

TARIFF CONTROL NO. 39590

PETITION OF EL PASO §  
ELECTRIC COMPANY FOR § PUBLIC UTILITY COMMISSION  
APPROVAL TO REVISE MILITARY §  
BASE DISCOUNT RECOVERY § OF TEXAS  
FACTOR TARIFF PURSUANT TO §  
PURA § 36.354 §

PETITION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO REVISE  
MILITARY BASE DISCOUNT RECOVERY FACTOR TARIFF  
PURSUANT TO PURA § 36.354

July 15, 2011

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**PETITION OF EL PASO §  
ELECTRIC COMPANY FOR § PUBLIC UTILITY COMMISSION  
APPROVAL TO REVISE MILITARY §  
BASE DISCOUNT RECOVERY FACTOR § OF TEXAS  
TARIFF PURSUANT TO PURA § 36.354 §**

**PETITION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO REVISE  
MILITARY BASE DISCOUNT RECOVERY FACTOR TARIFF  
PURSUANT TO PURA § 36.354**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

El Paso Electric Company (EPE or the Company) files this petition requesting approval to revise its Military Base Discount Recovery Factor (MBDRF) tariff pursuant to Public Utility Regulatory Act<sup>1</sup> § 36.354 (Petition). In support thereof, EPE would show the following:

**I. BUSINESS ADDRESS AND AUTHORIZED REPRESENTATIVES**

EPE's business address is 100 N. Stanton, El Paso, Texas 79901. EPE's authorized representative for the purpose of receiving service of documents is:

Nadia Powell  
Regulatory Case Manager  
El Paso Electric Company  
100 N. Stanton  
El Paso, Texas 79901  
Telephone: 915.543.2284  
Facsimile: 915.521.4605  
[Nadia.Powell@epelectric.com](mailto:Nadia.Powell@epelectric.com)

EPE's authorized legal representatives are:

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Evan D. Johnson  
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<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.017 (Vernon 2008 & Supp. 2010) (PURA).

Pleadings and other documents should be served on Bret J. Slocum at the address provided above.

## **II. JURISDICTION**

The Public Utility Commission of Texas (PUCT) has jurisdiction over EPE and this Petition pursuant to PURA §§ 32.001, 32.101, 36.001, and 36.354(d).<sup>2</sup> The parties that will be affected by this Petition, if granted, will be EPE and all of EPE's customers except for customers taking service under Rate Schedule No. 31 – Military Reservation Service Rate, to which the MBDRF does not apply.

## **III. DESCRIPTION OF THE PETITION**

In the Company's last Texas general base rate case, PUCT Docket No. 37690,<sup>3</sup> the PUCT approved two new rate schedules: Rate Schedule No. 95 – Military Base Rate Discount, and Rate Schedule No. 96 – Military Base Discount Recovery Factor. These two schedules were implemented pursuant to PURA § 36.354.

PURA §§ 36.354(a) and (b) require electric utilities in areas where electric choice is not available to discount charges for electric service provided to military bases by 20 percent of the base rate for the otherwise applicable rate. Rate Schedule No. 95 incorporates the 20 percent discount required by those sections of PURA. In addition, PURA § 36.354(c) provides that “[a]n electric utility, municipally owned utility, or electric cooperative may assess a surcharge to all of the utility's retail customers in the state to recover the difference in revenue between the revenues from the discounted rate for military bases provided under Subsection (a) and the base commercial rate.” Rate Schedule No. 96 assesses the surcharge allowed by PURA §36.354(c). This recovery factor is applicable to all rates except Rate Schedule No. 31 – Military Reservation Service Rate.

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<sup>2</sup> PURA § 36.354(d) states as follows: “Each electric utility shall file a tariff with the commission reflecting the discount required by Subsection (a) and may file a tariff reflecting the surcharge provided by Subsection (c). Not later than the 30th day after the date the commission receives the electric utility's tariff reflecting the surcharge, the commission shall approve the tariff. A proceeding under this subsection is not a rate change for purposes of Subchapter C.”

<sup>3</sup> *Petition 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 (July 30, 2010).

Rate Schedule No. 96, as approved in Docket No. 37690, requires that the MBDRF is based on actual historical usage and that EPE adjust the MBDRF in September of each year to include any over/under recovery amount collected under this tariff during the previous year.<sup>4</sup> EPE has calculated that, for the period in 2010 during which Rate Schedule Nos. 95 and 96 were in effect (July 1, 2010 to December 31, 2010), the difference between the actual discount provided under Rate Schedule No. 95 and the actual revenues collected under Rate Schedule 96 resulted in an under-recovery of \$761,274. In addition, EPE has calculated that, for 2011, based on actual revenues collected in January through May of this year and forecasted revenues collected in June through December of this year, the Company will provide approximately \$3,515,390 in rate discounts under Rate Schedule No. 95 that the Company will recover through the revised MBDRF included in Rate Schedule No. 96. Based on these calculations, EPE requests that the recovery factor under Rate Schedule No. 96 be revised to 1.039 percent from the current recovery factor of 0.377 percent. Under EPE's revised tariff, based on EPE's current base rates, a residential customer averaging 600 kWh of electricity per month would, on average, be charged \$0.57 per month, which is an increase of \$0.36 per month over the current average MBDRF monthly charge.

In support of this Petition, the Company provides the Direct Testimony of Company witness Curtis Hutcheson as Attachment A to this Petition. Exhibit CH-1 to Mr. Hutcheson's testimony contains EPE's revised Rate Schedule No. 96, to be effective for the one-year period beginning with the first billing cycle of September 2011. Exhibit CH-2 to Mr. Hutcheson's testimony contains the calculation of the over/under-recovery amount reflected in this tariff. Attachment B to this Petition contains the confidential workpapers for the calculation of the tariff. Because these workpapers contain customer-specific consumption information that is exempt from public disclosure pursuant to PURA § 17.004(a)(6) and Section 552.101 of the Public Information Act,<sup>5</sup> they are being filed under seal pursuant to the Company's proposed Protective Order, as provided below. A statement of confidentiality is attached to this Petition as Attachment E.

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<sup>4</sup> Docket No. 37690, Joint Motion to Implement Stipulation and Agreement and to Approve Interim Rates at 470 (Jun. 16, 2010).

<sup>5</sup> TEX. GOV'T CODE ANN. §§ 552.001-.353 (Vernon 2008 & Supp. 2010).

#### **IV. EFFECTIVE DATE**

EPE requests that revised Rate Schedule No. 96 become effective with the first billing cycle of September 2011.

#### **V. PROCEDURAL SCHEDULE**

Pursuant to the September 26, 2003 memorandum by Commission Staff to the Commissioners entitled "Military Bases Discounts and Surcharges" (Staff Memo), EPE proposes that its revised tariff sheet be administratively approved within 30 days of the date of this filing and that intervention and comment deadlines be established consistent with this 30-day deadline. In addition, EPE proposes an intervention deadline of August 5, 2011, which is 21 days after the date this Petition is filed with the Commission.

#### **VI. NOTICE**

Pursuant to the Staff Memo, within one day of filing, EPE will provide a copy of this Petition and the attached notice (Attachment C) by first-class mail to each of the Texas municipalities that has retained original jurisdiction over EPE's retail rates. These municipalities are El Paso, Anthony, Clint, Horizon, Socorro, Vinton, and Van Horn. The Company will also publish notice of this Petition by one-time publication in newspapers having general circulation in each county within the Company's Texas retail service area.

#### **VII. PROTECTIVE ORDER**

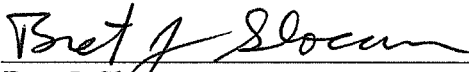
Because EPE's Petition contains confidential workpapers, the Company proposes that the Commission enter its standard Protective Order (Attachment D) as soon as possible.

#### **VIII. CONCLUSION AND PRAYER**

WHEREFORE, PREMISES CONSIDERED, EPE respectfully requests that the following relief be granted: (1) that the proposed notice is approved; (2) that the proposed Protective Order is approved; (3) that an Order is entered approving the revised Rate Schedule No. 96; and (4) that such other relief to which EPE may be entitled is granted.

Respectfully submitted,


Bret J. Slocum  
State Bar No. 18508200  
Evan D. Johnson  
State Bar No. 24065498  
Duggins Wren Mann & Romero, LLP  
P.O. Box 1149  
Austin, Texas 78767  
(512) 744-9300  
(512) 531-7200 (fax)

By:   
Bret J. Slocum

**ATTORNEYS FOR EL PASO  
ELECTRIC COMPANY**

**CERTIFICATE OF SERVICE**

I certify that on July 15, 2011 a true and correct copy of this document was served by first-class mail on each of the Texas municipalities that has retained original jurisdiction over EPE's retail rates.

  
Bret J. Slocum

TARIFF CONTROL NO. 39590

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BASE DISCOUNT RECOVERY	§	OF TEXAS
FACTOR TARIFF PURSUANT TO	§	
PURA § 36.354	§	

DIRECT TESTIMONY OF

CURTIS HUTCHESON

FOR

EL PASO ELECTRIC COMPANY

July 15, 2011

DIRECT TESTIMONY  
CURTIS HUTCHESON

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EXHIBITS

Exhibit CH-1	Rate Schedule No. 96 – Military Base Discount Recovery Factor
Exhibit CH-2	Military Base Discount Recovery Factor Calculation
Exhibit CH-3	Typical Residential Bill Comparison



**I. INTRODUCTION**

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**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Curtis Hutcheson. My business address is 100 North Stanton, El Paso, Texas, 79901.

**Q. HOW ARE YOU EMPLOYED?**

A. I am employed by El Paso Electric Company (EPE) as Manager–Economic & Rate Research. I direct the work of the Economic & Rate Research Department.

**Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND BUSINESS BACKGROUND.**

A. I graduated from New Mexico State University in 1988 with a Bachelor of Science degree in Mechanical Engineering and in 1990 with a Master of Arts in Economics with a Public Utility Regulatory Option.

I began working for EPE in 1991 as a Load Research Specialist in the Load Research Section, which was within the Economic and Rate Research group. Among my duties were the creation of load studies and the calculation of jurisdictional and class allocators. I was also involved in creating econometric models of residential load usage and statistical analyses of load data in the system. In 2004, the responsibility for EPE’s Long-Term and Budget Year Forecast was transferred to the Load Research Section. In 2005, I was promoted to the position of Supervisor of Load and Market Research. In that position, I directly oversaw the production and

1 review of the Long-Term Load Forecast for Energy and Demand. In July of 2008, I  
2 became Manager–Economic & Rate Research.

3

4 **Q. PLEASE DESCRIBE YOUR CURRENT RESPONSIBILITIES WITH EPE.**

5 A. As Manager of the Economic & Rate Research Department, my primary  
6 responsibilities include: (1) overseeing EPE’s rate research function; (2) developing  
7 EPE’s jurisdictional cost of service studies; (3) developing EPE’s class cost of service  
8 studies; (4) conducting rate design analysis and developing EPE’s retail rate  
9 schedules and charges; and, (5) evaluating end-use costs to serve and develop  
10 specialized rate designs and rate agreements.

11

12 **Q. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY BEFORE UTILITY  
13 REGULATORY BODIES?**

14 A. Yes, I have previously filed testimony with the Public Utility Commission of Texas  
15 (PUCT) and with the New Mexico Public Regulation Commission (NMPRC).

16

17 **II. PURPOSE OF TESTIMONY**

18 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

19 A. The purpose of my direct testimony is to present and support the Company’s request  
20 to revise its Military Base Discount Recovery Factor (MBDRF) tariff, Rate Schedule  
21 No. 96. I will present the revised tariff and the calculation of the rate.

22

23

1 **Q. ARE YOU SPONSORING ANY EXHIBITS IN YOUR TESTIMONY?**

2 A. Yes. I am sponsoring Exhibits CH-1, CH-2, and CH-3, which are attached to this  
3 testimony.

4

5 **Q. PLEASE DESCRIBE THE CONTENTS OF EACH EXHIBIT.**

6 A. The contents of each exhibit are as follows:

7 Exhibit CH-1 Rate Schedule No. 96 – Military Base Discount Recovery Factor

8 Exhibit CH-2 Calculation of the MBDRF

9 Exhibit CH-3 Typical Residential Bill Comparison

10

11

**III. REVISED MBDRF TARIFF**

12 **Q. WHAT IS THE PURPOSE OF THE MBDRF TARIFF?**

13 A. The MBDRF tariff allows EPE to recover the total base rate discount provided to  
14 military base facilities under EPE’s Rate Schedule No. 95 – Military Base Rate  
15 Discount, in compliance with Public Utility Regulatory Act (PURA) § 36.354(c).

16

17 **Q. EXPLAIN EPE’S RATE SCHEDULE NO. 95 - MILITARY BASE DISCOUNT.**

18 A. In its most recent rate case, consistent with PURA § 36.354, EPE developed a rate  
19 discount that is available to federal military installations. A 20 percent discount is  
20 deducted from the base portion of the customers’ actual tariff rate.

21

22

23

1 **Q. HAVE YOU PROVIDED THE REVISED MBDRF TARIFF?**

2 A. Yes. Exhibit CH-1 contains the revised Schedule No. 96 – Military Base Discount  
3 Recovery Factor, which is applicable to all rates except Rate Schedule No. 31 –  
4 Military Reservation Service Rate.

5

6 **IV. CALCULATION OF THE MBDRF**

7 **Q. HOW DID EPE CALCULATE THE MBDRF?**

8 A. EPE calculated the MBDRF consistent with the method used to calculate the MBDRF  
9 in Docket No. 37690, except that the proposed factor is calculated using both actual  
10 and projected 2011 billing data and base revenues. In addition, the proposed  
11 calculation includes an under-recovery amount based on the difference between the  
12 total discount provided and the revenues collected from July to December of 2010 to  
13 recover that discount.

14

15 **Q. WHAT ARE THE STEPS IN CALCULATING THE MBDRF?**

16 A. There is one military installation that qualifies for the discount in EPE's Texas  
17 service territory. This customer is also the only customer served under EPE's  
18 Schedule No. 31 – Military Reservation Service Rate. This customer's annual base  
19 revenues are estimated for the current year, and the 20 percent discount is applied to  
20 those revenues to calculate the discount amount to be recovered. An over/under-  
21 recovery amount is then calculated based on the difference between the historical  
22 amount discounted under Rate Schedule No. 95 and the actual amount collected  
23 under Rate Schedule No. 96 during the previous calendar year. The base revenues

1 collected from the military installation under Rate Schedule No. 31, to which the  
2 MBDRF does not apply, are then subtracted from the total estimated retail base  
3 revenues of all classes for the year to determine the estimated net total rate base  
4 revenues to which the MBRDF will apply. Finally, the sum of the total discount  
5 amount and the over/under-recovery amount is divided by the estimated net total rate  
6 base revenues to determine the MBDRF.

7  
8 **Q. WHAT IS THE COMPANY'S REVISED MBDRF?**

9 A. The revised MBDRF is 1.039 percent of a customer's non-fuel base rate charges.  
10 This is calculated, as shown in Exhibit CH-2, by dividing \$4,276,664 (the sum of the  
11 discount amount of \$3,515,390 and the 2010 under-recovery amount of \$761,274) by  
12 estimated net total retail base revenues of \$411,625,114 (the difference between the  
13 \$17,576,949 in estimated revenues to be collected under Schedule No. 31 in 2011 and  
14 the \$429,202,093 in estimated total retail base revenues to be collected from all rate  
15 classes in 2011).

16  
17 **Q. WHAT IS THE CURRENT MBDRF?**

18 A. The current MBDRF is 0.377 percent of a customer's non-fuel base rate charges.

19  
20 **Q. HOW DOES THE REVISED MBDRF AFFECT A TYPICAL EPE**  
21 **RESIDENTIAL CUSTOMER?**

22 A. The typical EPE residential customer averaged approximately 600 kWh per month for  
23 2010. A residential customer averaging 600 kWh per month under the revised tariff

1 would, on average, incur an MBDRF charge of \$0.57 per month, which is an increase  
2 of \$0.36 per month over the current average MBDRF charge of \$0.21 per month.  
3 This calculation is shown in Exhibit CH-3.  
4

5 **Q. WHY DID THE MBDRF INCREASE FROM 0.377 PERCENT TO**  
6 **1.039 PERCENT?**

7 A. The requested MBDRF is an increase over the one currently in effect because the  
8 dollar amount of the discount for the military installation pursuant to Rate Schedule  
9 No. 95 has increased from the estimated level when the MBDRF was set in EPE's last  
10 rate proceeding. Pursuant to PURA § 36,354, the discount is 20 percent of the base  
11 portion of the military installation's rate, and the magnitude of the dollar amount of  
12 the discount given to the military installation increased because the military  
13 installation's base charges have increased over what had been estimated in  
14 Docket 37690. The base charges have increased for two reasons: 1) the military  
15 installation's consumption has increased; and 2) the rate schedule under which some  
16 of the military installation consumption is being billed is different than that when the  
17 MBDRF was set.  
18

19 **Q. PLEASE DISCUSS THE LOAD GROWTH THE MILITARY**  
20 **INSTALLATION HAS EXPERIENCED SINCE THE TEST YEAR USED IN**  
21 **DOCKET NO. 37690 AND THE EXPECTED LOAD GROWTH IT IS**  
22 **EXPECTED TO EXPERIENCE GOING FORWARD?**

1 A. Total annual usage in 2010 was 17.4 percent above the annualized kWh used in  
2 Docket No. 37690. The estimated usage for the military installation for 2011 is  
3 22.7 percent above the 2010 annual usage. The military installation is expected to  
4 continue to grow with the influx of additional troops each year. New building  
5 construction is ongoing with new facilities currently under construction to house and  
6 serve the additional troops and their families. Recently, a new commissary and a new  
7 strip mall were opened on base. Additional construction projects include buildings  
8 for troop support, a new hospital and other support buildings, all of which contribute  
9 additional load

10

11 **Q. PLEASE EXPLAIN YOUR STATEMENT THAT THE RATE SCHEDULE**  
12 **UNDER WHICH SOME OF THE MILITARY INSTALLATION'S**  
13 **CONSUMPTION WAS BEING BILLED IS DIFFERENT.**

14 A. When EPE estimated the amount to be discounted under Rate Schedule No. 95 in  
15 Docket No. 37690, it based this estimate on the military installation being billed both  
16 for firm service under Schedule No. 31 – Military Reservation Service Rate and for  
17 interruptible service under Schedule No. 38 – Noticed Interruptible Power Service  
18 during the historic test-year that ended June 30, 2009. During that period, 16 MW of  
19 the military installation's total load was being served under the interruptible service  
20 rate. However, due to mechanical difficulties with the generator the military  
21 installation used to enable it to take interruptible service, it no longer qualified for  
22 service under Schedule No. 38 as of August 2010, one month after the new rates went  
23 into effect. Because the base rate billings were significantly higher than during the

1 historical test year, the actual discount provided under Rate Schedule No. 95 was  
2 larger than anticipated.

3

4 **Q. WHAT WAS THE AMOUNT OF THE DISCOUNT GIVEN AND HOW DID**  
5 **IT COMPARE TO COLLECTIONS UNDER THE MBDRF?**

6 A. The actual military base discount for the six-month period from July through  
7 December 2010 was \$1,537,520. EPE only collected \$776,246 through the MBDRF  
8 during that six-month period in 2010 when the current rate was in effect. This  
9 resulted in an under-recovery in 2010 of \$761,274, as shown in Exhibit CH-2. This  
10 amount represents the net of the annual military base discount amount of \$1,537,520  
11 less the actual discount recovery amount of \$776,246 collected from July to  
12 December 2010.

13

14 **Q. WHAT IS EPE'S ESTIMATE FOR THE AMOUNT OF DISCOUNT UNDER**  
15 **RATE SCHEDULE NO. 95 DURING 2011?**

16 A. The estimated revenues for 2011 are based on the military installation continuing to  
17 be billed for firm service under Rate Schedule No. 31 – Military Reservation Service  
18 Rate, without receiving any interruptible services under Rate Schedule No. 38. The  
19 revenue amounts used for January through May 2011 are actual billed base rate  
20 revenues, while the revenue amounts used for June through December 2011 are  
21 estimated revenues based on EPE's most current long-term forecast of revenues to be  
22 recovered under Rate Schedule No. 31 – Military Reservation Service Rate, using the  
23 military installation's historical load factor to estimate demand. In this filing, with



1 the military installation being billed only firm service, the discount is calculated to be  
2 \$3,515,390. As a point of comparison, at the time the current MBDRF was set, the  
3 annual discount under firm and interruptible service was estimated to be \$1,447,659.  
4

5 **Q. WHAT WOULD HAVE BEEN THE BILLING IMPACT IF THE MILITARY**  
6 **INSTALLATION HAD BILLED SOLELY ON THE RATE SCHEDULE 31 –**  
7 **MILITARY RESERVATION SERVICE RATE FOR 2009 AND 2010?**

8 A. The billing impact on the military installation if it had been billed solely on the  
9 applicable Rate Schedule No. 31 – Military Reservation Service Rate is shown in  
10 Workpaper CH-2 Confidential, Page 5 of 5.  
11

12 **Q. EXPLAIN HOW THE TOTAL ESTIMATED RETAIL BASE REVENUES**  
13 **FOR THE MBDRF WERE CALCULATED.**

14 A. The total estimated retail base revenues for Texas rate classes other than the military  
15 installation were estimated in the same manner as the military installation base  
16 revenues. For the months January through May 2011, revenues are actual non-fuel  
17 base revenues for each class. For the months June through December 2011, revenues  
18 are estimated based on forecasted kWh from EPE's 2010 long-term forecast for each  
19 rate. As shown in Exhibit CH-2, the total of actual and estimated retail base revenues  
20 for Texas customers during this period was \$429,202,093. Removing the Rate  
21 Schedule No. 31 revenues attributed to the military installation, which totaled  
22 \$17,576,949, results in an estimated retail base revenue amount of \$411,625,144.  
23

1

**V. CONCLUSION**

2 **Q. IS THE REVISED RATE SCHEDULE 96 – MILITARY BASE DISCOUNT**  
3 **RECOVERY FACTOR REASONABLE?**

4 **A.** Yes. The Schedule 96 – Military Base Discount Recovery Factor is reasonable. The  
5 1.039 percent MBDRF was calculated to recover the discount amount of \$3,515,390  
6 from Rate Schedule No. 95 – Military Base Discount, based on the estimated 2011  
7 base revenues of the military installation under this rate. It also recovers the under-  
8 recovery amount of \$761,274 for the year 2010.

9

10 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

11 **A.** Yes, it does.

**EL PASO ELECTRIC COMPANY**  
**SCHEDULE NO. 96**  
**MILITARY BASE DISCOUNT RECOVERY FACTOR**

**APPLICABILITY**

Electric service billed under rate schedules having a Military Base Discount Recovery Factor Clause shall be subject to a Military Base Discount Recovery Factor ("MBDRF").

Pursuant to PURA §36.354(c), the MBDRF allows the Company to recover the total base rate discount provided to military base facilities pursuant to Schedule No. 95 – Military Base Rate Discount.

**TERRITORY**

Texas Service Area

**MONTHLY RATE**

Percentage of monthly non-fuel base rate charges	1.039%	
--	--------	--

**HISTORICAL ADJUSTMENTS AND TRUE-UP**

The MBDRF shall be based on actual historic usage and adjusted in September of each year to include the over/under recovery from the previous year.

El Paso Electric Company  
 Rate Calculation for  
 Military Base Discount Recovery Factor

Line Description	Value
1 Rate No. 31 - Military Reservation Service 2011 Estimated Revenue	\$ 17,576,949
2 PURA Sec. 36.354(b) Military Base Rate Discount Percentage	20%
3 Calculated Military Base Rate Discount	<u>\$ 3,515,390</u>
4 Under/(Over) Recovery from Previous Year	761,274
5 Total Military Base Rate Discount to be Recovered	<u>\$ 4,276,664</u>
6 Total Estimated Texas Retail Base Rate Revenues	\$ 429,202,093
7 Less: Estimated Rate No. 31 Firm Base Revenues	17,576,949
8 Less: Estimated Rate No. 31 Interruptible Base Revenues	0
9 Total Estimated Retail Base Revenues for Military Base Discount Recovery	<u>\$ 411,625,144</u>
10 <b>Military Base Discount Recovery Factor (% of Base) Line 5 / Line 9</b>	<b>1.039%</b>

El Paso Electric Company  
Military Base Discount Recovery Factor Impact  
On Typical Texas Residential Customer Bills

Line	Month	Monthly Average per Customer Usage, 2010	Monthly Percent, 2010	Monthly Energy, kWh (a)	Customer and Energy Charges	Current MBDRF Charge	Revised MBDRF	Differenc e in MBDRF
1	January	647	8.76%	630	\$ 53.79	\$ 0.20	\$ 0.56	\$ 0.36
2	February	505	6.83%	492	43.11	0.16	0.45	0.29
3	March	456	6.18%	445	39.47	0.15	0.41	0.26
4	April	527	7.13%	513	44.73	0.17	0.46	0.30
5	May	1 465	6.29%	453	44.61	0.17	0.46	0.30
6	June	1 697	9.43%	679	64.38	0.24	0.67	0.43
7	July	1 848	11.47%	826	77.23	0.29	0.80	0.51
8	August	1 825	11.16%	804	75.31	0.28	0.78	0.50
9	September	1 815	11.02%	794	74.44	0.28	0.77	0.49
10	October	1 624	8.44%	608	58.17	0.22	0.60	0.39
11	November	454	6.14%	442	39.23	0.15	0.41	0.26
12	December	529	7.16%	515	44.89	0.17	0.47	0.30
13	Average	616	8.33%	600	\$ 54.95	\$ 0.21	\$ 0.57	\$ 0.36
14	Total	7,392	100.00%					

15	Average Monthly Usage, kWh	600
16	Annual Usage, kWh	7,200
17	Customer Charge	\$ 5.00
18	Winter Energy Charge	\$ 0.07745
19	Summer Energy Charge	\$ 0.08745
20	Revised MBDRF	1.039%
21	Current MBDRF	0.377%

(a) Based on monthly average usage per customer for 2010  
1 - denotes Summer Month

This workpaper contains confidential information and is being provided under a separate sealed envelope.

**NOTICE OF PETITION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO  
REVISE MILITARY BASE DISCOUNT RECOVERY FACTOR TARIFF  
PURSUANT TO PURA § 36.354**

On July 15, 2011, El Paso Electric Company (EPE or the Company) filed with the Public Utility Commission of Texas (PUCT) a petition requesting approval to revise its Military Base Discount Recovery Factor (MBDRF) tariff, Rate Schedule No. 96, pursuant to Public Utility Regulatory Act (PURA) § 36.354 (Petition). EPE requested that the revised tariff be approved within 30 days after it filed the Petition and that the revised tariff become effective no later than September 1, 2011. The parties that will be affected by this tariff revision will be EPE and all of EPE's customers except for customers taking service under Rate Schedule No. 31 – Military Reservation Service Rate, to which the MBDRF does not apply.

PURA §§ 36.354(a) and (b) require electric utilities in areas where electric choice is not available to discount charges for electric service provided to military bases by 20 percent of the base rate for the otherwise applicable rate. Rate Schedule No. 95 – Military Base Discount incorporates this 20 percent discount as required by those sections of PURA. In addition, PURA § 36.354(c) provides that “[a]n electric utility, municipally owned utility, or electric cooperative may assess a surcharge to all of the utility’s retail customers in the state to recover the difference in revenue between the revenues from the discounted rate for military bases provided under Subsection (a) and the base commercial rate.” Rate Schedule No. 96 assesses the surcharge allowed by PURA § 36.354(c).

This revised factor is applicable to all rates except Rate Schedule No. 31. EPE has calculated that, for the period in 2010 during which Rate Schedule Nos. 95 and 96 were in effect (July 1, 2010 to December 31, 2010), the difference between the actual discount provided under Rate Schedule No. 95 and the actual revenues collected under Rate Schedule 96 resulted in an under-recovery of \$761,274. In addition, EPE has calculated that, for 2011, the Company will provide approximately \$3,515,390 in rate discounts under Rate Schedule No. 95 that it will be necessary for the Company to recover through the revised MBDRF included in Rate Schedule No. 96. Based on these calculations, EPE requests that the MBDRF included in Rate Schedule No. 96 be revised to 1.039 percent from the current recovery factor of 0.377 percent. Under this revised factor, based on EPE's current base rates and fixed fuel factor, a residential customer

using 600 kWh of electricity per month would be charged, on average, \$0.57 per month, which is an increase of \$0.36 per month over the current average MBDRF charge of \$0.21 per month.

The Petition has been assigned Tariff Control No. 39590. Persons who wish to intervene or comment upon this proceeding or who want more information about EPE's Petition may contact the Company at 100 N. Stanton, El Paso, Texas 79901, or call (915) 543-2284. A complete copy of the Petition is available for inspection at this address. EPE has proposed an intervention deadline of August 5, 2011 for this proceeding. Persons who wish to formally participate in or comment upon these proceedings, or obtain further information, should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Consumer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.



**TARIFF CONTROL NO. 39590**

<b>PETITION OF EL PASO</b>	<b>§</b>	
<b>ELECTRIC COMPANY FOR</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>APPROVAL TO REVISE MILITARY</b>	<b>§</b>	
<b>BASE DISCOUNT RECOVERY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>FACTOR TARIFF PURSUANT TO</b>	<b>§</b>	
<b>PURA § 36.354</b>	<b>§</b>	

**PROTECTIVE ORDER**

This Protective Order shall govern the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials), including information whose confidentiality is currently under dispute, by a party providing information to the Public Utility Commission of Texas (Commission) or to any other party to this proceeding.

It is ORDERED that:

1. **Designation of Protected Materials.** Upon producing or filing a document, including, but not limited to, records on a computer disk or other similar electronic storage medium in this proceeding, the producing party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face “PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN TARIFF CONTROL NO. 39590” (or words to this effect) and consecutively Bates Stamping each page. Protected Materials and Highly Sensitive Protected Materials include the documents so designated, as well as the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.
2. **Materials Excluded from Protected Materials Designation.** Protected Materials shall not include any information or document contained in the public files of the Commission or any other federal or state agency, court, or local governmental authority subject to the Public Information Act.<sup>1</sup> Protected Materials also shall not include documents or information which at the time of, or prior to disclosure in, a proceeding is or was public

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<sup>1</sup> TEX. GOV'T CODE ANN. §§ 552.001-.353 (Vernon 2004 and Supp. 2009).

knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

3. **Reviewing Party.** For the purposes of this Protective Order, a “Reviewing Party” is any party to this docket.
4. **Procedures for Designation of Protected Materials.** On or before the date the Protected Materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party shall file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (a) any exemptions to the Public Information Act claimed to apply to the alleged Protected Materials; (b) the reasons supporting the producing party’s claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials; and (c) that counsel for the producing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.
5. **Persons Permitted Access to Protected Materials.** Except as otherwise provided in this Protective Order, a Reviewing Party may access Protected Materials only through its “Reviewing Representatives” who have signed the Protective Order Certification Form (see Attachment A). Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in this proceeding. At the request of the PUC Commissioners, copies of Protected Materials may be produced by Commission Staff. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order and shall observe the restrictions of the Protective Order.
6. **Highly Sensitive Protected Material Described.** The term “Highly Sensitive Protected Materials” is a subset of Protected Materials and refers to documents or information that a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the

Reviewing Party (except as specified herein) would expose a producing party to unreasonable risk of harm. Highly Sensitive Protected Materials include but are not limited to: (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act;<sup>2</sup> (b) contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; or (d) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party shall bear the designation “HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN TARIFF CONTROL NO. 39590” (or words to this effect) and shall be consecutively Bates Stamped. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party’s designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

7. **Restrictions on Copying and Inspection of Highly Sensitive Protected Material.**

Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. The Reviewing Party shall maintain a record of all copies made of Highly Sensitive Protected Material and shall send a duplicate of the record to the producing party when the copy or copies are made. The record shall specify the location and the person possessing the copy. Highly Sensitive Protected Material shall be made available for inspection only at the location or locations provided by the producing party, except as specified by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes shall themselves be treated as Highly

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<sup>2</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 32.101(c) (Vernon 2007 & Supp. 2009) (PURA).

Sensitive Protected Materials unless such notes are limited to a description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document.

8. **Restricting Persons Who May Have Access to Highly Sensitive Protected Material.**

With the exception of Commission Staff, The Office of the Attorney General (OAG), and the Office of Public Utility Counsel (OPC), and except as provided herein, the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are (a) outside counsel for the Reviewing Party, (b) outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel or, (c) employees of the Reviewing Party working with and under the direction of Reviewing Party's counsel who have been authorized by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party shall limit the number of Reviewing Representatives that review Highly Sensitive Protected Materials to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives whenever possible. Reviewing Representatives for Commission Staff and OPC, for the purpose of access to Highly Sensitive Protected Materials, shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.

9. **Copies Provided of Highly Sensitive Protected Material.** A producing party shall provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8, and must be either outside counsel or an outside consultant. Other representatives of the Reviewing Party who are authorized to view Highly Sensitive Protected Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party's representative designated to receive the information. Each Reviewing Party may make two additional copies of Highly Sensitive documents for outside consultants whose business offices are located outside of Travis County. All restrictions on Highly

Sensitive documents in this order shall apply to the additional copies maintained in the outside consultants' offices. Any Highly Sensitive Protected Materials provided to a Reviewing Party may not be copied except as provided in Paragraph 7 and shall be returned along with any copies made pursuant to paragraph 7 to the producing party within two weeks after the close of the evidence in this proceeding. The restrictions contained herein do not apply to Commission Staff, OPC, and the OAG when the OAG is a representing a party to the proceeding.

10. **Procedures in Paragraphs 10-14 Apply to Commission Staff, OPC, and the OAG and Control in the Event of Conflict.** The procedures in Paragraphs 10 through 14 apply to responses to requests for documents or information that the producing party designates as Highly Sensitive Protected Materials and provides to Commission Staff, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs shall control.
11. **Copy of Highly Sensitive Protected Material to be Provided to Commission Staff, OPC and the OAG.** When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party shall also deliver one copy of the Highly Sensitive Protected Materials to the Commission Staff, OPC, and the OAG (if the OAG is representing a party) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by Commission Staff, OPC, and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Commission Staff, OPC and the OAG (if the OAG is representing a party) may request such copies as are necessary of such voluminous material under the copying procedures specified herein.
12. **Delivery of the Copy of Highly Sensitive Protected Material to Commission Staff and Outside Consultants.** The Commission Staff, OPC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff

members first sign the certification specified by Paragraph 15. After obtaining the agreement of the producing party, Commission Staff, OPC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification in Attachment A.

13. **Restriction on Copying by Commission Staff, OPC and the OAG.** Except as allowed by Paragraph 7, Commission Staff, OPC and the OAG may not make additional copies of the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the presiding officer directs otherwise. Commission Staff, OPC, and the OAG may make limited notes of Highly Sensitive Protected Materials furnished to them, and all such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.
14. **Public Information Requests.** In the event of a request for any of the Highly Sensitive Protected Materials under the Public Information Act, an authorized representative of the Commission, OPC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.
15. **Required Certification.** Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in TARIFF CONTROL

No. 39590. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order shall, before inspection of such material, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

The Reviewing Party shall provide a copy of each signed certification to Counsel for the producing party and serve a copy upon all parties of record.

16. **Disclosures between Reviewing Representatives and Continuation of Disclosure Restrictions after a Person is no Longer Engaged in the Proceeding.** Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes, memoranda, or other information derived from the protected material shall either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.

17. **Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials.** Except for Highly Sensitive Protected Materials, which shall be provided to the Reviewing Parties pursuant to Paragraphs 9, and voluminous Protected Materials, the producing party shall provide a Reviewing Party one copy of the Protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record.
18. **Procedures Regarding Voluminous Protected Materials.** P.U.C. PROC. R. 22.144(h) will govern production of voluminous Protected Materials. Voluminous Protected Materials will be made available in the producing party's voluminous room, in Austin, Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.
19. **Reviewing Period Defined.** The Protected Materials may be reviewed only during the Reviewing Period, which shall commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period shall reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.
20. **Procedures for Making Copies of Voluminous Protected Materials.** Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical or electronic copies of the Protected Materials, subject to the conditions in this Protective Order; provided, however, that before photographic, mechanical or electronic copies may be made, the Reviewing Party seeking photographic, mechanical or electronic copies must provide written confirmation



of the receipt of copies listed on Attachment B of this Protective Order identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.

21. **Protected Materials to be Used Solely for the Purposes of These Proceedings.** All Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (a) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings; or (b) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Commission Staff or OPC.
22. **Procedures for Confidential Treatment of Protected Materials and Information Derived from Those Materials.** Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials including notes and analyses made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.
23. **Procedures for Submission of Protected Materials.** If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and

are sealed pursuant to this Protective Order. If filed at the Commission, such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the presiding officer and served under seal to the counsel of record for the Reviewing Parties. The presiding officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party: (a) shall notify the party which provided the information within sufficient time so that the producing party may seek a temporary sealing order; and (b) shall otherwise follow the procedures in Rule 76a, Texas Rules of Civil Procedure.

24. **Maintenance of Protected Status of Materials during Pendency of Appeal of Order**

**Holding Materials are not Protected Materials.** In the event that the presiding officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain or materials claimed to be Highly Sensitive Protected Materials are only Protected Materials, those materials shall nevertheless be subject to the protection afforded by this Protective Order for three (3) full working days, unless otherwise ordered, from the date the party asserting confidentiality receives notice of the presiding officer's order. Such notification will be by written communication. This provision establishes a deadline for appeal of a presiding officer's order to the Commission. In the event an appeal to the Commissioners is filed within those three (3) working days from notice, the Protected Materials shall be afforded the confidential treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.

25. **Notice of Intent to Use Protected Materials or Change Materials Designation.**

Parties intending to use Protected Materials shall notify the other parties prior to offering them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of TARIFF CONTROL No. 39590 at the Commission,

in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party shall at any time be able to file a written motion to challenge the designation of information as Protected Materials.

26. **Procedures to Contest Disclosure or Change in Designation.** In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request for change in designation, the party asserting confidentiality shall file with the appropriate presiding officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party asserting confidentiality files its objection and supporting materials, the party challenging confidentiality may respond. Any such response shall include a statement by counsel for the party challenging such confidentiality that he or she has reviewed all portions of the materials in dispute and, without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards, or that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera inspection, it shall do so no later than five (5) working days after the party challenging confidentiality has made its written filing.
27. **Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designation.** If the party asserting confidentiality files an objection, the appropriate presiding officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or Reviewing Party or upon the presiding officer's own initiative, the presiding officer may conduct a

prehearing conference. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the presiding officer determines that such proposed disclosure or change in designation should be made, disclosure shall not take place earlier than three (3) full working days after such determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such presiding officer's ruling.

28. **Maintenance of Protected Status during Periods Specified for Challenging Various Orders.** Any party electing to challenge, in the courts of this state, a Commission or presiding officer determination allowing disclosure or a change in designation shall have a period of ten (10) days from: (a) the date of an unfavorable Commission order; or (b) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this paragraph. For purposes of this paragraph, a favorable ruling of a state district court, state appeals court, Supreme Court or other appellate court includes any order extending the deadlines in this paragraph.

29. **Other Grounds for Objection to Use of Protected Materials Remain Applicable.** Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless the Commission or a court orders such additional disclosure, all parties will abide by the restrictions imposed by the Protective Order.

30. **Protection of Materials from Unauthorized Disclosure.** All notices, applications, responses or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.
31. **Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials.** Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, “conclusion of these proceedings” refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand proceeding, then the “conclusion of these proceedings” is extended by the remand to the exhaustion of available appeals of the remand, or the running of the time for making such appeals of the remand, as provided by applicable law. Promptly following the conclusion of these proceedings, counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this Paragraph. Nothing in this Paragraph shall prohibit counsel for each Reviewing Party from retaining two (2) copies of any filed testimony, brief, application for rehearing, hearing exhibit or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order.

32. **Applicability of Other Law.** This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act,<sup>3</sup> the Texas Securities Act<sup>4</sup> and any other applicable law, provided that parties subject to those acts will notify the party asserting confidentiality, if possible under those acts, prior to disclosure pursuant to those acts. Such notice shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
33. **Procedures for Release of Information Under Order.** If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order; provided, however, that: (a) the Reviewing Party shall notify the producing party of the order requiring the release of such information within five (5) calendar days of the date the Reviewing Party has notice of the order; (b) the Reviewing Party shall notify the producing party at least five (5) calendar days in advance of the release of the information to allow the producing party to contest any release of the confidential information; and (c) the Reviewing Party shall use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein. The notice specified in this section shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
34. **Best Efforts Defined.** The term “best efforts” as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless

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<sup>3</sup> TEX. GOV'T CODE ANN. § 551.001-.146 (Vernon 2004 & Supp. 2009).

<sup>4</sup> TEX. REV. CIV. STAT. ANN. arts. 581-1 to 581-43 (Vernon 1964 & Supp. 2009).

such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body, the written opinion of the Texas Attorney General sought in compliance with the Public Information Act, or the request of governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of §552.301 of the Public Information Act, or intends to comply with the final governmental or court order. Provided, however, that no notice is required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

35. **Notify Defined.** “Notify” for purposes of Paragraphs 32, 33 and 34 means written notice to the party asserting confidentiality at least five (5) calendar days prior to release; including when a Reviewing Party receives a request under the Public Information Act. However, the Commission or OPC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.
36. **Requests for Non-Disclosure.** If the producing party asserts that the requested information should not be disclosed at all, or should not be disclosed to certain parties under the protection afforded by this Protective Order, the producing party shall tender the information for in camera review to the presiding officer within ten (10) calendar days of the request. At the same time, the producing party shall file and serve on all parties its argument, including any supporting affidavits, in support of its position of non-disclosure. The burden is on the producing party to establish that the material should not be disclosed. The producing party shall serve a copy of the information under the classification of Highly Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information.

Parties wishing to respond to the producing party's argument for non-disclosure shall do so within five working days. Responding parties should explain why the information should be disclosed to them, including why disclosure is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer shall stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the Commission.

37. **Sanctions Available for Abuse of Designation.** If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to Paragraph 36, the presiding officer may sanction the producing party pursuant to P.U.C. PROC. R. 22.161.
38. **Modification of Protective Order.** Each party shall have the right to seek changes in this Protective Order as appropriate from the presiding officer.
39. **Breach of Protective Order.** In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party shall not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party shall be entitled to pursue any other form of relief to which it is entitled.



**ATTACHMENT A**

**Protective Order Certification**

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket and that I have received a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in TARIFF CONTROL No. 39590. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated here shall not apply.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Party Represented

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Party Represented

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**ATTACHMENT B**

I request to view/copy the following documents:

Document Requested	# of Copies	Non-Confidential	Protected Materials and/or Highly Sensitive Protected Materials

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Party Represented

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

## TARIFF CONTROL NO. 39590

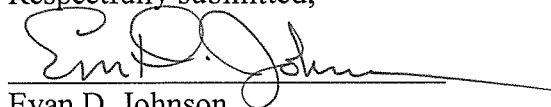
PETITION OF EL PASO	§	
ELECTRIC COMPANY FOR	§	PUBLIC UTILITY COMMISSION
APPROVAL TO REVISE MILITARY	§	
BASE DISCOUNT RECOVERY	§	OF TEXAS
FACTOR TARIFF PURSUANT TO	§	
PURA § 36.354	§	

**STATEMENT UNDER SECTION 4 OF PROTECTIVE ORDER DESIGNATING  
CONFIDENTIAL PROTECTED MATERIALS**

The undersigned attorney for El Paso Electric Company (EPE or the Company) submits this statement under Section 4 of the Protective Order in this case.<sup>1</sup>

The workpapers attached as Attachment B to the Company's Petition in this proceeding contain customer-specific consumption information. As such, these workpapers are exempt from public disclosure pursuant to Section 17.004(a)(6) of the Public Utility Regulatory Act<sup>2</sup> and Section 552.101 of the Public Information Act,<sup>3</sup> and are subject to treatment as confidential materials. The undersigned counsel for EPE has reviewed the information sufficiently to state in good faith that the information is exempt from disclosure under the Public Information Act and merits the confidential designation given to it.

Respectfully submitted,



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ATTORNEY FOR EL PASO ELECTRIC  
COMPANY

<sup>1</sup> In its Petition, EPE proposed that the Commission enter its standard Protective Order as soon as possible. A copy of the proposed Protective Order is attached to the Petition as Attachment D.

<sup>2</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.017 (Vernon 2008 & Supp. 2010) (PURA).

<sup>3</sup> TEX. GOV'T CODE ANN. §§ 552.001-.353 (Vernon 2008 & Supp. 2010).