DOCKET NUMBER 26-0000079 FILED DATE & TIME 08/03/2026 01:50 PM MST
FILED WITH NMPRC

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO IMPLEMENT A DEMAND RESPONSE AND DISTRIBUTED ENERGY RESOURCE PILOT PROJECT	)	**Case No. 26-0000079**
EL PASO ELECTRIC COMPANY, Applicant.	)	

EL PASO ELECTRIC COMPANY'S AMENDED APPLICATION FOR APPROVAL TO IMPLEMENT A DEMAND RESPONSE AND DISTRIBUTED ENERGY RESOURCE PILOT PROJECT

El Paso Electric Company ("EPE"), pursuant to Ordering Paragraph A of the New Mexico Public Regulation Commission's ("NMPRC" or "Commission") Order Requiring EPE to Amend and Supplement the Application and Appointing Hearing Examiner (July 7, 2026) ("Order"), hereby files its Amended Application for Approval to Implement a Demand Response and Distributed Energy Resource ("DR DER") Pilot Project ("Pilot Project") ("Amended Application") pursuant to NMSA 1978, Section 62-8-13 authorizing Applications for Grid Modernization Projects ("Grid Modernization Statute"), the Commission Order Accepting Integrated Resource Plan in Docket No. 24-00260-UT,[1] and Commission Rule 17.9.551 Prior Approval of Purchased Power Agreements ("Rule 551"). Concurrent with the filing of this Amended Application EPE is filing the Supplemental Testimony of EPE witnesses David C. Hawkins and George Novela.

EPE is requesting Rule 551 approval of the project's long term purchased power agreement ("LTPPA") and all necessary regulatory approvals to implement such a project

[1] *In the Matter of El Paso Electric Company's Integrated Resource Plan Filing for the Period of 2025-2044 Pursuant to 17.7.3 NMAC*, Case No. 24-00260-UT, Order Accepting Integrated Resource Plan and Requiring Further Action by El Paso Electric Company, Ordering ¶ 32 (Dec. 19, 2025).

pursuant to the Grid Modernization Statute, which authorizes utilities to request approval for projects that incorporate technologies, equipment, or infrastructure associated with grid modernization, and which specifically includes technologies to enable demand response as eligible grid modernization improvements. Specifically, EPE requests the following authorizations:

1. Approval of the project's LTPPA comprised of *The Distributed Energy Resources Aggregation Platform Master Power Purchase Agreement* between EPE and Creation Energy LLC ("Master Power Purchase Agreement") and the Statement of Work 2 entered into pursuant to that master agreement which are attached to the Direct Testimony of EPE witness Hawkins as Exhibits DCH-2 and DCH-4;[2]

2. Approval of the DR DER Pilot Project for up to 250 residential customers located in New Mexico;

3. Approval of reasonable Pilot Project costs including: (a) $350,000 for the costs associated with equipment necessary to test the Pilot Project's dispatch methods as contemplated by Statement of Work 1, (b) a first-year cost of $1.64 million, assuming all 250 homes are completed at the start of the first year operational period, and escalating 2% thereafter. The nominal cost over the 30-year term of the agreement is $66.5 million, as contemplated by Statement of Work 2, and (c) $46,934 for E3's value stream analysis;

4. Authorization to defer approved Pilot Project costs for recovery in a future ratemaking proceeding;

[2] Statement of Work 1 between Creation Energy and EPE, which part of the proposed pilot project, is an agreement for testing dispatch methods not subject to Rule 551 approval. See Exhibit DCH-3 attached to the Direct Testimony of Mr. Hawkins.

5. A variance from Rule 17.9.551.9(D)(6)'s requirement that this Application be accompanied by testimony demonstrating that the LTPPA is the lowest reasonable cost resource; and

6. Any other approvals, authorizations, and actions that may be required under the Grid Modernization Statute, the Public Utility Act, Rule 551, or the Commission's Rules to implement the DR DER Pilot Project, to approve the underlying agreements, and to recover project costs.

EPE is requesting approval of its Application and, in support thereof, states:

1. EPE is certified and authorized to conduct the business of providing public utility service within the State of New Mexico, is a public utility subject to the jurisdiction of the Commission under the New Mexico Public Utility Act, and is a wholly-owned subsidiary of Sun Jupiter, LLC

2. EPE generates, transmits, and distributes electricity through an interconnected system to customers in southern New Mexico and Texas. EPE owns, operates, leases, or controls the plant, property, and facilities used by it for the generation, transmission, distribution, sale, or furnishing of electricity to or for the public within New Mexico and Texas. EPE provides retail electric service to over 100,000 customers within its New Mexico service area.

3. EPE's principal business address and telephone number for its New Mexico service area are:

El Paso Electric Company
2820 Las Vegas Ct.
Las Cruces, NM 88007
(915) 543-5711

4. EPE's 2025 Integrated Resource Plan Action Plan, accepted by the Commission in Case No. 24-00260-UT, includes the action item to implement a pilot project for "demand

response (DR) and distributed energy resources (DER) located on up to 250 customer residences no later than 90 days after Commission acceptance of EPE's 2025 IRP."[3]

5. Creation Energy was selected as the vendor of the proposed Pilot Project based on its participation in EPE's 2025 Integrated Resource Plan ("IRP") stakeholder process, consistent with the stakeholder-requested work performed during the IRP public advisory process. During that process, EPE evaluated the Pilot Project technologies that formed the commitment made in EPE's IRP Action Plan. EPE did not conduct a separate request for proposals for the 250-home pilot before entering into the proposed agreement with Creation Energy.

6. The LTPPA consists of unique arrangements of distribution-level solar, battery, and demand response resources at up to 250 customer residences. The LTPPA represents up to an estimated 5.125 MW of accredited summer capacity to continue delivery of reliable energy to EPE's existing customers.

7. The key terms and conditions of the LTPPA are set forth in the Master Power Purchase Agreement and Statement of Work 2. In summary, Creation Energy is responsible for developing, owning, operating, and maintaining a portfolio of customer-sited resources, including solar, battery storage, demand response, energy efficiency, and related control equipment. The project has a minimum capacity requirement of 1 MW and a target deployment of approximately 250 homes, or 5.125 MW of capacity, subject to the timing and accepted capacity provisions in the Statement of Work.

8. In the event of non-performance, all operational risks are borne by Creation Energy. If Creation is unable to deliver according to the performance obligations, then EPE has

[3] Case No. 24-00260-UT, El Paso Electric Company's 2025 Integrated Resource Plan at pg. 186 (Sep. 2, 2025); EPE filed a Notice of Change to Anticipated Filing Date for Action Plan Item 5 on March 20, 2026, extending that deadline to April; 20, 2026.

the right to either; (i) terminate the contract, or (ii) step in and operate the equipment and pay for the equipment at cost less depreciation. The relevant sections of that agreement are Section 14.1, Termination for Cause by the Purchaser, Section 14.2, Remedy in the Event of Purchaser Termination for Cause, Section 14.6, Step-In Rights; Assumption of Installation Subcontracts, Section 21.12, Assignment; Binding Effect, and Exhibit K, Pricing for Purchase or Termination. The LTPPA has a term of thirty years.

9. EPE is not irrevocably obligated to purchase energy under the LTPPA until it is approved by the Commission.

10. As discussed in the Direct Testimony of EPE witness David C. Hawkins, this application for the LTPPA is a component of EPE's Integrated Resource Plan.

11. EPE listed six potential variances to Rule 551 in its Clarification to the Application filed on May 8, 2026. Because the Supplemental Testimony of EPE witnesses David C. Hawkins and George Novela assumes full, first-year program subscription, EPE asserts that variances may not be needed for Rule 17.9.551.8.D(2)(b) [size in MW capacity and the amount of energy in MWh or kWh per month and any conditions regarding maximum of minimum amount of energy or capacity made available or required to be purchased]; Rule 17.9.551.8.D(4) [effect on rates]; and Rule 17.9.551.8.D(7) [impact of financial condition and metrics]. Further EPE asserts variances may not be needed for Rule 17.9.551.8.D(3) [transmission costs] and Rule 17.9.551.8.D(9) [utility self-build alternative] because neither criteria is applicable to the distribution level pilot proposal. The Direct Testimony of Mr. Hawkins addresses EPE's requested variance from Rule 17.9.551.8.D(6) [lowest reasonable cost].

12. EPE has provided a reference table for the requirements of Rule 551 as Attachment 1 to this pleading.

13. The Grid Modernization Statute authorizes public utilities to file an application requesting approval of "rate designs or projects that incorporate the use of technologies, equipment, or infrastructure associated with grid modernization...".

14. Pursuant to the Grid Modernization Statute and the Commission's Final Order accepting EPE's Integrated Resource Plan in Docket No. 24-00260-UT, EPE's Application seeks approval to implement the proposed DR DER Pilot Project.

15. EPE's DR DER Pilot Project is detailed and supported in the pre-filed Direct Testimony, Supplemental Testimony and Exhibits of David C. Hawkins, EPE Vice President of Operations Support and the pre-filed Supplemental Testimony of George Novela, EPE Director of Economic and Rate Research.

16. EPE engaged E3 to perform a value stream analysis of the Pilot Project.

17. Pursuant to NMSA 1978, Section 62-8-13(C), EPE seeks to recover its reasonable Pilot Project costs through base rates in a future ratemaking proceeding.

18. Service of all notices, pleadings, and other documents related to this Application should be made as follows:

Nancy B. Burns
Deputy General Counsel
El Paso Electric Company
300 Galisteo St., Ste 206
Santa Fe, New Mexico 87501
(505) 982-7391

Kari E. Olson
Creighton R. McMurray
Spencer Fane, LLP
325 Paseo De Peralta
Santa Fe, New Mexico 87501
(505) 982-3873

19. Electronic service should be made as follows:

EPE_Reg_Mgmt@epelectric.com;
kaolson@spencerfane.com;
cmcmurray@spencerfane.com;
nancy.burns@epelectric.com;
michelle.pedroza@epelectric.com
tpacheco@spencerfane.com
ysandoval@spencerfane.com

19. As indicated on the Certificate of Service attached hereto, EPE has emailed a copy of its Application and supporting Testimony and Exhibits to all persons on the Commission's Updated Official Service for EPE's IRP Proceeding, Docket No. 24-00260-UT, the Attorney General, and all counsel of record and pro se parties in EPE's last rate case, Docket No. 20-00104-UT.

20 A proposed form of Notice to Customers is attached to this Application as Exhibit A.

WHEREFORE, EPE respectfully requests that the Commission, after such notice and hearing as it deems necessary, issue a Final Order in this case that:

(1) Approves the proposed Pilot Project's LTPPA comprised of the project's Master Service Agreement and Statement of Work 2.

(2) Approves the proposed Pilot Project;

(3) Approves Pilot Project costs;

(4) Authorizes deferral of approved Pilot Project costs for recovery in a future ratemaking proceeding;

(5) Grants a variance from Rule 17.9.551.8(D)(6); and

(6) Grants such other approvals, authorizations, and relief as may be necessary or appropriate.

Respectfully submitted,

/s/ Nancy B. Burns

Nancy B. Burns
Deputy General Counsel
El Paso Electric Company
300 Galisteo Street, Ste. 206
Santa Fe, New Mexico 87501

Telephone (505) 470-9342
nancy.burns@epelectric.com

Kari E. Olson
Creighton R. McMurray
Spencer Fane, LLP
325 Paseo De Peralta
Santa Fe, New Mexico 87501
kaolson@spencerfane.com
cmcmurray@spencerfane.com

ATTORNEYS FOR EL PASO ELECTRIC COMPANY

Rule 551.8 General Requirements for Filing an Application for Approval of a LTPPA					
				Testimony Of	**Reference**
551.8(D)			An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide:		
1			A copy of the LTPPA; and	David C. Hawkins	Direct Testimony Exhibits DCH-2, DCH-3[1], DCH-4
2			An explanation of key terms and conditions of the LTPPA containing:		
	A		the term of the LTPPA including any options to extend the agreement;	David C. Hawkins	Direct Testimony Exhibit DCH-4 – page 4
	B		the size in MW of capacity and the amount of energy in MWh or kWh per month and any conditions regarding the minimum or maximum amount of energy or capacity made available or required to be purchased;	David C. Hawkins	Direct Testimony Exhibits DCH-4 – page 4
	c		the price or pricing formula under which the electric utility will pay for the power and energy contracted for, including identification of when charges begin to be incurred, any price reopeners and any price escalation provisions;	David C. Hawkins	Direct Testimony Exhibits DCH-4 – page 4
	D		obligations by the electric utility to pay for any fixed or variable administrative, transactional or operation and maintenance costs incurred through the operation of the generation facility, including start-up costs, taxes, insurance,	David C. Hawkins, George Novela	Direct Testimony Exhibit DCH-2 – Section 1 & 7 Novela Supplemental Testimony,

[1] Statement of Work 1 (Exhibit DCH-3) between Creation Energy and EPE, which part of the proposed pilot project, is an agreement for testing dispatch methods not subject to Rule 551 approval.

Rule 551.8 General Requirements for Filing an Application for Approval of a LTPPA					
				Testimony Of	**Reference**
551.8(D)			An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide:		
			environmental or reclamation-related costs, fuel costs and any other costs that the electric utility may incur; and		Section III – Questions 11 & 12
	e		provisions related to non-performance by the counterparty and the remedies provided.	David C. Hawkins	Direct Testimony Exhibits DCH-2,DCH-3, DCH-4
3			a description of transmission costs the electric utility will incur or pay to receive the purchased power, which may include the costs of third-party transmission wheeling, or construction of transmission to facilitate purchases under the LTPPA or both;	David C. Hawkins	Supplemental Testimony, Section IV – Question 48
4			an explanation of how the electric utility proposes to recover from ratepayers the costs incurred and an estimate of the effect on rates to customers;	George Novela	Supplemental Testimony, Section III – Question 14
5			A general description of:		
	a		the generating facility or facilities that will generate the purchased power; or	David C. Hawkins	Direct Testimony Exhibits \DCH-4 – page 4
	b		if the power is to be generated from one or more specific generating units to be constructed outside New Mexico, a description of the anticipated siting of the generating unit, expected construction time the expected commercial operation date;	Not applicable as the power will not be generated from units to be constructed outside of New Mexico.	

Rule 551.8 General Requirements for Filing an Application for Approval of a LTPPA					
				Testimony Of	**Reference**
551.8(D)			An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide:		
	c		if the power is to be generated from one or more specific generating units to be constructed within New Mexico, a description of:	David C. Hawkins	
		i	the approvals required to construct and operate the generating unit, including air quality and other environmental permits;	David C. Hawkins	Supplemental Testimony, Section IV – Question 54
		ii	the expected construction time;	David C. Hawkins	Supplemental Testimony, Section IV – Question 42
		iii	the expected commercial operation date;	David C. Hawkins	Supplemental Testimony, Section IV – Question 42
		iv	the fuel type and supply sources; and	David C. Hawkins	Supplemental Testimony, Section III – Question 29
		v	other provisions addressing the electric utility's ownership options for the generating unit during or after the term of the agreement.	David C. Hawkins	Supplemental Testimony, Section III – Question 13 Direct Testimony Exhibits DCH-2-Section 1.9 and Exhibit K
6			evidence that entering into the LTPPA is consistent with the provision of safe and reliable electric utility service at the	David C. Hawkins	Supplemental Testimony, Section III – Question 23

Rule 551.8 General Requirements for Filing an Application for Approval of a LTPPA					
				Testimony Of	**Reference**
551.8(D)			An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide:		
			lowest reasonable cost, considering both short and long-term costs and all other relevant factors;		
7			evidence of the LTPPA's impact on the electric utility's financial condition and financial metrics;	George Novela	Supplemental Testimony, Section III – Question 14
8			evidence that the LTPPA is consistent with the electric utility's most recent commission-accepted integrated resource plan unless, as described in Section 17.7.3.10 NMAC, material changes that would warrant a different course of action by the electric utility have occurred; in which case, the testimony shall include justification for deviation from the integrated resource plan;	David C. Hawkins	Supplemental Testimony, Section IV – Question 51
9			evidence addressing whether a utility-owned generation resource could have been constructed as an alternative to the LTPPA with greater benefit to ratepayers;	David C. Hawkins	Supplemental Testimony, Section III – Question 19
10			evidence addressing the methodology and criteria by which the purchased power agreement was selected; and	David C. Hawkins	Supplemental Testimony, Section III, Question 11
11			any other information or evidence that the electric utility believes will assist the commission in its review of the LTPPA.		

Rule 551.9 Ratemaking Treatment For All Purchased Power Agreements			
		Testimony Of	**Reference**
551.9(A)	The following ratemaking treatment shall apply to all purchased power agreements unless otherwise expressly authorized by order of the commission:		
1	Energy costs incurred under a purchase power agreement are recoverable through a fuel and purchased power cost adjustment clause ("FPPCAC") according to the provisions of the FPPCAC approved for the electric utility; and	Geroge Novela	Supplemental Testimony, Section III – Question 16
2	Capacity costs and fixed costs incurred under a purchased power agreement, as well as energy costs incurred by an electric utility without an approved FPPCAC, may be recoverable through base rates when the commission issues an order authorizing a change in base rates that includes recovery of the capacity costs and fixed costs, and energy costs in the case of an electric utility without an approved FPPCAC.	George Novela	Supplemental Testimony, Section III – Question 16

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION	**)**	
OF EL PASO ELECTRIC COMPANY	**)**	
FOR APPROVAL TO IMPLEMENT A DEMAND	**)**	
RESPONSE AND DISTRIBUTED ENERGY	**)**	
RESOURCE PILOT PROJECT	**)**	**Case No. 26-0000079**
	)	
EL PASO ELECTRIC COMPANY,	**)**	
Applicant.	**)**	
	)	

SUPPLEMENTAL DIRECT TESTIMONY

OF

DAVID C. HAWKINS

ON BEHALF OF

EL PASO ELECTRIC COMPANY

AUGUST 2026

TABLE OF CONTENTS

SUBJECT **PAGE**

EXHIBITS

EL PASO ELECTRIC COMPANY
SUPPLEMENTAL DIRECT TESTIMONY OF
DAVID C. HAWKINS

I. INTRODUCTION AND QUALIFICATIONS

Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is David C. Hawkins. My business address is 100 North Stanton Street, El Paso, Texas, 79901.

Q2. ON WHOSE BEHALF ARE YOU SUBMITTING THIS TESTIMONY?

A. I am filing this testimony on behalf of El Paso Electric Company ("EPE" or "the Company").

Q3. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

A. Yes. I submitted Direct Testimony in this proceeding on April 20, 2026.

II. PURPOSE OF SUPPLEMENTAL DIRECT TESTIMONY

Q4. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL DIRECT TESTIMONY?

A. The purpose of my Supplemental Direct Testimony is to: (a) identify the other EPE witness providing supplemental testimony in response to the requirements set forth in Ordering Paragraph A, of the New Mexico Public Regulation Commission’s (“Commission”) July 2, 2026 Order Requiring EPE to Amend and Supplement the

Application and Appointing Hearing Examiner ("Order to Amend") in this case, as well as the specific paragraphs of Appendix A *Supplemental Information Requested from EPE* Paragraph they respond to; (b) to respond to Appendix A *Supplemental Information Requested from EPE Paragraph* Nos. 1, 2, 3, 5, and 8 through 18 required by the Order to Amend; and c) to provide additional support required for Rule 19.7.551 ("Rule 551") approval of the long term purchased power agreement for the proposal pilot project attached to my Direct Testimony as Exhibits DCH-2, and DCH-4 consistent with the Order to Amend requiring Rule 551 approval of that contract.

Q5. WHICH EPE WITNESS IS PROVIDING SUPPLEMENTAL TESTIMONY AND WHAT PARAGRAPHS OF APPENDIX A OF THE ORDER TO AMEND DO THEY RESPOND TO?

A. EPE witness George Novela addresses Appendix A Paragraph Nos. 4, 6 and 7.

III. SUPPLEMENTAL INFORMATION RESPONSIVE TO APPENDIX A OF THE ORDER TO AMEND

Q6. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 1 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 1 of Appendix A** requests EPE to "[e]xplain the size in MW of capacity and the amount of energy in MWh or KWh per month and any conditions regarding the minimum or maximum amount of energy capacity made available or required to be purchased based on reasonable projections and estimates of the number of homes enrolled by year."

Q7. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 1?

A. As detailed in the Statement of Work 2 (Exhibit DCH-04), there is a minimum of 1 megawatt ("MW") required for the project and the target deployment of 250 homes, or 5.125MW for the project. As shown in Exhibit DCH-02, the 5.125MW of capacity is contractually guaranteed for 8 hours per day, supplied from a combination of solar, battery storage, demand response and energy efficiency. As such, if EPE exercised the demand response component every day within a calendar month, the energy produced each month would be 1,230,000 kilowatt hours ("kWh"), or 1,230 megawatt hours ("MWhs") for a 30-day (month) period. Actual energy may differ based on solar output and the amount of hours EPE exercises demand response events. The expected contract capacity, timing of accepted capacity, and resulting annual payment obligations are also detailed in the Statement of Work 2.

Based on discussions with Creation Energy, after regulatory approvals, if only one builder is engaged in this process, the following is an estimated capacity ramp:

	Mo1	Mo2	Mo3	Mo4	Mo5	Mo6	Mo7	Mo8	Mo9	Mo10	Mo11	Mo12
Monthly Homes	10	10	10	10	10	10	10	10	10	10	10	10
Monthly kWs	205	205	205	205	205	205	205	205	205	205	205	205
Cumulative Homes	10	20	30	40	50	60	70	80	90	100	110	120
Cumulative kWs	205	410	615	820	1,025	1,230	1,435	1,640	1,845	2,050	2,255	2,460

	Mo13	Mo14	Mo15	Mo16	Mo17	Mo18	Mo19	Mo20	Mo21	Mo22	Mo23	Mo24
Monthly Homes	10	10	10	10	10	10	10	10	10	10	15	15
Monthly kWs	205	205	205	205	205	205	205	205	205	205	308	308
Cumulative Homes	130	140	150	160	170	180	190	200	210	220	235	250
Cumulative kWs	2,665	2,870	3,075	3,280	3,485	3,690	3,895	4,100	4,305	4,510	4,818	5,125

Creation Energy will undertake outreach to multiple builders, with EPE supporting the effort to accelerate deployment.

Q8. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 2 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 2 of the Appendix** requests "[i]nformation on whether the approach used by the Pilot Project has been used elsewhere successfully (i.e., the Seller persuading developers to install solar panels, two battery storage units, and various inside-the-home measures such as heat pumps throughout their new subdivisions prior to construction and sale of the homes)."

Q9. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 2?

A. While demand response programs are becoming increasingly familiar throughout the country,[1] and distributed energy resources, like residential rooftop solar, are well known, programs that focus on the aggregation of demand response and distributed energy resources are far less common. The underlying concept being proposed is not novel as federal policy recognizes that customer-sited distributed energy resources (distributed generation, electric storage, demand response, energy efficiency) can provide grid services, including capacity and energy services, when aggregated and enabled to participate as a resource.[2] Perhaps the best example of the approach used by the Pilot Project that has been used elsewhere successfully comes from the ERCOT market where the Aggregate Distributed Energy Resource (ADER) pilot was initiated in 2023. In the intervening three years, the pilot has grown from one aggregation of 4MW to 241MW of qualified capacity and a growing number of qualified resources.[3]

While there are differences between Texas and New Mexico energy regulations, the ADER program demonstrates that, if given the opportunity, residential customers will embrace aggregations of demand response and distributed energy resources in a meaningful and beneficial way. The New Mexico PRC's July 16, 2026 open meeting highlighted the growing importance of demand savings, with Synapse Energy Economics presenting on the value of demand-side resources. EPE was specifically identified during that meeting as the only New Mexico utility pursuing a virtual power plant approach,

[1] https://www.pew.org/en/research-and-analysis/data-visualizations/2026/explore-how-states-are-advancing-distributed-energy

[2] FERC Order No. 2222, 172 FERC ¶ 61,247 at PP 114–118 (2020).

[3] https://interchange.puc.texas.gov/Documents/53911_128_1659429.PDF

underscoring the relevance of this Pilot Project to the issues currently before the Commission.

Q10. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 3 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 3 of the Appendix** requests "[h[ow was Creation Energy selected as the vendor, including whether any competitive solicitation was conducted and what safeguards ensure that the PPA was selected independently, transparently, and in the public interest.

Q11. IN RESPONSE TO PARAGRAPH 3), HOW WAS CREATION ENERGY SELECTED AS THE VENDOR OF THE PROPOSED PILOT?

A. Creation Energy was selected as the vendor of the proposed Pilot Project based on its participation in EPE's 2025 Integrated Resource Plan ("IRP") stakeholder process, consistent with the stakeholder-requested work performed during the IRP public advisory process. During that process, EPE evaluated the Pilot Project technologies that formed the commitment made in EPE's IRP Action Plan Item 10. EPE did not conduct a separate request for proposals for the 250-home pilot before entering into the proposed agreement with Creation Energy.

The safeguards supporting the independence, transparency, and public interest basis for the proposed PPA are: (1) the Pilot Project proposal is tied to EPE's public IRP process and stakeholder requested evaluation of demand response and distributed energy resources; (2) the PPA places operational and performance risk on Creation Energy rather than customers; and (3) the payment obligations are tied to defined capacity and performance requirements. The public safeguard is a combination of the public planning process, contractual performance obligations, and risk allocation.

Q12. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 8 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 8 of the Appendix** requests "[W]ho bears the financial and operational risk if Creation Energy defaults, ceases operations, assigns the PPA, changes ownership or name, enters bankruptcy or receivership, or otherwise cannot maintain equipment or perform the PPA, including whether EPE would exercise purchase rights and whether those costs could be charged to customers."

Q13. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 8?

A. As demonstrated in the Master Power Purchase Agreement attached to my Direct Testimony (Exhibit DCH-2), all operational risk is borne by Creation Energy. If

Creation is unable to deliver according to the performance obligations, then EPE has the right to either; (i) terminate the contract, or (ii) step in and operate the equipment and pay for the equipment at cost less depreciation. The relevant sections of that agreement are Section 14.1, Termination for Cause by the Purchaser, Section 14.2, Remedy in the Event of Purchaser Termination for Cause, Section 14.6, Step-In Rights; Assumption of Installation Subcontracts, Section 21.12 Assignment; Binding Effect, and Exhibit K, Pricing for Purchase or Termination.

Q14. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 9 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 9 of the Appendix** requests "[d]oes EPE, for purposes of the Grid Modernization Statute, consider the proposed Pilot Project to "benefit[ ] only customers of [its] electric distribution system"? a) If yes to the above question, does EPE believe that would result in a prohibition against allocating any of the costs to customers served at 110 kV or higher voltage?

Q15. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 9?

A. EPE does not view the Pilot Project as benefiting only distribution level customers. Although the Customer Site installations are located at the distribution level, the aggregated Customer Sites are intended to provide system-level benefits, including capacity that supports EPE's planning reserve requirements and potential renewable-energy value that supports New Mexico renewable portfolio standard ("RPS") compliance. Those benefits are not confined to the individual Customer Sites or to distribution-level customers. Customers served at transmission voltage levels benefit when EPE's New Mexico jurisdictional resource portfolio includes additional capacity, renewable-energy attributes, and dispatchable demand response capability that help meet overall system needs.

Q16. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 10 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 10 of the Appendix** requests EPE to "[p]rovide all consumer protections, including but not limited to customer notice, consent, disclosure, and opt-out process at each decision point, including enrollment, installation, utility dispatch or control of customer equipment, material contract changes, equipment failure, customer departure, home sale, lease, foreclosure, program termination, and any transfer of obligations to a new homeowner."

Q17. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 10?

A. As discussed in my Direct Testimony, this Pilot Project would be a collaboration between EPE and Creation Energy, and Creation Energy and home developers and builders, to have this equipment installed at a customer's home but interconnected on the utility side of the meter. Although the customer agreement will be between Creation Energy and the homeowners where the Customer Sites are located, the dispatch and control that EPE utilizes has no impact on their specific bill or electric service on a day-to-day basis. It is important to recognize that because these resources are interconnected above the residential meter the system continues to operate and provide the necessary services for the utility. This structure eliminates significant risk for the utility and customers. Creation Energy is required to perform, subject to penalty, regardless of all these outside influences or issues.

Customer choice is paramount in the design of the Pilot Project proposal. Because these resources are deployed in the development and construction of a new home, the customer has the ability to choose to live in a home that has clean, resilient, energy security with no requirement to maintain or operate the equipment, or they can pick a traditional home with none of these benefits.

As shown in Exhibit DCH-1S, ('Membership Agreement"), the customer-facing Membership Agreement provides additional protections by requiring customer execution of the agreement and disclosure of related easement, Home Manual, Demand Response Terms, and Privacy Policy. It also addresses customer controls of certain home settings, manual overrides during demand response events, notice and acceptance procedures for material changes, advance notice for testing and maintenance access, and procedures for home sale and transfer. These provisions support the Pilot Project's design principle that customer participation is voluntary, disclosed in advance, and governed by written customer-facing procedures.

Q18. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 11 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 11 of Appendix A** requests "[d]id EPE consider whether a utility-owned generation resource constructed as an alternative to the PPA would provide greater benefits to the utility and ratepayers than the Pilot Project, and why did it not choose that method?

Q19. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 11?

A. The Application for the Pilot Project and the PPA were a result of EPE's IRP Action Plan. The purpose of the Grid Modernization Statute was to enable greater customer participation in demand response and distributed energy resources. A utility-owned generation resource would defeat that purpose and contradict the broad stakeholder process that resulted from EPE's IRP.

EPE ownership of a utility-scale resource was not intended to be an alternative to this Pilot Project because it would not evaluate customer participation, developer coordination, above-the-meter interconnection, dispatchable demand response, and distributed energy resource capability, customer-side resiliency, or third-party performance obligations under the PPA. For those reasons, EPE concluded that the proposed PPA better aligns with the purpose of the Pilot Project and the stakeholder-supported Action Plan than a utility-owned, utility-scale resource alternative.

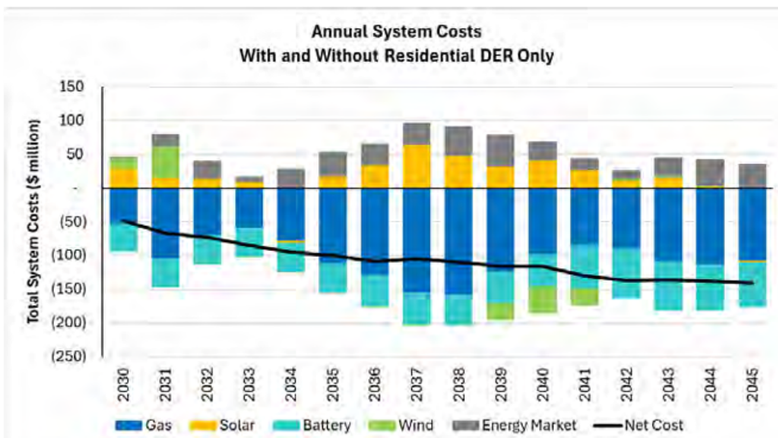
Q20. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 12 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 12 of the Appendix** requests "[w]hat evidence proves, as required by the Grid Modernization Statute, that EPE has demonstrated that the proposal is "the most cost-effective among feasible alternatives."

Q21. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 12?

A. The evidence supporting cost-effectiveness is EPE's IRP analysis and stakeholder process. In that process, EPE evaluated demand response and distributed energy resource alternatives against other feasible resource options, including traditional supply-side resources, and the DER/DR scenario demonstrated cost competitiveness. The Pilot Project is intended to test the real-world performance, dispatchability, resiliency, and aggregated capacity value of customer-sited resources in a way that a traditional utility-owned or supply-side resource would not. The cost benefits of the 2025 IRP DER/DR scenario are discussed in my direct testimony and displayed in the following Figure found on page 180 of EPE's 2025 IRP.

Figure 62: EPE System Annual Avoidance Cost of Residential DER compared to Least-Cost + REA



		Nominal Total System Costs			
	PVRR	**2030**	**2035**	**2040**	**2045**
Least Cost + REA	**$0.00**	$0.00	$0.00	$0.00	$0.00
Residential DER	**($757.76)**	($68.27)	($485.40)	($1,039.97)	($1,719.12)

For that reason, EPE evaluates cost-effectiveness in light of the Pilot Project's specific objectives. Among feasible alternatives capable of testing customer participation, developer and builder coordination, above-the-meter interconnection, dispatchable demand response and distributed energy resource capability, customer-side resiliency, and third-party performance responsibility under the PPA, EPE believes the proposed Pilot Project is the most cost-effective alternative. EPE's primary support for cost-effectiveness is the IRP analysis, stakeholder process, and the Pilot Project's limited, performance-based structure.

Q22. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 13 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 13 of the Appendix** requests "[w]hat evidence proves, as required by Rule 551, that EPE has demonstrated that entering the PPA is "consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost, considering both short- and long-term costs and all other relevant factors."

Q23. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 13?

A. The evidence supporting Rule 551 approval is EPE's IRP analysis, the stakeholder-supported Action Plan, and the structure of the PPA. The IRP showed that demand response and distributed energy resource alternatives can be cost competitive with other resource options, while the Pilot Project allows EPE to test whether aggregated customer-sited resources can provide dependable capacity, dispatchability, resiliency, and grid-management value under real operating conditions.

The PPA supports safe and reliable service at the lowest reasonable cost because Creation Energy is responsible for developing, owning, operating, maintaining, and performing the resource, while EPE's payment obligations are tied to accepted capacity and performance requirements. The PPA also includes testing, reporting, default, termination, and remedy provisions if the resource does not perform. This structure limits EPE's and customers' operational risk while allowing EPE to evaluate the short- and long-term value of a customer-sited resource portfolio. Below I address EPE's requested variance from the "lowest reasonable cost" requirement of Rule 551.8.(D)(6).

Q24. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 14 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 14 of the Appendix** requests "[h]as EPE performed a cost-benefit analysis for the Pilot Project, similar to those performed in other grid modernization dockets? If not, why not?"

Q25. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 14?

A. EPE has not performed a separate cost-benefit analysis for the Pilot Project in the same form used in other grid modernization dockets as the IRP process is designed to compare all available options and compare their cost-effectiveness. The IRP process evaluation is the open, public process that EPE utilizes in partnership with stakeholders and the commission to select the best, and most cost-effective resources, for use in the power portfolio. This Pilot Project is intended to test and quantify the real-world performance of customer-sited resources. The supporting analysis is publicly available from EPE's IRP analysis and stakeholder process, including the DER and DR scenario, that demonstrated cost competitiveness with other resource scenarios studied. The Pilot Project will also provide operational and customer-specific information—such as dispatchability, resiliency, developer and builder coordination, and aggregated capacity value—that a traditional resource cost comparison would not fully capture.

Q26. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 15 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 15 of the Appendix** requests "[d]o the solar panels, batteries, smart panels, inverters, easements, licenses, liens, or other encumbrances affect participating customers' title, mortgage, insurance, taxes, warranties, home resale, or ability to transfer the property?"

Q27. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 15?

A. The addition of energy and demand response resources that can provide energy security and resiliency to a home, reduce the cost of the monthly bill, and create significant value for the homeowner and any future homeowner. This voluntary program has been designed such that the homeowner bears no operational or financial risk. There are no liens on the property to encumber resale, unlike many traditional solar or battery programs. Easements are in place to allow access, operation, and maintenance to ensure continued performance and coordination with the customer. Appropriate permitting, engineering, and safety precautions will be in place for compliance with all applicable local and state regulatory requirements.

While it is not possible to predict every impact, these technologies are widely deployed and accepted by mortgage, insurance, and other relevant entities. The benefits provided are significant and create value for the homeowner for 30 years with no cost of ownership, operation or maintenance.

The form Membership Agreement further addresses these property-related issues by confirming that Creation Energy owns the System and that the homeowner receives limited use rights rather than ownership of the equipment. It also requires compliance with the easement, reasonable access for installation and maintenance, coordination with Creation Energy for repairs that may affect the System, and transfer of the agreement upon sale of the home unless termination rights are available and exercised. After the tenth calendar year, the homeowner may request termination and elect either to purchase the System or direct Creation Energy to remove it. These provisions are intended to manage title, resale, transfer, and access issues through written disclosures and contractual procedures rather than liens.

Q28. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 16 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 16 of the Appendix** asks EPE to "[p]resent a detailed summary of "the key terms and conditions" of the PPA that is required by Rule 17.9.551.8(D)(2) NMAC, including its benefits and costs to EPE's electrical system and New Mexico ratepayers."

Q29. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 16?

A. The key terms and conditions are set forth in the Master Power Purchase Agreement and Statement of Work 2. In summary, Creation Energy is responsible for developing, owning, operating, and maintaining a portfolio of customer-sited resources consisting of solar, battery storage, demand response, energy efficiency, and related control equipment. The project has a minimum capacity requirement of 1 MW and a target deployment of approximately 250 homes, or 5.125 MW of capacity, subject to the timing and accepted capacity provisions in the Statement of Work.

Key terms include the contract term, the minimum and target capacity requirements, the timing and amount of accepted capacity, the payment obligations tied to accepted capacity and performance, Creation Energy's responsibility to develop, own, operate, and maintain the customer-sited resources, EPE's right to dispatch the aggregated resource for defined capacity and grid-performance purposes, performance obligations and remedies if the resource does not perform, and the assignment, default, termination, and purchase-right provisions described in the PPA.

Under the PPA, EPE receives the right to use the aggregated resources for defined capacity and grid performance purposes, while Creation Energy bears the responsibility to install, operate, maintain, and perform under the agreement. EPE's payment obligations are tied to accepted capacity and contractual performance requirements. This structure provides New Mexico ratepayers with an aggregated customer-sited resource that can support capacity, energy, planning reserve needs, dispatchable demand response capability, customer resiliency, grid efficiency and information regarding the real-world performance of customer-sited resources, while assigning operational and performance responsibility to Creation Energy under the PPA and providing EPE contractual remedies if the resource does not perform.

The costs to EPE and New Mexico ratepayers are the contract payment obligations identified in the Statement of Work, and the expected benefits are the capacity, energy, dispatchability, resiliency, and planning value provided by the aggregated customer-sited resource over the contract term.

Q30. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 17 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 17 of the Appendix** requests EPE to "[i]dentify consumer protections regarding customer data, privacy, cybersecurity, and subcontractor controls, including who owns and may use customer usage, device, dispatch, and participation data, and whether Creation Energy may use such data outside the Pilot Project."

Q31. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 17?

A. EPE considers customer data privacy and cybersecurity to be critical components of the Pilot Project. Because the solar and battery resources are interconnected above the customer meter, EPE's dispatch of those resources is expected to involve resource availability, performance, and telemetry data rather than direct control of the customer's retail usage. To the extent customer usage or participation data is needed, EPE expects such data to be obtained through customer authorization, including the approved Green Button process where applicable. Green Button is a customer-authorized data access process that allows customers to share their utility usage data with an authorized third party in a secure manner approved by the Commission in Docket No. 21-00269-UT, EPE's prior Grid Mod proceeding for approval to implement an Advanced Meter System. EPE will work with Creation Energy to ensure that the final customer-facing documents and implementation procedures address customer consent, data access, cybersecurity, subcontractor access, and limits on data use consistent with EPE's data privacy and cybersecurity requirements.

The form Membership Agreement includes a Data and Privacy section that addresses homeowner consent for Creation Energy and its contractors, vendors, and partners to access, and use System Data including energy usage patterns, electric utility meter data, and operational data. It also states that System Data may be used for operational, performance, incentive, and service-improvement purposes; understanding energy usage patterns, qualifying for tax credits and incentives, and improving services, and may be shared with specified third parties; and will be anonymized if shared externally.

Q32. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 18 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 18 of the Appendix** asks EPE to "[p]rovide proposed reporting, evaluation, and exit criteria for this 30-year pilot, including objective success and failure metrics, interim milestones, customer complaint reporting, outage and equipment-failure reporting, cost-benefit updates, and whether Commission approval would be required before expansion, continuation, material amendment, or cost recovery."

Q33. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 18?

A. As detailed in the PPA and statements of work, the Pilot Project is unique in that the risk of owning, operating, and maintaining the equipment for the 30-year term is not put upon the customer and does not encumber the property with any liens. Annual reporting, testing, and performance requirements will be consistent with other EPE supply-side resources. As such, this does not follow the paradigm of tracking individual equipment. Creation Energy is required to deliver the capacity and services of this resource consistently for the 30-year term. As with any supply-side resource, individual components are not tracked, as EPE and consumers are concerned with the delivery performance of the resource, not the individual performance of any piece of equipment. All necessary reporting, testing, and performance requirements will be clearly documented and consistent with all other EPE contracts for resources.

Historically, DER programs and projects have created significant risk of management, reporting, and equipment failure for the utility, thus requiring the creation of new rules and/or independent reporting and metrics because they were not subject to the same strict utility scale/supply side solar, battery, and resource requirements for both performance and penalty. This DER project PPA accepts these performance and penalty requirements without asking for 'no penalty program' or other special considerations. It was developed and analyzed in comparison to all other alternatives in EPE's IRP process. This PPA represents a level playing field between a DER project and existing utility scale/supply side solar, battery, and other resource projects, with the same performance, reporting, testing, and penalty provisions.

IV. SUPPLEMENTAL INFORMATION RESPONSIVE TO RULE 551 APPROVAL

Q34. WHAT ARE THE REQUIREMENTS FOR FILING AN APPLICATION FOR A LONG TERM PURCHASED POWER AGREEMENT?

A The Commission's Rule 551 establishes the requirements for approval of a long term purchased power agreement ("LTPPA"), which are defined as purchased power agreements with terms of five years or more (Rule 551.7(E)) for the purchase of energy or capacity, or both, for which an electric utility seeks or intends to seek rate recovery from its New Mexico retail customers (Rule 551.7(F)).

Q35. DOES EPE'S FILING SATISFY THE REQUIREMENTS OF 551.8(A)?

A. Yes. Rule 551.8(A) requires that no electric utility become irrevocably obligated under an LTPPA contract without first obtaining Commission approval of the LTPPA. As I discussed in my direct testimony at Question 18, the pilot program proposal is structured as three agreements, comprised of a Master Power Service Agreement and two associated statements of work. The Master Power Purchase Agreement is entitled *The Distributed Energy Resources Aggregation Platform Master Power Purchase Agreement* between EPE and Creation Energy LLC ("Agreement" or "MSA") as is attached to my direct testimony as Exhibit DCH-2. On page 1 of the Agreement, Recital paragraph E requires Commission prior approval of Statement of Work 2 which establishes the proposed demonstration pilot project. Statement of Work 2, on pages 1- 2, sets forth a Conditions Precedent to Effectiveness Section requiring NMPRC approval of both the Agreement and SOW 2. SOW 2 is attached to my direct testimony as Exhibit DCH-4. EPE will not become irrevocably obligated under the agreements for the proposed project prior to Commission approval consistent with Rule 551.8(A).

Q36. DID EPE FILE THIS APPLICATION WITHIN 30 DAYS OF EXECUTION, IN ACCORDANCE WITH RULE 551.8(B)?

A. Yes. The SOW 2 establishing the specific terms of the proposed pilot program was executed on April 15, 2026 as shown on page 1 of Exhibit DCH-4 of my direct testimony. This application for approval timely was filed five days later on April 20, 2026.

Q37. HAS EPE SERVED COPIES OF ITS APPLICATION ON THE COMMISSION'S UTILITY DIVISION STAFF, THE NEW MEXICO ATTORNEY GENERAL, AND ALL PARTIES IN EPE'S MOST RECENT GENERAL ELECTRIC BASE RATE PROCEEDING?

A. Yes, copies of the application were served on all required parties concurrent with filing at the NMPRC.

Q38. HAS EPE COMPLIED WITH THE REQUIREMENTS OF RULE 17.9.551.8(D)?

A. Yes, EPE witness George Novela and I provide testimony and exhibits supporting all subparts of Section D. For ease of reference, EPE has also provided a Rule 551 testimony tracking table appended to the Supplemental Application identifying where each requirement is addressed.

Q39. HAS EPE DESCRIBED THE FACILITY?

A. Yes. Please see the response to Question 7 in my Direct Testimony.

Q40. HAS EPE PROVIDED A COPY OF THE LTPPA?

A. Yes. Please see Exhibits DCH-2 and DCH-4 to my Direct Testimony.

Q41. HAS EPE DESCRIBED THE METHODOLOGY AND CRITERIA BY WHICH THE LTPPA WAS SELECTED?

A. Yes. Please see my response to Question 11, above.

/

/

/

/

/

/

/

/

/

Q42. PLEASE SUMMARIZE THE KEY TERMS AND CONDITIONS OF THE LTPPA.

A. Please see the Summary Table below.

	Technology and Nameplate Capacity	Term (Years)	COD	Rate	Escalation (Yearly)	MWh/Yr Committed
	Solar, Battery, Demand Response,	**30**	**As subscribed**	**$320 /kW-year**	**2%**	**Up to 5.125 MW**

Q43. PLEASE DESCRIBE THE PRICE TERMS INCLUDED IN THE LTPPA.

A. Please see my response to Question 38 of my Direct Testimony.

Q44. DOES THE LTPPA INCLUDE OTHER NOTEWORTHY PRICING TERMS?

A. No.

Q45. ARE THE LTPPA PRICING TERMS REASONABLE AND NECESSARY?

A. Yes. Please see my responses to Question 39 of my Direct Testimony.

Q46. DOES THE LTPPA CONTAIN ANY PERFORMANCE RELATED PROVISIONS?

A. Yes. My Direct Testimony at Questions 17, 27, 33, and 34 discuss performance under the project's contracts. More specifically, in the event of non-performance, all operational risks are borne by Creation Energy. If Creation is unable to deliver according to the performance obligations, then EPE has the right to either: (i) terminate the contract, or (ii) step in and operate the equipment and pay for the equipment at cost less depreciation. The relevant sections of that agreement are Section 14.1, Termination for Cause by the Purchaser, Section 14.2, Remedy in the Event of Purchaser Termination for Cause, Section 14.6, Step-In Rights; Assumption of Installation Subcontracts, Section 21.12, Assignment; Binding Effect, and Exhibit K, Pricing for Purchase or Termination. Please see Exhibit DCH-4 to my Direct Testimony.

Q47. IS EPE RESPONSIBLE FOR ANY FIXED OR VARIABLE ADMINISTRATIVE, TRANSACTIONAL, OR OPERATION AND MAINTENANCE ("O&M") COSTS INCURRED THROUGH THE OPERATION OF THE LTPPA?

A. No. Please see my response to Question 42 of this Supplemental testimony.

Q48. WILL EPE INCUR ANY ADDITIONAL TRANSMISSION COSTS AS A RESULT OF THE LTPPA?

A. No.

Q49. IS EPE SEEKING RECOVERY OF TRANSMISSION COSTS RELATED TO THE DR DER IN THIS CASE?

A. No

Q50. COULD A UTILITY-OWNED RESOURCE HAVE BEEN CONSTRUCTED AS AN ALTERNATIVE TO THE LTPPA WITH GREATER BENEFIT TO RATEPAYERS?

A. No. Please see my response to Question 19, above.

Q51. IS APPROVAL OF THE LTPPA FOR THE DR DER CONSISTENT WITH EPE'S MOST RECENT INTEGRATED RESOURCE PLAN?

A. Yes. As explained in my Direct Testimony, Action Plan Item 5 to EPE's 2025 Integrated Resource Plan ("IRP") which was accepted by Final Order in Case No. 24-00260-UT on December 18, 2025, required EPE to file an application for and seek cost recovery for a pilot program for demand response (DR) and distributed energy resources (DER) located on up to 250 customer residences no later than 90 days after Commission acceptance of EPE's 2025 IRP. This Application was filed to comply with that Action Plan Item 5 and is thus consistent with the IRP.

Q52. WILL GRANTING EPE'S APPLICATION IMPACT EPE'S FINANCIAL CONDITION AND FINANCIAL METRICS (551.8(D)(7))?

A. No. Please see the testimony of EPE witness George Novela regarding the impact on EPE's financial condition and financial metrics.

Q53. WILL APPROVING THE LTPPA HAVE A REASONABLE IMPACT ON COSTS TO CUSTOMERS?

A. Yes. Please see the testimony of EPE witness George Novela regarding the impact on consumer costs.

Q54. WILL THE PILOT PROJECT REQUIRE APPROVALS TO CONSTRUCT AND OPERATE THE GENERATING UNITS, INCLUDING AIR QUALITY AND OTHER ENVIRONMENTAL PERMITS?

A. Any approvals will need to be acquired by the homebuilders and Creation Energy, as appropriate. EPE will not need to acquire any environmental permits or approvals for this project.

Q 55. IS EPE REQUESTING A VARIANCE FROM CERTAIN RULE 551 REQUIREMENTS?

A. Yes. Rule 551.8(D)(6) requires an application for LTPPA approval to be accompanied by "evidence that entering into the LTPPA is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost, considering both short and long-term costs and all other relevant factors." Specifically, EPE seeks a variance from the lowest reasonable cost requirement of Rule 551.8(D)(6) to the extent it is applicable to this Pilot Project proposal.

Q56. WHAT IS THE SITUATION THAT NECESSITATES EPE'S REQUEST FOR VARIANCE FROM RULE 17.9.551.8(D)(6)?

A. As I described above, the Action Plan of EPE's 2025 IRP required EPE to file this application within 90 days after Commission acceptance of EPE's 2025 IRP. Creation Energy was selected as the vendor of the proposed Pilot Project based on its participation in EPE's 2025 IRP stakeholder process, consistent with the stakeholder-requested work performed during the IRP public advisory process. During that process, EPE evaluated the Pilot Project technologies that formed the commitment made in EPE's IRP Action Plan Item 10.

Q57. WHAT IS THE EFFECT OF COMPLYING WITH THE RULE IF THE VARIANCE IS NOT GRANTED?

A. Denying the variance could disqualify the Pilot Project proposal from Commission consideration, in direct contradiction of EPE's 2025 IRP Plan.

Q58. WHAT RESULT WILL THE VARIANCE HAVE IF GRANTED?

A. Granting the variance will allow the Commission to consider this application.

Q59. DOES GRANTING THE PROPOSED VARIANCE ACHIEVE THE PURPOSES OF THE RULE AND IS IT IN THE PUBLIC INTEREST?

A. Yes. Granting the proposed variance achieves the purposes of Rule 551 and is in the public interest because it allows the Commission to consider a limited Pilot Project that was developed through EPE's 2025 IRP process and is intended to test demand response and distributed energy resources in a real-world operating environment. The purpose of the Pilot Project is not to bypass cost-effectiveness review, but to evaluate whether aggregated customer-sited resources can provide reliable capacity, dispatchable demand response capability, resiliency, and other grid benefits in a manner that can inform future planning and resource decisions.

Granting the variance would not relieve EPE of its burden to demonstrate that the Pilot Project is prudent, reasonable, and beneficial to New Mexico customers. Instead, it would recognize that the "lowest reasonable cost" standard should be applied in the context of this specific pilot, where the objective is to test a new resource model rather than simply select the lowest-cost conventional supply-side alternative. The Pilot Project includes important customer protections because Creation Energy bears the responsibility to develop, own, operate, maintain, and perform the resource, while EPE's payment obligations are tied to accepted capacity and contractual performance requirements.

For these reasons, granting the requested variance supports the purposes of Rule 551, preserves Commission oversight, allows the Commission to evaluate the Pilot Project on its merits, and advances the public interest by enabling EPE to test customer-sited resources that may provide capacity, reliability, resiliency, and long-term planning benefits for New Mexico customers.

Q60. DOES THIS CONCLUDE YOUR SUPPLEMENTAL DIRECT TESTIMONY?

A. Yes.

Creation Energy, LLC ("Creation Energy")
[Address]
[Contact Info]

Homeowner:

Name: ______________________
Telephone: ______________________
Email: ______________________
Property Address: ______________________
____

Effective Date: ______________________

Creation Energy Community Membership Agreement

This Creation Energy Community Membership Agreement ("**Membership Agreement**") is made and entered into by the Homeowner identified above ("**You**" or the "**Member**" herein) and Creation Energy as of the Effective Date. Creation Energy and You are sometimes hereinafter referred to separately as a "**Party**" and collectively as the "**Parties**."

As owner of the home (the "**Home**") located on the real property at the above address ("**Property**"), You and Creation Energy have agreed to enter into this Membership Agreement, which governs the terms of use of Creation Energy's electric infrastructure ("**System**") installed in Your Home and community.

Therefore, in consideration of the mutual promises herein and for other valuable consideration, the receipt and sufficiency of which each Party acknowledges, the Parties agree as follows:

1. Membership. By Your execution of this Membership Agreement, You agree to accept these terms and conditions of participating in the Creation Energy community, in exchange for your use of the System, subject to the limitations provided in this Membership Agreement. You acknowledge that the Home is subject to an easement that provides Creation Energy with certain rights to your property with respect to the System (the "**Easement**"). A true and correct copy of the Easement is attached as **Exhibit A**.

2. Membership Benefits. Creation Energy operates and maintains the System pursuant to an agreement with Your local utility integrating the System into the grid, providing You with certain benefits as a Creation Energy community member. Your Creation Energy Home comes with the user manual attached as **Exhibit B** ("**Home Manual**"). The Home Manual provides more detail with regard to the System and your Home, as well as support and service terms for the System. The Home Manual also provides a link and information for a communication portal ("**Communication Portal**") which Creation Energy and You may use to communicate and provide notices pursuant to this Membership Agreement. Following execution of this Membership Agreement, Creation Energy will provide You an introductory overview of the System and its functionalities, including instruction on your Home's energy management model and assistance in establishing its initial default settings. Your Creation Energy Home features:

(a) A Home energy management system that allows You to monitor, predict and control Your Home energy needs;

(b) Electric vehicle ("**EV**") charging infrastructure, as described in the Home Manual, and no cost installation of up to 2 EV chargers, as set forth in Section 11;

(c) Access to System benefits, providing increased resiliency for your Home when the electric grid has an outage;

(d) Cost-free maintenance, operation and repair of the System for the life of the Home, as provided in Section 10;

(e) Access to call center support from Creation Energy, as set forth in the Home Manual.

3. Operation of the System; Demand Response Terms. In accordance with your selected Setting Preferences, and with the terms set forth in **Exhibit C** (the "**Demand Response Terms**") that are defined by Your Utility demand response program and Creation Energy, Creation Energy will ensure the System maintains your preference settings for Your Home. Creation Energy will provide notice to you of any changes to these requirements for the Demand Response Terms during the Term of this Membership Agreement, and You agree to review and respond to changes in Demand Response Terms as set forth below. As part of such operation, Creation Energy has the right to access and control the Home's breaker panels; to adjust System settings as necessary to manage demand response needs of Your local utility, or to manage off-grid operation; and to modify, augment, or otherwise adjust the System and its settings. Creation Energy's control may limit the amount of electricity available for use in Your Home and will include adjusting thermostat settings, water heater settings and control of loads for Your Home, as necessary to manage demand response events with Your local utility.

(a) With respect to HVAC and water heater thermostat settings, You will control the base set temperature point of Your thermostat and the degree of variability of temperature adjustments in accordance with Your Setting Preferences. Creation Energy will attempt to precool or preheat the Home prior to any demand response event, in order to aid You in keeping the Home as close as possible to Your desired base set temperature point.

(b) You may manually override Creation Energy's control during a Demand Response event up to five (5) times each calendar year, at your sole discretion. If you exceed your permitted manual overrides, Creation Energy will reduce the amount of your Rebate Payment.

(c) **Changes to Demand Response Terms.** In the event that Your local utility updates its Demand Response Terms, Creation Energy will provide You notice of such changes through the Communication Portal. If the local utility updates are not Material Changes to the existing Demand Response Terms, you agree to accept the changes and they will be effective upon notice to You. If the local utility updates are Material Changes to the existing Demand Response Terms, You agree to review the changes and indicate your acceptance of them through the Communication Portal within thirty (30) days of receipt of notice to You. A "**Material Change**" means (1) an increase of more than two (2) hours in the duration of the Demand Response event or (2) an increase of more than twenty percent (20%) in the number of Demand Response events allowed per year.

i. In the event of a Material Change, if You fail to accept updated Demand Response Terms within thirty (30) days of notice, Creation Energy may cease payment of the Rebate to You.

ii. In the event of a Material Change, if you fail to accept the new Demand Response Terms within sixty (60) days of notice, You will be in default of this Membership

Agreement, and Creation Energy will have all available rights and remedies as set forth in Section 17 of this Membership Agreement.

4. Utility Service; Increased Home Resiliency. Creation Energy is not a regulated utility and is not your electric service provider. As with any home, You will need to maintain an electric service agreement with Your local utility for Your Creation Energy Home. One benefit of Your Creation Energy Home is that, for the full term of this Membership Agreement, Your Home will be more resilient to power loss. Through the System, Creation Energy is able to provide backup power to Your Home in the event of a grid failure or other power outage. However, in such event, and at all times in accordance with the requirements of this Membership Agreement, Creation Energy may limit operation of Home appliances to ensure electricity remains available to You for climate control, communications and lights in the Home. THIS MEMBERSHIP AGREEMENT DOES NOT GUARANTEE THAT YOU WILL NEVER LOSE POWER OR HAVE ANY INTERRUPTION IN ELECTRICITY SERVICE. YOU AGREE THAT CREATION ENERGY IS NOT LIABLE IN THE EVENT OF ANY POWER LOSS, OUTAGE OR INTERRUPTION IN ELECTRICITY SERVICE.

5. Clean Energy Payment. For the full term of this Membership Agreement, and in exchange for Your participation in the Creation Energy community in accordance with the terms of this Membership Agreement, Creation Energy will pay You the monthly clean energy payment based on Your participation in under the terms of this Membership Agreement (the "**Clean Energy Payment**"). The Clean Energy Payment will equal $30/mo. You will receive the first Rebate Payment within forty-five (45) days of the Effective Date of this Membership Agreement.

6. Member Obligations. You agree that:

(a) You will comply with the terms of the Easement;

(b) as provided in the Easement, You grant Creation Energy and its employees, contractors, affiliates, subcontractors and other agents or representatives thereof, reasonable access to the Property and cooperate with Creation Energy for the purpose of the performance of its obligations (including (i) installation, use and maintenance of the System, electric lines, breaker panels, and meters necessary for completion of all such services, (ii) use of drone technology to survey the Home's roof and the System; and (iii) conducting annual testing on the System);

(c) You authorize Creation Energy to operate the System, including to engage in demand response or off-grid operation, as further detailed in the Home Manual, and to cooperate with Creation Energy;

(d) You authorize Creation Energy to perform an annual test of the System, as provided in Section 13;

(e) You will not yourself, or permit others to, alter, damage, or modify the System;

(f) You will promptly notify Creation Energy if you believe the System is damaged, appears unsafe, or is stolen; and

(g) You will cooperate with Creation Energy and its reasonable requests, including providing any documentation requested by Creation Energy with regard to the System and Your Home.

7. Creation Energy Obligations. Creation Energy agrees to:

(a) own, operate, and maintain;

(b) ensure the System is properly maintained; and

(c) insure the System against damage or loss (except to the extent such damage is caused by Your gross negligence or intentional conduct).

8. Use of Home; Prohibitions on Certain Home Improvements. By Your execution of this Membership Agreement, You represent that you will use the Home and the System primarily for personal, family, or household purposes, and not for commercial business purposes. Because Creation Energy has integrated the System with Your local utility, You also agree that You will not, without Creation Energy's prior written consent, perform or permit any renovation or repair to the Home that may impact the System, including (a) installation of any electricity-generating or electricity-storing equipment on the Property, (b) installation of any EV chargers or related infrastructure, (c) roof repair or replacement, (which You will coordinate with Creation Energy as provided in Section 9(a) below) and (d) replacement of Your thermostat or water heater (except as provided in Section 9(b) below). All such renovations or repairs must be technically compatible with the System and shall not adversely affect use, functionality or operation of the System. You may request Creation Energy's review and consent to any proposed renovation or repair to the Home by written notice as set forth in Section 25.

(a) **Roof Repair or Replacement.** In the event the Home requires a roof repair or replacement, You agree to notify Creation Energy prior to beginning such work (except to the extent required to address an emergency). Creation Energy will coordinate with You and Your roofing contractor to safely remove and, following completion of the roof repair or replacement, reinstall any portion of the System affected by the roof repair or replacement at Creation Energy's cost. You agree to work with Creation Energy and Your roofing contractor to minimize the period of time between removal and reinstallation of any such portion of the System, and to use reasonable efforts to ensure that the roof repair or replacement work is completed within 14 days of Creation Energy's removal of the portion of the System (and in any event, to ensure that such work is completed within 20 days). You will ensure that such roof repair or replacement meets or exceeds the standards of the existing roof.

(b) **Smart Appliances.** Creation Energy encourages You to incorporate "smart" appliances into Your Home. "**Smart Appliances**" are appliances with two-way communications systems that may be remotely accessed and/or operated. The Home's current thermostat and water heater are Smart Appliances. Creation Energy's website lists the approved Smart Appliances that are compatible with the home at https://creation.energy/.

9. Maintenance. For the full term of this Membership Agreement, and as further detailed in the Home Manual, Creation Energy will provide for the operation and maintenance of the System at no cost to You. In order to perform this maintenance, You must permit Creation Energy to access the System.

(a) Creation Energy's obligations pursuant to this Section 10 do not cover damage (i) covered by another party's warranty or service agreements, insurance policies, or product recalls; (ii) caused by pre-existing issues or a third party (including theft or vandalism); (iii) resulting from unauthorized modifications or repairs to, or intentional damage or misuse of, the System; (iv) caused by anything other than normal use of the Home and System in accordance with the terms of this Membership Agreement; or (v) caused by force majeure events.

(b) If Creation Energy determines that it is unable to service the System, Creation Energy may, at its discretion, repair or replace the System. Creation Energy will provide You with at least 24 hours' notice prior to planned required maintenance activities that require access to the System on Your Home.

10. EV-Readiness. Your Creation Energy Home is equipped with 2 locations prepared for installation of an EV charger (1 in the garage and 1 outside). Upon Your request, and at no cost to You, Creation Energy will install one EV charger (up to a total of 2) for each EV that You own. Creation Energy will only install Creation Energy-approved EV chargers that are technically compatible with the System. In the event you request additional EV chargers (for example, you desire to install both EV chargers and you only have one EV vehicle), You may request Creation Energy provide such additional EV chargers for Your purchase. Following your purchase of an additional EV charger, Creation Energy will install the additional EV at no cost to You. Upon installation of an EV charger, Creation Energy will coordinate Your charge and discharge preferences for Your EV, which will be incorporated into Your System Preferences. There can be a maximum of Two (2) EV charges in the Home.

11. Annual System Test. No more than once each calendar year, Creation Energy may perform an annual test of the System. During such test, Creation Energy will facilitate disconnection of the Home from the local electric grid and will operate the System to provide electricity to the Home as the Home's sole source of electricity. Creation Energy will provide You at least 24 hours' notice prior to conducting the annual test. DURING SUCH ANNUAL TEST, ALTHOUGH CREATION ENERGY WILL MAKE EVERY ATTEMPT TO PREVENT ANY OUTAGE OR INTERRUPTION IN YOUR ELECTRICITY SERVICE, CREATION ENERGY DOES NOT GUARANTEE THAT YOU WILL NEVER LOSE POWER OR HAVE ANY INTERRUPTION IN ELECTRICITY SERVICE. YOU AGREE THAT CREATION ENERGY IS NOT LIABLE IN THE EVENT OF ANY POWER LOSS, OUTAGE OR INTERRUPTION IN ELECTRICITY SERVICE.

12. Ownership of the Electric Infrastructure; Energy Rebates, Credits, and Programs. You understand and agree that this is an agreement for limited use of the System at your Home, and not an agreement to purchase the System. Creation Energy owns the Electric Infrastructure for all purposes. Accordingly, by accepting the terms of this Membership Agreement, You understand and acknowledge that You are not eligible for any rebate or promotional program offered by Your local utility with respect to the Home or the Electric Infrastructure, including but not limited to net energy metering, demand response or virtual power plant programs, rebates, incentives, or credits of any nature. You are also not eligible for, and Creation Energy shall at all times have the exclusive rights to use and benefit of, any and all federal or state tax credits, benefits or incentives relating to or arising from the Electric Infrastructure. EXCEPT SOLELY WITH RESPECT TO THE REBATE PAYMENT SET FORTH IN SECTION 6 OF THIS MEMBERSHIP AGREEMENT, YOU HAVE NOT BEEN PROMISED ANY BENEFITS, INCENTIVES, OR REBATES RELATING TO THE SYSTEM. YOU UNDERSTAND AND AGREE THAT CREATION ENERGY MAKES NO REPRESENTATION, WARRANTY OR OTHER GUARANTEE OF ANY OTHER BENEFIT, INCENTIVE OR REBATE.

13. Membership Agreement Term. This Membership Agreement shall become effective as of the Effective Date, and shall remain in effect indefinitely, unless terminated earlier in accordance with the terms of this Membership Agreement.

14. Selling Your Home; Transfer of Membership Agreement. If You sell Your Creation Energy Home (and unless You are eligible for, and have elected to, terminate this Membership Agreement in accordance with Section 18), You agree to (a) provide written notice to Creation Energy as set forth in Section 25 at least 30 days prior to such sale, and (b) to transfer this Membership Agreement to the person buying the Home. Creation Energy will reasonably coordinate with You and the person buying the Home to facilitate the transfer of this Membership Agreement. For the sake of clarity, under no circumstances shall You be permitted to remove the System or facilitate the sale of the System, and you shall not attempt to transfer this Membership Agreement except in accordance with this Section 16.

15. Default. In the event You materially breach the terms of this Membership Agreement, and You fail to cure such breach within 30 days of notice from Creation Energy, You will be in default of this Membership Agreement. A material breach of this Membership Agreement includes, but is not limited to, causing damage to the System that impacts its functionality or performing renovation or repairs to the Home without Creation Energy's consent or as permitted pursuant to Section 9. In the event of Your default, Creation Energy may, at its option, take reasonable action to cure Your default, suspend performance of its obligations under this Membership Agreement, or exercise any other right or remedy available to Creation Energy at law or in equity, including the right to terminate this Membership Agreement. If Creation Energy terminates this Membership Agreement following Your default, Creation Energy may elect to recover from You the Purchase Price in exchange for the System, as set forth in Section 18 below. Both Parties agree to use commercially reasonable efforts to mitigate damages for such termination. Any disputes arising out of a default or termination of this Membership Agreement shall be governed by Section 19.

16. Termination. At any time after the 10^{th} calendar year following the Effective Date, and with no less than 30 days' written notice to Creation Energy as set forth in Section 25, You may request to terminate this Membership Agreement and elect to purchase the System for the purchase price set forth in the table attached to this Membership Agreement as **Exhibit E** (the "**Purchase Price**") or direct Creation Energy to remove the System. Your request must specify whether You intend to purchase the System or direct Creation Energy to remove the System. Following receipt of Your written notice electing to purchase the System, Creation Energy will provide You an equipment purchase agreement for the purchase of the System for the Purchase Price. In the alternative, following receipt of Your written notice electing to remove the System, Creation Energy will provide You with a removal agreement.

(a) Should You elect to purchase the System for the Purchase Price, this Membership Agreement will terminate and neither Party will have any remaining obligations under this Membership Agreement (including, for the avoidance of doubt, any operation, maintenance or repair obligations with respect to the System).

(b) Should You elect to have the System removed, Creation Energy will cause the System to be removed, returning the Home as close as reasonably possible to its condition prior to installation of the System (excluding ordinary wear and tear, and color variance due to manufacturing changes). You agree to reasonably cooperate with Creation Energy in removing the System, including providing necessary space, access, and storage for such removal work, and Creation Energy agrees to reasonably cooperate with You to schedule removal at a time and manner that minimizes inconvenience.

17. Applicable Law; Arbitration. The laws of the state where the Home is located shall govern this Membership Agreement. To the fullest extent permitted by applicable laws, the Parties agree that any dispute arising under this Membership Agreement shall be resolved exclusively by arbitration. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, AND THE DISPUTE WILL BE RESOLVED BY AN ARBITRATOR INSTEAD OF A JUDGE OR JURY.

(a) If you have a dispute, You must notify Creation Energy as set forth in Section 25 specifying "Membership Agreement Dispute—Section 19."

(b) The arbitration will be administered by the American Arbitration Association (AAA) under its Consumer Arbitration Rules and Mass Arbitration Supplementary Rules (AAA Rules). To learn more about arbitration before the AAA or for a copy of the AAA Rules, please visit www.adr.org. AAA Rules will govern the allocation and payment of filing, administrative and arbitrator fees (AAA Fees).

(c) In the event that, regardless of this provision, any dispute proceeds to court, to the greatest extent permitted by applicable laws, THE PARTIES EACH WAIVE THE RIGHT TO TRIAL BY JURY.

18. Force Majeure. Notwithstanding anything contained in this Membership Agreement to the contrary, neither Party will be deemed liable or to be in default for any delay or failure in performance under this Membership Agreement deemed to result, directly or indirectly, from acts of god, including natural disasters, epidemics and pandemics including, but not limited to acts of civil or military authority, acts of public enemy, war, riot, fire or any cause beyond its reasonable control unless such delay or failure in performance is expressly addressed elsewhere in this Membership Agreement; provided that the affected Party shall promptly notify the other Party. No event caused by the affected Party's fault or negligence shall be deemed a force majeure event.

19. Change in Law or Utility Agreement.

(a) **Change in Law**. In the event that, following the Effective Date, either Party becomes aware of a change in law applicable to this Membership Agreement, including but not limited to the enactment, adoption, promulgation, modification, repeal, change in interpretation or application by a governmental authority or local utility ("**Change in Law**"), which materially affects the rights or obligations of either Party under this Membership Agreement, such Party shall notify the other Party in writing within a reasonable period after becoming aware of such Change in Law, providing a description of the change and its anticipated impact. Following such notice, the Parties shall, in good faith, negotiate appropriate adjustments to the terms of this Membership Agreement, to equitably address the impact the of the Change in Law. In the event a Change in Law renders Creation Energy's ability to perform its obligations pursuant to this Membership Agreement illegal or commercially impracticable, Creation Energy may, by written notice to You, terminate this Membership Agreement without penalty. Upon any such termination, the Parties shall have no further liability to each other.

(b) **Change in Utility Agreement**. In the event that, following the Effective Date, Creation Energy's agreement with Your local utility materially changes or is terminated (a "**Change in Utility Agreement**"), such that Creation Energy's rights or obligations with respect to the Home are materially affected, Creation Energy will notify You, providing a description of the change and its anticipated impact. Upon a Change in Utility Agreement, Creation Energy may elect to (i) terminate this Membership Agreement by notice to You, (ii) offer You the opportunity to purchase the System for the Purchase Price, or (iii) offer You the opportunity to enter into a new agreement with Creation Energy to continue receiving the benefits of the System.

20. Limitation of Liability. To the fullest extent permitted by applicable law, the total liability of Creation Energy for any and all claims arising out of or relating to this Membership Agreement, whether in contract, tort (including negligence), or otherwise, shall not exceed an amount equal to the aggregate value of all Rebate Payments actually received by the Member pursuant to Section 6.

21. Consequential Damages Waiver. THE PARTIES' LIABILITY UNDER THIS MEMBERSHIP AGREEMENT SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES, INCLUDING BUT

NOT LIMITED TO LOSS OF ELECTRICITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

22. Confidentiality. You agree that this Membership Agreement is proprietary information of Creation Energy, and strictly confidential. You agree not to provide copies of this Membership Agreement or any other confidential, non-public information of Creation Energy (including, for the sake of clarity, the Home Manual and Demand Response Terms) to any third party without Creation Energy's prior written consent. If You are requested or required by applicable laws to disclose this Membership Agreement or other confidential information of Creation Energy, You will notify Creation Energy as set forth in Section 25 and cooperate with Creation Energy's reasonable requests related to such request or requirement. However, this Section 24 shall not prohibit Your ability to acknowledge or generally discuss Your Creation Energy Home, provided that such acknowledgement or discussion does not reveal the terms of this Membership Agreement.

23. Notice; Communication Portal Option. Any notice required to be sent or given hereunder shall be in accordance with this Section 25 and shall be (a) sent through the Communication Portal; (b) sent by electronic mail (Insert email address), with an electronic mail delivery receipt, with "FORMAL NOTICE" in the subject line; (c) sent by a recognized overnight or courier service;. Notices (except when sent through the Communication Portal or by electronic mail) shall be sent to the attention and address of the Parties set forth on the first page of this Membership Agreement; provided that either Party may at any time notify the other Party of a change in notice information.

24. Data and Privacy.

(a) **System Data.** You consent to, authorize, and direct Creation Energy and its subcontractors, vendors, and partners to access, use, and disclose data obtained or generated by Creation Energy in operating the System. This data includes but is not limited to, any from your System, energy usage patterns, Your electric utility meter data, and any other information that may be derived from the operation and monitoring of your System ("**System Data**"). You understand that this System Data may potentially be used in ways that could identify your Home and energy usage trends. System Data may be used for Creation Energy's business purposes, including but not limited to optimizing equipment performance, understanding energy usage patterns, qualifying for tax credits and incentives, and improving services. System Data may also be shared with third parties, including but not limited to the local utility, regulatory authorities, equipment manufacturers, enterprise affiliates, or other similar partners, for the purposes of providing, improving, and facilitating services associated with your System. If your System Data is shared externally, such System Data will be anonymized.

(b) **Privacy Policy.** With respect to all personal information that does not constitute System Data, You agree to the terms of Creation Energy's privacy policy, which outlines how Creation Energy collects, uses and protects Your personal information. Creation Energy's privacy policy is attached as **Exhibit D**.

25. Assignment. You shall not assign this Membership Agreement without the prior written consent of Creation Energy. Creation Energy may assign this Membership Agreement to an assignee, provided that such assignee assumes all rights and obligations of Creation Energy hereunder, and that Creation Energy provides You notice of such assignment. Any attempted assignment or delegation in violation of this Section 27 shall be null and void and shall be ineffective to relieve either Party of its obligations under this Membership Agreement.

26. Further Assurances. In order to more fully assure the Parties of the benefits of this Agreement, each Party agrees to deliver to the other such confirmations of fact, records, certificates, instruments of assignment and other documents as may be reasonably requested by a Party to carry out the intent and purposes of this Membership Agreement.

27. Survival. Sections 22, 23, and 24 of this Membership Agreement shall survive the termination or expiration of this Membership Agreement and shall remain in full force and effect.

28. Severability. In the event any provision of this Membership Agreement is determined to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Membership Agreement shall not in any way be affected or impaired thereby.

29. Entire Agreement; Amendment. This Membership Agreement contains the entire agreement between the parties with respect to the System and supersedes any and all prior proposals, discussions, or other agreements pertaining to the System. This Membership Agreement may only be changed or amended in a writing signed by both Parties.

30. Headings. The Section headings contained in this Membership Agreement are inserted for convenience of reference only and will not affect the meaning or interpretation of this Membership Agreement.

31. Multiple Counterparts. This Membership Agreement may be executed in two or more counterparts, each of which will be deemed an original, and all of which together will constitute one instrument. The Parties acknowledge that use of digital transaction management software shall constitute a valid means of executing this Membership Agreement and that signed copies delivered electronically shall be deemed to be original signatures.

By Your signature, you acknowledge you have read this Membership Agreement (including attached EXHIBITS A, B, C, and D) in its entirety, and that You have received a complete copy of this Membership Agreement.

DO NOT SIGN THIS MEMBERSHIP AGREEMENT IF THERE ARE ANY BLANK SPACES.

Member:

Signature: ____

Name: ____

Date: ____

Creation Energy, LLC:

Signature: ____

Name: ____

Title: ____

Date: ____

<u>EXHIBIT A</u>
<u>Easement</u>

EXHIBIT B
Home Manual with Support & Service Terms

EXHIBIT C
Demand Response Terms

EXHIBIT D
Privacy Policy

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION	)	
OF EL PASO ELECTRIC COMPANY	)	
FOR APPROVAL TO IMPLEMENT A DEMAND	)	
RESPONSE AND DISTRIBUTED ENERGY	)	
RESOURCE PILOT PROJECT	)	**Case No. 26-0000079**
	)	
EL PASO ELECTRIC COMPANY,	)	
Applicant.	)	
	)	

DECLARATION OF DAVID C. HAWKINS IN SUPPORT OF THE FOREGOING SUPPLEMENTAL DIRECT TESTIMONY TO THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO IMPLEMENT A DEMAND RESPONSE AND DISTRIBUTED ENERGY RESOURCE PILOT PROJECT

I, ***David C. Hawkins***, pursuant to Rule 1-011 NMRA, state as follows:

1. I affirm in writing under penalty of perjury under the laws of the State of New Mexico that the following statements are true and correct.

2. I am over 18 years of age and have personal knowledge of the facts stated herein. I am employed by El Paso Electric Company ("EPE" or "the Company") as the *Vice President of Operations Support.*

3. The foregoing Supplemental Direct Testimony of David C. Hawkins, together with all exhibits sponsored therein and attached thereto, is true and accurate based on my knowledge and belief.

4. I submit this Declaration, based upon my personal knowledge and upon information and belief, in support of EPE's ***Application to Implement a Demand Response and Distributed Energy Resource Pilot Project.***

FURTHER, DECLARANT SAYETH NAUGHT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 3, 2026.

/s/ David C. Hawkins
DAVID C. HAWKINS

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION	**)**	
OF EL PASO ELECTRIC COMPANY	**)**	
FOR APPROVAL TO IMPLEMENT A DEMAND	**)**	
RESPONSE AND DISTRIBUTED ENERGY	**)**	
RESOURCE PILOT PROJECT	**)**	**Case No. 26-0000079**
	)	
EL PASO ELECTRIC COMPANY,	**)**	
Applicant.	**)**	

SUPPLEMENTAL DIRECT TESTIMONY

OF

GEORGE NOVELA

ON BEHALF OF

EL PASO ELECTRIC COMPANY

AUGUST 2026

TABLE OF CONTENTS

SUBJECT **PAGE**

EL PASO ELECTRIC COMPANY
SUPPLEMENTAL DIRECT TESTIMONY OF
GEORGE NOVELA

I. INTRODUCTION AND QUALIFICATIONS

Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS.

A. My name is George Novela. My business address is 100 N. Stanton Street, El Paso, Texas 79901.

Q2. WHO IS YOUR CURRENT EMPLOYER AND WHAT POSITION DO YOU HOLD?

A. I am employed by El Paso Electric Company ("EPE" or the "Company") as the Director of Economic and Rate Research.

Q3. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I graduated from The University of Texas at El Paso with a Bachelor of Business Administration in Economics in 2006, a Master of Science in Economics in 2008, and a Master of Business Administration in Finance in 2012. I received a Graduate Certificate in Public Utility Regulation & Economics from New Mexico State University in 2014.

Prior to working at EPE, I worked as the Research Coordinator for the City of El Paso's Department of Economic Development from 2007 to 2008. My duties included calculating incentive packages for new and expanding businesses, producing impact studies, and coordinating recruitment efforts with various public and private stakeholders.

In 2008, I began working for EPE as a Load Research Specialist, where I specialized in analyzing EPE's large customers. I was promoted to Senior Economist in 2011, where my responsibilities included the development of the long-term energy, demand, and customer forecasts used for planning purposes. In 2014, I worked briefly for EPE's Energy Efficiency Department as a Program Coordinator, where I oversaw energy efficiency initiatives for residential customers in both Texas and New Mexico. In 2014, I was promoted to the Manager of Economic Research, where I oversaw the Company's long-term forecasting and load research programs. I was promoted to Director of Economic and Rate Research in 2021, where I managed and directed the activities of both the Load Research and Data Analytics and Rates Departments. As of 2024, I serve as Senior Director of Regulatory Policy and Rates, where I lead and represent the company, from a policy perspective, in various regulatory filings, while continuing to oversee previous responsibilities.

Alongside my professional career, I occasionally teach undergraduate courses in Macroeconomics and Microeconomics at El Paso Community College.

Q4. WHAT ARE YOUR RESPONSIBILITIES WITH EPE?

A. As Senior Director of Regulatory Policy and Rates, I oversee and direct activities of EPE's Rate Research Department and Load Research and Data Analytics Department. The Rate Research Department responsibilities include jurisdictional and class cost of service studies, rate design analysis, and the development of EPE's retail rate schedules and charges. Load Research and Data Analytics responsibilities include the preparation of long-term customer, energy, and load forecasts, rates functions, preparation of weather normalization, analysis of load research data, the preparation of load research studies and reports. As Senior Director of Regulatory Policy and Rates, I also lead and have direct participation in several regulatory filings, including general rate cases, made by EPE with the New Mexico Public Regulation Commission ("NMPRC" or "Commission") and the Public Utility Commission of Texas ("PUCT").

Q5. HAVE YOU PREVIOUSLY TESTIFIED BEFORE UTILITY REGULATORY BODIES?

A. Yes, I have testified before the Commission and the Public Utility Commission of Texas.

Q6. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

A. No, I have not.

II. PURPOSE OF SUPPLEMENTAL DIRECT TESTIMONY

Q7. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL DIRECT TESTIMONY?

A. The purpose of my Supplemental Direct Testimony is to provide information responsive to Paragraph Nos. 4, 6, and 7 of Appendix A to the Commission's July 2, 2026, Order Requiring EPE to Amend and Supplement the Application. Specifically, I will address the estimated rate impact of the Pilot Project proposal and its estimated impact on EPE's financial condition and metrics. I also address the reason why EPE is not seeking cost recovery at this time.

Q8. WHO IS EPE'S OTHER SUPPLEMENTAL WITNESS IN THIS PROCEEDING AND WHAT SUBJECTS DOES HE ADDRESS?

A. EPE witness David C. Hawkins is also submitting Supplemental Direct Testimony in this proceeding. EPE witness Hawkins will address Appendix A, Paragraph Nos. 1, 2, 3, 5, and 8 through 18, and will provide additional support for approval of the long-term purchased power agreement(“LTPPA”) for the proposed Pilot Project under Rule 551.

Q9. ARE YOU SPONSORING ANY EXHIBITS IN SUPPORT OF YOUR TESTIMONY?

A. No.

III. SUPPLEMENTAL INFORMATION RESPONSIVE TO APPENDIX A OF THE ORDER TO AMEND

Q10. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 4 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 4 of Appendix A** asks EPE to explain “[w]hat is EPE’s best estimate of the effect on rates to customers despite its claims that it does not have certainty “due to the variable number of customer homes enrolled?”

Q11. WHAT IS YOUR RESPONSE TO PARAGRAPH NO. 4?

A. As discussed in the Direct Testimony of EPE witness Hawkins, the estimated first-year PPA cost associated with the Statement of Work 2 (Exhibit DCH-4) of the Pilot Project will be $1.64 million at full program subscription of 250 homes, escalating 2 percent thereafter, with a nominal cost of $66.5 million over the thirty-year term of the agreement. Additional costs include a flat cost of $350,000 for testing equipment dispatch methods set forth in Statement of Work 1 (Exhibit DCH-03), as well as consultant costs associated with analyzing the valuation of Distributed Energy Resources, which, at the time of the filing of the Application, were approximately $47,000. EPE has sought approval of these program costs as well as authority to defer these program costs for recovery in a general rate case.

Q12. WHAT IS THE ESTIMATED RATE IMPACT ON A RESIDENTIAL CUSTOMER OF THE ESTIMATED PROJECT COST?

A. The first year of the Pilot Project's PPA costs are expected to result in an annual New Mexico jurisdictional revenue requirement of approximately $1.64 million, escalating by 2 percent each year over a 30-year period. When the approximately $397,000 in nonrecurring project costs, consisting of the $350,000 and $47,000 costs described above in question 11, is included to the PPA costs, the first three years of the project has an estimated monthly residential impact average of $0.000685 per kWh, or $0.51 per month for a typical customer using 720 kWh per month.

Q13. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 6 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 6 of Appendix A** asks "[w]hat is EPE's best estimate of the PPA's impact on the utility's financial condition and metrics?"

Q14. IN RESPONSE TO PARAGRAPH NO. 6, WHAT IMPACT, IF ANY, DOES EPE EXPECT THE PROPOSED PPA TO HAVE ON ITS FINANCIAL CONDITION AND FINANCIAL METRICS?

A. The cost of the proposed Pilot Project is expected to have minimal impact on the financial position of the Company. Based on EPE's March 31, 2026, FERC Form 1, the fair value of EPE's assets is approximately $6,983 million. As of that date, EPE's capital structure was comprised of 55.4 percent common stock equity and 44.6 percent long-term debt. EPE does not expect the proposed Pilot Project to impact its current bond ratings for Senior Notes of BBB by Fitch and Baa2 by Moody's based upon projected financial metrics. Additional information regarding the PPA is provided in the Direct Testimony of EPE witness Hawkins on pg. 17-18. In addition, because the Pilot Project is structured as a PPA, Creation Energy retains the operational risk associated with the project. As discussed by EPE witness Hawkins on pg. 7-8 of his Supplemental Testimony, if Creation Energy is unable to meet its performance obligations, EPE has contractual remedies available, which limit the risk to EPE's customers.

Q15. WHAT INFORMATION HAS THE COMMISSION REQUESTED IN PARAGRAPH NO. 7 OF APPENDIX A OF THE ORDER TO AMEND?

A. **Paragraph No. 7 of Appendix A** requests to "[e]xplain why EPE chose not to seek cost recovery now, as permitted under the Grid Modernization Statute."

Q16. IN RESPONSE TO PARAGRAPH NO. 7, WHY IS EPE NOT SEEKING COST RECOVERY AT THIS TIME?

A. As described above, the approved project costs will be recovered through PPA capacity costs in New Mexico base rates. In addition, there are $397,000 in flat costs in the Statement of Work 1. In the Direct Testimony of EPE witness Hawkins, he describes that EPE requests authority to defer approved Pilot Project costs for recovery in a future ratemaking proceeding for these costs. EPE is following a similar practice to recover for these costs, as it has done in past pilots, such as in Docket No. 24-00113-UT for Time Varying Rates.

As a matter of policy, EPE is requesting recovery in a future rate proceeding and not under a rider so as to avoid unnecessary delays in the present proceeding. Moreover, EPE is sensitive to the benefits of reducing the number of riders on customer bills.

IV. CONCLUSION

Q17. DOES THIS CONCLUDE YOUR SUPPLEMENTAL DIRECT TESTIMONY?

A. Yes.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION	**)**	
OF EL PASO ELECTRIC COMPANY	**)**	
FOR APPROVAL TO IMPLEMENT A DEMAND	**)**	
RESPONSE AND DISTRIBUTED ENERGY	**)**	
RESOURCE PILOT PROJECT	**)**	**Case No. 26-0000079**
	)	
EL PASO ELECTRIC COMPANY,	**)**	
Applicant.	**)**	
	)	

DECLARATION OF GEORGE NOVELA IN SUPPORT OF THE FOREGOING SUPPLEMENTAL DIRECT TESTIMONY TO THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO IMPLEMENT A DEMAND RESPONSE AND DISTRIBUTED ENERGY RESOURCE PILOT PROJECT

I, ***George Novela***, pursuant to Rule 1-011 NMRA, state as follows:

1. I affirm in writing under penalty of perjury under the laws of the State of New Mexico that the following statements are true and correct.

2. I am over 18 years of age and have personal knowledge of the facts stated herein. I am employed by El Paso Electric Company ("EPE" or "the Company") as the *Senior Director of Regulatory Policy and Rates.*

3. The foregoing Supplemental Direct Testimony of George Novela, together with all exhibits sponsored therein and attached thereto, is true and accurate based on my knowledge and belief.

4. I submit this Declaration, based upon my personal knowledge and upon information and belief, in support of EPE's ***Application to Implement a Demand Response and Distributed Energy Resource Pilot Project.***

FURTHER, DECLARANT SAYETH NAUGHT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 3, 2026.

/s/ George Novela
GEORGE NOVELA

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO IMPLEMENT A DEMAND RESPONSE AND DISTRIBUTED ENERGY RESOURCE PILOT PROJECT

Case No. 26-0000079

EL PASO ELECTRIC COMPANY,
Applicant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 3, 2026, **El Paso Electric Company's Amended Application for Approval to Implement a Demand Response and Distributed Energy Resource Pilot Project** was emailed to each of the following:

EPE Regional Management	EPE_Reg_Mgmt@epelectric.com;
Nancy Burns	nancy.burns@epelectric.com;
Michelle Pedroza	michelle.pedroza@epelectric.com;
Jeffrey J. Wechsler	jwechsler@spencerfane.com;
Kari A. Olson	kaolson@spencerfane.com;
Creighton R. McMurray	cmcmurray@spencerfane.com;
Yolanda Sandoval	ysandoval@spencerfane.com;
Teresa Pacheco	tpacheco@spencerfane.com;
Anastasia Stevens	astevens.law@gmail.com;
Brad Douglas	bdouglas@lascruces.gov;
Andrea Crane	ctcolumbia@aol.com;
Philip Simpson	philipbsimpson@comcast.net
Keith Herrmann	kherrmann@stelznerlaw.com;
Rockney D. Bacchus	rockybacchus@gmail.com;
Kyle J. Smith	kyle.j.smith124.civ@army.mil;
Merrie Lee Soules	mlsoules@hotmail.com;
Chris Leger	chris@interwest.org;
Remy Franklin	remy@interwest.org;
Joan E. Drake	jdrake@modrall.com;
Cydney Beadles	cydney.beadles@westernresources.org;
Cara Lynch	lynch.cara.nm@gmail.com;
John Bogatko	john.bogatko@prc.nm.gov;
Ed Rilkoff	ed.rilkoff@prc.nm.gov;
Russell Fisk	russell.fisk@prc.nm.gov;
Cathy Boies	cboies@gridworks.org;
Stephen Fischmann	stephen.fischmann@gmail.com;
Randy Rankin	randy.rankin@sustainableeng.energy;
NMDOJ Utilities Division	utilityfilings@nmdoj.gov;
Evan Crocker	ecrocker@nmdoj.gov;
Maria Oropeza	moropeza@nmdoj.gov;
Nicole Teupell	nteupell@nmdoj.gov;
Arthur O'Donnell	arthur.o'donnell@prc.nm.gov;
Keven Gedko	keven.gedko@prc.nm.gov;

DATED August 3, 2026

/s/ Kari E. Olson
Kari E. Olson