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PUC DOCKET NO. 40094
SOAH DOCKET NO. 473-12-4275

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PUBLIC UTILITY COMMISSION
FILING CLERK

APPLICATION OF EL PASO § PUBLIC UTILITY COMMISSION
ELECTRIC COMPANY TO CHANGE §
RATES AND TO RECONCILE FUEL § OF TEXAS
COSTS §

ORDER

This Order addresses the application of El Paso Electric Company (EPE or Company) for authority to change base rates and reconcile fuel costs for the period July 2009 through September 2011. An unopposed stipulation and agreement (agreement) was signed by a majority of the parties (signatories) that resolves all base rate issues in this case and calls for the dismissal of the fuel reconciliation request, so that it can be taken up in a later proceeding. Consistent with the agreement, 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 February 1, 2012, EPE filed an application to the Commission seeking an increase of \$13.766 million in EPE's base rates for firm service, an increase of \$3.173 million in EPE's rates for interruptible service, a surcharge for an anticipated \$8.658 million of rate case expenses, and an increase of \$0.658 million in service charge and other miscellaneous revenues, which altogether would provide a base rate increase of \$26.255 million or 5.6% annually, together with tariff changes.
2. EPE also sought to reconcile its fuel and purchased power costs and fuel factor revenues for July 1, 2009 through September 30, 2011.
3. The 12-month test year used in EPE's application was October 1, 2010 through September 30, 2011.

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4. Notice of EPE's application was published once a week for four consecutive weeks in a newspaper having general circulation in each county in EPE's Texas service territory. In addition, EPE provided individual notice to EPE's Texas retail customers; each municipality within EPE's service area with original jurisdiction over EPE's retail rates; and all parties to EPE's last rate case, *Application of El Paso Electric Company to Change Rates, to Reconcile Fuel Costs, to Establish Formula-Based Fuel Factors, and to Establish an Energy Efficiency Cost Recovery Factor*, Docket No. 37690, Order (Jul 30, 2010).
5. EPE timely filed appeals with the Commission of actions of the following municipalities exercising original jurisdiction within their service territory: Town of Anthony; Town of Horizon City; Town of Clint; Village of Vinton; Town of Van Horn; and City of Socorro. All such appeals were consolidated for determination in this docket.
6. The following parties were granted intervenor status in this docket: the City of El Paso (City); the Office of Public Utility Counsel (OPC); the Texas State Agencies; Texas Industrial Energy Consumers; Freeport-McMoRan Copper & Gold, Inc.; Wal-Mart Stores Texas, LLC and Sam's East, Inc.; Commercial Metals Company; ArcelorMittal Vinton, Inc.; Solar Energy Industries Association; El Paso Solar Energy Association; Ysleta Independent School District; El Paso Independent School District; Socorro Independent School District; San Elizario Independent School District; the Housing Authority of the City of El Paso; Region 19 Education Service Center; El Paso County Community College District; the United States Department of Defense and All Other Federal Executive Agencies; and W. Silver, Inc. Commission Staff also participated in this docket.
7. On February 2, 2012, the Commission referred this case to the State Office of Administrative Hearings (SOAH) to conduct an evidentiary hearing and preparation of a proposal for decision.
8. On February 2, 2012, the SOAH Administrative Law Judge (ALJ) issued Order No. 2, which, per the agreement of EPE to extend the effective date of the proposed rate change

- in its statement of intent by 58 days, suspended the effective date of the proposed rate and tariff changes until October 1, 2012.
9. On March 8, 2012, the Commission issued a preliminary order setting forth the issues to be addressed in this proceeding.
 10. On April 6, 2012, the SOAH ALJ issued Order No. 4, which granted the parties' motion to extend the procedural schedule indefinitely in order to facilitate settlement negotiations.
 11. On April 19, 2012, the signatories filed the agreement, together with their unopposed motion to facilitate consideration and implementation of the agreement. The agreement is signed by all of the parties listed in finding of fact 6, except for OPC, Region 19 Education Service Center, El Paso Community College District, San Elizario Independent School District, Ysleta Independent School District, El Paso Independent School District, Socorro Independent School District, and the Housing Authority of the City of El Paso who do not oppose the agreement.
 12. On April 27, 2012, the SOAH ALJ issued Order No. 7, admitting into evidence EPE's application, direct testimony and exhibits, notice affidavits, and the agreement and its attachments. The proceeding was also dismissed from the SOAH docket and returned to the Commission for further processing as a settled case.
 13. Order No. 7 also granted the signatories' request that EPE be authorized to implement the new base rates on an interim basis, effective with EPE's May 2012 billing month. These temporary rates were subject to refund or surcharge in accordance with P.U.C. PROC. R. 22.125(e). The signatories intend that the Commission approve as permanent rates the same rates placed into effect on an interim basis.
 14. On May 11, 2012, the Office of Public Utility Counsel filed a statement of position regarding the agreement, and on May 17, 2012, Commission Staff filed a motion to strike the statement of position.

Description of the Agreement

15. The signatories agree that the agreement's overall terms and conditions result in just and reasonable rates and that the public interest will be served by resolution of the issues addressed herein in the manner prescribed by the agreement.

Base Rates

16. The agreement provides for an overall revenue reduction of \$15,000,000 per annum consisting of a \$13.5 million base rate decrease and a \$1.5 million decrease for residential customers to be credited by means of a rider. The \$15,000,000 reduction is calculated using EPE's existing base rates in EPE's Texas retail service areas as expressed in its February 1, 2012 application, effective with EPE's May 2012 billing month, for bills rendered on or after May 1, 2012.
17. The agreement provides that it does not change the return on equity set in Docket No. 37690 for purposes of calculating AFUDC and for calculating carrying costs pursuant to P.U.C. SUBST. R. 25.181(f)(7) regarding deferred energy efficiency costs.
18. The agreement provides that EPE will utilize its proposed gas-fired generating unit depreciation rates, along with the transmission and distribution depreciation rates approved by the New Mexico Public Regulation Commission for EPE's use in New Mexico. For all other depreciation rates, EPE will utilize those rates approved in Docket No. 37690.
19. The agreement provides that EPE will be allowed Palo Verde decommissioning funding of \$3.6 million annually on a Texas jurisdictional basis, but that this funding shall be subject to review and adjustment on a going-forward basis in future proceedings.
20. Exhibit 2 of the agreement illustrates how the authorized revenue decrease shall be distributed among the customer classes.¹ In the agreement, the signatories recognize that the cost of service study prepared by EPE for this case suggests that EPE's existing rates contain inter-class subsidies, and further state that, without prejudicing their rights to propose alternative cost allocation methodologies or revenue distribution approaches in

¹ Exhibit 4 of the agreement compares current and settlement rates for Residential Basic Service and Small Commercial Service usage.

future proceedings, the signatories agree that it is desirable to eliminate inter-class subsidies.

21. The agreement specifies that EPE's tariffs shall include a new economic development rate with discounts in the demand charge. The discounts are reflected as a credit in the applicable tariff.
22. The agreement provides for agreed tariffs effective, on an interim basis, with EPE's May 2012 billing month.
23. The agreement provides that EPE will amortize all rate case expenses of the Company and the City incurred in this case, over a two-year period. EPE will not request recovery of such rate case expenses in any future proceeding. Rate case expenses shall include all expenses incurred by EPE for Docket No. 40094, the parallel proceedings filed with the cities, and the response to the City of El Paso's show cause order of October 4, 2011, and temporary rate order of November 15, 2011, including the reimbursement of municipal rate case expenses.
24. The agreement provides that for the period beginning May 1, 2012, until the effective date of the rate change resulting from EPE's next rate proceeding, any revenues collected by EPE pursuant to the power factor adjustment charges in excess of an annual amount of \$250,000 shall be credited to fuel costs. Pursuant to P.U.C. SUBST. R. 25.3(b), the signatories request a good cause exception of P.U.C. SUBST. R. 25.236(a) to permit these revenues to be treated as a credit to fuel costs. The signatories agree that allowing the return of these revenues to all customers without having to create a separate rider to do so constitutes good cause.
25. The agreement provides that for each rate class that is receiving a reduction under this agreement except for Rate Schedule No. 01, Residential Service Rate, Rate Schedule No. 24, General Service Rate, and Rate Schedule No. 25, Large Power Service Rate, the rate design within the class of that class's distributed reduction shall be an equal percentage reduction to each component of the base rate charge, as reflected in the agreed tariffs. For Rate Schedule No. 01, Residential Service Rate, the reduction shall be applied as a rider on a per kilowatt-hour (kWh) basis during the summer months, as

reflected in the agreed tariffs. For Rate Schedule No. 24, General Service Rate, 60% of the distributed reduction shall be applied to reduce the demand charge and the remaining 40% shall be applied to reduce the other components of the base rate charge, as reflected in the agreed tariff. For Rate Schedule No. 25, Large Power Service Rate, all of the distributed reduction shall be applied to reduce the demand charge, as reflected in the agreed tariff.

Fuel Reconciliation

26. Under the agreement EPE withdraws its request to reconcile fuel costs for the period July 1, 2009 through September 30, 2011, and the signatories agree that EPE's request should be dismissed.
27. The signatories agree that EPE should be granted a good cause exception to P.U.C. SUBST. R. 25.236(b) to allow the dismissal of the pending fuel reconciliation request and the inclusion in the next fuel reconciliation of more than three years of reconcilable data. EPE will be allowed to file its next fuel reconciliation request (covering a period beginning July 1, 2009) with the base rate case EPE expects to file in 2013, but if EPE does not make a base rate case filing in 2013, then EPE will file a separate fuel reconciliation request with a reconciliation period ending no later than June 30, 2013. The signatories agree that this treatment of the pending fuel reconciliation being part of an overall comprehensive settlement of the pending rate proceedings constitutes good cause for granting these exceptions to P.U.C. SUBST. R. 25.236(b).

Consistency of the Agreement with PURA and Commission Requirements

28. The agreement is the result of good faith negotiations by the parties, and these efforts, as well as the overall result of the agreement viewed in light of the record as a whole, support the reasonableness and benefits of the terms of the agreement.
29. The revenue requirement stipulated in the agreement is consistent with applicable provisions of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2011) (PURA), Chapter 36 and Commission rules.

30. It is reasonable for purposes of this proceeding to not change the return on equity set in Docket No. 37690 for purposes of calculating AFUDC and for calculating carrying costs pursuant to P.U.C. SUBST. R. 25.181(f)(7) regarding deferred energy efficiency costs.
31. It is reasonable for purposes of this proceeding to adopt the depreciation rates proposed by the agreement. The adopted depreciation rates are set forth in attachment 1 to this Order.
32. It is reasonable to allow EPE to collect \$3.6 million annually on a Texas jurisdictional basis for Palo Verde decommissioning funding subject to review and adjustment on a going-forward basis in future proceedings.
33. It is reasonable that EPE amortize its rate case expenses over a two-year period.
34. The distribution of the revenue decrease among customer rate classes is just and reasonable.
35. The settled rate design reflected in the rate schedules included in exhibit 3 to the agreement is just and reasonable.
36. EPE's economic development rate rider, Schedule No. 33, which offers discounts to the demand charge, is reasonable.
37. The treatment of revenues collected after May 1, 2012, up until the effective date of EPE's next rate change from EPE's power factor adjustment charges is reasonable.
38. There is good cause to allow the power factor revenues to be credited to fuel costs.
39. The withdrawal and dismissal of EPE's fuel reconciliation request is reasonable under these circumstances, as is the requested good cause exception to P.U.C. SUBST. R. 25.236(b), which allows EPE to withdraw the current fuel reconciliation and to include the period July 1, 2009 through September 30, 2011 in a 2013 proceeding.

II. Conclusions of Law

1. EPE is a public utility as that term is defined in PURA § 11.004(1) and an electric utility as that term is defined in PURA § 31.002(6).

2. The Commission exercises regulatory authority over EPE and jurisdiction over the subject matter of this application pursuant to PURA §§ 14.001, 32.001, 32.101, 33.002, 33.051, 36.001-36.111, 36.203 and 39.905.
3. This docket was processed in accordance with the requirements of PURA, the Texas Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001 (Vernon 2008 & Supp. 2011), and Commission rules.
4. EPE provided notice of its application in compliance with PURA § 36.103 and P.U.C. PROC. R. 22.51(a) and (b).
5. The agreement, taken as a whole, is a just and reasonable resolution of all the issues it addresses, results in just and reasonable rates, terms and conditions, and is consistent with the relevant provisions of PURA.
6. EPE's rates resulting from the agreement are just and reasonable and meet the requirements of PURA § 36.003.
7. The new economic development rate is a discounted rate pursuant to PURA § 36.007.
8. The agreement resolves all issues pending in this docket.
9. The tariff sheets and rate schedules included in the agreement are just and reasonable and accurately reflect the terms of the agreement.
10. The Commission's adoption of a final order consistent with the agreement satisfies the requirements of TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.056 without the necessity of a decision on contested case issues resulting from a hearing on the merits.
11. 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 agreement, EPE's application is approved.

2. Consistent with the agreement, the tariffs, rate schedules, and riders approved on an interim basis in Order No. 7 are approved as final.
3. Within 20 days of the date of this Order, EPE shall file a clean record copy of the approved tariff to be stamped "Approved" by Central Records and retained for future reference.
4. EPE shall deposit \$3.6 million, Texas jurisdictional, into its Palo Verde decommissioning funds on an annual basis until further order of this Commission.
5. EPE shall observe the depreciation rates approved in this Order until changed by further order of the Commission.
6. Because the final approved rates are the same as the temporary rates, no refunds or surcharges of the temporary rates are necessary.
7. EPE is granted a good cause exception to P.U.C. SUBST. R. 25.236(a) and shall include power factor adjustment revenues that are in excess of \$250,000 annually as a credit to fuel costs as provided by the agreement.
8. EPE is granted a good cause exception to P.U.C. SUBST. R. 25.236(b) and will be allowed to file its next fuel reconciliation request (covering a period beginning July 1, 2009) with the base rate case it expects to file in 2013, but no later than December 31, 2013.
9. The Commission approves EPE's economic development tariff.
10. The Commission approves the treatment of revenues collected after May 1, 2011, under EPE's power factor adjustment charges.
11. The entry of this Order consistent with the agreement does not indicate the Commission's endorsement of any principle or methodology that may underlie the agreement. Further, the entry of this Order should not be regarded as precedent as to the appropriateness of any principle or methodology underlying the agreement.
12. The Commission grants Commission Staff's motion to strike the statement of position filed on May 11, 2012 by the Office of Public Utility Counsel.


13. 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 in this Order, are hereby denied.

SIGNED AT AUSTIN, TEXAS the 22nd day of May 2012.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



ROLANDO PABLOS, COMMISSIONER