



Control Number: 57149



Item Number: 34

PUC DOCKET NO. 57149
SOAH DOCKET NO. 473-25-05084

**APPLICATION OF EL PASO
ELECTRIC COMPANY TO
RECONCILE FUEL COSTS**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

PRELIMINARY ORDER

El Paso Electric Company filed an application to reconcile its Texas jurisdictional fuel, fuel-related, and purchased-power expenses and revenues for the reconciliation period of April 1, 2022 through March 31, 2024. This preliminary order identifies the issues that must be addressed in this proceeding.

El Paso Electric seeks reconciliation of its fuel and purchased-power expenses and revenues during the reconciliation period. Specifically, El Paso Electric seeks the following:

- a. a prudence finding for the fuel-related contracts and arrangements under which fuel or power was taken or transported during the reconciliation period;
- b. approval of El Paso Electric's execution of, and purchases of energy under, the Buena Vista Energy Center purchased-power agreement (BV PPA);
- c. approval of El Paso Electric's reallocation of the portion of the energy purchased under the BV PPA in February and March of 2024 that had previously been allocated to Texas customers to serve New Mexico customers;
- d. approval of the reversal of a credit for an imputed capacity charge for the solar portion of the BV PPA for the period of July 2023 through March 2024 in the amount of \$2.7 million in the adjusted fuel reconciliation period balance; and
- e. authorization to seek recovery in El Paso Electric's next base-rate case of the reasonable rate-case expenses that it and any intervening municipalities incur in this case.

El Paso Electric states that it under-recovered its fuel costs during the reconciliation period by \$246,874.¹ El Paso Electric requests approval to carry forward the under-recovery balance of

¹ Application of El Paso Electric Company to Reconcile Fuel Costs at 7-9 (Sep. 27, 2024) (Application).

\$246,874 as the beginning balance for El Paso Electric's next reconciliation period beginning April 1, 2024.²

Motions to intervene filed by the following have been granted to date: City of El Paso; Texas Industrial Energy Consumers; Freeport-McMoRan, Inc.; and the Office of Public Utility Counsel.

El Paso Electric was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by October 21, 2024. El Paso Electric timely filed a list of issues.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to State Office of Administrative Hearings (SOAH).³ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

Notice

1. Has El Paso Electric provided sufficient notice of this fuel reconciliation proceeding?⁴

Application

2. Does El Paso Electric's application to reconcile fuel expenses stipulate a reconciliation period that complies with Commission rules?⁵
3. Has El Paso Electric supported its application with a summary and supporting testimony that includes all information required by the Commission's rules and previous Commission orders?⁶

² Application at 3, 21.

³ Tex. Gov't Code § 2003.049(e).

⁴ 16 Tex. Admin. Code § 25.235(b) (TAC).

⁵ *Id.* § 25.236(b).

⁶ *Id.* § 25.236(c).

Reconciliation

4. Has El Paso Electric met the burden of proof for fuel reconciliation proceedings?⁷
5. Are the fuel, fuel-related, and purchased-power expenses El Paso Electric incurred during the reconciliation period eligible expenses?⁸ If so, was it reasonable and necessary for El Paso Electric to incur those expenses?
6. What is the amount of the eligible fuel expenses, if any, incurred by El Paso Electric and properly recorded in each of the following Federal Energy Regulatory Commission (FERC) accounts:⁹
 - a. Account 501 (fuel used in production of steam), including only the delivered cost of fuel to the generating site and excluding fuel brokerage fees and revenues associated with the disposal of fuel combustion residuals;
 - b. Account 502 (steam expenses, major only), including only qualifying expenses for environmental consumables;¹⁰
 - c. Account 503 (the cost of steam purchased or transferred from another department of the utility or from others), including only expenses properly recorded in the account and excluding brokerage fees, return, non-fuel operations and maintenance expenses, depreciation costs, and taxes;
 - d. Account 509 (allowances), including only allowances expensed concurrent with the monthly emissions of sulfur dioxide and nitrogen oxides;
 - e. Accounts 518 (nuclear fuel expenses) and 536 (the cost of water used for hydraulic power generation), excluding brokerage fees;
 - f. Account 547 (the fuel cost delivered at the station for other or non-steam generation), including only the delivered cost of fuel to the generating site, excluding brokerage fees;¹¹ and

⁷ *Id.* § 25.236(d)(1).

⁸ *Id.* § 25.236(a)(1)–(6).

⁹ *Id.* § 25.236(a)(1).

¹⁰ 16 TAC § 25.236(a)(3).

¹¹ *Id.* § 25.236(a)(2).

- g. Account 555 (purchased power), excluding demand and capacity costs.
- 7. Has El Paso Electric properly excluded costs incurred after fuel is delivered to a generating plant site, maintenance expenses and taxes on rail cars owned or leased by El Paso Electric, and any equity return or profit for an affiliate from its eligible fuel expenses during the reconciliation period?
- 8. Were El Paso Electric's actions prudent with regard to each of the fuel, fuel-related, and purchased-power contracts that were entered into or modified before or during the reconciliation period that have not previously been reviewed by the Commission for prudence?
- 9. Were any outages during the reconciliation period caused by imprudent management of El Paso Electric's generating facilities or caused by vendor errors? If so, what were the replacement costs associated with the outages, and what is the appropriate rate treatment to be reflected in El Paso Electric's fuel balance?
- 10. During the reconciliation period, did El Paso Electric prudently manage its fuel, fuel-related, and purchased-power contracts; fuel inventories; generation of electricity; maintenance of its generation facilities; and dispatch of its generating units?
- 11. Did El Paso Electric take advantage of opportunities in the fuel and purchased-power markets to reduce costs, mitigate price volatility, and enhance reliability?
- 12. During the reconciliation period, did El Paso Electric prudently participate in wholesale energy markets?
 - a. What benefits related to fuel and purchased power has El Paso Electric received through its purchases in wholesale energy markets? How do these benefits compare to the benefits that a reasonably prudent utility would have achieved through its operations within the wholesale energy markets? Are those benefits properly reflected in this filing?
 - b. Are El Paso Electric's costs associated with its participation in energy and ancillary service markets reasonable and properly includable in its fuel expense?

13. Did El Paso Electric pay affiliates for fuel, purchased-power, or other expenses eligible for recovery through El Paso Electric's fuel factor? If so, did such payments for each item or class of items meet the requirements of PURA and the Commission's rules?¹²
14. Did El Paso Electric record revenues and expenses from off-system sales in accordance with the Commission's rules and orders?
15. Did El Paso Electric's treatment of margins from off-system sales comply with the requirements of 16 TAC § 25.236(a)(9)?
 - a. If not, should the Commission find a good-cause exception to the requirements of 16 TAC § 25.236(a)(9)?
 - b. Has El Paso Electric complied with the final orders in Docket Nos. 50058 and 41852 with respect to margin sharing for arbitrage sales during the reconciliation period?¹³
16. What is the proper quantification of any capacity costs (whether explicitly stated or not) in El Paso Electric's purchased-power contracts?
17. Has El Paso Electric properly accounted for the amount of fuel-related revenues collected from customers during the reconciliation period?
18. Are El Paso Electric's adjustments to its fuel and purchased-power expenses reasonable?
19. Did El Paso Electric properly apply reasonable line-loss factors in determining reconcilable fuel balances for each rate class?
 - a. What line-loss factors were used?
 - b. What was the source of the line-loss values?
20. What are El Paso Electric's appropriate energy- and demand-loss factors?
21. What is the appropriate allocation of El Paso Electric's eligible fuel, fuel-related, and purchased-power expenses and revenues to the Texas retail jurisdiction?

¹² PURA § 36.058; 16 TAC § 25.236(a)(1), (d)(1)(B).

¹³ Docket No. 50058, Order, Ordering Paragraph No. 6; *Application of El Paso Electric Company to Reconcile Fuel Costs*, Docket No. 41852, Order, Finding of Fact Nos. 11–12, Ordering Paragraph No. 3 (July 11, 2014).

22. What is the appropriate allocation of El Paso Electric's eligible fuel, fuel-related, and purchased-power expenses and revenues among El Paso Electric's Texas retail rate classes?
23. Does El Paso Electric's fuel over- or under-recovery balance, including interest, exceed the 4% materiality threshold?¹⁴ If so, is it expected that the over- or under-recovery will continue to exceed the threshold?
24. Is El Paso Electric's request to carry forward its fuel over- or under-recovery balance appropriate, or should a refund or surcharge for the over- or under-recovery balance be imposed in this docket?
25. If a refund or surcharge results from this docket, how and over what time period should it be made?
26. If the Commission approves El Paso Electric's request to carry forward its fuel over- or under-recovery balance, what is the appropriate allocation of the balance among El Paso Electric's Texas retail rate classes?
27. Should the Commission approve El Paso Electric's execution of, and purchases of energy under, the BV PPA?
28. Should the Commission approve El Paso Electric's reallocation of the portion of the energy purchased under the BV PPA in February and March 2024 that had previously been allocated to Texas customers to serve New Mexico customers?
29. Should the Commission approve El Paso Electric's reversal of a credit for an imputed capacity charge for the solar portion of the BV PPA for the period of July 2023 through March 2024?
30. Should the Commission approve El Paso Electric's request to reallocate its Newman Unit 6 fuel costs in this proceeding?

Rate-Case Expenses

31. Should any party recover the cost of participating in this proceeding? If so, the following issues should be addressed:
 - a. What are the reasonable costs of participating municipalities in this proceeding?¹⁵

¹⁴ 16 TAC § 25.237(a)(3)(B).

¹⁵ PURA § 33.023; 16 TAC § 25.245.

- i. Do the municipalities' requested rate-case expenses that are not excluded under PURA § 36.062 comply with 16 TAC § 25.245(b)(1) through (6)?
 - ii. Using the factors in 16 TAC § 25.245(c)(1) through (6), what amount of rate-case expenses actually and reasonably incurred by the municipalities, if any, does a preponderance of the evidence support?
 - iii. Should any of the municipalities' rate-case expenses be disallowed under 16 TAC § 25.245(d)? If so, how should the disallowance be calculated?
- b. What are the reasonable costs of participation incurred by El Paso Electric that are not excluded under PURA § 36.062 and that should be allowed as a cost or expense in this proceeding under PURA § 36.061(b)(2) and 16 TAC § 25.245?
- i. Do El Paso Electric's rate-case expenses comply with 16 TAC § 25.245(b)(1) through (6)?
 - ii. Using the factors in 16 TAC § 25.245(c)(1) through (6), what amount of rate-case expenses actually and reasonably incurred by El Paso Electric, if any, does a preponderance of the evidence support?
 - iii. Should any of El Paso Electric's rate-case expenses be disallowed?¹⁶ If so, how should the disallowance be calculated?
- c. Should these costs be addressed in this proceeding or deferred to a subsequent proceeding?
- d. In what manner should these costs be recovered?
32. Are all attorneys' fees included in rate-case expenses supported by an affidavit or testimony of a licensed attorney?

Compliance with Prior Orders

33. Did El Paso Electric use the cumulative reconciliation period under-recovery balance of \$38,489,277 from its previous fuel-reconciliation proceeding as the starting balance for this reconciliation filing, in accordance with the final order in Docket No. 54142?¹⁷

¹⁶ 16 TAC § 25.245(d).

¹⁷ *Application of El Paso Electric Company for Authority to Reconcile Fuel Costs*, Docket No. 54142, Order, Ordering Paragraph No. 6 (Apr. 11, 2024).

34. Has El Paso Electric filed direct testimony addressing its efforts and progress in minimizing forced outages due to personnel or contractor errors at its Newman station in accordance with the final order in Docket No. 54142?¹⁸ If so, did the testimony include a description of the root causes and estimated replacement power and capitalized repair costs incurred for any outages at the Newman station during the reconciliation period that were related to El Paso Electric personnel or contractor errors?¹⁹
35. Has El Paso Electric maintained community-solar customers in their retail rate group when determining refund or surcharge factors, in accordance with the final order in Docket No. 50058?²⁰
36. Do the terms and conditions of El Paso Electric's community-solar tariff continue to state that, in the event of a fuel refund or surcharge, the refund or surcharge factor applies only for the system energy provided to these customers on a monthly basis?²¹
37. Has El Paso Electric continued to price unsubscribed energy from facilities committed to the community-solar tariff at average avoided cost?²²
38. Has El Paso Electric complied with previous Commission orders concerning performance standards for the Palo Verde nuclear generating station?
39. Did El Paso Electric treat the solar purchased power agreements with Macho Springs and Newman Solar as system resources for purposes of jurisdictional allocation?²³
40. Did El Paso Electric correctly calculate the imputed capacity charges of the solar purchased power agreements with Macho Springs and Newman Solar and remove those imputed capacity charges from eligible fuel costs in this proceeding?²⁴

¹⁸ *Id.*, Ordering Paragraph No. 8.

¹⁹ *Id.*

²⁰ *Application of El Paso Electric Company to Reconcile Fuel Costs*, Docket No. 50058, Order, Ordering Paragraph No. 8 (Apr. 7, 2021).

²¹ *Id.*

²² *Id.*, Ordering Paragraph No. 10.

²³ *Application of El Paso Electric Company to Change Rates*, Docket No. 46831, Order, Finding of Fact No. 32 (Dec. 18, 2017).

²⁴ *Id.*, Finding of Fact No. 33.

41. What are the appropriate accounting treatments and amounts of El Paso Electric's allocable share of the final mine closing reclamation costs for the Four Corners mine consistent with the final order in Docket No. 46308?²⁵
42. Has El Paso Electric excluded from its fuel expenses costs incurred for the purchase of renewable energy credits, in accordance with the final orders in Docket Nos. 38361 and 37690?²⁶

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

II. Effect of Preliminary Order


This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

²⁵ *Application of El Paso Electric Company to Reconcile Fuel Costs*, Docket No. 46308, Order, Ordering Paragraph No. 3 (June 29, 2017).

²⁶ *Application of El Paso Electric Company to Reconcile Fuel Costs Severed from PUC Docket No. 37690*, Docket No. 38361, Order, Finding of Fact No. 11 (Jan. 27, 2011); *Application of El Paso Electric Company to Change Rates, to Reconcile Fuel Costs, to Establish Formula-Based Fuel Factors, and to Establish an Energy Efficiency Cost Recovery Factor*, Docket No. 37690, Order, Finding of Fact No. 24 (July 30, 2010).

Signed at Austin, Texas the 14th day of November 2024.

PUBLIC UTILITY COMMISSION OF TEXAS



THOMAS J. GLEESON, CHAIRMAN



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER



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