



## Filing Receipt

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

**OFFICE OF PUBLIC UTILITY COUNSEL'S  
STATEMENT OF POSITION**

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully submits this statement of position pursuant to 16 Texas Administrative Code (“TAC”) § 22.124. OPUC did not pre-file direct testimony on the issue of return on equity (“ROE”) but has reviewed the application, discovery responses, and testimony filed by El Paso Electric Company (“EPE” or the “Company”), as well as the direct testimony of the Staff of the Public Utility Commission of Texas (“Staff”) and Intervenors,<sup>1</sup> and takes the following positions:

**I. Introduction**

In this proceeding, EPE requests that the Commission approve a proposed ROE of 10.30%.<sup>2</sup> Staff and Intervenors contest EPE’s proposed ROE. Specifically, Staff and Intervenors recommend a lower ROE. OPUC agrees with Staff and Intervenors that the Company’s proposed ROE should be rejected by the Commission.

**II. Staff and Intervenors’ recommendations related to ROE**

Staff and Intervenors’ pre-filed direct testimony reflects slightly differing recommendations on the appropriate ROE for EPE. For ease of reference, Staff and Intervenors’ recommendations are summarized below.

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<sup>1</sup> OPUC’s reference to Intervenors specifically includes City of El Paso (“CEP”), Texas Industrial Energy Consumers (“TIEC”), and Freeport-McMoran Inc. (“FMI”). These specific intervenors have historically taken positions that are similar to OPUC’s position on ROE, capital structure and overall rate of return.

<sup>2</sup> Direct Testimony of Jennifer E. Nelson at 2 (Jun. 1, 2021) (“Nelson Direct”).

<b>Witness</b>	<b>ROE Recommendation</b>
Emily Sears (Staff) <sup>3</sup>	9.20%
Michael P. Gorman (TIEC) <sup>4</sup>	9.20%
Billie S. LaConte (FMI) <sup>5</sup>	9.56% (Maximum)
Daniel J. Lawton (CEP) <sup>6</sup>	9.0%

Each of the Intervenor and Staff witnesses cited in the table above conducted their own independent analysis of Ms. Nelson’s recommended ROE, and all concluded that the proposed ROE was too high. As stated by Mr. Lawton, “The bottom line is that Ms. Nelson's models and estimates are not reliable, in some cases theoretically flawed, and her equity return estimates and conclusion are unsupported.”<sup>7</sup> More, specifically, Ms. LaConte points out that state trends in ROEs have declined well below the 10.30% requested by EPE,<sup>8</sup> and that the risk premium assigned by Ms. Nelson is far in excess of what is actually warranted when EPE’s risk factors are considered.<sup>9</sup>

The evidentiary record demonstrates that EPE’s proposed ROE is inflated and should not be adopted by the Commission. As demonstrated by Staff and Intervenors’ pre-filed direct testimonies, an appropriate and reasonable ROE for EPE is significantly lower than the Company’s proposal. Thus, EPE’s proposed ROE should not be adopted by the Commission.

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<sup>3</sup> Direct Testimony of Emily Sears at 28:5 – 8 (Oct. 29, 2021) (“Sears Direct”).

<sup>4</sup> Direct Testimony of Michael P. Gorman at 58:23 (Oct. 22, 2021) (“Gorman Direct”).

<sup>5</sup> Direct Testimony of Billie S. LaConte at 23 (Oct. 22, 2021) (“LaConte Direct”).

<sup>6</sup> Direct Testimony of Daniel J. Lawton at 44:24 – 26 (Oct. 22, 2021) (“Lawton Direct”).

<sup>7</sup> *Id.* at 43:13-15.

<sup>8</sup> LaConte Direct at 5:16 – 22.

<sup>9</sup> *Id.* at 24:18 – 26:22.

### III. Conclusion

OPUC supports an ROE in the range of 9.0%-9.2%. OPUC reserves the right to amend or supplement this statement of position by the deadline set forth in the Commission's rules and to file rebuttal or cross-rebuttal testimony. OPUC reserves the right to participate at the hearing, cross-examine witnesses, and file briefs related to the issue of ROE. OPUC further requests such other relief to which it may be entitled.

Respectfully submitted,

Chris Ekoh  
Interim Chief Executive & Public Counsel  
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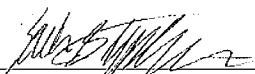
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**ATTORNEYS FOR THE OFFICE OF PUBLIC  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 5th day of January 2022, by facsimile, electronic mail, and/or first class, U.S. Mail.

  
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Zachary Stephenson