



Control Number: 39159



Item Number: 23

Addendum StartPage: 0

**PUC DOCKET NO. 39159
SOAH DOCKET NO. 473-11-3761**

**APPLICATION OF EL PASO
ELECTRIC COMPANY TO
IMPLEMENT AN INTERIM
FUEL REFUND**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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ORDER

This Order addresses the application of El Paso Electric Company (EPE) to implement an interim fuel refund. A Stipulation and Settlement Agreement (Stipulation) was executed that resolves all of the issues in this proceeding. Consistent with the Stipulation, EPE's application is approved.

The Public Utility Commission of Texas (Commission) adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Procedural History

1. On February 18, 2011 EPE filed an application to implement a refund for fuel cost over-recoveries from March 2007 through December 2010.
2. EPE sought to refund \$11,780,174 (\$11,869,427 of net over-recovered costs and (\$89,253) of interest).
3. EPE requested that the refund tariff proposed be made effective with bills rendered during the April 2011 billing month.
4. On March 8, 2011, the Commission issued the Order of Referral to the State Office of Administrative Hearings (SOAH).
5. The City of El Paso (City), Office of Public Utility Counsel (OPUC), and Texas Industrial Energy Consumers (TIEC) filed for and were granted intervenor status in this proceeding. Commission Staff also participated in this proceeding.
6. On March 22, 2011, EPE filed its affidavit proving completion of notice by: (a) one-time publication in a newspaper of general circulation in each of the 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 Reconcile Fuel Costs (Severed from Docket No. 37690)*, Docket No. 38361, Order (Jan. 27, 2011).

7. The Signatories agreed to the approval by the SOAH Administrative Law Judge (ALJ) of the implementation of interim rates pursuant to P.U.C. PROC. R. 22.125 to allow the refund to begin during April 2011.
8. On March 23, 2011, City and OPUC requested that the refund be made over two months, April and May 2011, while TIEC urged a full refund during April only as requested by EPE.
9. To resolve this dispute, the SOAH ALJ directed the parties to file a statement of their position.
10. The parties presented their positions in written filings and on March 25, 2011, the SOAH ALJ issued SOAH Order No. 3, determining that the refund should be made over one month and granting interim rate relief to allow the refund to occur during April 2011.
11. On March 31, 2011, EPE, Commission Staff, OPUC, and TIEC filed a Stipulation that resolves all of the remaining issues in this proceeding. The only other party, the City of El Paso, filed its concurrence with the Stipulation on April 15, 2011.
12. Consistent with the Stipulation, the Signatories agree that the appropriate amount of the refund is \$11,780,174, including estimated interest through the refund period.
13. Consistent with the SOAH ALJ's ruling that the refund should occur over one month, the Signatories agreed that the tariff sheet included with this Order as Attachment 1 is appropriate.
14. Pursuant to SOAH Order No. 4, 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).
15. On April 4, 2011, the SOAH ALJ filed SOAH Order No. 4, admitting the following evidence into the record: (a) EPE's application and accompanying pre-filed testimony and exhibits, filed February 18, 2011; (b) EPE's affidavit proving notice and publisher affidavits, filed March 22, 2011; and (c) the Signatories' Stipulation, filed March 31, 2011.

16. SOAH Order No. 4 also dismissed this proceeding from the SOAH docket and returned the matter to the Commission.

Stipulated Fuel Refund

17. 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 December 31, 2010.
18. The Stipulation supports a net refund to customers of \$11,780,174, which includes EPE's asserted amount of over-recovery balance plus interest through April 2011, as reflected in Finding of Fact No. 13 and the tariff sheet included with this Order as Attachment 1.
19. 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.
20. 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.
21. 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.
22. Consistent with the Stipulation, the terms of the Stipulation are reasonable and should be approved.

Informal Disposition

23. More than 15 days have passed since completion of the notice provided in this docket.
24. 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, the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-902 (Vernon 2010), and Commission rules.
4. EPE timely filed the application in accordance with P.U.C. SUBST. R. 25.237(a)(3)(B).
5. EPE provided notice of this 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, 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 given final approval.
3. Within 10 days of the date this Order is issued, 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 and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 3rd day of May April 2011.

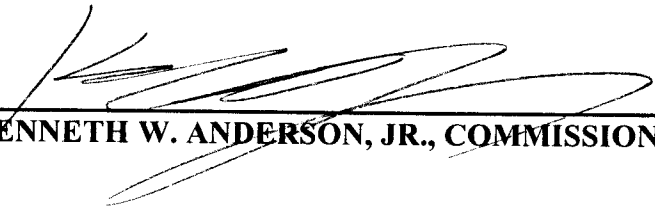
PUBLIC UTILITY COMMISSION OF TEXAS



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

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	\$3,198,503	(0.027835)
02	Small Commercial Service	S	1,202,968	(0.053430)
07	Outdoor Recreational Lighting	S	15,774	(0.036531)
07	Outdoor Recreational Lighting	P	201	(0.022353)
08	Governmental Street Light & Signal	S	88,418	(0.024899)
11	Municipal Pumping Service	S	17,171	(0.002874)
11	Municipal Pumping Service	P	18,945	(0.024985)
11TU	Municipal Pumping Service-TOU	S	234,558	(0.089976)
11TU	Municipal Pumping Service-TOU	P	13,687	(0.007547)
15	Electrolytic Refining Service	T (A)	82,509	(82,509)
22	Irrigation Service	S (A)	4,347	(4,347)
24	General Service	S	2,789,121	(0.027726)
24	General Service	P	39,973	(0.008321)
25	Large Power Service	S	765,881	(0.022410)
25	Large Power Service	P	238,033	(0.026019)
25	Large Power Service	T (A)	35,824	(35,824)
28	Petroleum Refinery Service	T (A)	680,501	(680,501)
30	Electric Furnace Service	S	48,871	(0.024835)
31	Military Reservation Service	T (A)	275,359	(275,359)
34	Cotton Gin Service	T (A)	584,654	(584,654)
34	Cotton Gin Service	S (A)	15,282	(15,282)
34	Cotton Gin Service	P (A)	0	0
38	Interruptible Service - Large Power	S (A)	33,455	(33,455)
38	Interruptible Service - Large Power	P (A)	162,339	(162,339)
41	City & County Service	S	998,636	(0.050081)
41	City & County Service	P	51,531	(0.011507)
43	University Service	S (A)	12,594	(12,594)
43	University Service	P (A)	114,183	(114,183)
45	Supplementary Power Service	P (A)	81,300	(81,300)
			<u>\$11,780,174</u>	

Section Number 1
Sheet Number 31.1

Revision Number 0
Effective with bills issued for the billing month
April 1, 2011