5-42

CEP 5-9:

Refer to the Direct Testimony of EPE witness Doyle at Page 16, Lines 18-20. Please provide the information gathered from other utilities and analysis conducted by EPE or provided EPE by third parties that support EPE's contention that the right of way agreement with the Isleta Tribe was reasonable.

RESPONSE:

This response assumes the City of El Paso is referencing the Direct Testimony of El Paso Electric Company ("EPE") witness Doyle in Docket 49148, at page 16, Lines 18-20.

Information gathered about other utilities was gathered through verbal conversations and was not documented, but EPE does have reference to that analysis conducted in 2015 in CEP 5-12, Attachment 4 – Confidential Voluminous at pages 837 to 838. Those discussions indicated that the costs to EPE were in the range of the other utilities' experience. The third-party information was consistent with the Wall Street Journal article referenced in R. Clay Doyle's direct testimony, page 24, line 23, and the analyses conducted by EPE are summarized in the presentation provided as Exhibit RCD-05.

Preparer: Darcy Welch

Title: Supervisor – T&D Financial Analysis &  
Planning

Sponsor: R. Clay Doyle

Title: Vice President – Transmission and  
Distribution

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

APPLICATION OF EL PASO	§	BEFORE THE STATE OFFICE
ELECTRIC COMPANY TO CHANGE	§	OF
RATES	§	ADMINISTRATIVE HEARINGS

EL PASO ELECTRIC COMPANY'S RESPONSE TO  
CITY OF EL PASO'S FIFTH REQUEST FOR INFORMATION  
QUESTION NOS. CEP 5-1 THROUGH CEP 5-42

CEP 5-12:

Refer to the Direct Testimony of EPE witness Doyle at Page 16, Lines 17-18. Please provide EPE's complete file regarding this transaction, including all backup information created and/or retained supporting the presentation provided in response to CEP 1-4 and 1-5.

RESPONSE:

El Paso Electric Company ("EPE") assumes the reference to CEP 1-4 and CEP 1-5 refer to the discovery questions in Docket No. 49148. Please see EPE's response to CEP 5-1 through 5-11 in this docket. Please see also CEP 5-12, Attachment 1 Voluminous, Attachments 2 and 3, Attachment 4 Confidential Voluminous, and Attachment 5 Confidential.

Preparer: Darcy Welch

Title: Supervisor – T&D Financial Analysis &  
Planning

Sponsor: R. Clay Doyle

Title: Vice President – Transmission and  
Distribution

EL PASO ELECTRIC COMPANY

SOAH Docket No. 473-21-2606

PUC Docket No. 52195

CEP's 5th, Q. No. CEP 5-12

Attachment 1

Page 1 of 1

## VOLUMINOUS

CEP 5-12 Attachment 1 is a VOLUMINOUS attachment.

TaskName	UpdateCor	LegalIssue	Send Email	CreationDate	UpdateDate	UpdateByE	EventDate
Meeting wi		TRUE		2/12/2015	2/6/2015	mwestber	
Update me		TRUE		2/12/2015	2/10/2015	mwestber	
Private eas		TRUE		2/12/2015	2/11/2015	mwestber	
PO establis		TRUE		11/26/2014	11/13/2014	mwestber	
Kick-Off		TRUE		11/26/2014	12/5/2014	mwestber	
Received		TRUE		12/9/2014	12/8/2014	mwestber	
Letter of In		TRUE		12/23/2014	12/18/2014	mwestber	
Mel &		TRUE		1/14/2015	1/8/2015	mwestber	
Mel		TRUE		1/21/2015	1/21/2015	mwestber	
Discussion		TRUE		1/26/2015	1/26/2015	mwestber	
Phase 2		TRUE		3/4/2015	3/2/2015	mwestber	
Scheduled		TRUE		4/8/2015	3/31/2015	mwestber	
Meeting wi		TRUE		4/20/2015	4/14/2015	mwestber	
Received		TRUE		4/20/2015	4/17/2015	mwestber	
Mark Murr		TRUE		5/6/2015	5/4/2015	mwestber	
Received p		TRUE		5/13/2015	5/13/2015	mwestber	
Ryan to ap		TRUE		5/29/2015	5/27/2015	mwestber	
Meeting wi		TRUE		6/18/2015	6/16/2015	mwestber	
Received r		TRUE		6/18/2015	6/18/2015	mwestber	
Approval		TRUE		6/30/2015	6/26/2015	mwestber	
Prepared r		TRUE		6/30/2015	6/29/2015	mwestber	
PO 151734		TRUE		7/7/2015	7/6/2015	mwestber	
Prepared		TRUE		7/16/2015	7/16/2015	mwestber	
Still		TRUE		7/21/2015	7/21/2015	mwestber	
Authorizati		TRUE		8/25/2015	8/11/2015	mwestber	
Authorizat		TRUE		8/25/2015	8/12/2015	mwestber	
Bi-Weekly		TRUE		8/25/2015	8/19/2015	mwestber	
Received		TRUE		8/25/2015	8/19/2015	mwestber	
Conferenc		TRUE		8/28/2015	8/26/2015	mwestber	
Received		TRUE		8/28/2015	8/28/2015	mwestber	
Provided c		TRUE		8/28/2015	8/28/2015	mwestber	
Letter		TRUE		9/3/2015	9/1/2015	mwestber	
Conference		TRUE		9/10/2015	9/3/2015	mwestber	
Forwarded		TRUE		9/10/2015	9/4/2015	mwestber	
Early AM, c		TRUE		9/10/2015	9/9/2015	mwestber	
PM Status		TRUE		9/10/2015	9/10/2015	mwestber	
Received d		TRUE		9/10/2015	9/10/2015	mwestber	
Left messa		TRUE		9/22/2015	9/15/2015	mwestber	
Contacted		TRUE		9/22/2015	9/17/2015	mwestber	
Still waitin		TRUE		9/22/2015	9/21/2015	mwestber	
Conference		TRUE		10/21/2015	10/1/2015	mwestber	
Kirk Allen s		TRUE		10/21/2015	10/6/2015	mwestber	
Kirk		TRUE		10/21/2015	10/15/2015	mwestber	
Tribal		TRUE		10/21/2015	10/20/2015	mwestber	
Tribal		TRUE		10/21/2015	10/21/2015	mwestber	
Notified		TRUE		11/2/2015	10/30/2015	mwestber	
Jessica C. a		TRUE		11/16/2015	11/16/2015	mwestber	

TaskName	UpdateCor	LegalIssue	Send Email	CreationDate	UpdateDate	UpdateByE	EventDate
Prepared,	TRUE			11/17/2015	11/17/2015	mwestber	
Received re	TRUE			12/2/2015	11/20/2015	mwestber	
Notified La	TRUE			12/2/2015	12/2/2015	mwestber	
Pending pr	TRUE			1/5/2016	1/5/2016	mwestber	
Initial Mee	TRUE			1/8/2016	1/8/2016	mwestber	
Posting in /	TRUE			1/18/2016	1/18/2016	mwestber	
Pre-Isleta P	TRUE			1/20/2016	1/15/2016	mwestber	
Strategy	TRUE			1/22/2016	1/21/2016	mwestber	
Meeting wi	TRUE			1/29/2016	1/27/2016	mwestber	
Meeting	TRUE			1/29/2016	1/27/2016	mwestber	
Conference	FALSE	FALSE		2/5/2016	2/5/2016	mwestber	
Forwarded	FALSE	FALSE		2/16/2016	2/16/2016	mwestber	
Requested	FALSE	FALSE		3/1/2016	3/1/2016	mwestber	2/29/2016
Ryan to tak	FALSE	FALSE		3/18/2016	4/13/2016	mwestber	3/18/2016
Shared a di	FALSE	FALSE		4/13/2016	4/13/2016	mwestber	4/5/2016
Final Thank	FALSE	FALSE		4/22/2016	4/22/2016	mwestber	
Maritza rec	FALSE	FALSE		4/27/2016	4/27/2016	mwestber	
Pre-Tribal C	FALSE	FALSE		6/10/2016	6/10/2016	mwestber	
2nd meetir	FALSE	FALSE		6/16/2016	6/16/2016	mwestber	6/15/2016
Received d	FALSE	FALSE		6/28/2016	6/29/2016	mwestber	6/26/2016
Ryan inforr	FALSE	FALSE		7/13/2016	7/13/2016	mwestber	7/8/2016
Kirk Allen (	FALSE	FALSE		7/15/2016	7/15/2016	mwestber	
Kirk Allen ii	FALSE	FALSE		7/27/2016	7/27/2016	mwestber	7/26/2016
Received fi	FALSE	FALSE		8/10/2016	8/10/2016	mwestber	
Conference	FALSE	FALSE		8/11/2016	8/11/2016	mwestber	
Review of c	FALSE	FALSE		8/15/2016	8/15/2016	mwestber	8/12/2016
Meeting sc	FALSE	FALSE		8/31/2016	8/31/2016	mwestber	8/26/2016
Draft Easer	FALSE	FALSE		10/5/2016	10/5/2016	mwestber	
Update fro	FALSE	FALSE		11/10/2016	11/10/2016	mwestber	
Offer Lette	FALSE	FALSE		11/10/2016	11/10/2016	mwestber	10/11/2016
Easement I	FALSE	FALSE		12/19/2016	12/19/2016	mwestber	12/14/2016
Inquired or	FALSE	FALSE		2/20/2017	2/20/2017	mwestber	2/9/2017
Awaiting re	FALSE	TRUE		4/4/2017	4/4/2017	rpaulk1	
EPE receive	FALSE	FALSE		5/1/2017	5/1/2017	mwestber	
Update: Ry	TRUE	FALSE		5/30/2017	5/30/2017	mwestber	5/30/2017
Isleta Pueb	FALSE	FALSE		6/26/2017	6/26/2017	mwestber	6/26/2017
Update:	FALSE	TRUE		10/3/2017	10/3/2017	mwestber	10/3/2017
RW Renew Prepared r	FALSE	FALSE		6/19/2017	6/19/2017	mwestber	6/16/2017
RW Renew Requisition	FALSE	FALSE		6/19/2017	6/19/2017	mwestber	6/19/2017
RW Renew Status on s	FALSE	FALSE		8/25/2017	8/25/2017	mwestber	8/25/2017
RW Renew Surveying t	FALSE	FALSE		6/27/2017	6/27/2017	mwestber	6/27/2017
RW Renew Status updi	FALSE	FALSE		7/12/2017	7/12/2017	mwestber	7/12/2017
RW Renew Requested	FALSE	FALSE		7/20/2017	7/20/2017	mwestber	
RW Renew Received d	FALSE	FALSE		7/20/2017	7/20/2017	mwestber	7/20/2017
RW Renew Approval fr	FALSE	FALSE		7/25/2017	7/25/2017	mwestber	7/25/2017
BIA Renew: Update fro	FALSE	FALSE		8/8/2017	8/8/2017	mwestber	8/8/2017
BIA Renew: Conference	FALSE	FALSE		8/11/2017	8/11/2017	mwestber	8/11/2017

TaskName	UpdateCor	LegalIssue	Send Email	CreationDate	UpdateDate	UpdateBy	E EventDate
BIA Renew: Conference	FALSE	TRUE	8/21/2017	8/21/2017	mwestber	8/18/2017	
BIA Renew: Draft easer	FALSE	FALSE	7/20/2017	7/20/2017	mwestber	7/20/2017	
BIA Renew: Conferenc	FALSE	FALSE	7/25/2017	7/25/2017	mwestber	7/25/2017	
BIA Renew: Status Upd	FALSE	TRUE	7/12/2017	7/12/2017	mwestber	7/12/2017	
BIA Renew: Status Upd	FALSE	FALSE	7/13/2017	7/13/2017	mwestber	7/13/2017	
BIA Renew: Cultural Up	FALSE	FALSE	7/14/2017	7/14/2017	mwestber	7/14/2017	
BIA Renew: Conference	FALSE	FALSE	6/29/2017	6/29/2017	mwestber	6/29/2017	
BIA Renew: NEPA	FALSE	FALSE	7/3/2017	7/3/2017	mwestber	7/3/2017	
BIA Renew: Conference	TRUE	FALSE	7/5/2017	7/5/2017	mwestber	7/5/2017	
BIA Renew: Requirem	FALSE	FALSE	8/25/2017	8/25/2017	mwestber	8/25/2017	
BIA Renew: Easement I	FALSE	TRUE	10/9/2017	10/9/2017	mwestber	10/9/2017	
BIA Renew: Update fro	FALSE	TRUE	1/11/2018	1/11/2018	mwestber	1/10/2018	
BIA Renew: Rent paym	FALSE	FALSE	3/27/2018	3/27/2018	mwestber	3/5/2018	
BIA Renew: Kirk Allen, i	FALSE	FALSE	6/13/2017	6/19/2017	mwestber	6/13/2017	



TaskName	UpdateCor	LegalIssue	Send Email	CreationDate	UpdateDate	UpdateByEmployeeId	EventDate
Schedule		TRUE		8/25/2014	8/25/2014	mwestber	
Meet & Gri		TRUE		9/26/2014	9/26/2014	mwestber	
Meet & Gri		TRUE		10/3/2014	10/3/2014	mwestber	
RE-group		TRUE		6/16/2015	6/16/2015	mwestber	
Received		TRUE		11/10/2015	11/9/2015	mwestber	
SWCA cont		TRUE		11/13/2015	11/13/2015	mwestber	
Requested		FALSE	FALSE	6/1/2016	6/1/2016	mwestber	

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PUBLIC

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

APPLICATION OF EL PASO	§	BEFORE THE STATE OFFICE
ELECTRIC COMPANY TO CHANGE	§	OF
RATES	§	ADMINISTRATIVE HEARINGS

EL PASO ELECTRIC COMPANY'S RESPONSE TO  
CITY OF EL PASO'S THIRTEENTH REQUEST FOR INFORMATION  
QUESTION NOS. CEP 13-1 THROUGH CEP 13-29

CEP 13-1:

**Rate Base.** Reference EPE's Response to CEP RFI 5-9 and pages 837-838 of the Voluminous Confidential Response to CEP RFI-5-12, Attachment 4. Please provide pages 837 and 838 unredacted.

RESPONSE:

After a diligent search, El Paso Electric Company ("EPE") was unable to locate the unredacted copy of CEP 5-12, Attachment 4-Confidential-Voluminous. EPE believes the subject of the redacted parts in page 837 to be similar or the same as those in page 838. EPE was able to locate the original email shown on page 838, which is provided as CEP 13-1 Attachment 1 – Confidential. Both the sender and receiver of the email on page 837 had deleted most emails from 2015 as part of an email cleaning effort to reduce data storage space. They believed the copies of the emails were saved in an unredacted file version, which EPE has not been able to locate.

Preparer: Darcy Welch

Title: Supervisor – Financial Analysis and  
Planning

Sponsor: R. Clay Doyle

Title: Vice President – Transmission &  
Distribution

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CEP 13-1 Attachment 1 is a CONFIDENTIAL or HIGHLY SENSITIVE PROTECTED MATERIALS attachment.

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

APPLICATION OF EL PASO	§	BEFORE THE STATE OFFICE
ELECTRIC COMPANY TO CHANGE	§	OF
RATES	§	ADMINISTRATIVE HEARINGS

EL PASO ELECTRIC COMPANY'S RESPONSE TO  
CITY OF EL PASO'S THIRTEENTH REQUEST FOR INFORMATION  
QUESTION NOS. CEP 13-1 THROUGH CEP 13-29

CEP 13-2:

**Rate Base.** Reference EPE's response to CEP RFI 5-12, Attachment 4, Confidential, page 633:

- a. Please provide a page 633 unredacted.
- b. Please identify what is meant by the last 6 words in the first paragraph.

RESPONSE:

- a. An unredacted copy of page 633 has been provided as CEP 13-2, Attachment 1 – Confidential.
- b. Please see CEP 13-2, Attachment 2-Confidential for this response.

Preparer: Darcy Welch

Title: Supervisor – Financial Analysis and  
Planning

Sponsor: R. Clay Doyle

Title: Vice President – Transmission &  
Distribution

EL PASO ELECTRIC COMPANY

SOAH Docket No. 473-21-2606

PUC Docket No. 52195

CEP's 13th, Q. No. CEP 13-2

Attachments 1 & 2

Page 1 of 1

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CEP 13-2 Attachments 1 and 2 are CONFIDENTIAL or HIGHLY SENSITIVE PROTECTED MATERIALS attachment.

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

APPLICATION OF EL PASO	§	BEFORE THE STATE OFFICE
ELECTRIC COMPANY TO CHANGE	§	OF
RATES	§	ADMINISTRATIVE HEARINGS

EL PASO ELECTRIC COMPANY'S RESPONSE TO  
CITY OF EL PASO'S THIRTEENTH REQUEST FOR INFORMATION  
QUESTION NOS. CEP 13-1 THROUGH CEP 13-29

CEP 13-3:

**Rate Base.** Reference EPE's response to CEP RFI 5-12, Attachment 4, Confidential, page 628. Please identify the author of the document.

RESPONSE:

The author of the document is El Paso Electric Company employee Ryan Paulk, Director-Support Services.

Preparer: Darcy Welch

Title: Supervisor – Financial Analysis and  
Planning

Sponsor: R. Clay Doyle

Title: Vice President – Transmission &  
Distribution



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

APPLICATION OF EL PASO	§	BEFORE THE STATE OFFICE
ELECTRIC COMPANY TO CHANGE	§	OF
RATES	§	ADMINISTRATIVE HEARINGS

EL PASO ELECTRIC COMPANY'S RESPONSE TO  
CITY OF EL PASO'S THIRTEENTH REQUEST FOR INFORMATION  
QUESTION NOS. CEP 13-1 THROUGH CEP 13-29

CEP 13-4:

**Rate Base.** Reference EPE's response to CEP RFI 5-12, Attachment 4, Confidential, page 621. To the Extent not included in Attachment 4, confidential, please provide the entire support and backup for the letter [Untitled.pdf] attached to the E-mail.

RESPONSE:

All related support and backup for the letter [Untitled.pdf] is included in El Paso Electric Company's response to CEP 5-12, Attachment 4-Confidential.

Preparer: Darcy Welch

Title: Supervisor – Financial Analysis and  
Planning

Sponsor: R. Clay Doyle

Title: Vice President – Transmission &  
Distribution

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

APPLICATION OF EL PASO	§	BEFORE THE STATE OFFICE
ELECTRIC COMPANY TO CHANGE	§	OF
RATES	§	ADMINISTRATIVE HEARINGS

EL PASO ELECTRIC COMPANY'S RESPONSE TO  
CITY OF EL PASO'S THIRTEENTH REQUEST FOR INFORMATION  
QUESTION NOS. CEP 13-1 THROUGH CEP 13-29

CEP 13-6:

**Rate Base.** Reference the response to CEP RFI 5-4, Do any documents exist which were in the possession of EPE in 2017 or prior supporting the amount paid for the subject right-of-way, other than the April 28, 2014 Wall Street Journal article attached to the response to CEP RFI 5-5?

- a. If so, please produce such documents.
- b. If any documents were destroyed. Please identify when and why they were destroyed.

RESPONSE:

- a. All documents relating to the subject right-of-way used by El Paso Electric Company ("EPE") have been provided in EPE's response to CEP 5-12. In particular, please see CEP 13-1, Attachment 1-Confidential and Exhibit RCD-5 in the direct testimony of EPE witness R. Clay Doyle.
- b. To the best of EPE's knowledge, none of the documents supporting the amount paid for the subject right-of-way have been destroyed.

Preparer: Darcy Welch

Title: Supervisor – Financial Analysis and  
Planning

Sponsor: R. Clay Doyle

Title: Vice President – Transmission &  
Distribution



# Public Utility Commission of Texas

7800 Shoal Creek Boulevard - Suite 400N  
Austin, Texas 78757 - 512/458-0100

RECEIVED

Peggy Rosson  
Chairman

Dennis L. Thomas  
Commissioner

Jo Campbell  
Commissioner

1985 JAN -9 AM 9:42  
PUBLIC UTILITY COMMISSION  
FILING CLERK

January 9, 1986

TO: ALL PARTIES OF RECORD

RE: Docket No. 6350 - Application of El Paso Electric Company for  
Authority to Change Rates

Ladies and Gentlemen:

Enclosed please find a copy of my Examiner's Report and proposed final Order in the above-referenced docket. The case will be considered by the Commission at an open meeting scheduled to begin at 9:00 a.m. on Wednesday, January 29, 1986, at the Commission offices located at 7800 Shoal Creek Boulevard, Austin, Texas.

Any exceptions to the Examiner's Report should be submitted in writing no later than 4:00 p.m., Friday, January 17, 1986. Replies to exceptions should be submitted no later than Friday, January 24, 1986. Requests for oral argument must be made in writing no later than Wednesday, January 22, 1986.

Due to the large number of specific recommendations contained in the attached Examiner's Report, I shall summarize only the major issues raised at the hearing and my bottom line recommendations. I have found that EPEC has a total company revenue requirement of \$350,845,583 being \$110,275,825 less than EPEC's total company request in this proceeding. Jurisdictional allocation of my recommended revenue requirement results in a bottom line recommendation that EPEC's rates to Texas retail customers should be decreased by \$4,295,556 from their current levels. I have recommended that EPEC be permitted a 15.5 percent return on equity capital and have found EPEC's weighted average cost of capital to be 12.21 percent.

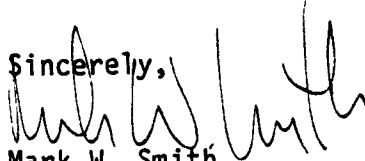
Further, I have recommended that EPEC be permitted to include no more than 50 percent of Palo Verde related CWIP in rate base. Although finding that inclusion of 60 percent of EPEC's adjusted test year-end CWIP balance in rate base is necessary to the financial integrity of EPEC within the meaning of PURA Section 41(a) and P.U.C. SUBST. R. 23.21(c)(2)(D), I have also found that under the standards set forth in those provisions EPEC has failed to meet its burden of proof of demonstrating that Palo Verde has been efficiently and prudently planned and managed. The evidence of record pertaining to the prudence and efficiency of EPEC's planning and management of Palo Verde does not support the inclusion of more than 50 percent of Palo Verde related CWIP in rate base.

January 8, 1986  
Page 2

Most issues concerning cost allocation, revenue distribution and rate design were resolved by stipulation of the parties. The stipulation provides that any base rate increase or decrease found by the Commission be allocated to customer classes on an equalized percentage basis. I have recommended adoption of the stipulation. The principal rate design issue not resolved by stipulation is the economic recovery rider discount to large industrial customers. I have recommended that an economic recovery rider not be adopted in this docket.

If you have any questions, do not hesitate to contact me at (512) 458-0269.

Sincerely,

  
Mark W. Smith  
Administrative Law Judge

MWS/lr

APPLICATION OF EL PASO ELECTRIC  
COMPANY FOR AUTHORITY TO CHANGE  
RATES

PUBLIC UTILITY COMMISSION  
OF TEXAS

APPEAL OF EL PASO ELECTRIC  
COMPANY FROM THE RATEMAKING  
ORDINANCES OF THE CITY OF  
EL PASO AND THE TOWNS OF  
VINTON, CLINT AND ANTHONY

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APPLICATION OF EL PASO ELECTRIC  
COMPANY FOR AUTHORITY TO CHANGE  
RATES

APPEAL OF EL PASO ELECTRIC  
COMPANY FROM THE RATEMAKING  
ORDINANCES OF THE CITY OF  
EL PASO AND THE TOWNS OF  
VINTON, CLINT, AND ANTHONY

PUBLIC UTILITY COMMISSION  
OF TEXAS

EXAMINER'S REPORT

I. Procedural History

On June 24, 1985, El Paso Electric Company (EPEC or the Company) filed a statement of intent to increase its rates within the unincorporated areas of El Paso, Culberson and Hudspeth Counties served by it, in accordance with Section 43(a) of the Public Utility Regulatory Act (PURA or the Act), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1985). Through its rate filing, EPEC is seeking to increase its rates by \$61,222,878 or 25 percent over total Texas adjusted test year revenues, assuming Commission recognition of Palo Verde Nuclear Generating Station (PVNGS or Palo Verde) Unit One as a commercially operating unit. Alternatively, should Palo Verde Unit One be excluded from EPEC's plant in service, EPEC is seeking authorization to increase its rates by \$67,487,922 or 27.63 percent over total Texas adjusted test year revenues. All customers and classes of customers are affected by the proposed changes.

By examiner's Order dated June 27, 1985, EPEC's proposed rate increase was suspended for 150 days beyond the otherwise effective date of July 30, 1985, until December 27, 1985, pursuant to Section 43(d) of the Act. On July 16, 1985, at the first prehearing conference in this docket, EPEC orally extended the effective date of the proposed rate increase to August 6, 1985, and the examiner resuspended the effective date until January 3, 1986. By motion filed with the Commission on August 12, 1985, EPEC again extended the effective date of the proposed rate increase from August 6, 1985, to August 27, 1985, and the examiner accordingly resuspended the effective date, by Order dated August 13, 1985, for the full 150 day statutory suspension period, until January 24, 1986. On October 25, 1985, EPEC extended the effective date from August 27, 1985 to September 3, 1985, and by Order dated October 30, 1985, the effective date was again resuspended by the examiner for the full statutory period of suspension, until January 31, 1986.

As required by P.U.C. PROC. R. 21.22(b)(1), EPEC published a statement of intent in conspicuous form and place once each week for four consecutive weeks, prior to the effective date of the proposed change, in newspapers of general circulation in the counties in which it serves. EPEC provided publishers' affidavits to that effect. EPEC also notified affected municipalities and its customers individually of the proposed change, as required by P.U.C. PROC. R. 21.22(b)(2) and (3).

The following parties have been granted intervenor status in this docket:

W. Silver, Inc. (W. Silver);  
City of El Paso (El Paso or the City);  
El Paso Iron & Metal Co. (EPIM);  
Border Steel Rolling Mills, Inc. (Border Steel);  
Texas Industrial Energy Consumers (TIEC);  
United States Department of Defense (DOD);  
Texas-New Mexico Power Company (TNP);  
ASARCO, Inc. (ASARCO);  
Office of Public Utility Counsel (OPC);  
United Steelworkers of America (USWA);  
El Paso County (the County);  
R. Brian Jones

Pursuant to Sections 17 and 26(a) of the Act, EPEC appealed the ratemaking ordinances of the City of El Paso, the Town of Vinton, the Town of Clint and the the Town of Anthony by filing a petition for review on November 22, 1985. On November 19, 1985, the Town of Van Horn requested that the public hearings before the Commission in this docket be considered for all purposes as the public hearings of the Town of Van Horn on EPEC's Petition for Review.

By Order dated December 10, 1985, the examiner consolidated without objection EPEC's appeals of the ratemaking ordinances of the City of El Paso, the Town of Vinton, the Town of Clint, and the Town of Anthony with this docket.

A first prehearing conference was conducted on July 16, 1985. Representatives from the following parties made appearance: EPEC, El Paso, ASARCO, EPIM, Border Steel, DOD, TIEC, OPC and the Commission's General Counsel. At that prehearing conference and by subsequent order a procedural schedule and hearing guidelines were established.

The procedural schedule adopted at the first prehearing conference was subsequently modified by examiner's Orders dated August 13 and August 27, 1985, providing the parties with additional time to engage in discovery and the preparation of prefiled testimony, as a consequence of EPEC's extensions of the effective date of the proposed rate increase. By Order dated October 30, 1985, the commencement of the hearing on the merits was postponed until November 4, 1985, in order to provide the parties additional time for settlement negotiations.

A second prehearing conference was convened on October 14, 1985, for the purpose of resolving a discovery dispute between EPEC and TIEC. Appearances were made by Ms. Patrice Johnson on behalf of TIEC, Mr. Michael McQueen on behalf of EPEC, Ms. Jeanine Lehman on behalf of OPC and Mr. Alfred Herrera on

behalf of the Commission's General Counsel. After taking oral argument from the parties regarding the merits of TIEC's motion to compel, the examiner orally and by subsequent order denied TIEC's motion to compel, on the basis that the requested information was not in existence and therefore was not discoverable under the discovery standard set forth in Section 14a(a) of the Administrative Procedure and Texas Register Act (APTRA), Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1985).

The hearing on the merits was convened on November 4, 1985, with the undersigned examiner presiding. Appearances were made at the hearing on the merits by Mr. David Wiggs, Mr. Mike McQueen and Mr. Eddie Rodriguez on behalf of EPEC, Ms. Martha Terry on behalf of W. Silver, Inc., Ms. Nanette Williams and Mr. Norman Gordon on behalf of the City, Mr. Michael Ginnings on behalf of Border Steel and EPIM, Ms. Patrice Johnson on behalf of TIEC, Mr. David McCormick on behalf of DOD, Mr. Michael Shirley on behalf of TNP, Mr. Alan Holman on behalf of ASARCO, Mr. Jim Boyle on behalf of OPC, and Mr. Alfred Herrera on behalf of the Commission staff. The County of El Paso, USWA and R. Brian Jones failed to make appearance or otherwise participate in the hearing on the merits. The hearing on the merits of the revenue deficiency phase of the docket was completed on November 22, 1985.

On November 21, 1985, the parties filed a written stipulation with the Commission resolving most cost allocation and rate design issues. Consequently a hearing was not conducted in the rate design phase of this docket. The stipulation was executed by all parties to the docket, with the exception of El Paso County, USWA and R. Brian Jones. At the time the stipulation was presented to the examiner, the examiner orally ruled that all parties who failed to make appearance or otherwise participate in the hearing waived their right to approve or disapprove the terms of the stipulation. The examiner has fully accepted the stipulated settlement of cost allocation and rate design issues.

On October 25, 1985, the City of El Paso filed a Motion to Dismiss and Alternative Objection to Palo Verde Filing which was taken up by the examiner on November 4, 1985, the first day of hearing. On November 5, 1985, the examiner denied the motion to dismiss EPEC's Palo Verde plant in service filing. On that same date the City, OPC, and DOD filed a joint interim appeal of the examiner's denial of the motion.

On November 6, 1985, after taking oral argument from the parties, the Commission granted the joint interim appeal and dismissed EPEC's Palo Verde plant in service filing. A written order to the same effect, containing findings of fact and conclusion of law, was issued by the Commission on November 18, 1985. As a consequence of the dismissal of the plant in service filing, the hearing on the merits in this docket was limited to EPEC's alternative construction work in progress (CWIP) filing.

On November 18, 1985, EPEC filed a motion for rehearing regarding the Commission's dismissal of the Palo Verde plant in service filing. The motion for rehearing was denied by the Commission on December 18, 1985.

On November 13, 1985, EPEC filed a Motion For Leave to File Amended Petition in order to include language in the petition for rate increase reflecting that EPEC is seeking to defer depreciation and costs currently being capitalized which would otherwise necessarily be recorded for Palo Verde Unit One on its commercial in-service date. On November 20, 1985, the examiner granted EPEC's motion and accepted EPEC's amended petition for a rate increase.

In the course of the proceeding, a number of motions have been filed on which the examiner has taken no action. To the extent to which no specific response has been made by the examiner to those motions, the examiner deems the motions to have been denied for want of merit.

## II. Jurisdiction

The Commission has jurisdiction over this application and the consolidated appeals by virtue of Sections 16, 17(d) and (e), 37 and 43 of the Act.

## III. Description of the Company

Electric energy in West Texas and South Central New Mexico is supplied by EPEC, which is headquartered in El Paso, the fourth largest city in the State of Texas.

Incorporated under the laws of the State of Texas in 1901, EPEC is an investor-owned electric utility engaged in the generation, purchase, transmission, distribution and sale of electricity in a two-state service area of approximately 10,000 square miles. EPEC supplies electric service to more than 200,000 customers in West Texas and South Central New Mexico. At the end of the 1984 calendar year, 163,434 customers in Texas and 42,469 in New Mexico received their electricity from EPEC.

Its service area extends 110 miles from the City of El Paso northwesterly to the Caballo Dam in New Mexico, and 120 miles southeasterly to Van Horn, Texas. The area includes the Cities of El Paso, Van Horn, Anthony and Clint in Texas; and Las Cruces, Hatch and the White Sands Missile Range in New Mexico. EPEC employs 1,067 persons in Texas and New Mexico, and operates in the Cities of Las Cruces and Sunland Park, New Mexico, and El Paso under franchise agreements that expire in the year 1993, 2009 and 2001, respectively.

In 1984, EPEC's fuel mix to generate electricity was 76 percent natural gas, 23 percent coal and one percent oil. Approximately 93 percent of fuel costs incurred through local generation went for natural gas, seven percent for coal and less than one percent for oil. 42.7 percent of all power sold by EPEC was purchased from other utilities.

EPEC and TNP are two-thirds and one-thirds participants, respectively, in an interconnection project known as the "Eastern Interconnection Project." The project consists of a 125-mile 345 KV transmission line from the White Sands Missile Range in New Mexico, to Artesia, New Mexico, and a back-to-back direct current terminal at Artesia. The "Eastern Interconnection Project" was placed in service on September 21, 1984.

EPEC owns a 15.8 percent undivided interest (200 megawatts from each of the three units) in the Palo Verde Nuclear Generating Station (PVNGS), located 50 miles west of Phoenix, Arizona. PVNGS is a joint effort of several Southwestern U.S. utilities to build the 3,810 megawatt nuclear generating station. Arizona Public Service Company is the operating agent for the project.

EPEC owns and operates or has interest in four electric generating stations, three of which are in the El Paso area. The Company owns a 7 percent undivided interest in two units at the Four Corners Generating Station near Farmington, New Mexico. The Company has a total net generating capacity of 989 megawatts.

#### IV. Quality of Service

The Commission staff is the only party to this proceeding which presented a quality of service witness. Mr. Paul Irish, a Consumer Analyst with the Commission's Consumer Affairs Office, testified regarding customer complaints against EPEC received by the Commission during the January 1, 1984 to December 31, 1984, test year.

According to Mr. Irish, the Commission received 115 complaints from 110 individual complainants concerning some aspect of service provided by EPEC during the test year, as well as three rate protest petitions signed by a total of 81 customers. Of the 115 individual complaints received, 87 were rate change protests.

Mr. Irish testified that of the remaining non-rate change related complaints, 22 were forwarded to EPEC for its investigation and response. It appears that the bulk of those complaints involved billing matters. EPEC was found by the Commission's Consumer Affairs Office to be at fault in four of the complaints and not at fault in 16 of the complaints. Fault could not be determined in the remaining two complaints. According to Mr. Irish, each of the responses from EPEC was adequate in its compliance with PURA and Commission rules.

Mr. Irish testified that EPEC makes information about complaint procedures and other customer services available to its customers both verbally and in writing through the Texas Residential Customer Handbook and Your Rights as a Customer publications, which are available both in English and in Spanish. After review of the customer service procedures of EPEC, Mr. Irish has found the Company's overall performance to be adequate. Mr. Irish has however recommended

that EPEC establish a mechanism for tracking the number and types of complaints the Company receives, in order to provide indicators of customer satisfaction or dissatisfaction with EPEC's customer service operations. The examiner concurs in this recommendation.

Based upon Mr. Irish's testimony, the examiner concludes that EPEC's quality of service is adequate and that the quality of EPEC's service is not such that it should be considered either favorably or adversely in fixing a reasonable return on invested capital, as permitted by Section 39(b) of the Act. Reviewing the complaint summary sponsored by Mr. Irish, it is apparent that EPEC's customers are concerned not so much with the quality of service but with the cost of service provided by EPEC.

#### V. Conservation and Load Management

P.U.C. SUBST. R. 23.22 requires in major rate change proceedings that a utility include a copy of its most recent energy efficiency plan in its filing and that testimony be presented regarding the extent to which the goals of the utility's energy efficiency plan have been reached, the status of all energy efficiency programs and studies being undertaken, the costs expended and benefits achieved to date, and the extent to which the utility's achievements through its energy efficiency plan have offset the need for new generating facilities or permitted the utility to reduce reliance upon less efficient generation facilities.

The rule provides that a utility may be permitted to recover part or all of its expenses associated with energy efficiency as part of the utility's cost of service, that capitalization or other treatment allowing a return on conservation expenditures may be permitted and that rate of return or return on equity may be adjusted as a consequence of the utility's energy efficiency activities.

In addition to the rather comprehensive provisions of P.U.C. SUBST. R. 23.22, Section 39(b) of the Act provides that in fixing a reasonable return on invested capital, the regulatory authority shall consider the efforts and achievements of the utility in the conservation of resources.

In support of the Company's energy conservation efforts and its current energy efficiency plan, EPEC presented the testimony of Mr. Michael C. Conley, Manager of EPEC's newly created Energy Management Division. The only other witness who testified on the subject was Ms. Carol Biedrzycki, a Research Associate with the Commission's Energy Efficiency Division. After review of the relevant prefiled testimony, exhibits and cross-examination, the examiner concludes that, although EPEC has devoted much more time and money on this subject than has previously been the case, EPEC's energy efficiency plan and its conservation efforts in general are woefully lacking.

As reflected on Schedule 2 of Ms. Biedrzycki's testimony, EPEC spent only \$69,381 on conservation and load management programs in calendar year 1984 (mainly for federally mandated RCS audits) but is contemplating spending approximately ten times that amount through calendar year 1985. As indicated by Mr. Conley on cross-examination, 8.8 full time equivalent professional or non-clerical persons have been allotted to EPEC's energy efficiency program, not including Mr. Conley, with budgeted salaries of \$20,000 to \$30,000 each. All of those individuals have been drawn from other divisions of EPEC and retrained as necessary, with the exception of Mr. Conley who had previously been employed by a utility in Missouri.

Given the personnel and budget allotted to EPEC's Energy Management Division, one would expect EPEC to have some very solid programs in place and positive benefits to report. By and large, the record reflects that that is not the case. The examiner has found Ms. Biedrzycki's criticism of EPEC's energy efficiency programs very convincing. Ms. Biedrzycki notes in her testimony that EPEC's energy efficiency plan fails to establish firm load objectives, to establish criteria for identifying appropriate alternatives or to present a supportable methodology for conservation and load management program selection. Further, both the original and updated plan fail to identify and evaluate energy efficiency alternatives.

As brought out on cross-examination of Mr. Conley, the Company's energy efficiency plan does not contain any load modification or load shifting objectives. Also, 60 to 70 percent of the energy management budget is devoted to residential programs although EPEC believes that the greatest opportunities for conservation and for energy efficiency development lie with commercial and industrial customers.

As to programs selected by EPEC, application of benefit/cost analysis to the programs included in the 1984 plan raises concerns about the suitability of these programs. As pointed out by Ms. Biedrzycki:

Although the results of benefit/cost analysis should not be the last word on the suitability of a program, the results of EPEC's financial analysis of programs chosen for implementation certainly seems woeful. As shown in Schedule 1, the benefit/cost ratios for all the programs are very low for the non-participant and the utility. The High Efficiency Appliance and Demonstration Program has a negative benefit/cost ratio even for the participant.

The examiner does not intend to address the merits of each of EPEC's current energy efficiency programs. However, it is useful to mention two of them for illustrative purposes.

Under the Company's Home Builder Program, one of the stated purposes of the program is, "to provide the homeowner with information about the more efficient, comfortable and quieter advantages of electric living." This implies to the

examiner that the Company is promoting, within the context of energy efficiency, the use of electricity over other forms of energy. The rebates offered under the Water Heater Program seem to confirm this. Under that program, EPEC will pay a customer \$40.00 for the replacement of an existing electric water heater with a high efficiency electric water heater. But, if the customer has non-electric water heating, EPEC will pay the customer \$125.00 for the purchase and installation of an energy efficient electric water heater. As pointed out by counsel for the City on cross-examination of Mr. Conley, the difference between the two rebates would encourage a person who has a gas water heater to switch to an electric water heater if he is in the market for a water heater. Mr. Conley testified that the rebate differential is attributable to a wiring allowance for the installation of the wiring for an electric water heater. In the examiner's opinion, the cause of the differential is irrelevant. The effect of the differential would clearly seem to encourage a customer to replace gas water heating with electric water heating, thus increasing the customer's level of electrical consumption. This is hardly a legitimate energy efficiency goal, especially when one considers that gas is a more cost effective fuel for water heating than is electricity.

The Company's response to criticism of its energy efficiency plan and energy efficiency programs is that P.U.C. SUBST. R. 23.22 was adopted quite recently and the Company has therefore had little time before filing this rate case to get its energy efficiency plans and programs in place. The examiner recognizes that that is in fact the case. However, that fact does not in any way transform an inadequate energy efficiency plan into an adequate one or a bad program into a good one. The Company in several instances has indicated that the next plan it files will contain a number of improvements. The examiner certainly hopes so because the current plan and programs in place suggest that although EPEC is going through the motions, it is not seriously attempting to achieve legitimate energy conservation goals.

Ms. Biedrzycki has recommended that the Commission strongly caution EPEC to scrutinize its current and proposed programs to properly identify and document expected impacts on the utility system and its customers for use in future proceedings. However, because this is the first time that EPEC's energy efficiency plan has been formally reviewed, Ms. Biedrzycki also recommends that EPEC be given the opportunity to comply with P.U.C. SUBST. R. 23.22 before negative consequences to EPEC in terms of its rate requests are recommended. The examiner fully concurs with Ms. Biedrzycki's position and recommends that the Commission give no consideration to EPEC's conservation and load management activities in setting a reasonable rate of return. However, absent improvement in this area, it may be appropriate to consider a rate of return penalty in EPEC's next rate case.



## VI. Invested Capital

EPEC proposed invested capital of \$1,127,876,274 in this case, composed of the following elements:

Plant in Service	\$ 458,813,732
Less Accumulated Depreciation	<u>(129,198,667)</u>
Net Plant	329,615,065
Construction Work in Progress	883,279,029
Working Cash Allowance	6,063,018
Materials and Supplies	5,019,548
Prepayments	3,186,317
Fuel Inventory	83,358
Deferred Taxes	(94,553,035)
Pre 1971 Investment Tax Credits	(757,940)
Customer Deposits	(2,966,146)
Injuries and Damages Reserve	(100,000)
Customer Advances for Construction	<u>(992,940)</u>
Total Invested Capital	\$1,127,876,274

### A. Net Plant

#### 1. Plant in Service

EPEC proposed a total company original cost of plant in service amount of \$458,813,732, representing the per book plant in service as of the end of the test year. The only party which challenged EPEC's plant in service number was the City of El Paso. City witness Thomas C. DeWard proposed two adjustments which if accepted would reduce EPEC's total company original cost of plant in service amount by \$19,082,131 for a total of \$439,731,601. A discussion of each adjustment follows.

a. Transfer of Palo Verde transmission line to CWIP. Mr. DeWard has proposed that the Palo Verde transmission line be removed from plant in service and transferred to CWIP on the basis that the transmission line is directly tied to PVNGS and PVNGS is not yet in service. EPEC's position is that the line is properly classified as plant in service because the line was carrying power and closed to the books during the test year. The Palo Verde transmission line has been utilized by EPEC to deliver start-up and construction power to PVNGS since December of 1984. Additionally, the line is utilized by EPEC for its firm sales to Imperial Irrigation District (IID) and economy sales to San Diego Gas & Electric, City of Riverside and Southern California Edison in California. Additionally, through cross-examination of Mr. DeWard EPEC has intimated that the line is also used by EPEC to obtain purchased power, although there is no evidence in the record to substantiate that intimation.

After review of the very slim evidence of record pertaining to this issue, the examiner is of the opinion that the transmission line is probably best treated as a part and parcel of PVNGS and therefore most appropriately treated as CWIP rather than plant in service. As discussed by Mr. DeWard, the supply of

construction and start-up power to PVNGS prior to its in-service date is essentially a function relating to the construction phase of PVNGS.

Additionally, as pointed out by Mr. DeWard, the use of the line for off system sales benefits EPEC as a whole although the benefit does not flow to the Texas jurisdictional ratepayer, since the sales presumably are not considered Texas jurisdictional sales. Use of the line for economy purchases by EPEC is a strong argument favoring inclusion of the line in plant in service prior to the in-service date of PVNGS, but as discussed previously, there is no evidence of record reflecting that the line is in fact used for such purchases. Even if the use of the line to make sales to IID and other western utilities was considered to be a solid basis for inclusion of the line in plant in service at this time, a question would necessarily arise as to whether the entire cost of the line should presently be included in plant in service, given that the line is surely underutilized pending placement of PVNGS in service. Until PVNGS is in service, one cannot say with certainty that the Palo Verde transmission line will be fully used and useful.

For the above reasons, the examiner recommends that Mr. DeWard's \$18,382,131 downward adjustment to plant in service attributable to transfer of the line costs from plant in service to CWIP be approved. However, in making this recommendation, the examiner recognizes that any booked depreciation as well as operations and maintenance expense and property taxes associated with the line must be reversed out and capitalized pending classification of the line as plant in service.

b. Removal of penalties associated with SPS transmission line. It appears that, due to EPEC's failure to meet construction deadlines in completing the SPS eastern interconnection transmission line, EPEC was required to pay \$700,000 in penalties. EPEC has included those penalties in the total cost of the transmission line which EPEC is requesting be included in plant in service. Mr. DeWard has proposed that the penalties paid by EPEC be deleted from plant in service on the basis that penalties do not constitute used and useful assets. According to Mr. DeWard, penalties incurred in the construction of the SPS transmission line should be charged directly to the shareholder and should not impact rates. The examiner fully concurs with Mr. DeWard on this matter. EPEC takes the position that one should not question whether penalties are used and useful, but rather, whether the total cost of the line, including penalties paid, is reasonable. The examiner finds this argument to be meritless. A penalty is the forfeiture of money to which an individual subjects himself by agreement in case of nonfulfillment of certain stipulations. A prudent individual insures that he is capable of fulfilling any agreement he enters into and then takes such steps as are necessary to fulfill that agreement. EPEC's actions in failing to avoid the penalty, assuming it was avoidable, or in agreeing to the penalty provisions of the Interconnection Agreement, if the penalty was not avoidable, were in the examiner's opinion, imprudent. The examiner notes that EPEC witness William Johnson fails to address the penalties

in his prefiled testimony. If the penalties were totally unavoidable by EPEC, the Company has failed to demonstrate that that is the case. EPEC cannot reasonably expect the ratepayer to bear the consequences of EPEC's failure to timely fulfill its obligations to SPS. The costs of mismanagement should be borne by the stockholder rather than the ratepayer, since the stockholder selects the management.

c. Summary. Based upon the foregoing discussion, the examiner finds that EPEC's requested total company plant in service figure of \$458,813,732 should be reduced by a total of \$19,082,131 for a recommended total company plant in service figure of \$439,731,601.

## 2. Accumulated Depreciation and Amortization

EPEC proposed that accumulated depreciation and amortization in the amount of \$129,198,667 be deducted from original cost of plant in service. As shown on Schedule D-1 of the Rate Filing Package, EPEC's accumulated depreciation and amortization balance as of the end of the test year was \$127,181,197. This proposed \$2,017,470 increase to accumulated depreciation and amortization represents one-half of EPEC's proposed increase to depreciation expense. Similarly, City witness DeWard has proposed a \$688,070 decrease to EPEC's requested accumulated depreciation and amortization number, representing one-half of the depreciation expense adjustment proposed by the City in this docket. Both EPEC and the City rely upon Commission precedent (see, Docket No. 5779, Application of Houston Lighting and Power Company for a Rate Increase, unpublished), in support of the propriety of this type of adjustment which is commonly referred to as the "one-half convention." The theory behind the adjustment is that, since test year end plant will be depreciated throughout the period rates will be in effect, accumulated depreciation increases and net plant decreases on the Company's books, although the Company continues to earn a return on the investment at the same level as if it were not being reduced by depreciation on a monthly basis. Therefore, to prevent an over or under collection of return, an adjustment should be made to recognize that accumulated depreciation is in fact increasing. Assuming that a utility will likely seek rate relief each year, one-half of the permitted increase or decrease in depreciation expense is factored into test year-end accumulated depreciation.

The Commission staff, through accounting witness Janet Simpson, has contested the propriety of the one-half convention and has proposed an adjustment to EPEC's accumulated depreciation and amortization number to reverse EPEC's adjustment. According to Ms. Simpson, the adjustment is not theoretically sound from an accounting or ratemaking point of view. Ms. Simpson believes that it is inappropriate to isolate one component of rate base and argues that the adjustment will cause an over or under recovery. According to Ms. Simpson, consistency requires that if this adjustment is made, pro forma adjustments for expected changes must be made to all other components of invested capital.

In the examiner's opinion, the one-half convention is fully supportable from a theoretical standpoint, and use of the adjustment without the additional entry of pro forma adjustments to all other invested capital components does not constitute an egregious inconsistency. Further, the examiner believes that the adjustment is mandated by prior Commission precedent. Therefore, the examiner recommends that Ms. Simpson's proposed adjustment to reverse EPEC's one-half convention adjustment be rejected.

Application of the one-half convention to the examiner's recommended depreciation expense results in an increase of \$1,371,792 to EPEC's test year depreciation and amortization balance, resulting in a \$645,678 decrease in EPEC's requested depreciation and amortization balance. The examiner finds EPEC to have a total depreciation and amortization balance of \$128,552,989.

### 3. Net Plant

The examiner proposes net plant in service of \$311,178,612 computed as follows:

Plant in Service	\$ 439,731,601
Accumulated Depreciation	(128,552,989)
Net Plant	\$ 311,178,612

#### B. Construction Work in Progress (CWIP)

As of test year end, EPEC had adjusted booked CWIP totaling \$1,089,561,822. Of this amount, EPEC has indicated on Schedule B of the Rate Filing Package that \$1,080,133,745 is attributable to the Palo Verde project and \$9,428,078 is non-Palo Verde related CWIP.

Of the total, EPEC has requested inclusion of \$873,850,951 or approximately 80 percent of Palo Verde CWIP and \$9,428,078 or 100 percent of non-Palo Verde CWIP, in rate base for purposes of maintaining EPEC's financial integrity. The aggregate amount of CWIP requested totals \$883,279,029.

In Docket No. 5700, EPEC's last general rate case, the Company was granted a total CWIP level of \$512,429,620 representing 50 percent of EPEC's booked CWIP related to Palo Verde and 100 percent of EPEC's non-Palo Verde related CWIP. Therefore, EPEC is, in this docket seeking an increase of \$370,849,409 over the level of CWIP included in EPEC's total invested capital in Docket No. 5700.

The only parties to this proceeding which prefiled testimony concerning CWIP, other than EPEC, are the City and the Commission staff. The City has recommended that EPEC be permitted to include as invested capital no more than 50 percent of EPEC's test year end CWIP. The Commission staff has recommended inclusion of 60 percent of EPEC's test year end CWIP.