



Control Number: 46831



Item Number: 839

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APPLICATION OF EL PASO  
ELECTRIC COMPANY TO CHANGE  
RATES

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PUBLIC UTILITY COMMISSION  
OF TEXAS  
FILING CLERK

## ORDER

This Order addresses the application of El Paso Electric Company for authority to change rates. An uncontested agreement was executed that resolves all of the issues between the parties to this proceeding. Consistent with the agreement and this Order, the application is approved.

The Commission adopts the following findings of fact and conclusions of law:

### I. Findings of Fact

#### Introduction and Procedural History

1. El Paso Electric Company (EPE) is an electric utility, a public utility, and a utility.
2. On February 13, 2017, EPE filed an application for approval of a \$42.547 million Texas-jurisdiction-retail increase in base rates and other miscellaneous revenues and changes to the structure and terms of its tariff.
3. Concurrent with the filing of the application with the Commission, EPE filed a similar petition and statement of intent with each incorporated municipality in its Texas service area that has original jurisdiction over its rates.
4. EPE proposed an effective date of March 20, 2017.
5. EPE also requested that, if the new rates were suspended for a period beyond March 20, 2017, then final rates would relate back and be made effective for consumption on and after July 18, 2017.
6. EPE used a test year of October 1, 2015 through September 30, 2016.
7. Notice of EPE's application was published once each week for four consecutive weeks in a newspaper having general circulation in each county in EPE's Texas service territory. In addition, EPE provided individual notice to EPE's Texas retail customers, each

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municipality within EPE's service area with original jurisdiction over EPE's retail rates, and each party to EPE's last general rate case.<sup>1</sup>

8. EPE timely appealed to the Commission the actions of the following municipalities exercising original jurisdiction within their service territory: the City of El Paso, the town of Anthony, the Town of Horizon City, the Town of Clint, the Village of Vinton, the Town of Van Horn, the City of San Elizario, and the City of Socorro. All such appeals were consolidated for determination in this docket.
9. The following parties were granted intervenor status in this docket:  
the City of El Paso; the Office of Public Utility Counsel (OPUC); Texas Industrial Energy Consumers (TIEC); Freeport-McMoran Copper & Gold, Inc. (FMI); Wal-Mart Stores Texas, LLC and Sam's East, Inc. (collectively, Walmart); W. Silver, Inc. (W. Silver); the U.S. Department of Defense and all other Federal Executive Agencies (DoD-FEA); ECO ELP, Inc. (ECO ELP); El Paso County (EPCO); a coalition of cities served by EPE (consisting of the municipalities of the City of San Elizario, the Town of Clint, and the Town of Horizon City) (Coalition); 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, the Region 19 Education Service Center, and the El Paso County Community College District (collectively, the Rate 41 Group); the Energy Freedom Coalition of America (EFCA); the Solar Energy Industries Association (SEIA); the City of Socorro (Socorro); Vinton Steel, LLC (Vinton Steel); the Environmental Defense Fund (EDF); the University of Texas at El Paso (UTEP); and pro se intervenors Vincent M. Perez, Richard Schecter, and Dr. Marjaneh M. Fooladi. Commission Staff also participated in this docket.
10. On February 14, 2017, the Commission referred this case to the State Office of Administrative Hearings (SOAH) to conduct an evidentiary hearing and prepare a proposal for decision, if necessary.

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<sup>1</sup> *Application of El Paso Electric Company to Change Rates*, Docket No. 44941, Order (Aug. 25, 2015).

11. On February 17, 2017, SOAH issued Order No. 1 suspending the effective date of the proposed tariff changes for 150 days from EPE's originally-proposed effective date, or until August 17, 2017, among other things.
12. On March 9, 2017, the Commission issued a preliminary order determining the issues to be addressed in this proceeding.
13. On June 5, 2017, SOAH issued Order No. 5 granting EPE's motion to sever the rate case expense issues and establishing *Review of Rate Case Expenses Incurred by El Paso Electric Company and Municipalities in Docket No. 46831*, SOAH Docket No. 473-17-4239, Docket No. 47228 (Docket No. 47228).
14. At the August 18, 2017 prehearing conference, EPE agreed to extend the jurisdictional deadline—which EPE had previously agreed to extend to November 30, 2017—to January 15, 2018.
15. On August 21, 2017, the hearing on the merits convened.
16. On August 24, 2017, SOAH issued Order No. 9 cancelling further hearings to facilitate settlement discussions.
17. On November 2, 2017, EPE and other parties filed in this proceeding and in Docket No. 47228 the agreement which settles and resolves all of the issues in this proceeding.
18. Along with the agreement, EPE and other parties also filed a joint motion to implement the agreement.
19. The following parties are signatories to the agreement: EPE, Commission Staff, the city of El Paso, TIEC, FMI, W. Silver, DoD-FEA, Coalition, Socorro, Rate 41 Group, Walmart, SEIA, OPUC, Vinton Steel, UTEP, and Vincent M. Perez, (collectively, the signatories). ECO ELP, EDF, Richard Schecter, and Dr. Marjaneh M. Fooladi do not oppose the Commission entering a final order consistent with the agreement, but do not join in the agreement.
20. On November 6, 2017, SOAH issued Order No. 10 in Docket No. 46831 and Order No. 3 in Docket No. 47228 consolidating the proceedings; admitting the various identified exhibits into evidence, including the agreement and testimony from EPE and Commission

Staff in support of the agreement; dismissing the consolidated proceeding from the SOAH docket; and returning the matter to the Commission for further processing.

**Description of the Agreement**

21. The signatories agree that the agreement results in just and reasonable rates and that the public interest will be served by resolution of the issues in the manner prescribed by the agreement.

**Overall Revenues**

22. The agreement provides that EPE should receive an overall increase of \$14.5 million in Texas-base-rate and other revenues, effective for electricity consumed on and after July 18, 2017. (Agreement art. I.A.)

**Future Change to Corporate Federal Income Tax Expense**

23. The agreement provides a mechanism to capture a reduction in the federal income-tax rates for corporations. (Agreement art. I.B.)
24. If the federal income-tax rate for corporations is decreased before EPE files its next base-rate case, then EPE will record, as a regulatory liability, taking into account changes in billing determinants, the difference between (a) the amount of federal income-tax expense that EPE collects through the revenue requirement approved in this proceeding and reflected in its rates and (b) the amount of federal income-tax expense calculated using the new federal income-tax rate, taking into account any other federal corporate-tax changes, such as the deductibility of interest costs. This regulatory liability will accumulate from (a) the later of (i) the date that the new base rates established in this case for EPE became effective or (ii) the date on which the tax-rate reduction became effective until (b) the refund tariff described below becomes effective.
25. EPE will file a refund tariff with the Commission and municipal regulatory authorities within 120 days after the enactment of the law making the tax-rate change reflecting (a) the reduction in federal-income-tax rates and (b) a credit for the regulatory liability referenced above over a twelve-month period. The tariff will calculate the difference in tax expense as the difference in: (i) federal-income-tax expense collected in rates (i.e., reflecting the federal-income-tax rate embedded in the tax factor indicated on Attachment

1 to the agreement) and (ii) the federal-income taxes that would have been collected in rates had the changes in the federal-income-tax rates, and other associated changes in the federal-income-tax calculation, been in effect at the time settlement rates were established. The proposed refund amount will be allocated to rate classes based upon the allocation of rate base as shown in Attachment 2 to the agreement.

26. In each subsequent year, EPE will file to update the refund factor to reflect any over- or under-recovery of federal-income-tax expense and to reflect any subsequent changes in federal-income-tax rates or calculations that would affect the settlement income-tax calculation reflected on Attachment 1 to the agreement. The refund factors in each subsequent year will be filed within 90 days after the end of the fiscal year, with a final reconciliation determined at the time of the final order in the base-rate case.
27. The refund factor will be discontinued upon the effective date of rates in EPE's next base rate case.
28. The amount and timing of the reduction in rates to reflect a tax-rate decrease will be subject to any new federal rules or state laws or regulations that address how a utility's rates should be adjusted to account for the reduction of federal-income-tax rates.
29. The regulatory treatment of any excess deferred taxes resulting from a reduction in the federal-income-tax rate will be addressed in EPE's next base-rate case.

**Financial Matters**

30. The agreement provides that effective beginning August 1, 2017, EPE's weighted average cost of capital (WACC) shall be 7.725% based upon a 5.922% cost of debt, an authorized return on equity (ROE) of 9.65%, and an authorized regulatory capital structure of 51.652% long-term debt and 48.348% equity. The foregoing WACC, cost of debt, ROE, and capital structure will apply, in accordance with PURA<sup>2</sup> and the Commission's rules, in all Commission proceedings or Commission filings requiring application of EPE's cost of debt, WACC, ROE, or capital structure to the same extent as if these factors had been determined in a final order in a fully-litigated proceeding. (Agreement art. I.C.)

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<sup>2</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-58.302 (West 2016 & Supp. 2017), §§ 59.001-66.016 (West 2007 & Supp. 2017) (PURA).

**Prudence Finding Regarding Investment**

31. Under the agreement, the signatories agree that all EPE investment through the end of the test year (September 30, 2016), as presented in EPE's rate filing package, is used and useful and prudent and included in rate base. (Agreement art. I.D.)

**Jurisdictional Allocation of Certain Solar Facilities**

32. The agreement specifies that the 50-megawatt (MW) Macho Springs solar-power purchase agreement (PPA) and the 10-MW Newman solar PPA will be system resources for purposes of jurisdictional allocation. (Agreement art. I.E.)

**Imputed Capacity**

33. Under the agreement, the classification of costs incurred by EPE as either base-rate capacity charges or fuel charges for the 50-MW Macho Springs solar PPA and the 10-MW Newman solar PPA shall be as follows for the term of these contracts: Effective beginning August 1, 2017, the imputed capacity charge for the 50-MW Macho Springs solar PPA shall be \$2.35 per kilowatt (kW) per month, and the imputed capacity charge for the 10-MW Newman solar PPA shall be \$2.33 per kW per month. All remaining costs incurred under these two PPAs shall be classified as fuel expenses. (Agreement art. I.F.)

**Four Corners Decommissioning**

34. The agreement provides for the rate treatment of EPE's share to decommission units 4 and 5 at the Four Corners Power Plant. (Agreement art. I.G.)
35. The agreement specifies that, consistent with EPE's request in this proceeding and the settlement agreement in Docket No. 44805,<sup>3</sup> the Commission's Order in the instant docket should authorize EPE's recovery of the costs of decommissioning units 4 and 5 at the Four Corners Power Plant in the amount of \$6,992,622 on a total company basis, or \$5,532,395 on a Texas jurisdictional basis, with this cost to be recovered over a seven-year period beginning August 1, 2017. This equates to an annual amortization in the amount of \$998,946 on a total company basis, or \$790,342 on a Texas jurisdictional basis, which represents one-seventh of the requested authorized recovery.

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<sup>3</sup> *Application of El Paso Electric Company for Reasonableness and Public Interest Findings on the Disposition of Coal-Fired Generating Facilities in New Mexico and Mine Closing Costs Adjustments*, Docket No. 44805, Order (Mar. 30, 2017).

36. The unamortized balance of the Four Corners decommissioning costs will not be included in rate base or accrue any carrying costs.
37. This amount for Four Corners decommissioning is subsumed in, and is not separate from, the overall \$14.5 million revenue requirement increase.

**Depreciation**

38. The agreement provides that beginning August 1, 2017, EPE will use the depreciation rates as proposed in the direct testimony of Commission Staff witness Reginald J. Tuvilla (filed June 30, 2017) and reflected in his Attachment RJT-4, which is Attachment 3 to the agreement. (Agreement art. I.H.)

**Nuclear Decommissioning**

39. Under the agreement, beginning July 18, 2017, EPE will recover annually \$2,132,186 (Texas jurisdiction) for nuclear-decommissioning funding. (Agreement art. I.I.)

**Baseline Values for Distribution-Cost-Recovery Factor (DCRF) Filing**

40. Under the agreement, if EPE files an application for approval of a distribution-cost recovery factor under PURA § 36.210 and 16 Texas Administrative Code (TAC) § 25.243 after July 18, 2017, then the baseline values to be used in that application are as shown in Attachment 4 to the agreement. (Agreement art. I.J.)

**Baseline Values for Transmission-Cost-Recovery Factor (TCRF) Filing**

41. The agreement specifies that if EPE files an application for approval of a transmission-cost recovery factor under PURA § 36.209 and 16 TAC § 25.239 after July 18, 2017, then the baseline values to be used in that application are as shown in attachment 5 to the agreement. (Agreement art. I.K.)

**Forbearance of DCRF and TCRF Filings**

42. EPE agrees that it will not file a DCRF or TCRF rate-change application prior to January 1, 2019. (Agreement art. I.L.)

**Continuation of Certain Docket No. 44941 Rate Treatments**

43. The agreement provides that EPE will continue to abide by four rate treatments contained in the amended and restated settlement agreement in Docket No. 44941 as follows: (a) those concerning the Copper gas generation turbine; (b) gains or losses for the retirement



of transportation equipment; (c) normalizing state income-tax expense; and (d) the costs of environmental consumables. (Agreement art. I.M.)

**Allocation of the \$14.5 Million Revenue Increase**

44. The agreement specifies how the \$14.5 million revenue increase is distributed among the rate classes in attachment 6 to the agreement. (Agreement art. I.N.)

**Distributed Generation**

45. The agreement contains provisions addressing residential and small-general-service customers with distributed generation (DG) and DG-related subjects. (Agreement art. I.O.)
46. The DG provisions are contained in attachment 7 to the agreement, which is provided as attachment A to this Order.
47. For convenience, attachment A to this Order is also referred to as the *DG Agreement*, which is summarized in this Order.
48. EPE, Commission Staff, EFCA, SEIA, and EPCO support the DG Agreement; the City of El Paso and OPUC, who are signatories, and ECO ELP and the EDF, do not oppose the DG Agreement.
49. For specified purposes, DG residential and small-general-service customers shall remain constituents of the residential-service or small-general-service rate classes, as applicable, as further explained in section 1 of the DG Agreement.
50. The DG Agreement addresses grandfathering provisions for residential customers and small-general-service customers who submit an application for interconnection and receive an email from EPE that states the application has been received and is under review prior to the day the Commission issues an order implementing the agreement. Such customers will not be subject to the minimum-bill provision. This subject is more fully explained in section 2 of the DG Agreement.
51. The DG Agreement addresses customer billing for DG customers (residential-service and small-general-service) who are not grandfathered. This subject is more fully explained in section 3 of the DG Agreement.

52. Under section 4 of the DG Agreement, EPE agrees to work with the local DG community, the city of El Paso and other municipalities in EPE's Texas service territory, Commission Staff, and OPUC on a commercially reasonable education program regarding DG service for existing and potential customers.
53. The DG Agreement addresses DG metering costs in section 5.
54. The DG Agreement addresses net energy metering in section 6.
55. The DG Agreement addresses interconnection-application fees in section 7.
56. In section 8 of the DG Agreement, EPE agrees to reset the demand ratchet for customers installing DG, installing storage, or both, following interconnection, of the DG or storage, effectively restarting the historical demand used for purposes of applying the tariffed demand ratchet.
57. The DG Agreement addresses the collaborative process EPE and interested stakeholders will undertake prior to EPE proposing modifications to the rate structure and conditions applicable to DG customers in the DG Agreement. This subject is addressed in section 9 of the DG Agreement.
58. Section 10 of the DG Agreement addresses certain restrictions on EPE proposing certain changes to DG rate and rate structures.

**Rate Design and Tariff Approval**

59. The agreement addresses tariff and rate-design issues (Agreement art. I.P.) as follows:
  - (A) Design of Rates: The tariff sheets in attachment 8 to the agreement reflect the signatories' agreements concerning the design of rates.
  - (B) Residential Customer Charge: The customer charge applicable to the Residential Service Rate, Schedule No. 01, shall be \$8.25 per month.
  - (C) Small General Service Customer Charge: The customer charge applicable to Small General Service, Schedule No. 02, shall be \$10.75 per month.
  - (D) Rate 24—General Service: New customers with an expected load greater than 400 kW shall take service under the time-of-use (TOU) alternative but have a one-time opportunity to opt out of the TOU alternative at the end of 12 months of service

under that rate and take service thereafter under the standard service rate. For any new customer choosing to opt out of the TOU alternative, the customer will be held harmless for the period of time they took service under the TOU alternative and be required to pay no greater than the lesser of bills calculated under the standard service or the TOU alternative.

- (E) Rate 41—City and County Service Rate: EPE’s proposal to apply a power factor penalty is not adopted. EPE’s proposal for a rate design that is based on an hours-of-use rate structure, similar to rate 24, is not adopted. Instead, the existing declining block structure is maintained. However, the current differential between the blocks is reduced and the demand charge increased, as presented in attachment 8 to the agreement. In addition, EPE agrees that, with the exception of accounts that take non-metered service, EPE will install demand meters (at no cost to the customer) on all rate-41 accounts. EPE will activate the demand function (at no cost to the customer) for those rate-41 accounts with demand meters but that do not have the demand reading capability functioning. Accounts that are currently unmetered shall remain unmetered unless there is a mutual agreement to convert the account to a metered account.
- (F) Rate 38—Noticed Interruptible Power Service: The minimum level of firm demand to be required from qualifying customers by rate 38 shall be reduced from 1,500 kW to 600 kW. In addition, EPE’s proposed 10% charge for failure to interrupt should be modified consistent with the agreement as follows:
- 1st Non-Compliance—Rebill the bill month at the applicable firm service rate.
  - 2nd Non-Compliance—Rebill the year-to-date at the applicable firm-service rate plus 5% (of rebilled interruptible amount, not including fuel).
  - 3rd Non-Compliance—Rebill the year (unbilled interruptible portion) at applicable firm-service rate plus 5% (of rebilled interruptible amount, not including fuel), and the customer thereafter is not eligible to take interruptible service, but may reapply after twelve months.

- (G) Rate Schedule DG: The following text, which has been modified from what EPE had proposed be added to the end-use-customer-affirmation-schedule portion of the agreement for interconnection and parallel operation of distributed generation, shall not be added to the end-use-customer-affirmation schedule but shall be a separate customer acknowledgement that EPE requires upon application for interconnection of distributed generation:

I acknowledge (i) that El Paso Electric Company's customer classifications, rates, charges, and fee structures are subject to change at any time upon approval of the authorities or entities that govern and/or regulate El Paso Electric Company, and (ii) such changes could affect the economics (i.e., costs and benefits) of my distributed generation, including the magnitude and existence of any net savings on my bill.

The signatories' agreement to this provision of the agreement should in no way be interpreted as an agreement to any future change proposed by EPE or a party participating in a future proceeding or to the lawfulness of any particular proposal including specifically any proposal to place residential customers who have interconnected DG into a separate class, and the parties reserve all rights to contest any such proposal.

- (H) EPE's proposed tariff-text changes with rates for the various classes consistent with the agreement, Attachment 8, should be approved upon final resolution of this case.

59A. The language of the separate customer acknowledgement that EPE requires upon application for interconnection of distributed generation described in finding of fact 59(G) is ambiguous.

59B. The following language provides better notice to customers and it is appropriate that the acknowledgement that EPE requires for the end-use-customer-affirmation schedule contain this language:

I acknowledge (i) that El Paso Electric Company's customer classifications, rates, charges, and fee structures are subject to change at any time upon approval of the municipalities, Public Utility Commission of Texas, or the

Federal Energy Regulatory Commission under their respective authorities to regulate El Paso Electric Company, and (ii) such changes could affect the economics (costs, any credits, and other benefits) of my distributed generation, including the magnitude and existence of any net savings on my bill.

**Rate-Case Expenses Recovery**

60. The agreement provides for the review and recovery of EPE's rate-case expenses. (Agreement art. I.Q.)
61. The signatories agree that the rate-case expense Docket No. 47228 should be consolidated with this Docket No. 46831.
62. The signatories agree that under PURA § 36.061(b)(2), EPE should recover its reasonable and necessary rate-case expenses associated with this proceeding for services rendered through August 31, 2017, as well as all deferred rate-case expenses, subject to Commission Staff's review of the reasonableness and necessity of such expenses.
63. The signatories further agree that under PURA § 33.023(b), the City of El Paso, the Coalition, and Socorro (collectively, the cities) should be reimbursed by EPE for their reasonable and necessary rate-case expenses associated with this proceeding for services rendered through August 31, 2017, as well as deferred rate-case expenses, and that EPE should recover those amounts.
64. Commission Staff reviewed rate-case-expense invoices for EPE and the cities for services rendered through August 31, 2017. Based on this review, the signatories agree to the disallowance of \$58,000 of the total rate-case expenses requested and find the remaining amount of \$3,390,588.75 to be reasonable and necessary expenses and in compliance with 16 TAC § 25.245. To the extent the hourly rate for any service exceeded \$550, only \$550 per hour is included in this amount.
65. The signatories further agree that rate-case expenses associated with this proceeding incurred after August 31, 2017 by EPE and Cities will be captured in a regulatory asset and preserved for recovery consideration in EPE's next general base-rate case. EPE will not accrue any return on the regulatory asset in this subsection.

66. The signatories agree that rate-case expenses discussed above through August 31, 2017, will be recovered through a rate-case-expense surcharge over three (3) years, and that this rate-case-expense surcharge will become effective as prescribed by the Commission. These expenses shall be allocated to customer classes as shown on attachment 9 to the agreement. In order to avoid having two concurrent rate-case-expense surcharges, the surcharge resulting from the instant proceeding shall incorporate the unrecovered amount of the rate-case expenses from Docket No. 44941, and the current surcharge from Docket No. 44941 shall be terminated. No return shall accrue on the rate-case expenses identified in this paragraph.

**Commission Approval**

67. The agreement, including the DG Agreement, is the result of good faith negotiations by the parties, and these efforts, as well as the overall result of the agreement viewed in light of the record as a whole, support the overall reasonableness and benefits of the terms of the agreement.
68. The allocation of the rate-case expenses among rate classes in attachment 9 to the agreement is just and reasonable.
69. The agreement is binding on each signatory only for the purpose of settling the issues as set out in the agreement and for no other purpose. Except to the extent that the agreement expressly governs a signatory's rights and obligations for future periods, the agreement, including all terms provided herein, shall not be binding or precedential on a signatory outside of this case except for a proceeding to enforce the terms of the agreement. The signatories acknowledge and agree that a signatory's support of the matters contained in the agreement may differ from its position or testimony in other proceedings. To the extent there is a difference, a signatory does not waive its position in such other proceedings. Because the agreement is a settlement agreement, a signatory is under no obligation to take the same position as set out in the agreement in other proceedings, whether those proceedings present the same or a different set of circumstances. The agreement is the result of compromise and was arrived at only for the purposes of settling this case.

70. The agreement is not intended to be precedential except to the extent that (a) the agreement in article I.D, is a final determination on the reasonableness and necessity of the cost of EPE's investment; (b) the agreement in article I.G is a final determination of the reasonableness and necessity of the final decommissioning costs for the Four Corners Power Plant; (c) the agreements in articles I.J and I.K are final determinations of the DCRF and TCRF baselines being established by this case; and (d) the agreements in article I, sections C (cost of capital), E (allocation of certain solar resources), F (imputed capacity), G with regard to the amortization period for Four Corners decommissioning cost, H (depreciation), I (nuclear decommissioning), and M (continuation of rate treatments from Docket No. 44941) are intended to be adopted by the Commission and remain in place until such time as they may be changed on a prospective basis.
71. A signatory's agreement to entry of a final order of the Commission consistent with the agreement should not be regarded as an agreement to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching the agreement.

## II. Conclusions of Law

1. EPE is a public utility as that term is defined in PURA § 11.004(1) and an electric utility as that term is defined in PURA § 31.002(6).
2. The Commission exercises regulatory authority over EPE and jurisdiction over the subject matter of this application under PURA §§ 14.001, 32.001, 36.001–.211, and 39.552.
3. SOAH exercised jurisdiction over this proceeding under PURA § 14.053 and Texas Government Code § 2003.049.<sup>4</sup>
4. This docket was processed in accordance with the requirements of PURA, the Administrative Procedure Act,<sup>5</sup> and the Commission's rules.
5. EPE provided notice of the application in compliance with PURA § 36.103 and 16 TAC § 22.51(a) and (b).

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<sup>4</sup> Tex. Gov't Code Ann. § 2003.049 (West 2016).

<sup>5</sup> Tex. Gov't Code Ann. § 2001.001-.902 (West 2016 & Supp. 2017) (APA).

6. The Commission has jurisdiction over an appeal from municipalities' rate proceedings under PURA § 33.051.
7. The agreement, taken as a whole, is a just and reasonable resolution of all the issues it addresses, results in just and reasonable rates, terms, and conditions, is supported by a preponderance of the credible evidence in the record, is consistent with the relevant provisions of PURA, and should be approved.
8. The revenue requirement, cost allocation, revenue distribution, and rate design contemplated by the agreement result in rates that are just and reasonable, comply with the ratemaking provisions of PURA, and are not unreasonably discriminatory or preferential.
9. EPE's rates resulting from the agreement are just and reasonable and meet the requirements of PURA § 36.003.
10. The agreement resolves all of the pending issues in this docket.
11. The tariff sheets and rate schedules included in the agreement are just and reasonable and accurately reflect the terms of the agreement.
12. The Commission's adoption of a final order consistent with the agreement satisfies the requirements of the APA §§ 2001.051 and 2001.056 without the necessity of a decision on contested case issues resulting from a hearing on the merits.
13. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

### **III. Ordering Paragraphs**

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

1. Consistent with the agreement and this Order, El Paso Electric Company's (EPE's) application is approved.
2. Consistent with the agreement and this Order, the rates, terms, and conditions described in this Order are approved.
3. EPE's tariffs attached to the agreement are approved.



4. Within 20 days of the date of this Order, EPE shall file a clean record copy of the approved tariffs to be stamped "Approved" by Central Records and retained by the Commission.
5. EPE shall file proposed surcharge tariffs consistent with this Order within 20 days of the date of this Order in *Compliance Tariff for the Final Order in Docket No. 46831 (Application of El Paso Electric Company to Change Rates)*, Tariff Control No. 47840. No later than 10 days after the date of the tariff filing, any intervenor in the instant proceeding may file comments on the individual sheets of the tariff. No later than 15 days after the date of the tariff filing, Commission Staff shall file its comments recommending approval, modification, or rejection of the individual sheets of the tariff. Responses to Commission Staff's recommendation shall be filed no later than 20 days after the filing of the tariff. The Commission shall by letter approve, modify, or reject each tariff sheet, effective the date of the letter.
6. The surcharge tariff sheets shall be deemed approved and shall become effective on the expiration of 30 days from the date of filing, in the absence of written notification of modification or rejection by the Commission. If any surcharge sheets are modified or rejected, EPE shall file proposed revisions of those sheets in accordance with the Commission's letter within 10 days of the date of that letter, and the review procedure set out above shall apply to the revised sheets.
7. Copies of all tariff-related filings shall be served on all parties of record.
8. EPE shall provide separately to a customer the following acknowledgement in lieu of the acknowledgement proposed in the settlement agreement upon a customer's application for interconnection of distributed generation.

I acknowledge (i) that El Paso Electric Company's customer classifications, rates, charges, and fee structures are subject to change at any time upon approval of the municipalities, Public Utility Commission of Texas, or the Federal Energy Regulatory Commission under their respective authorities to regulate El Paso Electric Company, and (ii) such changes could affect the economics (costs, any credits, and other benefits) of my distributed generation, including the magnitude and existence of any net savings on my bill.

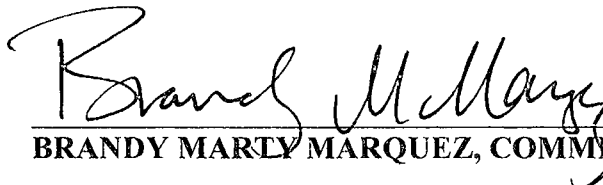
9. If the federal income-tax rate for corporations is decreased before EPE files its next base-rate case, EPE shall record the difference between the amount of federal income-tax expense that EPE collects through the revenue requirement approved in this proceeding and reflected in its rates and the amount of federal income-tax expense calculated using the new federal income-tax rate,. EPE shall calculate this difference in accordance with finding of fact 24 and article I.B of the settlement agreement. This difference shall be treated as a regulatory liability, and EPE shall file a refund tariff with the Commission and municipal regulatory authorities within 120 days after the enactment of the law making a federal tax-rate change. In each subsequent year, within 90 days after the end of the fiscal year, EPE shall file to update the refund factor.
10. EPE is authorized to establish a regulatory asset to record any rate-case expenses associated with this proceeding that EPE and the cities incurred after August 31, 2017. EPE shall not accrue any return on this regulatory asset. In EPE's next general base-rate case, EPE and the cities shall seek Commission review and recovery of any rate-case expenses recorded in this regulatory asset or forfeit such expenses.
11. Entry of this Order consistent with the agreement does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement. Entry of this Order consistent with the agreement shall not be regarded as binding holding or precedent as to the appropriateness of any principle or methodology underlying the agreement.
12. All other motions, requests for entry of specific findings of fact, conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 18<sup>th</sup> day of December 2017.

**PUBLIC UTILITY COMMISSION OF TEXAS**



**DEANN T. WALKER, CHAIRMAN**



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**ATTACHMENT 7 TO THE STIPULATION AND AGREEMENT IN EL PASO  
ELECTRIC COMPANY'S RATE CASE IN DOCKET NO. 46831-- DISTRIBUTED  
GENERATION**

The provisions in this Attachment 7 are a component part of the Stipulation and Agreement (Agreement) in El Paso Electric Company's (EPE's) Docket No. 46831. This Attachment 7 is supported by EPE, the Public Utility Commission Staff, Energy Freedom Coalition of America, Solar Energy Industries Association and the County of El Paso, while the OPUC, the City of El Paso, ECO ELP and the Environmental Defense Fund do not oppose it.

1. **No Separate Rate Class:** Distributed Generation ("DG") customers shall remain constituents of the Residential Service or Small General Service rate classes, as applicable, for cost allocation, revenue distribution, and rate design purposes. Residential and Small General Service DG customers will pay the same retail charges as the rest of their respective classes except as described below and provided for in the applicable tariff, based on the customer's selection of rate options.
  
2. **Grandfathering:** Residential and Small General Service customers who submit an application for interconnection and receive an email from EPE that states the application has been received and is under review prior to the day the Commission issues an order implementing this Agreement will not be subject to the Minimum Bill provision at their current residence or place of business for a grandfathering term of 20 years from the date of interconnection of their DG installation. Should the original interconnection customer move or sell the premises at which the DG system is installed, the grandfathering will continue to apply to that DG system for subsequent owners for the remainder of the grandfathering term. In addition, if a customer whose facility is subject to being grandfathered removes the entire DG system and relocates some or all of the facility to a new premise, the grandfathering will continue to apply to that DG system at a single new location, subject to confirmation by the company.

Grandfathered customers are subject to the same charges, including monthly customer charge, applicable to non-DG customers served under the applicable retail tariff and similarly will not be eligible to take service under the Experimental Demand Charge Monthly Rate.

3. **Customer Billing for Non-grandfathered DG Customers:**

Residential Service – Residential DG customers not subject to Grandfathering will be served on a default basis under the Standard Monthly Service Rate for their applicable rate schedule, subject to a Monthly Minimum Bill of \$30.00. The customer’s base rate monthly bill will consist of the greater of: (i) the total of base rate charges, including the monthly customer charge; or (ii) the customer’s Monthly Minimum Bill.

Non-grandfathered Residential DG customers may otherwise voluntarily elect to take service under one of the following options:

- (a) Alternate Time-of-Use Monthly Rate Customers may elect to receive service under the time-of-use (TOU) rate option provided for all residential customers under Rate 01, subject to a Minimum Monthly Bill of \$26.50. The customer’s base rate monthly bill will consist of the greater of: (i) the total of base rate charges, including the monthly customer charge; or (ii) the customer’s Monthly Minimum Bill. The Net Energy Metering (NEM) billing provision will be applied by TOU period for the billing cycle.
- (b) Experimental Demand Charge Monthly Rate - Customers may elect to receive service under the demand charge rate option provided for residential DG customers under Rate 01, the customer’s base rate monthly bill will consist of (i) the applicable monthly customer charge, (ii) a monthly demand charge of \$3.16 per kW applicable to monthly peak metered demand, (iii) TOU energy charges and all applicable riders. The NEM billing provision will be applied by TOU period for the billing cycle. This option is not subject to a minimum bill provision. This optional rate will be available for DG customers only.

In addition to any applicable minimum bill, existing applicable riders and charges (e.g., the Energy Efficiency Cost Recovery Factor, the Military Base Discount Rate Factor, the Fixed Fuel Factor, Rate 48, Relate-back, Rate Case expense) and any new rate riders,

(e.g. a DCRF or TCRF), will be billed on the basis of the customer's monthly base charges and net energy consumption or production.

Small General Service – Small General Service DG customers not subject to Grandfathering will be served on a default basis under the Standard Monthly Service Rate for their applicable rate schedule, subject to a Monthly Minimum Bill of \$39.00. The customer's base rate monthly bill will consist of the greater of: (i) the total of base rate charges, including the monthly customer charge; or (ii) the customer's Monthly Minimum Bill.

Non-grandfathered Small General Service DG customers may otherwise voluntarily elect to take service under one of the following options:

- (a) Alternate Time-of-Use Monthly Rate – Customers may elect to receive service under the TOU rate option provided for all small general service customers under Rate 02, subject to a Minimum Monthly Bill of \$36.50. The customer's base rate monthly bill will consist of the greater of: the total of base rate charges, including the monthly customer charge; or the customer's Monthly Minimum Bill. The NEM billing provision will be applied by TOU period for the billing cycle.
- (b) Experimental Demand Charge Monthly Rate - Customers may elect to receive service under the demand charge rate option provided for small general service DG customers under Rate 02, the customer's base rate monthly bill will consist of (i) the applicable monthly customer charge, (ii) a monthly demand charge of \$4.58 per kW applicable to monthly peak metered demand, (iii) TOU energy charges and all applicable riders. The NEM billing provision will be applied by TOU period for the billing cycle. This option is not subject to a minimum bill provision. This optional rate will be available for DG customers only.

In addition to any applicable minimum bill, existing applicable riders and charges (e.g., the Energy Efficiency Cost Recovery Factor, the Military Base Discount Rate Factor, the Fixed Fuel Factor, Rate 48, Relate-back, Rate Case expense) and any new rate riders. (e.g. a DCRF or TCRF), will be billed on the basis of the customer's monthly base charges and net energy consumption or production.

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4. **Cooperation Regarding Education Program:** EPE agrees to work with the local DG community, the City of El Paso and other municipalities in EPE's Texas service territory, Commission Staff, and the OPUC on a commercially reasonable education program regarding DG service for existing and potential customers.

5. **DG Metering Costs:** Metering costs for DG customers taking service under the Standard Monthly Service rate are recovered through the applicable base rates. No additional charges apply for DG customers relative to non-DG customers.

For DG customers electing service on the optional TOU or Demand rate option, additional charges as provided for in the applicable tariff will apply.

6. **Net Metering:** No changes are proposed or made to either the process of NEM for billing purposes or the application of Rate 48 for purposes of crediting net energy exports for eligible customers. The NEM billing provision will be applied by TOU period for the billing cycle for DG customers electing pricing options which include TOU energy pricing.

7. **Interconnection Application Fee:** The application fee included in Rate DG for an Interconnection Application for small and large generation facilities will not include specific cost recovery related to the GIS system. Interconnection application fees will be effective for new applications with rate approval under this settlement, and are not subject to the relate-back provision:

Interconnection Application Fees

Rated Capacity <= 100kW: \$85.00

Rated Capacity > 100kW: \$230.00

Amendments and addenda to an existing interconnection agreement undertaken in order to record increases of DG capacity or additions of storage will be subject to an interconnection application fee not to exceed 50% of the fee applicable for new interconnections. Amendments and addenda shall not result in forfeiture of grandfathering provisions where an agreement has previously been grandfathered. Cancellation of interconnection agreements and complete and permanent removal of

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existing interconnected DG or storage shall result in forfeiture of grandfathering provisions but will not be subject to a fee of any kind.

8. **Commercial and Industrial Customer Demand Ratchets:** EPE will reset the demand ratchet for customers installing DG and/or storage following interconnection of the DG and/or storage, effectively restarting the historical demand used for purposes of applying the tariffed demand ratchet.
9. **Collaboration Regarding DG Benefits:** Prior to proposing modifications to the rate structure and conditions applicable to DG customers as described in this Attachment #5 of the Agreement, EPE will collaborate with interested stakeholders in good faith to determine the cost and benefits of DG to EPE and EPE customers. This process should be informed by the November 2016 NARUC Manual Distributed Energy Resources Rate Design and Compensation and any supplements or amendments thereto, studies commissioned in other jurisdictions regarding the costs and benefits of distributed generation, and the MIT Energy Initiative's Utility of the Future.
10. **Forbearance Agreement:** For a period no less than three years after the Commission enters its final order in this proceeding, EPE will not initiate a proceeding to propose changes that would result in a rate structure change or rate increase to any DG customer that is different than the rate increase applicable to all other customers in their current class. For this same period, EPE will not propose a change in rate classes that would separate a DG customer from its current rate class unless all members of its current class are affected in the same manner. This restriction does not prevent periodic adjustments to charges under the riders in EPE's tariffs to pass through changes in costs as prescribed by the riders, and will not apply in instances where EPE is required by the PUCT or local municipality to file a rate proceeding. During this period, this provision does not affect the Commission's exercise of regulatory authority over EPE, including but not limited to rulemaking projects and EPE compliance with any such rule of general utility applicability.