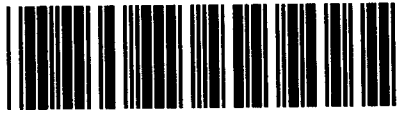




Control Number: 38802



Item Number: 19

Addendum StartPage: 0

**PUC DOCKET NO. 38802  
SOAH DOCKET NO. 473-11-1018**

<b>APPLICATION OF EL PASO ELECTRIC COMPANY TO IMPLEMENT AN INTERIM FUEL REFUND</b>	§ § § §	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**ORDER**

This Order addresses El Paso Electric Company's (EPE's) application to implement an interim fuel refund. This docket was processed in accordance with applicable statutes and Public Utility Commission of Texas (Commission) rules. EPE, the City of El Paso (City), Texas Industrial Energy Consumers (TIEC), and Commission Staff (collectively, Signatories) executed a Stipulation and Settlement Agreement (Stipulation) that resolves all of the issues in this proceeding. Consistent with the Stipulation, EPE's application is approved.

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

**I. Findings of Fact**

**Procedural History**

1. On October 20, 2010 EPE filed an application to implement a refund for fuel cost over-recoveries from March 2007 through September 2010.
2. EPE sought to refund \$12,786,944 (\$12,791,808 of net over-recovered costs and (\$4,864) of interest).
3. EPE requested that the refund tariff it proposed be made effective with bills rendered during the December 2010 billing month.
4. On October 28, 2010, the Commission issued an Order of Referral to the State Office of Administrative Hearings (SOAH).

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5. City and TIEC filed for and were granted intervenor status in this proceeding. Commission Staff also participated in this proceeding.
6. On November 4, 2010, EPE filed an affidavit proving completion of notice by: (a) one-time publication in a newspaper of general circulation in all counties in EPE's Texas service area; and (b) direct notice *via* hand-delivery or United States mail to all parties in EPE's last fuel reconciliation proceeding, *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 (Jul. 30, 2010).
7. On November 22, 2010, EPE, Commission Staff, and TIEC filed a Stipulation that resolves all of the issues in this proceeding. At the time the Stipulation was filed, counsel for the City stated that it is seeking authorization to concur with the Stipulation and does not object to the Stipulation going forward. On December 8, 2010, the City filed their Notice of Agreement to Stipulation and submitted a signed Stipulation signature page.
8. Pursuant to SOAH Order No. 1, EPE's notice was deemed adequate, and consistent with the Stipulation, the Signatories agree that EPE's notice was adequate and in compliance with P.U.C. SUBST. R. 25.235(b).
9. Consistent with the Stipulation, the Signatories agree that the appropriate amount of the refund is \$12,786,944, including estimated interest through the refund period.
10. Consistent with the Stipulation, the Signatories agree to a one-month fuel refund to be effective with bills rendered during December 2010, as reflected in the tariff sheet included with this Order as Attachment A.
11. On November 24, 2010, the following evidence was admitted into the record: (a) EPE's application and accompanying pre-filed testimony, and exhibits, filed October 20, 2010;

(b) EPE's affidavit proving notice and publishers' affidavits, filed November 4, 2010; and  
(c) the Signatories' Stipulation, filed November 22, 2010.

12. SOAH Order No. 3 also approved the Signatories' agreement for implementation of interim rates pursuant to P.U.C. PROC. R. 22.125(b) to allow the refund to be made during December 2010. The proceeding was also dismissed from the SOAH docket and returned to the Commission.

**Stipulated Fuel Refund**

13. The Stipulation supports approval of a net refund for EPE's over-collected fuel and purchased-power expenses incurred during the period March 1, 2007 through September 30, 2010.
14. The Stipulation supports a net refund to customers of \$12,786,944, which includes EPE's asserted amount of over-recovery balance plus interest through December 2010, as reflected in Finding of Fact No. 9 and the tariff sheet included with this Order as Attachment 1.
15. Consistent with the Stipulation, the Signatories agree that EPE is in a state of material over-collection and will remain in a state of material over-collection, unless the Commission approves the fuel refund.
16. Consistent with the Stipulation, the Signatories agree that the refund should be implemented over a one-month period beginning with bills rendered during the December 2010 billing cycle.
17. Consistent with the Stipulation, the Signatories agree, for purposes of this proceeding only, to the allocation of fuel costs to jurisdictions and rate classes calculated by EPE and to the resulting refund factors, subject to a fuel reconciliation proceeding.

18. Consistent with the Stipulation, the Signatories state that they arrived at the Stipulation through negotiation and compromise, and the Signatories do not endorse any particular cost allocation, rate design, or methodology underlying the Stipulation.
19. Consistent with the Stipulation, the terms of the Stipulation are reasonable and should be approved.

**Informal Disposition**

20. More than 15 days have passed since completion of the notice provided in this docket.
21. No protests, motions to intervene, or requests for hearing were filed that were not dealt with in the Stipulation. No issues of fact are disputed by any party; therefore, no hearing was necessary.

**II. Conclusions of Law**

1. EPE is an electric utility, as defined in § 31.002 of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2010) (PURA).
2. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 32.001, 36.001, and 36.203.
3. EPE's application was processed in accordance with the requirements of PURA and the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-.902 (Vernon 2010).
4. EPE timely filed the application in accordance with P.U.C. SUBST. R. 25.237(a)(3)(B).
5. EPE provided notice of the application in compliance with P.U.C. SUBST. R. 25.235(b).
6. P.U.C. SUBST. R. 25.237(a)(3)(B) does not require findings regarding the reasonableness of underlying fuel costs in fuel refund cases. Instead, P.U.C. SUBST. R. 25.237(a)(3)(A)

states that the reasonableness of EPE's fuel costs and revenues are subject to final review and reconciliation in EPE's next applicable fuel reconciliation proceeding.

7. Consistent with the Stipulation, EPE's application meets the requirements set out in P.U.C. SUBST. R. 25.237 and 25.236(e) regarding a fuel refund. Approval of the stipulated fuel refund represents a reasonable resolution of the issues in this proceeding and is in the public interest. The resulting refund rates are just and reasonable and otherwise in compliance with the Commission's rules and the requirements of PURA.
8. The requirements for informal disposition pursuant to P.U.C. PROC. R. 22.35 have been met in this proceeding.

### III. Ordering Paragraphs

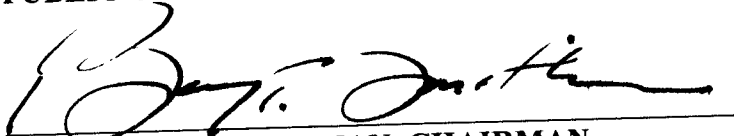
In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. Consistent with the Stipulation and EPE's application is approved.
2. EPE's interim fuel refund tariff reflecting a one-month refund period as depicted on Attachment 1 to this Order, is granted final approval.
3. EPE shall file in this docket a "clean" record copy of Schedule No. 98-FIRS, Fuel Interim Refund, to be stamped "Approved" and retained by the Commission.
4. Entry of this Order consistent with the Stipulation does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Stipulation. Entry of this Order consistent with the Stipulation shall not be regarded as binding precedent as to the appropriateness of any principle that may underlie the Stipulation.

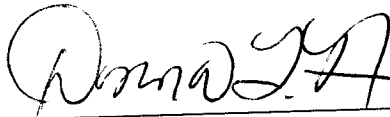
5. All other motions, requests for entry of specific findings of fact, conclusions of law, and ordering paragraphs, and any other requests for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS on the 16<sup>th</sup> day of December 2010.

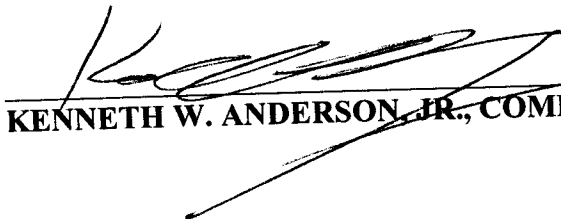
PUBLIC UTILITY COMMISSION OF TEXAS



BARRY T. SMITHERMAN, CHAIRMAN



DONNA L. NELSON, COMMISSIONER



KENNETH W. ANDERSON, JR., COMMISSIONER

# ATTACHMENT 1

## EL PASO ELECTRIC COMPANY

### SCHEDULE NO. 98-FIR FUEL INTERIM REFUND

N

**APPLICABILITY**

This refund is applicable to the rate schedules listed below.

**TERRITORY**

Texas service area.

**MONTHLY CREDIT**

A refund, to be calculated for each customer using the per kWh factor or directly assigned amount shown below, will be added as a separate line item to the base portion of the customer's Monthly Bill. The line item on a customer bill will be titled "Fuel Refund." The \$/kWh refund will continue for one (1) month. The directly assigned refund will also continue for one (1) month.

	<u>Rate Schedule</u>	<u>Voltage Level</u>	<u>Total Refund</u>	<u>Refund Factor \$/kWh</u>
01	Residential Service	S	\$ 4,045,651	(0.02700)
02	Small Commercial Service	S	197,113	(0.00802)
07	Outdoor Recreational Lighting	S	5,799	(0.01482)
07	Outdoor Recreational Lighting	P	1,685	(0.20678)
08	Governmental Street Light & Signal	S	101,101	(0.02354)
11	Municipal Pumping Service	S	2,705	(0.00049)
11	Municipal Pumping Service	P	147,047	(0.06339)
15	Electrolytic Refining Service	T (A)	181,121	(181,121)
WH	Water Heating Service	S	61,024	(0.02988)
22	Irrigation Service	S (A)	6,204	(6,204)
24	General Service	S	3,109,528	(0.03164)
24	General Service	P	240,420	(0.05081)
25	Large Power Service	S	1,110,874	(0.03308)
25	Large Power Service	P	257,401	(0.02863)
25	Large Power Service	T (A)	42,894	(42,894)
26	Petroleum Refinery Service	T (A)	909,595	(909,595)
28	Area Lighting Service Rate	S	68,086	(0.02554)
30	Electric Furnace Service (69 KV)	T (A)	13,181	(13,181)
30	Electric Furnace Service (115 KV)	T (A)	22,761	(22,761)
31	Military Reservation Service	T (A)	434,868	(434,868)
34	Cotton Gin Service	S (A)	349	(349)
34	Cotton Gin Service	P (A)	0	0
38	Interruptible Service - Large Power	S (A)	18,559	(18,559)
38	Interruptible Service - Large Power	P (A)	225,742	(225,742)
38	Interruptible Service - Large Power	T (A)	573,101	(573,101)
41	City & County Service	S	658,437	(0.03307)
41	City & County Service	P	174,169	(0.03887)
43	University Service	S	21,962	(0.02854)
43	University Service	P	125,667	(0.02712)
45	Supplementary Power Service	P (A)	29,902	(29,902)
			<u>\$ 12,786,944</u>	

Section Number 1  
 Sheet Number 31.1  
 Page 1 of 1

Revision Number 0  
 Effective with bills issued on or  
after December 1, 2010