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Public Utility Commission of Texas

TO: Chairman Peter M. Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty
Commissioner Kathleen Jackson

All Parties of Record

FROM: Office of Policy and Docket Management

RE: **PUC Docket No. 52195**
SOAH Docket No. 473-21-2606 – *Application of El Paso Electric Company to Change Rates*

DATE: August 26, 2022

The Commission will consider a proposed order in this docket at a future open meeting. The parties shall file corrections or exceptions to the proposed order on or before 3:00 pm on Tuesday, September 6, 2022.

On June 10, 2022, the Commission referred this proceeding to the State Office of Administrative Hearings. Subsequently, the docket was returned to the Commission.

If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.

If there are no corrections or exceptions

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

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

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

PROPOSED ORDER

This Order addresses the application of El Paso Electric Company for authority to change rates. The parties filed an unopposed agreement between themselves. The Commission approves the tariffs attached to the agreement as exhibit 7, including the rates in those tariffs, to the extent provided in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. El Paso Electric is a Delaware corporation registered with the Texas secretary of state under filing number 1073400.
2. El Paso Electric owns and operates for compensation in Texas facilities and equipment to produce, generate, transmit, distribute, and sell electricity within its certificated service area.
3. El Paso Electric is required under CCN number 30050 to provide service to the public and retail electric utility service within its certificated service area.

Application

4. On June 1, 2021, El Paso Electric filed an application requesting authority to change its Texas retail rates based on a historical test year of January 1, 2020 through December 31, 2020, adjusted for known and measurable changes.
5. El Paso Electric originally requested a base-rate, non-fuel revenue requirement of \$573.8 million for its Texas retail jurisdiction, which represents an increase of \$69.7 million.

6. The requested net increase to base revenues is \$41.8 million after accounting for \$27.9 million in revenues that El Paso Electric is already recovering through its distribution cost recovery factor (DCRF) and its transmission cost recovery factor (TCRF) and excluding non-firm base revenue.
7. El Paso Electric requested that transmission and distribution investments previously approved for recovery through the DCRF and TCRF now be included in rate base, that the TCRF and DCRF be zeroed out, and that new baseline values be established for future TCRF, DCRF, and generation cost recovery rider (GCRR) filings.
8. El Paso Electric proposed an overall rate of return of 7.985% based on an equity ratio of 51%, a return on equity of 10.3%, and a cost of debt of 5.576%.
9. El Paso Electric requested to recover its rate-case expenses incurred in this docket over a four-year period to the extent those expenses could be finalized in this docket.
10. El Paso Electric requested a prudence determination for all capital additions placed into service during the period of January 1, 2020 through December 31, 2020.
11. El Paso Electric requested approval of a set of proposed tariff schedules reflecting the increased rates.
12. El Paso Electric proposed to amend its existing tariff related to the federal tax refund factor to credit current excess deferred federal income taxes to customers and account for potential changes to the corporate tax rate before its next base-rate proceeding.
13. Based on a 2019 nuclear decommissioning study, El Paso Electric projected that no additional funding is necessary for the Palo Verde nuclear station; therefore, El Paso Electric did not request to recover any costs for nuclear decommissioning in its application.
14. In SOAH Order No. 2 filed on June 29, 2021, the State Office of Administrative Hearings (SOAH) administrative law judges (ALJs) found the application sufficient.
15. In its rebuttal testimony filed on November 19, 2021, El Paso Electric reduced its requested increase in Texas retail base-rate revenues to \$35,693,538, after accounting for zeroed out revenues that El Paso Electric is already recovering through its DCRF and TCRF and excluding non-firm base revenue.

Effective Date of Proposed Rates

16. El Paso Electric proposed an effective date of July 6, 2021.
17. El Paso Electric requested that, if the new rates were suspended for a period beyond 155 days after El Paso Electric filed its application, then final rates would relate back and be made effective for consumption on and after the 155th day after the rate filing package was filed.
18. In SOAH Order No. 1 filed on June 11, 2021, the SOAH administrative law judge (ALJ) suspended the effective date of the proposed tariff changes for 150 days from El Paso Electric's originally proposed effective date (i.e., until December 3, 2021).
19. In SOAH Order No. 2 filed on June 29, 2021, the SOAH ALJ reset the effective date to May 31, 2022, as agreed to by the parties.
20. The 155th day after the rate filing package was filed is November 3, 2021.

Notice of the Application

21. Notice of El Paso Electric's application was published in English and Spanish once each week for four consecutive weeks in the *El Paso Times*, which is a newspaper having general circulation in El Paso, Hudspeth, and Culberson counties.
22. Notice of El Paso Electric's application was published in Spanish once each week for four consecutive weeks in *El Diario de El Paso*, which is a newspaper having general circulation in El Paso County.
23. El Paso Electric provided individual notice to its Texas retail customers by direct mailing, which was completed by August 25, 2021.
24. On June 1, 2021, El Paso Electric provided individual notice to each party in its last base-rate proceeding.¹
25. On June 1, 2021, El Paso Electric hand-delivered the complete rate-filing package to Commission Staff and the Office of Public Utility Counsel (OPUC).

¹ *Application of El Paso Electric Company to Change Rates*, Docket No. 46831, Order (Dec. 18, 2017).

26. In an affidavit filed by El Paso Electric on September 23, 2021, Judith M. Parsons, senior regulatory case manager for El Paso Electric's regulatory services department, attested to the publication of notice of the application and to the provision of notice of the application to El Paso Electric's Texas retail customers, each party in El Paso Electric's last base-rate proceeding, Commission Staff, and OPUC.
27. In SOAH Order No. 2 filed on June 29, 2021, the SOAH ALJs found the application sufficient.

Interventions

28. In SOAH Order No. 2 filed on June 29, 2021, the SOAH ALJs granted motions to intervene filed by the following parties: OPUC; the City of El Paso; Texas Industrial Energy Consumers (TIEC); Freeport-McMoRan, Inc.; the Texas Cotton Ginners' Association; and the University of Texas at El Paso.
29. In SOAH Order No. 3 filed on August 4, 2021, the SOAH ALJs granted motions to intervene filed by Vinton Steel, LLC; Walmart Inc.; and W. Silver, Inc.
30. In SOAH Order No. 4 filed on August, 23, 2021, the SOAH ALJs granted motions to intervene filed by the United States Department of Defense and all other Federal Executive Agencies and the following entities collectively known as the Rate 41 group: Ysleta Independent School District (ISD), El Paso ISD, Socorro ISD, Clint ISD, San Elizario ISD, Fabens ISD, Anthony ISD, Canutillo ISD, Tornillo ISD, the Housing Authority of the City of El Paso, El Paso County Housing Authority, the Region 19 Education Service Center, and the El Paso County Community College District.
31. In SOAH Order No. 6 filed on October 14, 2021, the SOAH ALJ granted a motion to intervene filed by Local 960 of the International Brotherhood of Electrical Workers, AFL-CIO.

Municipal Proceedings and Appeals of Municipal Actions

32. On April 15, 2021, El Paso Electric emailed a notice of intent to change rates to all municipalities in its Texas service area that retain original jurisdiction over its rates and services.

33. On June 1, 2021, El Paso Electric emailed a copy of the application and statement of intent to change rates to each incorporated municipality in its Texas service area that retains original jurisdiction over its rates and services.
34. On June 1, 2021, El Paso Electric hand-delivered a copy of its complete rate-filing package to the El Paso city clerk and the El Paso city attorney and mailed a copy to the City of El Paso's outside counsel via FedEx overnight delivery.
35. In an affidavit filed by El Paso Electric on September 23, 2021, Ms. Parsons attested to the provision of notice of the application and statement of intent to all municipalities in El Paso Electric's Texas service area that retain original jurisdiction over the electric utility's rates and services.
36. On July 29, 2021, El Paso Electric appealed to the Commission the actions of the Village of Vinton.
37. On August 26, 2021, El Paso Electric appealed to the Commission the actions of the Town of Anthony.
38. On September 3, 2021, El Paso Electric appealed to the Commission the actions of the Town of Van Horn.
39. In SOAH Order No. 5 filed on September 13, 2021, the SOAH ALJs consolidated the appeals of the actions of the Village of Vinton, the Town of Anthony, and the Town of Van Horn.
40. On November 1, 2021, El Paso Electric appealed to the Commission the actions of the City of El Paso.
41. In SOAH Order No. 7 filed on November 10, 2021, the SOAH ALJs consolidated the appeal of the actions of the City of El Paso with the other appeals of municipal actions in this proceeding.
42. On December 10, 2021, El Paso Electric appealed to the Commission the actions of the following municipalities exercising original jurisdiction within their service territory: the Town of Horizon City, the Town of Clint, the City of San Elizario, and the City of Socorro.

43. In corrected Order No. 8 filed on December 17, 2021, the SOAH ALJs consolidated the appeals of the actions of the Town of Horizon City, the Town of Clint, the City of San Elizario, and the City of Socorro with the other appeals of municipal actions in this proceeding.

Referral to SOAH

44. On June 10, 2021, the Commission referred this proceeding to SOAH.
45. On June 28, 2021, the Commission filed a preliminary order.
46. The hearing on the merits convened on January 10, 11, 12, 13, 18, and 19, 2022. At the hearing, evidence was admitted, and testimony was taken.
47. In SOAH Order No. 10 filed on January 19, 2022, the SOAH ALJs abated the proceeding for discussions regarding an agreement between the parties.
48. On July 15, 2022, El Paso Electric and all the other parties filed an unopposed agreement between themselves.
49. The agreement states that all the signatories either agree to or do not oppose the terms of the agreement, and all of the parties to this proceeding are signatories.
50. The Rate 41 group joined the agreement contingent on obtaining approval from each of its members. The Rate 41 group reserved the right to withdraw from the agreement before a final order was issued by the Commission if all necessary board approvals were not obtained.
51. In SOAH Order No. 17 filed on July 21, 2022, the SOAH ALJ admitted the evidence listed in that order, dismissed the proceeding from SOAH's docket, and remanded the proceeding to the Commission.

Agreement – Base-Rate Revenues

52. The signatories agreed on a base-rate revenue increase of \$5.149 million in Texas-base-rate and non-firm revenues, after accounting for zeroed out revenues that El Paso Electric is already recovering through its DCRF and TCRF, effective for electricity consumed on and after November 3, 2021.
53. The agreed base-rate revenue increase is reasonable.

Agreement – Invested Capital

54. The signatories agreed that in any future TCRF or base-rate proceeding, the original cost of \$16.8 million for the Isleta transmission right-of-way will be reduced such that the net plant-in-service balance on a Texas retail basis as of December 31, 2022 will be \$7.962 million.
55. The signatories agreed on a disallowance of \$500,000 of the original cost on a total-company basis of the spare LMS 100 Turbine and spare LMS 100 Booster at the Montana Power Station.
56. The signatories agreed that, except for the disallowances described in this Order regarding the Isleta transmission right-of-way and the Montana Power Station, all of El Paso Electric's investment since September 30, 2016 through December 31, 2020, as presented in El Paso Electric's rate-filing package, is used and useful, was prudently incurred, and is properly included in rate base.
57. Except for the disallowances described in this Order regarding the Isleta transmission right-of-way and the Montana Power Station, all of El Paso Electric's investment since September 30, 2016 through December 31, 2020, as presented in El Paso Electric's rate-filing package, is used and useful, was prudently incurred, and is properly included in rate base.

Agreement - Depreciation

58. The signatories agreed for El Paso Electric to use the depreciation rates in attachment HG-3 of the direct testimony of Commission Staff witness Heidi Graham beginning with the effective date of November 3, 2021. Exhibit 1 to the agreement shows the agreed depreciation rates.
59. It is appropriate for El Paso Electric to use the agreed depreciation rates as set forth in exhibit 1 to the agreement.

Agreement – Return and Capital Structure

60. The signatories agreed on the following, effective November 3, 2021: a weighted average cost of capital of 7.501% based on a 5.576% cost of debt, an authorized return on equity of 9.35%, and a regulatory capital structure of 49% long-term debt and 51% equity.

61. Under the agreement, the agreed weighted average cost of capital, cost of debt, return on equity, and capital structure will apply when calculating El Paso Electric's allowance for funds used during construction and in proceedings where the weighted average cost of capital is required (e.g., TCRF, DCRF, and GCRR proceedings).

Agreement – Nuclear Decommissioning

62. The signatories agreed that no costs for nuclear decommissioning are included in El Paso Electric's cost of service.

Agreement – COVID-19 Costs

63. On March 6, 2020, the Commission filed in Project No. 50664 an order authorizing electric utilities to record as a regulatory asset expenses resulting from the effects of COVID-19, including but not limited to non-payment of qualified customer bills.²
64. The signatories agreed on a separate COVID-19 surcharge to recover \$6,297,803 of deferred COVID-19 costs incurred through December 31, 2020 over a four-year period (i.e., \$1,574,451 annually).
65. The signatories agreed that none of the costs included in the COVID-19 surcharge are included in the rate base or base-rate revenue requirement approved in this Order.
66. None of the costs included in the COVID-19 surcharge are included in the rate base or base-rate revenue requirement approved in this Order.
67. El Paso Electric agreed not to include any carrying costs, including but not limited to rate of return, on the unamortized amount of the regulatory asset recovered through the COVID-19 surcharge.
68. The signatories agreed for the COVID-19 rider and the four-year amortization not to relate back and instead to begin in the first billing cycle after the date of this Order.
69. El Paso Electric agreed to file for approval of a true-up of the previous year by March 31 of each year to account for any changes in the bad-debt amount and additional expenses

² *Issues Related to the State of Disaster for the Coronavirus Disease 2019*, Project No. 50664, Order Related to Accrual of Regulatory Assets (Mar. 26, 2020).

related to COVID-19 that were incurred after the test year and were deferred under the Commission's order filed in Project No. 50664 on March 26, 2020.

70. It is appropriate for El Paso Electric to recover its regulatory asset of expenses resulting from the effects of COVID-19 through December 31, 2020 in a separate COVID-19 surcharge rider.
71. The treatment of the COVID-19 rider as described by this Order is appropriate.

Agreement – Retiring-Plant Rider

72. The signatories agreed for El Paso Electric's net investment and costs associated with three retiring generation plants—Rio Grande Unit 7 and Newman Units 1 and 2—to be removed from its base rates and recovered through a separate rider that is in addition to the revenue requirement approved in this Order.
73. The signatories agreed for the retiring-plant rider to be in an amount of \$5,935,946 per year based on a return on equity of 9.35% and the agreed depreciation rates as set forth in exhibit 1 to the agreement.
74. The signatories agreed for the retiring-plant rider to continue in effect so long as there is continued electric service provided from each unit, including contingent service for reliability purposes, to Texas ratepayers. The signatories agreed that as each unit ceases to provide service to customers, the rider will be adjusted to reflect the removal of the unit from service.
75. The signatories agreed that the retiring-plant rider would relate back to November 3, 2021.
76. The signatories agreed on El Paso Electric being required to file supporting evidence in its next base-rate proceeding regarding the retirement dates chosen by El Paso Electric for the three retiring generation plants. The signatories agreed that these retirement dates would be subject to challenge by Commission Staff and intervenors in that docket.
77. The signatories agreed that any over-recovery by El Paso Electric because of an incorrect retirement date for Rio Grande Unit 7 or Newman Units 1 or 2 would be subject to a refund to be provided to ratepayers in accordance with the cost allocation and rate design approved in this Order.

78. Any over-recovery by El Paso Electric because of an incorrect retirement date is subject to a refund to ratepayers in accordance with the cost allocation and rate design approved in this Order.
79. The signatories agreed that, except to adjust the charges in the retiring-plant rider as each unit discontinues electric service to Texas ratepayers, any necessary updates to the rider to reflect changing costs would occur in a future base-rate proceeding.
80. The signatories agreed that the treatment of any undepreciated capital remaining after discontinuing cost recovery through the retiring-plant rider for any applicable generation unit would be addressed in a future base-rate proceeding.
81. The establishment and treatment of the retiring-plant rider as described in this Order is appropriate.

Rate-Case Expenses

82. The signatories agreed to remove rate-case expenses in the amount of \$4,087,168 from base rates.
83. The signatories agreed for El Paso Electric's rate-case expenses in this proceeding in the amount of \$4,267,270 to be recovered through a separate rider over a four-year period. This amount is not included in the agreed base-rate revenue requirement.
84. The amount of \$4,267,270 includes El Paso Electric's reasonable and necessary rate-case expenses incurred in this proceeding through March 31, 2022, including reimbursement for the City of El Paso's expenses, after an agreed disallowance of \$3,275.
85. The rate-case expenses reflected in the \$4,267,270 amount are reasonable and necessary.
86. The signatories agreed for the rate-case expense rider and the four-year amortization not to relate back and instead to begin in the first billing cycle after the date of this Order.
87. The signatories agreed for rate-case expenses incurred after March 31, 2022 to be considered in El Paso Electric's next base-rate proceeding.
88. The signatories agreed that, for the purposes of rate-case expenses in this proceeding, the term *incurred* means when the underlying service that resulted in the rate-case expense was performed.

89. It is appropriate to defer the review of any additional rate-case expenses incurred in this proceeding by El Paso Electric or the City of El Paso after March 31, 2022 to El Paso Electric's next base-rate proceeding.
90. The signatories agreed that, if the Commission's order in Docket No. 52040³ modified any of the expenses from that proceeding included in the rate-case expense rider, El Paso Electric would make a compliance filing to adjust the rider in accordance with the Commission's order in Docket No. 52040.

Excess Deferred Income Taxes

91. The signatories agreed to return excess deferred income taxes (EDIT) in a total-company amount of \$24,091,867 (\$3,106,666 unprotected and \$20,985,201 stub-period protected) to Texas customers over a four-year period through a credit rider. The credit rider will return \$4,717,101 per year on a Texas retail basis, i.e., \$6,098,168 after grossing up for taxes.
92. The signatories agreed for the EDIT credit rider and the four-year amortization not to relate back and instead to begin in the first billing cycle after the date of this Order. However, the signatories agreed that the amount that would otherwise be returned to customers in the fourth year, and all previous years (if necessary), would be used first as an offset against the relate-back surcharge as provided in the agreement, with any remaining amount being returned in the amortization.
93. The signatories agreed to revise the EDIT credit rider if the Internal Revenue Service determined that amounts included in the rider violated tax normalization requirements.
94. The treatment of the EDIT credit, as described in this Order, is appropriate.

Relate-Back Surcharge

95. The signatories agreed to offset the amount of any relate-back surcharge applicable to the base rates and the retiring-plant rider on a rate class-by-rate class basis with the EDIT credit that would otherwise be refunded to customers in the rate class.

³ *Application of El Paso Electric Company for Advanced Metering System (AMS) Deployment Plan, AMS Surcharge, and Non-Standard Metering Service Fees, Docket No. 52040 (pending).*

96. Using the EDIT credit to offset any relate-back surcharge is appropriate.
97. The signatories agreed that any EDIT credit remaining after the offset against the relate-back surcharge would be refunded in the amortization.
98. Refunding in the amortization any EDIT credit remaining after the offset against the relate-back surcharge is appropriate.
99. The signatories agreed that, if any customer still owed a relate-back balance to El Paso Electric after using the EDIT credit as an offset, the customer would be surcharged over a 12-month period to recover that balance.
100. Surcharging any net relate-back balance owed over a 12-month period is appropriate.
101. The signatories agreed that, if a rate class is due a net refund under the relate-back rider and the retiring-plant rider, the refund would be made to the customer as a credit over a 12-month period.
102. Refunding any net refund under the relate-back rider as a credit over a 12-month period is appropriate.
103. El Paso Electric agreed to file a schedule showing its calculation of the relate-back rates and the corresponding offset of the EDIT credit in a separate docket.
104. El Paso Electric agreed to include, as part of the schedule calculating the relate-back rates and the EDIT credit offset, its proposed tariffs for any refunds or surcharges resulting from the relate-back tariff, including any necessary adjustment to the EDIT credit rider.
105. It is appropriate for the Commission to require El Paso Electric to file in a separate docket a schedule calculating the relate-back rates and the EDIT credit offset and to include its proposed tariffs for any resulting refunds or surcharges or necessary adjustments to the EDIT credit rider.
106. The treatment of the relate-back surcharge, as described in this Order, is appropriate.

El Paso Electric's Existing DCRF and TCRF

107. The signatories agreed for El Paso Electric's existing DCRF and TCRF to be set to zero.

108. Under the rates approved in this Order, El Paso Electric's existing DCRF and TCRF are set to zero.
109. The signatories agreed that no refund is necessary for El Paso Electric's collections under its TCRF through December 31, 2020.
110. The signatories agreed that no refund is necessary for El Paso Electric's collections under its DCRF.
111. It is appropriate for there to be no refund for El Paso Electric's collections under its TCRF through December 31, 2020 or for its collections under its DCRF.

Baseline Values for DCRF, TCRF, and GCRR Filings

112. The signatories agreed on a baseline for future DCRF filings. The agreed baseline is set forth in exhibit 2 to the agreement.
113. The signatories agreed on a baseline for future TCRF filings. The agreed baseline is set forth in exhibit 3 to the agreement.
114. The signatories agreed on a baseline for future GCRR filings. The agreed baseline is set forth in exhibit 4 to the agreement.
115. The agreed GCRR baseline includes a jurisdictional allocator in accordance with the treatment of Newman Unit 6 as a system resource.
116. The DCRF, TCRF, and GCRR baselines—as set forth in exhibits 2, 3, and 4 to the agreement, respectively—are appropriate.

Rate Design

117. The signatories agreed on the rate design and allocations between the rate classes set forth in exhibits 5 and 6 to the agreement.
118. The rate design and allocations set forth in exhibits 5 and 6 to the agreement are reasonable and appropriate.

Tariffs

119. The signatories agreed on the tariffs and rates set forth in exhibit 7 attached to the agreement.

120. The tariffs and rates set forth in exhibit 7 attached to the agreement incorporate the base-rate revenue increase approved by this Order.
121. The tariffs and rates set forth in exhibit 7 attached to the agreement accurately reflect the rates approved by this Order.
122. The tariffs and rates set forth in exhibit 7 attached to the agreement are just and reasonable.

Additional Ring-Fencing Provisions

123. El Paso Electric agreed that its debt would not be secured by non-El Paso Electric assets.
124. El Paso Electric agreed that, except for access to the utility money pool and use of shared assets governed by the Commission's affiliate rules, El Paso Electric would not commingle its assets with those of Sun Jupiter Holdings, LLC or IIF US Holding 2 LP.
125. The two additional ring-fencing provisions as set forth in this Order are appropriate.

Collaboration Regarding Distributed Generation

126. In paragraph 9 of attachment A to the Commission's order filed in Docket No. 46831 on December 18, 2017, El Paso Electric committed to collaborating with interested stakeholders before proposing any modification of the rate design agreed to in that proceeding for customers who have distributed generation.
127. El Paso Electric agreed to begin the collaboration described in paragraph 9 of attachment A to the Commission's order filed in Docket No. 46831 on December 18, 2017 within 90 days of the date of this Order.

Federal Tax Refund Factor

128. El Paso Electric withdrew its request to amend its schedule related to the federal tax refund factor. Therefore, the schedule expires on the effective date of the base rates approved in this Order.

Interim Rates

129. In SOAH Order No. 17 filed on July 21, 2022, the SOAH ALJ approved the agreed tariffs, effective August 1, 2022, subject to refund or surcharge to the extent that the interim rates differ from the rates approved in this Order.

Informal Disposition

130. More than 15 days have passed since the completion of notice provided in this docket.
131. The only parties to this proceeding are El Paso Electric; Commission Staff; OPUC; the City of El Paso; TIEC; Freeport-McMoRan, Inc.; the Texas Cotton Ginners' Association; the University of Texas at El Paso; Vinton Steel, LLC; Walmart Inc.; W. Silver, Inc.; the United States Department of Defense and all other Federal Executive Agencies; the Rate 41 group; and Local 960.
132. All parties either agreed to or do not oppose the terms of the agreement, although the Rate 41 group reserved the right to withdraw from the agreement before a final order was issued by the Commission if all necessary board approvals from each of its members were not obtained.
133. No hearing is needed.
134. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. El Paso Electric is a public utility as that term is defined in PURA⁴ § 11.004(1) and an electric utility as that term is defined in PURA § 31.002(6).
2. The Commission exercises regulatory authority over El Paso Electric and jurisdiction over the subject matter of this application under PURA §§ 14.001, 32.001, 36.001 through 36.211, and 39.552.
3. The Commission has jurisdiction over an appeal from municipalities' rate proceedings under PURA § 33.051.
4. SOAH exercised jurisdiction over this proceeding under PURA § 14.053 and Texas Government Code § 2003.049.

⁴ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

5. This docket was processed in accordance with the requirements of PURA, the Administrative Procedure Act,⁵ and Commission rules.
6. El Paso Electric provided notice of the application in compliance with PURA § 36.103 and 16 TAC § 22.51(a) and filed affidavits attesting to the completion of notice in compliance with 16 TAC § 22.51(d).
7. Notice of the hearing on the merits was given in compliance with Texas Government Code §§ 2001.051 and 2001.052.
8. El Paso Electric's application complied with PURA § 36.112(b)(2) and 16 TAC § 25.246(b)(2) and (3), which allow for an electric utility's revenue requirement to be based on information submitted for a test year and updated to include information that reflects the most current actual or estimated information regarding increases or decreases to the electric utility's cost of service.
9. The rates approved by this Order are just and reasonable under PURA § 36.003(a).
10. The rates approved by this Order are not unreasonably preferential, prejudicial, or discriminatory and are sufficient, equitable, and consistent in application to each customer class under PURA § 36.003(b) and 16 TAC § 25.234(a).
11. In accordance with PURA § 36.051, the revenue produced by the rates approved by this Order permits El Paso Electric a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses.
12. The rates approved by this Order comply with PURA § 36.053 with regard to invested capital.
13. The depreciation rates set forth in exhibit 5 to the agreement comply with the requirements of PURA § 36.056 and 16 TAC § 25.231(b)(1)(B).
14. El Paso Electric's invested capital through the end of the test year meets the requirements of PURA § 36.058.

⁵ Tex. Gov't Code §§ 2001.001–.903.

15. Because El Paso Electric did not incur any affiliate expenses during the test year, the requirements under PURA § 36.058 do not apply.
16. The rates approved by this Order include only expenses that are reasonable and necessary to provide service to the public under 16 TAC § 25.231(b).
17. The rates approved by this Order do not include any expenses prohibited from recovery under PURA §§ 36.061(a) and 36.062 and 16 TAC § 25.231(b)(2).
18. The adjustments to El Paso Electric's test-year data are known and measurable under 16 TAC § 25.231(a) and (c)(2)(F) and 16 TAC § 25.246(b)(5).
19. Under PURA § 33.023(b), El Paso Electric is required to reimburse the City of El Paso for its reasonable rate-case expenses incurred in this proceeding.
20. The rates approved by this Order are effective for consumption on and after November 3, 2021 under PURA § 36.211(b) and 16 TAC § 25.246(d)(1).
21. Under 16 TAC § 22.125(e), the interim rates approved in SOAH Order No. 17 filed on July 21, 2022 are subject to refund or surcharge to the extent they differ from the rates approved in this Order.
22. This proceeding meets the requirements for informal disposition in 16 TAC § 22.35.

III. Ordering Paragraphs

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

1. The Commission approves the tariffs attached to the agreement as exhibit 7, including the rates in those tariffs, to the extent provided in this Order.
2. The final rates approved by this Order are effective for consumption on or after November 3, 2021, except that the COVID-19 rider and its four-year amortization and the EDIT credit rider and its four-year amortization do not relate back and are effective with the first billing cycle after the date of this Order.

3. Within 20 days of the date of this Order, El Paso Electric must file a clean record copy of the tariffs approved in this Order, with the approved effective dates, with Central Records to be marked *Approved* and filed in the Commission's tariff books.
4. Within 60 days of this Order, El Paso Electric must file a schedule showing its calculation of the relate back of rates to November 3, 2021, and the corresponding offset to the EDIT credit rider. El Paso Electric must file the schedule in *Compliance Docket for the Final Order in Docket No. 52195 (Application of El Paso Electric Company to Change Rates)*, Docket No. 53997. In its filing, El Paso Electric must include its proposed tariffs for any refunds or surcharges resulting from the relate back, including any necessary adjustment to the EDIT credit rider.
5. The Commission authorizes El Paso Electric to establish a regulatory asset to record any rate-case expenses associated with this proceeding that El Paso Electric and the City of El Paso incurred after March 31, 2022. The Commission does not authorize El Paso Electric to accrue any return on this regulatory asset. In El Paso Electric's next base-rate proceeding, El Paso Electric and the City of El Paso must seek Commission review of any rate-case expenses recorded in this regulatory asset.
6. If the final order in Docket No. 52040 modifies any of the expenses included in the rate-case expense rider, El Paso Electric must make a filing in a separate docket to adjust the rider to reflect the Commission's final order within 30 days of the date that the Commission's final order in Docket No. 52040 is final under Texas Government Code § 2001.144.
7. By March 31 of each year, El Paso Electric must file for approval of a true-up of the previous year to account for any changes in the bad-debt amount and additional expenses related to COVID-19 that were incurred after the test year and were deferred under the Commission's order filed in Docket No. 50664 on March 26, 2020.
8. The Commission approves the depreciation rates for the asset categories set forth in exhibit 1 attached to the agreement.
9. The Commission approves the TCRF baseline values set forth in exhibit 2 attached to the agreement.

10. The Commission approves the DCRF baseline values set forth in exhibit 3 attached to the agreement.
11. The Commission approves the GCRR baseline values set forth in exhibit 4 attached to the agreement.
12. El Paso Electric must allocate the revenue requirement approved by this Order between the rate classes in the manner set forth in exhibit 5 attached to the agreement.
13. The retiring-plant rider approved in this Order must be adjusted as each of following units discontinues electric service to Texas ratepayers: Rio Grande unit 7 and Newman units 1 and 2.
14. El Paso Electric must offset the amount of any relate-back surcharge applicable to the base rates and the retiring-plant rider on a rate class-by-rate class basis with the EDIT credit that would otherwise be refunded to customers in the rate class. Any EDIT credit remaining after the offset against the relate-back surcharge must be refunded in the amortization.
15. If a customer owes a relate-back balance to El Paso Electric after the EDIT credit is used as an offset, the customer must be surcharged over a 12-month period to recover that balance.
16. If a rate class is due a net refund under the relate-back rider and the retiring-plant rider, the refund must be made to the customer as a credit over a 12-month period.
17. El Paso Electric's debt must not be secured by non-El Paso Electric assets.
18. Except for access to the utility money pool and use of shared assets governed by the Commission's affiliate rules, El Paso Electric must not commingle its assets with those of Sun Jupiter Holdings, LLC or IIF US Holding 2 LP.
19. El Paso Electric must begin the collaboration with interested stakeholders as described in paragraph 9 of attachment A to the Commission's order in Docket No. 46831 within 90 days of this Order.
20. In its next base-rate proceeding, El Paso Electric must file supporting evidence regarding its chosen retirement dates for retiring generation plants Rio Grande Unit 7 and Newman Units 1 and 2.

21. El Paso Electric must refund to ratepayers any over-recovery that is caused by an incorrect retirement date for Rio Grande Unit 7 or Newman Units 1 or 2 in accordance with the cost allocation and rate design approved in this Order.
22. 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.
23. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the _____ day of _____ 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER