



## Filing Receipt

**Received - 2021-11-19 02:24:15 PM**  
**Control Number - 52195**  
**ItemNumber - 403**

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

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

REBUTTAL TESTIMONY  
  
OF  
  
JAMES SCHICHTL  
  
FOR  
  
EL PASO ELECTRIC COMPANY

NOVEMBER 19, 2021

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## EXHIBITS

Exhibit JS-1R      Affidavit Regarding El Paso Electric Company's Rate Case Expenses

1 **I. Introduction and Qualifications**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is James Schichtl. My business address is 100 North Stanton Street, El Paso,  
4 Texas 79901.

5  
6 Q. HOW ARE YOU EMPLOYED?

7 A. I am employed by El Paso Electric Company ("EPE" or "Company") as Vice President of  
8 Regulatory and Governmental Affairs.

9  
10 Q. ARE YOU THE SAME JAMES SCHICHTL WHO SUBMITTED DIRECT  
11 TESTIMONY?

12 A. Yes, I am.  
13

14 **II. Purpose of Rebuttal Testimony**

15 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

16 A. First, I update EPE's proposed revenue requirement deficiency as supported by EPE's  
17 rebuttal testimony. Secondly, my rebuttal testimony summarizes at a high level the case  
18 presented by intervenors and Staff and provides a response from the Company's  
19 perspective. I also address positions taken by intervenors on a range of other issues from  
20 a Company policy perspective. These include proposed ratemaking treatment for certain  
21 generation assets, rate case expenses, and financial ring-fencing proposals put forth by  
22 Commission Staff ("Staff").  
23

24 Q. PLEASE SUMMARIZE THE COMPANY'S REVISED REQUESTED REVENUE  
25 REQUIREMENT AS SUPPORTED IN EPE'S REBUTTAL.

26 A. The Company's original filing presented a revenue deficiency for the Texas retail  
27 jurisdiction of \$41.8 million. Through the process of discovery and in preparing its  
28 rebuttal testimony, the Company identified additional adjustments to its base revenue  
29 requirement. EPE witness Jennifer Borden summarizes these adjustments on a Total  
30 Company basis and EPE witness Adrian Hernandez provides the resulting Texas  
31 jurisdictional revenues utilized in the determination of base rates in his rebuttal

1 testimony. After reflecting agreed changes to miscellaneous revenues and the shifting of  
2 COVID-19 and rate case expenses out of base rates into separate riders for recovery,  
3 EPE's total adjusted base revenue requirement request is now \$34.973 million. EPE  
4 witness Manuel Carrasco explains the determination of the rate riders agreed to by EPE  
5 in rebuttal.

6  
7 Q. IS EPE PRESENTING REBUTTAL FROM ANY WITNESSES WHO DID NOT FILE  
8 DIRECT TESTIMONY FOR EPE?

9 A. Yes. Mr. Paul M. Normand, a Principal with Management Applications Consulting, Inc.  
10 ("MAC"), provides rebuttal testimony in support of EPE's filed "2017 Analysis of System  
11 Losses", which he produced. Because the 2017 loss study was filed in PUCT Docket No.  
12 50058 and adopted by final order in that case, EPE did not file testimony in support of the  
13 study in this case. In spite of that fact, several parties have attacked the approved loss  
14 study and its use by EPE, some going so far as to recommend the loss factors determined  
15 there not be used. Mr. Normand explains in his rebuttal how the issues raised by these  
16 parties are inaccurate and the factors developed in the loss study and previously approved  
17 by the Commission should be accepted for use in this case.

18  
19 **III. Summary of EPE Rebuttal**

20 Q. PLEASE SUMMARIZE THE COLLECTIVE POSITIONS OF THE STAFF AND  
21 INTERVENORS FROM EPE'S PERSPECTIVE.

22 A. Taken as a whole, the positions of Staff and intervenors would significantly reduce or  
23 even eliminate the revenue deficiency identified by EPE in its filed case. The City of  
24 El Paso for example is recommending a base rate reduction of over \$10.8 million. Staff  
25 and the parties taking a position regarding return on equity ("ROE") are recommending a  
26 rate below the range of ROE's approved by the Public Utility Commission of Texas  
27 ("PUCT") in five of the six cases decided since 2018 where an ROE was adopted.<sup>1</sup> The  
28 slowing of cost recovery through longer amortizations or depreciation rate changes and  
29 significant disallowances to other test year expenses, including those incurred in response

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<sup>1</sup> RRA Regulatory Focus, S&P Global Market Intelligence, November 4, 2021.

1 to and in preparation for effects of the COVID 19 pandemic, contribute to the reduced  
2 base rate revenue deficiency.

3  
4 Q. IS THERE A CONTEXT IN WHICH YOU BELIEVE THE COMMISSION SHOULD  
5 CONSIDER EPE'S REQUEST IN THIS CASE?

6 A. Yes, reliability. The positions of parties in this case may have the effect of eroding EPE's  
7 ability to maintain reliability in the face of increasing complexity and uncertainty. This  
8 can result generally from the continuing pressure on EPE's ability to earn a reasonable  
9 return on investment, especially considering the growing need to invest to prepare for  
10 potential extreme weather. Or very specifically, EPE's ability to continue to provide  
11 reliable service is challenged when parties oppose EPE's ability to recover the cost of  
12 investing in spare generator parts that can significantly mitigate the extent of outages or  
13 in distribution "reliability" projects or even its test-year level of transmission operation  
14 and maintenance expense. Such recommendations are not supportive of a reliable  
15 system. The U.S Energy Information Administration ("EIA") calculates that, on average,  
16 U.S. electricity customers experienced just over eight hours of power interruptions in  
17 2020, the most since EIA began collecting reliability data in 2013.<sup>2</sup> The Commission  
18 should consider the outcome of this case in light of the growing reliability issues in the  
19 industry.

20  
21 Q. WHY IS RELIABILITY AN OVERARCHING CONSIDERATION FOR EPE AND  
22 TEXAS?

23 A. Reliability is a significant concern in Texas and the U.S. The combined effects of  
24 extreme weather conditions, the pandemic, and resource constraints resulted in blackouts  
25 in the west in 2020, and the February 2021 freeze event in the southwest, and in Texas in  
26 particular, revealed serious capacity and reliability issues and resulted in hundreds of  
27 deaths. EPE was able to avoid the most serious effects of the freeze event in part because  
28 the Company invested in weatherization at its generating stations and dual fuel capability  
29 at its newest station. Increasing energy demand with electrification, the expansion of

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<sup>2</sup> U.S. Energy Information Administration, "Today in Energy", November 10, 2021.

1 renewable generation and storage on the supply side, and environmental uncertainty will  
2 all require electric utilities to plan and prepare for different eventualities than in the past.

3  
4 **IV. Ratemaking for Certain Generation Plant**

5 Q. WITNESS CANNADY FOR THE OFFICE OF PUBLIC UTILITY COUNSEL  
6 ("OPUC") AND WITNESS LACONTE FOR FREEPORT-MCMORAN, INC. ("FMI")  
7 BOTH RECOMMEND THAT COSTS RELATED TO CERTAIN GENERATING  
8 UNITS AT TWO LOCAL PLANTS – RIO GRANDE AND NEWMAN – BE  
9 REMOVED FROM BASE RATES AND INSTEAD RECOVERED THROUGH A  
10 RIDER. WHAT IS THE BASIS FOR THIS RECOMMENDATION?

11 A. Both intervenors cite to EPE's most recently completed 2021 Integrated Resource Plan  
12 ("IRP"), and the Loads & Resources ("L&R") included with that report. The L&R table  
13 indicates "unit retirements" at the end of 2022 for the three generating units, and these  
14 witnesses interpret that to mean that it can be concluded these units will no longer be  
15 used and useful for providing service after 2022. With that belief, both witnesses  
16 recommend that cost recovery for these assets be removed from base rates and assigned  
17 instead to a rider that can be terminated at the time of retirement.

18  
19 Q. WOULD EPE AGREE WITH THIS CHANGE TO THE EXISTING COST  
20 RECOVERY MECHANISM FOR THE GENERATING UNITS IDENTIFIED?

21 A. No. There is no compelling reason to deviate from normal regulatory treatment for these  
22 facilities. The ratemaking treatment proposed by witness Cannady and LaConte is  
23 nowhere found in the Commission's rules or forms. The Commission's rules contemplate  
24 adjustments for events affecting rate base that occur after the test-year and specifically  
25 address post-test year adjustments for plant in service that is retired (16 Tex. Admin Code  
26 §25.231(c)(2)(F)). However, these units would not qualify for a post-test year adjustment  
27 because the rule requires, among other things, that the plant be retired prior to the rate  
28 year, which is not the circumstance here. And consequently, that is not what these  
29 witnesses have proposed.

30 Furthermore, the fundamental defect with this proposed special ratemaking  
31 treatment for the three generating units is their assumption regarding the retirement dates.

1 The current IRP and L&R on which witnesses Cannady and LaConte base their proposal  
2 is a resource planning analysis, and as explained by EPE witness Hawkins, it does not  
3 represent a firm operational decision to stop providing service to Texas customers from  
4 these generating units at the end of 2022. EPE witness Hawkins explains in his rebuttal  
5 the appropriate context in which the retirement dates for units in EPEs L&R should be  
6 considered. As he discusses, the decision to permanently remove a unit from operation  
7 reflects numerous other considerations, some of which are not incorporated in the L&R.  
8 These include the actual condition of the units, changing operational limitations related to  
9 fuel or emissions, and changing needs for additional capacity. EPE will place Newman  
10 Units 1 and 2 and Rio Grande Unit 7 in inactive reserve for several years after the  
11 planning retirement date for use as contingency reserves.

12 In contrast to the certainty regarding the cessation of use of facilities in the cases  
13 cited by these witnesses in their Direct testimony, the uncertainty associated with the date  
14 these EPE units would be finally removed from service makes this change in ratemaking  
15 unnecessary and improper. The normal ratemaking treatment remains adequate and  
16 appropriate for these generating assets.

17  
18 Q. CAN YOU EXPLAIN FURTHER HOW THE CASES CITED BY WITNESSES  
19 CANNADY AND LACONTE DIFFER FROM EPE'S SITUATION?

20 A. Yes. The situation in the retirement of SWEPCO's Dolet Hills power plant, a 650 MW  
21 lignite plant, and the situation concerning EPE's three units are fundamentally different.  
22 Dolet Hills will definitely be retired on December 31, 2021. (SWEPCO PFD at page 7)  
23 Thus, the retirement will occur while SWEPCO's rate case is pending or shortly after the  
24 case concludes. Welsh Unit 2, a 528 MW coal fired plant, the treatment of which  
25 Ms. Cannady relies upon for her proposal, was already retired at the time the rate case  
26 was filed. This timing is not at all comparable to EPE's three generation units, with a  
27 combined capacity of 195 MW, which will operate well after this rate case is over.

28 Likewise, the net book value of the assets is not at all comparable. The ALJs in  
29 the SWEPCO case found that the recovery of costs related to Dolet Hills through a  
30 separate rider did not comply with the Commission's cost-of-service rule, but that good  
31 cause exists for an exception to the rule based in part on the size of the Dolet Hills asset.



1 The relevant net book value of Dolet Hills is \$45.4 million for Texas customers and  
2 \$122.8 million on a total company basis. (SWEPCO PFD at 29). In contrast, for EPE's  
3 three plants, the Texas jurisdictional net book value is much less, being \$2,741,618,  
4 \$1,015,388, and \$ 1,726,260, for total of \$5,483,266.

5  
6 Q. CAN YOU GIVE AN EXAMPLE OF THE RETIREMENT PROCESS FOR A  
7 SPECIFIC GENERATING UNIT AND HOW OPERATIONAL CONSIDERATIONS  
8 CAN DEViate FROM THE L&R AND IRP?

9 A. Yes. Rio Grande Unit 6 ("RG6"), a 45 MW unit at Rio Grande Power Plant, is shown on  
10 the 2021 L&R with a 2021 retirement date. Parenthetically, 2014 is identified as the  
11 retirement date, and in fact the unit originally was identified in previous L&R tables as  
12 retiring in 2009. The capacity provided by RG6 was effectively replaced with the  
13 addition of the Montana Power Station in 2015-2016. However, RG6 was maintained in  
14 inactive reserve, periodically returned to service, and is currently available to EPE for  
15 contingency purposes through the summer of 2023. RG6 has remained a valuable  
16 contingency reserve used and useful to EPE customers to help maintain reliability at very  
17 low cost. Planning for retirement of units like RG6, which will be well past its useful  
18 lifespan at 63 years old when it retires in 2023, through the resource planning and L&R  
19 analysis is critical to ensure new resources are online and serving load when needed. But  
20 regarding a future retirement, as Mr. Hawkins explains, the retirement dates in an L&R  
21 do not represent the kind of certainty assumed by Ms. Cannady and Ms. LaConte to  
22 support their proposed ratemaking treatment.

23  
24 Q. IS THERE A FORMAL REGULATORY PROCESS THAT MUST OCCUR BEFORE  
25 A GENERATING UNIT IS PERMANENTLY REMOVED FROM SERVICE BY EPE?

26 A. Yes. Newman Units 1 and 2 and Rio Grande Unit 7 have CCNs granted by the  
27 New Mexico Public Regulation Commission and serve customer load in New Mexico.  
28 New Mexico statute requires that EPE receive approval for formal abandonment of a  
29 generating unit before it is removed from service, except for discontinuance of service in  
30 the usual course of business.

1 Q. WHAT IS THE NORMAL TREATMENT OF GENERATING UNIT COSTS IN  
2 RATES WITH RETIREMENTS BETWEEN RATE CASES?

3 A. The base rates established in a rate case reflect the level of rate base and accumulated  
4 depreciation for approved capital investment as of the end of the test year. Going  
5 forward, these same rates continue to apply even as physical assets continue to  
6 depreciate, and new investment is made to replace assets and account for growth. This  
7 replacement of invested capital occurs even in the case of fully depreciated assets such as  
8 a generating unit in the interim between rate cases.  
9

10 Q. WITNESS LACONTE NOTES THE GENERATION COST RECOVERY RIDER  
11 ("GCRR") AND ARGUES THAT THE RIDER TREATMENT AS PROPOSED IS  
12 EQUITABLE TREATMENT WITH GENERATION RESOURCES LEAVING  
13 SERVICE. IS THIS A VALID ARGUMENT IN YOUR OPINION?

14 A. First, there is no valid basis for arguing that these generating units will cease being used  
15 and useful in serving customers before EPE's next rate case, as I and Mr. Hawkins  
16 explain. So there is no reason to replace the existing ratemaking with a new mechanism  
17 to remove them from rates. Secondly, the statute and rule supporting the GCRR are  
18 specifically designed to provide cost recovery for a new generating unit, not to account  
19 for changes to existing facilities. In fact, the treatment of generating assets as proposed  
20 by OPUC and FMI was rejected in the development of the GCRR rule.<sup>3</sup> Rather than a  
21 rider designed to account for new investment and depreciation of existing assets, offset  
22 by customer growth, as with the Distribution Cost Recovery Factor, the GCRR was  
23 designed simply to add a rate rider for a new generating asset that is providing service  
24 until the costs can be added to base rates in a rate proceeding.

25 /

26 /

27 /

28 /

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<sup>3</sup> Project No. 50031, *Rulemaking Related to Generation Cost Recovery Rider (GCRR)*, Order (July 8, 2020), at page 13-14.

1 **V. RATE CASE EXPENSES**

2 Docket No. 46831 Expenses

3 Q. DOES STAFF WITNESS ANNA GIVENS RECOMMEND ADJUSTMENTS TO EPE'S  
4 REQUEST TO RECOVER DEFERRED EXPENSES RELATED TO DOCKET  
5 NO. 46831?

6 A. Yes. Ms. Givens recommends removing \$237,436.51 in legal expenses and \$4,686.15  
7 for reimbursement for the Cities' expenses.  
8

9 Q. DO YOU AGREE WITH COMMISSION STAFF WITNESS GIVENS' ADJUSTMENT  
10 TO REMOVE THESE EXPENSES?

11 A. No, given that EPE has since remedied what she had perceived as deficiencies in EPE's  
12 presentation. Ms. Givens removed the expenses for Duggins Wren, Mann & Romero,  
13 LLC ("DWMR") based on EPE's response to Staff 11-1, Attachment 2. In that Request  
14 for Information ("RFI"), Staff asked for the supporting documentation for expenses  
15 provided in EPE's response to Staff 6-1 requesting expenses to be recovered for Docket  
16 No. 46831 after August 31, 2017. Included in Staff 11-1, Attachment 2, were the cover  
17 pages of the invoices for DWMR for October 11, 2021; January 11, 2018; and  
18 February 13, 2018; however, the additional pages of the invoices that contained the hours  
19 worked on the dates the services were performed, tasks performed, name of billing  
20 attorney, and the number of hours worked, and the hourly rate, were inadvertently  
21 omitted.  
22

23 Q. HAS EPE PROVIDED THE NECESSARY SUPPORTING DOCUMENTATION FOR  
24 THESE COSTS?

25 A. Yes. EPE's supplemental response to Staff's 11<sup>th</sup>, Staff 11-1 Supplemental,  
26 Attachment-2, filed in this docket on November 5, 2021, includes the required data.  
27

28 Q. DID MS. GIVENS RECOMMEND ANY OTHER ADJUSTMENTS TO THE  
29 REQUESTED RECOVERY AMOUNT FOR DOCKET NO. 46831?

30 A. Yes. Ms. Givens recommends removing \$4,686.15 for reimbursement for the Cities'  
31 expenses. She states (page 19, lines 4-5):

1 "The invoices produced by EPE in its response to Staff's Eleventh RFI  
2 demonstrate that some of the Cities' expense relate to the time before  
3 August 31, 2017. The Commission's order in Docket No. 46831 only  
4 authorized EPE to establish a regulatory asset to record any rate-case  
5 expenses associated with that proceeding that EPE and the Cities rendered  
6 after August 31, 2017."  
7

8 Therefore, she recommends removing this amount from the amount to be  
9 recovered in the rate case rider.  
10

11 Q. DO YOU AGREE THAT THIS ADJUSTMENT WAS APPROPRIATE?

12 A. No. While the amount of \$4,686.15 is, as Ms. Givens states, related to services provided  
13 before August 31, 2017, the invoices for these services were provided to EPE after  
14 August 31, 2017. In addition, the invoice also contained charges for work performed  
15 after August 31, 2017, but the amounts were not separated on the invoice. For the  
16 calculation of deferred expenses, EPE used invoices after August 31, 2017, when  
17 invoices were received. Invoices received and paid before August 31, 2017, were  
18 included in the Docket No. 46831 rate case expense rider. Consequently, these costs  
19 have not been recovered by EPE, so inclusion with the current request will not result in  
20 EPE recovering them twice.  
21

22 Docket No. 52195

23 Q. DOES COMMISSION STAFF WITNESS GIVENS RECOMMEND ADJUSTMENTS  
24 TO EPE'S REQUEST TO RECOVER RATE CASE EXPENSES RELATED TO  
25 DOCKET NO. 52195?

26 A. Yes. Ms. Givens recommends removing \$2,675 in consulting expenses associated with  
27 hourly rates exceeding \$550 per hour and \$3,886.25 due to the missing supporting  
28 documentation for DGC Consulting.  
29

30 Q. DO YOU AGREE WITH COMMISSION STAFF WITNESS GIVENS' ADJUSTMENT  
31 ASSOCIATED WITH HOURLY RATES EXCEEDING \$550 PER HOUR RELATED  
32 TO DOCKET NO. 52195?

1 A. No I do not. The \$550 limit is not specified anywhere in 16 TAC § 25.245. 16 TAC  
2 § 25.245(c) does state

3 In determining the reasonableness of the rate-case expenses, the presiding officer  
4 shall consider the relevant factors listed in subsection (b) of this section and any  
5 other factor shown to be relevant to the specific case.  
6

7 This clearly leaves the decision of what is a reasonable per-hour rate up to the  
8 presiding officer.

9 Second, her broad rule of no hourly rates greater than \$550 does not specifically  
10 consider whether the hourly rate is appropriate for a witness with a particular specialty. I  
11 believe, given the very specialized field that this witness addresses, cash working capital  
12 and lead-lag studies; the limited number of qualified persons available on this topic; and  
13 his familiarity with EPE, which would expedite his review, his rate is justified. While  
14 with attorneys, Ms. Givens no doubt would have comparable rates to reach a conclusion  
15 whether a particular rate was excessive, she does not point to any other experts on this  
16 topic that charge less.

17 Finally, Ms. Givens also finds support for the limit in the Proposal for Decision in  
18 Docket No. 51415, *Application of Southwestern Electric Power Company for Authority*  
19 *to Change Rates*. But in that case the limit was applied to attorneys' hourly rates for  
20 which there was evidence of a broad range of rates below the \$550 limit and not to expert  
21 witnesses testifying on specialized technical subject matters. Moreover, in that case, the  
22 PFD expressly recognized that the \$550 limit should not be considered a rigid rule,  
23 stating "...there may be instances in the near term, not present her, where an electric  
24 utility could justify a request to recover in excess of \$550 per hour from its customers."<sup>4</sup>  
25

26 Q. DO YOU AGREE WITH COMMISSION STAFF WITNESS GIVENS' ADJUSTMENT  
27 TO REMOVE \$3,886.25 DUE TO MISSING DOCUMENTATION FOR DGC  
28 CONSULTING?

29 A. No, because EPE has since addressed the deficiency she perceived with EPE's support.  
30 In EPE's response to Staff 11-1, Attachment 1, EPE provided the invoices for costs  
31 incurred through July 2021 for Docket No. 52195. EPE has since supplemented that

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<sup>4</sup> Proposal for Decision at 330.

1 response with costs incurred through August 2021. The invoice for the difference is  
2 included in that response.

3  
4 Q. DO YOU PROPOSE ANY CHANGES TO EPE'S RECOVERY OF EPE'S  
5 REQUESTED RATE CASE EXPENSE OF REGULATORY ASSETS ASSOCIATED  
6 WITH VARIOUS TEXAS PROCEEDINGS?

7 A. Yes, in response to Commission Staff witness Ruth Stark, EPE proposes to remove all  
8 rate case related regulatory assets from rate base and recover these expenses through a  
9 rate rider.

10  
11 Q. WHAT IS EPE'S PROPOSAL TO RECOVER THE COSTS ASSOCIATED WITH  
12 THIS RATE CASE AND THE REGULATORY ASSETS REMOVED FROM RATE  
13 BASE?

14 A. EPE proposes to recover the current rate case expenses and the costs transferred from rate  
15 base in a rate rider over a three-year period.

16 Staff witness Givens recommends "EPE provide an update to the rate-case  
17 expense reporting along with its reply brief to support the amount of rate-case expenses  
18 incurred during the hearing on the merits and post hearing briefing. This reporting will  
19 allow the presiding officer to consider the final rate case expense updates in the Proposal  
20 for Decision to be issued in this docket." (page 22, line 6 through page 23 line 2) She  
21 also recommends that "EPE record a regulatory asset for its rate-case expenses incurred  
22 after it files its post-hearing briefing, along with the expenses incurred by [the City of  
23 El Paso]". She recommends that the Commission allow EPE to request recovery of the  
24 trailing expenses included in this regulatory asset in its next full base rate case and  
25 require it to provide supporting documentation at that time." (page 23, lines 10-14)

26  
27 Q. WOULD EPE BE AGREEABLE TO THE STAFF PROPOSAL?

28 A. Yes. EPE recommends that a rate rider be established based on actual case expenses  
29 recorded through post-hearings briefs and expenses recorded for other cited cases, with  
30 recovery over a three-year period. EPE will record any case expenses incurred after that  
31 point for recovery in a subsequent rate proceeding.

1  
2 Q. HAS EPE REVIEWED ITS INCURRED LEGAL EXPENSES IN THIS CASE FOR  
3 REASONABLENESS?

4 A. I have attached a signed affidavit to my testimony as Exhibit JS-1R attesting to the  
5 review of all legal expenses incurred by EPE in the course of this proceeding.  
6

7  
8 **VI. FINANCIAL RING-FENCING**

9 Q. STAFF WITNESS SEARS RECOMMENDS THE COMMISSION REQUIRE RING-  
10 FENCING MEASURES IN ADDITION TO THOSE ADOPTED IN EPE'S RECENT  
11 ACQUISITION CASE IN DOCKET NO. 49849. HOW DO YOU RESPOND?

12 A. The measures recommended by Staff are unnecessary and no need or deficiency in  
13 existing provisions has been identified. Staff's testimony does not discuss the extensive  
14 provisions adopted by settlement in Docket No. 49849.

15 Q. WHAT WAS THE BASIS THEN FOR STAFF'S RECOMMENDATION?

16 A. The rationale appears to be that because ring fencing provisions have been included in  
17 Commission orders in three recent rate-related dockets they should be required for EPE.  
18 Ms. Sears testimony states that the proposed measures were used in the other rate-making  
19 dockets. All of the referenced proceedings were resolved by settlement.  
20

21 Q. STAFF NOTED THAT CERTAIN PROTECTIVE MEASURES WERE PUT IN  
22 PLACE FOR EPE IN DOCKET NO. 49849, ITS RECENT MERGER PROCEEDING.  
23 WAS THAT PROCEEDING RESOLVED BY SETTLEMENT AS WELL?

24 A. Yes, and all of the protective measures and other commitments were implemented  
25 following close of the acquisition of EPE in July 2020.  
26

27 Q. WAS STAFF A PARTY IN THE ACQUISITION DOCKET NO. 49849?

28 A. Yes, and they joined in the settlement and stipulation of that recent case, which included  
29 the ring-fencing provisions. Those ring-fencing provisions were the result of an  
30 extensive negotiation between the multiple parties in that proceeding, including the Staff.

Staff's witness does not explain why provisions that were not included in settlement of the acquisition docket should now be added.

Q. ARE THE ADDITIONAL RATEMAKING PROVISIONS RECOMMENDED BY STAFF ACCOUNTED FOR IN THE EXISTING RING-FENCING ADOPTED IN DOCKET NO. 49849?

A. While the language of the new Staff provisions is not reflected in the Docket No. 49849 ring-fencing, I believe that the second and third requirements of the three recommended provisions are accounted for in existing ring-fencing – prohibiting the securing of EPE debt by non-EPE assets and prohibiting the commingling of assets.

Q. WHAT ABOUT THE FIRST OF THE THREE RECOMMENDED RING-FENCING MEASURES?

A. This measure, which I have included below, is not included in existing ring-fencing for EPE. The proposed measure is as follows:

*"Regulatory Return on Equity (ROE) Commitment. If EPE's issuer credit rating is not maintained as investment grade by S&P or Moody's, EPE will not use its below-investment-grade ratings to justify an argument in favor of a higher regulatory ROE."*

This measure, though recommended by Staff in each of the three cases cited by witness Sears, was, in fact, not reflected in the orders of those cases.

Q. DO YOU HAVE ANY COMMENT ON THIS PROVISION?

A. Yes. It is not clear how this provision qualifies as financial ring-fencing in the context of the other requirements, either those included in EPE's acquisition settlement or those cited by Staff in this case. While it may be appropriate to separate consideration of EPE's authorized ROE and the debt ratings of the EPE's parent or affiliates, it would not make sense to restrict EPE from arguing that a relatively low authorized ROE, for example the one proposed by Staff in this case, has negatively affected its credit ratings, cost of borrowing, or access to capital. It should also be noted that EPE is not rated by S&P.



1 Q. DID STAFF MAKE ANY OTHER RECOMMENDATIONS REGARDING RING-  
2 FENCING?

3 A. Yes. Staff also recommends that "the Commission requires EPE to commit to  
4 maintaining the financial protective policies ordered in Docket 49849." This  
5 recommendation is unnecessary. EPE is very aware of its compliance obligations with  
6 respect to the settlement of ring-fencing issues in Docket No. 49849 and has annual  
7 reporting requirements to that end. An additional order from the Commission in this case  
8 that EPE follow Commission orders from other cases seems excessive.  
9

10 **VII. CONCLUSION**

11 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

12 A. Yes, it does.

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PUC DOCKET NO. 52195**

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

**AFFIDAVIT REGARDING EL PASO ELECTRIC COMPANY'S  
RATE CASE EXPENSES**

**STATE OF TEXAS           §  
   §  
COUNTY OF EL PASO     §**

Before me, the undersigned authority, on this day personally appeared Matthew K. Behrens, who, upon being duly sworn, deposed and said the following:

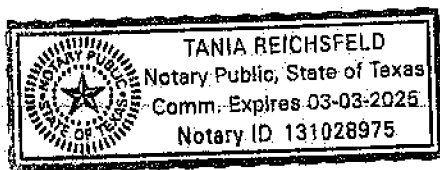
1. My name is Matthew K. Behrens. I am over the age of twenty-one years and am of sound mind and competent to testify as to the matters stated herein. I have personal knowledge of the facts set forth in this affidavit, and they are true and correct. I am competent to make this Affidavit.
2. I am Director of Energy Solutions for El Paso Electric Company (EPE). I joined EPE in 2017. Before my current role, I was a senior attorney for EPE for four years. Before that, I was Assistant General Counsel for El Paso Water Utilities – Public Service Board for two years; a senior project manager in EPE's Renewable and Emergent Technologies Group for nine months; Assistant City Attorney for the City of El Paso, Texas, for two years; State and Local Tax Director for Hunt Companies in El Paso, Texas, for two years; and a senior tax consultant for Deloitte in Houston, Texas, for five years. I have practiced law for over ten years, including cases before the Public Utility Commission of Texas.
3. The purpose of this affidavit is to support the reasonableness of the cost of the legal services procured by EPE for which recovery is requested in Docket No. 52195, which include costs for that proceeding as well as some remaining costs for its previous rate proceeding, Docket No. 46831, and the costs EPE incurred for two Distribution Cost Recovery Factor proceedings, Docket Nos. 49395 and 51348, and a Transmission Cost Recovery Factor proceeding, Docket No. 49148.
4. Duggins, Wren, Mann & Romero, LLP (DWMR) provided legal services to EPE in the course of the four proceedings identified in the previous paragraph. I have reviewed DWMR's billings for those proceedings and believe the time spent on the various tasks were directly in support of EPE's request in those proceedings and were reasonable and necessary. DWMR's billings were consistent with the standards set forth by the Commission in 16 Tex. Admin. Code (TAC) § 25.245 for recovery of rate case expenses.

5. EPE's legal consultants were required to perform high-level, complex work. The nature of utility law requires a legal team that not only has specialized legal knowledge and experience in administrative law, but also substantive knowledge of complex utility questions, such as cost of service analysis, transmission, generation, and financial matters. In addition, its regulatory legal counsel has extensive knowledge of the Company and its prior regulatory filings.
7. I have reviewed the hourly rates for the legal services EPE employed in the proceedings identified in paragraph 3. I am generally familiar with the rates charged by attorneys in large Texas markets, including El Paso, Dallas, Houston, and Austin, for regulatory work. I also compared the hourly billing rates charged by DWMR to the hourly billing rates submitted by other utilities in Project No. 41622 (related to the Commission's Rate Case Expense Rule, 16 TAC § 25.245). In my estimation, the hourly rates for the legal services EPE used are reasonable, cost-competitive, and appropriate for the work involved in this case.
8. In summary, I believe the rate case expenses EPE incurred for professional legal services are reasonable.

Further affiant sayeth not.

  
Matthew K. Behrens

SWORN TO AND SUBSCRIBED before me on the 19<sup>th</sup> day of November, 2021.



  
Notary Public, State of Texas

Tania Reichsfeld  
Notary's Printed Name

My commission expires: 3/3/2025