CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: **City Manager's Office**

AGENDA DATE: **January 21, 2020**

CONTACT PERSON/PHONE: **Robert Cortinas, Chief Financial Officer, (915) 212-1067**

DISTRICT(S) AFFECTED: **All**

SUBJECT:

AN ORDINANCE AMENDING ORDINANCE NO. 16090, GRANTING A FRANCHISE TO EL PASO ELECTRIC COMPANY, (AS AMENDED BY ORDINANCES NO. 17460 AND 18772, AMENDING THE STREET RENTAL CHARGE) TO REDUCE THE RESTRICTION ON THE STREET RENTAL CHARGE; PROVIDING FOR ADDITIONAL COMPENSATION AND ASSURANCES TO THE CITY; AND PROVIDING CONSENT AS REQUIRED IN SECTION 15.08.013 OF THE CITY CODE AND SECTION 14(b) OF ORDINANCE NO. 16090 UPON THE TERMS AND CONDITIONS DESCRIBED IN THIS ORDINANCE; THE PENALTY AS PROVIDED IN CITY CODE SECTION 15.08.040

BACKGROUND / DISCUSSION:
On September 20, 2019, EPE filed a franchise assignment application with the City pursuant to El Paso City Code § 15.08.013, and paragraph 14(b) of Ordinance 16090 ("Franchise Application") in connection with the Proposed Transaction described in PUCT Docket 49849.

PRIOR COUNCIL ACTION:
The City Council approved Ordinance 16090 July 12, 2005, amended the ordinance on November 16, 2010 (Ordinance 17460) and again March 20, 2018 (Ordinance 18772).

AMOUNT AND SOURCE OF FUNDING:
N/A

BOARD / COMMISSION ACTION:
N/A

*******************REQUIRED AUTHORIZATION********************

DEPARTMENT HEAD: David Jay For Robert Cortinas **DATE:** 1/14/2020

ORDINANCE NO. _______________

AN ORDINANCE AMENDING ORDINANCE NO. 16090, GRANTING A FRANCHISE TO EL PASO ELECTRIC COMPANY, (AS AMENDED BY ORDINANCES NO. 17460 AND 18772, AMENDING THE STREET RENTAL CHARGE) TO REDUCE THE RESTRICTION ON THE STREET RENTAL CHARGE; PROVIDING FOR ADDITIONAL COMPENSATION AND ASSURANCES TO THE CITY; AND PROVIDING CONSENT AS REQUIRED IN SECTION 15.08.013 OF THE CITY CODE AND SECTION 14(b) OF ORDINANCE NO. 16090 UPON THE TERMS AND CONDITIONS DESCRIBED IN THIS ORDINANCE; THE PENALTY AS PROVIDED IN CITY CODE SECTION 15.08.040

WHEREAS, the City Council of the City of El Paso, Texas, ("**City**") granted to El Paso Electric Company ("**Company**" or "**EPE**") a franchise to operate the electric utility for transmission and distribution of electrical energy within the boundaries of the City on July 12, 2005, by Ordinance No. 16090;

WHEREAS, the City and Company amended Ordinance No. 16090 to increase the street rental charge on November 16, 2010, and again on March 20, 2018 (collectively referred with Ordinance No. 16090, as the "**Franchise Ordinance**");

WHEREAS, EPE, Sun Jupiter Holdings, LLC, a Delaware limited liability company ("**Sun Jupiter**"), and IIF US Holding 2 LP ("**IIF US 2**") filed the Joint Report and Application of EPE, Sun Jupiter, and IIF US 2 for Regulatory Approvals under Texas Utilities Code §§ 14.101, 39.262, and 39.915 with the Public Utility Commission of Texas ("**PUCT**") on August 13, 2019, ("**Joint Application**") seeking the PUCT's approval of the Agreement and Plan of Merger ("**Merger Agreement**") by and among EPE, Sun Jupiter, and Sun Merger Sub Inc. dated as of June 1, 2019, and assigned PUCT Docket No. 49849 ("**Proposed Transaction**");

WHEREAS, on September 20, 2019, EPE filed a franchise assignment application with the City pursuant to El Paso City Code § 15.08.013, and paragraph 14(b) of Ordinance 16090 ("**Franchise Application**") in connection with the Proposed Transaction;

WHEREAS, after the close of the Proposed Transaction and approval of the Franchise Application, EPE will maintain an existence that is separate and distinct from Sun Jupiter, IIF US 2 and any of its affiliates or subsidiaries, and will continue all obligations of "Company" as defined in Ordinance 16090 granting the franchise as amended;

WHEREAS, paragraph 14(b) of Ordinance 16090 requires consent of any merger or acquisition of the Company, sale of substantially all of the assets of the Company or change in control of the Company, and a formal assignment is required subsequent to the merger or acquisition;

WHEREAS, paragraph 14(b) of Ordinance 16090 requires the governing body of the City's consent to the assignment to be evidenced by an ordinance that fully recites the terms and conditions upon which consent is given;

WHEREAS, the City Council wishes to consent to the Proposed Transaction and Franchise Application;

WHEREAS, in Ordinance No. 017460, the City and Company agreed to increase the Street Rental Charge, which is a percentage of gross revenues the Company receives for the generation, transmission and distribution of electrical energy and other services within the City and for broadband over power line communications services, by 0.75% ("Additional Fee") to be allocated to promotion of economic development within the City;

WHEREAS, in Ordinance No. 018772, the City and Company agreed to increase the Street Rental Charge by an additional 1%, and to increase the allocation for promotion of economic development to 1.75% of the Street Rental Charge;

WHEREAS, the City wishes to reduce the Street Rental Charge economic development allocation to 1% effective July 29, 2030;

WHEREAS, Sun Jupiter is not the franchisee, and is not obligated by any operational requirements contained in City Code § 15.08 nor Ordinance 16090 as amended;

WHEREAS, if the Proposed Transaction closes and Sun Jupiter becomes the 100% equity holder of EPE, it will provide additional compensation and assurances to City as provided herein; and

WHEREAS, the City's consent to the Proposed Transaction and Franchise Application is conditioned upon the items identified in Section 1.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, THAT:

SECTION 1.

1. After the public hearing, the City Council finds that EPE meets the following requirements of City Code Sections 15.08.012(D) and 15.08.013(C):

   A. EPE is qualified to render its proposed services;

   B. EPE's is qualified to maintain the public rights-of-way adequately and safely;

   C. EPE is financially responsible and able to meet the terms of the franchise;

   D. The proposed use of the rights-of-way will not have a negative impact on the public's use of the rights-of-way; and

E. There are no other relevant facts that would cause City Council to refuse consent.

2. Therefore, the City hereby consents to the Proposed Transaction and Franchise Application as defined herein in accordance with City Code Section 15.08.013 and Ordinance No. 16090, as amended, paragraph 14(b), upon the following terms and conditions:

   A. Company must accept this Ordinance amending Ordinance 16090 as previously amended ("**Franchise Amendment**") within thirty days of the adoption of this Ordinance.

   B. Final Stipulation in PUCT Docket No. 49849. The Parties will use best efforts to obtain prompt adoption of a final order by the PUCT approving the Joint Application consistent with the terms of this Franchise Amendment.

   C. Sun Jupiter will provide the following additional assurances and compensation to the City, which will be obligated through a separate agreement and are noted here as conditions of the City's consent:

      1. For so long as IIF US 2 owns Sun Jupiter:

         a. Sun Jupiter will not relocate jobs outside of the EPE service territory and will not reduce EPE's workforce as a result of the Proposed Transaction and EPE will maintain sufficient employment levels as required to furnish EPE's customers with safe, adequate, efficient, and reasonable electric service; and

         b. Sun Jupiter will never move EPE's headquarters outside the City of El Paso.

      2. Economic Development Fund:

         a. Eighty million dollars ($80,000,000) of the Economic Development Fund will be jurisdictionally allocated to Company's Texas service territory and held in a restricted account for the purpose of promoting economic development in Company's Texas service territory ("**Texas Economic Development Fund**").

         b. Sun Jupiter will fund the Texas Economic Development Fund through fifteen (15) equal annual installments of five million three hundred thirty-three thousand three hundred thirty-three dollars and 33/100 cents ($5,333,333.33). Contributions to the Texas Economic Development Fund will be due by the 15th day of December of each year, with the first of the fifteen (15) installments to be due by the first December 15th to occur after the close of the Proposed Transaction.

c. The City's Economic Development Department ("**EDD**") will administer the Texas Economic Development Fund in accordance with an economic development policy to be developed by the City and approved by Sun Jupiter within six (6) months after the close of the Proposed Transaction ("**Incentive Policy**").

d. The City will make reports, at least annually, to the Company's Board of Directors regarding the activities and uses of the Texas Economic Development Fund.

e. The City's EDD will make reasonable efforts to coordinate with other state and local agencies within EPE's Texas service territory regarding the uses of the Texas Economic Development Fund.

f. If the City eliminates the EDD or the Incentive Policy, or fails to abide by the Incentive Policy, the City and Sun Jupiter will find a replacement entity to administer the balance, if any, of the Texas Economic Development Fund. Elimination of the EDD does not include a change in department name or a reassigning of the duties of the EDD to another City Department so long as the duties and responsibilities of the department remain substantially similar to those of the EDD.

3. General Fund Payments. In addition to the franchise fees currently due to the City under the Franchise Agreement, Sun Jupiter will pay the City, for use in its general fund, seven hundred fifty thousand dollars ($750,000) per year for a period of ten (10) years. The first payment shall be made no later than thirty (30) days after the close of the Proposed Transaction by electronic funds transfer as designated by the City. Each remaining annual payment will be made on or before the 30th day of June of each corresponding year.

4. Low Income Assistance Program. Within ninety (90) days of closing of the Proposed Transaction, EPE will coordinate with the City on efforts to enhance EPE's current low income assistance programs and EPE will make recommendations and proposals for consideration to the City. Sun Jupiter will pledge up to one million dollars ($1,000,000) to be paid in equal installments of two hundred thousand dollars ($200,000) per year over a period of five (5) years to support enhancements to EPE's low income assistance programs.

SECTION 2.

That Section 3, Police Power, of the Franchise Ordinance is hereby amended to add the following:

Land Use. The Company will coordinate with the City's Engineer within six (6) months after the close of the transaction contemplated in the Final Agreement and Plan of Merger between the Company; Sun Jupiter Holdings LLC ("Sun Jupiter"); and Sun Merger Sub Inc dated June 1, 2019 ("Proposed Transaction"), to identify:

1. Land under the control of the Company that the City desires to utilize for public recreation, exercise, relaxation, travel, or pleasure in accordance with Section 75.0022 of the Texas Civil Practice and Remedies Code and;

2. Poles, lines, conduits, or other construction that the Company maintains that may need to be installed or relocated in accordance with this Section 3.

Maintenance. City and the Company shall coordinate quarterly regarding maintenance issues that affect community safety or aesthetics on land and street lighting under the control of the Company. The Company shall give higher priority to work orders for continuous street lighting on controlled access/State highways and major arterials. During the course of the quarterly meetings, the Company and the City will establish processes and procedures for work orders and develop benchmarks based on industry standards and align with community impacts.

SECTION 3.

New Section 9.5 is created to add the following:

Section 9.5. Renewable Generation Study.

(a) Within one year after the close of the Proposed Transaction, the Company will complete a study concerning renewable generation, as defined in Texas Utilities Code § 39.904(d) ("Renewable Generation Study"). The Company will share the results of the Renewable Generation Study with the City within thirty (30) days of the Renewable Generation Study's completion. Should the Company not be able to complete the study within one year, the Company may request additional time to complete the Renewable Generation Study from the City, and the City shall not unreasonably withhold its consent to the extension.

(b) The Renewable Generation Study will cover, but is not limited to, the following topics:

1. The technical feasibility of integrating utility-scale renewable generation into the Company's utility system and the changes and impacts to the Company's transmission and distribution system;

2. Possible costs and operational impacts related to the integration of utility-scale renewable generation into the Company's Texas service territory;

3. Legislative or regulatory changes, if any, that may be required to increase utility-scale renewable generation in the Company's Texas service territory and the legislative strategies necessary to implement such legislative or regulatory changes;

4. Potential voluntary renewable generation program offerings to allow customers to increase their use of renewable resources within the El Paso, Texas, city limits and the Company's Texas service territory;

5. Reasonable commitments that the Company can make to increase the integration of renewable generation in the Company's Texas generation portfolio;

6. Grant opportunities for the Company, the City, or both to increase the integration of renewable generation in the Company's Texas generation portfolio; and

7. Potential renewable generation programs to assist with low-income assistance programs such as the Low Income Home Energy Assistance Program or additional incentives for distributed generation.

(c) The Company shall designate material contained in the Renewable Generation Study as confidential to the extent that it relates to critical infrastructure, as that phrase is understood in Texas Government Code § 418.181, or to the extent that it contains sensitive information that would not be subject to public release under the Texas Public Information Act, as codified in chapter 552 of the Texas Government Code. The City will use its best efforts to not publicly distribute such designated material to parties outside of the City. The City will also provide the Company with notice of an open records request implicating such material so that the Company may assert its rights under the Texas Public Information Act.

(d) The Company shall report to the City Council no less than two (2) times per year on the Company's progress towards renewable generation commitments, opportunities, and goals that are identified by the Renewable Generation Study. The City and the Company will coordinate on efforts to implement legislative, regulatory, or other policy changes identified as part of the Renewable Generation Study.

SECTION 4.

Subsection (b) of Section 13, Compensation, of the Franchise Ordinance, is hereby amended to read as follows:

(b) The City will increase the Street Rental Charge to be paid by the Company to the City on a quarterly basis during the remaining life of this Franchise by an additional three quarters of one percent (0.75%) effective 2010 ("Additional Fee") and a supplemental one percent (1.0%) ("Auxiliary Fee") for a total amount of (i) five percent (5.0%) of the gross revenues the Company receives for the generation, transmission, and distribution of electrical energy and other services within the City and (ii) five and three quarters percent (5.75%) of BPL-related gross revenues within the City of El Paso, except however for any revenues from municipal accounts to the extent that any such revenues are excepted from the Company's Rate Schedule 94, Supplemental Franchise Fee Rider. The "Economic Development Allocation" is a portion of the Street Rental Charge equal to one and three quarters of one percent (1.75%) of the gross revenues the Company receives for the generation, transmission, and distribution of electrical energy and other services, including BPL services, within the City shall be allocated by the City for promotion of economic development, including economic development incentives for new commercial customers with high electric energy needs, the attraction of companies that will make significant investments of capital and human resources in the community, solar or other renewable energy rebates or incentives, or to increase the City's capacity in alternative energy research, development, manufacturing and generation, and for such other economic development public purposes including infrastructure as reasonably determined by the City. After July 29, 2030, the Economic Development Allocation will be reduced to one percent (1.00%). The Economic Development Allocation will be placed in a restricted fund to be used solely for the economic development purposes described herein and cannot be commingled with existing Street Rental Charges to support or supplement general fund operations. The City will provide an annual update on the status, uses, and economic impact of Economic Development Allocation to the City Council and the public.

The Company shall pay the Street Rental Charge to the City by electronic funds transfer or by other means of immediately available funds within forty-five (45) days of the end of each calendar quarter (the "Payment Date"). If the Street Rental Charge or any portion thereof is not paid on or before the Payment Date, the unpaid balance shall bear interest at a daily rate equivalent to the prime rate of interest as published by the Wall Street Journal for that date, plus one percent (1%) per annum from the Payment Date until the date such payment is made. If any payment shall be more than thirty (30) days late, the interest shall be paid at such prime rate plus three percent (3%) per annum.

SECTION 5.

That Section 13, Compensation, of the Franchise Ordinance is hereby amended to add the following:

(c) City Expenses Related to Docket No. 49849. The Company will pay the City two hundred thousand dollars ($200,000) for the City's reasonable consultants and attorneys fees incurred due to the City's intervention in Docket No. 49849 ("City Public

Interest Fees") no later than thirty (30) days after the later of (1) the close of the Proposed Transaction; (2) Company's receipt of invoices supporting the City Public Interest Fees; or (3) the termination of the Proposed Transaction for any reason without a closing, provided, however, that the City Public Interest Fees shall not be paid if the City opposes the Proposed Transaction, either directly or indirectly, in any proceeding before a governmental or regulatory body, with the exception of PUCT Docket No. 49849 in which the City originally opposed the Proposed Transaction but subsequently signed the Stipulation.

SECTION 6.

New Section 18 is created to add the following:

Section 18. City's Future Purchase Option. This Section 18 shall apply for so long as IIF US Holding 2 LP owns Sun Jupiter:

(a) In the event Sun Jupiter decides to consider a sale of one hundred percent (100%) of its equity interests in, or all of the assets and liabilities of the Company ("Sale Transaction"), Sun Jupiter will first provide notice to the City of the potential Sale Transaction (a "Potential Sale Notice"). The City will use best efforts to protect information related to a Sale Transaction from public disclosure consistent with the exceptions in chapter 552 of the Texas Government Code, including, Texas Government Code § 552.110.

(b) Within one hundred twenty (120) days of receipt by the City of a Potential Sale Notice ("Exclusive Offer Period"), the City will have the exclusive right to either (i) make a bona fide binding offer to purchase the Company or all of the assets and liabilities of the Company ("Offer") or (ii) provide a waiver of the right to make an Offer during the Exclusive Offer Period ("Waiver"). The Offer, if made, shall remain open for at least thirty (30) days during which time Sun Jupiter will consider the Offer in good faith.

(c) If the City makes an Offer during the Exclusive Offer Period and Sun Jupiter does not accept the Offer, Sun Jupiter shall provide a written acknowledgement that (i) Sun Jupiter has provided the City with the Potential Sale Notice and (ii) the City made an Offer and Sun Jupiter did not accept such Offer ("Acknowledgment"). After Sun Jupiter provides the Acknowledgment in accordance with this paragraph, Sun Jupiter may enter into a definitive agreement with a third party for a Sale Transaction if Sun Jupiter reasonably determines such third party's offer contains terms and conditions that, on the whole, are more favorable to Sun Jupiter than those contained in the Offer. Sun Jupiter shall have twenty-four (24) months to complete the Sale Transaction with such a third party ("Acknowledgement Completion Period") before a new Potential Sale Notice must be issued.

(d) If the City provides a Waiver in response to a Potential Sale Notice, then Sun Jupiter will invite the City to participate in any process it runs with third party potential acquirers to effectuate a Sale Transaction ("Sale Process") and the City may make an Offer pursuant to the terms and conditions of the Sale Process, which terms and conditions shall be applicable to all participants in the Sale Process. Sun Jupiter shall have twenty-four (24) months to complete a Sale Transaction in the Sale Process ("Sale Process Completion Period") before a new Potential Sale Notice must be issued.

(e) For the avoidance of doubt, except during an Acknowledgment Completion Period, a Sale Process (except as set forth in (d) above) or Sale Process Completion Period, the City may make an Offer at any time.

(f) The City will abide by the Texas Government Code exceptions from public disclosure commitment made in paragraph (a) to this Section 18 if the City is making an Offer outside of the Exclusive Offer Period.

(g) The City does not waive any rights with respect to franchise assignment as set forth in El Paso City Code § 15.08.013; or Section 14(b) of this Agreement provided, however, that the City shall not unreasonably withhold any required consent to the assignment of the franchise to a third party following Sun Jupiter's compliance with this Section 18.

SECTION 8. This ordinance will be contingent upon, and take effect upon, the final approval of the Proposed Transaction by all relevant regulatory agencies, and closing of the Proposed Transaction, however, the conditions of consent listed in Section 1 Paragraph 2(A) and Sections 4 and 5 shall take effect upon approval by the City Council and acceptance by the Company.

SECTION 9. Except as expressly amended herein, the Franchise Ordinance shall continue in full force and effect.

PASSED AND APPROVED this ____ day of ________________, 2020.

CITY OF EL PASO

____
Dee Margo, Mayor

ATTEST:

____
Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Karla Nieman

____
Karla M. Nieman
City Attorney

APPROVED AS TO CONTENT:

____
Tomás González
City Manager

ACCEPTANCE

The Amendment of the Franchise granted by the City of El Paso on ____________, 2020, is hereby accepted this _____ day of ________________, 2020.

EL PASO ELECTRIC COMPANY

By: ___________________________
Adrian J. Rodriguez
Interim Chief Executive Officer

STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me this ____ day of __________________, 2020, by _________________________________, **Chief Executive Officer** of **El Paso Electric Company**, a Texas corporation, on behalf of said corporation.

____
Notary Public in and for the
State of Texas

Received for filing this _____ day of __________________, 2020.

____
Laura D. Prine
City Clerk

The Electric Company®
El Paso Electric
Matthew K. Behrens
Staff Attorney

P.O. Box 982
El Paso, Texas
79960-0982
(915) 543-5711

September 20, 2019

City of El Paso
Attn: Laura D. Prine, City Clerk
300 N. Campbell Street
El Paso, Texas 79901

RE: El Paso Electric Franchise Assignment Application

Dear Ms. Prine:

El Paso Electric Company ("EPE" or "Company") files its Franchise Assignment Application with the City of El Paso ("City") pursuant to El Paso Code of Ordinances § 15.08.013. EPE respectfully requests that the City consent to Sun Jupiter Holdings LLC's ("Sun Jupiter") purchase of EPE (the "Proposed Transaction") and the associated franchise assignment.

City Ordinance No. 16090, as amended by Ordinance Nos. 17460 and 18772, grants EPE "a franchise to construct, reconstruct, repair, maintain, use, and operate in, over, or under the present and future streets, alleys, public ways, parks, and public places of the City of El Paso, facilities for the transmission and distribution of electrical energy and broadband over power line communications services for the use of the City and the inhabitants thereof and properties therein, with all usual and customary appurtenances for such transmission and distribution" for the term commencing August 2, 2005, and extending through July 31, 2060 (the "Franchise"). Section 14 of the Franchise, relating to assignments, requires consent of the governing body of the City in the event of "any merger or acquisition of the Company, sale of substantially all of the assets of the Company or change in control of the Company."

On June 1, 2019, EPE, Sun Jupiter, and Sun Merger Sub Inc. ("Merger Sub") executed an Agreement and Plan of Merger ("Merger Agreement"). Under the Merger Agreement, Merger Sub will merge with and into EPE, with EPE continuing as the surviving corporation and retaining its current name. IIF US Holding 2 LP ("IIF US 2") will provide Sun Jupiter the equity necessary to complete the purchase of EPE and support the associated Regulatory Commitments. The Proposed Transaction essentially results in Sun Jupiter directly replacing EPE's public shareholders at closing, with IIF US 2 as the indirect sole shareholder of EPE. A detailed description of the Proposed Transaction and the associated Regulatory Commitments are contained in the public interest application and supporting testimony filed with the Public Utility Commission of Texas, attached to this application in Exhibit K.

The Proposed Transaction is straightforward, as are its benefits. To highlight a few:

- The Proposed Transaction provides a $21 million credit to current EPE customers on electric bills over 36 months;

- The Proposed Transaction establishes a 20-Year, $100 million Community Economic Sustainability Fund to support EPE's Texas and New Mexico service areas;
- The Proposed Transaction enhances EPE's ability to meet growing service area needs, including renewable energy and sustainability initiatives; and
- The Proposed Transaction ensures continuity of EPE's workforce.
- The Proposed Transaction ensures that EPE's headquarters will remain in El Paso, Texas, and that local management will remain the primary point of contact for all regulatory, operational, and community engagement matters.
- The Proposed Transaction will maintain EPE's annual amount of charitable giving at EPE's average annual charitable giving level for the three-year period ending December 31, 2018, which is approximately $1.2 million per year.
- The Proposed Transaction will create programs that provide entry-level training focused on engineering, management, and finance skills for the local labor force in collaboration with The University of Texas at El Paso and New Mexico State University.
- The Proposed Transaction will create apprenticeship programs for technical and professional positions for students in local high schools and colleges.

As demonstrated by this application and the Public Utility Commission of Texas application, EPE will remain an independently operated, locally managed, regulated utility headquartered in El Paso, Texas. There will be no assignment of the Franchise to a new entity; rather EPE will simply have new upstream ownership. EPE will continue to be a responsible business entity, qualified to render its services and maintain public rights-of-way adequately and safely. EPE will continue to be financially responsible and is willing and capable of continuing the duties and responsibilities of its Franchise. EPE's continued use of public rights-of-way to provide electric service is in the public interest. As such, EPE requests the City consent to and approve the Proposed Transaction and associated assignment of the Franchise.

Sincerely,

Matthew K. Behrens
Senior Attorney

Encl: Franchise Assignment Application

cc: Tommy Gonzalez, City Manager;
Robert Cortinas, Chief Financial Officer;
Karla Neiman, City Attorney;
Josette Flores, Senior Assistant City Attorney;
Norman J. Gordon, Law Office of Norman J. Gordon

CITY OF EL PASO, TEXAS
FRANCHISE ASSIGNMENT APPLICATION

CITY OF EL PASO
FRANCHISE ASSIGNMENT APPLICATION

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CITY OF EL PASO, TEXAS
FRANCHISE ASSIGNMENT APPLICATION

*****<u>NOTICE</u>*****

NO ASSIGNMENT APPLICATION SHALL BE ACCEPTED OR PROCESSED BY THE CITY OF EL PASO UNTIL THE APPLICANT SIGNS THIS NOTICE BEFORE A NOTARY PUBLIC AND RETURNS IT WITH ALL INFORMATION REQUIRED BY THE APPLICATION.

All information supplied to the City of El Paso ("City") by any person, now as a franchise assignment applicant or hereafter as a franchisee, *including supplementary information supplied at a later date*, is subject to public disclosure under the provisions of the Texas Public Information Act, Tex. Gov't Code, Chapter 552, (Vernon's 1995), as amended, to the extent permitted by law, and shall be disclosed to the public upon request unless all information which a franchise applicant believes is confidential or privileged by law is specifically and clearly marked as such <u>at the time it is initially submitted to the City</u>.

The franchise assignment applicant shall have the burden of establishing at the time the information is initially submitted to the City, in written form and with appropriate citations in support of its position, that the information it has identified as confidential and privileged by law is excepted from disclosure under the Texas Public Information Act or other applicable laws.

Upon receiving a request for the disclosure of records, which, as required herein, are identified as containing confidential or privileged information, the City of El Paso shall, within the applicable timeframe described in the applicable law, meet the requirements of the applicable law and provide written notice to the franchise assignment applicant, and that party may request a determination from and submit information to the Texas Attorney General to establish that disclosure of the information would cause the party substantial competitive harm and whether the information is to be made available to the public.

The City of El Paso, Texas, cannot guarantee to any applicant, franchisee or other person that the Texas Attorney General will authorize any information submitted to the City, and which has been identified as confidential and privileged under the terms of this notice, to be withheld from public disclosure.

I, ADRIAN J. RODRIGUEZ, do hereby affirm that I am the duly authorized and empowered representative of the franchise assignment applicant, El Paso Electric Company, and that I have read and understand the information contained in this notice. I have read the requirements for identifying confidential and privileged information, which is submitted to the City of El Paso, and I understand that the City of El Paso may disclose any and all information, which is not specifically and clearly marked and identified as confidential and privileged at the time it is initially submitted to the City. Any legal recourse which the franchise assignment applicant may have against the City for such disclosure is hereby waived.

Signature

INTERIM CEO
Title

ACKNOWLEDGEMENT

STATE OF Texas)
)
COUNTY OF El Paso)

This instrument was acknowledged before me on this 20 day of September, 2019, by Adrián Jose Rodriguez, as Interim CEO, of El Paso Electric Company.

Valerie J Pugh
Notary Public, State of Texas
Typed or Printed Name:

VALERIE J. PUGH
My Notary ID # 10712464
Expires December 9, 2020

12-9-2020
My Commission Expires:

Seal

I. INSTRUCTIONS

A $5,000 assignment application fee must be paid to the City at the time application for an assignment of franchise is made.

Complete the attached assignment application using information for the most recently completed fiscal year. Please specify whether the data being provided is actual or estimated and identify by month and year the commencing and ending date of the fiscal year for which the data is being provided. Respond to each item. If the question by its terms does not apply, respond "N/A".

An authorized representative of the assignment applicant should sign the Notice that precedes these instructions and the certification in *Section VII* and the signature should be acknowledged.

The assignment application should be neatly bound with appropriate dividers. The original should be filed with the City Clerk along with two (2) complete copies of the assignment application and all exhibits.

Assignment applicants that believe the City has the information required for response to a specific question in its files in connection with a current franchise may, upon written request, obtain a waiver of the obligation to respond to such question.

Assignment applicant must file supplemental information reflecting any change in data while the application is pending.

Each question must be restated immediately above the response.

II. IDENTIFICATION

A. State assignment applicant's ("AA") name and address.
El Paso Electric Company
100 N. Stanton Street
El Paso, Texas 79901

B. State name and address of person to whom communication should be sent if different from Item A.
Mariah Novela, Regulatory Case Manager
P.O. Box 982
El Paso, Texas 79960

C. State business office address of AA.
Please refer to the answer to Question II.A

D. State name and title of AA's chief executive officer.
Name printed: Adrian J. Rodriguez
Title: Interim Chief Executive Officer, General Counsel, and Assistant Secretary

E. File as **Exhibit A**, a map marked with the proposed encroachment and encroachment route.

El Paso Electric Company ("EPE") requests a waiver for this question from the City of El Paso (the "City") as there are no proposed encroachments arising from the Proposed Transaction (for a description of the Proposed Transaction, please refer to Exhibit K, Attachment 2) and the City should have records of any proposed encroachments and routes that the Company is actively seeking.

F. If an encroachment is to be placed in, upon or along City streets and right-of-way, submit documentation of the distance (footage measurement and, as applicable, mileage) of the encroachment to be made.

Please refer to the waiver sought in Question II.E.

G. If an encroachment is to be placed across City streets, provide a list of all street crossings.

Please refer to the waiver sought in Question II.E.

H. Provide documentation by site of any and all of the AA's cable, pipes or other encroaching materials in El Paso, which are currently located in any conduit owned by AA or by another company or individual.

EPE requests a waiver for this question as EPE will not be assigning any rights to a new entity.

I. Provide documentation by site of any and all the AA's cable, pipes or other encroaching materials, which are proposed to be located in any conduit owned by the AA or by another company or individual.

Please find included with Exhibit J, Attachment 1 please find a copy of the EPE's monthly construction report for August 2019 filed with the Public

Utility Commission of Texas ("PUCT") that details transmission and projects throughout the City.

J. Provide a copy of state-issued certificate of public convenience and necessity for the proposed service(s) to be provided.

EPE requests a waiver for this question as EPE will not be assigning any rights to a new entity, and EPE will continue to operate under its existing certificates of public convenience and necessity. Please refer to Exhibit K and Attachment 2 (Direct Testimonies of Nathan T. Hirschi and Andrew E. Gilbert) thereto for further explanation of the proposed merger between IIF US Holding 2 ("IIF US 2") and EPE ("Proposed Transaction").

K. If AA, or any parent or affiliated company of AA, or any party to this application is a franchise assignment applicant, franchisee or licensee in any other county or municipality in any state, including Texas, for the same or similar type of franchise that AA is seeking, supply the following information for each such county or municipality as **Exhibit B**:

1. the name of the municipality, county, and state;
2. the interest of the applicant or franchisee or licensee;
3. if franchisee or licensee, the date franchisee or license was acquired;
4. if franchisee or licensee, the date franchise or license expires;
5. a copy of state-issued certificate of public convenience and necessity;
6. the date of FCC certification, EPA licensing, or other certification or licensing required by federal, state or local law, if any;
7. the percentage of construction completed; and
8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

EPE requests a waiver from this question as EPE will not be assigning any rights to a new entity. Please refer to Exhibit K and Attachment 2 (Direct Testimonies of Nathan T. Hirschi and Andrew E. Gilbert) thereto for further explanation of the Proposed Transaction.

L. Provide proof (certificate) of insurance of AA or any party to this application, to include, but not be limited to, property damage insurance and comprehensive general liability insurance (including excess coverage).

Please refer to Exhibit J, Attachment 2.

III. PURPOSE AND REVENUE

A. List and describe the present and future purposes for which the cable, pipes or other encroaching materials in the proposed, and existing, system will be used.

EPE is a vertically-integrated electric utility and will continue to operate the system in that manner. Please refer to Exhibit K and Attachment 2 (Direct Testimony of Steven T. Buraczyk) thereto for further detail regarding the Proposed Transaction's impact on service.

B. Identify the types of services or products which will be offered to customers and identify whether the services or products will be offered to residential customers.

EPE is a vertically integrated electric utility and will continue to offer the same services that it currently offers its customers. Any changes to its service are subject to approval by the appropriate regulatory bodies including, but not limited to, the City, the PUCT, and the Federal Energy Regulatory Commission. Please refer to Exhibit K and Attachment 2 (Direct Testimony of Steven T. Buraczyk) thereto for further detail regarding the Proposed Transaction.

C. State whether the proposed use of the system will include the provision of video programming services by either the franchise applicant or any of its potential customers or third parties.

No.

D. State in detail:

1. the projected gross receipts or income indirectly attributable to the sale or exchange of services and operating expenses within the City for each of the next five (5) years;

   Please refer to Exhibit J, Attachment 3. (CONFIDENTIAL)

2. the projected capital requirements for each of the next five (5) years; and

Expected Capital Spending 2020-2025

(in thousands in dollars)				
Year	**Generation**	**Transmission**	**Distribution**	**Total**
2020	70,787	24,468	89,073	184,328
2021	95,844	23,878	110,736	230,458
2022	92,184	43,824	116,743	252,751
2023	91,680	49,860	111,241	252,781
2024	136,267	27,983	111,695	275,945
2025	168,150	39,627	97,516	305,293
2020 through 2025 cumulative	654,912	209,640	637,005	1,501,556

3. how projected capital requirements will be met.

EPE uses a mix of long-term debt and equity capital to finance its construction requirements. Please refer to Exhibit K and Attachment 2 (Direct Testimony Steven T. Buraczyk and Direct Testimony of Nathan T. Hirschi) thereto for further detail on the Proposed Transaction and its effects on EPE's capital requirements.

IV. TECHNICAL

A. Describe in detail the technical structure of the proposed system including terminal equipment and switching.

EPE will continue to operate the same electric generation, transmission, and distribution system that it currently operates. Please refer to Exhibit K and Attachment 2 (Direct Testimony of Steven T. Buraczyk) thereto for further detail regarding its system.

B. Would AA's performance and, as applicable, production standards for the system be higher than those required by current FCC rules, the EPA or other applicable regulatory agencies or laws? If so, explain.

EPE will continue to provide the same high level of reliability, availability, and quality of service that it currently provides to its customers. Please refer to Exhibit K and Attachment 2 (Direct Testimony of Steven T Buraczyk) thereto for further detail regarding EPE's quality of service.

C. In terms of proposed technical performance of the system, describe:

1. the quality of signals or product;

2. the continuity of operation;

3. the standard of care in operation; and

4. the adherence to state-of-the-art technology.

Please refer to Exhibit K, Attachment 2 (Direct Testimony of Steven T. Buraczyk) for a description of EPE's system and performance.

C. State, as applicable, whether AA's proposed system will, at the time of initial operations or in the future, be technologically capable of offering video programming services or other similar or related services.

N/A

V. RESIDENCY, CHARACTER AND OWNERSHIP OF ASSIGNMENT APPLICANT

A. Describe the business organization of AA including whether AA is:

1. an individual;

2. a corporation;

3. an unincorporated association;

4. a limited partnership;

5. a general partnership; or

6. any other legal entity (specify).

EPE is currently a public company whose common stock is traded on the New York Stock Exchange under the ticker symbol "EE."

B. If AA is an individual, provide their name, business address and current business telephone number, and file a detailed audited financial statement.

N/A

C. If AA is a corporation:

1. Attach as **Exhibit C** a copy of:

   a. the latest annual report to stockholders;

   EPE requests a waiver to this question as EPE filed a copy of its annual report with the City in March of 2019.

   b. the latest prospectus; and

   A copy of EPE's Proxy Statement may be found in Attachment 2 of Exhibit K (Joint Application, Exhibit D).

   c. the current By-laws and Articles of Incorporation (certified by the Secretary of State)

   Please refer to the attached documents included in Exhibit C.

2. Attach as **Exhibit D** a list of creditors who hold 10% or greater of the outstanding indebtedness as of the date of this application and supply the following information concerning each listed creditor:

   a. the name of each creditor holding such indebtedness;

   b. the amount of indebtedness in dollars held by such creditors;

   c. the percentage of total indebtedness held by such creditors; and

   d. copies of the terms of each debt agreement with such creditor.

   EPE seeks a waiver for this question because the Proposed Transaction is the event triggering this application, not EPE's current ownership structure. The Proposed Transaction as described in Exhibit K and Attachment 2 thereto, has ring-fencing provisions that will protect EPE from debt held by its upstream owners. Please refer specifically to Exhibit B of the Agreement and Plan of Merger found in Exhibit K, Attachment 2 (Joint Application, Exhibit A) as well as the Direct Testimonies of Nathan T. Hirschi, Andrew E. Gilbert, and Ellen Lapson found in Exhibit K, Attachment 2.

3. List the name, business address and business telephone number, years of service in any officer and director capacity and number of

AA shares ownership for all officers and directors of AA corporation.

Please refer to Exhibit J, Attachment 4. (CONFIDENTIAL)

D. If AA is an unincorporated association:

1. list the name, business address and business telephone number, years of service in any officer and director capacity, and the type of ownership for all officers and directors of AA corporation, principals and ultimate beneficial owners, however designated; and

2. indicate the legal organization of the AA, and cite the laws under which it is organized.

N/A

D. If AA is a partnership, list the name, business address and business telephone number and a financial statement for each partner and a copy of the partnership agreement.

N/A

F. For each corporation, individual, or legal entity having a 10% or greater ownership interest in the AA:

1. indicate the name and the percentage of stock owned or other ownership interest owned by such corporation, individual or legal entity; and

2. list the name, business address and business telephone number for each officer, director or 10% or greater stockholder of a legal entity named above and for each partner of a partnership named above.

EPE seeks a waiver for this question because the Proposed Transaction is the event triggering this application, not EPE's current ownership structure. For information on IIF US 2, please refer to the Direct Testimony of Andrew Gilbert found in Exhibit K, Attachment 2.

G. If the AA owns 10% or greater of the stock of any other corporation or has a 10% or greater ownership interest in any other legal entity, then:

1. Indicate:

a. the name of such corporation or legal entity;

b. the primary nature of the business of such entity;

c. whether such entity is public or private; and

e. what percentage of stock or ownership interest of such entity is owned by AA.

EPE does not own 10% or greater of the stock of any other corporation nor does EPE have a 10% or greater ownership interest in any other legal entity.

2. List the name, business address and business telephone number for each individual, director or officer of legal entities named above.

N/A

H. State whether AA is owned by any person or business entity which owns or is a cable operator as defined by the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection Act of 1992 (*47 U.S.C. §521 et. seq.*).

EPE seeks a waiver for this question because the Proposed Transaction is the event triggering this application, not EPE's current ownership structure. For information on IIF US 2, please refer to the Direct Testimony of Andrew Gilbert found in Exhibit K, Attachment 2.

I. State whether AA has any ownership interest in any business entity which owns or is a cable operator as defined by the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection Act of 1992 (*47 U.S.C. §521 et. Seq.)*.

EPE does not have any ownership interest in in any business entity which owns or is a cable operator as defined by the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection Act of 1992 (47 U.S.C. §521 et. Seq.).

ASSIGNMENT APPLICANT <u>MUST</u> ANSWER SECTION V. (J-T) QUESTIONS. FILE AS EXHIBIT E ANY EXPLANATIONS ACCOMPANYING THE ANSWERS.

J. State whether AA or any party to this assignment application has had any public license, franchise or permit revoked or suspended by order or decree of any court, administrative agency, or government body.

EPE has reviewed its records dating back to 1996 and found no instance where it had a public license, franchise, or permit revoked or suspended by order or decree by any court, administrative agency, or government body.

K. State whether the Securities and Exchange Commission has instituted any investigation or legal action against the AA or any party to this assignment application.

EPE is not aware of the Securities and Exchange Commission having instituted any investigation or legal action against EPE or any party to the assignment application.

L. State whether the AA or any party to this assignment application has been found guilty by a federal court of a violation of the laws of the United States relating to unlawful restraints, monopolies, combination, or agreements in restraint of trade.

EPE has reviewed its records dating back to 1996 and is not aware of EPE having been found guilty by a federal court of a violation of the laws of the United States relating to unlawful restraints, monopolies, combination, or agreements in restraint of trade.

M. State whether the AA or any party to this assignment application has been found civilly or criminally liable by any court or any agency of any felony, any charge of libel, slander, obscenity, copyright or trademark infringement, or invasion of privacy; the violation of any state, territorial or local law relating to unlawful lotteries, restraints, monopolies, or combination, contracts or agreements in restraint of trade, unfair competition; or deceptive trade practices.

EPE has reviewed its records dating back to 1996 and has found no instance where it has been found civilly or criminally liable by any court or any agency of any felony, any charge of libel, slander, obscenity, copyright or trademark infringement, or invasion of privacy; the violation of any state, territorial or local law relating to unlawful lotteries, restraints, monopolies, or combination, contracts or agreements in restraint of trade, unfair competition; or deceptive trade practices.

N. State whether there is now pending or if there has ever been in any court or administrative body, any action against the AA or any party to this assignment application involving any of the matters referred to in Questions V. (J-M).

EPE reviewed records dating back to 1996 and below are cases that are related to the matters referred to in Question V (J-M).

<u>Pacer Western District of Texas</u>

- ***Roth v. El Paso Electric Com, et al*** - 3:03-cv-00004-DB: Class Action Complaint for Violations of Federal Securities Laws
  - Case Closed 10/06/2005
  - Settlement payed by Garden Group: $41,361.37 - 08/30/2006

- ***Brutschy v. El Paso Electric Com, et al*** – 3:03-cv-00050-Db: Class Action Complaint for violation of 15:78m(a) Securities Exchange Act
  - 04/18/2003 - Order granting motion to consolidate cases [5-1], granting motion of the Carpenters pension funds of Illinois for consolidation, appointment as lead plaintiff and approval of selection of lead liaison counsel to consolidate cases [2-1] signed by Judge David Briones, (Case consolidated into lead case which is EP-03-CV-004-DB) (mt) (Entered: 04/18/2003) (Merged with Roth)
  - Case Closed: 08/11/2004

- ***Richards v. El Paso Electric, et al*** - 3:03-cv-00139-DB: 15:78m(a) Securities Exchange Act
  - 08/11/2004 - Case closed (mt) (Entered: 08/11/2004) (Merged with Roth)

- ***Kevmar Holdings Limi v. El Paso Electric Com, et al*** - 3:03-cv-00143-DB: 15:78m(a) Securities Exchange Act
  - Case closed (mt) (Entered: 08/11/2004) (Merger with Roth)

<u>Pacer Southern District of Texas</u>

- **None.**

<u>Pacer New Mexico</u>

- **None**

<u>Pacer Arizona</u>

- ***Tucson Electric Power CO. v. El Paso Electric CO***. – CV-08-680-TUC-CKJ: Breach of Contract; Breach of the implied Covenant of Good Faith and Fair Dealing
  - Dismissed with prejudice 11/08/2011

Pacer Southern District of New York

- ***Stein v. El Paso Electric Company et al - 1:19-cv-06703-VSB***: Civil action over violation of 15:78m(a) Securities Exchange Act (Pending**)**

- ***Gorski v. El Paso Electric Company et al*** - 1:19-cv-07211-VSB: Civil action over violation of 15:78m(a) Securities Exchange Act
  - ***CASE ACCEPTED AS RELATED***. Create association to 1:19-cv-06703-VSB. Notice of Assignment to follow. (ad) (Entered: 08/05/2019) (Merged with Stein**)**

Pacer Delaware

- ***Rosenblatt v. El Paso Electric Company et al*** – 1:19-cv-01367-MN: Class Action Complaint for Violation of 15:78m(a) Securities Exchange Action (Pending**)**

Pacer Southern District of California

- ***Wah Chang v El Paso Electric et al –*** 3:04-cv-01840-RHW: Antitrust Civil litigation (Enron Case)
  - Dismissed 02/11/2019

- ***City of Tacina v. America Elec Power, et al… El Paso Electric*** – 3:04-cv-01841-RHW: Civil Antitrust Litigation (Enron Case)
  - Dismissed 02/11/2019

- ***Port of Seattle v. Avista Corp… El Paso Electric*** – 3:03-cv-02474-RHW: Civil litigation accusing El Paso Electric of Antitrust practices and RICO (Enron Case)
  - Dismissed 05/12/2004

Pacer Central District of California

- ***Cook Intel Energy v. El Paso Electric Co*** – 2:03-cv-02251-CAS-RZ: Civil action over Contract
  - Dismissed with Prejudice 04/29/2004

Pacer Eastern District of California

- ***People of California v. ACN Energy Inc. et al… El Paso Electric*** – 2:01-cv-01917-EJG-JFM
  - Transferred to Sac Superior Court – 02/06/2002

Sacramento Superior Court

- ***People of California v. ACN Energy Inc. et al… El Paso Electric*** – 01AS05497
  - Records not available.

Pacer District of Organ

- ***Wah v. Corp, et al … El Paso Electric*** - 3:04-cv-00619-AS: 18:1964 Racketeering (RICO) Act & Antitrust litigation
  - Case transferred to Southern District of California (09/28/2004)

Pacer Western District of Washington

- ***City if Tacina v. America Elec Power, et al… El Paso Electric*** – 3:04-cv-01841-RHW: Civil Antitrust Litigation
  - Case transferred to Southern District of California

- ***Port of Seattle v. Avista Corp… El Paso Electric*** – 3:03-cv-02474-RHW: Civil litigation accusing El Paso Electric of Antitrust practices and RICO
  - Case transferred to Southern District of California

Federal Energy Regulatory Commission

- Enron Corp Cases – Settled March 13, 2003
  - ***EL02-113-000*** - 1. - Public Utility District No. 1 of Snohomish County, Washington ("Snohomish") filed a Motion to Intervene in this proceeding on November 20, 2002.
  - ***EL02-114-000*** - Order initiating investigation and establishing hearing procedures and refund effective date re Portland General Electric Company & Enron Power Marketing, Inc. under EL02-114. News Release dated 8/13/02 concerning FERC's Enforcement Action against Avista Corp, Avista Energy, Inc., El Paso Electric Co, et al under PA02-2 et al.
  - ***EL02-115-000*** - Initial Report on Company-Specific Proceedings and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Price
  - ***EL03-154-000*** - 1.- Public Utility District No. 1 of Snohomish County, Washington ("Snohomish") filed a Motion to Compel Data Responses of Enron Power Marketing Inc. and Enron Energy Services, Inc. ("Enron") on January 12, 2004. Enron filed a Motion for Extension of Procedural Deadlines on January 8, 2004.
  - ***EL03-180-000*** - Release on Commission Issues sweeping show cause orders to companies alleged to have gamed western energy markets: hearing set to explain action, address remedies under EL03-137 et al.
  - ***Enron*** Corp Cases – **EL00-95 –** FERC Letter. Insufficient data.

O. State whether involuntary proceedings in bankruptcy have ever been brought against the AA or any party to this assignment application and any other respective franchising authority.

No involuntary proceedings in bankruptcy have ever been brought against EPE.

P. State whether involuntary proceedings in bankruptcy have ever been brought against the AA or any party to this assignment application.

No involuntary proceedings in bankruptcy have ever been brought against EPE.

Q. State whether there are any outstanding unsatisfied judgments or decrees against the AA or any party to this assignment application.

EPE reviewed its records dating back to 1996 and determined that there are no outstanding unsatisfied judgments or decrees against EPE.

R. State whether AA or any party to this assignment application has:

1. any application pending before the FCC or other federal, state or local regulatory agency for permit(s) or license(s); or

2. had any application for the above denied by the FCC or other applicable regulatory agency.

EPE currently has an Application for Assignment of Authorization and Transfers of Control ("Form 603") pending before the FCC. The Form 603 was filed on August 13, 2019, and was given File Number 8737430.

S. State whether AA or any party to this assignment application has been the subject of any complaints filed with the FCC or other regulatory agency.

EPE receives numerous informal complaints filed with the PUCT and the New Mexico Public Regulation Commission ("NMPRC") each year. In calendar year 2018, 40 informal complaints against EPE were filed at the PUCT and three were filed at the NMPRC.

T. If any of the answers to Questions V. (Q-S) are affirmative, state the substance and disposition of such matters and complaint(s).

Below is a listing of each complaint type that EPE received in 2018. All informal complaints were resolved to the Commissions' satisfaction.

TYPE	Number
Customer Service	7
Deposits/Refunds	5
Discontinuance	8
Energy theft	1
Meter and Inspection for Solar	1
No Bill Received	1
Outages	1
Rates/Charges	16
Texas Total	40
Billing – High Bill	1
Service – Disconnect	1
Service – Extension	1
New Mexico Total	3

VI. OTHER CHARACTERISTICS OF THE PROPOSED SYSTEM

A. Attach as **Exhibit F** an explanation of operational safety measures for the proposed system.

EPE will continue to operate the electric generation, transmission, and distribution system in the same safe, reliable manner that it currently does. Please refer to Exhibit K, Attachment 2 (Direct Testimony of Steven T. Buraczyk) for further detail regarding EPE's system and the effects of the Proposed Transaction on EPE's operational safety.

B. Attach as **Exhibit G** an explanation of environmental safety measures for the proposed system and its construction.

EPE will continue to operate the electric generation, transmission, and distribution system in the same safe, reliable manner that it currently does. Please refer to Exhibit K, Attachment 2 (Direct Testimony of Steven T. Buraczyk) for further detail regarding EPE's system and the effects of the Proposed Transaction on EPE's operational safety.

C. State whether AA or any party to this assignment application is operating under an NPDES general or individual permit for storm water discharges from construction sites, or a state equivalent.

Below is a list of the NPDES permits that EPE is operating under.

<u>Active NPDES Construction Permits</u>

TXR15820V Rio Grande to Sunset Transmission line

NMR10024M Hatch-21 Distribution Line Rebuild

Active NPDES Operating Permits

NM0000108 Rio Grande Power Station

WQ0000836000 Newman Generating Station

D. State whether AA or any party to this assignment application has been the subject of complaints files with the United States Environmental Protection Agency or a like agency of any state.

Yes.

E. If the answer to Question VI. (D) is affirmative, then state the substance and disposition of such complaint(s).

EPE reviewed its records dating back to 1996 and found the following two complaints.

Incident # 140435, May 2010

Complaint filed with Texas Commission on Environmental Quality (TCEQ) alleging uncontrolled release of Hexavalent chromium at Newman Generating Station. TCEQ investigation including analytical sampling identified no regulatory threshold exceedances. Incident was closed by TCEQ August 2010 with no violations.

Incident #145496, September 2010

Complaint filed with TCEQ alleging acceptance of contaminated soil and contamination of nearby wells at Newman Generating Station. TCEQ investigation including analytical sampling identified no regulatory threshold exceedances. Incident was closed by TCEQ November 2010 with no violations.

F. Attach as **Exhibit H** a copy of any contract(s) or proposed contract(s) or plan(s) with other companies for pole attachments or other facilities including signal carriage in either direction for the proposed system.

EPE seeks a waiver to this question as the production of these documents would be burdensome. EPE has numerous contracts with various entities to attach items to its poles throughout its service territory. EPE's procedure is to comply with applicable federal statutes and regulations regarding pole attachments..

G. Attach as **Exhibit I** a copy of applicant's Equal Employment Opportunity program.

H. Attach any additional information requested by the City as **Exhibit J**.

I. If AA wishes to state any additional information to support its request for a franchise, file such a statement as **Exhibit K.**

VII. CERTIFICATION

All assignment applications shall contain the following certification statement and shall be signed by an authorized representative of the AA and notarized by a duly authorized Notary Public:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who managed the information gathering, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly doing so."

Signature

INTERIM CEO

Title

ACKNOWLEDGEMENT

STATE OF Texas §
§
COUNTY OF El Paso §

This instrument was acknowledged before me on this 20 day of September, 2019, by Adrian Jose Rodriguez as Interim CEO, of El Paso Electric Company

VALERIE J. PUGH
My Notary ID # 10712464
Expires December 9, 2020

Seal

Valerie J Pugh
Notary Public, State of Texas
Name Printed: Valerie J Pugh
My Commission Expires: 12-9-2020

CITY OF EL PASO, TEXAS
FRANCHISE ASSIGNMENT APPLICATION

STATEMENT UNDER THE FRANCHISE ASSIGNMENT APPLICATION DESIGNATING CONFIDENTIAL MATERIALS

The undersigned attorney for El Paso Electric Company (EPE) submits this statement under the Franchise Assignment Application regarding Exhibit J – Attachment 3 and Exhibit J – Attachment 4. Material provided in these responses is exempt from public disclosure pursuant to sections 552.101, 552.104, and 552.110 of the Public Information Act (PIA) as confidential information.

Exhibit J – Attachment 3 is exempt from public disclosure in accordance section 552.101, 552.104, and 552.110 of the PIA. The response contains information on business operations and financial information that is commercially sensitive and not otherwise readily available to the public. Moreover, the information contained within that response includes information that qualifies as trade secrets, as the information is not generally known and provides a commercial advantage to its owner. Finally, Exhibit J – Attachment 4 contains personal financial information that is not readily available to the public and is therefore exempt from disclosure in accordance with section 552.101 of the PIA.

The undersigned counsel for EPE has reviewed the information described above sufficiently to state in good faith that the information is exempt from disclosure under the Public Information Act and merits the confidential designation given to it.

Respectfully Submitted,

Matthew K. Behrens
State Bar No. 24069356
Senior Attorney
matthew.behrens@epelectric.com
El Paso Electric Company
P.O. Box 982
El Paso, Texas 79960
Telephone: (915) 543-5882
Facsimile: (915) 521-4747

EXHIBIT A
PROPOSED ENCROACHMENT AND ENCROACHMENT ROUTES

WAIVER REQUESTED BY EPE.

EXHIBIT B
OTHER FRANCHISES AND CERTIFICATIONS

WAIVER REQUESTED BY EPE.

EXHIBIT C
CORPORATE INFORMATION

Question V.C.1.a: Waiver requested by EPE.

Question V.C.1.b: A copy of the EPE's Proxy Statement may be found in Attachment 2 of Exhibit K (Joint Application, Exhibit D).

Question V.C.1.c: Requested documents attached.

The State of Texas

SECRETARY OF STATE

CERTIFICATE OF RESTATED ARTICLES OF INCORPORATION OF

EL PASO ELECTRIC COMPANY
CHARTER NO. 10734-0

The undersigned, as Secretary of State of Texas, hereby certifies that the attached Restated Articles of Incorporation for the above named corporation have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law, hereby issues this Certificate of Restated Articles of Incorporation.

Dated: February 9, 1996

Effective: February 9, 1996

THE STATE OF TEXAS

Antonio O. Garza, Jr.
Secretary of State

pac

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF EL PASO ELECTRIC COMPANY

ARTICLE ONE

El Paso Electric Company (the "Corporation"), pursuant to the provisions of Articles 4.07 and 4.14 of the Texas Business Corporation Act, as amended (the "TBCA"), hereby adopts Amended and Restated Articles of Incorporation which accurately copy the Corporation's Restated Articles of Incorporation and all amendments thereto that are in effect to date and as further amended by such Amended and Restated Articles of Incorporation as hereinafter set forth and which contain no other change in any provision thereof

ARTICLE TWO

Each such amendment made by the Amended and Restated Articles of Incorporation has been effected in conformity with the provisions of the TBCA, and such Amended and Restated Articles of Incorporation and each amendment made by the Amended and Restated Articles of Incorporation were generally approved, in compliance with Article 4.14 of the TBCA, by the "Order and Judgment Confirming the Debtor's Fourth Amended Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code and Granting Related Relief" dated January 9, 1996 (the "Confirmation Order") of the United States Bankruptcy Court for the Western District of Texas (Austin Division) (the "Bankruptcy Court"), which confirmed the Fourth Amended Plan of Reorganization of El Paso Electric Company, as modified (the "Plan"), in the case styled In re El Paso Electric Company (Case No. 92-10148-FM (Chapter 11)). The Confirmation Order provides, among other things, for the making and filing of these Amended and Restated Articles of Incorporation by the Corporation's officers, including the execution hereof by the undersigned officer of the Corporation. The Bankruptcy Court has jurisdiction over the Corporation's reorganization proceedings under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §101 et seq.

ARTICLE THREE

The amendments effectuate certain changes to the Corporation's Restated Articles of Incorporation, which changes are summarized in this ARTICLE THREE and are required or permitted by the Plan and the Confirmation Order. The Corporation's Restated Articles of Incorporation are amended by the Amended and Restated Articles of Incorporation as follows:

A. The following Articles of the Corporation's Restated Articles of Incorporation have been amended and are restated in their entirety as indicated in the Amended and Restated Articles of Incorporation. The Amended and Restated Articles of Incorporation are stated in their entirety in ARTICLE FOUR hereof.

1. Article I of the Restated Articles of Incorporation is amended and restated in its entirety in Article I of the Amended and Restated Articles of Incorporation.

2. Article II of the Restated Articles of Incorporation is amended and restated in its entirety in Article III of the Amended and Restated Articles of Incorporation.

3. Article III of the Restated Articles of Incorporation is amended and restated in its entirety in Article VII of the Amended and Restated Articles of Incorporation.

4. Article IV of the Restated Articles of Incorporation is amended and restated in its entirety in Article II of the Amended and Restated Articles of Incorporation.

5. Article V of the Restated Articles of Incorporation is amended and restated in its entirety in Article VIII of the Amended and Restated Articles of Incorporation.

6. Article VI of the Restated Articles of Incorporation is amended and restated in its entirety in Article IV of the Amended and Restated Articles of Incorporation.

7. Article IX of the Restated Articles of Incorporation is amended and restated in its entirety in Article XI of the Amended and Restated Articles of Incorporation.

8. Article X of the Restated Articles of Incorporation is amended and restated in its entirety in Article XIII of the Amended and Restated Articles of Incorporation.

9. Article XI of the Restated Articles of Incorporation is amended and restated in its entirety in Article IX of the Amended and Restated Articles of Incorporation.

B. The following Articles of the Corporation's Restated Articles of Incorporation have been deleted in their entirety:

1. Article VII.

2. Article VIII.

C. The following Articles of the Amended and Restated Articles of Incorporation have been added to the provisions of the Corporation's Restated Articles of Incorporation. These Articles are stated in their entirety in ARTICLE FOUR hereof.

1. Article V.

2. Article VI.

3. Article X.

4. Article XII.

ARTICLE FOUR

The Corporation's Restated Articles of Incorporation and all amendments and supplements thereto are hereby superseded by the following Amended and Restated Articles of Incorporation which accurately copy the entire text thereof and as amended as above set forth:

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
EL PASO ELECTRIC COMPANY

ARTICLE I

NAME

The name of the Corporation is El Paso Electric Company.

ARTICLE II

DURATION

The period of duration of the Corporation is perpetual.

ARTICLE III

PURPOSE

The purpose for which the Corporation is organized is the transaction of any and all lawful business for which corporations may be incorporated under the Texas Business Corporation Act, as amended (the "TBCA").

ARTICLE IV

CAPITAL STOCK

The total number of shares of stock which the Corporation shall have authority to issue is 102,000,000 shares of capital stock, classified as (i) 100,000,000 shares of common stock, no par value ("Common Stock"), and (ii) 2,000,000 shares of preferred stock, no par value ("Preferred Stock").

The designations and the powers, preferences, rights, qualifications, limitations, and restrictions of the Preferred Stock and Common Stock are as follows:

A. Provisions Relating to the Preferred Stock.

1. The Preferred Stock may be issued from time to time in one or more classes or series, the shares of each class or series to have such designations and powers, preferences, and rights, and qualifications, limitations, and restrictions thereof, as are stated and expressed herein and in the resolution or resolutions providing for the issue of such class or series adopted, as hereinafter prescribed, by the board of directors of the Corporation ("Board of Directors") or (to the extent permitted by law) by any duly designated committee thereof ("Committee").

2. Authority is hereby expressly granted to and vested in the Board of Directors or Committee to authorize the issuance of the Preferred Stock from time to time in one or more classes or series, and with respect to each class or series of the Preferred Stock, to fix and state, to the extent permitted by law, by the resolution or resolutions from time to time adopted providing for the issuance thereof the following:

(a) whether or not the class or series is to have voting rights, full, special, or limited, or is to be without voting rights, and whether or not such class or series is to be entitled to vote as a separate class either alone or together with the holders of one or more other classes or series of stock;

(b) the number of shares to constitute the class or series and the designations thereof;

(c) the preferences, and relative, participating, optional, or other special rights, if any, and the qualifications, limitations, or restrictions thereof, if any, with respect to any class or series;

(d) whether or not the shares of any class or series shall be redeemable at the option of the Corporation or the holders thereof or upon the happening of any specified event, and, if redeemable, the redemption price or prices (which may be payable in the form of cash, notes, securities, or other property), and the time or times at which, and the terms and conditions upon which, such shares shall be redeemable and the manner of redemption;

(e) whether or not the shares of a class or series shall be subject to the operation of retirement or sinking funds to be applied to the purchase or redemption of such shares for retirement, and, if such retirement or sinking fund or funds are to be established, the annual amount thereof, and the terms and provisions relative to the operation thereof,

(f) the dividend rate, whether dividends are payable in cash, stock of the Corporation, or other property, the conditions upon which and the times when such dividends are payable, the relative rights of priority of such dividends to dividends payable on any other class or classes or series of stock, whether or not such dividends shall be cumulative, partially cumulative or noncumulative, and if cumulative or partially cumulative, the date or dates from which such dividends shall accumulate;

(g) the preferences, if any, and the amounts thereof which the holders of any class or series thereof shall be entitled to receive upon the voluntary or involuntary dissolution of, or upon any distribution of the assets of, the Corporation;

(h) whether or not the shares of any class or series, at the option of the Corporation or the holder thereof or upon the happening of any specified event, shall be convertible into or exchangeable for, the shares of any other class or classes or of any other series of the same or any other class or classes of stock, securities, or other property of the Corporation and the conversion price or prices or ratio or ratios or the rate or rates at which such exchange may be made, with such adjustments, if any, as shall be stated and expressed or provided for in such resolution or resolutions;

(i) the qualifications, limitations and restrictions, if any, upon the issuance or reissuance of any other class or series of Preferred Stock ranking on a parity with or prior to shares of that series as to dividends or upon liquidation, dissolution or winding up; and

(j) such other special rights and protective provisions with respect to any class or series as the Board of Directors or Committee may deem advisable.

3. The shares of each class or series of the Preferred Stock may vary from the shares of any other class or series thereof in any or all of the foregoing respects. The Board of Directors or Committee may increase the number of shares of the Preferred Stock designated for any existing class or series by a resolution adding to such class or series authorized and unissued shares of the Preferred Stock not designated for any other class or series. The Board of Directors or Committee may decrease the number of shares of the Preferred Stock designated for any existing class or series by a resolution subtracting from such class or series authorized and unissued shares of the Preferred Stock designated for such existing class or series, and the shares so subtracted shall become authorized, unissued, and undesignated shares of the Preferred Stock.

B. Provisions Relating to the Common Stock.

1. Each share of Common Stock of the Corporation shall have identical rights and privileges in every respect. The holders of shares of Common Stock shall be entitled to vote upon all matters submitted to a vote of the shareholders of the Corporation and shall be entitled to one vote for each share of Common Stock held.

2. Subject to the prior rights and preferences, if any, applicable to shares of the Preferred Stock or any series thereof, the holders of shares of the Common Stock shall be entitled to receive such dividends (payable in cash, stock, or otherwise) as may be declared thereon by the Board of Directors or Committee at any time, and from time to time, out of any funds of the Corporation legally available therefor.

3. In the event of any voluntary or involuntary liquidation, dissolution, or winding-up of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of the Preferred Stock or any series thereof, the holders of shares of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation available for distribution to its shareholders, ratably in proportion to the number of shares of the Common Stock held by them. A liquidation, dissolution, or winding-up of the Corporation, as such terms are used in this paragraph, shall not be deemed to be occasioned by or to include any consolidation or merger of the Corporation with or into any other corporation or corporations or other entity or a sale, lease, exchange, or conveyance of all or a part of the assets of the Corporation.

C. General.

1. Subject to the foregoing provisions of these Amended and Restated Articles of Incorporation, the Corporation may issue shares of its Preferred Stock and Common Stock from time to time for such consideration (not less than the par value thereof) as may be fixed by the Board of Directors or Committee, which is expressly authorized to fix

the same in its absolute and uncontrolled discretion subject to the foregoing conditions. Shares so issued for which the consideration shall have been paid or delivered to the Corporation shall be deemed fully paid stock and shall not be liable to any further call or assessment thereon, and the holders of such shares shall not be liable for any further payments in respect of such shares.

2. The Corporation shall have authority to create and issue rights and options entitling their holders to purchase or receive shares of the Corporation's capital stock of any class or series or other securities of the Corporation, and such rights and options shall be evidenced by instrument(s) approved by the Board of Directors or Committee. The Board of Directors or Committee shall be empowered to set the exercise price, duration, times for exercise, and other terms of such options or rights; provided, however, that the consideration to be received for any shares of capital stock subject thereto shall not be less than the par value thereof.

3. Cumulative voting shall not be allowed in the election of directors or for any other purpose.

4. No holder of shares of stock of the Corporation shall have any preemptive or other right, except as such rights are expressly provided by contract, to purchase or subscribe for or receive any shares of any class, or series thereof, of stock of the Corporation, whether now or hereafter authorized, or any warrants, options, bonds, debentures, or other securities convertible into, exchangeable for or carrying any right to purchase any shares of any class, or series thereof, of stock; but such additional shares of stock and such warrants, options, bonds, debentures, or other securities convertible into, exchangeable for or carrying any right to purchase any shares of any class, or series thereof, of stock may be issued or disposed of by the Board of Directors to such persons, and on such terms and for such lawful consideration, as in its discretion it shall deem advisable or as to which the Corporation shall have by binding contract agreed.

5. Notwithstanding the foregoing, from and after the date these Amended and Restated Articles of Incorporation become effective, the Corporation shall be prohibited from issuing nonvoting equity securities in accordance with and to the extent required by Section 1123(a)(6) of the United States Bankruptcy Code, 11 U.S.C. 101, *et seq.*, as amended. This provision shall have no further force and effect beyond that required by Section 1123(a)(6) and for so long as Section 1123(a)(6) is in effect and applicable to the Corporation.

ARTICLE V

WRITTEN CONSENTS

No action required to be taken or which may be taken at any annual or special meeting of shareholders of the Corporation may be taken without a meeting, and the power of shareholders to consent in writing, without a meeting, to the taking of any action is specifically denied. Notwithstanding the foregoing, the provisions of this Article V shall not apply to the holders of any class or series of Preferred Stock created pursuant to Article IV hereof, provided the resolution or resolutions establishing such class or series of Preferred Stock expressly permit the holders of such class or series of Preferred Stock to take any action required to be taken or which may be taken at any annual or special meeting of shareholders of the Corporation or pursuant to the resolution or resolutions establishing such class or series of Preferred Stock without a meeting through a consent or consents in writing setting forth the action so taken or to be taken signed by the holders of such series of Preferred Stock having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the holders of such series of Preferred Stock were present and voted.

ARTICLE VI

MINIMUM CAPITAL

The Corporation will not commence business until it has received for the issuance of its shares consideration of the value of $1,000, consisting of money, labor done, or property actually received.

ARTICLE VII

REGISTERED AGENT

The address of the registered office of the Corporation is 303 North Oregon Street, El Paso, Texas 79901, and the name of its registered agent at such address is Eduardo A. Rodriguez.

ARTICLE VIII

BOARD OF DIRECTORS

The number of directors constituting the Board of Directors shall be fixed by, or in the manner provided in, the Bylaws of the Corporation, provided that such number shall be no less than one (plus such number of directors as may be elected from time to time pursuant to the terms of any series of Preferred Stock that may be issued and outstanding from time to time).

The directors of the Corporation, whether now serving as such or hereafter elected (exclusive of directors who are elected pursuant to the terms of, and serve as representatives of the holders of, any series of Preferred Stock), shall be referred to herein as

"Classified Directors" and shall be divided into three classes, with the first class referred to herein as "Class 1," the second class as "Class 2," and the third class as "Class 3." If the total number of Classified Directors equals a number divisible by three, then the number of directors in each of Class 1, Class 2, and Class 3 shall be that number of directors equal to the total number of directors divided by three. However, if the total number of Classified Directors equals a number that is not divisible by three, each such class of directors shall consist of that number of directors as nearly equal in number as reasonably possible to the total number of directors divided by three, as determined by the Board of Directors in advance of each respective election of directors by holders of shares of capital stock of the Corporation then entitled to vote in such election. The term of office of the initial Class 1 directors shall expire at the 1997 annual meeting of shareholders, the term of office of the initial Class 2 directors shall expire at the 1998 annual meeting of shareholders and the term of office of the initial Class 3 directors shall expire at the 1999 annual meeting of shareholders, with each director to hold office until his or her successor shall have been duly elected and qualified. At each annual meeting of shareholders, commencing with the 1997 annual meeting, directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of shareholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified.

Notwithstanding the foregoing, whenever the holders of any one or more classes or series of Preferred Stock issued by the Corporation shall have the night, voting separately by series or by class (excluding holders of Common Stock), to elect directors, the election, term of office, filling of vacancies, and other features of such directorships shall be governed by the terms of these Amended and Restated Articles of Incorporation (including any amendment to these Amended and Restated Articles of Incorporation that designates a series of Preferred Stock), and such directors so elected by the holders of Preferred Stock shall not be divided into classes pursuant to this Article VIII unless expressly provided by such terms.

Any or all Classified Directors may be removed, with cause, at any meeting of shareholders called expressly for that purpose, upon the affirmative vote of the holders of at least 80% of the outstanding shares of each class of capital stock of the Corporation then entitled to vote at an election of such Classified Directors. No Classified Director may be removed without cause. Except as may otherwise be provided by law, cause for removal shall exist only if the director whose removal is proposed (i) has been willfully guilty of significant misconduct or neglect in the discharge of his or her duties hereunder, provided that notice thereof has been given to the director, (ii) has been convicted of any felony or any civil offense involving fraud or moral turpitude by a court of competent jurisdiction and such conviction is no longer subject to direct appeal, other than an offense that in the opinion of the other members of the Board of Directors does not affect such director's position as a director, (iii) has pled guilty or nolo contendere to any felony or any civil offense involving fraud or moral turpitude, other than an offense that in the opinion of the other members of the Board of Directors does not affect the director's position as a director, (iv) has been adjudicated by a court of competent jurisdiction to be liable for gross negligence, recklessness or misconduct in the performance of his or her duty to the Corporation in a matter of substantial importance to the Corporation and such adjudication is no longer subject to direct appeal, (v) has been adjudicated by a court of competent jurisdiction to be mentally incompetent, which mental incompetency directly affects his or her ability to serve as a director of the Corporation, and such adjudication is no longer subject to direct appeal or (vi) has missed 5 consecutive meetings of the Board of Directors. Any action for removal must be brought within 90 days of the date on which such conviction or adjudication is no longer subject to direct appeal.

The number of directors constituting the Board of Directors at the time of filing of these Amended and Restated Articles of Incorporation is eight and the name and address of each person who is serving as a director of the Corporation at the time of filing of these Amended and Restated Articles of Incorporation are as follows:

Name	Mailing Address
David H. Wiggs, Jr.	303 N. Oregon El Paso, Texas 79901
Curtis L. Hoskins	303 N. Oregon El Paso, Texas 79901
Sidney G. Baucom	303 N. Oregon El Paso, Texas 79901
Wilfred E. Binns	303 N. Oregon El Paso, Texas 79901
Wilson K. Cadman	303 N. Oregon El Paso, Texas 79901
James A. Cardwell	303 N. Oregon El Paso, Texas 79901
George W. Edwards, Jr.	303 N. Oregon El Paso, Texas 79901
Thomas C. Simpson	303 N. Oregon El Paso, Texas 79901

Notwithstanding any other provision of these Amended and Restated Articles of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, these Amended and Restated Articles of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of 80% or more of the outstanding shares of capital stock entitled to vote thereon shall be required to amend or repeal, or adopt any provision inconsistent with, this Article VIII.

ARTICLE IX

LIABILITY OF DIRECTORS

A past or present director of the Corporation shall not be liable to the Corporation or its shareholders for monetary damages for an act or omission occurring in the director's capacity as a director, except to the extent otherwise expressly provided by the laws of the State of Texas, as such laws may now or hereafter exist. Any repeal or modification of this Article by the shareholders of the Corporation shall be prospective only and shall not adversely affect any limitation on the personal liability of a past or present director of the Corporation existing at the time of such repeal or modification.

ARTICLE X

INDEMNIFICATION AND INSURANCE

The Corporation shall indemnify and advance expenses to and may provide indemnity insurance for persons who are named in any lawsuits or other proceedings as a result of their service to the Corporation as directors or officers of the Corporation to the fullest extent permitted by the laws of the State of Texas as such laws may now or hereafter exist. The Corporation may, but is not required to, indemnify, advance expenses to, and provide indemnity insurance for, persons who are named in any lawsuits or other proceedings as a result of their service to the Corporation as employees or agents of the Corporation to the fullest extent permitted by the laws of the State of Texas as such laws may now or hereafter exist. Any repeal or amendment of this Article shall operate prospectively only and shall not adversely affect any right to receive indemnification which then exists as a result hereof.

ARTICLE XI

BUSINESS COMBINATIONS

A. **Approval of Certain Business Combinations.** A Business Combination (as hereinafter defined) shall require (i) only such affirmative vote of the shareholders of the Corporation as is required by law and any other provision of these Amended and Restated Articles of Incorporation, if all of the conditions specified in either Paragraph 1 or Paragraph 2 of this Section A are met, or (ii) in addition to any affirmative vote required by law or these Amended and Restated Articles of Incorporation, the affirmative vote of the holders of shares of capital stock representing at least 80% of the voting power of the then outstanding shares of Voting Stock (as hereafter defined), voting together as a single class. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified by law.

1. **Approval by Disinterested Directors.** The Business Combination shall have been approved by a majority of the Disinterested Directors (as hereinafter defined) at a meeting of the Board of Directors that is duly called and held or by unanimous written consent of the members of the Board of Directors in lieu of such a meeting.

2. **Requirements With Respect to Price and Procedure.** All of the following conditions shall have been met:

(a) The aggregate amount of the cash and the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination of consideration other than cash to be received by holders of shares of Common Stock for each share held by them in such Business Combination shall be at least equal to the higher of the following:

(i) (if applicable) the highest price per share (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Shareholder (as hereinafter defined) for any shares of Common Stock acquired by it (A) within the two-year period immediately prior to the first public announcement of the terms of the proposed Business Combination (the "Announcement Date") or (B) in the transaction in which the Interested Shareholder became an Interested Shareholder, whichever is higher; or

(ii) the Fair Market Value per share of Common Stock on the Announcement Date or on the date on which the Interested Shareholder became an Interested Shareholder (such date being hereinafter referred to as the "Determination Date"), whichever is higher.

(b) The consideration to be received by holders of shares of Common Stock in such Business Combination shall be in cash or in the same form as the Interested Shareholder has previously paid for shares of Common Stock. If the Interested Shareholder has paid for shares of Common Stock with varying forms of consideration, the form of consideration for Common Stock shall be either cash or the form used to acquire the largest number of shares of Common Stock previously acquired by the Interested Shareholder. The amount of the consideration to be received by holders of shares of Common Stock in accordance with Paragraph 2(a) of this Section A of Article XI shall be subject to appropriate adjustment in the event of any special dividend or other disposition of material assets other than in the ordinary course of business or any stock dividend, stock split, combination of shares or similar event. Whether any consideration satisfies the requirements of this subsection, and the amount of any adjustment to such consideration, shall be determined by vote of a majority of the Disinterested Directors at a meeting of the Board of Directors that is duly called and held or by unanimous written consent of the members of the Board of Directors in lieu of such a meeting.

(c) After an Interested Shareholder has become an Interested Shareholder and prior to the consummation of such Business Combination, such Interested Shareholder shall not have become the beneficial owner of any additional shares of Common Stock, except as part of the transaction that resulted in such Interested Shareholder becoming an Interested Shareholder.

(d) After an Interested Shareholder has become an Interested Shareholder, such Interested Shareholder shall not have received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guaranties, pledges or other financial assistance or any tax credits or other tax advantages provided to or by the Corporation, whether in anticipation of or in connection with such Business Combination or otherwise.

(e) A proxy, consent solicitation or information statement describing the proposed Business Combination and complying with the requirements of the Exchange Act and the rules and regulations thereunder (or any subsequent provisions replacing such act, rules or regulations) shall have been mailed to the holders of Common Stock at least 30 days prior to the consummation of such Business Combination (whether or not such proxy, consent solicitation or information statement is required to be mailed pursuant to such act or subsequent provisions).

B. Certain definitions. For purposes of this Article XI:

1. "Business Combination" shall mean any transaction that is referred to in any one or more of the following clauses:

(a) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (i) any Interested Shareholder or (ii) any other Person (whether or not itself an Interested Shareholder) that is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Shareholder; or

(b) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Shareholder or any Affiliate of any Interested Shareholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value of $1,000,000 or more; or

(c) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Shareholder or any Affiliate of any Interested Shareholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of $1,000,000 or more; or

(d) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of any Interested Shareholder or any Affiliate of any Interested Shareholder; or

(e) any reclassification of securities (including any reverse stock split) or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Shareholder) that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of Equity Security (as hereinafter defined) of the Corporation or any Subsidiary that is directly or indirectly owned by any Interested Shareholder or any Affiliate of any Interested Shareholder.

2. "Person" shall mean any natural person, organization, corporation, company, limited liability company, partnership, limited partnership or other entity.

3. "Interested Shareholder" shall mean any Person (other than the Corporation or any Subsidiary or employee benefit plan of the Corporation or any Subsidiary) that:

(a) is the beneficial owner, directly or indirectly, of shares of capital stock of the Corporation representing 15% or more of the voting power of the outstanding Voting Stock; or

(b) at any time within the two-year period immediately prior to the applicable date was the beneficial owner, directly or indirectly, of shares of capital stock of the Corporation representing 15% or more of the voting power of the then outstanding Voting Stock.

4. A Person shall be a "beneficial owner" of any shares of capital stock that:

(a) such Person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns, directly or indirectly, within the meaning of Rule 13d-3 under the Exchange Act; or

(b) such Person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding; or

(c) are beneficially owned, directly or indirectly, within the meaning of Rule 13d-3 under the Exchange Act by any other Person with which such Person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of such stock.

5. For the purpose of determining whether a Person is an Interested Shareholder pursuant to Paragraph 3 of this Section B, the number of shares of Voting Stock deemed to be outstanding shall include the shares deemed to be owned by such Person through application of Paragraph 4 of this Section B but shall not include any other shares of Voting Stock that may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

6. "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Exchange Act.

7. "Subsidiary" shall mean any Person of which a majority of any class of Equity Security is owned, directly or indirectly, by the Corporation.

8. "Disinterested Director" shall mean any member of the Board of Directors who is unaffiliated with the Interested Shareholder and was a member of the Board of Directors immediately before the time that the Interested Shareholder became an Interested Shareholder, and any successor of a Disinterested Director who is unaffiliated with the Interested Shareholder and is recommended to succeed a Disinterested Director by a majority of Disinterested Directors then on the Board of Directors.

9. "Fair Market Value" shall mean: (a) in the case of stock, (i) the highest closing sale price of a share of stock during the 30-day period immediately preceding the date in question on the principal United States securities exchange on which such stock is listed, or (ii) if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period immediately preceding the date in question on the Nasdaq National Market or any similar system then in use, or (iii) if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by a majority of the Disinterested Directors in good faith; or (b) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by a majority of the Disinterested Directors in good faith.

10. In the event of any Business Combination in which the Corporation survives, the phrase "consideration other than cash to be received" as used in Paragraph 2(a) of Section A of this Article XI shall include the shares of Common Stock and the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

11. "Equity Security" shall have the meaning ascribed to such term in Section 3(a)(11) of the Exchange Act.

12. "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

13. "Voting Stock" shall mean shares of the Corporation's capital stock which are entitled at the time of the Business Combination to vote generally in the election of Directors.

C. **Powers of the Board of Directors.** A majority of the Disinterested Directors shall have the power and duty to determine for the purposes of this Article XI, on the basis of information known to them after reasonable inquiry, (1) whether a Person is an Interested Shareholder, (2) the number of shares of Voting Stock beneficially owned by any Person, (3) whether a Person is an Affiliate or Associate of another, and (4) whether the assets that are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of $1,000,000 or more. A majority of the Disinterested Directors shall have the further power to interpret all of the terms and provisions of this Article XI.

D. **No Effect on Fiduciary Obligations of Interested Shareholders.** Nothing contained in this Article XI shall be construed to relieve any Interested Shareholder from any fiduciary obligation imposed by law.

E. **Amendment of Article XI.** Notwithstanding any other provision of these Amended and Restated Articles of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, these Amended and Restated Articles of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of 80% or more of the outstanding Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provision inconsistent with, this Article XI.

ARTICLE XII

SPECIAL MEETINGS OF SHAREHOLDERS

Special meetings of the shareholders for any purpose or purposes may be called by the Chairman of the Board or the President, unless otherwise prescribed by law, and shall be called by the Chairman of the Board, the President or Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of shareholders owning at least 25% of the outstanding shares of capital stock entitled to vote at such meeting. The record date for determining the shareholders entitled to call a special meeting shall be determined in accordance with the Corporation's Bylaws. A request for a special meeting shall state the purpose or purposes of the proposed meeting. The person receiving the written request shall within five (5) days from the date of its receipt cause notice of the meeting to be given in the manner provided in the Corporation's Bylaws. If, and only if, the person does not give notice of the meeting within five (5) days after the date of receipt of written request, the person or persons calling the meeting may fix the time of meeting and give notice in the manner provided in the Corporation's Bylaws. Business transacted at any special meeting of shareholders shall be limited to the purposes stated in the notice of such meeting or in an executed waiver of notice thereof.

Notwithstanding any other provision of these Amended and Restated Articles of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, these Amended and Restated Articles of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of 80% or more of the outstanding shares of capital stock entitled to vote thereon shall be required to amend or repeal, or adopt any provision inconsistent with, this Article XII.

ARTICLE XIII

AMENDMENT TO BYLAWS

Notwithstanding any other provision of these Amended and Restated Articles of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, these Amended and Restated Articles of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of 80% or more of the outstanding shares of capital stock entitled to vote thereon shall be required to amend or repeal, or adopt any provision inconsistent with, the following provisions of the Bylaws of the Corporation: Article II, Sections 3, 4, 5, 9, 10 and 12, Article III, Section 2, Article IV, Section 1, and Article IX, Section 1.

Notwithstanding any other provision of these Amended and Restated Articles of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, these Amended and Restated Articles of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of 80% or more of the outstanding shares of capital stock entitled to vote thereon shall be required to amend or repeal, or adopt any provision inconsistent with, this Article XIII.

ARTICLE FIVE

Pursuant to the Plan, each share of the Corporation's common stock, no par value per share, and preferred stock, including all series and classes thereof, no par value per share, issued and outstanding immediately prior to the effective date of the Plan shall be canceled and eliminated, automatically without any action on the part of the holders thereof, in its entirety on the effective date of the Plan, which is expected to be February 12, 1996.

ARTICLE SIX

The manner in which the amendments will effect a change in the amount of stated capital, and the amount of stated capital as changed by such amendments, are as follows:

Pursuant to Article 4.14 of the TBCA, the Plan and the Confirmation Order, the cancellation and elimination of each issued and outstanding share of common stock and preferred stock, as described in ARTICLE FIVE above, will reduce the Corporation's stated capital to $0.00. The issuance of shares of Common Stock and Preferred Stock authorized by these Amended and Restated Articles of Incorporation pursuant to the Plan and Confirmation Order will increase the amount of the Corporation's stated capital. Until the number of such shares to be issued is determined and such shares are actually issued as contemplated by the Plan and Confirmation Order, the amount of stated capital reflecting the issuance of such shares of Common Stock and Preferred Stock cannot be determined.

ARTICLE SEVEN

Pursuant to Article 10.03 of the TBCA these Amended and Restated Articles of Incorporation shall become effective at 8:30 a.m., on February 12, 1996.

Dated the 7th day of February 1996

EL PASO ELECTRIC COMPANY

By: [signature]
Name: Gary R. Hedrick
Title: Vice President

EL PASO ELECTRIC COMPANY

STATEMENT OF RESOLUTION ESTABLISHING SERIES OF PREFERRED STOCK

To the Secretary of State
of the State of Texas:

Pursuant to the provisions of Article 2.13 of the Texas Business Corporation Act, as amended (the "TBCA"), the undersigned corporation submits the following statement for the purpose of establishing and designating a series of shares and fixing and determining the relative rights and preferences thereof (the "Statement of Resolution"):

A. The name of the corporation is El Paso Electric Company (the "Corporation").

B. Pursuant to Article 10.03 of the TBCA, this Statement of Resolution shall become effective at 8:45 a.m. on February 12, 1996.

C. The following resolution establishing and designating a series of shares of preferred stock and fixing and determining the relative rights and preferences thereof, was duly adopted by the Board of Directors of the Corporation on February 6, 1996:

> "RESOLVED, that pursuant to ARTICLE IV of the Corporation's Amended and Restated Articles of Incorporation, as amended (which creates and authorizes 2,000,000 shares of preferred stock, no par value per share, none of which shares have been issued), there shall be created a series of 1,500,000 shares of preferred stock of El Paso Electric Company (the "Corporation") designated as its Series A Preferred Stock, no par value per share (the "Series A Preferred Stock"), of which the preferences and relative, participating, optional and other special rights, and the qualifications, limitations or restrictions of such preferences and rights, in addition to those set forth in such Article IV, are as follows:

1. CERTAIN DEFINITIONS.

Unless the context otherwise requires, the terms defined in this paragraph 1 shall have, for all purposes of this resolution, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"Articles of Incorporation" means the Corporation's Amended and Restated Articles of Incorporation.

"Board of Directors" means the Board of Directors of the Corporation or any authorized committee of the Board of Directors.

"Business Day" means a day other than a Saturday, a Sunday or any federal or New York holiday.

"Capital Stock" of any person means (i) in the case of a corporation, corporate stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock, (iii) in the case of a partnership, partnership interests (whether general or limited) and (iv) in the case of any Person, any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such person.

"Change of Control" means the occurrence of any of the following: (i) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Corporation and its Subsidiaries taken as a whole, (ii) the adoption of a plan relating to the liquidation or dissolution of the Corporation, (iii) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" or "group" (as such terms are defined in Sections 13(d)(3) and 14(d)(2) of the Exchange Act) becomes the "beneficial owner" (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the Voting Stock of the Corporation, or (iv) the first day on which a majority of the members of the Board of Directors of the Corporation are not Continuing Directors. For purposes of this definition, any transfer of an equity interest of an entity that was formed for the purpose of acquiring Voting Stock of the Corporation shall be deemed to be a transfer of such portion of such Voting Stock as corresponds to the portion of the equity of such entity that has been so transferred.

"Change of Control Offer" shall have the meaning set forth in Section 5(a) below.

"Change of Control Payment" shall have the meaning set forth in Section 5(a) below.

"Change of Control Payment Date" shall have the meaning set forth in Section 5(b)(v) below.

"Commission" means the Securities and Exchange Commission.

"Common Equity" means all shares now or hereafter authorized of any class of common stock of the Corporation, including the Common Stock, and any other stock of the Corporation, howsoever designated, authorized after the Issue Date, which has the right (subject always to prior rights of any class or series of Preferred Stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

"Common Stock" means the common stock of the Corporation as it exists on the Issue Date or as it may be constituted from time to time.

"Consolidated Net Worth" means, with respect to any Person as of any date, the sum of (i) the consolidated equity of the common shareholders of such Person and its consolidated Subsidiaries as of such date *plus* (ii) the respective amounts reported on such Person's balance sheet as of such date with respect to any series of Preferred Stock (other than Disqualified Stock and the Series A Preferred Stock) that by its terms is not entitled to the payment of dividends unless such dividends may be declared and paid only out of net earnings in respect of the year of such declaration and payment, but only to the extent of any cash received by such Person upon issuance of such Preferred Stock, *less* (x) all write-ups (other than write-ups resulting from foreign currency translations and write-ups of tangible assets of a going concern business made within 12 months after the acquisition of such business) subsequent to the Issue Date in the book value of any asset owned by such Person or a consolidated Subsidiary of such Person, (y) all investments as of such date in unconsolidated Subsidiaries, and (z) all unamortized debt discount and expense and unamortized deferred charges as of such date, all of the foregoing determined in accordance with GAAP.

"Continuing Directors" means, as of any date of determination, any member of the Board of Directors of the Corporation who (i) was a member of such Board of Directors on the Issue Date or named in the prospectus relating to the Series A Preferred Stock with his or her consent as a prospective member of such Board of Directors, or (ii) was nominated for election or elected to such Board of Directors with the approval of a majority of Continuing Directors who were members of such Board at the time of such nomination or election.

"Disqualified Stock" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is one year after the date on which the Series A Preferred Stock is subject to mandatory redemption pursuant to Section 4(b) below.

"Dividend Accrual Date" shall have the meaning set forth in Section 2(c) below.

"Dividend Period" means the period from, and including, the Issue Date to, but not including, the first Dividend Accrual Date and thereafter, each quarterly period from, and including, a Dividend Accrual Date to, but not including, the next Dividend Accrual Date.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"GAAP" means generally accepted accounting principles in use at the Issue Date, or, at the option of the Corporation, other generally accepted accounting principles which are in use at the time of their determination; in determining generally accepted accounting principles, the Corporation may, but shall not be required to, conform to any accounting order, rule or regulation of any regulatory authority having jurisdiction over the electric generating, transmission and distribution operations of the Corporation.

"Issue Date" means the date that shares of Series A Preferred Stock are first issued by the Corporation.

"Junior Payment" shall have the meaning set forth in Section 7(b) below.

"Junior Securities" means Common Equity and any class or series of stock of the Corporation authorized after the Issue Date which is not entitled to receive (i) any dividends in any Dividend Period unless all dividends required to have been paid or declared and set apart for payment on the Series A Preferred Stock shall have been so paid or declared and set apart for payment, or (ii) any assets upon liquidation, dissolution or winding up of the affairs of the Corporation until the Series A Preferred Stock shall have received the entire amount to which such stock is entitled upon such liquidation, dissolution or winding up.

"Liquidation Preference" means $100.00 per share.

"Officers' Certificate" means a certificate of the Corporation signed on behalf of the Corporation by the president or any vice president and a principal financial or accounting officer.

"Parity Securities" means any class or series of stock of the Corporation authorized after the Issue Date which is entitled to receive (i) payment of dividends on a parity with the Series A Preferred Stock, or (ii) assets upon liquidation, dissolution or winding up of the affairs of the Corporation on a parity with the Series A Preferred Stock.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock corporation, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"Preferred Stock" means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, or both, over shares of Capital Stock of any other class of such corporation.

"Record Date" means the date designated by the Board of Directors of the Corporation at the time a dividend is declared; *provided, however,* that such Record Date shall not be more than thirty (30) days nor less than ten (10) days prior to the respective Dividend Accrual Date or such other date designated by the Board of Directors for the payment of dividends.

"Redemption Price" means the applicable amount payable upon redemption of the Series A Preferred Stock pursuant to Section 4(a) or (b) below.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Senior Securities" means any class or series of stock of the Corporation authorized after the Issue Date ranking senior to the Series A Preferred Stock in respect of (i) the right to receive dividends, or (ii) the right to participate in any distribution upon liquidation, dissolution or winding up of the affairs of the Corporation.

"Statement of Resolution" means this Statement of Resolution Establishing Series of Preferred Stock.

"Subsidiary" means, with respect to any Person, (i) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without

regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person (or a combination thereof) and (ii) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).

"*Successor Corporation*" shall have the meaning set forth in Section 7(a) below.

"*Transfer Agent*" means The Bank of New York or any successor thereto appointed by the Corporation, as transfer agent with respect to the Series A Preferred Stock.

"*Voting Rights Triggering Event*" shall have the meaning set forth in Section 6(a)(iv) below.

"*Voting Stock*" of a corporation means all classes of Capital Stock of such corporation then outstanding and normally entitled to vote in the election of directors.

2. **DIVIDENDS.**

(a) Subject to the prior preferences and other rights of any Senior Securities as to dividends, the record holders of Series A Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors of the Corporation, out of funds legally available for payment of dividends. Such dividends shall be payable by the Corporation at the rate of 11.40% per annum of the Liquidation Preference of each such share.

(b) All dividends paid pursuant to this Section shall be paid in equal pro rata proportions to the holders entitled thereto based on the number of shares such holder holds. Prior to the Dividend Period ending on May 1, 1999, all dividends declared shall be paid only in additional fully paid and nonassessable shares of Series A Preferred Stock at the rate of one share of Series A Preferred Stock for each $100.00 of such dividend, subject to an adjustment in the event of any stock split, stock combination, recapitalization or similar transaction with respect to the Series A Preferred Stock. In lieu of issuing fractional shares of Series A Preferred Stock, each holder of Series A Preferred Stock entitled to receive a fractional share of Series A Preferred Stock shall receive instead the cash value thereof at the rate of $100.00 per share. On and after May 1, 1999, all dividends declared shall be paid only in cash. Cash dividends paid by the Corporation from time to time shall be applied to unpaid dividends in the order in which such dividends accrued.

(c) Dividends payable on shares of Series A Preferred Stock shall accrue and be cumulative from the date of issuance or, in the case of shares of Series A Preferred Stock issued as a dividend, from the date such dividend is declared payable or is accrued. Dividends shall be payable quarterly in arrears when, as and if declared by the Board of Directors of the Corporation. Dividend accrual periods shall end on February 1, May 1, August 1 and November 1 of each year (each, a "*Dividend Accrual Date*") commencing May 1, 1996. The first dividend shall be paid no earlier than November 1, 1996 and shall include all amounts of dividends accrued from the date of issuance. If any Dividend Accrual Date occurs on a day that is not a Business Day, any accrued dividends otherwise payable on such Dividend Accrual Date shall be paid on the next succeeding Business Day. Dividends shall be paid to the holders of record of the Series A Preferred Stock as their names shall appear on the stock transfer records of the Corporation on the Record Date for such dividend. The amount of dividends payable on Series A

Preferred Stock for each full Dividend Period shall be computed by dividing by four (4) the annual rate per share set forth in subparagraph 2(a) above and multiplying by the aggregate Liquidation Preference of the shares of Series A Preferred Stock for which dividends are payable or being accrued. Dividends payable for any period less than a full Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Accrued and unpaid dividends, if any, shall not bear interest or, except dividends paid or accrued in additional shares of Series A Preferred Stock, bear dividends thereon. Subject to Section 2(b) above, dividends on account of arrears for any past Dividend Periods and dividends in connection with any optional redemption pursuant to Section 4(a) below may be declared and paid at any time to holders of record on the Record Date therefor.

(d) Provisions regarding the declaration, payment or setting apart for payment of any dividends with respect to Junior Securities or Parity Securities are set forth in Section 7(b) below.

(e) In the event that full dividends are not paid or made available to the holders of all outstanding shares of Series A Preferred Stock and of any Parity Securities and funds available for payment of dividends shall be insufficient to permit payment in full to holders of all such stock of the full preferential amounts to which they are then entitled, then the entire amount available for payment of dividends shall be distributed ratably among all such holders of Series A Preferred Stock and of any Parity Securities in proportion to the full amount to which they would otherwise be respectively entitled.

3. DISTRIBUTIONS UPON LIQUIDATION, DISSOLUTION OR WINDING UP.

(a) In the event of any voluntary or involuntary liquidation, dissolution or other winding up of the affairs of the Corporation or reduction or decrease of the Corporation's Capital Stock resulting in the distribution of assets of the Corporation to the holders of Common Stock (a "*reduction or decrease in Capital Stock*"), subject to the prior preferences and other rights of any Senior Securities as to liquidation preferences, but before any payment or distribution shall be made to the holders of Junior Securities, holders of Series A Preferred Stock shall be entitled to payment out of the assets of the Corporation available for distribution in an amount equal to the Liquidation Preference per share of Series A Preferred Stock held by such holder or in arrears, plus accrued and unpaid dividends, if any, to the date fixed for liquidation, dissolution, winding up or reduction or decrease in Capital Stock (including an amount equal to a prorated dividend from the immediately preceding Dividend Accrual Date to the date fixed for liquidation, dissolution, winding up or reduction or decrease in Capital Stock), before any distribution is made on any Junior Securities, including, without limitation, Common Stock. Except as provided in this Section 3, holders of Series A Preferred Stock shall not be entitled to any distribution in the event of liquidation, dissolution, winding up of the affairs of the Corporation, or reduction or decrease in Capital Stock.

(b) If upon any voluntary or involuntary liquidation, dissolution, winding up of the Corporation, or reduction or decrease in Capital Stock, the application of all amounts available for payments with respect to the Series A Preferred Stock and all Parity Securities would not result in payment in full of the Series A Preferred Stock and such Parity Securities, holders of the Series A Preferred Stock and the Parity Securities shall share equally and ratably in any distribution of assets of the Corporation in proportion to the full amount payable upon liquidation to which each is entitled.

(c) Neither the voluntary sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or assets of the Corporation nor the consolidation or merger of the Corporation with one or more corporations shall be deemed to be a voluntary or involuntary liquidation, dissolution, winding up of the Corporation or reduction or decrease in Capital Stock within the meaning of this Section 3, unless such sale, conveyance, exchange or transfer shall be in connection with a liquidation, dissolution, winding up of the business of the Corporation or reduction or decrease in Capital Stock.

4. REDEMPTION BY THE CORPORATION.

(a) *Optional Redemption.* The Series A Preferred Stock shall not be redeemable at the Corporation's option prior to February 1, 1999; *provided, however,* that upon the occurrence of a Change of control on or prior to February 1, 1999, the Corporation shall have the right to redeem (a "*Change of Control Redemption*") the outstanding Series A Preferred Stock, in whole or in part, no earlier than 30 days nor later than 60 days from the date the Change of Control Offer is mailed to the holders of Series A Preferred Stock, in cash, at a price per share equal to the sum of (i) 108% of the Liquidation Preference plus (ii) accrued and unpaid dividends (including an amount equal to a prorated dividend from the immediately preceding Dividend Accrual Date), if any, to the redemption date (the "*Change of Control Redemption Price*"). Thereafter, the outstanding Series A Preferred Stock may be redeemed, in whole or in part, at the option of the Corporation, in cash at the redemption prices (expressed as a percent of the Liquidation Preference) set forth in the table below, plus all accrued and unpaid dividends (including an amount equal to a prorated dividend from the immediately preceding Dividend Accrual Date to the date of redemption), if any (the "*Redemption Price*"), if redeemed during the 12-month period beginning on February 1 of the years indicated below:

Year	Percentage
1999	105.700%
2000	104.560%
2001	103.420%
2002	102.280%
2003	101.140%
2004 and thereafter	100.000%

(b) *Mandatory Redemption.* On February 1, 2008, the Corporation shall be required to redeem (subject to the legal availability of funds therefor) all outstanding shares of Series A Preferred Stock at a price in cash equal to the sum of (i) the Liquidation Preference thereof plus (ii) all accrued and unpaid dividends, if any, to the date of redemption.

(c) *Procedures for Redemption.*

(i) In case of redemption of less than all shares of Series A Preferred Stock at the time outstanding, the shares to be redeemed shall be selected by a method that complies with the requirements of any national stock exchange on which Series A Preferred Stock is listed, if any, or if the Series A Preferred Stock is not so listed, (A) pro rata, (B) by lot or (C) by such other method as the Board of Directors shall deem, in its sole discretion, fair and appropriate.

(ii) Notice of any redemption shall be sent by or on behalf of the Corporation not more than sixty (60) days nor less than thirty (30) days prior to the date of redemption, by first class mail, postage prepaid, to all holders of record of the Series A Preferred Stock at his or her registered address listed on the stock transfer records of the Corporation; *provided, however,* that no failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Series A Preferred Stock except as to the holder to whom the Corporation has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series A Preferred Stock may be listed or admitted to trading, such notice shall state: (A) whether such redemption is being made pursuant to the optional or the mandatory redemption or Change of Control Redemption provisions hereof; (B) the date of redemption: (C) the Redemption Price or, if applicable, the Change of Control Redemption Price; (D) the number of shares of Series A Preferred Stock to be redeemed and, if less than all shares held by such holder or in arrears are to be redeemed, the number of such shares to be redeemed and their method of selection; (E) that if fewer than all the shares represented by any certificate are to be redeemed, a new certificate or certificates representing the unredeemed shares shall be issued without cost to the holder thereof; (F) the place or places where certificates for such issued shares are to be surrendered for payment of the Redemption Price; (G) that dividends on the shares to be redeemed shall cease to accrue on the date of redemption; (H) that the certificate or certificates representing the shares to be redeemed must be surrendered; and (I) all instructions and materials necessary to enable the holders of Series A Preferred Stock to surrender their outstanding shares to be redeemed. Upon the mailing of any such notices of redemption, the Corporation shall become obligated to redeem at the time of redemption specified thereon all shares called for redemption.

(iii) If notice has been mailed in accordance with Section 4(c)(ii) above and provided that on or before the date of redemption specified in such notice, all funds necessary for such redemption shall have been set aside by the Corporation, separate and apart from its other funds in trust for the pro rata benefit of the holders of the shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the date of redemption, dividends on the shares of the Series A Preferred Stock so called for redemption shall cease to accrue, and said shares shall no longer be deemed to be outstanding and shall not have the status of shares of Series A Preferred Stock, and all rights of the holders thereof as shareholders of the Corporation (except the right to receive from the Corporation the Redemption Price) shall cease. Upon surrender, in accordance with said notice, of the certificates for any issued shares so redeemed (properly endorsed or assigned for transfer, if the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the Redemption Price by mailing a check to such holder's last registered address listed on the stock transfer records of the Corporation, or as otherwise agreed by the holders of Series A Preferred Stock and the Corporation. In case fewer than all the shares represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed shares without cost to the holder thereof.

(iv) Any funds deposited with a bank or trust company for the purpose of redeeming Series A Preferred Stock shall be irrevocable except that: (A) the Corporation shall be entitled to receive from such bank or trust company the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to such interest or other earnings; and (B) any balance of monies so deposited by the Corporation and unclaimed by the holders of the Series A Preferred Stock entitled thereto at the expiration of six years from the applicable date of redemption shall be repaid, together with any interest or other earnings earned thereon, to the Corporation, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

(v) No Series A Preferred Stock may be redeemed except with funds legally available for the payment of the Redemption Price.

(vi) Notwithstanding the foregoing provisions of this Section 4, unless the full cumulative dividends, if any, on all outstanding shares of Series A Preferred Stock shall have been paid or contemporaneously are declared and paid, none of the shares of Series A Preferred Stock shall be redeemed unless all outstanding shares of Series A Preferred Stock are simultaneously redeemed.

(vii) All shares of Series A Preferred Stock redeemed pursuant to this Section 4 shall be retired and shall be restored to the status of authorized and unissued shares of Preferred Stock, without designation as to series and may thereafter be reissued as shares of any series of Preferred Stock other than shares of Series A Preferred Stock.

(viii) In redeeming any shares pursuant to this Section 4, the Corporation shall comply with any tender offer rules under the Exchange Act which may then be applicable, including Rules 13e-4 and 14e-1. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Statement of Resolution, the Corporation shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations hereunder by virtue thereof.

5. CHANGE OF CONTROL

(a) Upon the occurrence of a Change of Control, each holder of issued shares of Series A Preferred Stock shall have the right to require the Corporation to repurchase all or any part of such holder's outstanding shares of Series A Preferred Stock not otherwise subject to a Change of Control Redemption or an optional redemption pursuant to an offer by the Company, pursuant to the offer described below (the "*Change of Control Offer*") at an offer price in cash (the "*Change of Control Offer Price*") equal to the sum of (i) 101% of the Liquidation Preference plus (ii) accrued and unpaid dividends (including an amount equal to a prorated dividend from the immediately preceding Dividend Accrual Date to the Change of Control Payment Date), if any (the "*Change of Control Payment*").

(b) Within ten (10) days following any Change of Control, the Corporation shall mail or cause to be mailed a notice to each holder of Series A Preferred Stock at his or her last registered address listed on the stock transfer records of the Corporation with a copy to the Transfer Agent, which notice shall state:

(i) that a Change of Control has occurred and the circumstances and relevant facts regarding such Change of Control;

(ii) that the Change of Control Offer is being made pursuant to this Section 5 for all outstanding shares of Series A Preferred Stock (not otherwise selected for a Change of Control Redemption) and that all shares of Series A Preferred Stock properly tendered shall be accepted for payment;

(iii) the identification of all shares of Series A Preferred Stock selected for an optional redemption upon a Change of Control pursuant to Section 4(a) hereof;

(iv) that each holder of shares of Series A Preferred Stock has the right to require the Corporation to repurchase his or her outstanding shares of Series A Preferred Stock at the Change of Control Offer Price in cash if such holder complies with the terms of the Change of Control Offer;

(v) the Change of Control Offer Price and the purchase date, which date shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed (the "*Change of Control Payment Date*");

(vi) that any shares of Series A Preferred Stock not properly tendered shall continue to accrue dividends;

(vii) that, unless the Corporation defaults in the payment of the Change of Control Payment, all shares of Series A Preferred Stock accepted for payment pursuant to the Change of Control Offer shall cease to accrue dividends after the Change of Control Payment Date;

(viii) that holders electing to have any shares of Series A Preferred Stock purchased pursuant to a Change of Control Offer shall be required to surrender the shares of Series A Preferred Stock or transfer the shares of Series A Preferred Stock to the Transfer Agent at the address specified in the notice, prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(ix) that holders shall be entitled to withdraw their election if the Transfer Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the holder, the amount of Series A Preferred Stock delivered for purchase, and a statement that such holder is withdrawing its election to have such shares of Series A Preferred Stock purchased;

(x) that holders whose shares of Series A Preferred Stock are being purchased only in part shall be issued new certificates of Series A Preferred Stock equal in amount to the unpurchased portion of the Series A Preferred Stock surrendered; and

(xi) all instructions and materials necessary to enable the holders of Series A Preferred Stock to surrender their outstanding shares pursuant to the Change of Control Offer.

(c) On the Change of Control Payment Date, the Corporation shall, to the extent lawful: (i) accept for payment all shares of Series A Preferred Stock or portions thereof properly tendered pursuant to the Change of Control Offer, (ii) deposit with the Transfer Agent an amount equal to the Change of Control Payment in respect of all shares of Series A Preferred Stock or portions thereof so tendered and (iii) deliver or cause to be delivered to the holders of Series A Preferred Stock so accepted an Officers' Certificate stating the aggregate amount of Series A Preferred Stock or portions thereof being purchased by the Corporation. The Corporation shall promptly pay to each holder of shares of Series A Preferred Stock so tendered the Change of Control Payment for such shares of Series A Preferred

Stock by mailing a check to such holder's last registered address listed on the stock transfer records of the Corporation, or as otherwise agreed by the holders of the Series A Preferred Stock and if applicable, the Corporation, and the Corporation shall promptly mail to each such holder a new certificate or certificates representing any unpurchased portion of the Series A Preferred Stock surrendered, if any.

(d) The Corporation shall comply with any tender offer rules under the Exchange Act which may then be applicable, including Rules 13e-4 and 14e-1, in connection with any offer required to be made by the Corporation to repurchase the Series A Preferred Stock as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Statement of Resolution, the Corporation shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations hereunder by virtue thereof.

(e) On the Change of Control Payment Date, unless the Corporation defaults in the payment for the shares of Series A Preferred Stock tendered and not withdrawn pursuant to the Change of Control Offer, all rights with respect to such shares shall forthwith cease and terminate, except the right of the holder thereof to receive payment therefor, on the Change of Control Payment Date.

(f) Notwithstanding the foregoing, prior to complying with the provisions of this Section 5, but in any event within ninety (90) days following a Change of Control, the Corporation shall either repay all of its outstanding indebtedness, perform all of its obligations or obtain all of the requisite consents, if any, necessary under all agreements restricting or prohibiting its repurchase of the shares of Series A Preferred Stock required by this covenant. In addition, the Corporation shall publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

6. VOTING RIGHTS.

(a) The holders of record of shares of Series A Preferred Stock shall not be entitled to any voting rights except:

(i) as required by law;

(ii) as provided in Section 6(e) below;

(iii) as provided in Section 6(f) below;

(iv) that holders of a majority of the outstanding shares of Series A Preferred Stock, voting as a separate class, shall (A) upon the accumulation of accrued and unpaid dividends on the outstanding Series A Preferred Stock in an amount equal to six full quarterly dividends, (B) upon the failure of the Corporation to satisfy any mandatory redemption or repurchase obligation (including, without limitation, pursuant to any required Change of Control Offer) with respect to the Series A Preferred Stock, (C) upon the failure of the Corporation to make a Change of Control Offer within 30 days following any Change of Control or (D) upon the failure of the Corporation to comply with the provisions of Sections 7(a), (b) or (c) below (each of the events described in clauses (A), (B), (C) and (D) being referred to herein as a "*Voting Rights Triggering Event*"), be entitled to elect two members to the Board of Directors. Upon the election of any members to the Board of Directors pursuant to the foregoing provision, such directors shall become additional directors of the Corporation and the authorized number of directors of the Corporation shall thereupon be automatically increased by such number of directors; and

(v) notwithstanding the provisions of Section 5 above, the holders of a majority of the outstanding shares of Series A Preferred Stock may, by written consent, waive or modify the Corporation's obligation to make a Change of Control Offer pursuant to Section 5 above.

(b) Whenever a voting right pursuant to Section 6(a)(ii), (iii), (iv) or (v) shall have vested, such right may be exercised initially either at a special meeting of the holders of Series A Preferred Stock, called as hereinafter provided, or at any regularly scheduled annual meeting of shareholders, and thereafter at such annual meetings or by the written consent of the holders of Series A Preferred Stock. The right of the holders of Series A Preferred Stock to elect directors may be exercised until all dividends to which the holders of Series A Preferred Stock shall have been entitled for all previous Dividend Periods shall have been paid in full or such other Voting Rights Triggering Event has been cured or waived, at which time the right of the holders of Series A Preferred Stock to elect such number of directors shall cease, the term of such directors previously elected shall thereupon terminate, and the authorized number of directors of the Corporation shall thereupon return to the number of authorized directors otherwise in effect but subject always to the same provisions for the renewal and divestment of such special voting rights in the case of any such future Voting Rights Triggering Event. Any waiver of a Voting Rights Triggering Event pursuant to this Section 6(b) shall be approved by the holders of a majority of the outstanding shares of Series A Preferred Stock, voting as a separate class, and may be exercised pursuant to the voting procedures set forth in this Section 6(b).

(c) At any time when a voting right shall have vested in the holders of Series A Preferred Stock and if such right shall not already have been initially exercised, a proper officer of the Corporation shall, upon the written request of any holder of record of Series A Preferred Stock then outstanding, addressed to the Secretary of the Corporation, call a special meeting of holders of Series A Preferred Stock. Such meeting shall be held at the earliest practicable date upon the notice required for annual meetings of shareholders at the place for holding annual meetings of shareholders of the Corporation or, if none, at a place designated by the Secretary of the Corporation. If such meeting shall not be called by the proper officers of the Corporation within thirty (30) days after the personal service of such written request upon the Secretary of the Corporation, or within thirty (30) days after mailing the same within the United States, by registered mail addressed to the Secretary of the Corporation at its principal office (such mailing to be evidenced by the registry receipt issued by the postal authorities), then the holders of record of 10% of the shares of Series A Preferred Stock then outstanding may designate in writing a holder of Series A Preferred Stock to call such meeting at the expense of the Corporation, and such meeting may be called by such person so designated upon the notice required for annual meetings of shareholders and shall be held at the place for holding annual meetings of the Corporation or, if none, at a place designated by such holder. Any holder of Series A Preferred Stock that would be entitled to vote at such meeting shall have access to the stock books of the Corporation for the purpose of causing a meeting of shareholders to be called pursuant to the provisions of this Section 6(c). Notwithstanding the provisions of this Section 6(c), however, no such special meeting shall be called if any such request is received less than ninety (90) days before the date fixed for the next ensuing annual or special meeting of shareholders.

(d) If a director so elected by the holders of Series A Preferred Stock shall cease to serve as a director before his term shall expire, the holders of Series A Preferred Stock then outstanding may, at a special meeting of the holders called as provided above, elect a successor to hold office for the unexpired term of the director whose place shall be vacant

(e) In addition to any affirmative vote of shareholders required by law or the Articles of Incorporation, the affirmative vote or written consent of the holders of at least $66^2/_3$% of the shares of Series A Preferred Stock at the time outstanding, voting as a separate class, given in person or by proxy, by vote at any meeting called for the purpose or by written consent shall be necessary for effecting or validating:

(i) Any amendment, alteration or repeal of any of the provisions of the Articles of Incorporation, or of the Bylaws of the Corporation, which affects adversely the voting powers, preferences and relative, participating, optional and other special rights of the holders of shares of Series A Preferred Stock, *provided, however,* that.

(A) any amendment to the provisions of the Articles of Incorporation so as to authorize or create, or to increase the authorized amount of any class of, or any security convertible into, Junior Securities shall not be deemed to affect adversely the voting powers, preferences and relative, participating, optional and other special rights of the holders of shares of Series A Preferred Stock; and

(B) any amendment to the provisions of the Articles of Incorporation so as to authorize or create, or to increase the authorized amount of any class of, or any security convertible into, any Senior Securities shall be deemed to affect adversely the voting powers, preferences and relative, participating, optional and other special rights of the holders of shares of Series A Preferred Stock;

(ii) Any purchase, redemption or other acquisition for value (or payment into or setting aside as a sinking fund for such purpose) of any shares of Common Stock or other capital stock of the Corporation; *provided, however,* that no such consent of the holders of Series A Preferred Stock shall be required for the repurchase of shares of Common Stock from officers, directors or employees of the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, including the termination of employment by or service to the Corporation or any subsidiary; and *provided, further,* that without the approval, by vote or written consent, of the holders of $66^2/_3$% of the Series A Preferred Stock, the total amount applied to the repurchase of shares of Common Stock shall not exceed $1,000,000 during any fiscal year of the Corporation; or

(iii) Any declaration or payment of any dividends on or declaration or making of any other distribution, direct or indirect (other than a dividend payable solely in shares of Common Stock), on account of the Common Stock or setting apart any sum for any such purpose unless all accrued and unpaid dividends on Series A Preferred Stock have been paid.

(f) In addition to any affirmative vote of shareholders required by law or the Articles of Incorporation, the affirmative vote or written consent of the holders of at least 50% of the shares of Series A Preferred Stock at the time outstanding, voting as a separate class, given in person or by proxy, by vote at any meeting called for the purpose or by written consent, shall be necessary for effecting any (i) issuance of additional shares of Series A Preferred Stock, other than in payment of dividends pursuant to Section 2 hereof, or (ii) issuance of Parity Securities.

7. CERTAIN COVENANTS.

(a) *Merger, Consolidation and Sale of Assets.* Without the affirmative vote or written consent of holders of a majority of the outstanding shares of Series A Preferred Stock, voting as a class, the Corporation may not consolidate or merge with or into (whether or not the Corporation is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to another Person unless: (i) the resulting, surviving or transferee Person (the "*Successor Corporation*") is a corporation organized or existing under the laws of the United States, any state thereof or the District of Columbia; (ii) the Series A Preferred Stock shall be converted into or exchanged for and shall become shares of the Successor Corporation having in respect of the Successor Corporation substantially the same powers, preferences and relative participating, optional or other special rights, and the qualifications, limitations or restrictions thereon, that the Series A Preferred Stock had immediately prior to such transaction; (iii) the Successor Corporation shall have Consolidated Net Worth immediately after the transaction (but prior to any revaluation or recalculation of Consolidated Net Worth as of the transaction relating to a carryover basis (if any) of the assets acquired in the transaction (as determined in accordance with GAAP)) equal to or greater than the Consolidated Net Worth of the Corporation immediately preceding the transaction; and (iv) the Corporation shall deliver to the transfer agent prior to. the consummation of the proposed transaction an Officers' Certificate and an opinion of counsel to the effect that such sale, assignment, transfer, lease, conveyance or other disposition complies with the terms of this Statement of Resolution and that all conditions precedent to such sale, assignment, transfer, lease, conveyance or other disposition have been satisfied.

(b) *Junior Payments.* So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not declare, pay or set apart for payment on any Junior Securities or Parity Securities any dividends whatsoever, whether in cash, property or otherwise (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock with respect to Junior Securities other than Common Stock, together with cash in lieu of fractional shares), nor shall the Corporation make any distribution on any Junior Securities or Parity Securities, nor shall any Junior Security or Parity Security be purchased, redeemed or otherwise acquired or retired for value by the Corporation or any of its Subsidiaries, nor shall any monies be paid or made available for a sinking fund for the purchase or redemption of any Junior Security or Parity Security (each, a "*Junior Payment*"), unless all dividends, redemption payments, Change of Control Payments or other payments to which the holders of Series A Preferred Stock shall have been entitled at the time of such Junior Payment shall have been paid or declared and a sum of money sufficient for the payment thereof shall have been set apart; *provided, however,* that until May 1, 1999, no Junior Payments, other than with respect to the Common Stock, may be made in cash. Notwithstanding the foregoing, if the Corporation is unable to meet its payment obligations with respect to dividends, redemption payments, Change of Control Payments or other payments with respect to the Series A Preferred Stock and other Parity Securities as described herein, holders of Series A Preferred Stock and Parity Securities shall share equally and ratably in any payments by the Corporation with respect thereto.

(c) *Reports.* So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall furnish to the holders of Series A Preferred Stock, within 15 days after filing them with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) that the Corporation is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act. If the Corporation is nevertheless not subject to the requirements of Section 13 or

15(d) of the Exchange Act, the Corporation shall nevertheless file with the Commission and furnish to the holders of Series A Preferred Stock, on the date upon which it would have been required to file with the Commission, financial statements, including any notes thereto (and with respect to annual reports, an auditor's report by a firm of established national reputation), and a "Management's Discussion and Analysis of Financial Condition and Results of Operations," both comparable to that which the Corporation would have been required to include in such annual reports, information, documents or other reports if the Corporation were subject to the requirements of Section 13 or 15(d) of the Exchange Act; *provided, however,* that the Corporation shall not be required to register under the Exchange Act by virtue of this provision, if it were not otherwise required to do so.

So long as any shares of Series A Preferred Stock are outstanding, if the Corporation is required to furnish annual and quarterly reports to its shareholders pursuant to the Exchange Act, the Corporation shall furnish to each holder thereof any annual report furnished to its shareholders generally and any quarterly or other financial reports it furnishes to its shareholders generally, at his or her address listed on the stock transfer records of the Corporation. If the Corporation is not required to furnish annual or quarterly reports to its shareholders pursuant to the Exchange Act, the Corporation shall cause its financial statements referred to in the immediately preceding paragraph, including any notes thereto (and with respect to annual reports, an auditor's report by a firm of established national reputation), and a "Management's Discussion and Analysis of Financial Condition and Results of Operations," to be so mailed to the holders within 120 days after the end of each of the Corporation's fiscal years and within 60 days after the end of each of the first three fiscal quarters of each year.

8. EXCLUSION OF OTHER RIGHTS.

Except as may otherwise be required by law, the shares of Series A Preferred Stock shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in this resolution (as such resolution may be amended from time to time) and in the Articles of Incorporation. The shares of Series A Preferred Stock shall have no preemptive or subscription rights. The shares of Series A Preferred Stock shall not be convertible into Common Stock or other securities of the Corporation at the election of the holders thereof or the Corporation.

9. ACTION BY WRITTEN CONSENT.

Any action by the holders of shares of Series A Preferred Stock required to be taken or which may be taken at any annual or special meeting of such holders of Series A Preferred Stock of the Corporation or pursuant to this Statement of Resolution or required by the Texas Business Corporation Act to be taken at any annual or special meeting of the holders of Series A Preferred Stock may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth action so taken or to be taken, is signed by the holders of shares of Series A Preferred Stock having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the holders of Series A Preferred Stock were present and voted.

10. HEADINGS OF SUBDIVISIONS.

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof

11. SEVERABILITY OF PROVISIONS.

If any voting powers, preferences and relative, participating, optional and other special rights of the Series A Preferred Stock and qualifications, limitations and restrictions thereof set forth in this resolution (as such resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series A Preferred Stock and qualifications, limitations and restrictions thereof set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences and relative, participating, optional and other special rights of Series A Preferred Stock and qualifications, limitations and restrictions thereof shall, nevertheless, remain in full force and effect and no voting powers, preferences and relative, participating, optional or other special rights of Series A Preferred Stock and qualifications, limitations and restrictions thereof herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special rights of Series A Preferred Stock and qualifications, limitations and restrictions thereof unless so expressed herein.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be duly executed by Gary R. Hedrick Vice President, and attested by Michael L. Blough Assistant Secretary, this 7th day of February 1996.

EL PASO ELECTRIC COMPANY

By:
Name: Gary R. Hedrick
Title: Vice President

ATTEST:

By:
Name: Michael L. Blough
Title: Assistant Secretary

EX-3.1 2 exhibit31.htm EXHIBIT 3.1 AMENDED AND RESTATED BYLAWS

EXHIBIT 3.1

AMENDED AND RESTATED BYLAWS OF

EL PASO ELECTRIC COMPANY

A Texas Corporation

BYLAWS OF
EL PASO ELECTRIC COMPANY

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AMENDED AND RESTATED BYLAWS

OF EL PASO ELECTRIC COMPANY

A Texas Corporation

PREAMBLE

These Amended and Restated Bylaws ("Bylaws") are subject to, and governed by, the Texas Business Organizations Code (the "TBOC") and the Amended and Restated Articles of Incorporation ("Articles of Incorporation") of El Paso Electric Company, a Texas corporation (the "Corporation"). In the event of a direct conflict between the provisions of these Bylaws and the mandatory provisions of the TBOC from time to time in effect or the provisions of the Articles of Incorporation, such provisions of the TBOC or the Articles of Incorporation, as the case may be, will be controlling.

ARTICLE I
OFFICES

Section 1. REGISTERED OFFICE AND AGENT. The registered office and registered agent of the Corporation shall be as designated from time to time by the appropriate filing by the Corporation with the Office of the Secretary of State of the State of Texas.

Section 2. OTHER OFFICES. The Corporation may also have offices at such other places both within and without the State of Texas as the Board of Directors may from time to time determine or the business of the Corporation may require or as may be desirable.

ARTICLE II
SHAREHOLDERS

Section 1. MEETINGS. All meetings of shareholders for any purpose shall be held at such times and places, within or without the State of Texas, as shall be stated in the notices of the meetings or in executed waivers of notice thereof.

Section 2. ANNUAL MEETINGS. The annual meeting of shareholders shall be held annually at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of meeting. Failure to designate a time for the annual meeting or to hold the annual meeting at the designated time shall not work a winding up or termination of the Corporation.

Section 3. SPECIAL MEETINGS. Special meetings of the shareholders, for any purpose or purposes may be called by the Chairman of the Board or the President, unless otherwise prescribed by law or by the Articles of Incorporation, and shall be called by the Chairman of the Board, the President or Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of shareholders owning at least 25% of the outstanding shares of capital stock entitled to vote at such meeting, or as provided in the Articles of Incorporation. The record date for determining the shareholders entitled to call a special meeting shall be determined in accordance with Section 4 of this Article II. A request for a special meeting shall state the purpose or purposes of the proposed meeting. The person receiving the written request shall within five (5) days from the date of its receipt cause notice of the meeting to be given in the manner provided in Section 5 of this Article II. If, and only if, the person does not give notice of the meeting within five (5) days after the date of receipt of written request, the person or persons calling the meeting may fix the time of meeting and give notice in the manner provided in Section 5 of this Article II. Business transacted at any special meeting of shareholders shall be limited to the purposes stated in the notice of such meeting or in an executed waiver of notice thereof.

Section 4. FIXING RECORD DATE. The Board of Directors shall fix and shall have the exclusive authority to fix, in advance, a date as the record date for the purpose of determining shareholders entitled to notice of or to vote at any annual or special meeting of shareholders or any adjournment thereof, or shareholders entitled to receive a distribution by the Corporation (other than a distribution involving a purchase or redemption by the Corporation of any of its own shares) or a share dividend, or in order to make a determination of shareholders for any other proper purpose. Such date, in any case, shall not be more than sixty (60) days, and in the case of a meeting of shareholders not less than ten (10) days, prior to the date on which the particular action requiring such determination of shareholders is to be taken.

Section 5. NOTICE OF SHAREHOLDERS' MEETINGS. Written or printed notice stating the place, day and hour of each meeting of shareholders, and in the case of a special meeting (or if otherwise required by law), the purpose or purposes for which it is called, shall be delivered (unless otherwise required by law) not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the Chairman of the Board, the President, the Secretary, or the officer or person calling the meeting; to each shareholder of record entitled to vote at such meeting.

Any notice required to be given to any shareholder, under any provision of the TBCA, or the Articles of Incorporation of this Corporation or these Bylaws, need not be given to the shareholder if (a) notice of two consecutive annual meetings and all notices of meetings held during the period between those annual meetings, if any, or (b) all (but in no event less than two) payments (if sent by first class mail) of distributions or interest on securities during a twelve-month period, have been mailed to that person, addressed at his or her address as shown on the records of the Corporation, and have been returned undeliverable. If such a person delivers to the Corporation a written notice setting forth his or her then current address, the requirement that notice be given to that person shall be reinstated.

Section 6. VOTING LIST. The officer or agent who has charge of the share transfer records for shares of the Corporation shall make, at least ten (10) days before every meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting or any adjournment thereof, arranged in alphabetical order, and showing the address of each shareholder, the type of shares and the number of shares held by each shareholder and the number of votes that each shareholder is entitled to (if the number of votes is different than the number of shares held). Such list shall be kept on file at the registered office or the principal place of business of the Corporation and shall be subject to the inspection of any shareholder during usual business hours, for a period of at least ten (10) days prior to the meeting. The list shall also be produced and kept open at the time and place of the meeting during the whole time

thereof, and may be inspected by any shareholder. The original share transfer records shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of the shareholders. Failure to comply with any requirements of this Section 6 shall not affect the validity of any action taken at such meeting.

Section 7. VOTING SHARES. Each outstanding share of the Corporation, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders or any adjournment thereof, except (a) to the extent that the Articles of Incorporation provide for more or less than one vote per share or limit or deny voting rights to the holders of the shares of any class or series or (b) as otherwise provided by law.

Shareholders are prohibited in the Articles of Incorporation from cumulating their votes in any election of Directors of the Corporation.

At any meeting of shareholders or any adjournment thereof, a shareholder having the right to vote may vote either in person or by proxy executed in writing by the shareholder or by his or her duly authorized attorney-in-fact. A telegram, telex, cablegram, or similar transmission by the shareholder, or photographic, photostatic, facsimile, or similar reproduction of a writing executed by the shareholder or by his or her duly authorized attorney-in-fact, shall be treated as an execution in writing for purposes of this Section 7. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest. Any vote may be taken by voice or show of hands unless a shareholder entitled to vote, either in person or by proxy, objects, in which case written ballots shall be used.

Treasury shares, shares of the Corporation’s own stock owned by another corporation (the majority of the voting stock of which is owned or controlled by the Corporation) and shares of the Corporation’s own stock held by the Corporation in a fiduciary capacity shall not be voted (directly or indirectly) at any meeting of shareholders and shall not be counted in determining the total number of outstanding shares of the Corporation at any given time.

Section 8. QUORUM. The holders of a majority of the shares of the Corporation issued and outstanding and entitled to be voted, present in person or represented by proxy, shall be requisite and shall constitute a quorum at all meetings of shareholders.

If a quorum is present at a meeting of shareholders, the shareholders represented in person or by proxy at the meeting may conduct such business as may be properly brought before the meeting until it is adjourned, and the subsequent withdrawal from the meeting of any shareholder or the refusal of any shareholder represented in person or by proxy to vote shall not affect the presence of a quorum at the meeting.

Section 9. NOMINATION OF DIRECTORS. Except with respect to the rights of holders of any class or series of stock having a preference over Common Stock of the Corporation as to dividends or upon liquidation to elect directors under specified circumstances, nominations of persons for election to the Board of Directors may be made only (a) by the Board of Directors or a committee appointed by the Board of Directors or (b) by any shareholder who is

a shareholder of record at the time of giving of the shareholder's notice provided for in this Section 9, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 9. A shareholder wishing to nominate one or more individuals to stand for election in the election of members of the Board of Directors at an annual or special meeting must provide written notice thereof to the Board of Directors not less than 80 days in advance of such meeting; provided, however, that in the event that the date of the meeting was not publicly announced by the Corporation by a mailing to shareholders, a press release or a filing with the Securities and Exchange Commission pursuant to Section 13(a) or 14(a) of the Securities and Exchange Act of 1934 more than 90 days prior to the meeting, such notice, to be timely, must be delivered to the Board of Directors not later than the close of business on the tenth day following the day on which the date of the meeting was publicly announced. A shareholder's notice shall set forth (a) the name and address, as they appear on the Corporation's books, of the shareholder making the nomination or nominations; (b) such information regarding the nominee(s) proposed by such shareholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had the nominees) been nominated or intended to be nominated by the Board of Directors; (c) a representation of the shareholder as to the class and number of shares of capital stock of the Corporation that are beneficially owned by such shareholder, and the shareholder's intent to appear in person or by proxy at the meeting to propose such nomination; and (d) the written consent of the nominee(s) to serve as a member of the Board of Directors if so elected. No shareholder nomination shall be effective unless made in accordance with the procedures set forth in this Section 9. The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a shareholder nomination was not made in accordance with the provisions of the Bylaws, and if the chairman should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

Section 10. PROPOSALS OF SHAREHOLDERS. At any meeting of shareholders, there shall be conducted only such business as shall have been brought before the meeting (a) by or at the direction of the Board of Directors or (b) by any shareholder of the Corporation who is a shareholder of record at the time of giving of the shareholder's notice provided for in this Section 10, who shall be entitled to vote at such meeting and who complies with the notice procedure set forth in this Section 10. For business to be properly brought before a meeting of shareholders by a shareholder, the shareholder shall have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a shareholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than 80 days in advance of such meeting; provided, however, that in the event that the date of the meeting was not publicly announced by the Corporation by a mailing to shareholders, a press release or a filing with the Securities and Exchange Commission pursuant to Section 13(a) or 14(a) of the Securities and Exchange Act of 1934 more than 90 days prior to the meeting, such notice, to be timely, must be delivered to the Board of Directors not later than the close of business on the tenth day following the day on which the date of the meeting was first so publicly announced. A shareholder's notice shall set forth as to each matter proposed to be brought before the meeting: (a) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and, in the event that such business includes a proposal regarding the amendment of either the Articles of Incorporation or Bylaws of the Corporation, the language of the proposed amendment; (b) the name and address, as they appear on the Corporation's books, of the shareholder proposing such business; (c) a representation of the shareholder as to the class and number of shares of capital stock of the Corporation that are beneficially owned by such shareholder, and the shareholder's intent to appear in person or by proxy at the meeting to propose such business; and (d) any material interest of such shareholder in such proposal or business. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at a shareholders meeting unless brought before the meeting in accordance with the procedure set forth in this Section 10. The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the provisions of the Bylaws, and if the chairman should so determine, the chairman shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

Section 11. MAJORITY/PLURALITY VOTE. When a quorum is present at any meeting of shareholders, the act of the shareholders relative to any matter (except the election of directors, see below, and except in cases where a different vote is required by express provision of law, the Articles of Incorporation or these Bylaws, in which cases such express provision shall govern and control the decision of such matters) shall be decided by the affirmative vote of the holders of a majority of the shares entitled to vote on that matter and represented in person or by proxy at the meeting.

Directors shall be elected by a plurality of the votes cast by the holders of shares of the Corporation entitled to vote in the election of directors at a meeting of shareholders at which a quorum is present, unless otherwise provided in the Articles of Incorporation.

Section 12. ACTION BY WRITTEN CONSENT WITHOUT A MEETING. Shareholders of the corporation may not take action by written consent without a meeting. Any action required or permitted by law, the Articles of Incorporation, or these Bylaws to be taken at a meeting of the shareholders may be taken only at an annual, regular, or special meeting of shareholders. Notwithstanding the foregoing, the provisions of this Article II, Section 12 shall not apply to the holders of any class or series of preferred stock created pursuant to Article IV of the Articles of Incorporation, provided the resolution or resolutions establishing such class or series of preferred stock expressly permit the holders of such class or series of preferred stock to (a) take any action required to be taken or which may be taken at any annual or special meeting of shareholders of the Corporation or pursuant to the resolution or resolutions establishing such class or series of preferred stock without a meeting or (b) consent in writing, without a meeting, to the taking of any action.

Section 13. CHAIRMAN OF THE MEETING AND CONDUCT OF MEETINGS. The Chairman of the Board, or in his or her absence or at his or her direction, the Vice Chairman of the Board, or in his or her absence, the President shall preside at all meetings of the shareholders or, if such officers are not present at a meeting, by such other person as the Board of Directors shall designate or if no such person is designated by the Board of Directors, the most senior officer of the Corporation present at the meeting (such person, the "Chairman of the Meeting"). The Secretary of the Corporation, if present, shall act as secretary of each meeting of shareholders; if he or she is not present at a meeting, then such person as may be designated by the Chairman of the Meeting shall act as secretary of the meeting. Meetings of shareholders shall follow reasonable and fair procedure. Subject to the foregoing, the conduct of any meeting of shareholders and the determination of procedure and rules shall be within the absolute discretion of Chairman of the Meeting, and there shall be no appeal from any ruling of the Chairman of the Meeting with respect to procedure or rules. Accordingly, in any meeting of shareholders or part thereof, the Chairman of the Meeting shall have the sole power to determine appropriate rules or to dispense with theretofore prevailing rules. Without limiting the foregoing, the following rules shall apply:

(a) The Chairman of the Meeting may impose restrictions on entry to the meeting after the time fixed for the commencement thereof and may ask or require that anyone not a bona fide shareholder or proxy leave the meeting.

(b) A resolution or motion proposed by a shareholder shall only be considered for vote of the shareholders if it meets the criteria of Article II, Section 9 (Nomination of Directors) or Article II, Section 10 (Proposals of Shareholders), as the case may be. The Chairman of the Meeting may propose any resolution or motion for vote of the shareholders.

(c) The order of business at all meetings of shareholders shall be determined by the Chairman of the Meeting.

(d) The Chairman of the Meeting may impose limits with respect to participation in the meeting by shareholders, including, but not limited to, limits on the amount of time taken up by the remarks or questions of any shareholder, limits on the number of questions per shareholder and limits as to the subject matter and timing of questions and remarks by shareholders.

(e) The Chairman of the Meeting may impose restrictions on the use of audio or video recording devices at the meeting of shareholders.

(f) Before any meeting of shareholders, the Board of Directors may appoint up to three persons other than nominees for office to act as inspectors of election at the meeting or any adjournment thereof. If no inspectors of election are so appointed, the Chairman of the Meeting may, and on the request of any shareholder or a shareholder's proxy shall, appoint inspectors of election at the meeting of the shareholders and the number of such inspectors shall be no more than three. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. If any person appointed as inspector fails to appear or fails or refuses to act, the Chairman of the Meeting may, and upon the request of any shareholder or a shareholder's proxy shall, appoint a person to fill such vacancy.

The duties of the inspectors shall be to:

(i) determine the number of shares of the Corporation outstanding and the voting power of each, the shares of the Corporation represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies and ballots;

(ii) receive votes or ballots;

(iii) hear and determine all challenges and questions in any way arising in connection with the vote;

(iv) count and tabulate all votes;

(v) report to the Chairman of the Meeting the results based on the information assembled by the inspectors; and

(vi) do any other acts that may be proper to conduct the election or vote with fairness to all shareholders.

Notwithstanding the foregoing, the final certification of the results of the election or other matter acted upon at a meeting of shareholders shall be made by the Chairman of the Meeting.

All determinations of the Chairman of the Meeting shall be conclusive unless a matter is determined otherwise upon motion duly adopted by the affirmative vote of the holders of at least 80% of the voting power of the shares of the Corporation entitled to vote in the election of Directors held by shareholders present in person or represented by proxy at such meeting.

Whether or not a quorum is present, the Chairman of the Meeting may adjourn any meeting of shareholders at any time and for any reason, to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting. If after the adjournment the Board of Directors fixes a new record date for shareholders entitled to vote at the adjourned meeting, the Board of Directors shall give notice of the adjourned meeting to each shareholder of record entitled to vote at such adjourned meeting as of the record date for such adjourned meeting. In no event shall the public disclosure of an adjournment of a meeting of shareholders commence a new time period for the giving of a shareholder's notice as described in Article II, Section 9 (Nomination of Directors) or Article II, Section 10 (Proposals of Shareholders).

The Board of Directors may, at any time prior to the holding of a meeting of shareholders, and for any reason, cancel, postpone or reschedule such meeting by public announcement made prior to the time previously scheduled for such meeting of shareholders. The meeting may be postponed or scheduled to such time and place as is specified in the notice of postponement or rescheduling of such meeting.

ARTICLE III
DIRECTORS

Section 1. BOARD OF DIRECTORS. The powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, the Board of Directors. Directors need not be residents of the State of Texas or shareholders of the Corporation.

In the discharge of any duty imposed or power conferred upon a Director of the Corporation, including as a member of a committee, the Director may in good faith and utilizing ordinary care rely upon the statements, valuations or information referred to in Section 21.314 of the TBOC or upon other information, opinions, reports, or statements, including financial

statements and other financial data, concerning the Corporation or another person, that were prepared or presented by (a) one or more officers or employees of the Corporation, (b) legal counsel, public accountants, investment bankers, or other persons as to matters the Director reasonably believes are within the person's professional or expert competence, or (c) a committee of the Board of Directors of which the Director is not a member. A Director is not relying in good faith within the meaning of the preceding sentence if the Director has knowledge concerning the matter in question that makes reliance otherwise permitted by the above sentence unwarranted.

Section 2. NUMBER OF DIRECTORS: ELECTION: TERM: QUALIFICATION. The Board of Directors shall consist of no less than one director (plus such number of Directors as may be required to be elected from time to time pursuant to the terms of any series of preferred stock that may be issued and outstanding from time to time). Subject to the preceding sentence, the number of Directors which shall constitute the whole Board of Directors shall from time to time be fixed and determined by resolution adopted by the Board of Directors. The Directors of the Corporation (exclusive of Directors who are elected pursuant to the terms of, and serve as representatives of the holders of, any series of preferred stock of the Corporation) shall be referred to herein as "Classified Directors" and shall be divided into three classes, with the first class referred to herein as "Class 1," the second class as "Class 2," and the third class as "Class 3." If the total number of Classified Directors equals a number divisible by three, then the number of Directors in each of Class 1, Class 2, and Class 3 shall be that number of Directors equal to the total number of Directors divided by three. If, however, the total number of Classified Directors equals a number that is not divisible by three, each such class of Directors shall consist of that number of Directors as nearly equal in number as possible to the total number of Directors divided by three, as determined by the Board of Directors in advance of each respective election of Directors by the shareholders of the Corporation then entitled to vote in such election. The term of office of the initial Class 1 Directors shall expire at the 1997 annual meeting of shareholders, the term of office of the initial Class 2 Directors shall expire at the 1998 annual meeting of shareholders and the term of office of the initial Class 3 Directors shall expire at the 1999 annual meeting of shareholders, with each director to hold office until his successor shall have been duly elected and qualified. At each annual meeting of shareholders, commencing with the 1997 annual meeting, Directors elected to succeed those Directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of shareholders after their election, with each director to hold office until his successor shall have been duly elected and qualified.

Notwithstanding the foregoing, whenever the holders of any one or more classes or series of preferred stock issued by the Corporation shall have the right, voting separately by series or by class (excluding holders of Common Stock), to elect Directors at an annual or special meeting of shareholders, the election, term of office, filling of vacancies, and other features of such Directorships shall be governed by the terms of the Articles of Incorporation (including any amendment to the Articles of Incorporation that designates a series of preferred stock), and such Directors so elected by the holders of preferred stock shall not be divided into classes pursuant to this Section 2 of this Article III unless expressly provided by the terms of the Articles of Incorporation.

Section 3. VACANCIES AND NEWLY CREATED DIRECTORSHIPS. Vacancies occurring on the Board of Directors may be filled by election at an annual or special meeting of shareholders called for that purpose, or by a majority of the remaining Directors, though less than a quorum. A Director elected to fill the vacancy shall be elected for the unexpired term of his or her predecessor in office.

Any directorship to be filled by reason of any increase in the number of Directors may be filled by election at an annual or special meeting of shareholders called for that purpose, or by the Board of Directors for a term of office continuing only until the next election of one or more Directors by the shareholders; provided, however, that the Board of Directors may not fill more than two such directorships during the period between any two successive annual meetings of shareholders.

Notwithstanding the foregoing, whenever the holders of any class or series of shares, or group of classes or series of shares, of stock of the Corporation are entitled to elect one or more Directors by the provisions of the Articles of Incorporation, any vacancies in such directorships and any newly created directorships of such class or series to be filled by reason of an increase in the number of such Directors may be filled by the affirmative vote of a majority of the Directors elected by such class or series, or by such group, then in office, or by a sole remaining Director so elected, or by the vote of the holders of the outstanding shares of such class or series, or of such group, at an annual or special meeting called for that purpose and such directorships shall not in any case be filled by the vote of the remaining Directors or the holders of the outstanding shares as a whole unless otherwise provided in the Articles of Incorporation.

Section 4. REMOVAL OF DIRECTORS. Except to the extent limited by the TBOC or the Articles of Incorporation, at any meeting of shareholders called expressly for purposes of removal, any Director or the entire Board of Directors may be removed, with cause, by the holders of a majority of shares entitled to vote at an election of Directors; provided, however, that whenever the holders of any class or series of shares, or any group of classes or series of shares, of stock of the Corporation are entitled to elect one or more Directors by the provisions of the Articles of Incorporation, only the holders of shares of that class or series or group shall be entitled to vote for or against the removal of any Directors elected by the holders of that class or series or group. If the Articles of Incorporation should be amended so as to permit cumulative voting and if less than the entire Board of Directors is to be removed, no one of the Directors may be removed if the votes cast against his or her removal would be sufficient to elect him or her if then cumulatively voted at an election of the entire Board of Directors, or if there be classes of Directors, at an election of the class of Directors of which he or she is a part.

Section 5. MEETINGS. The Board of Directors of the Corporation may hold meetings, both regular and special, within or without the State of Texas.

Section 6. FIRST MEETING. The first meeting of each newly elected Board of Directors shall be held without further notice immediately following the annual meeting of shareholders, and at the same place, unless by the unanimous consent of the Directors, then elected and serving, such time or place shall be changed.

Section 7. REGULAR MEETINGS. Regular meetings of the Board of Directors may be held with or without notice.

Section 8. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called with notice by the Chairman of the Board, the Vice Chairman of the Board or by the President.

Section 9. NOTICES. Notice shall be sent to the last known address of each director at least four days before the meeting. Oral notice may be substituted for such written notice if given not later than one day before the meeting. Except as otherwise herein provided, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 10. QUORUM; MAJORITY VOTE. At all meetings of the Board of Directors, a majority of the number of Directors fixed in the manner provided in these Bylaws shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by law, the Articles of Incorporation or these Bylaws; provided, however, that if a Board of one Director shall be authorized, then one Director shall constitute a quorum and the act of that one Director shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the Directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 11. CONSENT OF DIRECTORS. Unless otherwise restricted by the TBOC or the Articles of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board or the committee, as the case may be, execute a written consent setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote at a meeting. The consent may be in more than one counterpart so long as each director signs one of the counterparts.

Section 12. TELEPHONIC MEETING. Unless otherwise restricted by the TBOC or the Articles of Incorporation and subject to the provisions required or permitted by law or these Bylaws for notice of meetings, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in and hold a meeting of the Board of Directors, or such committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting by such means shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 13. COMMITTEES OF DIRECTORS. The Board of Directors may, by resolution adopted by a majority of the whole Board, from time to time designate from among the members of the Board of Directors one or more committees. Each committee shall consist of one or more members of the Board of Directors. The Board of Directors may designate one or more of its members as alternate members of any committee, who may, subject to limitations imposed by the Board of Directors, replace absent or disqualified members at any meeting of that committee.

Except as limited by the TBOC, the Articles of Incorporation, these Bylaws or the resolution establishing such committee, each committee shall have and may exercise all of the authority of the Board of Directors as the Board of Directors may determine and specify in the respective resolutions appointing each such committee. The designation of any committee and the delegation of any authority to the committee shall not operate to relieve the Board of Directors, or any member of the Board of Directors, of any responsibility imposed by law.

The Board of Directors, by resolution or resolutions passed by a majority of the whole Board of Directors, may designate one or more members of the Board of Directors to constitute an Executive Committee and one or more other committees, which shall in each case consist of such number of Directors as the Board of Directors may determine. The Executive Committee shall have and may exercise, subject to such restrictions as may be contained in the Articles of Incorporation or that may be imposed by law, all of the authority of the Board of Directors, including without limitation the power and authority to declare a dividend and to authorize the issuance of shares of the Corporation.

A majority of all the members of any such committee may fix the time and place of its meetings, unless the Board of Directors shall otherwise provide, and meetings of any committee may be held upon such notice, or without notice, as shall from time to time be determined by the members of any such committee.

At all meetings of any committee, a majority of its members shall constitute a quorum for the transaction of business, and the act of a majority of the members present shall be the act of any such committee, unless otherwise specifically provided by the TBOC, the Articles of Incorporation, the Bylaws or the resolution establishing such committee. The Board of Directors shall have power at any time, subject as aforesaid, to change the number and members of any such committee, to fill vacancies and to discharge any such committee.

Section 14. COMPENSATION OF DIRECTORS. By resolution of the Board of Directors, the Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and for carrying out other business of the Corporation and may be paid cash, issued capital stock and/or granted equity awards as compensation for their services as Directors. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees may be allowed like compensation for attending committee meetings and performing other committee responsibilities.

Section 15. RESIGNATION. Any Director may resign at any time by written notice to the Corporation. Any such resignation shall take effect at the date of receipt of such notice or at such other time as may be specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE IV
NOTICES

Section 1. METHOD OF NOTICE. Whenever by law, the Articles of Incorporation, or these Bylaws, notice is required to be given to any committee member, Director, or shareholder, it shall not be construed to mean personal notice, but any such notice may be given (a) in writing, by mail, postage prepaid, addressed to such member, Director or shareholder at his or her address as it appears on the records of the Corporation, or (b) by any other method permitted by law (including, but not limited to, by telegram, telex, cablegram, facsimile and, in the case of Directors, by telephone). Any notice required or permitted to be given by mail shall be deemed to be delivered and given at the time when the same is deposited in the United States mail as aforesaid. Any notice required or permitted to be given by telegram, telex, cablegram or facsimile shall be deemed to be delivered and given at the time transmitted with all charges prepaid and addressed as aforesaid.

Section 2. WAIVER OF NOTICE. Whenever any notice is required to be given under the provisions of law, of the Articles of Incorporation or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE V
OFFICERS

Section 1. OFFICERS. The officers of the Corporation shall be elected by the Board of Directors and shall consist of a Chairman of the Board (if the Board of Directors shall determine the election of such officer to be appropriate), a Vice Chairman of the Board (if the Board of Directors shall determine the election of such officer to be appropriate), a President, and a Secretary, and may consist of such other officers and agents as the Board of Directors may deem necessary, including a Chief Executive Officer, one or more Vice Presidents (and, in the case of each Vice President, with such descriptive title, if any, as the Board of Directors shall determine), a Treasurer, a Controller, and one or more Assistant Secretaries and Assistant Treasurers. Any two or more offices may be held by the same person.

In the discharge of any duty imposed or power conferred upon an officer of the Corporation, the officer may in good faith and ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person, that were prepared or presented by (a) one or more other officers or employees of the Corporation including members of the Board of Directors or (b) legal counsel, public accountants, investment bankers, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence. An officer is not relying in good faith within the meaning of the preceding sentence if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by the above sentence unwarranted.

None of the officers of the Corporation need be a Director or a shareholder of the Corporation.

Section 2. ELECTION. Without limiting the right of the Board of Directors to elect officers of the Corporation at any time when vacancies occur or when the number of officers is increased, the Board of Directors, at its first regular meeting after each annual meeting of shareholders or as soon thereafter as conveniently practicable, shall elect the officers of the Corporation and such agents as the Board of Directors shall deem necessary or desirable.

Section 3. TERM; REMOVAL; RESIGNATION; VACANCIES; COMPENSATION. The officers of the Corporation shall hold office until their successors are elected or appointed and qualified, or until their earlier death, resignation, retirement, disqualification or removal. Any officer elected by the Board of Directors may be removed at any time with or without cause by the affirmative vote of a majority of the Board of Directors, but any such removal shall be without prejudice to the contractual rights, if any, of the person so removed. Any officer may resign at any time by giving written notice to the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at such other time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Election or appointment of an officer or agent shall not of itself create contract rights. Any vacancy occurring in any office of the Corporation may be filled by the Board of Directors for the unexpired portion of the term.

The compensation of all officers and agents of the Corporation shall be fixed from time to time by the Board of Directors or pursuant to its direction. No officer shall be prevented from receiving such compensation by reason of his or her also being a Director.

Section 4. CHAIRMAN OF THE BOARD. The Chairman of the Board (if one be elected and serving) shall preside at all meetings of shareholders and the Board of Directors and shall have such other authority and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

Section 5. VICE CHAIRMAN OF THE BOARD. The Vice Chairman of the Board (if one be elected and serving) shall, if there is no Chairman of the Board, or in the absence or disability of the Chairman of the Board, preside at all meetings of shareholders and of the Board of Directors, and perform the duties and exercise the powers of the Chairman of the Board, and shall have such other authority and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

Section 6. PRESIDENT. The President shall be the chief executive officer of the Corporation. He or she shall have general and active management of the business of the Corporation, shall see that all orders and resolutions of the Board of Directors are carried into effect, and shall have and exercise direct charge of and general supervision over the business affairs and employees of the Corporation. He or she shall also have such other authority and perform such other duties as may be prescribed from time to time by the Board of Directors or these Bylaws.

Section 7. VICE PRESIDENTS. Vice Presidents shall have such authority and perform such duties as may be delegated, permitted or assigned from time to time by the President or the Board of Directors and, in the event of the absence, unavailability or disability of the President, or in the event of his or her inability or refusal to act, shall, in the order of their seniority, perform the duties and have the authority and exercise the powers of the President, unless otherwise determined by the Board of Directors.

Section 8. SECRETARY AND ASSISTANT SECRETARIES. The Secretary shall have the duty of recording the proceedings of the meetings of shareholders and Board of Directors in a minute book to be kept for that purpose and shall perform all like duties for any committees. The Secretary shall give or cause to be given notice, as required by these Bylaws or by law, of all meetings of the shareholders and all meetings of the Board of Directors and shall perform such other duties as may be prescribed by these Bylaws or by the Board of Directors or President, under whose supervision the Secretary shall be. The Secretary, or an Assistant Secretary, shall have safe custody of the seal of the Corporation and he or she, or an Assistant Secretary, when authorized and directed by the Board of Directors, shall affix the same to any instrument requiring it and when so affixed, it shall be attested by his or her signature or by the signature of an Assistant Secretary or of the Treasurer or an Assistant Treasurer. The Secretary also shall perform such other duties and have such other powers as may be permitted by law or as the Board of Directors or the President may from time to time prescribe or authorize.

The Assistant Secretaries, if any, in the order of their seniority, unless otherwise determined by the Board of Directors shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as may be permitted by law or as the Board of Directors or the President may from time to time prescribe, authorize or delegate.

In the absence of the Secretary or an Assistant Secretary, the minutes of all meetings of the Board of Directors and of shareholders shall be recorded by such person as shall be designated by the Board of Directors.

Section 9. TREASURER AND ASSISTANT TREASURERS. If a Treasurer is designated as an officer of the Corporation by the Board of Directors, the Treasurer shall have the custody of the corporate funds and securities and shall keep, or cause to be kept, full and accurate accounts and records of receipts and disbursements and other transactions in books belonging to the Corporation and shall deposit, or see to the deposit of, all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by or under the authority of the Board of Directors. He or she shall: (a) endorse or cause to be endorsed in the name of the Corporation for collection the bills, notes, checks or other negotiable instruments received by the Corporation; (b) sign or cause to be signed all checks issued by the Corporation; and (c) pay out or cause to be paid out money as the Corporation may require, taking vouchers therefor. In addition, he or she shall perform such other duties as may be permitted by law or as the Board of Directors or the President may from time to time prescribe, authorize or delegate. The Board of Directors may by resolution delegate, with or without power to re-delegate, any or all of the foregoing duties of the Treasurer to other officers, employees or agents of the Corporation, and to provide that other officers, employees and agents shall have the power to sign checks, vouchers, orders or other instruments on behalf

of the Corporation. The Treasurer shall render to the Board of Directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, he or she shall give the Corporation a bond of such type, character and amount as the Board of Directors may require.

If a Treasurer is not designated as an officer of the Corporation, the functions of the Treasurer shall be performed by the President, the Secretary or such other officer or officers of the Corporation as shall be designated by the Board of Directors at any time or from time to time.

The Assistant Treasurers, if any, in the order of their seniority, unless otherwise determined by the Board of Directors, shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as may be permitted by law or as the Board of Directors or the President may from time to time prescribe, authorize or delegate. If required by the Board of Directors, the Assistant Treasurers shall give the Corporation a bond of such type, character and amount as the Board of Directors may require.

ARTICLE VI
CERTIFICATES AND SHAREHOLDERS

Section 1. CERTIFICATES OF SHARES. The Corporation shall deliver certificates representing shares to which shareholders are entitled or the shares of the Corporation may be uncertificated shares. Certificates representing shares shall be numbered and shall be entered in the stock transfer records of the Corporation as they are issued. They shall be signed by the President or any Vice President, and by the Secretary or any Assistant Secretary or by the Treasurer (if any) or any Assistant Treasurer, and may be sealed with the seal of the Corporation or facsimile thereof. Any or all of the officer signatures upon the certificates may be facsimiles. If any officer or officers who have signed or whose facsimile signature or signatures have been used on any such certificate or certificates cease to be such officer or officers of the Corporation before said certificate or certificates shall have been issued, such certificate or certificates may nevertheless be issued by the Corporation with the same effect as though the person or persons who signed such certificates or whose facsimile signature or signatures shall have been used thereon had been such officer or officers at the date of its issuance. Certificates for shares shall be in such form as shall be in conformity to law and as may be prescribed from time to time by the Board of Directors.

In the event the Corporation is authorized to issue shares of more than one class or series, each certificate representing shares issued by the Corporation (a) shall conspicuously set forth on the face or back of the certificate a full statement of all the designations, preferences, limitations and relative rights of the shares of each class or series to the extent they have been fixed and determined and the authority of the Board of Directors to fix and determine the designations, preferences, limitations, and relative rights of subsequent series or (b) shall conspicuously state on the face or back of the certificate that (i) such a statement is set forth in the Articles of Incorporation on file in the office of the Secretary of State of the State of Texas and (ii) the Corporation will furnish a copy of such statement to the record holder of the certificate without charge on written request to the Corporation at its principal place of business or registered office.

Each certificate representing shares issued by the Corporation (a) shall conspicuously set forth on the face or back of the certificate a full statement of the limitation or denial of preemptive rights contained in the Articles of Incorporation or (b) shall conspicuously state on the face or back of the certificate that (i) such a statement is set forth in the Articles of Incorporation on file in the office of the Secretary of State of the State of Texas and (ii) the Corporation will furnish a copy of such statement to the record holder of the certificate without charge on request to the Corporation at its principal place of business or registered office. All certificates surrendered to the Corporation for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except that in the cases of a lost, stolen, destroyed or mutilated certificate a new one may be issued therefor pursuant to the provisions of Section 4 of this Article VI. Certificates shall not be issued representing fractional shares of stock.

Section 2. TRANSFER OF SHARES. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate representing shares of stock or other securities of the Corporation duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, and otherwise meeting all legal requirements for transfer, a new certificate shall be issued to the person entitled thereto and the old certificate canceled and the transaction recorded upon the books of the Corporation. Transfers of shares or other securities shall be made only on the books of the Corporation by the registered holder thereof, or by such holder's attorney thereunto authorized by power of attorney and filed with the Secretary of the Corporation or the transfer agent.

Section 3. REGISTERED SHAREHOLDERS. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares of the Corporation to receive distributions or share dividends, to vote, to receive notifications, and otherwise exercise all the rights and powers of an owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

Section 4. LOST CERTIFICATES. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of shares to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors, in its discretion and as a condition precedent to the issuance thereof, may prescribe such terms and conditions as it deems expedient and may require such sureties, assurances or indemnities as it deems adequate to protect the Corporation from any claim that may be made against it with respect to any such certificate alleged to have been lost, stolen or destroyed.

ARTICLE VII
INDEMNIFICATION; INSURANCE

Section 1. INDEMNIFICATION. Each person who at any time shall serve, or shall have served, as a director, officer, employee or agent of the Corporation, or any person who, while a director, officer, employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, member, manager, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, limited liability company, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise (each such person referred to herein as an "Indemnitee"), shall be entitled to indemnification as and to the fullest extent permitted by Chapter 8 of the TBOC or any successor statutory provision, as from time to time amended. The foregoing right of indemnification shall not be deemed exclusive of any other rights to which those to be indemnified may be entitled as a matter of law or under any agreement, other provision of these Bylaws, vote of shareholders or directors, or other arrangement. The Corporation may enter into indemnification agreements with its officers and directors that contractually provide to them the benefits of the provisions of this Article VII and include related provisions meant to facilitate the Indemnitees' receipt of such benefits and such other indemnification protections as may be deemed appropriate.

Section 2. ADVANCEMENT OR REIMBURSEMENT OF EXPENSES. The rights of an Indemnitee provided under the preceding section shall include, but not be limited to, the right to be indemnified and to have expenses advanced in all proceedings to the fullest extent permitted by Chapter 8 of the TBOC or any successor statutory provision. In the event that an Indemnitee is not wholly successful, on the merits or otherwise, in a proceeding but is successful, on the merits or otherwise, as to any claim in such proceeding, the Corporation shall at a minimum indemnify such Indemnitee against all expenses actually and reasonably incurred by him or her, or on his or her behalf, relating to each claim. The termination of a claim in a proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim. In addition, to the extent an Indemnitee is, by reason of his or her corporate status, a witness or otherwise participates in any proceeding at a time when he or she is not named a defendant or respondent in the proceeding, he or she shall be indemnified against all expenses actually and reasonably incurred by him or her, or on his or her behalf, in connection therewith. The Corporation shall pay all reasonable expenses incurred by or on behalf of an Indemnitee in connection with any proceeding or claim, whether brought by the Corporation or otherwise, in advance of any determination respecting entitlement to indemnification pursuant to this Article VII within ten days after the receipt by the Corporation of a written request from such Indemnitee reasonably evidencing such expenses and requesting such payment or payments from time to time, whether prior to or after final disposition of such proceeding or claim; provided that such Indemnitee undertakes and agrees in writing that he or she will reimburse and repay the Corporation for any expenses so advanced to the extent that it shall ultimately be determined by a court, in a final adjudication from which there is no further right of appeal, that such Indemnitee is not entitled to be indemnified against such expenses.

Section 3. DETERMINATION OF REQUEST. Upon written request to the Corporation by an Indemnitee for indemnification pursuant to these Bylaws, a determination, if required by applicable law, with respect to such Indemnitee's entitlement thereto shall be made in accordance with Chapter 8 of the TBOC; provided, however, that notwithstanding the foregoing, if a Change in Control shall have occurred, such determination shall be made by Independent Counsel selected by the Indemnitee, unless the Indemnitee shall request that such determination be made in accordance with Section 8.103(a)(1), (2), (4) or (5) of the TBOC (or successor provisions). The Corporation shall pay any and all reasonable fees and expenses of Independent Counsel incurred in connection with any such determination. If a Change in Control shall have occurred, the Indemnitee shall be presumed (except as otherwise expressly provided in this Article VII) to be entitled to indemnification under this Article VII upon submission of a

request to the Corporation for indemnification, and thereafter the Corporation shall have the burden of proof in overcoming that presumption in reaching a determination contrary to that presumption. The presumption shall be used by Independent Counsel, or such other person or persons determining entitlement to indemnification, as a basis for a determination of entitlement to indemnification unless the Corporation provides information sufficient to overcome such presumption by clear and convincing evidence or the investigation, review and analysis of Independent Counsel or such other person or persons convinces him, her or them by clear and convincing evidence that the presumption should not apply.

Section 4. EFFECT OF CERTAIN PROCEEDINGS. The termination of any proceeding or of any claim in a proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Article VII) by itself adversely affect the right of an Indemnitee to indemnification or create a presumption that an Indemnitee did not conduct himself or herself in good faith and in a manner that he or she reasonably believed in the case of conduct in his or her official capacity, that was in the best interests of the Corporation or, in all other cases, that was not opposed to the best interests of the Corporation or, with respect to any criminal proceeding, that such Indemnitee had reasonable cause to believe that his or her conduct was unlawful and Indemnitee shall be deemed to have been found liable in respect of any claim only after he or she shall have been so adjudged by a court of competent jurisdiction in a final adjudication after the exhaustion of all appeals therefrom.

Section 5. EXPENSES OF ENFORCEMENT OF ARTICLE. In the event that an Indemnitee, pursuant to this Article VII, seeks a judicial adjudication to enforce his or her rights under, or to recover damages for breach of, rights created under or pursuant to this Article VII, such Indemnitee shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation against, any and all expenses actually and reasonably incurred by him or her in such judicial adjudication but only if he or she prevails therein. If it shall be determined in said judicial adjudication that such Indemnitee is entitled to receive part but not all of the indemnification or advancement of expenses sought, the expenses incurred by such Indemnitee in connection with such judicial adjudication shall be reasonably prorated in good faith by counsel for such Indemnitee. Notwithstanding the foregoing, if a Change in Control shall have occurred, an Indemnitee shall be entitled to indemnification under this Section 5 regardless of whether such Indemnitee ultimately prevails in such judicial adjudication.

Section 6. INSURANCE AND SELF-INSURANCE ARRANGEMENTS. The Corporation may procure or maintain insurance or other similar arrangements, at its expense, to protect itself and any Indemnitee against any expense, liability or loss asserted against or incurred by such person, incurred by him or her in such a capacity or arising out of his or her status as such a person, whether or not the Corporation would have the power to indemnify such person against such expense or liability. In considering the cost and availability of such insurance, the Corporation (through the exercise of the business judgment of its Directors and officers), may from time to time, purchase insurance which provides for any and all of (a) deductibles, (b) limits on payments required to be made by the insurer, or (c) coverage which may not be as comprehensive as that previously included in insurance purchased by the Corporation. The purchase of insurance with deductibles, limits on payments and coverage exclusions will be deemed to be in the best interest of the Corporation but may not be in the best

interest of certain of the persons covered thereby. As to the Corporation, purchasing insurance with deductibles, limits on payments, and coverage exclusions is similar to the Corporation's practice of self-insurance in other areas. In order to protect the Indemnitees who would otherwise be more fully or entirely covered under such policies, the Corporation shall indemnify and hold each of them harmless as provided in Section 1 of this Article VII, without regard to whether the Corporation would otherwise be entitled to indemnify such officer or director under the other provisions of this Article VII, or under any law, agreement, vote of shareholders or directors or other arrangement, to the extent (a) of such deductibles, (b) of amounts exceeding payments required to be made by an insurer or (c) that prior policies of officer's and director's liability insurance held by the Corporation or its predecessors would have provided for payment to such officer or director.

Section 7. SEVERABILITY. If any provision or provisions of this Article VII shall be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby; and, to the fullest extent possible, the provisions of this Article VII shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 8. DEFINITIONS. The following terms are used herein as follows:

"Capital Stock" means (i) in the case of a corporation, corporate stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock, (iii) in the case of a partnership, partnership interests (whether general or limited), (iv) in the case of a limited liability company, membership or other equity interests, and (v) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Change in Control" means the occurrence of any of the following: (i) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Corporation and its Subsidiaries taken as a whole, (ii) the adoption of a plan relating to the liquidation or dissolution of the Corporation, (iii) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" or group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the voting stock of the Corporation, or (iv) the first day on which a majority of the members of the Board of Directors of the Corporation are not Continuing Directors. For purposes of this definition, any transfer of an equity interest of an entity that was formed for the purpose of acquiring voting stock of the Corporation shall be deemed to be a transfer of such portion of such voting stock as corresponds to the portion of the equity of such entity that has been so transferred.

"Continuing Directors" means, as of any date of determination, any member of the Board of Directors of the Corporation who (i) was a member of such Board of Directors on July 27, 2017, or (ii) was nominated for election or elected to such Board of

Directors with the approval of at least two-thirds of Continuing Directors who were members of such Board at the time of such nomination or election.

"Corporate status" means the status of a person who is or was a director, officer, partner, employee, agent or fiduciary of the Corporation or of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Corporation.

"Disinterested Director" means a director of the Corporation who is not a named defendant or respondent to the proceeding or subject to a claim in respect of which indemnification is sought by Indemnitee.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder.

"Independent Counsel" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither contemporaneously is, nor in the five years theretofore has been, retained to represent: (a) the Corporation or an Indemnitee in any matter material to either such party, (b) any other party to the proceeding giving rise to a claim for indemnification hereunder or (c) the beneficial owner, directly or indirectly, of securities of the Corporation representing 10% or more of the combined voting power of the Corporation's then outstanding voting securities. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or an Indemnitee in an action to determine such Indemnitee's rights to indemnification under these Bylaws.

"Person" means any individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Subsidiary" means, with respect to any Person, (i) any corporation, limited liability company, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person (or a combination thereof) and (ii) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are such Person or of one or more Subsidiaries of such Person (or any combination thereof).

ARTICLE VIII
GENERAL PROVISIONS

Section 1. DISTRIBUTIONS AND SHARE DIVIDENDS. Subject to the provisions of the Articles of Incorporation relating thereto, if any, and the restrictions imposed by applicable law, distributions and/or share dividends on the Corporation's outstanding shares may be

declared from time to time by the Board of Directors or a Committee thereof, in its discretion, at any regular or special meeting, in accordance with applicable law.

Section 2. RESERVES. Before payment of any distribution or share dividend, the Board of Directors by resolution from time to time, in their absolute discretion, may create a reserve or reserves out of the Corporation's surplus, or designate or allocate any part or all of such surplus in any manner for any proper purpose, including, without limitation, a reserve or reserves for meeting contingencies, equalizing dividends, repairing or maintaining any property of the Corporation, or for such other purpose as the Directors deem beneficial to the interests of the Corporation, and the Board of Directors may modify or abolish any such reserve, designation or allocation in the manner in which it was created.

Section 3. CONTRACTS. Subject to the provisions of Article V, the Board of Directors may authorize any officer, officers, agent or agents to enter into any contract or agreement of any nature whatsoever, including, without limitation, any contract, deed, bond, mortgage, guaranty, deed of trust, security agreement, pledge agreement, act of pledge, collateral mortgage, collateral chattel mortgage or any other document or instrument of any nature whatsoever, and to execute and deliver any such contract, agreement, document or other instrument of any nature whatsoever for and in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 4. DEPOSITS. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors (or officers of the Corporation pursuant to delegated authority from the Board of Directors) may select.

Section 5. BOOKS AND RECORDS. The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders, Board of Directors and each committee of the Board of Directors, and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of the original issuance of shares issued by the Corporation and a record of each transfer of those shares that has been presented to the Corporation for registration of transfer. Such original issuance and transfer records shall contain the names and addresses of all past and current shareholders of the Corporation and the number and class or series of shares held by each. Any books, records, minutes and share transfer records may be in written form or in any other form capable of being converted into written form within a reasonable time.

Section 6. CHECKS. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 7. FISCAL YEAR. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 8. SEAL. The corporate seal of the Corporation shall be in such form as may be prescribed by the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

ARTICLE IX
BYLAWS

Section 1. AMENDMENTS. These Bylaws may be amended or repealed, or new Bylaws adopted (a) by the Board of Directors or (b) by the shareholders upon the affirmative vote of the holders of a majority of the outstanding shares of capital stock entitled to vote thereon. Notwithstanding the foregoing, the affirmative vote of the holders of 80% or more of the outstanding shares of capital stock entitled to vote thereon, shall be required to amend or repeal, or adopt any provision inconsistent with, the following provisions of the Bylaws of the Corporation: Article II, Sections 3, 4, 5, 9, 10 and 12, Article III, Section 2, Article IV, Section 1, and Article IX, Section 1.

Section 2. CONSTRUCTION. Whenever the context so requires, the masculine and feminine shall include the neuter, and the singular shall include the plural, and conversely. If any portion of these Bylaws shall be invalid or inoperative, then, so far as is reasonable and possible:

(a) The remainder of these Bylaws shall be considered valid and operative, and

(b) Effect shall be given to the intent manifested by the portion held invalid or inoperative.

References to the TBCA in sections referred to in the second sentence of Article IX, Section 1 shall be deemed to refer to the relevant provision(s) of the TBOC.

Section 3. TABLE OF CONTENTS: HEADINGS. The table of contents and headings are for organization, convenience and clarity. In interpreting these Bylaws, the table of contents and headings shall be subordinated in importance to the other written material.

I, the undersigned, being the Secretary of the Corporation DO HEREBY CERTIFY THAT the foregoing are the Amended and Restated Bylaws of said Corporation, as adopted by the Board of Directors of said Corporation on the 27 day of July 2017.

/s/ JESSICA GOLDMAN
Jessica Goldman

Corporate Secretary

EXHIBIT D
LIST OF CREDITORS

WAIVER REQUESTED BY EPE.

EXHIBIT E
LEGAL AND REGULATORY MATTERS

NOT USED.

EXHIBIT F
OPERATIONAL SAFETY MEASURES

PLEASE REFER TO EXHIBIT K, ATTACHMENT 2 (DIRECT TESTIMONY OF STEVEN T. BURACZYK).

EXHIBIT G
ENVIRONMENTAL SAFETY MEASURES

PLEASE REFER TO EXHIBIT K, ATTACHMENT 2 (DIRECT TESTIMONY OF STEVEN T. BURACZYK).

EXHIBIT H
POLE ATTACHMENT CONTRACTS

WAIVER REQUESTED BY EPE.

EXHIBIT I
EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

El Paso Electric

POLICY STATEMENT ON EQUAL EMPLOYMENT OPPORTUNITY

El Paso Electric Company (EPE) is dedicated to providing equal employment opportunities to all qualified persons in all areas of occupation without regard to age, disability status, national origin or ancestry, race, ethnicity, color, religion, sex, sexual orientation, gender identity, gender expression, workers' compensation status, veteran status, military service, genetic information, citizenship, or familial responsibilities. In addition, EPE is committed to complying with all relevant and applicable federal, state and local laws pertaining to equal employment opportunity and nondiscrimination in the workplace. This commitment extends to: hiring and firing; compensation; assignment or classification of employees; transfer, promotion, layoff, or recall; job advertisements; recruitment; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay; retirement plans; disability leave; or other terms and conditions of employment. EPE also maintains and monitors an Affirmative Action Program which assists EPE in ensuring fair access to employment opportunities and that its workforce reflects the available talent in EPE's culture rich communities.

HARASSMENT: Company employees are entitled to work in a respectful, safe, and professional environment, free of prohibited discrimination. EPE specifically prohibits harassment based on age, disability status, national origin or ancestry, race, ethnicity, color, religion, sex, sexual orientation, gender identity, gender expression, workers' compensation status, veteran status, military service, genetic information, citizenship, or familial responsibilities. Such harassment includes verbal or non-verbal conduct which is offensive and related to any of the foregoing characteristics. Any harassing conduct which is based on sex may also constitute sexual harassment, such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is so pervasive or severe it creates a hostile or offensive work environment. Employees who are subjected to (or have knowledge of) conduct prohibited under this policy should immediately report their complaints.

DISCRIMINATION COMPLAINTS: All discrimination complaints should be reported immediately using appropriate reporting channels including the Human Resources Department, Employee Relations, located at the Stanton Tower, 100 N. Stanton St., El Paso, TX 79901 at (915) 543-2056 or the Legal Department, Equal Opportunity Investigator at (915) 521-4659 and also located at the Stanton Tower, or to any member of management using the Company's Open Door Policy located in the Employee Handbook. Discrimination complaints may also be reported through the EthicsPoint Hotline listed below.

REMEDY/INTERVENTION: If a report of misconduct results in a finding that a violation of this policy has occurred, EPE will take prompt and appropriate action to stop the conduct/behavior which gave rise to the complaint. Intervention may include: removing employee(s) from the work site; training; disciplinary action; termination; or other appropriate action. Employees with knowledge of relevant facts are required to cooperate with EEO inquiries.

CONFIDENTIALITY: Even though EPE will safeguard information gained in processing a complaint, EPE will weigh legal requirements and other factors in making confidentiality determinations. Mutually-agreeable meeting locations and times may be arranged.

RETALIATION: EPE prohibits retaliation against an individual who has, in good faith, filed a charge of discrimination, participated in an investigation, or opposed/alleged discriminatory practices.

MANAGEMENT RESPONSIBILITY: Management is responsible for establishing a professional working environment free of discriminatory behavior. Disciplinary action may be taken against any employee who participates in, condones, or fails to address and report discriminatory matters in a timely manner.

CONSENSUAL RELATIONSHIPS: Consensual romantic relationships between employees where one employee directly or indirectly supervises the other, or where one employee is an officer of the Company, are prohibited and will result in discipline up to and including termination of employment.

ANONYMOUS REPORTING: In an effort to provide an avenue for employees and others to anonymously and confidentially report actual or suspected activities that may involve violations of the Code of Ethics, or other unlawful or inappropriate conduct, concerned individuals may also file an anonymous report via the internet at www.EthicsPoint.com, or by calling toll free at (866) 384-4277. In addition to EthicsPoint, anonymous complaints may also be sent directly to EPE's Human Resources or Legal Departments.

Compliance with anti-discrimination laws is mandated and is also a fundamental component of how EPE conducts business. With your help, we can all succeed in making EPE a healthy, safe and productive workplace.

EL PASO ELECTRIC COMPANY

Mary E. Kipp, Chief Executive Officer

EXHIBIT J
ADDITIONAL INFORMATION REQUESTED
BY CITY

Attachment 1 – Question II.I, EPE Monthly Construction Report for August 2019

Attachment 2 – Question II.L, Certificates of Insurance

Attachment 3 – Question III.D.1, Gross Receipts and Operating Expense Projections

Attachment 4 – Question V.C.3, Officer and Director Information

ATTACHMENT 1
EPE MONTHLY CONSTRUCTION REPORT
AUGUST 2019

Public Utility Commission of Texas

Project No. 49066

EL PASO ELECTRIC CO.
MONTHLY
TRANSMISSION CONSTRUCTION PROGRESS REPORT
AUGUST 2019

Utility's Project Number	Project Name	Location (City/County)	Description	Estimated (or Actual) Start Date	Finish Date (Construction Complete)	Date Energized (If Applicable)	Initial Estimated Project Cost ($)	Final Estimated Project Cost ($)	Final Actual Project Cost ($)	% Variance	Percent Complete	Existing Voltage (kV)	Upgraded or New Voltage (kV)	Circuit Length (Miles)	Conductor Type & Size & Bundling	Structure Type(s)	Existing ROW Width (Feet)	Existing ROW Length (Miles)	New ROW Width (Feet)	New ROW Length (Miles)	Rule Section or PUC Control Number	Comments
TL174	Copper - Lane 115kV Rebuild & Reconductor	El Paso, El Paso	EPE will replace approximately sixty-four 65' wooden monopole structures with 95' steel monopole structures along a 3.5 mile stretch of Interstate 10 between Lane and Copper Substations. In addition, conductor will be upgraded to 954 MCM ACSR. One new pole will be constructed off of the existing route due to encroaching residential development.	09/27/17	01/02/19	01/03/19	3,319,403	5,331,703	6,041,108	13%	100%	115	n/a	5.01	556 kcmil ACSR, single conductor, will be replaced with 954 kcmil ACSR	65'/70' wood single pole structures will be replaced with 95'-110' galvanized steel monopole structures; one corner self-supported structure on new route will be constructed	TxDOT permit	3.57	n/a	n/a	25.101(c)(5)(B) and (E)	
TL239	Reconductor Durazno to Ascarate 115kV transmission line	El Paso, El Paso	Reconductor the line to relieve overloading on the line. EPE will replace wood monopole structures with steel monopole structures to accommodate upgrade of wire to 954 ACSR	03/19/19	05/29/19	05/29/19	1,922,157	3,100,000			100%	115	n/a	3.5	556 ACSR conductor will be replaced with 954 ACSR single conductor	Replace wood monopole structures with 85'-105' steel monopoles.	varies and street ROW franchise	3.5	10	0.19	25.101(c)(5)(B)	Project completed.
TL247	TxDOT SL375 Interchange Improvements	El Paso, El Paso	Adjust 2-345kV transmission lines in two separate locations along SL375, Caliente to Amrad and Caliente to Picante, to accommodate the new eastbound and westbound frontage roads to be constructed by TxDOT. EPE will replace several poles on either side of SL375 with taller steel poles for each line.	09/30/19			3,248,413					345	n/a	1.10 each	954 ACSR corncrake double bundle conductor	Replace wood H-frame structures with 90'-125' steel H-frame or 3-pole structures.	300	1.10 each	n/a	n/a	25.101(c)(5)(F)	Pending execution of Utility Agreement by TxDOT
TL233	Nuway Project	El Paso, El Paso	This is a 2-phase project to allow for the construction of a new substation, Nuway, underneath two transmission lines. Phase 1 temporarily reroute the 115kV Montoya to Anthony and permanently reroute the 69kV Rio Grande to Border Steel presently on a double circuit steel monopole. Phase 2 complete the installation of the 115kV transmission line Montoya to Anthony which will cut into the new Nuway Substation.	03/25/18	03/31/18		687,000	1,200,000			90%	115 and 69	n/a	115kV-8.58 and 69kV-13.09	Both transmissions 795 ACSR single bundle	Temporarily install 2-95' steel structures to reroute the 115kV line to the east side of the substation. Permanently install an 85' steel double circuit monopole on the north and south side of the substation to continue with the 69kV and 115kV lines. Reroute the 69kV line to the west side of the substation on 2-85' single circuit monopoles. Once the substation is near completion, permanently install 2-85' single circuit monopoles for the 115kV line and tapping into Nuway Substation	50-100	115kV 8.58 and 69kV 13.09	n/a	n/a	25.101(c)(5)(A)	
TL247	TxDOT US 62/180 (Montana Ave) Expansion	El Paso, El Paso	Adjust three 115kV transmission lines out of Vista Substation to accommodate the road expansion of US 62/180 by TxDOT. Vista to Caliente, Vista to Global Reach and Vista to Scotsdale	03/04/19	04/08/19		757,233	960,000	903,510	-6%	100%	115	n/a	Vista Caliente - 6.64; Vista Global Reach - 2.96, Vista Scotsdale - 5.18	Vista Caliente - 795 ACSR, Vista Global Reach - 795 ACSS, Vista Scotsdale - 556 ACSR; all single bundle	Replace and relocate wood structures with steel self support, tangent, and h-frame structures. 2-105' h-frame, 1-105' monopole, 4 sets of 3-pole dead ends (65'-100')	100 and highway ROW	Vista Caliente - 6.64; Vista Global Reach - 2.96, Vista Scotsdale - 5.18	n/a	n/a	25.101(c)(5)(F)	Project completed April 8, 2019

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Public Utility Commission of Texas

Project No. 49066

EL PASO ELECTRIC CO.
MONTHLY
TRANSMISSION CONSTRUCTION PROGRESS REPORT
AUGUST 2019

Utility's Project Number	Project Name	Location (City/County)	Description	Estimated (or Actual) Start Date	Finish Date (Construction Complete)	Date Energized (If Applicable)	Initial Estimated Project Cost ($)	Final Estimated Project Cost ($)	Final Actual Project Cost ($)	% Variance	Percent Complete	Existing Voltage (kV)	Upgraded or New Voltage (kV)	Circuit Length (Miles)	Conductor Type & Size & Bundling	Structure Type(s)	Existing ROW Width (Feet)	Existing ROW Length (Miles)	New ROW Width (Feet)	New ROW Length (Miles)	Rule Section or PUC Control Number	Comments
TL247	TxDOT US 62/180 (Montana Ave) Expansion Accommodate Distribution Vista to Scotsdale	El Paso, El Paso	Install taller transmission structures on the Vista to Scotsdale 115kV line along Montana Ave to accommodate the distribution adjustments for the TxDOT highway expansion	04/01/19	06/13/19		300,185				100%	115	n/a	5.18	556 ACSR	Replace existing monopole structures with monopole tangent steel structures; heights vary from 75'-105'	Highway right of way	5.15	n/a	n/a	25.101(c)(5)(F)	
TL247	Vista to Caliente 115kV Transmission Line Adjustments	El Paso, El Paso	Due to the TxDOT US 62 (Montana) project, the removal of 2 existing span guy poles north of Montana that support the dead end structure holding the Vista-Caliente (VC) and Vista-Scotsdale (VS) 115 kV transmission lines affect the VC, VS, and Vista-Global Reach(VGR) 115kV line all the way back to Vista Substation. The VC line currently crossing under the VGR line, must be moved to the south side of the substation and repositioned to the east side of the corridor. The VGR will become a double circuit line and repositioned on the east side of the shifted VC line.	03/04/19			592,758				90%	115	n/a	1.5	795 ACSR single bundle	Install intermediate 95' monopoles	100	6.64	30	0.06	25.101(c)(5)(F)	
TL259	Sunset to Santa Fe 69kV line upgrade	El Paso, El Paso	Re-conductor the 69kV transmission line and replace all the wood structures to increase the capacity of the line. A total of 9 wood structures will be replaced with 75'-85' steel structures.	01/25/19	02/28/19	03/19/19	887,398	1,140,000	1,283,433	13%	100%	69	n/a	1.34	Replace 336 ACSR single bundle conductor with 954 ACSR single bundle conductor	Replace 9-65' wood poles with 3-75'-85' steel deadend structures on drill pier foundations and 6 75'-80' steel tangent structures	Along street right of way	1.34	n/a	n/a	25.101(c)(5)(B)	
TL236	Rio Grande to Sunset North 115kV transmission line tap into Executive Substation	El Paso, El Paso	Replace structures on the 15800 -115kV transmission line to tap into the new Executive Substation. Will create the Sunset North to Executive and Executive to Rio Grande 115kV lines	08/05/19			474,590				20%	115	n/a	0.1	556 ACSR double bundle; wire will not be replaced	Replace H-frame wood structures with 4-100' steel monopole tangents and install 2-85' deadend steel structures on drill pier foundations	50	0.1	n/a	n/a	25.101(c)(5)(A)	Foundations completed
TL247	TxDOT SL375 Interchange Improvements	El Paso, El Paso	Adjust 2-115kV transmission lines, Global Reach to Picante and Liberty to Bliss Industrial to accommodate the new eastbound and westbound frontage roads to be constructed by TxDOT. EPE will replace several poles on either side of SL375 with taller steel poles for each line.	09/30/19			1,350,545					115	n/a	0.34 each	954 ASCR single bundle	Each line install 2-100' tangent steel H-frame structures and 2-70' 3 pole steel deadend structures.	100	0.34 each	n/a	n/a	25.101(c)(5)(F)	Pending execution of Utility Agreement by TxDOT
TL101	Rio Grande to Sunset 69kV and Rio Grande to Sunset North 115kV transmission lines rebuild and reconductoring.	El Paso, El Paso	Rebuild two 69kV lines from Rio Grande to Sunset, and one 115kV line from Rio Grande to Sunset North, by upgrading the conductor and replacing existing wooden poles with one double-circuit and one single-circuit steel monopole line. One line will carry a 69kV line. The second line will carry a 69kV line and a 115kV double-bundle line.	07/31/19			22,888,944				10%	69 & 115	n/a	5.24-115kV & 10.04 - 69KV	69kV lines replace 336 and 556 ACSR single bundle conductor with 954 ACSR single bundle and replace the 115kV - 556 ACSR double bundle conductor with 954 ASCR double bundle	All steel structures varing between 75' to 120' in height; single circuit tangent structures, double circuit tangent monopoles, and drill pier foundation dead end	50'-100'	4.32-115kV & 9.12-69kV	n/a	n/a	25.101(c)(5)(B)	Majority of foundations completed; began installing structures.

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ATTACHMENT 2
CERTIFICATES OF INSURANCE

EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY): çñ î ñ ðï ç

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

PRODUCER NAME, CONTACT PERSON AND ADDRESS Ó¿®¸ É ±®¸¿³ ô ¿¼ª·-±² ±º Ó¿®¸ ËÍ ßô×²½ ÐÑ Þ±¨ ï í èè Ø±«-¬±² ôÌ È éé î ëï ð í èè Ó¿®¸ É ±®¸¿³ ô¿ ¼ª·-±² ±º Ó¿®¸ ËÍ ßô×²½ ©©©ò±®¸¿³ ²·-«®²½òð½³	PHONE (A/C, No, Ext): éï í ëî êá í êê
FAX (A/C, No): éï í ëî ï ð çëï	E-MAIL ADDRESS:
CODE:	SUB CODE:
AGENCY CUSTOMER ID #: ï ðÛÔÐßÍ ÑÛÔ	
NAMED INSURED AND ADDRESS Û´ Ð¿-± Û´»½¬®·½Ý±³ °¿²§ ß¬¬² æØòÈ¿§²» Ì ±¦¿ ÐðÑòÞ±¨ çëî Û´ Ð¿-± Ì È éççêðåçèî	
ADDITIONAL NAMED INSURED(S)	

COMPANY NAME AND ADDRESS Í »» ß¬¬¿½¸»¼	NAIC NO:
IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH	
POLICY TYPE	
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THIS REPLACES PRIOR EVIDENCE DATED:	

PROPERTY INFORMATION (ACORD 101 may be attached if more space is required) ☐ BUILDING OR ☐ BUSINESS PERSONAL PROPERTY

LOCATION / DESCRIPTION Ý±ª»®¿¹» ¿°°´·»- ¬± ¿´´ ´±½¿¬·±²- ±º ¬¸» ²¿³»¼ ·²-«®»¼

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

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CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

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ACORD®

ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

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ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: î è **FORM TITLE:** Û ª·¼»² ½» ±º Ý±³ ³ »®½·¿´ Ð®±° »®§ ×² ñ ê÷

ADDITIONAL INTEREST: Ý·§ ±º Û´ Ð¿± ôÌ »¨¿
ADDRESS:

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Commercial Property
INSURERS:
Policy No. PO5264307P - 41% part of 100%
AEGIS
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Policy No. 31106619GP - 15% part of 100%
Energy Insurance Mutual Ltd.
-----------------------------------------------------
Policy No.: ME1904379 - 18.75% part of 100%
Lloyd's Syndicate 1225, 1221, 2010, 0033, Helvetia Swiss Insurance Company in
Liechtenstein
-----------------------------------------------------
Policy No.: ME1904380 - 18.75% part of 100%
HDI Global Specialty SE UK Branch
------------------------------------------------------
Policy No. ME1904377 - 14.75% part of 100%
Lloyd's Syndicate 5000, 2121, 0382, 1301
------------------------------------------------------
Policy No. CLP3016768 - 7.50% part of 100%
Allianz Global Risks US Insurance Co
------------------------------------------------------
Policy No. FA001981420191 - 3.00% part of 100%
General Security Indemnity Co of AZ
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SUBLIMITS:
*FLOOD in a SPECIAL FLOOD HAZARD AREA: $25,000,000 in any one OCCURRENCE in the AGGREGATE
*Earth Movement, excluding HIGH HAZARD EARTH MOVEMENT ZONE

DEDUCTIBLES:

$250,000 per occurrence for all losses to Offices, Wind Turbines, Solar Panels and
Contractors Equipment except;
$1,500,000 per occurrence for all losses to Gas Turbine Generators;
$1,500,000 per occurrence for all losses to Equipment at Generating Locations including
GSU Transformers located at Copper, Newman, & Rio Grande Power Stations;
$1,500,000 per occurrence for all losses to Substations;
$ 250,000 per occurrence for all losses during Transit, except turbine generators which is
$1,500,000

Flood in a SPECIAL FLOOD HAZARD AREA - Power Generating Locations - deductible of 2.5% of
the Total Insured Value of the property located, whether wholly or partially, in a SPECIAL
FLOOD HAZARD AREA, subject to $1,500,000 minimum deductible except;

Flood in a SPECIAL FLOOD HAZARD AREA - Non-Power Generating Locations - deductible of 2.5%
of the Total Insured Value of the property located, whether wholly or partially, in a
SPECIAL FLOOD HAZARD AREA, subject to $250,000 minimum deductible except;

72 Hours per occurrence as respects Service Interruption
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ATTACHMENT

This certificate cancels and supersedes ALL previously issued certificates.

ATTACHMENT 3
GROSS RECEIPTS AND OPERATING EXPENSE PROJECTIONS

CONFIDENTIAL

[redacted]

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ATTACHMENT 4
OFFICER AND DIRECTOR INFORMATION

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EXHIBIT K
ADDITIONAL INFORMATION

<u>Introduction</u>

El Paso Electric Company ("EPE" or "Company") seeks the City of El Paso's (City) consent to the franchise assignment associated with Sun Jupiter Holdings LLC's ("Sun Jupiter") purchase of EPE (the "Proposed Transaction"). City Ordinance No. 16090, as amended by Ordinance Nos. 17460 and 18772, grants EPE "a franchise to construct, reconstruct, repair, maintain, use and operate in, over, or under the present and future streets, alleys, public ways, parks, and public places of the City of El Paso, facilities for the transmission and distribution of electrical energy and broadband over power line communications services for the use of the City and the inhabitants thereof and properties therein, with all usual and customary appurtenances for such transmission and distribution" for the term commencing August 2, 2005 and extending through July 31, 2060 (the "Franchise"). Section 14 of the Franchise, relating to assignments, requires consent of the governing body of the City in the event of "any merger or acquisition of the Company, sale of substantially all of the assets of the Company or change in control of the Company." The Proposed Transaction does not contemplate assigning EPE's Franchise to a new entity, but the Proposed Transaction involves a change-in-control and the sale of more than 50% of EPE's common stock. As such, EPE requests that the City consent to the Proposed Transaction and associated Franchise assignment within 60 days of this application.

<u>The Proposed Transaction</u>

The Proposed Transaction is a straightforward merger transaction, which will take place according to the provisions of the Agreement and Plan of Merger ("Merger Agreement") by and among Sun Jupiter, Sun Merger Sub Inc. ("Merger Sub"), and EPE. Pursuant to the Merger Agreement, Merger Sub will merge with and into EPE, with EPE continuing as the surviving corporation. As a result of the Proposed Transaction, EPE will become a direct wholly-owned subsidiary of Sun Jupiter and an indirect wholly-owned subsidiary of IIF US Holding 2 LP ("IIF US 2"), which is one of three master partnerships that holds the investments of the Infrastructure Investments Fund (referred to herein as "IIF"). The Proposed Transaction essentially results in IIF US 2, through its subsidiary Sun Jupiter, taking the place of the public shareholders that currently own EPE through an investment in the Company

IIF is a long-term private investment fund that invests capital provided by institutional investors (predominantly pension funds and insurance companies) (collectively, the "IIF Investors") into infrastructure companies in developed countries. IIF is not an actual entity; instead, it is an umbrella name for all of the fund's constituent entities, including its three master partnerships that hold all of IIF's investments. The IIF Investors invest into these three master partnerships, which in turn own interests in the IIF's "portfolio companies." owned by the three master partnerships. IIF US 2 is the master partnership that, as mentioned previously, will indirectly own EPE, thereby making EPE one of IIF's portfolio companies.

EPE's Board of Directors unanimously approved the Merger Agreement, and EPE expects the Proposed Transaction to close in the first half of 2020, subject to the receipt of regulatory approvals, and other customary closing conditions.

The Proposed Transaction will not Change EPE's Operations

Because IIF US 2 is simply stepping into the current public investors' shoes, EPE does not expect any changes in EPE's day-to-day operations. EPE will remain an independently-operated, investor-owned regulated utility headquartered in El Paso, Texas. As the Regulatory Commitments discussed herein demonstrate, IIF US 2 and EPE share the same vision for local job retention and growth, meaningful support of EPE's communities, and sustainable growth of EPE's renewable energy resources. EPE's focus will remain on providing safe and reliable energy to its customers at reasonable rates.

It is important to understand that the Proposed Transaction is simply a change in upstream ownership of EPE. The Proposed Transaction essentially results in Sun Jupiter directly taking the place of the public shareholders who own EPE today. The Proposed Transaction will provide EPE with enhanced access to capital and a long-term investment orientation that will provide the Company with an ever-greater focus on long-term results. In addition, the Proposed Transaction delivers other significant benefits to all stakeholders, including a rate credit to current customers, robust commitments to local communities, continuity of local EPE management and employees, a premium for shareholders, and financial integrity protections for EPE in the form of significant ring-fencing arrangements.

At closing, EPE's senior management will continue to have the same level of control over EPE's operations and will continue to reside in the Las Cruces, New Mexico, and El Paso, Texas, vicinity. EPE's local management will remain the point of contact for all regulatory, operational, and community engagement matters. The Proposed Transaction will not result in any adverse and material effect on EPE's utility operations, and EPE will continue to provide reliable electric service at just and reasonable rates.

Regulatory Commitments Provide Benefits and Ensure Continuity of EPE Operations

IIF US 2 and EPE have made numerous commitments that will benefit EPE, its customers, employees, and the communities it serves in connection with the Proposed Transaction ("Regulatory Commitments"). The Regulatory Commitments are set forth in Exhibit C to EPE's application for approval to the Public Utility Commission of Texas, which is attached to this Application.

- Forty-three specific Regulatory Commitments will provide significant benefits to EPE, its customers, employees, and the communities it serves, while also providing the necessary protections to assure that EPE remains an independent and locally managed utility and its customers are protected from any financial risks associated with the Proposed Transaction.

- The Proposed Transaction provides tangible and quantifiable benefits through a $21 million rate credit on electric bills to EPE's current customers (on a total company basis) over a three-year period. Customers will experience only a beneficial impact to rates compared to the status quo as a result of the Proposed Transaction, as EPE will apply this credit without corresponding recovery of transaction-related costs; and

- The Proposed Transaction establishes a 20-year, $100 million fund to support economic development in EPE's service territory, none of which will be recovered from EPE customers.

These Regulatory Commitments provide significant benefits to the community EPE serves. Customers will receive a rate credit and a substantial commitment is being made to support economic development. In addition, the Regulatory Commitments, in particular those regarding EPE's labor force and continued local control ensure that EPE will continue to operate as it currently does.

Franchise and Municipal Code Requirements

Section 14 of EPE's Franchise provides as follows:

> FRANCHISE
>
> Section 14. Assignment. (a) If the Company shall assign this Franchise to any other person or corporation (the "Assignee") acquiring and duly authorized to acquire, own and operate the Company's property and to carry on the Company's business as then conducted, the Assignee shall execute and deliver to the City an agreement in writing to be bound by all of the Company's obligations, liabilities and undertakings under this Franchise, the Assignee shall thereupon be deemed to be substituted for the Company, and the Company shall stand released from all obligations under this Franchise except such as have already accrued. If the Assignee fails to file such agreement within thirty (30) days after said assignment, this Franchise shall terminate.
>
> (b) This grant shall not be assignable without the express consent of the governing body of the City. Said consent shall be evidenced by an ordinance that fully recites the terms and conditions, if any, upon which such consent is given. If the governing body does not grant said consent then this Agreement shall terminate. In the context of this Agreement, consent is required in the event of any merger or acquisition of the Company, sale of substantially all of the assets of the Company or change in control of the Company. A formal assignment of the Franchise is required subsequent to merger or acquisition. "Change in Control" is defined to mean the occurrence of any of the following : (i)] the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries taken as a whole, (ii) the adoption of a plan relating to the liquidation or dissolution of the Company, (iii) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" or "group" (as such terms are defined in Sections 13(d)(3) and 14(d)(2) of the Exchange Act) becomes the "beneficial owner" (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly, or more than 50% of the voting stock of the Company, or (iv) the first day on which a majority of the members of the Board of Directors of the Company are not Continuing Directors. For purposes of this definition, any transfer of an equity interest of an entity that was formed for the purpose of acquiring voting stock of the Company

shall be deemed to be a transfer of such portion of such voting stock as corresponds to the portion of the equity of such entity that has been so transferred.

Although under the Proposed Transaction the Franchise is not being assigned to a new entity, the Proposed Transaction qualifies as a change in control under these provisions. Therefore, EPE must seek the City's consent.

In addition to the requirement for obtaining consent presented in the Franchise, the City's municipal code addresses the assignment of a franchise:

15.08.013 - Assignment of franchise.

A. Whenever a franchise by its terms requires the city council to approve assignment of a franchise to a third party, a franchisee and proposed assignee who wish to effectuate the assignment of a city-issued franchise shall submit to the city a written application requesting approval of the assignment of the franchise. The application packet may be obtained from the city clerk. The application shall be completed in its entirety prior to acceptance and consideration by the city. The franchise assignment application shall be verified by oath by both the franchisee, or the duly authorized representative of the franchisee, and the proposed assignee, or the duly authorized representative of the franchisee, and filed with two complete copies of the franchise assignment application and exhibits with the city clerk. The applicant shall, among other requirements, identify the nature of the proposed use of city rights-of-way, the nature of the applicant's business and organization, and the applicant's authorized representative. The city clerk shall forward one copy of the application to the office of the city attorney and one copy of the application to the city manager.

B. Any person who applies for city council approval of assignment of a franchise or any rights thereunder shall pay a nonrefundable franchise assignment application fee of five thousand dollars. Payment of the nonrefundable franchise assignment application fee does not guarantee that the application for assignment of the franchise will be approved by city council.

C. The city shall schedule a public hearing at which the city council shall receive evidence concerning, but not limited to, the following:

1. The proposed assignee's qualifications to render its proposed services;

2. The proposed assignee's qualifications to maintain the public rights-of-way adequately and safely;

3. The proposed assignee's financial responsibility and ability to meet the terms of the franchise; and

4. Any other relevant facts.

> D. At all times, the burden of proof shall be upon the proposed assignee to establish that the continued use of public rights-of-way is in the public interest, that the proposed assignee is a responsible business entity and that the proposed assignee is willing and capable of assuming the duties and responsibilities of the franchisee.
>
> E. The city council may approve the assignment and determine the terms and conditions by which it will be approved, or may refuse to approve the assignment based upon the evidence presented at the public hearing.

Request for Consent of Assignment of Franchise

EPE requests consent to the Proposed Transaction and associated Franchise assignment. As demonstrated by this application, EPE meets the requirements for the assignment of the Franchise under both the Franchise and the Municipal Code. Consistent with the requirement of the Franchise, attached as Attachment 1 to this Exhibit K is a statement by Adrian Rodriguez, Interim Chief Executive Officer of El Paso Electric Company, in which he states EPE's agreement in writing to be bound by all of the Company's obligations, liabilities and undertakings under this Franchise. As for the requirements of the municipal code, this filing constitutes EPE's submission of a complete application consistent with the form provided by the City Clerk, along with the required fee of $5,000. This application, which includes the attached application filed with Public Utility Commission of Texas meets the requirements to identify the nature of the proposed use of city rights-of-way, the nature of the applicant's business and organization, and the applicant's authorized representative. This franchise assignment application is verified by oath by a duly authorized representative of both the franchisee and the proposed assignee, which in this situation for both franchisee and assignee is EPE. See the Certification pursuant to Section VII to this Application.

Approval of this application will allow EPE to continue to provide service to the citizens of the City of El Paso, which EPE has done for over 100 years. This long history, as well as the information provided in this application including the public interest applications, demonstrate that EPE is qualified to maintain the public rights-of-way adequately and safely, is financially responsible, and has the ability to meet the terms of the franchise. This history and the information provided in this application also demonstrate that the continued use of public rights-of-way is in the public interest, that

EPE is a responsible business entity and that EPE is willing and capable of assuming the duties and responsibilities of the franchisee.

Request for Timely Review and Consideration

EPE requests that the City set this matter for hearing at its earliest convenience. EPE also request that the City consent to the Proposed Transaction and associated assignment of the Franchise to EPE (under new ownership) within 60 days of this filing, subject to final regulatory approval of the public interest applications.

ATTACHMENT 1
STATEMENT BY CEO

El Paso Electric Company (the "Company") agrees to be bound by all of the Company's obligations, liabilities, and undertakings under the franchise granted to the Company by the City of El Paso through City Ordinance No. 16090, as amended by Ordinance Nos. 17460 and 18772.

Adrian J. Rodriguez
Interim Chief Executive Officer

ACKNOWLEDGEMENT

STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this 20 day of September, 2019, by Adrian J. Rodriguez as Interim Chief Executive Officer, of El Paso Electric Company.

VALERIE J. PUGH
My Notary ID # 10712464
Expires December 9, 2020

Valerie J Pugh
Notary Public, State of Texas
Name Printed: Valerie J Pugh
My Commission Expires: 12-9-2020

ATTACHMENT 2
TEXAS PUBLIC INTEREST FILING

DOCKET NO. ______

JOINT REPORT AND APPLICATION OF EL PASO ELECTRIC COMPANY, SUN JUPITER HOLDINGS LLC, AND IIF US HOLDING 2 LP FOR REGULATORY APPROVALS UNDER PURA §§ 14.101, 39.262, AND 39.915	§ § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

JOINT REPORT AND APPLICATION OF EL PASO ELECTRIC COMPANY, SUN JUPITER HOLDINGS LLC, AND IIF US HOLDING 2 LP FOR REGULATORY APPROVALS UNDER PURA §§ 14.101, 39.262, AND 39.915

TABLE OF CONTENTS

EXHIBITS

Exhibit F	Proposed Protective Order
Exhibit G	Application for Sale, Transfer, or Merger Form

DOCKET NO. ______

JOINT REPORT AND APPLICATION OF EL PASO ELECTRIC COMPANY, SUN JUPITER HOLDINGS LLC, AND IIF US HOLDING 2 LP FOR REGULATORY APPROVALS UNDER PURA §§ 14.101, 39.262, AND 39.915	§ § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

JOINT REPORT AND APPLICATION OF EL PASO ELECTRIC COMPANY, SUN JUPITER HOLDINGS LLC, AND IIF US HOLDING 2 LP FOR REGULATORY APPROVALS UNDER PURA §§ 14.101, 39.262, AND 39.915

El Paso Electric Company ("EPE"), Sun Jupiter Holdings LLC ("Sun Jupiter"), and IIF US Holding 2 LP ("IIF US 2") (collectively, "Joint Applicants") file this Joint Report and Application ("Application") under Sections 14.101, 39.262(*l*)–(m), and 39.915 of the Public Utility Regulatory Act ("PURA").[1] Joint Applicants respectfully request that the Public Utility Commission of Texas ("Commission") find that Sun Jupiter's purchase of EPE (the "Proposed Transaction") meets PURA's standards for approval and is in the public interest. Joint Applicants further request the Commission approve the Regulatory Commitments described herein and listed in Exhibit C and find that these Regulatory Commitments support the Commission's public interest determination.

I. Introduction

On June 1, 2019, EPE, Sun Jupiter, and Sun Merger Sub Inc. ("Merger Sub") executed an Agreement and Plan of Merger ("Merger Agreement").[2] Under the Merger Agreement, Merger Sub will merge with and into EPE, with EPE continuing as the surviving corporation and retaining its current name. IIF US 2 will provide Sun Jupiter the equity necessary to complete the purchase of EPE and support the Regulatory Commitments. The Proposed Transaction essentially results in Sun Jupiter directly replacing EPE's public shareholders at closing, with IIF US 2 as the indirect sole shareholder of EPE.

In support of this Application, Joint Applicants provide:

- The Agreement and Plan of Merger attached as Exhibit A;
- Pre- and post-closing corporate structure charts attached as Exhibit B;

[1] Tex. Util. Code §§ 11.001–58.302, §§ 59.001–66.016 ("PURA").

[2] The Merger Agreement is attached as Exhibit A to the Application.

- The Joint Applicants' Regulatory Commitments attached as Exhibit C;
- The Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, attached as Exhibit D;
- A proposed form of Notice attached as Exhibit E;
- A proposed Protective Order attached as Exhibit F;
- The completed Commission Application for Sale, Transfer, or Merger form attached as Exhibit G; and
- The pre-filed, direct testimony of five witnesses—Nathan T. Hirschi (EPE), Steven T. Buraczyk (EPE), James A. Schichtl (EPE), Andrew E. Gilbert (Sun Jupiter and IIF US 2), and Ellen Lapson (Sun Jupiter and IIF US 2).

If the Commission approves the Proposed Transaction, EPE will remain an independently operated, locally managed, regulated utility headquartered in El Paso, Texas. The Proposed Transaction is straightforward, as are its benefits. To highlight a few:

- The Proposed Transaction provides a $21 million credit to current EPE customers on electric bills over 36 months;
- The Proposed Transaction establishes a 20-Year, $100 million Community Economic Sustainability Fund to support EPE's Texas and New Mexico service areas;
- The Proposed Transaction enhances EPE's ability to meet growing service area needs, including renewable energy and sustainability initiatives; and
- The Proposed Transaction ensures continuity of EPE's workforce.

II. Joint Applicants

A. El Paso Electric Company

EPE first began serving its customers in 1901. Initially, its primary business consisted of providing transportation via mule-drawn streetcars, which were replaced in 1902 with electric streetcars. By 1925, EPE's core business had evolved to producing and distributing electricity. That year, EPE was also granted authorization to transact business in New Mexico.

Today, EPE provides bundled electric service to approximately 429,000 retail and wholesale customers in a 10,000 square mile area of the Rio Grande Valley in west Texas and southern New Mexico. Its service territory extends from Hatch, New Mexico to Van Horn, Texas. EPE's principal industrial and large customers include a steel production facility; an oil refinery;

several medical centers; two large universities; and U.S. military installations, including Fort Bliss in Texas and the White Sands Missile Range and Holloman Air Force Base in New Mexico.

EPE takes pride in being an active corporate citizen in the communities it serves. Contributing to EPE's communities is an express part of its corporate mission statement, and as such, helps to define its corporate purpose and mold employees' actions.

B. Sun Jupiter Holdings LLC

Sun Jupiter is a newly created Delaware limited liability company formed solely for the purpose of entering into the Merger Agreement, completing the Proposed Transaction, and thereafter owning 100% of the equity interests in EPE. Sun Jupiter conducts no business activities other than its ownership of Merger Sub and will become the sole owner of EPE upon closing. Sun Jupiter is an indirect wholly-owned subsidiary of IIF US 2.

C. IIF US Holding 2 LP

IIF US 2 is a limited partnership organized under the laws of the state of Delaware. It is one of three master partnerships that constitute the "Infrastructure Investments Fund" ("IIF"), a long-term private investment fund that invests capital provided predominantly by institutional investors (such as pension funds and insurance companies) into infrastructure companies in developed countries.

As of June 30, 2019, IIF (through IIF US 2 and its two other master partnerships) owned a portfolio with a gross asset value of over $25 billion across 19 portfolio companies and 439 unique assets, diversified across 25 countries and 12 subsectors. IIF's net asset value as of that same date was approximately $12.2 billion. J.P. Morgan Investment Management, Inc.'s Infrastructure Investments Group provides investment advisory services to IIF. Andrew Gilbert provides further detail about IIF US 2's structure and management in his direct testimony accompanying this Application.

III. Proposed Transaction

The Proposed Transaction is a straightforward merger transaction, which will occur in accordance with the June 1, 2019 Merger Agreement, attached hereto as Exhibit A. Pursuant to the Merger Agreement, Merger Sub will merge with and into EPE, with EPE continuing as the surviving corporation. As a result of the Proposed Transaction, EPE will become a direct wholly-owned subsidiary of Sun Jupiter and, through IIF US 2, one of IIF's portfolio companies. Attached as Exhibit B to the Application is an organizational chart illustrating EPE's pre- and post-closing ownership structure.

Under the Proposed Transaction, shares held by EPE's shareholders immediately before the merger's effective date will be cancelled and converted into the right to receive $68.25 in cash per share without interest, and EPE's stock will be delisted from the NYSE. The per-share purchase price of $68.25 in cash represents an enterprise value of approximately $4.3 billion, including EPE's net debt, and is a 17% premium to EPE's unaffected closing price on May 31, 2019, the last trading day before the announcement of the Merger Agreement. Immediately following the merger effected by the Proposed Transaction, Sun Jupiter will own all the equity in EPE.

EPE's Board of Directors unanimously approved the Merger Agreement and recommended that the existing shareholders vote in favor of the Proposed Transaction. Joint Applicants expect the Proposed Transaction to close in the first half of 2020, subject to the approval of EPE's shareholders, the receipt of regulatory approvals (including the Commission), and other customary closing conditions.

IV. PURA and the Public Interest

The evidence supporting this Application demonstrates that the Proposed Transaction is in the public interest and, if approved, will substantially benefit EPE customers and the communities in EPE's service territory.

Under PURA §§ 39.262(*l*)–(m) and 39.915, the Proposed Transaction cannot close unless this Commission finds that it is in the public interest.[3] These provisions list three factors the Commission must consider: whether the Proposed Transaction will adversely affect the reliability, availability, or cost of service of the electric utility.[4]

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[3] PURA §§ 39.262(*l*)(3) and 39.915(a)(3) require a utility to report to, and obtain approval from, the Commission prior to the closing of a transaction in which "a controlling interest or operational control of the electric utility or transmission and distribution utility will be transferred." *See also* 16 Tex. Admin. Code § 25.74(a) ("TAC"). If the Commission finds that the transaction is in the public interest, the Commission shall approve the transaction. PURA §§ 39.262(m), 39.915(b).

[4] *See* PURA §§ 39.262(m), 39.915(b).

The Proposed Transaction is also subject to review under PURA § 14.101, which similarly instructs the Commission to consider whether a proposed acquisition is consistent with the public interest.[5] In making this determination, the Commission must consider whether the Proposed Transaction will result in the transfer of jobs to workers outside of Texas, adversely affect the health or safety of the utility's customers or employees, or result in a decline in service. The Commission must also consider the reasonable value of the property, facilities, or securities to be acquired, and whether the utility will receive consideration equal to the reasonable value of the assets when it sells, leases, or transfers assets.[6]

As demonstrated by the materials submitted with the Application, including the supporting testimony, the Proposed Transaction satisfies the applicable statutory criteria. The Proposed Transaction will not adversely affect the reliability, availability, or cost of EPE's service. Consistent with the Regulatory Commitments attached hereto as Exhibit C, EPE will see no changes to the day-to-day operations of the company. The Proposed Transaction contains real commitments to ensure stability for EPE's workforce, including union and non-union employees and management, following the Proposed Transaction. Joint Applicants are committed to continuing to fund the capital additions and improvements necessary to serve all of EPE's customers in a safe, reliable manner. Additionally, Joint Applicants have committed to not seek recovery of any costs associated with the Proposed Transaction and will also not seek recovery of the acquisition premium Sun Jupiter will pay to EPE's shareholders.

Similarly, the Proposed Transaction will not adversely affect the health or safety of EPE's customers or employees. After closing, the management team will remain headquartered in El Paso and no jobs will be transferred outside of Texas. Joint Applicants are committed to providing the safe, clean, affordable, and reliable electric service that customers and the Commission expect and deserve. The Proposed Transaction will not result in a decline in service as Joint Applicants have committed to funding EPE's current five-year capital expenditure plan and will not impose, as a result of the Proposed Transaction, any material workforce reduction for at least five years.

Finally, the purchase price is reasonable. Sun Jupiter will acquire EPE's common stock at a 17% premium over the existing book value and the pre-announcement market value after

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[5] *See* PURA § 14.101(a), (b). *See also* 16 TAC § 25.74(b).

[6] *See* PURA § 14.101(b).

participating in a robust and competitive bid process described in the Proxy Statement included as Exhibit D.

V. Tangible and Quantifiable Benefits to Customers

The evidence supporting this Application demonstrates that the Proposed Transaction will offer substantial benefit to EPE customers and the communities in EPE's service territory. First, current EPE customers will receive a direct $21 million credit and EPE's customers will not be responsible for the premium and transaction costs associated with EPE's acquisition. Joint Applicants' capital expenditure Regulatory Commitment will enhance EPE's ability to serve its customers and communities, including investment in renewable energy resources, local generation, and other infrastructure needs.

Further, the $100 million Community Economic Sustainability Fund, in combination with the job training and apprenticeship programs, contained in the Regulatory Commitments, will create jobs and long-term economic benefits in the region. Regional charities will continue to benefit from EPE's ongoing philanthropic efforts, low income customers will benefit from continuation and improvement of assistance programs, and regional minority-owned businesses will benefit from inclusion in EPE's supply chain.

VI. Requested Commission Approvals

Based on this Application and the supporting evidence, Joint Applicants respectfully request a Commission order finding that the Proposed Transaction meets PURA's applicable standards of approval and is in the public interest. In addition, Joint Applicants request the Commission approve the Regulatory Commitments listed in Exhibit C and find that these Regulatory Commitments support the Commission's public interest determination.

VII. Jurisdiction

The Commission has jurisdiction over this proceeding under PURA §§ 14.101, 39.262(*l*)–(m), and 39.915.

VIII. Potentially Affected Persons

Persons potentially affected by the Proposed Transaction include all those persons identified in Section IX regarding notice.

IX. Notice

Joint Applicants propose to provide notice of this filing by mailing a notice substantially in the form attached as Exhibit E to this Application by first class mail to: (1) all affected counties and municipalities; (2) all neighboring utilities and electric cooperatives of EPE; and (3) all authorized representatives for parties in Docket No. 46831, *Application of El Paso Electric Company to Change Rates*. Joint Applicants submit that this proposed notice complies with 16 TAC § 22.55, which requires "reasonable notice to affected persons."

X. Request for Protective Order

Attached to this Application as Exhibit F is the Commission's standard Protective Order pursuant to 16 TAC § 22.142(c) for the protection of materials associated with this proceeding containing privileged, confidential, competitively sensitive, proprietary trade secret data, and commercial and financial information. Joint Applicants request that the Commission issue this protective order and require all parties to adhere to its terms.

XI. Request for Commission Hearing

Given the importance of this filing, Joint Applicants respectfully request that the merits hearing, if any, be conducted by the Commissioners themselves.

XII. Designated Representatives and Service of Pleadings

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

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EPE's authorized legal representatives and designated recipients for service of pleadings and other documents are:

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Sun Jupiter and IIF US 2's designated legal and business representatives for purposes of this proceeding are:

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All pleadings, orders, discovery requests, and other matters related to this Application should be served on EPE via email and on Sun Jupiter and IIF US 2 by email at the email addresses listed above.

XIII. Conclusion and Prayer

Based on the Application and evidence in this proceeding, Joint Applicants respectfully request that the Commission:

(1) find that the Proposed Transaction is in the public interest in accordance with PURA §§ 14.101, 39.262(*l*)–(m), and 39.915 and is approved; and

(2) grant Joint Applicants any other necessary relief to which they are entitled.

Respectfully Submitted,

By: ______________________________

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ATTORNEYS FOR SUN JUPITER HOLDINGS LLC AND IIF US HOLDING 2 LP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been hand-delivered to Commission Staff and the Office of Public Utility Counsel on this the 13th day of August, 2019.

Sarah K. Merrick

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

by and among

EL PASO ELECTRIC COMPANY,

SUN JUPITER HOLDINGS LLC

and

SUN MERGER SUB INC.

Dated as of June 1, 2019

TABLE OF CONTENTS

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of June 1, 2019, is by and among El Paso Electric Company, a Texas corporation (the "Company"), Sun Jupiter Holdings LLC, a Delaware limited liability company (the "Parent"), and Sun Merger Sub Inc., a Texas corporation and wholly owned subsidiary of Parent ("Merger Sub" and, together with the Company and Parent, the "Parties").

RECITALS

WHEREAS, the Parties intend that, upon the terms and subject to the conditions set forth herein, at the Effective Time, Merger Sub will merge with and into the Company, with the Company surviving such merger (the "Merger"), in accordance with the Texas Business Organizations Code (the "TBOC");

WHEREAS, the board of directors of the Company (the "Company Board") has unanimously (a) determined that it is in the best interests of the Company and its shareholders, and has declared it advisable, for the Company to enter into this Agreement and to consummate the transactions contemplated hereby, including the Merger, (b) adopted and approved this Agreement and approved the Company's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the Merger, upon the terms and subject to the conditions set forth herein, in accordance with the TBOC, and (c) resolved to recommend the approval of the transactions contemplated hereby, including the Merger, to the Company's shareholders and directed that this Agreement be submitted to the Company's shareholders for approval at a duly held meeting of such shareholders for such purpose in accordance with the TBOC;

WHEREAS, the sole member of Parent has (a) determined that it is in the best interests of Parent and its member, and has declared it advisable, for Parent to enter into this Agreement and to consummate the transactions contemplated hereby and (b) adopted and approved this Agreement and approved Parent's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby upon the terms and subject to the conditions set forth herein, in accordance with the Delaware Limited Liability Company Act;

WHEREAS, the board of directors of Merger Sub has unanimously (a) determined that it is in the best interests of Merger Sub, and has declared it advisable, for Merger Sub to enter into this Agreement and to consummate the transactions contemplated hereby, including the Merger, (b) adopted and approved this Agreement and approved Merger Sub's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the Merger, upon the terms and subject to the conditions set forth herein, in accordance with the TBOC, and (c) resolved to recommend the approval of the transactions contemplated hereby, including the Merger, to Parent, as the sole shareholder of Merger Sub, and directed that this Agreement be submitted to Parent for approval in accordance with the TBOC;

WHEREAS, concurrently with the execution of this Agreement, and as a condition to the willingness of the Company to enter into this Agreement, IIF US Holding 2 LP, a Delaware limited partnership and an Affiliate of Parent and Merger Sub (the "Sponsor"), has entered into an Equity Commitment Agreement, dated as of the date hereof (the "Equity Commitment Agreement"), pursuant to which the Sponsor has agreed to provide funding to the Parent in the circumstances set forth therein;

WHEREAS, Parent has approved this Agreement and the transactions contemplated hereby by written consent in its capacity as the sole shareholder of Merger Sub; and

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements specified herein in connection with this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth herein, and subject to the conditions set forth herein, and each intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I

THE MERGER

SECTION 1.01 The Merger. At the Effective Time, upon the terms and subject to the conditions set forth herein, and in accordance with the relevant provisions of the TBOC, Merger Sub shall be merged with and into the Company, and the separate corporate existence of Merger Sub shall thereupon cease. The Company shall continue its existence under the Laws of the State of Texas as the surviving corporation in the Merger (sometimes referred to herein as the "Surviving Corporation") and a wholly owned subsidiary of Parent.

SECTION 1.02 The Effective Time. Upon the terms and subject to the conditions set forth herein, as soon as practicable on the Closing Date, the Company shall deliver to the Secretary of State of the State of Texas a certificate of merger with respect to the Merger, in such form as is required by, and executed in accordance with, the relevant provisions of the TBOC (the "Certificate of Merger"). The Merger shall become effective at the time the Certificate of Merger has been duly accepted for filing by the Secretary of State of the State of Texas in accordance with the TBOC or at such later time as is permissible in accordance with the TBOC and, as the Parties may mutually agree, as specified in the Certificate of Merger (the time the Merger becomes effective, the "Effective Time").

SECTION 1.03 The Closing. Unless this Agreement has been terminated in accordance with Section 8.01, the consummation of the Merger (the "Closing") shall take place at the offices of Baker Botts L.L.P., 910 Louisiana Street, Houston, Texas 77002 (or remotely via the electronic exchange of executed documents) at 9:00 a.m. Houston, Texas time on a date to be mutually agreed to by the Parties, which date shall be no later than the third (3^{rd}) Business Day after the satisfaction or waiver (to the extent such waiver is permitted by Law) of the conditions to the Closing set forth in Article VII (except for those conditions to the Closing that by their terms are to be satisfied at the Closing but subject to the satisfaction or waiver of such conditions), unless another time, date or place is mutually agreed to in writing by the Parties. The date on which the Closing occurs is referred to herein as the "Closing Date."

SECTION 1.04 Effects of the Merger. The Merger shall have the effects specified herein and in the applicable provisions of the TBOC. Without limiting the foregoing, from and after the Effective Time, the Surviving Corporation shall possess all of the properties, rights, privileges, powers and franchises of the Company and Merger Sub, and all of the claims, obligations, liabilities, debts and duties of the Company and Merger Sub shall become the claims, obligations, liabilities, debts and duties of the Surviving Corporation.

SECTION 1.05 Surviving Corporation Organizational Documents. As of the Effective Time, the articles of incorporation of the Surviving Corporation shall be amended and restated to be the same as the certificate of formation of Merger Sub, as in effect immediately prior to the Effective Time, until thereafter amended as provided therein and in accordance with applicable Law, except that the name of the Surviving Corporation shall be "El Paso Electric Company". As of the Effective Time, the bylaws of the Surviving Corporation shall be amended and restated to be the same as the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, until thereafter amended as provided therein and in accordance with applicable Law, except that the name of the Surviving Corporation shall be "El Paso Electric Company".

SECTION 1.06 Surviving Corporation Directors and Officers. As of the Effective Time, (a) the directors of Merger Sub as of immediately prior to the Effective Time shall be the directors of the Surviving Corporation and (b) the officers of the Company as of immediately prior to the Effective Time shall be the officers of the Surviving Corporation, in each case until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the certificate of formation and bylaws of the Surviving Corporation.

SECTION 1.07 Plan of Merger. This Article I and Article II and, solely to the extent necessary under the TBOC, the other provisions of this Agreement shall constitute a "plan of merger" for purposes of the TBOC. Subject to the terms and conditions of this Agreement, the Parties agree to cooperate and to take all reasonable actions prior to the Effective Time, including executing all requisite documentation, as may be reasonably necessary to effect the Merger in accordance with the terms and conditions hereof.

ARTICLE II

MERGER CONSIDERATION; EXCHANGE OF CERTIFICATES AND BOOK-ENTRY SHARES

SECTION 2.01 Merger Consideration.

At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof:

(a) Conversion of Company Common Stock. Subject to Sections 2.03 and 2.04, and except as otherwise provided by paragraphs (b) and (c) of this Section 2.01, each share of common stock, no par value, of the Company ("Company Common Stock") issued and outstanding immediately prior to the Effective Time, other than the Treasury Shares to be cancelled in accordance with Section 2.01(c) and the Dissenting Shares to be cancelled in accordance with Section 2.01(f), shall automatically be converted into, and shall thereafter represent solely, the right to receive cash in the amount of $68.25, without interest (the "Merger Consideration").

(b) Equitable Adjustment. If at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of the Company (or any other securities convertible therefor or exchangeable thereto) shall occur as a result of any reclassification, recapitalization, stock split (including a reverse stock split), combination, subdivision, exchange or readjustment of shares, or any stock dividend or stock distribution with a record date during such period, or any similar event, in each case, other than pursuant to the transactions contemplated by this Agreement, the Merger Consideration and any other similarly dependent items shall be equitably adjusted to provide to the holders of shares of Company Common Stock the same economic effect as contemplated by this Agreement prior to such action; provided, however, that nothing in this Section 2.01(b) shall be deemed to authorize or permit the Company to effect any such change that is not otherwise specifically authorized or permitted by this Agreement.

(c) Treasury Shares. All Treasury Shares shall be canceled automatically and retired at the Effective Time, and no consideration shall be issued in exchange therefor.

(d) Outstanding Parent Interests. All membership interests of Parent issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding and unaffected by the Merger.

(e) Outstanding Common Stock of Merger Sub. Each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one share of common stock of the Surviving Corporation and shall constitute the only outstanding shares of capital stock of the Surviving Corporation.

(f) Dissenting Shares. At the Effective Time, each Dissenting Share shall cease to be outstanding, be cancelled without payment of any consideration therefor and shall cease to exist, subject to any rights the holder thereof may have pursuant to Section 2.05 and the TBOC.

SECTION 2.02 Rights as Shareholders; Share Transfers. At the Effective Time, except as set forth in Section 2.05, holders of shares of Company Common Stock shall cease to be, and shall have no rights as, shareholders of the Company, other than (a) to receive any dividend or other distribution with respect to such shares of Company Common Stock with a record date occurring prior to the Effective Time and (b) to receive the consideration provided under this Article II.

SECTION 2.03 Exchange and Payment Procedures.

(a) Exchange Agent. Prior to the Closing Date, Parent shall appoint a bank or trust company to act as paying and exchange agent reasonably acceptable to the Company (the "Exchange Agent") for the purpose of exchanging shares of Company Common Stock for the Merger Consideration in accordance with Section 2.01(a). At or prior to the Effective Time, Parent shall deposit or cause to be deposited with the Exchange Agent, in trust for the benefit of the holders of shares of Company Common Stock contemplated by Section 2.01(a), an aggregate amount of cash sufficient to deliver the aggregate amount of the Merger Consideration. All such cash shall hereinafter be referred to as the "Exchange Fund."

(b) Payment Procedures.

(i) Promptly after the Effective Time (but no later than three (3) Business Days after the Effective Time), the Exchange Agent will mail to each holder of record of a certificate representing outstanding shares of Company Common Stock immediately prior to the Effective Time (a "Certificate") and to each holder of uncertificated shares of Company Common Stock represented by book entry immediately prior to the Effective Time ("Book-Entry Shares"), in each case, whose shares were converted into the right to receive the Merger Consideration pursuant to Section 2.01(a):

(1) a letter of transmittal, which shall specify that delivery shall be effected, and that risk of loss and title to Certificates or Book-Entry Shares held by such holder will pass, only upon proper delivery of such Certificates or Book-Entry Shares to the Exchange Agent in accordance with the procedures set forth in the letter of transmittal and which shall be in form and substance reasonably satisfactory to Parent and the Company; and

(2) instructions for use in effecting the surrender of such Certificates or Book-Entry Shares in exchange for the Merger Consideration with respect to such shares;

provided, however, with respect to each holder whose shares cease to be Dissenting Shares following the Effective Time pursuant to Section 2.05, Parent shall instruct the Exchange Agent promptly after the date on which Parent becomes aware that such Dissenting Shares have ceased to be Dissenting Shares to mail to such holder the letter of transmittal and instructions referred to above with respect to such shares.

(ii) Upon surrender to, and acceptance in accordance with Section 2.03(b)(iii) by, the Exchange Agent of a Certificate or Book-Entry Share together with the letter of transmittal, if applicable, duly completed and validly executed in accordance with the instructions thereto, the holder thereof will be entitled to the Merger Consideration payable in respect of the number of shares of Company Common Stock formerly represented by such Certificate or Book-Entry Share surrendered under this Agreement.

(iii) The Exchange Agent will accept Certificates or Book-Entry Shares upon compliance with such reasonable terms and conditions as the Exchange

Agent may impose to effect an orderly exchange of the Certificates and Book-Entry Shares in accordance with customary exchange practices.

(iv) From and after the Effective Time, no further transfers may be made on the records of the Company or its transfer agent of Certificates or Book-Entry Shares, and if any Certificate or Book-Entry Share is presented to the Company for transfer, such Certificate or Book-Entry Share shall be canceled against delivery of the Merger Consideration payable in respect of the shares of Company Common Stock represented by such Certificate or Book-Entry Share.

(v) If any Merger Consideration is to be remitted to a name other than that in which a Certificate or Book-Entry Share is registered, no Merger Consideration may be paid in exchange for such surrendered Certificate or Book-Entry Share unless:

(1) either (A) the Certificate so surrendered is properly endorsed, with signature guaranteed, or otherwise in proper form for transfer or (B) the Book-Entry Share is properly transferred; and

(2) the Person requesting such payment shall (A) pay any transfer or other Taxes required by reason of the payment to a Person other than the registered holder of the Certificate or Book-Entry Share or (B) establish to the satisfaction of the Exchange Agent that such Taxes have been paid or are not payable.

(vi) At any time after the Effective Time until surrendered as contemplated by this Section 2.03, each Certificate or Book-Entry Share shall be deemed to represent only the right to receive upon such surrender the Merger Consideration payable in respect of the shares of Company Common Stock represented by such Certificate or Book-Entry Share as contemplated by Section 2.01(a). No interest will be paid or accrued for the benefit of holders of Certificates or Book-Entry Shares on the Merger Consideration payable in respect of the shares of Company Common Stock represented by Certificates or Book-Entry Shares.

(c) No Further Ownership Rights in Company Common Stock.

(i) At the Effective Time, each holder of a Certificate, and each holder of Book-Entry Shares, will cease to have any rights with respect to such shares of Company Common Stock, except, to the extent provided by Section 2.02, for the right to receive the Merger Consideration payable in respect of the shares of Company Common Stock formerly represented by such Certificate or Book-Entry Shares upon surrender of such Certificate or Book-Entry Share in accordance with Section 2.03(b);

(ii) The Merger Consideration paid upon the surrender or exchange of Certificates or Book-Entry Shares in accordance with this Section 2.03 will be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Common Stock formerly represented by such Certificates or Book-Entry Shares.

(d) Termination of Exchange Fund. The Exchange Agent will deliver to the Surviving Corporation, upon the Surviving Corporation's demand, any portion of the Exchange Fund (including any interest and other income received by the Exchange Agent in respect of all such funds) which remains undistributed to the former holders of Certificates or Book-Entry Shares upon expiration of the period ending one (1) year after the Effective Time. Thereafter, any former holder of Certificates or Book-Entry Shares prior to the Merger who has not complied with this Section 2.03 prior to such time, may look only to the Surviving Corporation for payment of his, her or its claim for Merger Consideration to which such holder may be entitled.

(e) No Liability. None of Parent, the Company, the Exchange Agent or the Surviving Corporation shall be liable to any former holder of shares of Company Common Stock for any payment of the Merger Consideration delivered to a public official if required by any applicable abandoned property, escheat or similar Law. Any portion of the Exchange Fund remaining unclaimed by holders of shares of Company Common Stock as of a date that is immediately prior to such time as such amounts would otherwise escheat to or become property of any Governmental Entity will, to the extent not prohibited by applicable Law, become the property of Parent, free and clear of all or any claims or interest of any Person previously entitled thereto.

(f) Withholding Taxes. Each of Parent, the Surviving Corporation and the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of Certificates, Book-Entry Shares, Company Restricted Stock, Company Performance Stock or Company Unpaid Performance Stock such amounts for Taxes as may be required to be deducted and withheld with respect to the making of such payment under applicable Tax Law. Amounts so deducted and withheld shall be promptly paid over to the appropriate taxing authority and shall be treated for all purposes under this Agreement as having been paid to the holder of Certificates, Book-Entry Shares, Company Restricted Stock, Company Performance Stock or Company Unpaid Performance Stock, as applicable, in respect of which such deduction or withholding was made. Parent, the Surviving Corporation or the Exchange Agent, as relevant, shall reasonably cooperate in good faith to establish or obtain any exemption from or reduction in the amount of any withholding that otherwise would be required.

(g) Waiver. The Surviving Corporation may from time to time, in the case of one or more Persons, waive one or more of the rights provided to it in this Article II to withhold certain payments, deliveries and distributions; and no such waiver shall constitute a waiver of its rights thereafter to withhold any such payment, delivery or distribution in the case of any Person.

(h) Lost, Stolen or Destroyed Certificates. If any Certificate formerly representing shares of Company Common Stock has been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent, the posting by such Person of a bond, in such reasonable and customary amount as Parent may direct, as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent shall deliver and pay, in exchange for such lost, stolen or destroyed certificate, the Merger Consideration payable in respect thereof pursuant to this Agreement.

(i) Investment of Exchange Fund. The Exchange Agent shall invest any cash in the Exchange Fund if and as directed by Parent; provided that such investment shall be in obligations of, or guaranteed by, the United States, in commercial paper obligations of issuers organized under the Law of a state of the United States, rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's Ratings Service, respectively, or in certificates of deposit, bank repurchase agreements or bankers' acceptances of commercial banks with capital exceeding $10,000,000,000, or in mutual funds investing in such assets. Any interest and other income resulting from such investments shall be paid to, and be the property of, Parent. No investment losses resulting from the Exchange Fund shall diminish the rights of any holders of shares of Company Common Stock, Company Restricted Stock, Company Performance Stock or Company Unpaid Performance Stock to receive the Merger Consideration or any other payment as provided herein. To the extent there are losses with respect to such investments or the Exchange Fund diminishes for any other reason below the level required to make prompt cash payment of the aggregate funds required to be paid pursuant to the terms hereof, Parent shall reasonably promptly replace or restore the cash in the Exchange Fund so as to ensure that the Exchange Fund is at all times maintained at a level sufficient to make such cash payments.

SECTION 2.04 Equity Awards. At or prior to the Effective Time, the Company shall take such actions as are necessary (including obtaining any resolutions of the Company Board or, if appropriate, any committee thereof administering the Company Stock Plan) to effect the following:

(a) Company Restricted Stock. Immediately prior to the Effective Time, each share of Company Restricted Stock that is outstanding and unvested immediately prior to the Effective Time shall be cancelled as of the Effective Time and converted into a vested right to receive cash in an amount equal to the Merger Consideration, subject to any withholding Taxes required by Law to be withheld in accordance with Section 2.03(f). In each case, payment with respect to any Company Restricted Stock shall be made within five (5) Business Days after the Closing Date.

(b) Company Unpaid Performance Stock. Immediately prior to the Effective Time, each share of Company Unpaid Performance Stock that is unvested immediately prior to the Effective Time shall be cancelled as of the Effective Time and converted into a vested right to receive cash in an amount equal to the Merger Consideration, with the number of vested shares of Company Unpaid Performance Stock to be the number determined in accordance with the performance criteria as provided in the applicable award agreement, subject to any withholding Taxes required by Law to be withheld in accordance with Section 2.03(f). In each case, payment with respect to any Company

Unpaid Performance Stock shall be made within five (5) Business Days after the Closing Date.

(c) Company Performance Stock. Immediately prior to the Effective Time, each share of Company Performance Stock that is unvested immediately prior to the Effective Time shall be cancelled as of the Effective Time and converted into a vested right to receive cash in an amount equal to the Merger Consideration, with the number of vested shares of Company Performance Stock to be the greater of (1) the number determined in accordance with the performance criteria as otherwise provided in the applicable award agreement and as if the performance period ended as of the last Business Day immediately preceding the Closing Date and (2) the target award as provided in the applicable award agreement, subject to any withholding Taxes required by Law to be withheld in accordance with Section 2.03(f). In each case, payment with respect to any Company Performance Stock shall be made within five (5) Business Days after the Closing Date.

(d) Termination of Company Stock Plan. Effective as of the Effective Time, the Company Stock Plan shall be terminated and no further shares of Company Restricted Stock or Company Performance Stock shall be granted thereunder.

SECTION 2.05 Dissenting Shares. Notwithstanding anything to the contrary contained in this Agreement, any shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time and which are held by holders who shall have complied with the provisions of Chapter 10, Subchapter H of the TBOC prior to the Effective Time (the "Dissenting Shares") shall not be converted into the right to receive the Merger Consideration in accordance with this Article II, and holders of such Dissenting Shares shall be entitled to only those rights and remedies set forth in Chapter 10, Subchapter H of the TBOC; provided, however, in the event the applicable holder fails to comply with the provisions of Chapter 10, Subchapter H of the TBOC or effectively withdraws or otherwise loses such holder's rights or remedies under Chapter 10, Subchapter H of the TBOC, such Dissenting Shares shall thereupon be treated as if they had been converted at the Effective Time into the right to receive the Merger Consideration in accordance with this Article II. The Company shall give Parent prompt notice of any written demands for appraisal of shares of the Company Common Stock received by the Company under Chapter 10, Subchapter H of the TBOC, and shall give Parent the opportunity to devise and implement strategy for, and participate in, all negotiations and proceedings with respect to such demands. The Company shall not, except with the prior written consent of Parent, schedule any meeting or make any payment with respect to any such demands for appraisal or offer to settle or settle any such demands.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except (a) as set forth in the Company Reports publicly available and filed with or furnished to the SEC from January 1, 2017 to the date of this Agreement (excluding any disclosures of factors or risks contained or references therein under the captions "Risk Factors" or "Forward-Looking Statements" and any other statements that are predictive, cautionary or forward-looking in nature (provided, however, that any disclosure in any such Company Report shall not qualify the representations and warranties in Section 3.01, Section 3.03, Section 3.04, Section 3.05, Section 3.15(a), Section 3.19(a), Section 3.20 and Section 3.21 and in the first sentence of each of Section 3.09(a) and Section 3.17(a))) or (b) subject to Section 9.04(k), as set forth in the corresponding section of the disclosure letter delivered by the Company to Parent concurrently with the execution and delivery by the Company of this Agreement (the "Company Disclosure Letter"), the Company represents and warrants to Parent and Merger Sub as follows:

SECTION 3.01 Organization, Standing and Power. The Company is duly organized, validly existing and in active status or good standing, as applicable, under the Laws of the State of Texas. The Company has all requisite entity power and authority to enable it to own, operate, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted, except where the failure to have such power or authority would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company is duly qualified or licensed to do business and in good standing in New Mexico and in each jurisdiction where the nature of its business or the ownership, operation or leasing of its properties make such qualification necessary, except in any such jurisdiction (other than New Mexico) where the failure to be so qualified or licensed would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company has made available to Parent true and complete copies of the amended and restated articles of incorporation of the Company in effect as of the date of this Agreement (the "Company Articles") and the amended and restated bylaws of the Company in effect as of the date of this Agreement (the "Company Bylaws").

SECTION 3.02 No Subsidiaries. The Company has no Subsidiaries and does not own any capital stock or voting securities of, or other equity interests in, any Person. The Company is not a party to any Contract with respect to the formation of any Subsidiary or the acquisition by the Company of any capital stock or voting securities of, or other equity interests in, any Person.

SECTION 3.03 Capital Structure.

(a) The authorized capital stock of the Company consists of 102,000,000 shares of which 100,000,000 shares is Company Common Stock, no par value and 2,000,000 shares is preferred stock, no par value (the "Preferred Stock"). At the close of business on May 31, 2019, (i) 64,281,761 shares of Company Common Stock were issued and outstanding, (ii) no shares of Preferred Stock were issued and outstanding, (iii) 23,666,005 shares of Company Common Stock were held by the Company in its treasury, (iv) Company Restricted Stock with respect to an aggregate of 146,927 shares of Company Common Stock were issued and outstanding, (v) Company Performance Stock with respect to an aggregate of 139,389 shares of Company Common Stock based on achievement of applicable performance criteria at target level were granted, (vi) Company Unpaid Performance Stock with respect to an aggregate of zero shares of Company Common Stock based on achievement of applicable performance criteria at actual results were granted and (vii) Company Performance Stock with respect to an aggregate of 278,778 shares of Company Common Stock based on achievement of applicable performance criteria at maximum level were granted. At the close of business on May 31, 2019, an aggregate of 1,172,313 shares of Company Common Stock were available for issuance pursuant to the Company Stock Plan.

(b) All outstanding shares of Company Common Stock are, and all shares of Company Common Stock that may be issued upon the settlement of Company Restricted Stock, Company Performance Stock, and Company Unpaid Performance Stock will be, when issued, duly authorized, validly issued, fully paid and nonassessable and not subject to, or issued in violation of, any preemptive or similar right. Except as set forth in this Section 3.03 or as set forth in Section 3.03 or Section 5.01(a)(v) of the Company Disclosure Letter, there are not issued, reserved for issuance or outstanding, and there are not any outstanding obligations of the Company to issue, deliver or sell, or cause to be issued, delivered or sold, (i) any capital stock of the Company or any securities of the Company convertible into or exchangeable or exercisable for shares of capital stock or voting securities of, or other equity interests in, the Company or (ii) any warrants, calls, options, "phantom" equity rights, equity appreciation rights, profit participation rights, equity-based performance units, commitments, Contracts, arrangements or undertakings of any kind, or other rights to acquire from the Company, or any security convertible or exercisable for or exchangeable into any capital stock of or other equity interest in, the Company or any Company Voting Debt, or any interests based on the value of equity interests in the Company, or any other obligation of the Company to issue, deliver or sell, or cause to be issued, delivered or sold, any capital stock or voting securities of, or other equity interests in, the Company (the foregoing clauses (i) and (ii), collectively, "Equity Securities"). Except pursuant to the Company Stock Plan, there are not any outstanding obligations of the Company to repurchase, redeem or otherwise acquire any Equity Securities. There is no outstanding Indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which shareholders of the Company may vote ("Company Voting Debt"). There are no proxies, voting trusts or other agreements or understandings to which the Company is a party to or is bound with respect to the voting or registration of any capital stock or voting securities of, or other equity interests in, the Company.

SECTION 3.04 Authority; Execution and Delivery; Enforceability. The Company has all requisite corporate power and authority to execute and deliver this Agreement, to perform its covenants and agreements hereunder and to consummate the transactions contemplated hereby, including the Merger, subject, in the case of the Merger, to the receipt of the Company Shareholder Approval. The Company Board has unanimously adopted resolutions, at a meeting duly called at which a quorum of directors of the Company was present, (a) determining that it is in the best interests of the Company and its shareholders, and declaring it advisable, for the Company to enter into this Agreement, (b) adopting this Agreement and approving the Company's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated thereby, and (c) resolving to recommend that the Company's shareholders approve this Agreement (the "Company Board Recommendation") and directing that this Agreement be submitted to the Company's shareholders for approval at a duly held meeting of such shareholders for such purpose (the "Company Shareholders Meeting"). Such resolutions have not been amended or withdrawn as of the date of this Agreement. Except for (i) the approval of this Agreement by the affirmative vote of the holders of shares of Company Common Stock of at least two-thirds of all of the outstanding shares of Company Common

Stock entitled to vote at the Company Shareholders Meeting (the "Company Shareholder Approval") and (ii) the filing of the Certificate of Merger as required by the TBOC, no other vote or corporate proceedings on the part of the Company or its shareholders are necessary to authorize, adopt or approve this Agreement or to consummate the transactions contemplated hereby, including the Merger. The Company has duly executed and delivered this Agreement and, assuming the due authorization, execution and delivery by Parent and Merger Sub, this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject in all respects to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other Laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at law) (the "Bankruptcy and Equity Exceptions").

SECTION 3.05 No Conflicts; Consents.

(a) The execution and delivery by the Company of this Agreement does not, and the performance by the Company of its covenants and agreements hereunder and the consummation of the transactions contemplated hereby, including the Merger, will not, (i) subject, solely with respect to the consummation of the transactions contemplated hereby, to obtaining the Company Shareholder Approval, conflict with, or result in any violation of any provision of, the Company Articles or the Company Bylaws, (ii) subject to obtaining the Consents set forth in Section 3.05(a)(ii) of the Company Disclosure Letter (the "Company Required Consents"), conflict with, result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or result in the creation of any pledges, liens, charges, mortgages, encumbrances and security interests of any kind or nature whatsoever (collectively, "Liens") upon any of the properties or assets of the Company pursuant to, any Contract to which the Company is a party or by which any of its properties or assets are bound or any Permit applicable to the business of the Company or (iii) subject to obtaining the Company Shareholder Approval and the Consents referred to in Section 3.05(b) and making the Filings referred to in Section 3.05(b), conflict with, or result in any violation of any provision of, any Judgment or Law, in each case, applicable to the Company or its properties or assets, except for, in the case of the foregoing clauses (ii) and (iii), any matter that would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and would not prevent or materially impede, interfere with or delay the consummation of the transactions contemplated hereby, including the Merger.

(b) No consent, waiver or Permit ("Consent") of or from, or registration, declaration, notice, submission or filing ("Filing") made to or with, any Governmental Entity is required to be obtained or made by the Company or any Affiliate of the Company in connection with the Company's execution and delivery of this Agreement or its performance of its covenants and agreements hereunder or the consummation of the transactions contemplated hereby, including the Merger, except for the following:

(i) (A) the filing with the Securities and Exchange Commission (the "SEC"), in preliminary and definitive form, of the Proxy Statement and (B) the filing with the SEC of such reports under, and such other compliance with, the Securities Exchange Act of 1934, as amended (together with the rules and regulations of the SEC promulgated thereunder, the "Exchange Act"), or the Securities Act of 1933, as amended (together with the rules and regulations of the SEC promulgated thereunder, the "Securities Act"), in each case as may be required in connection with this Agreement or the Merger;

(ii) compliance with, Filings under and the expiration or termination of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder (the "HSR Act");

(iii) the filing of the Certificate of Merger with the Secretary of State of the State of Texas and appropriate documents with the relevant authorities of the other jurisdictions in which the Company is qualified to do business;

(iv) (A) the Filings with, and the Consent of, the Federal Energy Regulatory Commission (the "FERC") under Section 203 of the Federal Power Act (the "FPA"), (B) the Filings with, and the Consent of, the U.S. Nuclear Regulatory Commission (the "NRC"), (C) the Filings with, and the Consents of, the Governmental Entities set forth in Section 3.05(b)(iv)(C) of the Company Disclosure Letter, (D) the other Filings and Consents set forth in Section 3.05(b)(iv)(D) of the Company Disclosure Letter and (E) the other Filings and Consents set forth in Section 3.05(b)(iv)(E) of the Company Disclosure Letter (the Filings and Consents set forth in the Section 3.05(b)(iv)(E) of the Company Disclosure Letter, collectively, the "Additional Approvals", and the Filings and Consents set forth in Section 3.05(b)(ii) and this Section 3.05(b)(iv), collectively, the "Company Required Approvals");

(v) the Company Required Consents, as applicable;

(vi) compliance with and filings required under the rules and regulations of the NYSE;

(vii) such Filings and Consents as are required to be made or obtained under state or federal property transfer Laws or Environmental Laws as set forth in Section 3.05(b)(vii) of the Company Disclosure Letter; and

(viii) such other Filings and Consents the failure of which to make or obtain would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and would not prevent or materially impede, interfere with or delay the consummation of the Merger.

SECTION 3.06 Company Reports; Financial Statements.

(a) The Company has furnished or filed all reports, schedules, forms, statements and other documents (including exhibits and other information incorporated therein) required to be furnished or filed by the Company with the SEC since January 1, 2017 (such documents, together with all exhibits, financial statements, including the Company Financial Statements, and schedules thereto and all information incorporated therein by reference, but excluding the Proxy Statement, being collectively referred to as the "Company Reports"). Each Company Report (i) at the time furnished or filed, complied in all material respects with the applicable requirements of the Exchange Act, the Securities Act or the Sarbanes-Oxley Act of 2002 (including the rules and regulations promulgated thereunder), as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such Company Report and (ii) did not at the time it was filed (or if amended or superseded by a filing or amendment prior to the date of this Agreement, then at the time of such filing or amendment) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that no representation is made as to the accuracy of any financial projections or forward-looking statements. Each of the financial statements of the Company included in the Company Reports (the "Company Financial Statements") complied at the time it was filed as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, was prepared in accordance with United States generally accepted accounting principles ("GAAP") (except, in the case of unaudited quarterly financial statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods and as of the dates involved (except as may be indicated in the notes thereto) and fairly presents in all material respects, in accordance with GAAP, the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods shown (subject, in the case of unaudited quarterly financial statements, to normal year-end audit adjustments and any other adjustments stated therein or in the notes thereto). (i) To the Knowledge of the Company, none of the Company Reports is the subject of ongoing SEC review or an outstanding SEC investigation and (ii) there are no outstanding or unresolved comments received from the SEC with respect to any of the Company Reports, or any resolved comments received from the SEC that have not yet been reflected in the Company Reports.

(b) The Company does not have any liability of any nature that is required by GAAP to be set forth on a balance sheet of the Company, except liabilities (i) reflected or reserved against in the most recent balance sheet (including the notes thereto) of the Company included in the Company Reports filed prior to the date hereof, (ii) incurred in the ordinary course of business after December 31, 2018, (iii) incurred in connection with the Merger or any other transaction or agreement contemplated by this Agreement or (iv) that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) The Company maintains a system of "internal control over financial reporting" (as defined in Rule 13a-15(f) or 15d-15(f), as applicable, under the Exchange Act). Such internal control over financial reporting is effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP in all material respects. The Company maintains "disclosure controls and procedures" required by Rule 13a-15(e) or 15d-15(e) under the Exchange Act that are effective in all material respects to ensure that information required to be disclosed by the Company in the reports it files or furnishes under the Exchange Act is recorded, processed, summarized and reported on a timely basis to the individuals responsible for the preparation of the Company's filings with the SEC and other public disclosure documents. The Company has disclosed, based on its most recent evaluation prior to the date of this Agreement, to the Company's outside auditors and the audit committee of the Company Board (i) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (ii) any fraud, known to the Company, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting, and each such deficiency, weakness of fraud so disclosed, if any, has been disclosed to Parent in writing prior to the date of this Agreement.

(d) At all applicable times, the Company has complied in all material respects with the applicable provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations thereunder, as amended from time to time. The shares of Company Common Stock are listed on the NYSE, and, at all applicable times, the Company has complied in all material respects with the applicable listing and corporate governance requirements of the NYSE.

SECTION 3.07 Absence of Certain Changes or Events.

(a) From January 1, 2019 to the date of this Agreement, the Company has conducted its business in the ordinary course of business in all material respects.

(b) From January 1, 2019 to the date of this Agreement, there has not occurred any fact, circumstance, effect, change, event or development that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

SECTION 3.08 Taxes.

(a) (i) The Company has timely filed, taking into account all valid extensions, all material Tax Returns required to have been filed and such Tax Returns are true, accurate and complete in all material respects, and (ii) all material Taxes have been timely paid in full (whether or not shown or required to be shown as due on any Tax Return) except for Taxes that are being contested in good faith or that have been adequately provided for, in accordance with GAAP, in the Company Financial Statements.

(b) All material Tax withholding and deposit requirements imposed on or with respect to the Company have been satisfied.

(c) (i) No audit, examination, investigation or other proceeding is pending with, or has been threatened in writing by, any Governmental Entity with respect to any material amount of unpaid Taxes asserted against the Company, in each case which have not been fully paid or settled, and (ii) the Company has not granted any waiver of any statute of limitations with respect to, or any extension of a period for the assessment of, any material Tax which has not yet expired (excluding extensions of time to file Tax Returns obtained in the ordinary course).

(d) (i) The Company did not have any liabilities for material unpaid Taxes as of the date of the latest balance sheet included in the Company Financial Statements that had not been accrued or reserved on such balance sheet in accordance with GAAP, and (ii) the Company has not incurred any material liability for Taxes since the date of the latest balance sheet included in the Company Financial Statements except in the ordinary course of business.

(e) The Company does not have any liability for material Taxes of any Person arising from the application of Treasury Regulations Section 1.1502-6 or any analogous provision of state, local or foreign Law, as a transferee or successor or by contract.

(f) The Company is not a party to or is otherwise bound by any Tax sharing, allocation or indemnification agreement or arrangement, except for such an agreement or arrangement (i) with customers, vendors, lessors or other third parties entered into in the ordinary course of business and not primarily related to Taxes or (ii) that as of the Closing Date will be terminated without any further payments being required to be made.

(g) Within the past three (3) years, the Company has not been a "distributing corporation" or a "controlled corporation" in a distribution intended to qualify for tax-free treatment under Section 355 of the Code.

(h) The Company has not participated in any "listed transaction" as defined in Treasury Regulations Section 1.6011-4(b)(2) or Treasury Regulations Section 301.6111-2(b) in any Tax year for which the statute of limitations has not expired.

(i) There are no Liens on any of the assets of the Company that arose in connection with any failure (or alleged failure) to pay any material Tax (excluding Taxes that are being contested in good faith for which adequate reserves have been provided in accordance with GAAP).

(j) The Company does not have any material Tax rulings, requests for rulings, closing agreements or other similar agreements in effect or filed with any Governmental Entity.

(k) The Company will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for a taxable period ending after the Closing Date as a result of any (i) adjustment pursuant to Section 481 of the Code (or any analogous provision of state, local or foreign Law) for a taxable period on or before the Closing Date, (ii) "closing agreement" as described in Section 7121 of the Code (or any analogous provision of state, local or foreign Law) executed on or prior to the Closing Date, (iii) installment sale, intercompany transaction or open transaction disposition made on or prior to the Closing Date, (iv) prepaid amount received on or prior to the Closing Date, or (v) election by the Company under Section 108(i) of the Code (or any similar provision of state, local or foreign Law).

(l) Except to the extent Section 3.09 relates to Taxes, the representations and warranties contained in this Section 3.08 are the sole and exclusive representations and warranties of the Company relating to Taxes, and no other representation or warranty of the Company contained herein shall be construed to relate to Taxes.

SECTION 3.09 Employee Benefits.

(a) Section 3.09(a) of the Company Disclosure Letter sets forth a complete and accurate list, as of the date of this Agreement, of each material Company Benefit Plan and each material Company Benefit Agreement.

(b) With respect to each material Company Benefit Plan and material Company Benefit Agreement, the Company has made available to Parent, to the extent applicable, complete and accurate copies of (i) the governing document (or, if such arrangement is not in writing, a written description of the material terms thereof), including any amendment thereto and any summary plan description thereof, (ii) each trust, insurance, annuity or other funding Contract related thereto, (iii) the most recent audited financial statement and actuarial or other valuation report prepared with respect thereto, (iv) the most recent annual report on Form 5500 required to be filed with the Internal Revenue Service (the "IRS") with respect thereto and (v) the most recently received IRS determination letter or, if applicable, current IRS opinion or advisory letter (as to qualified plan status). No Company Benefit Plan or Company Benefit Agreement is maintained outside the jurisdiction of the United States or covers any Company Personnel residing or working outside of the United States.

(c) Except as, individually or in the aggregate, has not had and would not reasonably be expected to have a Company Material Adverse Effect, (i) each Company Benefit Plan and each Company Benefit Agreement has been maintained in compliance with its terms and with the requirements prescribed by ERISA, the Code and all other applicable Laws, (ii) there are no pending or, to the Knowledge of the Company, threatened proceedings or claims against any Company Benefit Plan or Company Benefit Agreement or any fiduciary thereof, or the Company with respect to any Company Benefit Plan or Company Benefit Agreement and (iii) all contributions, reimbursements, premium payments and other payments required to be made by the Company or any Company Commonly Controlled Entity to any Company Benefit Plan or Company Benefit Agreement have been made on or before their applicable due dates. Except as, individually or in the aggregate, has not had and would not reasonably be expected to have a Company Material Adverse Effect, neither the Company nor any Company Commonly Controlled Entity has engaged in, and to the Knowledge of the Company, there has not been, any non-exempt transaction prohibited by ERISA or by Section 4975 of the Code with respect to any Company Benefit Plan or Company Benefit Agreement or their related trusts that would reasonably be expected to result in a liability of the Company or a Company Commonly Controlled Entity. No Company Benefit Plan or Company Benefit Agreement is under audit or is the subject of a material administrative proceeding by the IRS, the Department of Labor, or any other Governmental Entity, nor is any such audit or other material administrative proceeding, to the Knowledge of the Company, threatened.

(d) Section 3.09(d)(i) of the Company Disclosure Letter sets forth each Company Benefit Plan and Company Benefit Agreement that is subject to Section 302 or Title IV of ERISA or Section 412, 430 or 4971 of the Code. Except as provided in Section 3.09(d)(ii) of the Company Disclosure Letter, no Company Benefit Plan or Company Benefit Agreement is a Multiemployer Plan and neither the Company nor any Company Commonly Controlled Entity has contributed to or been obligated to contribute to any such plan within the six years preceding this Agreement. Except for matters that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any Company Commonly Controlled Entity has incurred any Controlled Group Liability (as defined below) that has not been satisfied in full nor do any circumstances exist that could reasonably be expected to give rise to any Controlled Group Liability (except for the payment of premiums to the Pension Benefit Guaranty Corporation). For the purposes of this Agreement, "Controlled Group Liability" means any and all liabilities (i) under Title IV of ERISA, (ii) under Section 302 of ERISA, (iii) under Sections 412, 430 and 4971 of the Code or (iv) as a result of the failure to comply with the continuation of coverage requirements of Section 601 *et seq.* of ERISA and Section 4980B of the Code.

(e) Each Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and such plan has received a currently effective favorable determination letter or, if applicable, current opinion or advisory letter to that effect from the IRS.

(f) In connection with the consummation of the Merger, no payments of money or property, acceleration of benefits, or provisions of other rights have or will be made hereunder or under the Company Benefit Plans or Company Benefit Agreement which, in the aggregate, would or would be reasonably likely to result in imposition of the sanctions imposed under Sections 280G and 4999 of the Code, whether or not some other action or event would be required to cause such payment, acceleration or provision to be triggered. No Person is entitled to receive any additional payment (including any tax gross-up or other payment) from the Company as a result of the imposition of Taxes required by Section 4999 of the Code.

(g) The consummation of the transactions contemplated by this Agreement, whether alone or together with any other event, will not entitle any Company Personnel to any payment or benefit or accelerate the time of payment or vesting of or increase the amount of compensation or benefits due any Company Personnel.

(h) No Company Benefit Plan or Company Benefit Agreement that is a "welfare benefit plan" within the meaning of ERISA provides benefits in respect of Company Personnel beyond their retirement or other termination of service, other than coverage mandated solely by applicable Law.

(i) The representations and warranties contained in this Section 3.09 are the sole and exclusive representations and warranties of the Company relating to Company Benefit Plans or Company Benefit Agreements (including their compliance with any applicable Law) or ERISA, and no other representation or warranty of the Company contained herein shall be construed to relate to Company Benefit Plans or Company Benefit Agreements (including their compliance with any applicable Law) or ERISA.

SECTION 3.10 Labor and Employment Matters. Except for the Company Union Contracts, the Company is not a party to, or bound by, or in the process of negotiating, any collective bargaining agreement or similar labor union Contract with respect to any of its employees. Except for employees covered by a Company Union Contract, no employees of the Company are represented by any other labor union with respect to their employment with the Company. There are no labor union representation or certification proceedings with respect to employees of the Company pending or threatened in writing to be brought or filed with the National Labor Relations Board, and there are no, and since January 1, 2017 there have been no, labor union organizing activities with respect to any employees of the Company. Since January 1, 2017, there have been no labor union strikes, slowdowns, work stoppages or lockouts or other material labor disputes pending or threatened in writing against or affecting the Company. Except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, since January 1, 2017, the Company has complied and is in compliance with all Company Union Contracts and applicable Laws pertaining to employment or labor matters, including but not limited to all laws relating to labor relations, unfair labor practices, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, employee classification, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave, whistleblowing, and unemployment insurance. Since January 1, 2017, the Company has not engaged in any action that will require any notifications under the Workers Adjustment and Retraining Notification Act and comparable local, state, and federal Laws (the "WARN Act"). Except as would not, or would not reasonably be expected to, individually or in the aggregate, result in material liability to the Company, there are no Claims or investigations pending or, to the Knowledge of the Company, threatened by or on behalf of any employee of the Company, that relate to employment or labor matters. Except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, all employees of the Company classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified as exempt.

SECTION 3.11 Litigation. There is no Claim before any Governmental Entity pending or, to the Knowledge of the Company, threatened against the Company that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or that would reasonably be expected to prevent or materially delay the ability of the Company to consummate the Merger by the End Date. There is no Judgment outstanding against or, to the Knowledge of the Company, investigation by any Governmental Entity of the Company or any of its properties or assets that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. This Section 3.11 does not relate to Taxes; Company Benefit Plans or Company Benefit Agreements (including their compliance with any applicable Law) or ERISA; Environmental Permits, Environmental Laws, Environmental Claims, Releases, Hazardous Materials or other environmental matters; or Intellectual Property, which are addressed in Sections 3.08, 3.09, 3.14 and 3.17, respectively.

SECTION 3.12 Compliance with Applicable Laws; Permits. Except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (a) the Company is, and at all times since January 1, 2017, has been, in compliance with all applicable Laws (including Anti-Corruption Laws) and all Permits applicable to the business and operations of the Company, and (b) the Company holds, and is in compliance with, all Permits required by Law for the conduct of its business as it is now being conducted. Since January 1, 2017, the Company has not received any written notice or notification, or to the Knowledge of the Company, any other communication from any Governmental Entity regarding any actual or possible violation of, or failure to comply with, any applicable Law, except where such violations or non-compliance would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, all Permits held by the Company are valid and in full force and effect. No suspension, cancellation, non-renewal, or adverse modifications of any Permits of the Company is pending or, to the Knowledge of the Company, threatened, except for any such suspension or cancellation which would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. None of the Company, or, to the Knowledge of the Company, its directors, officers, employees, agents or representatives: (i) is a Designated Person, (ii) is a Person that is owned or controlled by a Designated Person; (iii) is located, organized or resident in a Sanctioned Country; or (iv) has or is now, in connection with the business of the Company, engaged in, any dealings or transactions (A) with any Designated Person, (B) in any Sanctioned Country, or (C) otherwise in material violation of Sanctions. For at least the previous five (5) years, the Company has maintained and implemented policies, procedures and controls to ensure compliance with all Anti-Corruption Laws applicable to the Company. This Section 3.12 does not relate to Taxes; Company Benefit Plans or Company Benefit Agreements (including their compliance with any applicable Law) or ERISA; Environmental Permits, Environmental Laws, Environmental Claims, Releases, Hazardous Materials or other environmental matters; or Intellectual Property, which are addressed in Sections 3.08, 3.09, 3.14 and 3.17, respectively.

SECTION 3.13 Takeover Statutes. Assuming the accuracy of Section 4.09, the Company Board has taken all actions necessary to render inapplicable to this Agreement, the Merger and the other transactions contemplated hereby all applicable state anti-takeover statutes or regulations and all takeover-related provisions set forth in the Company Articles or Company Bylaws, including Section 21.606 of the TBOC, in each case to the extent, if any, such restrictions would otherwise be applicable to this Agreement, the Merger and the other transactions contemplated hereby. Subject to the foregoing, and assuming the accuracy of Section 4.09, no “business combination,” “control share acquisition,” “fair price,” “moratorium” or other anti-takeover Law (each, a “Takeover Statute”) or any similar anti-takeover provision in the Company Articles or Company Bylaws applies or purports to apply to this Agreement or the transactions contemplated hereby.

SECTION 3.14 Environmental Matters.

(a) Except for matters that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(i) the Company is and at all times since January 1, 2016, has been, in compliance with all Environmental Laws, and, except for matters that have been fully resolved, the Company has not received any written communication from a Governmental Entity or other Person that alleges that the Company is in violation of any Environmental Law or any Permit issued pursuant to Environmental Law (an "Environmental Permit");

(ii) with respect to all Environmental Permits necessary to conduct the operations of the Company as currently conducted, (1) the Company has obtained, or has filed timely applications for, all such Environmental Permits, (2) all such Environmental Permits are valid and in good standing, (3) the Company has not received notice from any Governmental Entity seeking to modify, revoke or terminate, any such Environmental Permits, (4) no appeal nor any other action is pending to terminate, revoke or modify any such Environmental Permits and (5) no such Environmental Permits will be subject to substantial modification, termination or revocation as a result of the transactions contemplated by this Agreement, and to the Knowledge of the Company, there are no facts, circumstances or conditions that could reasonably be expected to result in any such Environmental Claims;

(iii) the Company is not subject to any Judgment pursuant to Environmental Law or with respect to Hazardous Materials;

(iv) there are no Environmental Claims pending or, to the Knowledge of the Company, threatened in writing against the Company that have not been fully and finally resolved;

(v) to the Knowledge of the Company, there are and have been no Releases of any Hazardous Materials on, at, under or from any property currently or formerly owned, leased or operated by the Company that would reasonably be expected to form the basis of any Environmental Claim against the Company;

(vi) the Company has not transported or arranged for the transportation of any Hazardous Materials generated by the Company to any location which is listed on the National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or on any similar state list, or which is the subject of federal, state or local enforcement actions or other investigations that would reasonably be expected to form the basis of any Environmental Claim against the Company; and

(vii) the Company has not assumed, retained or agreed to provide indemnification by Contract with respect to any liabilities of any other Person pursuant to Environmental Laws, except as set forth in any Contracts with a Governmental Entity.

(b) The representations and warranties contained in this Section 3.14 are the sole and exclusive representations and warranties of the Company relating to Environmental Permits, Environmental Laws, Environmental Claims, Releases, Hazardous Materials or other environmental matters, and no other representation or warranty of the Company contained herein shall be construed to relate to Environmental Permits, Environmental Laws, Environmental Claims, Releases, Hazardous Materials or other environmental matters.

SECTION 3.15 Contracts.

(a) Except for the Contracts filed as exhibits to any Company Report, or set forth in Section 3.15(a) of the Company Disclosure Letter, as of the date hereof, the Company is not a party to, and none of its properties or assets is bound by any of the following categories of Contracts (each such Contract required to be filed as an exhibit to any Company Report or listed in Section 3.15(a) of the Company Disclosure Letter, a "Company Contract"):

(i) any Contract required to be filed by the Company as a "material contract" pursuant to Item 601(b)(10) of Regulation S-K under the Securities Act that has not been so filed;

(ii) any Contract to which the Company is a party that (a) restricts the ability of the Company to engage in or compete in any business in any manner that is material to the Company, (b) requires the Company to conduct any business on a "most favored nations" basis with any third party that restricts in any material respect the business of the Company, or (c) provides for "exclusivity," rights of first refusal or offer or any similar requirement or right in favor of any third party that restricts in any material respect the business of the Company;

(iii) any Contract to which the Company is a party that provides for payments to or from the Company in excess of $50,000,000 in the aggregate after the date of this Agreement (other than (A) Contracts for transportation or storage of gas, transportation of coal, transmission of electric energy, capacity or ancillary services sales, (B) Contracts for future purchases, exchange or sales of gas, coal, oil or electric energy and (C) financial derivative interest rate hedges);

(iv) any Contract creating, guaranteeing or securing Indebtedness for borrowed money of the Company in excess of $25,000,000;

(v) any material Contract with respect to the creation, formation, governance or control of any material partnerships, joint ventures or joint ownership arrangements with third parties;

(vi) any Contract that (A) relates to the acquisition of assets (other than in the ordinary course of business) or capital stock or other securities (by merger, capital contribution or otherwise) of any Person after the date of this Agreement with a total consideration of more than $25,000,000 in the aggregate, (B) relates to the disposition (other than in the ordinary course of business) after the date of this Agreement, directly or indirectly, of assets of the Company with a total consideration of more than $25,000,000 in the aggregate or any capital stock or other securities (by merger, capital contribution or otherwise) of the Company or (C) contains a put, call, right of first refusal or similar right pursuant to which the Company could be required to purchase or sell, as applicable, any of the foregoing;

(vii) any Contract that requires the Company to make any advance, loan or commitment therefor or provide any credit support for or any capital contribution to, or other investment in, any Person (other than the Company) in excess of $25,000,000;

(viii) any Contract that otherwise limits or restricts the payment or dividends or distributions in respect of the capital stock or equity interests of the Company;

(ix) any Contract entered into since January 1, 2017 that relates to the sale, transfer or other disposition of a business or assets by the Company pursuant to which the Company has any continuing indemnification, guarantee, "earnout" or other contingent, deferred or fixed payment obligations that would reasonably be expected to result in aggregate payments in excess of $25,000,000;

(x) any Contract with a term exceeding one (1) year after the date of this Agreement for future purchases, exchange or sales of gas, oil or electric energy in excess of $50,000,000 in the aggregate after the date of this Agreement;

(xi) any Contract with a term exceeding one (1) year after the date of this Agreement for future thermal energy sales, transmission of electric energy, capacity or ancillary services sales in excess of $100,000,000 in the aggregate after the date of this Agreement;

(xii) any Contract with a Governmental Entity, other than any Contract relating to real property or franchise agreements, that provides for payments to or from the Company in excess of $25,000,000;

(xiii) any Company Union Contract;

(xiv) any material Contract relating to the Palo Verde Generating Station; and

(xv) any Contract with a term exceeding one (1) year after the date of this Agreement which is a financial derivative interest rate hedge with a value in excess of $10,000,000.

(b) Except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) each Company Contract is a valid, binding and legally enforceable obligation of the Company and, to the Knowledge of the Company, of the other parties thereto, subject in all respects to the Bankruptcy and Equity Exceptions, (ii) each such Company Contract is in full force and effect with respect to the Company and, to the Knowledge of the Company, with respect to the other parties thereto and (iii) as of the date hereof, the Company is not (with or without notice or lapse of time, or both) in breach or default under any such Company Contract and, to the Knowledge of the Company, no other party to any such Company Contract is (with or without notice or lapse of time, or both) in breach or default thereunder. The Company has not received written notice of (x) any violation or default under any Company Contract or (y) any termination or threatened termination of any Company Contract, except for violations, defaults or terminations that would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company has made available to Parent true and complete copies of each Company Contract (including, for the avoidance of doubt, all material amendments, modifications, extensions, or renewals with respect thereto).

SECTION 3.16 Property. Except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company has either good fee title or valid leasehold, easement or other real property rights, to the land, buildings, wires, pipes, structures and other improvements thereon and fixtures thereto necessary to permit it to conduct its business as and where currently conducted. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and except as may be limited by the Bankruptcy and Equity Exceptions, (a) all leases, easements or other agreements under which the Company leases, accesses, uses or occupies real property necessary to permit it to conduct its business as currently conducted are valid, binding and in full force and effect against the Company and, to the Knowledge of the Company, the counterparties thereto, in accordance with their respective terms, and (b) the Company or, to the Knowledge of the Company, the counterparties thereto are not in default under any of such leases, easements or other agreements described in the foregoing clause (a). This Section 3.16 does not relate to Environmental Permits, Environmental Laws, Environmental Claims, Releases, Hazardous Materials or other environmental matters; or Intellectual Property, which are addressed in Section 3.14 and Section 3.17, respectively.

SECTION 3.17 Intellectual Property.

(a) Section 3.17(a) of the Company Disclosure Letter sets forth a correct and complete list (in all material respects) of all (i) issued patents and patent applications, (ii) trademark registrations and applications and material unregistered trademarks, and (iii) copyright registrations and applications owned by the Company in any jurisdiction in the world. Except as would not have or would not be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company is the sole and exclusive beneficial and, with respect to applications and registrations (including patents), record owner of all of the Intellectual Property items set forth in Section 3.17(a) of the Company Disclosure Letter.

(b) Except as would not have or would not be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company owns, or has the valid right to use, all Intellectual Property used in their business as presently conducted and such conduct does not infringe or otherwise violate any Person's Intellectual Property, (ii) there is no Claim of such infringement or other violation pending or threatened in writing against the Company, (iii) to the Knowledge of the Company, no Person is infringing or otherwise violating any Intellectual Property owned by the Company, and (iv) no Claims of such infringement or other violation are pending or threatened in writing against any Person by the Company.

(c) Except as would not have or would not be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect, since January 1, 2017, to the Knowledge of the Company, there have been no security breaches in the information technology systems in the complete and entire control of the Company ("IT Systems").

(d) The Company has implemented and maintained appropriate technical and organizational measures to protect Personal Information and its own IT Systems against unlawful destruction or unauthorized loss, which ensure a level of security appropriate to the risk as required under applicable Law, including a process for testing, assessing and evaluating the effectiveness of such security measures (collectively, the "IT Policies and Procedures"). The Company has aligned its IT Policies and Procedures with applicable industry standards.

(e) The representations and warranties contained in this Section 3.17 are the sole and exclusive representations and warranties of the Company relating to infringement or other violation of Intellectual Property, and no other representation or warranty of the Company contained herein shall be construed to relate to infringement or other violation of Intellectual Property.

SECTION 3.18 Insurance. Except as would not have or would not be reasonably likely to have, individually or in the aggregate, a Company Material Adverse Effect, (a) all fire and casualty, general liability, director and officer, business interruption, product liability, sprinkler and water damage, and other insurance policies maintained by the Company ("Insurance Policies") are in full force and effect, (b) all premiums due with respect to all Insurance Policies have been paid, (c) the Company is not in breach or default under, and to the Knowledge of the Company, no event has occurred which, with notice or the lapse of time, would constitute such a breach of or default under, or permit termination or modification under, any such Insurance Policies, and (d) since the most recent renewal date, the Company has not received any written notice threatening termination of, or premium increases with respect to, or material alteration of coverage under, any such policies, other than premium increases or alterations of coverage occurring in the ordinary course during the renewal process for any such policies.

SECTION 3.19 Regulatory Status.

(a) The Company is subject to regulation as a "public utility", a "utility" and an "electric utility," in each case as such terms are defined in the Texas Public Utility Regulatory Act, the New Mexico Public Utility Act and the FPA. The Company is not a "holding company" under the Public Utility Holding Company Act of 2005 and is not regulated as a public utility by any state other than the State of Texas and the State of New Mexico.

(b) All Filings (except for immaterial Filings) required to be made by the Company since January 1, 2017 with the FERC, the Public Utility Commission of Texas (the "PUCT") and the New Mexico Public Regulation Commission (the "NMPRC"), as the case may be, have been made, including all forms, statements, reports, agreements and all documents, exhibits, amendments and supplements appertaining thereto, including all rates, tariffs and related documents, and all such Filings complied, as of their respective dates, and currently comply, with all applicable requirements of applicable Laws, except for Filings the failure of which to make or the failure of which to make in compliance with all applicable requirements of applicable Laws, would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

SECTION 3.20 Brokers' Fees and Expenses. Except for the Company Financial Advisor, the fees and expenses of which will be paid by the Company, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement, including the Merger, based upon arrangements made by or on behalf of the Company. The Company has made available to Parent true and complete copies of all agreements between the Company and the Company Financial Advisor, which agreements disclose all fees payable to the Company Financial Advisor.

SECTION 3.21 Opinion of Financial Advisor. The Company Board has received an opinion of the Company Financial Advisor to the effect that, as of the date of such opinion and based upon and subject to the various matters, limitations, qualifications and assumptions set forth therein, the Merger Consideration is fair, from a financial point of view, to the holders of shares of Company Common Stock (other than shares owned by the Company as treasury stock or shares that are owned directly or indirectly by Parent or Merger Sub) and, as of the date of this Agreement, such opinion has not been modified or withdrawn. Promptly following execution of this Agreement, the Company will provide copies of such opinion to Parent for informational purposes only.

SECTION 3.22 No Additional Representations. Except for the representations and warranties expressly set forth in Article IV (as modified by the Parent Disclosure Letter) and in any certificate delivered by Parent to the Company in accordance with the terms hereof, the Company specifically acknowledges and agrees that neither Parent nor any of its Affiliates, Representatives or shareholders or any other Person makes, or has made, any other express or implied representation or warranty whatsoever (whether at law (including at common law or by statute) or in equity). Except for the representations and warranties expressly set forth in this Article III (as modified by the Company Disclosure Letter) and in any certificate delivered by the Company to Parent in accordance with the terms hereof, the Company hereby expressly disclaims and negates (a) any other express or implied representation or warranty whatsoever (whether at law (including at common law or by statute) or in equity), including with respect to (i) the Company or any of the Company's businesses, assets, employees, Permits, liabilities, operations, prospects or condition (financial or otherwise) or (ii) any opinion, projection, forecast, statement, budget, estimate, advice or other information with respect to the projections, budgets or estimates of future revenues, results of operations (or any component thereof), cash flows, financial condition (or any component thereof) or the future business and operations of the Company, as well as any other business plan and cost-related plan information of the Company related to future periods, made, communicated or furnished (orally or in writing), or to be made, communicated or furnished (orally or in writing), to Parent, its Affiliates or its Representatives, in each case, whether made by the Company or any of its Affiliates, Representatives or shareholders or any other Person (this clause (ii), collectively, "Company Projections") and (b) all liability and responsibility for any such other representation or warranty or any such Company Projection.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as set forth in the disclosure letter delivered by Parent to the Company concurrently with the execution and delivery by Parent and Merger Sub of this Agreement (the "Parent Disclosure Letter"), Parent and Merger Sub represent and warrant to the Company as follows:

SECTION 4.01 Organization, Standing and Power. Each of Parent and Merger Sub is duly organized, validly existing and in active status or good standing, as applicable, under the Laws of the jurisdiction in which it is organized (in the case of active status or good standing, to the extent such jurisdiction recognizes such concept). Each of Parent and Merger Sub has all requisite entity power and authority to enable it to own, operate, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted, except where the failure to have such power or authority would not have or would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Each of Parent and Merger Sub is duly qualified or licensed to do business in each jurisdiction where the nature of its business or the ownership, operation or leasing of its properties make such qualification necessary, except in any such jurisdiction where the failure to be so qualified or licensed would not have or would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

SECTION 4.02 Authority; Execution and Delivery; Enforceability. Each of Parent and Merger Sub has all requisite power and authority to execute and deliver this Agreement, to perform its covenants and agreements hereunder and to consummate the transactions contemplated hereby, including the Merger. The sole member of Parent has adopted resolutions (a) determining that it is in the best interests of Parent and its member, and declaring it advisable, for Parent to enter into this Agreement and (b) adopting this Agreement and approving Parent's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement, including the Merger. Such resolutions have not been amended or withdrawn as of the date of this Agreement. The board of directors of Merger Sub has adopted resolutions (i) determining that it is in the best interests of Merger Sub and its shareholder, and declaring it advisable, for Merger Sub to enter into this Agreement, (ii) adopting this Agreement and approving Merger Sub's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement, including the Merger, and (iii) resolving to recommend that Parent, in its capacity as the sole shareholder of Merger Sub, adopt this Agreement. Parent has approved this Agreement by written consent in its capacity as the sole shareholder of Merger Sub. Such resolutions and written consent have not been amended or withdrawn as of the date of this Agreement. No other vote or corporate proceedings on the part of Parent or Merger Sub are necessary to authorize, adopt or approve, as applicable, this Agreement or to consummate the Merger. Parent and Merger Sub have duly executed and delivered this Agreement and, assuming the due authorization, execution and delivery by the Company, this Agreement constitutes the legal, valid and binding obligation of each of Parent and Merger Sub, enforceable against it in accordance with its terms, subject in all respects to the Bankruptcy and Equity Exceptions.

SECTION 4.03 No Conflicts; Consents.

(a) The execution and delivery of this Agreement by Parent and Merger Sub does not, and the performance by each of Parent and Merger Sub of its covenants and agreements hereunder and the consummation of the transactions contemplated hereby, including the Merger, will not, (i) conflict with, or result in any violation of any provision of, the Organizational Documents of Parent or the Organizational Documents of Merger Sub, (ii) subject to obtaining the Consents set forth in Section 4.03(a)(ii) of the Parent Disclosure Letter (the "Parent Required Consents" and, together with the Company Required Consents, the "Required Consents"), conflict with, result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any material obligation or to the loss of a material benefit under, or result in the creation of a Lien upon any of the respective properties or assets of Parent or Merger Sub pursuant to, any Contract to which Parent or Merger Sub is a party or by which any of their respective properties or assets is bound or any Permit applicable to the business of Parent or Merger Sub or (iii) subject to obtaining the Consents referred to in Section 4.03(b) and making the Filings referred to in Section 4.03(b), conflict with, or result in any violation of any provision of, any Judgment or Law, in each case, applicable to Parent or Merger Sub or their respective properties or assets, except for, in the case of the foregoing clauses (ii) and (iii), any matter that would not have or would not be reasonably expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) No Consent of or from, or Filing made to or with, any Governmental Entity, is required to be obtained or made by Parent or any Affiliate of Parent in connection with Parent's and Merger Sub's execution and delivery of this Agreement or their performance of their covenants and agreements hereunder or the consummation of the transactions contemplated hereby, including the Merger, except for the following:

(i) compliance with, Filings under and the expiration or termination of any applicable waiting period under the HSR Act;

(ii) (A) Filings with, and the Consent of, the FERC under Section 203 of the FPA, (B) Filings with, and the Consent of, the Governmental Entities set forth in Section 4.03(b)(ii)(B) of the Parent Disclosure Letter, (C) the Filings and Consents set forth in Section 4.03(b)(ii)(C) of the Parent Disclosure Letter and (D) the Additional Approvals (the Consents and Filings set forth in Section 4.03(b)(i) and this Section 4.03(b)(ii), collectively, the "Parent Required Approvals" and, together with the Company Required Approvals, the "Required Approvals");

(iii) the Parent Required Consents, as applicable;

(iv) Filings and Consents as are required to be made or obtained under state or federal property transfer Laws or Environmental Laws as set forth in Section 4.03(b)(iv) of the Parent Disclosure Letter; and

(v) such other Filings and Consents the failure of which to make or obtain would not have or would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

SECTION 4.04 Litigation. Except as set forth in Section 4.04 of the Parent Disclosure Letter, there is no Claim before any Governmental Entity pending or, to the Knowledge of Parent, threatened against Parent or Merger Sub or any Affiliate of Parent that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. There is no Judgment outstanding against or, to the Knowledge of Parent, investigation by any Governmental Entity of Parent, Merger Sub or any Affiliate of Parent or any of their respective properties or assets that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

SECTION 4.05 Compliance with Applicable Laws. Except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, Parent and Merger Sub are in compliance with all applicable Laws (including Anti-Corruption Laws) and all material Permits applicable to the business and operations of Parent and Merger Sub. None of Parent or Merger Sub or, to the Knowledge of Parent or Merger Sub, their respective directors, officers, employees, agents or representatives: (i) is a Designated Person, (ii) is a Person that is owned or controlled by a Designated Person; (iii) is located, organized or resident in a Sanctioned Country; or (iv) has or is now, in connection with the business of Parent or Merger Sub, engaged in, any dealings or transactions (A) with any Designated Person, (B) in any Sanctioned Country, or (C) otherwise in material violation of Sanctions.

SECTION 4.06 Financing. Parent has delivered to the Company true and complete fully executed copies of (a) the commitment letter, dated as of the date hereof, among Parent, Bank of America, N.A. and BofA Securities, Inc. (the "Debt Commitment Letter") and (b) the fee letter, among Parent, Bank of America, N.A. and BofA Securities, Inc., dated as of the date hereof (in each case, as redacted to remove only the fee amounts, pricing caps, the rates and amounts included in the "market flex" and other economic provisions (none of which could affect the conditionality, principal amount or availability of the Debt Financing)), in each case, including all exhibits, schedules, annexes and amendments to such letters in effect as of the date of this Agreement (collectively, the "Debt Letters"), pursuant to which and subject to the terms and conditions thereof, each of the Debt Financing Sources party thereto has severally committed to lend the amounts set forth therein to Parent (the provision of such funds as set forth therein, the "Debt Financing") for the purposes set forth in such Debt Letters. The Debt Letters have not been amended, restated or otherwise modified or waived prior to the execution and delivery of this Agreement. As of the execution and delivery of this Agreement, the Debt Letters are in full force and effect and constitute the legal, valid and binding obligation of each of Parent and, to Parent's Knowledge, the other parties thereto, subject in each case to the Bankruptcy and Equity Exceptions. There are no conditions precedent or contingencies directly or indirectly related to the funding of the full amount of the Debt Financing pursuant to the Debt Letters, other than as expressly set forth in the Debt Letters. Subject to the terms and conditions thereof, the Debt Letters will provide Parent and Merger Sub, together with the Equity Commitment Agreement, with sufficient funds at the Closing to pay all of Parent's obligations under this Agreement, including the payment of the Merger Consideration and all fees and expenses expected to be incurred in connection therewith. As of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, would constitute a breach or default on the part of Parent or, to Parent's Knowledge, any other party to the Debt Letters under the Debt Letters that would (a) result in any of the conditions in the Debt Letters not being satisfied or (b) otherwise result in the Debt Financing not being available, other than such default or breach that has been waived by the lenders or otherwise cured in a timely manner by Parent or Merger Sub to the satisfaction of the lenders, as the case may be. As of the date of this Agreement, there are no side letters or other agreements, Contracts, arrangements or understandings (written or oral) directly or indirectly related to the funding of the Debt Financing that could affect the conditionality, principal amount or availability of the Debt Financing other than as expressly set forth in the Debt Letters. Parent has fully paid all commitment fees or other fees required to be paid on or prior to the date of this Agreement in connection with the Debt Financing. As of the date of this Agreement assuming the satisfaction of the conditions set forth in Section 7.01 and Section 7.03, Parent has no reason to believe that any of the conditions to the Debt Financing contemplated by the Debt Letters will not be satisfied or waived on a timely basis or that the Debt Financing contemplated by the Debt Letters will not be made available on the Closing Date in accordance with the terms of the Debt Letters. As of the date hereof, no lender has notified Parent of its intention to terminate its obligations under the Debt Letters or to not provide the Debt Financing.

SECTION 4.07 Brokers' Fees and Expenses. Except for any Person set forth in Section 4.07 of the Parent Disclosure Letter, the fees and expenses of which will be paid by Parent, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement, including the Merger, based upon arrangements made by or on behalf of Parent or Merger Sub.

SECTION 4.08 Merger Sub. The authorized capital stock of Merger Sub consists of one thousand (1,000) shares of common stock, par value $0.01 per share. All outstanding shares of capital stock of Merger Sub are duly authorized, validly issued, fully paid and nonassessable. Parent owns all of the outstanding shares of capital stock of Merger Sub. Merger Sub has been incorporated solely for the purpose of merging with and into the Company and taking action incident to the Merger and this Agreement. Merger Sub has no assets, liabilities or obligations and has not, since the date of its formation, carried on any business or conducted any operations, except, in each case, as arising from the execution of this Agreement, the performance of its covenants and agreements hereunder and matters ancillary thereto.

SECTION 4.09 Ownership of Company Common Stock; Affiliated Shareholder. Neither Parent nor any other Affiliate of Parent "beneficially owns" (as such term is defined for purposes of Section 13(d) of the Exchange Act) any shares of Company Common Stock or any other Equity Securities. Neither Parent nor any "affiliate" or "associate" (as such terms are used in Section 21.606 of the TBOC) of Parent is, nor at any time during the last three (3) years has been, an "affiliated shareholder" of the Company as defined in Section 21.606 of the TBOC.

SECTION 4.10 Solvency. Assuming (i) the representations and warranties of the Company made in this Agreement are true and correct in all material respects (disregarding any references to "Knowledge of the Company," "Company Material Adverse Effect," "materiality" or similar qualifications contained in such representations), (ii) the compliance by the Company of its obligations hereunder, (iii) all material contingent liabilities of the business of the Company are disclosed herein, in the Company Disclosure Letter or in the Company Reports, (iv) the satisfaction of the conditions set forth in Article VII and (v) that the most recent projections, forecasts or estimates of the Company that have been provided to Parent have been prepared in good faith based on assumptions that were and continue to be reasonable, Parent and Merger Sub, individually and on a consolidated basis, are not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at Closing, including the Merger, the Debt Financing, any Substitute Financing, the payment of the Merger Consideration, and the payment of all related fees and expenses, will not be, Insolvent.

SECTION 4.11 Equity Commitment Agreement. Concurrently with the execution of this Agreement, the Sponsor has executed the Equity Commitment Agreement. The Equity Commitment Agreement is in full force and effect, is a valid, binding and enforceable obligation of the Sponsor and no event has occurred which, with or without notice, lapse of time or both, would constitute a default on the part of the Sponsor under the Equity Commitment Agreement. The Equity Commitment Agreement is not subject to any conditions or other contractual contingencies other than as set forth therein.

SECTION 4.12 No Additional Representations. Except for the representations and warranties expressly set forth in Article III (as modified by the Company Disclosure Letter) and in any certificate delivered by the Company to Parent in accordance with the terms hereof, each of Parent and Merger Sub (a) specifically acknowledges and agrees that none of the Company or any of its Affiliates, Representatives or shareholders or any other Person makes, or has made, any other express or implied representation or warranty whatsoever (whether at law (including at common law or by statute) or in equity), including with respect to the Company or any of the Company's businesses, assets, employees, Permits, liabilities, operations, prospects, condition (financial or otherwise) or any Company Projection, and hereby expressly waives and relinquishes any and all rights, Claims or causes of action (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity) based on, arising out of or relating to any such other representation or warranty or any Company Projection, (b) specifically acknowledges and agrees to the Company's express disclaimer and negation of any such other representation or warranty or any Company Projection and of all liability and responsibility for any such other representation or warranty or any Company Projection and (c) expressly waives and relinquishes any and all rights, Claims and causes of action (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity) against (i) the Company in connection with accuracy, completeness or materiality of any Company Projection and (ii) any Affiliate of the Company or any of the Company's or any such Affiliate's respective Representatives or shareholders (other than the Company) or any other Person, and hereby specifically acknowledges and agrees that such Persons shall have no liability or obligations, based on, arising out of or relating to this Agreement or the negotiation, execution, performance or subject matter hereof, including (1) for any alleged nondisclosure or misrepresentations made by any such Person or (2) in connection with the accuracy, completeness or materiality of any Company Projection. Each of Parent and Merger Sub acknowledges and agrees that (A) it has conducted to its satisfaction its own independent investigation of the transactions contemplated hereby (including with respect to the Company and its businesses, operations, assets and liabilities) and, in making its determination to enter into this Agreement and proceed with the transactions contemplated hereby, has relied solely on the results of such independent investigation and the representations and warranties of the Company expressly set forth in Article III (as modified by the Company Disclosure Letter), and (B) except for the representations and warranties of the Company expressly set forth in Article III (as modified by the Company Disclosure Letter) and in any certificate delivered by the Company to Parent in accordance with the terms hereof, it has not relied on, or been induced by, any representation, warranty or other statement of or by the Company or any of its Affiliates, Representatives or shareholders or any other Person, including any Company Projection or with respect to the Company or any of the Company's businesses, assets, employees, Permits, liabilities, operations, prospects or condition (financial or otherwise) or any Company Projection, in determining to enter into this Agreement and proceed with the transactions contemplated hereby. Except for the representations and warranties expressly set forth in this Article IV (as modified by the Parent Disclosure Letter) and in any certificate delivered by Parent to the Company in accordance with the terms hereof, Parent hereby expressly disclaims and negates (a) any other express or implied representation or warranty whatsoever (whether at law (including at common law or by statute) or in equity), and (b) all liability and responsibility for any such other representation or warranty.

ARTICLE V

COVENANTS RELATING TO CONDUCT OF BUSINESS

SECTION 5.01 Conduct of Business.

(a) Conduct of Business by the Company. Except for matters set forth in Section 5.01 of the Company Disclosure Letter or otherwise contemplated or required by this Agreement, or as required by a Governmental Entity or by applicable Law, or as required in connection with any Proceedings, or with the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed), from the date of this Agreement until the Effective Time, the Company shall use commercially reasonable efforts to, (x) conduct its business in the ordinary course of business in all material respects, (y) maintain in effect all material Permits necessary for the lawful conduct of its business and (z) preserve intact, in all material respects, its business organization, goodwill and existing relationships with employees, customers, suppliers and Governmental Entities and any other Person having a material business relationship with it. In addition, and without limiting the generality of the foregoing, except as set forth in the Company Disclosure Letter or otherwise contemplated or required by this Agreement, or as required by a Governmental Entity or by applicable Law, or as required in connection with any Proceedings, or with the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed), from the date of this Agreement until the Effective Time, the Company shall not do any of the following:

(i) declare, set aside or pay any dividends on, or make any other distributions (whether in cash, stock or property or any combination thereof) in respect of, any of its capital stock, other equity interests or voting securities, except for (A) quarterly cash dividends payable by the Company in respect of shares of Company Common Stock on a schedule consistent with the Company's past practices in an amount per share of Company Common Stock not in excess of (1) $0.385 for quarterly dividends declared before June 1, 2020 and (2) $0.41 for quarterly dividends declared on or after June 1, 2020, (B) dividend equivalents accrued or payable by the Company in respect of Company Restricted Stock in accordance with the applicable award agreements, and (C) a "stub period" dividend to holders of record of Company Common Stock as of immediately prior to the Effective Time equal to the product of (1) the number of days from the record date for payment of the last quarterly dividend paid by the Company prior to the Effective Time, multiplied by (2) a daily dividend rate determined by dividing the amount of the last quarterly dividend paid prior to the Effective Time by ninety-one (91);

(ii) amend any of its Organizational Documents (except for immaterial or ministerial amendments or amendments required by changes in Law);

(iii) split, combine, consolidate, subdivide or reclassify any of its capital stock, other equity interests or voting securities, or securities convertible into or exchangeable or exercisable for capital stock or other equity interests or voting securities, or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for its capital stock, other equity interests or voting securities;

(iv) repurchase, redeem or otherwise acquire, or offer to repurchase, redeem or otherwise acquire, any capital stock or voting securities of, or equity interests in, the Company or any securities of the Company convertible into or exchangeable or exercisable for capital stock or voting securities of, or equity interests in, the Company, or any warrants, calls, options, "phantom" stock or units, stock appreciation rights, or other rights to acquire any such capital stock, securities, interests or rights, except for (A) the acquisition by the Company of shares of Company Common Stock in the open market to satisfy its obligations under all Company Benefit Plans and (B) the withholding of shares of Company

Common Stock to satisfy Tax obligations with respect to awards granted pursuant to the Company Stock Plan;

(v) issue, deliver, sell, grant, pledge or otherwise encumber or subject to any Lien any Equity Securities or Company Voting Debt, in each case, except for the settlement of Company Restricted Stock, Company Performance Stock or Company Unpaid Performance Stock;

(vi) (A) grant to any Company Personnel any increase in compensation or benefits (including paying to any Company Personnel any amount not due) except in the ordinary course of business and consistent with past practices, but in any event not exceeding increases with a value in the aggregate of 6.10% of the current cost of compensation and benefits provided to Company Personnel as of the date of this Agreement, (B) grant to any Company Personnel any increase in change-in-control, severance, retention or termination pay, or enter into or amend any change-in-control, severance, retention or termination agreement with any Company Personnel, (C) establish, adopt, enter into, amend in any material respect or terminate any Company Benefit Plan or Company Benefit Agreement (or any plan or agreement that would be a Company Benefit Plan or Company Benefit Agreement if in existence on the date hereof), in each case, except in the ordinary course of business consistent with past practices or (D) take any action to accelerate the time of vesting, funding or payment of any compensation or benefits under any Company Benefit Plan or Company Benefit Agreement, except in the case of the foregoing clause (A) through (D) for actions required pursuant to the terms of any Company Benefit Plan or Company Benefit Agreement existing on the date hereof that has been made available to Parent, or as expressly required by the terms and conditions of this Agreement;

(vii) make any material change in accounting methods, principles or practices, except to the extent as may have been required by a change in applicable Law or GAAP or by any Governmental Entity (including the SEC or the Public Company Accounting Oversight Board);

(viii) make any acquisition or disposition, sale or transfer of an asset or business (including by merger, consolidation or acquisition of stock or any other equity interests or assets) except for (A) any acquisition or disposition for consideration that is individually not in excess of $25,000,000 and in the aggregate not in excess of $50,000,000 or (B) any disposition of obsolete or worn-out equipment in the ordinary course of business;

(ix) incur any Indebtedness, except for (A) as reasonably necessary to finance any capital expenditures permitted under Section 5.01(a)(x), (B) Indebtedness in replacement of existing Indebtedness (provided that the aggregate commitments or principal amounts thereunder shall not be increased), (C) guarantees by the Company of existing Indebtedness, (D) guarantees and other credit support by the Company of obligations of the Trust in the ordinary course of business consistent with past practice, (E) borrowings under existing revolving credit facilities (or replacements thereof on comparable terms) in the ordinary course of business or (F) Indebtedness in amounts necessary to maintain the capital structure of the Company or the Trust, as authorized by the PUCT and the NMPRC, and to maintain the present capital structure of the Company consistent with past practice in all material respects;

(x) make, or agree or commit to make, any capital expenditure, except (A) in accordance with the capital plan set forth in Section 5.01(a)(x) of the Company Disclosure Letter, plus a 10% variance for each principal category set forth in such capital plan, (B) with respect to any capital expenditure not addressed by the foregoing clause (A), not to exceed $30,000,000 in the aggregate in any twelve (12) month period, (C) capital expenditures related to operational emergencies subject to Section 5.01(b) or (D) as required by Law or a Governmental Entity; provided, that, in the case of clauses (C) and (D), the Company shall provide Parent with notice of such action taken as soon as reasonably practicable thereafter;

(xi) enter into, modify or amend in any material respect, or terminate or waive any material right under, any Company Contract (except for (A) any modification, amendment, termination or waiver in the ordinary course of business or (B) a termination without material penalty or loss of material benefit to the Company);

(xii) make or change any material Tax election, change any material method of Tax accounting, settle or compromise any material Tax liability, audit or other proceeding, compromise or surrender any refund, credit or other similar benefit, enter into any closing agreements relating to a material amount of Taxes, file or amend any material Tax Return, grant any waiver of any statute of limitations with respect to, or any extension of a period for the assessment of, any material Tax (excluding extensions of time to file Tax Returns obtained in the ordinary course);

(xiii) waive, release, assign, settle or compromise any material Claim against the Company, except to the extent permitted by Section 5.02 and except for waivers, releases, assignments, settlements or compromises that are limited solely to the payment of monetary damages and that, with respect to the payment of such monetary damages, the amount of monetary damages to be paid by the Company does not exceed (A) the amount with respect thereto reflected on the Company Financial Statements (including the notes thereto) or (B) $10,000,000, in the aggregate, in excess of the proceeds received or to be received from any insurance policies in connection with such payment;

(xiv) terminate the employment of any employee at the level of Vice President or above, other than for cause;

(xv) waive the restrictive covenant obligations of any employee of the Company;

(xvi) enter into, materially amend, terminate or extend any collective bargaining agreement or similar labor agreement, other than as required by applicable Law, or voluntarily recognize or certify any union, works council or other employee representative body as the bargaining representative of any employees of the Company;

(xvii) effectuate a “plant closing” or “mass layoff,” as those terms are defined in the WARN Act;

(xviii) enter into a new line of business or cease operations of an existing line of business;

(xix) adopt or recommend a plan or agreement of complete or partial liquidation or dissolution, restructuring or other reorganization;

(xx) form or acquire any Subsidiary;

(xxi) materially change any of its energy price risk management and marketing of energy parameters, limits and guidelines (the “Company Risk Management Guidelines”) or enter into any physical commodity transactions, exchange-traded futures and options transactions, over-the-counter transactions and derivatives thereof or similar transactions other than as permitted by the Company Risk Management Guidelines;

(xxii) materially change any of its IT Policies and Procedures except as required by applicable Law or in accordance with Good Utility Practice;

(xxiii) fail to maintain, terminate or cancel any material insurance coverage maintained by the Company with respect to any material assets without using commercially reasonable efforts to replace such coverage with a comparable amount of insurance coverage to the extent available on commercially reasonable terms;

(xxiv) except to the extent permitted by Section 5.02, initiate or pursue any Proceedings with or before any Governmental Entity;

(xxv) except as necessary in the ordinary course of business consistent with past practice, grant or acquire, agree to grant to or acquire from any Person, or dispose of or permit to lapse any rights to any material Intellectual Property; or

(xxvi) authorize or enter into any Contract to do any of the foregoing.

(b) Emergencies. Notwithstanding anything to the contrary herein, the Company may take reasonable actions in compliance with applicable Law and Good Utility Practice (i) with respect to any operational emergencies (including any restoration measures in response to any hurricane, strong winds, ice event, fire, tornado, tsunami, flood, earthquake or other natural disaster, severe weather-related event, circumstance or development, act of terrorism or sabotage), equipment failures, outages or an immediate and material threat to the health or safety of natural Persons; provided, that the Company shall provide Parent with notice of such action taken as soon as reasonably practicable thereafter.

(c) No Control of the Company's Business. Parent acknowledges and agrees that (i) nothing contained herein is intended to give Parent, directly or indirectly, the right to control or direct the operations of the Company prior to the Effective Time and (ii) prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its businesses and operations.

(d) Notice of Changes. Each of Parent and the Company shall promptly notify the other orally and in writing of any change or event of which it becomes aware that would reasonably be expected to prevent any of the conditions precedent described in Article VII from being satisfied.

SECTION 5.02 Proceedings. Between the date of this Agreement and the Closing, the Company may (a) initiate new rate cases or any other proceeding, or continue to pursue regulatory and other proceedings, in each case as set forth in Section 5.02(a) of the Company Disclosure Letter, (b) enter into any settlement or stipulation in respect of any Proceeding set forth in Section 5.02(b) of the Company Disclosure Letter, (c) with the prior written consent of Parent (such consent not to be unreasonably withheld, delayed or conditioned), initiate new rate cases or any other proceeding that would reasonably be expected to affect the authorized capital structure or authorized return on equity of the Company or materially affect the return on equity of the Company in an adverse manner, with Governmental Entities, and (d) with the prior written consent of Parent (such consent not to be unreasonably withheld, delayed or conditioned), initiate any other proceeding with Governmental Entities in the ordinary course of business (the foregoing clauses (a), (c) and (d), collectively, the "Proceedings"); provided that the Company shall (A) keep Parent informed as promptly as reasonably practicable of any material communications or meetings with any Governmental Entity with respect to Proceedings and shall provide copies of any written communications or materials, (B) consult with Parent and give Parent a reasonable opportunity, within time constraints imposed in such Proceedings, to comment on material written communications or materials submitted to any Governmental Entity, in each case with respect to any Proceedings, which the Company shall consider in good faith and (C) at the request of Parent, provide Parent a reasonable opportunity to participate in any material meeting or communications related thereto. Subject to applicable Law, Parent shall have the opportunity to review and comment on all economic aspects of any filings in connection with any Proceedings. If a Proceeding is combined with any proceeding relating to obtaining any Required Approval, the provisions of Section 6.03 and Section 6.06 will apply with respect to such Proceeding.

SECTION 5.03 No Solicitation by the Company; Company Board Recommendation.

(a) The Company shall not, and shall not authorize any of its Affiliates or any of its and their respective officers, directors, principals, partners, managers, members, attorneys, accountants, agents, employees, consultants, financial advisors or other authorized representatives (collectively, "Representatives") to (i) directly or indirectly solicit, initiate or knowingly encourage, induce or facilitate any Company Takeover Proposal or any inquiry or proposal that would reasonably be expected to lead to a Company Takeover Proposal, in each case, except for this Agreement and the transactions contemplated hereby, or (ii) directly or indirectly participate in any discussions or negotiations with any Person (except between the Company's Affiliates and its and their respective Representatives and Parent and Parent's Affiliates and its and their respective Representatives with respect to the transactions contemplated by this Agreement) regarding, or furnish to any such Person, any nonpublic information with respect to, or cooperate in any way with any such Person with respect to, any Company Takeover Proposal or any inquiry or proposal that would reasonably be expected to lead to a Company Takeover Proposal. The Company shall, and shall cause its Affiliates and its and their respective Representatives to, immediately cease and cause to be terminated all existing discussions or negotiations with any Person (except between the Company's Affiliates and its and their respective Representatives and Parent and Parent's Affiliates and its and their respective Representatives with respect to the transactions contemplated by this Agreement) with respect to any Company Takeover Proposal or any inquiry or proposal that would reasonably be expected to lead to a Company Takeover Proposal, request the prompt return or destruction of all confidential information previously furnished and immediately terminate all physical and electronic data room access previously granted to any such Person or its Representatives. Notwithstanding anything to the contrary herein, at any time prior to obtaining the Company Shareholder Approval, in response to the receipt of a *bona fide* written Company Takeover Proposal made after the date of this Agreement that does not result from a breach (other than an immaterial breach) of this Section 5.03(a) and that the Company Board determines in good faith (after consultation with outside legal counsel and a nationally recognized financial advisor) constitutes or could reasonably be expected to lead to a Superior Company Proposal, the Company and its Representatives may (1) furnish information with respect to the Company to the Person making such Company Takeover Proposal (and its Representatives) (provided that all such information has previously been provided to Parent or is provided to Parent prior to or concurrently with the provision of such information to such Person) pursuant to a customary confidentiality agreement that does not restrict the Company's ability to comply with its obligations under this Section 5.03, and (2) participate in discussions regarding the terms of such Company Takeover Proposal, including terms of a Company Acquisition Agreement with respect thereto, and the negotiation of such terms with the Person making such Company Takeover Proposal (and such Person's Representatives). Without limiting the foregoing, it is agreed that any violation of this Section 5.03(a) by any Representative of the Company or any of its Affiliates, in each case, at the Company's direction, shall constitute a breach of this Section 5.03(a) by the Company. Notwithstanding anything to the contrary herein, the Company may grant a waiver, amendment or release under any confidentiality or standstill agreement to the extent (x) necessary to allow a confidential Company Takeover Proposal to be made to the Company or the Company Board so long as the Company Board promptly (and in any event, within twenty four (24) hours) notifies Parent thereof after granting any such waiver, amendment or release and (y) the Company Board determines in good faith (after consultation with outside legal counsel) that the failure to grant such waiver, amendment or release would reasonably likely be inconsistent with its fiduciary duties under applicable Law.

(b) Except as set forth in Section 5.03(c) and Section 5.03(e), and except for the public disclosure of a Company Recommendation Change Notice, neither the Company Board nor any committee thereof shall (i) withdraw, change, qualify, withhold or modify in any manner adverse to Parent, or propose publicly to withdraw, change, qualify, withhold or modify in any manner adverse to Parent, the Company Board Recommendation, (ii) adopt, approve or recommend, or propose publicly to adopt, approve or recommend, any Company Takeover Proposal, (iii) fail to include in the Proxy Statement the Company Board Recommendation, (iv) fail to expressly reaffirm publicly the Company Board Recommendation following Parent's written request to do so if a Company Takeover Proposal is publicly announced or disclosed (provided that Parent may only make such request twice with respect to any particular Company Takeover Proposal or any material publicly announced or disclosed amendment or modification thereto), on or prior to the earlier of the fifth (5^{th}) Business Day after the delivery of such request by Parent and two (2) Business Days prior to the Company Shareholders Meeting (or any adjournment or postponement thereof) or (v) take any formal action or make any recommendation or public statement in connection with a tender offer or exchange offer (except for a recommendation against such offer or a customary "stop, look and listen" communication of the type contemplated by Rule 14d-9(f) under the Exchange Act) (any action in the foregoing clauses (i)–(v) being referred to as a "Company Adverse Recommendation Change"). Except as set forth in Section 5.03(c) and Section 5.03(e), neither the Company Board nor any committee thereof shall authorize, permit, approve or recommend, or propose publicly to authorize, permit, approve or recommend, or allow the Company or any of its Affiliates to execute or enter into, any letter of intent, memorandum of understanding, agreement in principle, agreement or commitment constituting, or that would reasonably be expected to lead to, any Company Takeover Proposal, or requiring, or that would reasonably be expected to cause, the Company to abandon or terminate this Agreement (a "Company Acquisition Agreement").

(c) Notwithstanding anything to the contrary herein, at any time prior to obtaining the Company Shareholder Approval, the Company Board may make a Company Adverse Recommendation Change if (i) a Company Intervening Event has occurred or (ii) the Company has received a Superior Company Proposal that does not result from a breach (other than an immaterial breach) of Section 5.03 and, in each case, if the Company Board determines in good faith (after consultation with outside legal counsel and a nationally recognized financial advisor) that the failure to effect a Company Adverse Recommendation Change as a result of the occurrence of such Company Intervening Event or in response to the receipt of such Superior Company Proposal, as the case may be, would reasonably likely be inconsistent with the Company Board's fiduciary duties under applicable Law; provided, however, that the Company Board may not make such Company Adverse Recommendation Change unless (1) the Company Board has provided prior written notice to Parent (a "Company Recommendation Change Notice") that it is prepared to effect a Company Adverse Recommendation Change at least three (3) Business Days prior to taking such action, which notice shall specify the basis for such Company Adverse Recommendation Change and, in the case of a Superior Company Proposal, attaching the most current draft of any Company Acquisition Agreement with respect to such Superior Company Proposal or, if no draft exists, a summary of the material terms and conditions of such Superior Company Proposal (it being understood that such Company Recommendation Change Notice shall not in itself be deemed a Company Adverse Recommendation Change and that if there has been any subsequent material revision or amendment to the terms of a Superior Company Proposal, a new notice to which the provisions of clauses (2), (3) and (4) of this Section 5.03(c) shall apply *mutatis mutandis* except that, in the case of such a new notice, all references to three (3) Business Days in this Section 5.03(c) shall be deemed to be two (2) Business Days), (2) during the three (3) Business Day period after delivery of the Company Recommendation Change Notice, the Company and its Representatives negotiate in good faith with Parent and its Representatives regarding any revisions to this Agreement that Parent proposes to make as would permit the Company Board in the exercise of its fiduciary duties not to effect a Company Adverse Recommendation Change, and (3) at the end of such three (3) Business Day period and taking into account any changes to the terms of this Agreement committed to in writing by Parent, the Company Board determines in good faith (after consultation with outside legal counsel and a nationally recognized financial advisor) that the failure to make such a Company Adverse Recommendation Change would reasonably likely be inconsistent with its fiduciary duties under applicable Law, and that, in the case of a Company Adverse Recommendation Change with respect to a Company Takeover Proposal, such Company Takeover Proposal still constitutes a Superior Company Proposal.

(d) The Company shall promptly (and in any event no later than twenty-four (24) hours after receipt) advise Parent orally and in writing of any Company Takeover Proposal, the material terms and conditions of any such Company Takeover Proposal and the identity of the Person making any such Company Takeover Proposal. The Company shall keep Parent reasonably informed in all material respects on a reasonably current basis (and in any event no later than the later of (i) twenty-four (24) hours or (ii) 5:00 p.m. New York City time on the next Business Day) of the material terms and status (including any change to the terms thereof) of any Company Takeover Proposal. Without limiting the foregoing, the Company shall notify Parent in writing promptly (and in any event within twenty-four (24) hours) after it determines to begin providing information or to engage in discussions or negotiations concerning a Company Takeover Proposal.

(e) Nothing contained in this Section 5.03 shall prohibit the Company from (i) complying with Rule 14d-9 and Rule 14e-2 promulgated under the Exchange Act or (ii) making any disclosure to the shareholders of the Company if, in the good-faith judgment of the Company Board (after consultation with outside legal counsel) failure to so disclose would reasonably likely be inconsistent with its obligations under applicable Law.