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the meaning of Willful Breach, the Parties acknowledge and agree that any failure by any Party to consummate the Merger and the other transactions contemplated hereby after the applicable conditions to the Closing set forth in Article VII have been satisfied or waived (except for those conditions that by their nature are to be satisfied at the Closing, which conditions would be capable of being satisfied at the time of such failure to consummate the Merger) shall constitute a Willful Breach of this Agreement, except for such failure by Parent due solely to the failure of the Debt Financing to be funded on the date the Closing should have occurred. For the avoidance of doubt, in the event that all applicable conditions to the Closing set forth in Article VII have been satisfied or waived (except for those conditions that by their nature are to be satisfied at the Closing, which conditions would be capable of being satisfied at the time of such failure to consummate the Merger) but Parent fails to close for any reason, except for such failure by Parent due solely to the failure of the Debt Financing to be funded on the date the Closing should have occurred, such failure to close shall be considered a Willful Breach.

SECTION 8.03 Amendment. This Agreement may be amended by the Parties at any time before or after receipt of the Company Shareholder Approval; provided, however, that (a) after receipt of the Company Shareholder Approval, there shall be made no amendment that by Law requires further approval by the shareholders of the Company without the further approval of such shareholders, (b) no amendment shall be made to this Agreement after the Effective Time, (c) except as provided above, no amendment of this Agreement shall require the approval of the shareholders of Parent or the shareholders of the Company and (d) no adverse amendments to or waivers of any Debt Financing Source Provision or amendments to the definitions of “Debt Financing Sources” or “Debt Financing Related Parties” shall be effective without the prior written consent of the Debt Financing Sources. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Parties.

SECTION 8.04 Extension; Waiver. At any time prior to the Effective Time, the Parties may (a) extend the time for the performance of any of the obligations or other acts of the other Parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant to this Agreement, (c) subject to Section 8.03(a), waive compliance with any covenants and agreements contained herein or (d) waive the satisfaction of any of the conditions contained herein. Any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party. The failure of any Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

SECTION 8.05 Procedure for Termination, Amendment, Extension or Waiver. A termination of this Agreement pursuant to Section 8.01, an amendment of this Agreement pursuant to Section 8.03 or an extension or waiver pursuant to Section 8.04 shall, in order to be effective, require, in the case of the Company, Parent or Merger Sub, action by such Party’s board of directors or the duly authorized designee of its board of directors. Termination of this Agreement prior to the Effective Time shall not require the approval of the shareholders of any Party. The Party desiring to terminate this Agreement pursuant to Section 8.01 shall give written notice of such termination to the other Parties in accordance with Section 9.02, specifying the provision of this Agreement pursuant to which such termination is effected.

**ARTICLE IX**

**GENERAL PROVISIONS**

SECTION 9.01 Nonsurvival of Representations, Warranties, Covenants and Agreements; Contractual Nature of Representations and Warranties. None of the representations or warranties contained herein or in any instrument delivered pursuant to this Agreement shall survive, 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) with respect thereto shall terminate at the Effective Time. Except for any covenant or agreement that by its terms contemplates performance after the Effective Time, none of the covenants or agreements of the Parties contained herein shall survive, 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) with respect to such covenants and agreements shall terminate at the Effective Time. The Parties hereby acknowledge and agree that (a) all representations and warranties set forth in this Agreement are contractual in nature only, (b) no Person is asserting the truth or accuracy of any representation or warranty set forth in this Agreement, (c) if any such representation or warranty (as modified by the applicable Disclosure Letter) should prove untrue, the Parties’

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only rights, Claims or causes of action shall be to exercise the specific rights set forth in Section 7.02(a), Section 7.03(a), Section 8.01(c)(ii) and Section 8.01(d)(ii), as and if applicable, and (d) the Parties shall have no other 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 related to any such untruth of any such representation or warranty.

SECTION 9.02 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (a) when delivered personally by hand (with written confirmation of receipt by other than automatic means, whether electronic or otherwise), (b) when sent by facsimile or email (with written confirmation of transmission) or (c) one (1) Business Day following the day sent by an internationally recognized overnight courier (with written confirmation of receipt), in each case, at the following addresses, facsimile numbers and email addresses (or to such other address, facsimile number or email address as a Party may have specified by notice given to the other Party pursuant to this provision):

To Parent or Merger Sub:

Sun Jupiter Holdings LLC  
c/o J.P. Morgan Asset Management  
277 Park Avenue, 35<sup>th</sup> Floor  
New York, NY 10172  
Attention: Amanda Wallace  
Email: amanda.wallace@jpmorgan.com

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, N.W.  
Washington, DC 20005  
Attention: Jeremy D. London  
Paul S. Kraske  
Email: jeremy.london@skadden.com  
paul.kraske@skadden.com

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To the Company:

El Paso Electric Company  
Stanton Tower, 100 North Stanton Street  
El Paso, TX 79901  
Attention: Mary E. Kipp  
Email: mary.kipp@epelectric.com

with a copy (which shall not constitute notice) to:

El Paso Electric Company  
Stanton Tower, 100 North Stanton Street  
El Paso, TX 79901  
Attention: Adrian J. Rodriguez  
Email: adrian.rodriguez@epelectric.com

with a copy (which shall not constitute notice) to:

Baker Botts L.L.P.  
910 Louisiana Street  
Houston, TX 77002  
Attention: Timothy S. Taylor  
William S. Lamb  
Email: timothy.taylor@bakerbotts.com  
bill.lamb@bakerbotts.com

SECTION 9.03 Definitions. For purposes of this Agreement, each capitalized term has the meaning given to it, or specified, in Exhibit A.

SECTION 9.04 Interpretation.

(a) Time Periods. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, (i) the date that is the reference date in calculating such period shall be excluded and (ii) if the last day of such period is a not a Business Day, the period in question shall end on the next succeeding Business Day.

(b) Dollars. Unless otherwise specifically indicated, any reference herein to \$ means U.S. dollars.

(c) Gender and Number. Any reference herein to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(d) Articles, Sections and Headings. When a reference is made herein to an Article or a Section, such reference shall be to an Article or a Section of this Agreement unless otherwise indicated. The table of contents and headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(e) Include. Whenever the words “include”, “includes” or “including” are used herein, they shall be deemed to be followed by the words “without limitation.”

(f) Hereof. The words “hereof,” “hereto,” “hereby,” “herein” and “hereunder” and words of similar import when used herein shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(g) Extent. The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if.”

(h) Contracts; Laws. Any Contract or Law defined or referred to herein means such Contract or Law as from time to time amended, modified or supplemented, unless otherwise specifically indicated.

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(i) Persons. References to a person are also to its permitted successors and assigns.

(j) Or. Unless otherwise specifically provided herein, the term “or” shall not be deemed to be exclusive.

(k) Exhibits and Disclosure Letters. The Exhibits to this Agreement and the Disclosure Letters are hereby incorporated and made a part hereof and are an integral part of this Agreement. Each of the Company and Parent may, at its option, include in the Company Disclosure Letter or the Parent Disclosure Letter, respectively, items that are not material in order to avoid any misunderstanding, and such inclusion, or any references to dollar amounts herein or in the Disclosure Letters, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement or otherwise. Any matter set forth in any section of the Disclosure Letters shall be deemed to be referred to and incorporated in any section to which it is specifically referenced or cross-referenced and also in all other sections of such Disclosure Letter to which such matter’s application or relevance is reasonably apparent on the face of such matter. Any capitalized term used in any Exhibit or any Disclosure Letter but not otherwise defined therein shall have the meaning given to such term herein.

(l) Reflected On or Set Forth In. An item arising with respect to a specific representation, warranty, covenant or agreement shall be deemed to be “reflected on” or “set forth in” the Company Financial Statements included in the Company Reports, to the extent any such phrase appears in such representation, warranty, covenant or agreement if (i) there is a reserve, accrual or other similar item underlying a number on such balance sheet or financial statement reasonably related on its face to the subject matter of such representation or (ii) such item and the amount thereof is otherwise reasonably identified on such balance sheet or financial statement (or the notes thereto).

SECTION 9.05 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or Law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party or such Party waives its rights under this Section 9.05 with respect thereto. Upon any determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated by this Agreement are fulfilled to the extent possible.

SECTION 9.06 Counterparts. This Agreement may be executed in one or more counterparts (including by means of facsimile or email in .pdf format), all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties.

SECTION 9.07 Entire Agreement; No Third-Party Beneficiaries. This Agreement, taken together with the Company Disclosure Letter, the Parent Disclosure Letter and the exhibits hereto and other instruments referred to herein, and the Confidentiality Agreement, constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between or among the Parties with respect to the transactions contemplated by this Agreement, including the Merger. Except as provided in the following two sentences (a) after the Effective Time, the rights of the Company’s shareholders and holders of Company Restricted Stock, Company Performance Stock or Company Unpaid Performance Stock to receive the Merger Consideration and payments pursuant to Article II, and (b) after the Effective Time, except for Section 6.09, each Party agrees that (i) its respective representations, warranties, covenants and agreements set forth herein are solely for the benefit of the other Parties, in accordance with and subject to the terms of this Agreement and (ii) this Agreement is not intended to, and does not, confer upon any Person other than the Parties any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein. Each of the Debt Financing Sources and each of their respective Affiliates and their respective current, former and future direct or indirect equity holders, controlling persons, stockholders, agents, Affiliates, members, managers, general or limited partners, assignees or representatives (collectively, the “Debt Financing Related Parties”) shall be express third-party beneficiaries with respect to Section 8.02(d), Section 8.03(d), this Section 9.07, Section 9.08, Section 9.10, Section 9.11(b), Section 9.12 and Section 9.14 (collectively, the “Debt Financing Source Provisions”).

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SECTION 9.08 Governing Law. This Agreement, and all Claims or causes of action of the Parties (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity) that may be based on, arise out of or relate to this Agreement or the negotiation, execution, performance or subject matter hereof, shall be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflict of laws. Notwithstanding the foregoing sentence, except as otherwise set forth in the Debt Letters as in effect as of the date of this Agreement, all matters relating to the interpretation, construction, validity and enforcement (whether at law, in equity, in contract, in tort, or otherwise) against any of the Debt Financing Related Parties in any way relating to the Debt Letters or the performance thereof or the Debt Financing shall be exclusively governed by, and construed in accordance with, the domestic Law of the State of New York without giving effect to any choice or conflict of law provision or rule whether of the State of New York or any other jurisdiction that would cause the application of Law of any jurisdiction other than the State of New York.

SECTION 9.09 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise, by any of the Parties without the prior written consent of the other Parties. Any purported assignment without such consent shall be void; provided, that Parent may make an assignment of its rights (but not its obligations) under this Agreement to any Debt Financing Source without the prior written consent of the Company. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

SECTION 9.10 Specific Enforcement. The Parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that monetary damages, even if available, would not be an adequate remedy therefor. It is accordingly agreed that, at any time prior to the termination of this Agreement pursuant to Article VIII, the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the performance of terms and provisions of this Agreement, including the right of a Party to cause each other Party to consummate the Merger and the other transactions contemplated by this Agreement, in any court referred to in Section 9.11, without proof of actual damages (and each Party hereby waives any requirement for the securing or posting of any bond in connection with such remedy), this being in addition to any other remedy to which they are entitled at law or in equity. The Parties further agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to Law or inequitable for any reason, nor to assert that a remedy of monetary damages would provide an adequate remedy for any such breach. Notwithstanding the foregoing, the Company shall be entitled to specific performance of Parent's and Merger Sub's obligations to consummate the Closing and to cause the funding of the Contribution (as defined in the Equity Commitment Agreement) under the Equity Commitment Agreement by the Sponsor solely in the event that (1) all of the conditions set forth in Section 7.01, Section 7.02 and Section 7.03 have been satisfied or waived in accordance with this Agreement as of the date that the Closing should have been consummated pursuant to Section 1.03 (except for those conditions that by their terms are to be satisfied at the Closing), (2) Parent and Merger Sub do not complete the Closing on the day that the Closing should have been consummated pursuant to Section 1.03, (3) the Company shall have delivered to Parent an irrevocable written notice that it stands ready, willing and able to consummate the Closing, (4) Parent and Merger Sub fail to consummate the Closing within five (5) Business Days following their receipt of written notice from the Company requesting such consummation, and (5) the Debt Financing (or Substitute Financing) has been funded or will be funded in accordance with its terms at the Closing if the financing contemplated by the Equity Commitment Agreement is funded at the Closing. Notwithstanding anything to the contrary in this Agreement, the maximum aggregate liability of Parent, Merger Sub and the Debt Financing Related Parties together for any losses, damages, costs or expenses of the Company or its Affiliates related to the failure of the transactions contemplated by this Agreement, or a breach of this Agreement by Parent or Merger Sub or otherwise (including a Willful Breach), shall be limited to an amount equal to: (i) the amount of the Parent Termination Fee, plus (ii) the aggregate amount of any expense reimbursement and indemnification obligations pursuant to Section 5.05(d), the last sentence of Section 6.02(a), and Section 8.02(c) (collectively, the "Liability Limitation"), and in no event shall the Company, its Subsidiaries, or its Affiliates seek any amount in excess of the Liability Limitation in connection with this Agreement or the transactions contemplated by this Agreement or in respect of any other document, whether at law or equity, in contract, in tort or otherwise.

SECTION 9.11 Jurisdiction; Venue.

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(a) All Claims arising from, under or in connection with this Agreement shall be raised to and exclusively determined by any Texas State court located in El Paso, Texas or Houston, Texas or, if such court disclaims jurisdiction, the U.S. District Court for the Western District of Texas (El Paso Division) or the U.S. District Court for the Southern District of Texas (Houston Division), to whose jurisdiction and venue the Parties unconditionally consent and submit. Each Party hereby irrevocably and unconditionally waives any objection to the laying of venue of Claim arising out of this Agreement in such court and hereby further irrevocably and unconditionally waives and agree not to plead or claim in any such court that any such Claim brought in any such court has been brought in an inconvenient forum. Each Party further agree that service of any process, summons, notice or document by U.S. registered mail to the respective addresses set forth in Section 9.02 shall be effective service of process for any Claim brought against such Party in any such court.

(b) Notwithstanding anything to the contrary in this Agreement (including this Section 9.11), each Party agrees that it will not bring or support any action, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against the Debt Financing Related Parties in any way relating to this Agreement, including any dispute arising out of or relating to the Debt Letters or the performance thereof or the Debt Financing, in any forum other than the Supreme Court of the State of New York, County of New York, or, if under applicable law exclusive jurisdiction is vested in the Federal courts, the United States District Court for the Southern District of New York (and of the appropriate appellate courts therefrom).

SECTION 9.12 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE MERGER (INCLUDING ANY PROCEEDING AGAINST THE DEBT FINANCING RELATED PARTIES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED HEREBY, THE DEBT LETTERS, THE EQUITY COMMITMENT AGREEMENT, THE FINANCING OR THE PERFORMANCE OF SERVICES WITH RESPECT THERETO). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT, IN THE EVENT OF ANY ACTION, SUIT OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 9.12.

SECTION 9.13 Construction. Each of the Parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.

SECTION 9.14 Liability of Debt Financing Related Parties. Notwithstanding anything to the contrary contained herein, the Company hereby waives any rights or claims against any Debt Financing Related Party in connection with this Agreement, the Debt Financing, the Debt Letters or the transactions contemplated hereby or thereby, and no Debt Financing Related Party shall have any rights or claims against the Company in connection with this Agreement, the Debt Financing or the transactions contemplated hereby or thereby, whether at law or equity, in contract, in tort or otherwise; provided, that, following consummation of the Merger, the foregoing will not limit the rights of the parties to the Debt Financing under the Debt Letters.

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, the Parties have duly executed this Agreement, each as of the date first written above.

EL PASO ELECTRIC COMPANY

By: /s/ Mary E. Kipp  
Name: Mary E. Kipp  
Title: President and Chief Executive Officer

SUN JUPITER HOLDINGS LLC

By: /s/ Andrew Gilbert  
Name: Andrew Gilbert  
Title: Authorized Signatory

SUN MERGER SUB INC.

By: /s/ Andrew Gilbert  
Name: Andrew Gilbert  
Title: Authorized Signatory

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EXHIBIT A

DEFINED TERMS

Section 1.01 Certain Defined Terms. For purposes of this Agreement, each of the following terms has the meaning specified in this Section 1.01 of Exhibit A :

“ Affiliate ” of any Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person. For purposes of this definition, “ control ” (including the terms “ controlled by ” and “ under common control with ”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise; provided, that for the avoidance of doubt, the Sponsor and any direct or indirect portfolio companies owned, managed or controlled by the Sponsor shall be considered an Affiliate of Parent and Merger Sub. Furthermore, for the avoidance of doubt, none of JPMorgan Chase Bank, N.A., J.P. Morgan Investment Management Inc. or any of their Affiliates shall be considered an Affiliate of Parent or Merger Sub.

“ Anti-Corruption Laws ” means the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act of 2010, as amended, and all Laws of any jurisdiction applicable to the Company and its Affiliates concerning or relating to bribery or corruption.

“ Antitrust Laws ” means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, all applicable state, foreign or supranational antitrust Laws and all other applicable Laws issued by a Governmental Entity that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

“ Burdensome Condition ” means a material adverse effect on the financial condition, assets, liabilities, businesses or results of operations (i) of the Company, or (ii) of, taken as a whole, Parent and its Subsidiaries; provided, however, that for purposes of this definition only, Parent and its Subsidiaries shall be deemed a consolidated group of entities of the size and scale of a hypothetical company that is 100% of the size of the Company taken as a whole as of the date of this Agreement; provided, further, all undertakings, terms, conditions, liabilities, obligations, commitments, sanctions or other measures or provisions shall be taken into account in determining whether there has been or is a Burdensome Condition, including any such undertakings, terms, conditions, liabilities, obligations, commitments, sanctions or other measures or provisions that implement the commitments and agreements set forth in Exhibit B hereto.

“ Business Day ” means any day except for (a) a Saturday or a Sunday or (b) a day on which banking and savings and loan institutions are authorized or required by Law to be closed in El Paso, Texas or New York, New York.

“ Claim ” means any demand, claim, petition, charge, complaint, grievance, litigation, suit, action, legal proceeding (whether at law or in equity, civil, criminal, administrative or investigative) or arbitration.

“ Code ” means the Internal Revenue Code of 1986, as amended.

“ Company Benefit Agreement ” means each employment, consulting, bonus, incentive or deferred compensation, equity or equity-based compensation, severance, change-in-control, retention, termination or other material Contract between the Company or any Company Commonly Controlled Entity, on the one hand, and any Company Personnel, on the other hand.

“ Company Benefit Plan ” means each (a) employee benefit plan (as defined in Section 3(3) of ERISA, whether or not subject to ERISA) or post-retirement or employment health or medical plan, program, policy or arrangement, (b) bonus, incentive or deferred compensation or equity or equity-based compensation plan, program, policy or arrangement, (c) severance, change-in control, retention or termination plan, program, policy or arrangement or (d) other compensation, pension, retirement, savings or other benefit plan, program, policy or arrangement, in each case, sponsored, maintained, contributed to or required to be maintained or contributed to by the Company or any Company Commonly Controlled Entity for the benefit of any Company Personnel, or for which the Company or any Company Commonly Controlled Entity has any direct or indirect liability.



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“Company Commonly Controlled Entity” means any person or entity that, together with the Company, is treated as a single employer under Section 414 of the Code.

“Company Financial Advisor” means any Person set forth in Section 3.20 of the Company Disclosure Letter.

“Company Material Adverse Effect” means any fact, circumstance, effect, change, event or development that has or would reasonably be expected to have a material adverse effect on the business, properties, financial condition or results of operations of the Company; provided that no fact, circumstance, effect, change, event or development resulting from or arising out of any of the following, individually or in the aggregate, shall constitute or be taken into account in determining whether a Company Material Adverse Effect has occurred: (a) any change or condition affecting any industry in which the Company operates, including electric generating, transmission or distribution industries (including, in each case, any changes in the operations thereof); (b) any change affecting any economic, legislative or political condition or any change affecting any securities, credit, financial or other capital markets condition, in each case in the United States, in any foreign jurisdiction or in any specific geographical area; (c) any failure in and of itself by the Company to meet any internal or public projection, budget, forecast, estimate or prediction in respect of revenues, earnings or other financial or operating metrics for any period (it being understood that the facts or occurrences giving rise to or contributing to such failure may be deemed to constitute, or be taken into account in determining whether there has or will be, a Company Material Adverse Effect); (d) any change attributable to the announcement, execution or delivery of this Agreement or the pendency of the Merger, including (i) any action taken by the Company that is expressly required pursuant to this Agreement, or is consented to by Parent, or any action taken by Parent or any Affiliate thereof, to obtain any Consent from any Governmental Entity to the consummation of the Merger and the result of any such actions, (ii) any Claim arising out of or related to this Agreement (including shareholder litigation), (iii) any adverse change in supplier, employee, financing source, shareholder, regulatory, partner or similar relationships resulting therefrom or (iv) any change that arises out of or relates to the identity of Parent or any of its Affiliates as the acquirer of the Company; (e) any change or condition affecting the market for commodities, including any change in the price or availability of commodities; (f) any change in and of itself in the market price, credit rating or trading volume of shares of Company Common Stock on the NYSE or any change affecting the ratings or the ratings outlook for the Company (it being understood that the facts or occurrences giving rise to or contributing to such failure may be deemed to constitute, or be taken into account in determining whether there has or will be, a Company Material Adverse Effect); (g) any change in applicable Law, regulation or GAAP (or authoritative interpretation thereof); (h) geopolitical conditions, the outbreak or escalation of hostilities, any act of war, sabotage or terrorism, or any escalation or worsening of any such act of war, sabotage or terrorism threatened or underway as of the date of this Agreement; (i) any fact, circumstance, effect, change, event or development resulting from or arising out of or affecting the national, regional, state or local engineering or construction industries or the wholesale or retail markets for commodities, materials or supplies (including equipment supplies, steel, concrete, electric power, fuel, coal, natural gas, water or coal transportation) or the hedging markets therefor, including any change in commodity prices; (j) any hurricane, strong winds, ice event, fire, tornado, tsunami, flood, earthquake or other natural disaster or severe weather-related event, circumstance or development, (k) any change or effect arising from any requirements imposed by any Governmental Entities as a condition to obtaining the Company Required Approvals or the Parent Required Approvals, or (l) casualty or condemnation related to the Company’s real property rights to the land, buildings, wires, pipes, structures and other improvements thereon and fixtures thereto and any improvements located thereon; provided, however, that any fact, circumstance, effect, change, event or development set forth in clauses (a), (b), (e), (g), (h), (i) and (j) above may be taken into account in determining whether a Company Material Adverse Effect has occurred solely to the extent such fact, circumstance, effect, change, event or development has a materially disproportionate adverse effect on the Company, as compared to other entities (if any) engaged in the relevant business in the geographic area affected by such fact, circumstance, effect, change, event or development (in which case, only the incremental disproportionate impact may be taken into account in determining whether there has been, or would be, a Company Material Adverse Effect, to the extent such change is not otherwise excluded from being taken into account by clauses (a)–(l) of this definition).

“Company Performance Stock” means any outstanding performance shares that were granted under the Company Stock Plan and represent the right to receive shares of Company Common Stock subject to performance-based vesting and that are not Company Unpaid Performance Stock.

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“Company Personnel” means any current or former director, officer, employee or other natural person service provider of the Company.

“Company Restricted Stock” means any outstanding restricted shares of Company Common Stock that are subject to time-based vesting under the Company Stock Plan.

“Company Stock Plan” means the Company’s Amended and Restated 2007 Long-Term Incentive Plan as amended and in effect from time to time.

“Company Termination Fee” means an amount in cash equal to \$85,000,000.

“Company Union Contracts” means the Contracts set forth in Section 3.15(a)(xiii) of the Company Disclosure Letter.

“Company Unpaid Performance Stock” means any outstanding performance shares that were granted under the Company Stock Plan and represent the right to receive shares of Company Common Stock subject to performance-based vesting with a performance period that ended prior to the Closing Date, but remains unpaid as of the Closing Date.

“Contract” means any written or oral contract, lease, license, evidence of indebtedness, mortgage, indenture, purchase order, binding bid, letter of credit, security agreement, undertaking or other agreement that is legally binding.

“Debt Financing Sources” means the financial institutions identified in the Debt Commitment Letter, together with the agents, arrangers, lenders and other entities that have committed to provide or arrange or otherwise entered into agreements in connection with all or any part of the Debt Financing and each other Person that commits to arrange or provide or otherwise provides the Debt Financing in accordance with this Agreement, whether by joinder to the Debt Commitment Letter or otherwise, including the parties to any joinder agreements, engagement letters, indentures or credit agreements entered into in connection therewith, together with their respective Affiliates and their respective Affiliates’ officers, directors, employees, controlling persons, agents and representatives and their respective successors and permitted assigns.

“Designated Person” means any Person listed on a Sanctions List.

“Disclosure Letters” means, collectively, the Company Disclosure Letter and the Parent Disclosure Letter.

“Environmental Claim” means any (i) Claim against the Company asserted by any Person alleging liability (including potential liability for investigatory costs, cleanup costs, response costs, natural resources damages, property damages, personal injuries, or penalties) or responsibility arising out of, based on or resulting from (a) the presence or Release of or exposure to any Hazardous Materials at any location, whether or not owned or operated by the Company, or (b) any violation or alleged violation of Environmental Law or any Environmental Permit, or (ii) investigation or information request as to which the Company has received written notice, which could result in such a Claim.

“Environmental Laws” means all applicable Laws relating to pollution or protection of or damage to the environment (including ambient air, surface water, groundwater, land surface, subsurface and sediments), natural resources, endangered or threatened species, the climate or human health and safety as it relates to exposure to hazardous or toxic materials, including Laws relating to the exposure to Hazardous Materials.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Good Utility Practice” means (a) any of the practices, methods and acts engaged in or approved by a significant portion of the electric generating, transmission or distribution industries, as applicable, during the relevant time period or (b) any of the practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, would reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition; provided that Good Utility Practice is not intended to be limited to optimum practices, methods or acts to the exclusion of all others but rather to be acceptable practices, methods or acts generally accepted in the geographic location of the performance of such practice, method or act.

“Governmental Entity” means any U.S. or foreign federal, state, provincial or local governmental authority, court, government or self-regulatory organization, commission, tribunal or organization or any regulatory,

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administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, including any governmental, quasi-governmental or nongovernmental body administering, regulating, or having general oversight over any energy-related markets, including NERC, or any court, arbitrator, arbitration panel or similar judicial body.

“Hazardous Materials” means (a) petroleum, coal tar and other hydrocarbons and any derivatives or by-products, coal, coal combustion products, residues, or emissions, bottom ash, flue gas desulfurization material, explosive or radioactive materials or wastes, asbestos in any form, polychlorinated biphenyls, urea formaldehyde insulation, chlorofluorocarbons and other ozone-depleting substances and (b) any other chemical, material, substance or waste that is regulated or for which liability or standards of care are imposed under any Environmental Law.

“Indebtedness” means, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money (other than intercompany indebtedness), (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person evidenced by letters of credit, bankers’ acceptances or similar facilities to the extent drawn upon by the counterparty thereto, (d) all capitalized lease obligations of such Person and (d) all guarantees or other assumptions of liability for any of the foregoing.

“Intellectual Property” means all intellectual property and industrial property rights of any kind or nature, including all U.S. and foreign trademarks, service marks, service names, internet domain names, trade dress and trade names, and all goodwill associated therewith and symbolized thereby, patents and all related continuations, continuations-in-part, divisionals, reissues, reexaminations, substitutions, and extensions thereof, trade secrets, registered and unregistered copyrights and works of authorship, rights in computer programs (whether in source code, object code or other form), proprietary rights in databases, compilations and data, to the extent recognized in any given jurisdiction, and registrations and applications for registration of any of the foregoing.

“Insolvent” shall mean, with respect to any Person, (i) the present fair saleable value of such Person’s assets is less than the amount required to pay such person’s total liabilities, including contingent liabilities, (ii) the present fair saleable value of such Person’s assets is less than the amount required to pay the probable liability (subordinated, contingent or otherwise) of such Person on its debts, as such debts and liabilities become absolute and matured, (iii) such Person intends to incur or believes that it will incur debts or liabilities that would be beyond its ability to pay such debts and liabilities as they mature, or (iv) such Person has unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted.

“Judgment” means any decision, verdict, judgment, order, decree, ruling, writ, subpoena, assessment or arbitration award of a Governmental Entity of competent jurisdiction.

“Knowledge” means (i) with respect to the Company, the actual knowledge of the individuals listed in Section 1.01 of the Company Disclosure Letter and (ii) with respect to Parent or Merger Sub, the actual knowledge of the individuals listed in Section 1.01 of the Parent Disclosure Letter.

“Law” means any domestic or foreign, federal, state, provincial or local statute, law, common law, ordinance, rule, binding administrative interpretation, regulation, Judgment or other requirement of any Governmental Entity, including the orders, rules and regulations of the NYSE, the FERC, the NRC, the PUCT and the NMPRC.

“Multiemployer Plan” shall mean any plan defined in Sections 3(37) or 4001(a)(3) of ERISA.

“NYSE” means the New York Stock Exchange.

“OFAC” means the Office of Foreign Assets Control.

“Organizational Documents” means any corporate, partnership or limited liability organizational documents, including certificates or articles of incorporation, bylaws, certificates of formation, operating agreements (including limited liability company agreement and agreements of limited partnership), certificates of limited partnership, partnership agreements, shareholder agreements and certificates of existence, as applicable.

“Parent Material Adverse Effect” means any fact, circumstance, effect, change, event or development that has or would reasonably be expected to have a material and adverse effect on the ability of Parent or Merger Sub to consummate, or that would reasonably be expected to prevent or materially impede, interfere with or delay Parent or Merger Sub’s consummation of, the transactions contemplated by this Agreement.

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“Parent Termination Fee” means an amount in cash equal to \$170,000,000.

“Permit” means a franchise, license, permit, authorization, tariff, variance, exemption, order, registration, clearance or approval of a Governmental Entity.

“Person” means any natural person, firm, corporation, partnership, company, limited liability company, trust, joint venture, association, Governmental Entity or other entity.

“Personal Information” means (a) any and all information that, alone or in combination with other information, allows the identification of a living individual, (b) “personal data” as that term is defined in Article 4 of the European Union’s General Data Protection Regulation and all rules and regulations issued under any of the foregoing, and (c) “personally identifiable information” under any privacy or data security law in any jurisdiction applicable to the processing of that Personal Information (including, IP address, name, address, telephone number, email address, social security number, bank account number, driver’s license number, credit card number, credit history and criminal history).

“Release” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment (including ambient air, surface water, groundwater, land surface, subsurface and sediments).

“Required Financial Information” means the information required by clause (ii) of Exhibit B to the Debt Commitment Letter.

“Sanctioned Country” means a country or territory which is at any time subject to Sanctions.

“Sanctions” means (a) economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government and administered by OFAC, (b) economic or financial sanctions imposed, administered or enforced from time to time by the U.S. State Department, the U.S. Department of Commerce or the U.S. Department of the Treasury, and (c) economic or financial sanctions imposed, administered or enforced from time to time by the United Nations Security Council, the European Union, or Her Majesty’s Treasury.

“Sanctions List” means any of the lists of specially designated nationals or designated persons or entities (or equivalent) held by the U.S. government and administered by OFAC, the U.S. State Department, the U.S. Department of Commerce or the U.S. Department of the Treasury or any similar list maintained by any other U.S. government entity, the United Nations Security Council, the European Union, or Her Majesty’s Treasury, in each case as the same may be amended, supplemented or substituted from time to time.

“Subsidiary” of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its Board of Directors or other governing body (or, if there are no such voting interests, more than 50% of the equity interests of which) is owned directly or indirectly by such first Person.

“Tax Return” means all Tax returns, declarations, statements, reports, schedules, forms, claims for refund and information returns, including any amended Tax returns relating to Taxes.

“Taxes” means (a) all taxes, customs, tariffs, imposts, levies, duties, other like assessments or charges in the nature of a tax imposed by a Governmental Entity, together with all interest, penalties and additions imposed with respect to such amounts and (b) any liability for any item described in clause (a) payable by reason of Contract, assumption, transferee or successor liability, operation of Law or otherwise, and in each case whether disputed or otherwise.

“Texas Public Utility Regulatory Act” means Article II of the Texas Utilities Code, §§ 11.001 – 66.017, as such may be amended from time to time.

“Treasury Shares” means shares of Company Common Stock held by the Company or directly or indirectly held by Parent or Merger Sub.

“Trust” means Rio Grande Resources Trust II, a Texas grantor trust.

Section 1.02 Other Defined Terms. In addition to the defined terms set forth in Section 1.01 of this Exhibit A, each of the following capitalized terms has the respective meaning specified in the Section set forth opposite such term below:

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| <b>Term</b>                           | <b>Section</b> |
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**EXHIBIT B**

**COMMITMENTS TO BE INCLUDED IN APPLICATIONS TO THE PUCT AND NMPRC AND AGREEMENT WITH THE CITY OF EL PASO**

**Economic Development and Community Commitments**

- Commitment to dedicate \$100 million to promote economic development in the City of El Paso, Texas and Las Cruces, New Mexico to be funded at a level of \$5 million per year for 20 years. Contributions to the fund will not be recoverable in rates.
- Maintain the Company's annual amount of charitable giving following the transaction at the Company's average annual charitable giving level for the three-year period ending December 31, 2018 (i.e., approximately \$1.2 million per year).
- Maintain the Company's existing low income assistance programs while evaluating potential methods to improve such programs.
- 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.
- Create apprenticeship programs for technical and professional positions for students in local high-schools and colleges.
- Continue and enhance utility supplier diversity by promoting the inclusion of minority-, women-, LGBTQ- and veteran-owned businesses into the Company's supply chain.
- Study and evaluate growth opportunities related to electric vehicles, distributed generation and battery storage in collaboration with the University of Texas at El Paso and New Mexico State University.
- The Company will support Texas RPS standards and the New Mexico Energy Transition Act.
- The Company shall report annually to the NMPRC the status of efforts during the prior calendar year to add renewable energy to its power supply portfolio and assure compliance toward the New Mexico Energy Transition Act. Such report shall include a description of efforts to diversify the renewable energy sources considered and an explanation as to what determinations were made and the basis therefor.

**Rate And Capital Expenditure Commitments**

- The Company will issue a rate credit to its Texas and New Mexico customers in a total aggregate amount for all customers of \$21 million. The rate credit will be distributed among customers in 36 monthly installments starting shortly after closing of the transaction. Allocation of the funds is to be determined in a post-closing proceeding. The Company will not attempt to recover the value of this rate credit in future rate cases.
- No recovery in rates of acquisition premium will be sought.
- No recovery in rates of transaction costs will be sought.
- The Company will continue to make minimum capital expenditures in an amount equal to the Company's current five-year budget for the five-year period beginning January 1, 2021, subject to the following adjustments: the Company may reduce capital spending due to conditions not under the Company's control, including, without limitation, siting delays, cancellations of projects by third-parties, weaker than expected economic conditions, or if the Company determines that a particular expenditure would not be prudent.

**Ring-Fencing Commitments**

- The Company will maintain an existence that is separate and distinct from IIF US Holding 2 LP ("IIF") and any of its affiliates or subsidiaries (excluding the Company and Rio Grande Resources Trust II), including, its separate name, logo, franchises, obligations and privileges.

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- IIF shall take the actions necessary to ensure the existence of Company stand-alone credit and debt ratings, as applicable.
- In connection with the transaction, IIF has created Parent, an indirect, wholly-owned special-purpose entity, to hold 100% of the equity interests in the Company.
- Parent will be retained between the Company and IIF for so long as IIF owns the Company.
- The Company will not guarantee the debt or credit instruments of Parent, IIF or any other affiliate (excluding the Company and Rio Grande Resources Trust II).
- The Company's assets, revenues or stock shall not be pledged by Parent, IIF or any of its affiliates or subsidiaries, for the benefit of any entity other than the Company.
- Neither the Company nor Parent will enter into any inter-company debt transactions with IIF or any of its affiliates or subsidiaries post-transaction, unless approved by the PUCT and NMPRC.
- Neither the Company nor Parent will share credit facilities with IIF or any of its affiliates or subsidiaries.
- Neither the Company nor Parent will include in any of its debt or credit agreements cross-default provisions between the securities of the Company or Parent and the securities of IIF or any of its affiliates or subsidiaries (excluding the Company and Rio Grande Resources Trust II).
- Neither the Company nor Parent will include in any of its debt or credit agreements any financial covenants or rating-agency triggers related to IIF or any of its affiliates or subsidiaries (excluding the Company and Rio Grande Resources Trust II).
- The Company will not incur, guaranty or pledge assets for any new incremental debt related to the Merger.
- Neither the Company nor Parent will seek to recover from the Company's customers any costs incurred as a result of a bankruptcy of IIF or any of its affiliates (excluding the Company).
- Following close of the transaction, the Company's CEO and other senior management who directly report to the CEO will hold no positions with IIF or any of its affiliates or subsidiaries (excluding the Company and Parent).
- IIF will obtain a non-consolidation legal opinion that provides that, in the event of a bankruptcy of IIF or any of its affiliates, a bankruptcy court will not consolidate the assets and liabilities of the Company with IIF or any affiliate of IIF.
- Neither the Company nor Parent will transfer any material assets or facilities to any affiliates, other than a transfer that is on an arm's-length basis consistent with the PUCT and NMPRC affiliate standards as applicable to the Company.
- Each of the Company and Parent will maintain an arm's-length relationship with IIF and its affiliates, consistent with the PUCT and NMPRC affiliate standards as applicable to the Company.
- IIF will provide the PUCT and NMPRC access to its books and records, as well as those of its affiliates, as necessary to facilitate either Commission's audit or review of any affiliate transactions as between the Company and IIF or IIF's affiliates.
- Each of the Company and Parent will maintain accurate, appropriate, and detailed books, financial records and accounts, including checking and other bank accounts, and custodial and other securities safekeeping accounts that are separate and distinct from those of any other entity.
- The Company will suspend payment of dividends or other distributions, except for contractual tax payments, until otherwise allowed by the PUCT and NMPRC if issuance of the dividend or distribution would cause the equity component of the Company's debt-to-equity ratio to fall below that established from time to time by the PUCT and NMPRC for the Company for ratemaking purposes.
- The equity component of the Company's debt-to-equity ratio will not fall below that established from time to time by the PUCT and NMPRC for the Company for ratemaking purposes.



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**Local Control and Management Commitments**

- The Company's existing Headquarters will remain in El Paso, Texas for so long as IIF owns the Company.
- The Company's CEO and the Company's senior management will continue to have day-to-day control over the Company's operations and senior management will continue to reside in the El Paso, Texas and Las Cruces, New Mexico vicinity.
- The Company's local management will remain the primary point of contact for all regulatory, operational and community engagement matters.
- The Company's post-closing Board of Directors will comprise of ten (10) Directors, of which:
  - One (1) will be the Company's CEO;
  - Two (2) will be IIF-level representatives; and
  - The remaining seven (7), including the Board's Chairperson, will satisfy the definition of NYSE Independent Directors.
    - Of the seven (7) NYSE Independent Directors:
      - At least two (2) will reside within the Company's service territory; and
      - At least two (2) will be individuals that either served on the Company's Board immediately prior to the transaction, are local business/community leaders or are from a university within the Company's service territory.
- Company Board meetings will take place in Las Cruces, New Mexico at least once per year.
- IIF will maintain its ownership interest in the Company for at least ten (10) years post-closing.

**Employment Commitments**

- For at least five (5) years post-closing, the Company will not implement any material involuntary workforce reductions or changes to wages, benefits and other terms and conditions of employment in effect prior to the transaction.
- Honor the terms of the Company's existing collective bargaining agreements.

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**Annex B**

May 31, 2019

The Board of Directors  
El Paso Electric Company  
Stanton Tower  
100 North Stanton Street  
El Paso, Texas 79901

Dear Members of the Board:

We understand that El Paso Electric Company, a Texas corporation (“Company”), Sun Jupiter Holdings LLC, a Delaware limited liability company (“Parent”), and Sun Merger Sub Inc., a Texas corporation and wholly owned subsidiary of Parent (“Merger Sub”), propose to enter into an Agreement and Plan of Merger (the “Agreement”), pursuant to which Parent will acquire Company (the “Transaction”). Pursuant to the Agreement, Merger Sub will be merged with and into Company and each issued and outstanding share of the common stock, no par value, of Company (“Company Common Stock”), other than shares of Company Common Stock held by Company, Parent or Merger Sub and shares of Company Common Stock held by holders who are entitled to and properly demand an appraisal of their shares of Company Common Stock (such holders, collectively, “Excluded Holders”), will be converted into the right to receive \$68.25 in cash (the “Consideration”), subject to certain equitable adjustments relating to certain changes in the outstanding capital stock of Company as more fully described in the Agreement. The terms and conditions of the Transaction are more fully set forth in the Agreement.

You have requested our opinion as of the date hereof as to the fairness, from a financial point of view, to holders of Company Common Stock (other than Excluded Holders) of the Consideration to be paid to such holders in the Transaction.

In connection with this opinion, we have:

- (i) Reviewed the financial terms and conditions of a draft, dated May 31, 2019, of the Agreement;
- (ii) Reviewed certain publicly available historical business and financial information relating to Company;
- (iii) Reviewed various financial forecasts and other data provided to us by Company relating to the business of Company;
- (iv) Held discussions with members of the senior management of Company with respect to the business and prospects of Company;
- (v) Reviewed public information with respect to certain other companies in lines of business we believe to be generally relevant in evaluating the business of Company;
- (vi) Reviewed the financial terms of certain business combinations involving companies in lines of business we believe to be generally relevant in evaluating the business of Company;
- (vii) Reviewed historical stock prices and trading volumes of Company Common Stock; and
- (viii) Conducted such other financial studies, analyses and investigations as we deemed appropriate.

We have assumed and relied upon the accuracy and completeness of the foregoing information, without independent verification of such information. We have not conducted any independent valuation or appraisal of any of the assets or liabilities (contingent or otherwise) of Company or concerning the solvency or fair value of Company, and we have not been furnished with any such valuation or appraisal. With respect to the financial forecasts utilized in our analyses, we have assumed, with the consent of Company, that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments as to the future financial performance of Company. We assume no responsibility for and express no view as to any such forecasts or the assumptions on which they are based. We further have assumed, with the consent of Company, that adjustments (if any) to the Consideration will not be material in any respect to our analyses or opinion.

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The Board of Directors  
El Paso Electric Company  
May 31, 2019  
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Further, our opinion is necessarily based on economic, monetary, market and other conditions as in effect on, and the information made available to us as of, the date hereof. We assume no responsibility for updating or revising our opinion based on circumstances or events occurring after the date hereof. We do not express any opinion as to the price at which shares of Company Common Stock may trade at any time subsequent to the announcement of the Transaction. In addition, our opinion does not address the relative merits of the Transaction as compared to any other transaction or business strategy in which Company might engage or the merits of the underlying decision by Company to engage in the Transaction.

In rendering our opinion, we have assumed, with the consent of Company, that the Transaction will be consummated on the terms described in the Agreement, without any waiver or modification of any material terms or conditions. Representatives of Company have advised us, and we have assumed, that the Agreement, when executed, will conform to the draft reviewed by us in all material respects. We also have assumed, with the consent of Company, that obtaining the necessary governmental, regulatory or third party approvals and consents for the Transaction will not have an adverse effect on Company or the Transaction. We do not express any opinion as to any tax or other consequences that might result from the Transaction, nor does our opinion address any legal, tax, regulatory or accounting matters, as to which we understand that Company obtained such advice as it deemed necessary from qualified professionals. We express no view or opinion as to any terms or other aspects (other than the Consideration to the extent expressly specified herein) of the Transaction, including, without limitation, the form or structure of the Transaction or any agreements or arrangements entered into in connection with, or contemplated by, the Transaction. In addition, we express no view or opinion as to the fairness of the amount or nature of, or any other aspects relating to, the compensation to any officers, directors or employees of any parties to the Transaction, or class of such persons, relative to the Consideration or otherwise.

Lazard Frères & Co. LLC ("Lazard") is acting as financial advisor to Company in connection with the Transaction and will receive a fee for such services, a portion of which is payable upon the rendering of this opinion and a substantial portion of which is contingent upon the closing of the Transaction. In addition, in the ordinary course, Lazard and its affiliates and employees may trade securities of Company, Parent and certain of their respective affiliates for their own accounts and for the accounts of their customers, may at any time hold a long or short position in such securities, and may also trade and hold securities on behalf of Company, Parent and certain of their respective affiliates. The issuance of this opinion was approved by the Opinion Committee of Lazard.

Our engagement and the opinion expressed herein are for the benefit of the Board of Directors of Company (in its capacity as such) and our opinion is rendered to the Board of Directors of Company in connection with its evaluation of the Transaction. Our opinion is not intended to and does not constitute a recommendation to any shareholder as to how such shareholder should vote or act with respect to the Transaction or any matter relating thereto.

Based on and subject to the foregoing, we are of the opinion that, as of the date hereof, the Consideration to be paid to holders of Company Common Stock (other than Excluded Holders) in the Transaction is fair, from a financial point of view, to holders of Company Common Stock (other than Excluded Holders).

Very truly yours,

LAZARD FRERES & CO. LLC

By /s/ George W. Bilicic  
George W. Bilicic  
Managing Director

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Annex C

**DISSENTERS' RIGHTS PROVISIONS OF THE TEXAS BUSINESS ORGANIZATIONS CODE**

**SUBCHAPTER H. RIGHTS OF DISSENTING OWNERS**

**Sec. 10.351. APPLICABILITY OF SUBCHAPTER.**

- (a) This subchapter does not apply to a fundamental business transaction of a domestic entity if, immediately before the effective date of the fundamental business transaction, all of the ownership interests of the entity otherwise entitled to rights to dissent and appraisal under this code are held by one owner or only by the owners who approved the fundamental business transaction.
- (b) This subchapter applies only to a "domestic entity subject to dissenters' rights," as defined in Section 1.002. That term includes a domestic for-profit corporation, professional corporation, professional association, and real estate investment trust. Except as provided in Subsection (c), that term does not include a partnership or limited liability company.
- (c) The governing documents of a partnership or a limited liability company may provide that its owners are entitled to the rights of dissent and appraisal provided by this subchapter, subject to any modification to those rights as provided by the entity's governing documents.

**Sec. 10.352. DEFINITIONS. In this subchapter:**

- (1) "Dissenting owner" means an owner of an ownership interest in a domestic entity subject to dissenters' rights who:
  - (A) provides notice under Section 10.356; and
  - (B) complies with the requirements for perfecting that owner's right to dissent under this subchapter.
- (2) "Responsible organization" means:
  - (A) the organization responsible for:
    - (i) the provision of notices under this subchapter; and
    - (ii) the primary obligation of paying the fair value for an ownership interest held by a dissenting owner;
  - (B) with respect to a merger or conversion:
    - (i) for matters occurring before the merger or conversion, the organization that is merging or converting; and
    - (ii) for matters occurring after the merger or conversion, the surviving or new organization that is primarily obligated for the payment of the fair value of the dissenting owner's ownership interest in the merger or conversion;
  - (C) with respect to an interest exchange, the organization the ownership interests of which are being acquired in the interest exchange;
  - (D) with respect to the sale of all or substantially all of the assets of an organization, the organization the assets of which are to be transferred by sale or in another manner; and
  - (E) with respect to an amendment to a domestic for-profit corporation's certificate of formation described by Section 10.354(a)(1)(G), the corporation.

**Sec. 10.353. FORM AND VALIDITY OF NOTICE.**

- (a) Notice required under this subchapter:
  - (1) must be in writing; and

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- (2) may be mailed, hand-delivered, or delivered by courier or electronic transmission.
- (b) Failure to provide notice as required by this subchapter does not invalidate any action taken.

**Sec. 10.354. RIGHTS OF DISSENT AND APPRAISAL.**

- (a) Subject to Subsection (b), an owner of an ownership interest in a domestic entity subject to dissenters' rights is entitled to:
  - (1) dissent from:
    - (A) a plan of merger to which the domestic entity is a party if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the plan of merger;
    - (B) a sale of all or substantially all of the assets of the domestic entity if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the sale;
    - (C) a plan of exchange in which the ownership interest of the owner is to be acquired;
    - (D) a plan of conversion in which the domestic entity is the converting entity if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the plan of conversion;
    - (E) a merger effected under Section 10.006 in which:
      - (i) the owner is entitled to vote on the merger; or
      - (ii) the ownership interest of the owner is converted or exchanged;
    - (F) a merger effected under Section 21.459(c) in which the shares of the shareholders are converted or exchanged; or
    - (G) if the owner owns shares that were entitled to vote on the amendment, an amendment to a domestic for-profit corporation's certificate of formation to:
      - (i) add the provisions required by Section 3.007(e) to elect to be a public benefit corporation; or
      - (ii) delete the provisions required by Section 3.007(e), which in effect cancels the corporation's election to be a public benefit corporation; and
  - (2) subject to compliance with the procedures set forth in this subchapter, obtain the fair value of that ownership interest through an appraisal.
- (b) Notwithstanding Subsection (a), subject to Subsection (c), an owner may not dissent from a plan of merger or conversion in which there is a single surviving or new domestic entity or non-code organization, or from a plan of exchange, if:
  - (1) the ownership interest, or a depository receipt in respect of the ownership interest, held by the owner is part of a class or series of ownership interests, or depository receipts in respect of ownership interests, that are, on the record date set for purposes of determining which owners are entitled to vote on the plan of merger, conversion, or exchange, as appropriate:
    - (A) listed on a national securities exchange; or
    - (B) held of record by at least 2,000 owners;
  - (2) the owner is not required by the terms of the plan of merger, conversion, or exchange, as appropriate, to accept for the owner's ownership interest any consideration that is different from the consideration to be provided to any other holder of an ownership interest of the same class or series as the ownership interest held by the owner, other than cash instead of fractional shares or interests the owner would otherwise be entitled to receive; and

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- (3) the owner is not required by the terms of the plan of merger, conversion, or exchange, as appropriate, to accept for the owner's ownership interest any consideration other than:
  - (A) ownership interests, or depository receipts in respect of ownership interests, of a domestic entity or non-code organization of the same general organizational type that, immediately after the effective date of the merger, conversion, or exchange, as appropriate, will be part of a class or series of ownership interests, or depository receipts in respect of ownership interests, that are:
    - (i) listed on a national securities exchange or authorized for listing on the exchange on official notice of issuance; or
    - (ii) held of record by at least 2,000 owners;
  - (B) cash instead of fractional ownership interests the owner would otherwise be entitled to receive; or
  - (C) any combination of the ownership interests and cash described by Paragraphs (A) and (B).
- (c) Subsection (b) shall not apply either to a domestic entity that is a subsidiary with respect to a merger under Section 10.006 or to a corporation with respect to a merger under Section 21.459(c).
- (d) Notwithstanding Subsection (a), an owner of an ownership interest in a domestic for-profit corporation subject to dissenters' rights may not dissent from an amendment to the corporation's certificate of formation described by Subsection (a)(1)(G) if the shares held by the owner are part of a class or series of shares, on the record date set for purposes of determining which owners are entitled to vote on the amendment:
  - (1) listed on a national securities exchange; or
  - (2) held of record by at least 2,000 owners.

**Sec. 10.355. NOTICE OF RIGHT OF DISSENT AND APPRAISAL.**

- (a) A domestic entity subject to dissenters' rights that takes or proposes to take an action regarding which an owner has a right to dissent and obtain an appraisal under Section 10.354 shall notify each affected owner of the owner's rights under that section if:
  - (1) the action or proposed action is submitted to a vote of the owners at a meeting; or
  - (2) approval of the action or proposed action is obtained by written consent of the owners instead of being submitted to a vote of the owners.
- (b) If a parent organization effects a merger under Section 10.006 and a subsidiary organization that is a party to the merger is a domestic entity subject to dissenters' rights, the responsible organization shall notify the owners of that subsidiary organization who have a right to dissent to the merger under Section 10.354 of their rights under this subchapter not later than the 10th day after the effective date of the merger. The notice must also include a copy of the certificate of merger and a statement that the merger has become effective.
- (b-1) If a corporation effects a merger under Section 21.459(c), the responsible organization shall notify the shareholders of that corporation who have a right to dissent to the plan of merger under Section 10.354 of their rights under this subchapter not later than the 10th day after the effective date of the merger. Notice required under this subsection that is given to shareholders before the effective date of the merger may, but is not required to, contain a statement of the merger's effective date. If the notice is not given to the shareholders until on or after the effective date of the merger, the notice must contain a statement of the merger's effective date.
- (c) A notice required to be provided under Subsection (a), (b), or (b-1) must:
  - (1) be accompanied by a copy of this subchapter; and
  - (2) advise the owner of the location of the responsible organization's principal executive offices to which a notice required under Section 10.356(b)(1) or a demand under Section 10.356(b)(3), or both, may be provided.

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- (d) In addition to the requirements prescribed by Subsection (c), a notice required to be provided:
  - (1) under Subsection (a)(1) must accompany the notice of the meeting to consider the action;
  - (2) under Subsection (a)(2) must be provided to:
    - (A) each owner who consents in writing to the action before the owner delivers the written consent; and
    - (B) each owner who is entitled to vote on the action and does not consent in writing to the action before the 11th day after the date the action takes effect; and
  - (3) under Subsection (b-1) must be provided:
    - (A) if given before the consummation of the tender or exchange offer described by Section 21.459(c)(2), to each shareholder to whom that offer is made; or
    - (B) if given after the consummation of the tender or exchange offer described by Section 21.459(c)(2), to each shareholder who did not tender the shareholder's shares in that offer.
- (e) Not later than the 10th day after the date an action described by Subsection (a)(1) takes effect, the responsible organization shall give notice that the action has been effected to each owner who voted against the action and sent notice under Section 10.356(b)(1).
- (f) If the notice given under Subsection (b-1) did not include a statement of the effective date of the merger, the responsible organization shall, not later than the 10th day after the effective date, give a second notice to the shareholders notifying them of the merger's effective date. If the second notice is given after the later of the date on which the tender or exchange offer described by Section 21.459(c)(2) is consummated or the 20th day after the date notice under Subsection (b-1) is given, then the second notice is required to be given to only those shareholders who have made a demand under Section 10.356(b)(3).

**Sec. 10.356. PROCEDURE FOR DISSENT BY OWNERS AS TO ACTIONS; PERFECTION OF RIGHT OF DISSENT AND APPRAISAL.**

- (a) An owner of an ownership interest of a domestic entity subject to dissenters' rights who has the right to dissent and appraisal from any of the actions referred to in Section 10.354 may exercise that right to dissent and appraisal only by complying with the procedures specified in this subchapter. An owner's right of dissent and appraisal under Section 10.354 may be exercised by an owner only with respect to an ownership interest that is not voted in favor of the action.
- (b) To perfect the owner's rights of dissent and appraisal under Section 10.354, an owner:
  - (1) if the proposed action is to be submitted to a vote of the owners at a meeting, must give to the domestic entity a written notice of objection to the action that:
    - (A) is addressed to the entity's president and secretary;
    - (B) states that the owner's right to dissent will be exercised if the action takes effect;
    - (C) provides an address to which notice of effectiveness of the action should be delivered or mailed; and
    - (D) is delivered to the entity's principal executive offices before the meeting;
  - (2) with respect to the ownership interest for which the rights of dissent and appraisal are sought:
    - (A) must vote against the action if the owner is entitled to vote on the action and the action is approved at a meeting of the owners; and
    - (B) may not consent to the action if the action is approved by written consent; and
  - (3) must give to the responsible organization a demand in writing that:
    - (A) is addressed to the president and secretary of the responsible organization;

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- (B) demands payment of the fair value of the ownership interests for which the rights of dissent and appraisal are sought;
- (C) provides to the responsible organization an address to which a notice relating to the dissent and appraisal procedures under this subchapter may be sent;
- (D) states the number and class of the ownership interests of the domestic entity owned by the owner and the fair value of the ownership interests as estimated by the owner; and
- (E) is delivered to the responsible organization at its principal executive offices at the following time:
  - (i) not later than the 20th day after the date the responsible organization sends to the owner the notice required by Section 10.355(e) that the action has taken effect, if the action was approved by a vote of the owners at a meeting;
  - (ii) not later than the 20th day after the date the responsible organization sends to the owner the notice required by Section 10.355(d)(2) that the action has taken effect, if the action was approved by the written consent of the owners;
  - (iii) not later than the 20th day after the date the responsible organization sends to the owner a notice that the merger was effected, if the action is a merger effected under Section 10.006; or (iv) not later than the 20th day after the date the responsible organization gives to the shareholder the notice required by Section 10.355(b-1) or the date of the consummation of the tender or exchange offer described by Section 21.459(c)(2), whichever is later, if the action is a merger effected under Section 21.459(c).
- (c) An owner who does not make a demand within the period required by Subsection (b)(3)(E) or, if Subsection (b)(1) is applicable, does not give the notice of objection before the meeting of the owners is bound by the action and is not entitled to exercise the rights of dissent and appraisal under Section 10.354.
- (d) Not later than the 20th day after the date an owner makes a demand under Subsection (b)(3), the owner must submit to the responsible organization any certificates representing the ownership interest to which the demand relates for purposes of making a notation on the certificates that a demand for the payment of the fair value of an ownership interest has been made under this section. An owner's failure to submit the certificates within the required period has the effect of terminating, at the option of the responsible organization, the owner's rights to dissent and appraisal under Section 10.354 unless a court, for good cause shown, directs otherwise.
- (e) If a domestic entity and responsible organization satisfy the requirements of this subchapter relating to the rights of owners of ownership interests in the entity to dissent to an action and seek appraisal of those ownership interests, an owner of an ownership interest who fails to perfect that owner's right of dissent in accordance with this subchapter may not bring suit to recover the value of the ownership interest or money damages relating to the action.

**Sec. 10.357. WITHDRAWAL OF DEMAND FOR FAIR VALUE OF OWNERSHIP INTEREST.**

- (a) An owner may withdraw a demand for the payment of the fair value of an ownership interest made under Section 10.356 before:
  - (1) payment for the ownership interest has been made under Sections 10.358 and 10.361; or
  - (2) a petition has been filed under Section 10.361.
- (b) Unless the responsible organization consents to the withdrawal of the demand, an owner may not withdraw a demand for payment under Subsection (a) after either of the events specified in Subsections (a)(1) and (2).



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**Sec. 10.358. RESPONSE BY ORGANIZATION TO NOTICE OF DISSENT AND DEMAND FOR FAIR VALUE BY DISSENTING OWNER.**

- (a) Not later than the 20th day after the date a responsible organization receives a demand for payment made by a dissenting owner in accordance with Section 10.356(b)(3), the responsible organization shall respond to the dissenting owner in writing by:
  - (1) accepting the amount claimed in the demand as the fair value of the ownership interests specified in the notice; or
  - (2) rejecting the demand and including in the response the requirements prescribed by Subsection (c).
- (b) If the responsible organization accepts the amount claimed in the demand, the responsible organization shall pay the amount not later than the 90th day after the date the action that is the subject of the demand was effected if the owner delivers to the responsible organization:
  - (1) endorsed certificates representing the ownership interests if the ownership interests are certificated; or
  - (2) signed assignments of the ownership interests if the ownership interests are uncertificated.
- (c) If the responsible organization rejects the amount claimed in the demand, the responsible organization shall provide to the owner:
  - (1) an estimate by the responsible organization of the fair value of the ownership interests; and
  - (2) an offer to pay the amount of the estimate provided under Subdivision (1).
- (d) If the dissenting owner decides to accept the offer made by the responsible organization under Subsection (c)(2), the owner must provide to the responsible organization notice of the acceptance of the offer not later than the 90th day after the date the action that is the subject of the demand took effect.
- (e) If, not later than the 90th day after the date the action that is the subject of the demand took effect, a dissenting owner accepts an offer made by a responsible organization under Subsection (c)(2) or a dissenting owner and a responsible organization reach an agreement on the fair value of the ownership interests, the responsible organization shall pay the agreed amount not later than the 120th day after the date the action that is the subject of the demand took effect, if the dissenting owner delivers to the responsible organization:
  - (1) endorsed certificates representing the ownership interests if the ownership interests are certificated; or
  - (2) signed assignments of the ownership interests if the ownership interests are uncertificated.

**Sec. 10.359. RECORD OF DEMAND FOR FAIR VALUE OF OWNERSHIP INTEREST.**

- (a) A responsible organization shall note in the organization's ownership interest records maintained under Section 3.151 the receipt of a demand for payment from any dissenting owner made under Section 10.356.
- (b) If an ownership interest that is the subject of a demand for payment made under Section 10.356 is transferred, a new certificate representing that ownership interest must contain:
  - (1) a reference to the demand; and
  - (2) the name of the original dissenting owner of the ownership interest.

**Sec. 10.360. RIGHTS OF TRANSFeree OF CERTAIN OWNERSHIP INTEREST.**

A transferee of an ownership interest that is the subject of a demand for payment made under Section 10.356 does not acquire additional rights with respect to the responsible organization following the transfer. The transferee has only the rights the original dissenting owner had with respect to the responsible organization after making the demand.

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**Sec. 10.361. PROCEEDING TO DETERMINE FAIR VALUE OF OWNERSHIP INTEREST AND OWNERS ENTITLED TO PAYMENT; APPOINTMENT OF APPRAISERS.**

- (a) If a responsible organization rejects the amount demanded by a dissenting owner under Section 10.358 and the dissenting owner and responsible organization are unable to reach an agreement relating to the fair value of the ownership interests within the period prescribed by Section 10.358(d), the dissenting owner or responsible organization may file a petition requesting a finding and determination of the fair value of the owner's ownership interests in a court in:
  - (1) the county in which the organization's principal office is located in this state; or
  - (2) the county in which the organization's registered office is located in this state, if the organization does not have a business office in this state.
- (b) A petition described by Subsection (a) must be filed not later than the 60th day after the expiration of the period required by Section 10.358(d).
- (c) On the filing of a petition by an owner under Subsection (a), service of a copy of the petition shall be made to the responsible organization. Not later than the 10th day after the date a responsible organization receives service under this subsection, the responsible organization shall file with the clerk of the court in which the petition was filed a list containing the names and addresses of each owner of the organization who has demanded payment for ownership interests under Section 10.356 and with whom agreement as to the value of the ownership interests has not been reached with the responsible organization. If the responsible organization files a petition under Subsection (a), the petition must be accompanied by this list.
- (d) The clerk of the court in which a petition is filed under this section shall provide by registered mail notice of the time and place set for the hearing to:
  - (1) the responsible organization; and
  - (2) each owner named on the list described by Subsection (c) at the address shown for the owner on the list.
- (e) The court shall:
  - (1) determine which owners have:
    - (A) perfected their rights by complying with this subchapter; and
    - (B) become subsequently entitled to receive payment for the fair value of their ownership interests; and
  - (2) appoint one or more qualified appraisers to determine the fair value of the ownership interests of the owners described by Subdivision (1).
- (f) The court shall approve the form of a notice required to be provided under this section. The judgment of the court is final and binding on the responsible organization, any other organization obligated to make payment under this subchapter for an ownership interest, and each owner who is notified as required by this section.
- (g) The beneficial owner of an ownership interest subject to dissenters' rights held in a voting trust or by a nominee on the beneficial owner's behalf may file a petition described by Subsection (a) if no agreement between the dissenting owner of the ownership interest and the responsible organization has been reached within the period prescribed by Section 10.358(d). When the beneficial owner files a petition described by Subsection (a):
  - (1) the beneficial owner shall at that time be considered, for purposes of this subchapter, the owner, the dissenting owner, and the holder of the ownership interest subject to the petition; and
  - (2) the dissenting owner who demanded payment under Section 10.356 has no further rights regarding the ownership interest subject to the petition.

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**Sec. 10.362. COMPUTATION AND DETERMINATION OF FAIR VALUE OF OWNERSHIP INTEREST.**

- (a) For purposes of this subchapter, the fair value of an ownership interest of a domestic entity subject to dissenters' rights is the value of the ownership interest on the date preceding the date of the action that is the subject of the appraisal. Any appreciation or depreciation in the value of the ownership interest occurring in anticipation of the proposed action or as a result of the action must be specifically excluded from the computation of the fair value of the ownership interest.
- (b) In computing the fair value of an ownership interest under this subchapter, consideration must be given to the value of the domestic entity as a going concern without including in the computation of value any control premium, any minority ownership discount, or any discount for lack of marketability. If the domestic entity has different classes or series of ownership interests, the relative rights and preferences of and limitations placed on the class or series of ownership interests, other than relative voting rights, held by the dissenting owner must be taken into account in the computation of value.
- (c) The determination of the fair value of an ownership interest made for purposes of this subchapter may not be used for purposes of making a determination of the fair value of that ownership interest for another purpose or of the fair value of another ownership interest, including for purposes of determining any minority or liquidity discount that might apply to a sale of an ownership interest.

**Sec. 10.363. POWERS AND DUTIES OF APPRAISER; APPRAISAL PROCEDURES.**

- (a) An appraiser appointed under Section 10.361 has the power and authority that:
  - (1) is granted by the court in the order appointing the appraiser; and
  - (2) may be conferred by a court to a master in chancery as provided by Rule 171, Texas Rules of Civil Procedure.
- (b) The appraiser shall:
  - (1) determine the fair value of an ownership interest of an owner adjudged by the court to be entitled to payment for the ownership interest; and
  - (2) file with the court a report of that determination.
- (c) The appraiser is entitled to examine the books and records of a responsible organization and may conduct investigations as the appraiser considers appropriate. A dissenting owner or responsible organization may submit to an appraiser evidence or other information relevant to the determination of the fair value of the ownership interest required by Subsection (b)(1).
- (d) The clerk of the court appointing the appraiser shall provide notice of the filing of the report under Subsection (b) to each dissenting owner named in the list filed under Section 10.361 and the responsible organization.

**Sec. 10.364. OBJECTION TO APPRAISAL; HEARING.**

- (a) A dissenting owner or responsible organization may object, based on the law or the facts, to all or part of an appraisal report containing the fair value of an ownership interest determined under Section 10.363(b).
- (b) If an objection to a report is raised under Subsection (a), the court shall hold a hearing to determine the fair value of the ownership interest that is the subject of the report. After the hearing, the court shall require the responsible organization to pay to the holders of the ownership interest the amount of the determined value with interest, accruing from the 91st day after the date the applicable action for which the owner elected to dissent was effected until the date of the judgment.
- (c) Interest under Subsection (b) accrues at the same rate as is provided for the accrual of prejudgment interest in civil cases.
- (d) The responsible organization shall:
  - (1) immediately pay the amount of the judgment to a holder of an uncertificated ownership interest; and

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- (2) pay the amount of the judgment to a holder of a certificated ownership interest immediately after the certificate holder surrenders to the responsible organization an endorsed certificate representing the ownership interest.
- (e) On payment of the judgment, the dissenting owner does not have an interest in the:
  - (1) ownership interest for which the payment is made; or
  - (2) responsible organization with respect to that ownership interest.

**Sec. 10.365. COURT COSTS; COMPENSATION FOR APPRAISER.**

- (a) An appraiser appointed under Section 10.361 is entitled to a reasonable fee payable from court costs.
- (b) All court costs shall be allocated between the responsible organization and the dissenting owners in the manner that the court determines to be fair and equitable.

**Sec. 10.366. STATUS OF OWNERSHIP INTEREST HELD OR FORMERLY HELD BY DISSENTING OWNER.**

- (a) An ownership interest of an organization acquired by a responsible organization under this subchapter:
  - (1) in the case of a merger, conversion, or interest exchange, shall be held or disposed of as provided in the plan of merger, conversion, or interest exchange; and
  - (2) in any other case, may be held or disposed of by the responsible organization in the same manner as other ownership interests acquired by the organization or held in its treasury.
- (b) An owner who has demanded payment for the owner's ownership interest under Section 10.356 is not entitled to vote or exercise any other rights of an owner with respect to the ownership interest except the right to:
  - (1) receive payment for the ownership interest under this subchapter; and
  - (2) bring an appropriate action to obtain relief on the ground that the action to which the demand relates would be or was fraudulent.
- (c) An ownership interest for which payment has been demanded under Section 10.356 may not be considered outstanding for purposes of any subsequent vote or action.

**Sec. 10.367. RIGHTS OF OWNERS FOLLOWING TERMINATION OF RIGHT OF DISSENT.**

- (a) The rights of a dissenting owner terminate if:
  - (1) the owner withdraws the demand under Section 10.356;
  - (2) the owner's right of dissent is terminated under Section 10.356;
  - (3) a petition is not filed within the period required by Section 10.361; or
  - (4) after a hearing held under Section 10.361, the court adjudges that the owner is not entitled to elect to dissent from an action under this subchapter.
- (b) On termination of the right of dissent under this section:
  - (1) the dissenting owner and all persons claiming a right under the owner are conclusively presumed to have approved and ratified the action to which the owner dissented and are bound by that action;
  - (2) the owner's right to be paid the fair value of the owner's ownership interests ceases;
  - (3) the owner's status as an owner of those ownership interests is restored, as if the owner's demand for payment of the fair value of the ownership interests had not been made under Section 10.356, if the owner's ownership interests were not canceled, converted, or exchanged as a result of the action or a subsequent action;

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- (4) the dissenting owner is entitled to receive the same cash, property, rights, and other consideration received by owners of the same class and series of ownership interests held by the owner, as if the owner's demand for payment of the fair value of the ownership interests had not been made under Section 10.356, if the owner's ownership interests were canceled, converted, or exchanged as a result of the action or a subsequent action;
- (5) any action of the domestic entity taken after the date of the demand for payment by the owner under Section 10.356 will not be considered ineffective or invalid because of the restoration of the owner's ownership interests or the other rights or entitlements of the owner under this subsection; and
- (6) the dissenting owner is entitled to receive dividends or other distributions made after the date of the owner's payment demand under Section 10.356, to owners of the same class and series of ownership interests held by the owner as if the demand had not been made, subject to any change in or adjustment to the ownership interests because of an action taken by the domestic entity after the date of the demand.

**Sec. 10.368. EXCLUSIVITY OF REMEDY OF DISSENT AND APPRAISAL.**

In the absence of fraud in the transaction, any right of an owner of an ownership interest to dissent from an action and obtain the fair value of the ownership interest under this subchapter is the exclusive remedy for recovery of:

- (1) the value of the ownership interest; or
- (2) money damages to the owner with respect to the action.

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**El Paso Electric**  
**EL PASO ELECTRIC COMPANY**  
**100 NORTH STANTON STREET**  
**EL PASO, TX 79901**

**VOTE BY INTERNET - [www.proxyvote.com](http://www.proxyvote.com)**

Use the Internet to transmit your voting instructions and for electronic delivery of information. Vote by 9:59 p.m. EDT on September 18, 2019. Have your proxy card in hand when you access the web site and follow the instructions to submit your records and to create an electronic voting instruction form.

**VOTE BY PHONE - 1-800-690-6903**

Use any touch-tone telephone to transmit your voting instructions. Vote by 9:59 p.m. EDT on September 18, 2019. Have your proxy card in hand when you call and then follow the instructions.

**VOTE BY MAIL**

Mark, sign and date your proxy card and return it in the postage-paid envelope we have provided or return it to Vote Processing, c/o Broadridge, 51 Mercedes Way, Edgewood, NY 11717.

TO VOTE, MARK BLOCKS BELOW IN BLUE OR BLACK INK AS FOLLOWS:

83282218D

KEEP THIS PORTION FOR YOUR RECORDS  
DETACH AND RETURN THIS PORTION ONLY

**THIS PROXY CARD IS VALID ONLY WHEN SIGNED AND DATED.**

**EL PASO ELECTRIC COMPANY**

The Board of Directors recommends you vote **FOR** proposals 1, 2 and 3:

- |                                                                                                                                                                                                                                                                                                                                                         | For                      | Against                  | Abstain                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| 1. To approve the Agreements and Plan of Merger, dated as of June 1, 2019, by and among El Paso Electric Company (the Company), Sun Jupiter Holdings LLC (Parent) and Sun Merger Sub Inc., a wholly-owned subsidiary of Parent (Merger Sub) and the transactions contemplated (together, including the merger or Merger Sub with and into the Company). | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. To approve by non-binding advisory resolution, the compensation of the named executive officers of the Company that will or may become payable in connection with the merger.                                                                                                                                                                        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. To approve any motion to adjourn the special meeting to a later date or dates; if necessary, to solicit additional proxies if there are insufficient votes to approve proposal 1 at the time of the special meeting.                                                                                                                                 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

For address changes and/or comments, please check this box and write them on the back where indicated. ☐

Please sign exactly as your name(s) appears hereon. When signing as attorney, executor, administrator, or other fiduciary, please give full title as such. Joint owners should each sign personally. All holders must sign. If a corporation or partnership, please sign in full corporate or partnership name by authorized officer.

\_\_\_\_\_  
Signature [PLEASE SIGN WITHIN BOX] Date: \_\_\_\_\_

\_\_\_\_\_  
Signature (Joint Owners) Date: \_\_\_\_\_

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**Important Notice Regarding the Availability of Proxy Materials for the Special Meeting:**  
The Notice and Proxy Statement are available at [www.proxyvote.com](http://www.proxyvote.com).

1000221-100

**EL PASO ELECTRIC COMPANY  
THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS  
SPECIAL MEETING OF SHAREHOLDERS  
SEPTEMBER 19, 2019**

The undersigned hereby nominate(s), constitute(s) and appoint(s) Adrian J. Rodriguez and Nathan T. Hirsch, jointly and severally, as attorneys, agents and proxies, with full powers of substitution and discretionary authority, to attend and act as proxy or proxies of the undersigned at the Special Meeting of Shareholders (the "Special Meeting") of El Paso Electric Company (the "Company") to be held at the Stanton Tower, 100 North Stanton Street, El Paso, Texas 79901, on September 19, 2019 at 10:00 a.m., MDT, or at any adjournments thereof, and vote as specified herein the number of shares of Company common stock that the undersigned, if personally present, would be entitled to vote at the Special Meeting.

**THIS PROXY, WHEN PROPERLY EXECUTED, WILL BE VOTED AS DIRECTED BY THE SHAREHOLDER(S). IF NO SUCH DIRECTIONS ARE MADE, THIS PROXY WILL BE VOTED FOR PROPOSALS 1, 2 AND 3. PLEASE MARK, SIGN, DATE, AND RETURN THIS PROXY CARD PROMPTLY USING THE ENCLOSED REPLY ENVELOPE.**

Address Changes/Comments:

(If you noted any Address Changes/Comments above, please mark corresponding box on the reverse side.)

**CONTINUED AND TO BE SIGNED ON REVERSE SIDE**

**NOTICE OF APPLICATION**  
**FILED WITH THE PUBLIC UTILITY COMMISSION OF TEXAS**

El Paso Electric Company (“EPE”), a regulated electric utility, wishes to inform you that on August 13, 2019, EPE, Sun Jupiter Holdings LLC, and IIF US Holding 2 LP (“Joint Applicants”) filed an Application for regulatory approvals under Public Utility Regulatory Act §§ 14.101, 39.262, and 39.915 with the Public Utility Commission of Texas (“PUCT” or “Commission”), copies of which are kept at EPE’s office at 100 N. Stanton Street, El Paso, TX 79901. The Application requests Commission approval for Sun Jupiter Holdings LLC, an indirect subsidiary of IIF US Holding 2 LP to acquire all of the common stock of EPE, which will continue to exist as a company with its existing name. The Joint Applicants make a number of commitments in support of the Application. The Application does not seek Commission approval of a modification to EPE’s rates or services.

Any person wishing to intervene in this proceeding must file a written request with the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, TX 78711-3326, no later than \_\_\_\_\_, 2019. This case has been assigned PUCT Docket No. \_\_\_\_\_.

El Paso Electric Company



DOCKET NO. \_\_\_\_\_

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

**PROTECTIVE ORDER**

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

It is ORDERED that:

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

<sup>1</sup> TEX. GOV'T CODE ANN. §§ 552.001-552.353 (West 2012 & Supp. 2016).

3. **Reviewing Party.** For the purposes of this Protective Order, a “Reviewing Party” is any party to this docket.
4. **Procedures for Designation of Protected Materials.** On or before the date the Protected Materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party shall file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (a) any exemptions to the Public Information Act claimed to apply to the alleged Protected Materials; (b) the reasons supporting the producing party’s claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials; and (c) that counsel for the producing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.
5. **Persons Permitted Access to Protected Materials.** Except as otherwise provided in this Protective Order, a Reviewing Party may access Protected Materials only through its “Reviewing Representatives” who have signed the Protective Order Certification Form (see Attachment A). Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in this proceeding. At the request of the PUC Commissioners, copies of Protected Materials may be produced by Commission Staff. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order and shall observe the restrictions of the Protective Order.
6. **Highly Sensitive Protected Material Described.** The term “Highly Sensitive Protected Materials” is a subset of Protected Materials and refers to documents or information that a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as specified herein) would expose a producing party to unreasonable risk of harm. Highly Sensitive Protected Materials include but are not limited to: (a) customer-specific information protected by § 32.101(c) of the Public

Utility Regulatory Act;<sup>2</sup> (b) contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; and (d) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party shall bear the designation “HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. \_\_\_\_\_” (or words to this effect) and shall be consecutively Bates Stamped. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party’s designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

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

Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. The Reviewing Party shall maintain a record of all copies made of Highly Sensitive Protected Material and shall send a duplicate of the record to the producing party when the copy or copies are made. The record shall specify the location and the person possessing the copy. Highly Sensitive Protected Material shall be made available for inspection only at the location or locations provided by the producing party, except as specified by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes shall themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document.

<sup>2</sup> Tex. Util. Code Ann. §§ 11.001-58.302 (West 2016 & Supp. 2017), §§ 59.001-66.016 (West 2007 & Supp. 2017) (“PURA”).

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

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

9. **Copies Provided of Highly Sensitive Protected Material.** A producing party shall provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8. Representatives of the Reviewing Party who are authorized to view Highly Sensitive Protected Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party's representative designated to receive the information. Any Highly Sensitive Protected Materials provided to a Reviewing Party may not be copied except as provided in Paragraph 7. The restrictions contained herein do not apply to Commission Staff, OPC, and the OAG when the OAG is representing a party to the proceeding.

10. **Procedures in Paragraphs 10-14 Apply to Commission Staff, OPC, and the OAG and Control in the Event of Conflict.** The procedures in Paragraphs 10 through 14

apply to responses to requests for documents or information that the producing party designates as Highly Sensitive Protected Materials and provides to Commission Staff, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflicts with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs shall control.

11. **Copy of Highly Sensitive Protected Material to be Provided to Commission Staff, OPC and the OAG.** When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party shall also deliver one copy of the Highly Sensitive Protected Materials to the Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Commission Staff, OPC (if OPC is a party) and the OAG (if the OAG is representing a party) may request such copies as are necessary of such voluminous material under the copying procedures specified herein.
12. **Delivery of the Copy of Highly Sensitive Protected Material to Commission Staff and Outside Consultants.** The Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff members first sign the certification specified by Paragraph 15. After obtaining the agreement of the producing party, Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification in Attachment A.
13. **Restriction on Copying by Commission Staff, OPC and the OAG.** Except as allowed by Paragraph 7, Commission Staff, OPC and the OAG may not make additional copies of

the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the presiding officer directs otherwise. Commission Staff, OPC, and the OAG may make limited notes of Highly Sensitive Protected Materials furnished to them, and all such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.

14. **Public Information Requests.** In the event of a request for any of the Highly Sensitive Protected Materials under the Public Information Act, an authorized representative of the Commission, OPC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.
15. **Required Certification.** Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification found in Attachment A to this Protective Order:

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

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

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

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

16. **Disclosures between Reviewing Representatives and Continuation of Disclosure Restrictions after a Person is no Longer Engaged in the Proceeding.** Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes, memoranda, or other information derived from the protected material shall either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.
17. **Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials.** Except for Highly Sensitive Protected Materials, which shall be provided to the Reviewing Parties pursuant to Paragraphs 9, and voluminous Protected Materials, the producing party shall provide a Reviewing Party one copy of the Protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the

documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record.

18. **Procedures Regarding Voluminous Protected Materials.** P.U.C. PROC. R. 22.144(h) will govern production of voluminous Protected Materials. Voluminous Protected Materials will be made available in the producing party's voluminous room, in Austin, Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.
19. **Reviewing Period Defined.** The Protected Materials may be reviewed only during the Reviewing Period, which shall commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period shall reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.
20. **Procedures for Making Copies of Voluminous Protected Materials.** Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical or electronic copies of the Protected Materials, subject to the conditions in this Protective Order; provided, however, that before photographic, mechanical or electronic copies may be made, the Reviewing Party seeking photographic, mechanical or electronic copies must provide written confirmation of the receipt of copies listed on Attachment B of this Protective Order identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.
21. **Protected Materials to be Used Solely for the Purposes of These Proceedings.** All Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (a) any other pending or potential proceeding involving any claim, complaint,



or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings; or (b) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Commission Staff or OPC.

22. **Procedures for Confidential Treatment of Protected Materials and Information Derived from Those Materials.** Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials including notes and analyses made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.
23. **Procedures for Submission of Protected Materials.** If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the presiding officer and served under seal to the counsel of record for the Reviewing Parties. The presiding officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party: (a) shall notify the party which provided the

information within sufficient time so that the producing party may seek a temporary sealing order; and (b) shall otherwise follow the procedures in Rule 76a, Texas Rules of Civil Procedure.

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

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

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

Parties intending to use Protected Materials shall notify the other parties prior to offering them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of Docket No. \_\_\_\_\_ at the Commission, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such

Protected Materials. A Reviewing Party shall at any time be able to file a written motion to challenge the designation of information as Protected Materials.

26. **Procedures to Contest Disclosure or Change in Designation.** In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request for change in designation, the party asserting confidentiality shall file with the appropriate presiding officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party asserting confidentiality files its objection and supporting materials, the party challenging confidentiality may respond. Any such response shall include a statement by counsel for the party challenging such confidentiality that he or she has reviewed all portions of the materials in dispute and, without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards, or that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera inspection, it shall do so no later than five (5) working days after the party challenging confidentiality has made its written filing.
27. **Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designation.** If the party asserting confidentiality files an objection, the appropriate presiding officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or Reviewing Party or upon the presiding officer's own initiative, the presiding officer may conduct a prehearing conference. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the presiding officer determines that such proposed disclosure or change in designation should be made, disclosure shall not take place earlier than three (3) full working days after such determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such presiding officer's ruling.

28. **Maintenance of Protected Status during Periods Specified for Challenging Various Orders.** Any party electing to challenge, in the courts of this state, a Commission or presiding officer determination allowing disclosure or a change in designation shall have a period of ten (10) days from: (a) the date of an unfavorable Commission order; or (b) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this paragraph. For purposes of this paragraph, a favorable ruling of a state district court, state appeals court, Supreme Court or other appellate court includes any order extending the deadlines in this paragraph.
29. **Other Grounds for Objection to Use of Protected Materials Remain Applicable.** Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless the Commission or a court orders such additional disclosure, all parties will abide by the restrictions imposed by the Protective Order.
30. **Protection of Materials from Unauthorized Disclosure.** All notices, applications, responses or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.
31. **Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials.** Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice

described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, “conclusion of these proceedings” refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand proceeding, then the “conclusion of these proceedings” is extended by the remand to the exhaustion of available appeals of the remand, or the running of the time for making such appeals of the remand, as provided by applicable law. Promptly following the conclusion of these proceedings, counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this Paragraph. Nothing in this Paragraph shall prohibit counsel for each Reviewing Party from retaining two (2) copies of any filed testimony, brief, application for rehearing, hearing exhibit or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order.

32. **Applicability of Other Law.** This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act,<sup>3</sup> the Texas Securities Act<sup>4</sup> and any other applicable law, provided that parties subject to those acts will notify the party asserting confidentiality, if possible under those acts, prior to disclosure pursuant to those acts. Such notice shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates

<sup>3</sup> TEX. GOV'T CODE ANN. § 551.001-551.146 (West 2017).

<sup>4</sup> TEX. REV. CIV. STAT. ANN. arts. 581-1 to 581-43 (West 2010 & Supp. 2016).

to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

33. **Procedures for Release of Information under Order.** If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order; provided, however, that: (a) the Reviewing Party shall notify the producing party of the order requiring the release of such information within five (5) calendar days of the date the Reviewing Party has notice of the order; (b) the Reviewing Party shall notify the producing party at least five (5) calendar days in advance of the release of the information to allow the producing party to contest any release of the confidential information; and (c) the Reviewing Party shall use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein. The notice specified in this section shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
34. **Best Efforts Defined.** The term “best efforts” as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body, the written opinion of the Texas Attorney General sought in compliance with the Public Information Act, or the request of governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of §552.301 of the

Public Information Act, or intends to comply with the final governmental or court order. Provided, however, that no notice is required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

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

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

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



**ATTACHMENT A**

**Protective Order Certification**

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

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Date

**ATTACHMENT B**

I request to view/copy the following documents:

| Document Requested | # of Copies | Non-Confidential | Protected Materials<br>and/or Highly<br>Sensitive Protected<br>Materials |
|--------------------|-------------|------------------|--------------------------------------------------------------------------|
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\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Date

PUBLIC UTILITY COMMISSION OF TEXAS  
1701 N. CONGRESS AVENUE  
AUSTIN, TEXAS 78701  
(512) 936-7000

**APPLICATION FOR SALE, TRANSFER, OR MERGER**

This form should be used by public utilities for:

- 1) seeking authority to sell assign, or lease a Certificate of Convenience and Necessity or any rights obtained under a certificate;
- 2) reporting the sale, acquisition, lease or rental by or to any public utility of any plant as an operating system or unit for a total consideration in excess of \$10,000,000;
- 3) reporting the merger or consolidation of two or more public utilities; and
- 4) reporting the purchase by one public utility of voting stock in another public utility.

See Sections 59, 63, and 64 of the Public Utility Regulatory Act, Art. 1446c V.A.C.S.

1. Proposed action or subject of report:

- ☐ Sale, transfer, or lease of an entire Certificate of Convenience and Necessity
- ☐ Sale, transfer or lease of a portion of Applicant's service area or facilities to which it is certificated (including certificate rights)
- ☐ Sale, transfer or lease of a utility plant as an operating system or unit for more than \$10,000,000 (including certificate rights)
- ☐ Merger or consolidation of public utilities
- ☐ Purchase by a public utility of voting stock in another public utility
- ☒ Other

**This is a change-in-control application under PURA §§ 14.101, 39.262, and 39.915. Sun Jupiter Holdings LLC ("Sun Jupiter"), a Delaware limited liability company, proposes to acquire all outstanding shares of common stock in El Paso Electric Company ("EPE") as contemplated by the Agreement and Plan of Merger dated June 1, 2019 by and among EPE, Sun Jupiter, and Sun Merger Sub Inc. ("Merger Sub"). Merger Sub, a Texas corporation and wholly-owned subsidiary of Sun Jupiter, will merge with and into EPE, with EPE surviving the merger as the direct, wholly-owned subsidiary of Sun Jupiter.**

**IIF US Holding 2 LP ("IIF US 2") is an indirect parent of Sun Jupiter and will**

**provide Sun Jupiter the equity necessary to complete the purchase of EPE. IIF US 2 is a limited partnership organized under the laws of the state of Delaware, and one of three master partnerships that constitute the “Infrastructure Investments Fund” (“IIF”) advised by J.P. Morgan Investment Management Inc. (“JP Morgan”). If the proposed transaction closes, EPE will be an indirect, wholly-owned subsidiary of IIF US 2 and an IIF portfolio company.**

**For a more detailed description of the proposed transaction, please refer to the direct testimony of EPE witness Nathan Hirschi and IIF US 2 and Sun Jupiter witness Andrew Gilbert.**

List all counties in which the utility’s service area will be affected by this transaction:

**The counties in Texas served by EPE are El Paso County, Hudspeth County, and Culberson County.**

2. Applicants: **EPE, Sun Jupiter, and IIF US 2**

Mark one:

  X   EPE holds Certificate of Convenience and Necessity No. **30050**.

  X   IIF US 2 and Sun Jupiter do not hold a certificate from the Public Utility Commission.

The Applicants are the:

       Seller (transferor or lessor)

       Purchaser (transferee or lessor)

       One of the merging or consolidating utilities

  X   Other (please explain)

**Please see description of the proposed transaction in the response to Question No. 1.**

Business Address: **El Paso Electric Company  
100 N. Stanton Street  
El Paso, Texas 79901  
915-543-5777  
915-521-4450 (fax)**

**Sun Jupiter Holdings LLC  
c/o J.P. Morgan Asset Management  
277 Park Avenue, 35<sup>th</sup> Floor  
New York, New York 10172**

**IIF US Holding 2 LP  
c/o J.P. Morgan Asset Management  
277 Park Avenue, 35<sup>th</sup> Floor  
New York, New York 10172**

3. Applicants are:

**EPE is a Texas corporation. Sun Jupiter is a Delaware limited liability company. IIF US 2 is a Delaware limited partnership.**

4. If applicable, list the names, addresses and office of all partners or all officers of Applicants:

**Officers of EPE:**

|                     |                                                                             |                                            |
|---------------------|-----------------------------------------------------------------------------|--------------------------------------------|
| Adrian J. Rodriguez | Interim Chief Executive Officer, General Counsel, and Assistant Secretary   | 100 N. Stanton St.<br>El Paso, Texas 79901 |
| Elaina L. Ball      | Senior Vice President and Interim Chief Operating Officer                   | Same                                       |
| Steven T. Buraczyk  | Senior Vice President, Operations                                           | Same                                       |
| Nathan T. Hirschi   | Senior Vice President, Chief Financial Officer                              | Same                                       |
| Rocky R. Miracle    | Senior Vice President, Corporate Development and Chief Compliance Officer   | Same                                       |
| Robert Clay Doyle   | Vice President, Transmission and Distribution                               | Same                                       |
| Russell G. Gibson   | Vice President, Controller                                                  | Same                                       |
| Eduardo Gutiérrez   | Vice President, Strategic Communications, Customer and Community Engagement | Same                                       |
| David C. Hawkins    | Vice President, Generation, System Planning and Dispatch                    | Same                                       |
| Patrick V. Reinhart | Vice President, Governmental Affairs                                        | Same                                       |
| Victor F. Rueda     | Vice President, Human Resources                                             | Same                                       |

|                    |                                                   |      |
|--------------------|---------------------------------------------------|------|
| James Schichtl     | Vice President, Regulatory Affairs                | Same |
| Richard Turner     | Vice President, Business Development              | Same |
| Henry W. Soza      | Vice President, Compliance and Chief Risk Officer | Same |
| Jessica M. Goldman | Corporate Secretary                               | Same |

**Officers of Sun Jupiter:**

**Sun Jupiter does not have any officers.**

**Officers of IIF US 2:**

**IIF US 2 does not have any officers.**

5. If applicable, list names, addresses and positions of Applicant's five largest shareholders.

**EPE: As of July 31, 2019, EPE's five largest shareholders were:**

| Shareholder                                 | Shares Held | Percentage | Position | Address                                               |
|---------------------------------------------|-------------|------------|----------|-------------------------------------------------------|
| BlackRock Inc.                              | 6,178,968   | 15.20% *   | 1        | 55 East 52 <sup>nd</sup> Street<br>New York, NY 10055 |
| The Vanguard Group, Inc.                    | 4,490,716   | 11.03% *   | 2        | 100 Vanguard Blvd.<br>Malvern, PA 19355               |
| GAMCO Investors, Inc.                       | 3,202,050   | 7.86% *    | 3        | One Corporate Center<br>Rye, NY 10580                 |
| Fuller & Thaler Asset Management, Inc.      | 1,503,317   | 3.70%      | 4        | 411 Borel Avenue<br>San Mateo, CA. 94402              |
| Goldman Sachs Asset Management, L.P. (U.S.) | 1,440,808   | 3.55%      | 5        | 200 West Street<br>New York, NY 10282                 |

\* Based on beneficial ownership filings with the Securities and Exchange Commission. Actual percentage may differ due to stock transactions made subsequent to beneficial owner's filing date.

**Sun Jupiter: Sun Jupiter is a limited liability company. Its sole member is Sun Jupiter Parent LLC.**

**IIF US 2: IIF US 2 is a limited partnership. IIF US 2's general partner is IIF US 2GP, LLC. IIF US 2's limited partners consist of various passive investors.**

6. Applicants designate the following persons to be contacted with respect to any questions

regarding the filing:

**EPE**

**James Schichtl**  
**Vice President, Regulatory Affairs**  
**100 N. Stanton Street**  
**El Paso, TX 79901**  
**(915) 521-4697**  
**james.schichtl@epelectric.com**

**Sun Jupiter**

**Andrew E. Gilbert**  
**Managing Director**  
**J.P. Morgan Investment Management, Inc.**  
**277 Park Avenue**  
**New York, New York 10172**  
**Andrew.e.gilbert@jpmorgan.com**

**Amanda Wallace**  
**Managing Director**  
**J.P. Morgan Investment Management, Inc.**  
**277 Park Ave, 35th Floor**  
**New York, New York 10172**  
**Amanda.wallace@jpmorgan.com**

**EPE**

**Mariah M. Novela**  
**Regulatory Case Manager**  
**100 N. Stanton Street**  
**El Paso, TX 79901**  
**(915) 521-4662**  
**mariah.novela@epelectric.com**

**IIF US 2**

**Andrew E. Gilbert**  
**Managing Director**  
**J.P. Morgan Investment Management, Inc.**  
**277 Park Avenue**  
**New York, New York 10172**  
**(212) 648-1509**  
**Andrew.e.gilbert@jpmorgan.com**

**Amanda Wallace**  
**Managing Director**  
**J.P. Morgan Investment Management, Inc.**  
**277 Park Ave, 35th Floor**  
**New York, New York 10172**  
**Amanda.wallace@jpmorgan.com**

7. If Applicants are represented by an attorney:

**EPE**

**Matthew K. Behrens**  
**Bar No. 24069356**  
**El Paso Electric Company**  
**100 N. Stanton Street**  
**El Paso, Texas 79901**  
**(915) 543-5897**  
**matthew.behrens@epelectric.com**

**Sun Jupiter**

**Lino Mendiola III**  
**Bar No. 00791248**  
**Jeffrey B. Stuart**  
**Bar No. 24066160**  
**Eversheds Sutherland (US) LLP**  
**600 Congress Ave., Suite 2000**  
**Austin, Texas 78701**  
**(512) 721-2700**  
**linomendiola@eversheds-sutherland.us**  
**jeffreystuart@eversheds-sutherland.us**

**EPE**

**Casey Wren**  
**Bar No. 22019300**  
**Bret J. Slocum**  
**Bar No. 18508200**  
**Duggins Wren Mann & Romero, LLP**  
**P.O. Box 1149**  
**Austin, Texas 78767**  
**(512) 744-9300**  
**cwren@dwmrlaw.com**  
**bslocum@dwmrlaw.com**

**IIF US 2**

**Lino Mendiola III**  
**Bar No. 00791248**  
**Jeffrey B. Stuart**  
**Bar No. 24066160**  
**Eversheds Sutherland (US) LLP**  
**600 Congress Ave., Suite 2000**  
**Austin, Texas 78701**  
**(512) 721-2700**  
**linomendiola@eversheds-sutherland.us**  
**jeffreystuart@eversheds-sutherland.us**

8. Do Applicants presently have a tariff on file with the Commission?

  X   Yes.

If yes, date of filing: **EPE's current base rates were approved by the Commission in Docket No. 46831 and the compliance tariff for those approved base rates was filed in that docket on December 28, 2017.**

**Sun Jupiter does not have tariffs on file with the Commission.**

**IIF US 2 does not have tariffs on file with the Commission.**

       No. If no, attach a written schedule of present rates and services.



9. Please indicate the proposed effect of this transaction on rates to be charged affected customers:

  X   All customers will be charged the same rates as they were charged before the transaction.

       (Some) (all) customers will be charged different rates than they were charged before the transaction. If so, please explain.

       Applicant intends to file with the Commission an application to change rates of (some) (all) of its customers as a result of this transaction. If so, please explain.

  X   Other: Please explain. **EPE, Sun Jupiter, and IIF US 2 have committed to provide a credit on customer electric bills in the amount of \$21 million on a total company basis over 36 months.**

10. Other party to this transaction: **Not Applicable.**

       The other party holds Certificate of Convenience and Necessity No.

       The other party does not hold a Certificate of Convenience and Necessity.

The other party is the:

       Seller (transferor or lessor)

       Purchaser (transferee or lessee)

       One of the merging or consolidating utilities

       Other:

Business Address

Telephone

If there are more than two parties to this transaction, please attach sheets providing the information required in Question No. 9 through 16 for each party.

11. Other parties are:

**Please see response to Question No. 2.**

12. If applicable, list the names, addresses and office of all partners or all officers of the other

parties.

**Please see response to Question No. 4.**

13. If applicable, list the names and addresses of the other party's five (5) largest shareholders.

**Please see response to Question No. 5.**

14. The other party designates the following person to be contacted with respect to any question regarding the filing: **Not Applicable.**

15. If the other party has retained an engineer: **Not Applicable.**

The Public Utility Commission should be informed of any change of engineer prior to the completion of a project in process.

16. If the other party is represented by an attorney:

**Please see response to Question No. 7.**

17. List all neighboring utilities, cities, political subdivisions, or other parties directly affected by this application.

**EPE's only neighboring electric utility within Texas is Rio Grande Electric Cooperative.**

**Cities in EPE's Texas service area include City of El Paso, Town of Anthony, Town of Clint, Town of Horizon City, City of Socorro, Town of Van Horn, Village of Vinton, and City of San Elizario.**

**Counties included in EPE's service area are identified in the response to Question 1 above.**

Applicant represents to the Public Utility Commission that each of the above parties and all other parties to this transaction were notified of the nature of this application and its filing with the Commission, and each of the above parties by that notification has an opportunity to protest that the application (See page 9). Other parties to this transaction have been furnished copies of this application.

18. Please describe the nature of the transaction. Indicate if it involves the transfer of certificated facilities and/or service area.

**For a description of the transaction, see the response to Question No. 1. The transaction does not involve the transfer of certificated facilities and/or service area.**

19. If the transaction involves the transfer of certificated facilities and/or service area please describe the qualifications of the purchaser (or transferee) to provide adequate utility service. **Not Applicable.**

20. State the purchase price and/or the other consideration for the transaction:

**Please see the direct testimony of EPE witness Nathan Hirschi and IIF US 2 and Sun Jupiter witness Andrew Gilbert.**

21. If applicable, state the original cost of plant to be sold or merged, as recorded - on books of Seller (or merging companies): **Not Applicable.**

22. If applicable, state the amount of accumulated depreciation and the date of acquisition: \$ \_\_\_\_\_ as of \_\_\_\_\_, 20\_\_\_\_. **Not Applicable.**

23. If applicable, state the amount recorded as plant acquisition adjustment on books of selling company(ies): \$ \_\_\_\_\_. **Not Applicable.**

24. Complete the following proposed entries in books of purchasing (or surviving) company to record purchase (or merger): **Not Applicable.**

Utility plant in service  
Plant acquisition adjustment  
Extraordinary loss on purchase  
Accumulated depreciation plant  
Cash  
Notes payable  
Mortgage payable  
Other list

25. If utility plant in service is traded for utility plant in service, give details of original cost - accumulated depreciation, and reasons for or justification of the trade: **Not Applicable.**

26. Provide analysis of tax consequences in transaction and recognition given in books to parties concerned: **Not Applicable.**
27. Describe type of plant facilities, and number of connections affected by this application. **Not Applicable.**
28. Describe the location of plant facilities involved in this application with respect to streets, highways, cities, known landmarks, water courses, coordinates of transmitter sites, etc.: **Not Applicable.**
29. Regarding the utility being sold, provide details of the following: **Not Applicable.**
- a. Planned or needed capital improvements;
  - b. Estimated cost of such improvements;
  - c. Whether required to make such improvements by a federal or state agency;
  - d. Any time limits imposed for such improvements.
30. Please describe anticipated impact of this transaction on the quality of utility service. Please explain anticipated changes in quality of service.

**Applicants do not anticipate any adverse impact on the quality of utility service due to the proposed transaction. Please see the direct testimony of EPE witnesses Nathan Hirschi, James Schichtl, and Steven Buraczyk and IIF US 2 and Sun Jupiter witnesses Andrew Gilbert and Ellen Lapson.**

31. If a merger or combination is sought by this application, please provide the following: **Not Applicable.**
- a. A balance sheet for each entity;
  - b. An income statement for each entity;
  - c. Articles of Incorporation of a newly created entity;
  - d. A preliminary prospectus if stock of a newly created entity is to be publicly held.

If the Affiant(s) to this form is any person other than the sole owner, partner, or officer of the applicant or its attorney, a properly verified Power of Attorney must be enclosed.

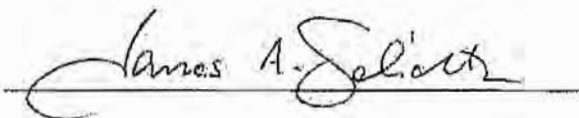
OATH

STATE OF TEXAS

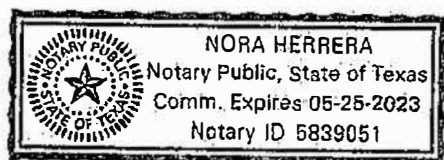
COUNTY OF EL PASO

I, James A. Schichtl, Vice President – Regulatory Affairs of El Paso Electric Company, being duly sworn and authorized as a representative of the Applicants, file this application and affirm that in such capacities, I am qualified and authorized to file and verify such application, are personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to the Applicants are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith, that notice of its filing was given to all necessary parties, and that this application does not duplicate any filing presently before the Commission.

James A. Schichtl



SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State of Texas, this 12<sup>th</sup> day of August 2019.



Notary Public

OATH

STATE OF NEW YORK

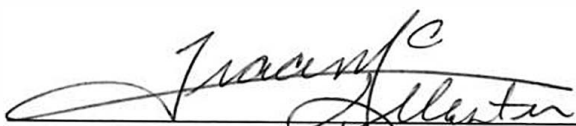
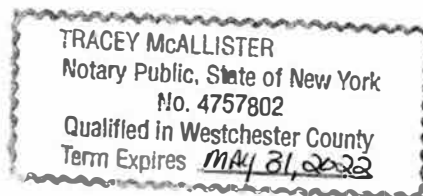
COUNTY OF NEW YORK

I, Andrew E. Gilbert, being duly sworn and an authorized signatory of Sun Jupiter Holdings LLC and IIF US Holding 2 LP, file this application and affirm that in such capacities, I am qualified and authorized to file and verify such application, are personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to Sun Jupiter Holdings LLC and IIF US Holding 2 LP are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith, that notice of its filing was given to all necessary parties, and that this application does not duplicate any filing presently before the Commission.

Andrew E. Gilbert

  
\_\_\_\_\_

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State of NEW YORK, this 12<sup>TH</sup> day of August, 2019.

  
\_\_\_\_\_  
Notary Public

**DOCKET NO. \_\_\_\_\_**

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

**DIRECT TESTIMONY**

**OF**

**NATHAN T. HIRSCHI**

**ON BEHALF**

**OF**

**EL PASO ELECTRIC COMPANY**

**AUGUST 13, 2019**

DOCKET NO. \_\_\_\_\_

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

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**DIRECT TESTIMONY OF NATHAN T. HIRSCHI**

**I. Introduction and Qualifications**

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

A. My name is Nathan T. Hirschi. My business address is 100 North Stanton Street, El Paso, Texas 79901.

**Q. HOW ARE YOU EMPLOYED?**

A. I am employed by El Paso Electric Company (“EPE” or “Company”) as Senior Vice President and Chief Financial Officer.

**Q. ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

A. I am appearing on behalf of EPE.

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

A. I hold a Bachelor of Science in Business Administration with a double major in Accounting and Finance from the University of Arizona. I am a Certified Public Accountant in both Texas and New Mexico. I am a member of the American Institute of Certified Public Accountants and the Texas Society of Certified Public Accountants.

I have 30 years of accounting experience with a focus on the electric utility industry and public companies. I began my career as an assistant auditor with Peat, Marwick, Mitchell & Co. in January 1986. Peat, Marwick, Mitchell & Co. subsequently became KPMG LLP. From January 1986 until April 2009, I held a number of accounting and management positions with KPMG LLP, and my primary area of focus was as an auditor in the electric utilities, energy, and power industries. I was admitted to the KPMG LLP partnership in 2003. I periodically provided various accounting and auditing services to EPE from July 1993 through February 2009.

I joined EPE in December 2009 as Vice President of Special Projects. I was appointed Vice President and Controller on March 1, 2010, and I was promoted to my current position on October 3, 2013.

1 **Q. PLEASE DESCRIBE YOUR PRINCIPAL AREAS OF RESPONSIBILITY AT**  
2 **EPE.**

3 A. I have executive responsibility for the accounting, tax, internal audit, treasury,  
4 budgeting, investor relations, financial planning, support services, supply chain  
5 management, and sustainability functions of EPE. My responsibilities include the  
6 development and presentation of testimony before various regulatory bodies with  
7 respect to EPE's financial planning, public and private financing, securities  
8 transactions, accounting, tax, and revenue requirements.

9 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY BEFORE ANY**  
10 **REGULATORY AGENCY?**

11 A. Yes. I have filed testimony with the Public Utility Commission of Texas  
12 ("Commission") in the base rate proceedings in Docket Nos. 40094, 44941, and  
13 46831, and with the New Mexico Public Regulation Commission ("NMPRC") in the  
14 base rate proceeding in Case No. 15-00127-UT.

## 15 **II. Purpose of Testimony**

16 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THIS**  
17 **PROCEEDING?**

18 A. My testimony primarily summarizes why the Commission should approve, as being  
19 in the public interest, the proposed purchase of EPE by Sun Jupiter Holdings LLC  
20 (the "Proposed Transaction"). Under the Proposed Transaction, IIF US Holding 2 LP  
21 ("IIF US 2") will provide the equity needed by Sun Jupiter Holdings LLC ("Sun  
22 Jupiter") to purchase EPE. Sun Jupiter is an indirect, wholly-owned subsidiary of IIF  
23 US 2, specifically created by IIF US 2 to hold 100% of the equity interests in EPE  
24 post-closing. Andrew E. Gilbert discusses in detail the organizational structure of  
25 Sun Jupiter and IIF US 2 in his direct testimony. I refer to EPE, Sun Jupiter, and IIF  
26 US 2 as "Joint Applicants." I explain the many benefits of this transaction as well as  
27 the built-in protections that collectively advance the interests of all stakeholders.

28 In addition, I introduce the other Joint Applicant witnesses testifying in this  
29 proceeding and provide a more detailed discussion of the financial and accounting  
30 implications of the Proposed Transaction.

**Q. DO YOU SPONSOR ANY EXHIBITS WITH YOUR DIRECT TESTIMONY?**

A. No. I do, however, co-sponsor and adopt as part of my testimony the June 1, 2019 Agreement and Plan of Merger (the “Merger Agreement”),<sup>1</sup> the document that governs the Proposed Transaction, which is attached as Exhibit A to the Application.

**Q. WAS THIS TESTIMONY PREPARED BY YOU OR UNDER YOUR DIRECTION?**

A. Yes, this testimony was prepared by me or under my direction. The information contained in this testimony is true and correct as of filing to the best of my knowledge.

### **III. Overview of Filing Package**

**Q. PLEASE DESCRIBE THE APPLICATION FILING PACKAGE.**

A. The filing package consists of the Application, which requests Commission approval of the Proposed Transaction under Public Utility Regulatory Act (“PURA”) §§ 14.101, 39.262, and 39.915. In support of the Application, Joint Applicants also provide:

- The pre-filed, direct testimony of five witnesses: myself (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);
- The Agreement and Plan of Merger attached as Exhibit A to the Application;
- Pre- and post-closing corporate structure charts attached as Exhibit B to the Application;
- The Joint Applicants’ Regulatory Commitments attached as Exhibit C to the Application;
- The Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, attached as Exhibit D to the Application;
- A proposed form of Notice attached as Exhibit E to the Application;

---

<sup>1</sup> Exhibit B to the Merger Agreement contains the regulatory commitments that were made as part of the Merger Agreement. As discussed by Andrew Gilbert in his direct testimony, since execution of the Merger Agreement, Joint Applicants have added to and strengthened the corporate governance commitments to provide more protection to EPE based on the recommendations of Ellen Lapson, and these revised commitments (together with those made in Exhibit B to the Merger Agreement) are reflected in Exhibit C to the Application and Exhibit AEG-3 to Mr. Gilbert’s direct testimony.

- A proposed Protective Order attached as Exhibit F to the Application; and
- The completed Commission Application for Sale, Transfer, or Merger form attached as Exhibit G.

**Q. PLEASE SUMMARIZE THE SUBJECTS JOINT APPLICANTS' WITNESSES ADDRESS.**

A. The following table identifies each witness filing direct testimony in support of the Application and the subject matter addressed by that witness.

| WITNESS                                                                                       | PARTY                   | SUBJECT MATTER                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Nathan T. Hirschi</b> ,<br>Senior Vice<br>President and Chief<br>Financial Officer,<br>EPE | EPE                     | <ul style="list-style-type: none"> <li>• Overview of the filing package;</li> <li>• Overview of EPE;</li> <li>• Overview of the Proposed Transaction;</li> <li>• Transaction accounting and tax implications; and</li> <li>• Statutory criteria and other factors.</li> </ul>                                                                                                                                                                                   |
| <b>James A. Schichtl</b> ,<br>Vice President,<br>Regulatory Affairs,<br>EPE                   | EPE                     | <ul style="list-style-type: none"> <li>• Necessary regulatory approvals for the Proposed Transaction;</li> <li>• Overall public interest analysis;</li> <li>• Impact of the Proposed Transaction on EPE's rates;</li> <li>• Continued compliance with regulatory requirements;</li> <li>• Effect of the Proposed Transaction on Commission's jurisdiction; and</li> <li>• Effect of the Proposed Transaction on municipal jurisdiction and policies.</li> </ul> |
| <b>Steven T. Buraczyk</b> ,<br>Senior Vice<br>President<br>Operations, EPE                    | EPE                     | <ul style="list-style-type: none"> <li>• Overview of EPE's system and operations;</li> <li>• Organization and function of operations division;</li> <li>• Reliability, availability, and quality of service; and</li> <li>• Health and safety of customers and EPE's employees.</li> </ul>                                                                                                                                                                      |
| <b>Andrew E. Gilbert</b> ,<br>Managing Director,<br>JP Morgan                                 | Sun Jupiter<br>IIF US 2 | <ul style="list-style-type: none"> <li>• Overview of the Proposed Transaction;</li> <li>• Information about the Infrastructure Investments Fund, IIF US 2, and Sun Jupiter;</li> <li>• Proposed Regulatory Commitments; and</li> <li>• Statutory criteria and other factors.</li> </ul>                                                                                                                                                                         |
| <b>Ellen Lapson</b> ,<br>Founder and<br>Principal,<br>Lapson Advisory                         | Sun Jupiter<br>IIF US 2 | <ul style="list-style-type: none"> <li>• Impact of the Proposed Transaction on EPE's future financial condition;</li> <li>• Credit implications of the Proposed Transaction;</li> <li>• Impact of the Proposed Transaction on EPE's access to capital; and</li> <li>• Effectiveness of Joint Applicants' ring-fencing and governance commitments.</li> </ul>                                                                                                    |

#### IV. Overview of EPE

**Q. PLEASE DESCRIBE EPE.**

A. 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

1 producing and distributing electricity. That year, EPE was also granted authorization  
2 to transact business in New Mexico. Since then, EPE has focused on providing safe,  
3 clean, affordable, and reliable energy to its customers.

4 EPE has a long history of partnering with regulators and local communities  
5 not only to provide safe, clean, affordable, and reliable service to its customers, but  
6 also to act as a partner in the economic growth and vitality of the regions it serves.  
7 According to research and analysis conducted by EPE's Economic Research  
8 Department in the spring of 2018, EPE is responsible for the direct and indirect  
9 employment of 2,611 individuals in our region. EPE's charitable contributions  
10 generated \$396,492 in labor income, and the total economic impact from EPE's  
11 donations and volunteer hours resulted in almost \$1.8 million in total output. For  
12 every dollar that EPE donated or volunteered, \$1.50 was generated in economic  
13 activity.

14 Today, EPE directly employs approximately 1,100 people and is one of the  
15 largest companies headquartered in the City of El Paso, Texas. The Company is a  
16 leading employer for the local workforce and graduates of local universities, a strong  
17 supporter of its union labor force, and a good partner to economic development  
18 organizations. It has been estimated that EPE's overall annual regional economic  
19 impact is approximately \$863 million, according to EPE's Economic Research  
20 Department. At the end of June 2019, EPE provided bundled electric service to  
21 approximately 429,000 retail and wholesale customers in a 10,000 square mile area of  
22 the Rio Grande Valley in west Texas and southern New Mexico. Its service territory  
23 extends from Hatch, New Mexico to Van Horn, Texas. EPE's principal industrial and  
24 large customers include a steel production facility, an oil refinery, several medical  
25 centers, two large universities, and U.S. military installations, including the U.S.  
26 Army at Fort Bliss in Texas and the White Sands Missile Range and Holloman Air  
27 Force Base in New Mexico. Steven T. Buraczyk provides additional detail about  
28 EPE's system and operations in his direct testimony.

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

1 actions. EPE has a number of programs and policies in place today that support this  
2 mission. For example, in 2018, EPE employees collectively volunteered 7,972 hours  
3 of time to more than 158 organizations. EPE also recently received the United Way  
4 Award for being number one in employee donations for the region for donations  
5 made in 2018. EPE also supports educational and STEM programs through student  
6 scholarships and summer intern programs. Preserving the Company's relationships  
7 with local communities and its contribution to local pride, culture, and sustainable  
8 growth is critical to the successful future of EPE.

9 **Q. WHAT IS EPE'S CURRENT OWNERSHIP STRUCTURE?**

10 A. EPE is currently a public company whose common stock is traded on the New York  
11 Stock Exchange ("NYSE") under the ticker symbol "EE."

12 **Q. WHEN AND WHY DID EPE DECIDE TO EXPLORE A POTENTIAL**  
13 **STRATEGIC TRANSACTION?**

14 A. The Board of Directors of EPE (the "Board") and senior management of the  
15 Company regularly reviews and evaluates the strategic direction of the Company,  
16 generally taking into account factors such as economic, competitive, regulatory, and  
17 other conditions, as well as historical and projected industry trends and developments.  
18 As part of its ongoing strategic review, the Board and senior management of the  
19 Company also periodically consider and evaluate potential alternatives to the  
20 Company's stand-alone plan that may enhance shareholder value and provide benefits  
21 to all Company stakeholders, including, from time to time, strategic transactions.  
22 Over the past decade, the Board and senior management have discussed potential  
23 acquisitions, mergers, and sale transactions of the Company as part of such  
24 evaluations in light of the evolving landscape in the utility industry.

25 In the investor-owned utility industry, EPE is a relatively small company.  
26 According to the Edison Electric Institute ("EEI"), the total market capitalization of  
27 U.S. investor-owned electric companies was \$731 billion on December 31, 2018  
28 relative to EPE's market capitalization of \$2.0 billion at that time. Industry  
29 consolidation has been a structural trend and the universe of U.S. investor-owned  
30 electric utilities tracked by EEI had shrunk to 42 at year-end 2018 from 83 at the start

1 of 2000. As Ms. Lapson demonstrates in her direct testimony, EPE has one of the  
2 five smallest market capitalizations among electric and gas utilities in North America,  
3 and a number of its peers of similar size have been the targets of takeover transactions  
4 by other utilities. These types of transactions are often justified by savings  
5 accomplished through the removal of executive management, elimination of local  
6 back-office and other corporate services, and consolidation of headquarters into the  
7 larger utility, with the transaction target becoming an operating subsidiary of a larger,  
8 out-of-state organization.

9 The Board and senior management recognized EPE's importance as a premier  
10 employer in the region, a significant contributor to the local communities it serves,  
11 and a provider of safe, clean, affordable and reliable energy, and wanted to ensure  
12 that EPE continued to fulfill these roles for its customers and other stakeholders in the  
13 local community while delivering value to EPE's shareholders and enhancing the  
14 ability to provide excellent service in an ever-evolving utility industry. As detailed in  
15 Ms. Lapson's testimony, the relative size of EPE creates certain challenges to this  
16 goal, including efficient access to equity capital. The evolving landscape of the  
17 utility industry increasingly requires capital expenditures to invest in projects that  
18 ensure the safety, reliability, and sustainability of EPE's core operations as well as  
19 projects that bring the Company closer to meeting evolving customer expectations,  
20 regulations, and laws that are pushing the industry as a whole towards a clean energy  
21 future. The Company's access to funding for these capital expenditures can be  
22 challenging as we compete for capital with our larger and higher-profile peers. From  
23 an equity capital perspective, the Company's rather small public float of shares has  
24 made obtaining and maintaining equity analyst coverage difficult. Further, large  
25 investors are often hesitant to invest in EPE due to our relatively low volume of daily  
26 transactions, which can make it difficult for larger investors to establish and reduce  
27 their holdings in the Company. As consolidation continues to occur in our industry,  
28 these challenges are likely to continue.

29 In early 2018, as part of this ongoing planning process and in response to the  
30 potential long-term challenges faced by the Company that I've described, the Board  
31 decided to explore potential strategic alternatives that would meet several objectives,

1 including the provision of significant value for all its stakeholders (customers,  
2 employees, shareholders, and the communities in which EPE operates), that had a  
3 likelihood of obtaining required regulatory approvals and successfully closing.

4 **Q. PLEASE BRIEFLY DESCRIBE THAT PROCESS.**

5 A. As further detailed in the Proxy Statement attached as Exhibit D to the Application,  
6 during the first half of 2018, the Company and its advisor, Lazard Freres & Co. LLC  
7 (“Lazard”), began analyzing the Company’s stand-alone plan and potential strategic  
8 alternatives to the stand-alone plan. It was determined that it would be appropriate to  
9 solicit bids from potential buyers in order to properly evaluate the Company’s  
10 strategic options.

11 EPE received interest from a number of potential buyers at the beginning of  
12 the process, two of which were larger utilities and the others, including IIF, were  
13 infrastructure and utility-oriented investment funds. Of the two final bidders, only IIF  
14 US 2 produced a slate of commitments that met with EPE’s expectations for long-  
15 term commitments to EPE employees, customers, and local communities.  
16 Accordingly, after the robust and competitive process described in Exhibit D to the  
17 Application, the Board of Directors determined that it was in the best interest of the  
18 Company and its various stakeholders to enter into the Merger Agreement. The  
19 Board also noted that the Company’s stakeholders, including both customers and  
20 local communities, would be better served under the Proposed Transaction than if  
21 EPE remained a stand-alone company.

22 The Proposed Transaction provides substantial direct benefits to customers,  
23 employees, and the communities EPE serves that would not occur absent the  
24 Proposed Transaction. The Regulatory Commitments reflect the significant terms  
25 that IIF US 2 was willing to agree to in order to provide all EPE stakeholders with  
26 meaningful benefits while meeting the strategic objectives of the Company and also  
27 demonstrate IIF US 2’s support of EPE’s role as a partner to its local communities.



1 **Q. IN WHAT WAYS WILL THE COMPANY AND INTERESTED**  
 2 **STAKEHOLDERS BENEFIT FROM EPE'S AFFILIATION WITH IIF US 2?**

3 A. I believe the Proposed Transaction is beneficial to EPE and all interested stakeholders  
 4 for the reasons discussed throughout the remainder of my testimony and Joint  
 5 Applicants' other testimony. The Proposed Transaction secures a strong partner for  
 6 the Company; keeps EPE's headquarters, management, and employee base in the  
 7 region; and provides significant, tangible, and immediate benefits to customers and  
 8 local communities, all while enhancing EPE's ability to meet growing service area  
 9 needs.

10 As discussed in Mr. Gilbert's testimony, the Infrastructure Investments Fund  
 11 ("IIF")<sup>2</sup> is a long-term, strategic investor that invests in infrastructure assets on behalf  
 12 of the 40 million families whose retirement security is invested in its portfolio  
 13 companies. Regulated utilities make up the foundation of IIF's portfolio given the  
 14 stable, sustainable nature of well-run utility businesses, and IIF has a strong track  
 15 record in investing in utility businesses backed by strong management teams. IIF  
 16 continually seeks to reinvest capital in its portfolio companies, partnering with those  
 17 companies' management teams to execute on business plans and strategic objectives  
 18 such as reliability of service, renewable development, and other key priorities that  
 19 support management teams in fulfilling their companies' missions.

20 The Proposed Transaction contains meaningful commitments to ensure EPE's  
 21 workforce will remain in place and the Company will continue as an independently  
 22 operated, regulated utility headquartered in the City of El Paso, Texas. EPE's current  
 23 Texas and New Mexico customers will benefit from \$21 million in credits on electric  
 24 bills over 36 months and a continued commitment to safe, clean, affordable, and  
 25 reliable energy. The Proposed Transaction also establishes a 20-year, \$100 million  
 26 Community Economic Sustainability Fund to promote EPE's service area while  
 27 maintaining approximately \$1.2 million in annual charitable contributions under  
 28 EPE's existing Community Partner Program. Absent the Proposed Transaction, these  
 29 benefits, among others, would not occur. The benefits I describe here as well as

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<sup>2</sup> Andrew Gilbert provides a description of the Infrastructure Investments Fund and its relationship to IIF US 2 in his direct testimony.

1 others are memorialized as Regulatory Commitments in Exhibit C to the Application  
2 and Exhibit AEG-3 to Mr. Gilbert's direct testimony. The Proposed Transaction is a  
3 great outcome for EPE's shareholders, customers, and community stakeholders that  
4 will provide EPE the necessary support and framework to continue providing safe,  
5 clean, affordable, and reliable service and continue serving as an engine for local  
6 economic growth well into the future.

7 Beyond these and other benefits reflected in Application Exhibit C, I believe  
8 EPE's affiliation with IIF US 2 will benefit EPE and interested stakeholders in a  
9 number of ways. Mr. Gilbert describes in his testimony that, unlike typical financial  
10 sponsors, IIF US 2 does not have a requirement to sell the companies it acquires after  
11 a certain period of time. In fact, IIF US 2 is quite the opposite. IIF US 2, as a part of  
12 IIF, espouses a long-term investment philosophy and is focused on long-term  
13 stability, which Mr. Gilbert describes, enabling it to make the commitment to  
14 maintain a controlling ownership interest in EPE for the long-term. This investment  
15 strategy will allow EPE and management to have an even greater focus on long-term  
16 results, which allows EPE to make investments that benefit the community over many  
17 years, as opposed to focusing on short-term quarterly earnings results.

18 This long-term investment strategy will allow EPE to make substantial capital  
19 commitments, and IIF's scale and resources will help the Company secure funding  
20 efficiently rather than being subject to the constraints imposed by EPE's size and  
21 public market volatility. As Ms. Lapson discusses, the Company is currently  
22 dependent on the sometimes-volatile public markets for equity capital. The amount  
23 of any equity capital the Company is able to obtain is based on the prevailing market  
24 price of our equity securities and market participants' enthusiasm and interest for  
25 additional investment in the Company. The prevailing market price of EPE's shares  
26 is influenced not just by the performance of the Company, but also by overall  
27 sentiment surrounding the general stock market at any given time, which is volatile.  
28 The Company's relatively small size in the utility industry creates further challenges  
29 when attempting to access public markets relative to other, much larger peers because  
30 the Company receives less coverage and attention from industry analysts and its  
31 equity issuances are of a smaller size than large public investors prefer. Further, there

1 are underwriter's commissions and transaction related fees that further reduce  
2 proceeds from these equity offerings.

3 As described in Ms. Lapson's testimony, our affiliation with IIF US 2 will  
4 allow us efficient access to equity capital without the market risks and fees associated  
5 with public equity offerings. This access to equity will allow us to focus on our  
6 capital program rather than market liquidity. In addition, flexible access to equity  
7 capital will give the Company more flexibility in the timing of long-term debt  
8 issuances for capital requirements. IIF US 2, as a part of IIF, is a long-term, strategic  
9 investor representing 40 million families' retirement savings, and its scale ensures  
10 consistency and availability of equity capital to support EPE's financial security and  
11 future capital projects to better serve the Company's customers and other  
12 stakeholders—Mr. Gilbert outlines in his testimony that over the 12 months ending  
13 June 30, 2019, for example, the Infrastructure Investments Fund raised \$5.4 billion in  
14 equity capital available to fund capital projects at its existing portfolio companies. In  
15 my opinion, this is clear evidence of the benefits that IIF US 2 will bring to EPE by  
16 providing equity to fund its business.

17 Finally, EPE will benefit from its association with IIF's portfolio of  
18 companies. To cite one example, IIF has an extensive portfolio of renewable energy  
19 investments, as Mr. Gilbert discusses in his direct testimony. Being part of the IIF  
20 portfolio will also give EPE access to expertise that could help us as we look to  
21 responsibly and efficiently expand our renewable energy resources or attract new  
22 resources to our territory. IIF's strong track record of investing in utilities  
23 specifically and energy more broadly will also allow for sharing of best practices to  
24 further enhance EPE's pursuit of excellence in safety, reliability, cybersecurity,  
25 training and development, and other organizational challenges that face our industry  
26 as a whole.

27 The continuity, resources, and expertise afforded by the Proposed Transaction  
28 would be significant assets to the Company, its customers, and its community  
29 stakeholders. The Regulatory Commitments described in Application Exhibit C  
30 provide tangible evidence and significant assurance that the benefits described here  
31 will come to fruition and make it clear that a partnership with IIF, through IIF US 2,

1 is the best path forward for the Company and its stakeholders and that the Proposed  
2 Transaction is in the public interest.

3 **V. Overview of the Proposed Transaction**

4 **Q. PLEASE DESCRIBE THE PROPOSED TRANSACTION.**

5 A. The Proposed Transaction essentially results in Sun Jupiter directly replacing EPE's  
6 public shareholders at closing, with IIF US 2 as the indirect sole shareholder of EPE.  
7 The Proposed Transaction will occur in accordance with the Merger Agreement  
8 (attached as Exhibit A to the Application), by and among Sun Jupiter, Sun Merger  
9 Sub Inc. ("Merger Sub"), and EPE. Pursuant to the Merger Agreement, Merger Sub  
10 will merge with and into EPE, with EPE continuing as the surviving corporation. As  
11 a result of the Proposed Transaction, EPE will become a direct wholly-owned  
12 subsidiary of Sun Jupiter and, through IIF US 2, one of IIF's portfolio companies.

13 Under the Proposed Transaction, shares held by EPE's shareholders  
14 immediately before the merger's effective time will be cancelled and converted into  
15 the right to receive \$68.25 in cash per share, without interest, and EPE's stock will be  
16 delisted from the NYSE. The per-share purchase price of \$68.25 represents an  
17 enterprise value of approximately \$4.3 billion, including EPE's net debt (as of March  
18 31, 2019), and is a 17% premium to EPE's unaffected closing price on May 31, 2019,  
19 the last trading day prior to the announcement of the Merger Agreement.  
20 Immediately following the merger effected by the Proposed Transaction, Sun Jupiter  
21 will own all the equity in EPE.

22 The Board unanimously approved the Merger Agreement and recommended  
23 that the existing shareholders vote in favor of the transaction. Joint Applicants expect  
24 the Proposed Transaction to close in the first half of 2020, subject to the approval of  
25 EPE's shareholders, the receipt of regulatory approvals, and other customary closing  
26 conditions.

1 **Q. PLEASE PROVIDE ADDITIONAL DETAIL REGARDING THE**  
2 **MECHANICS OF THE PROPOSED TRANSACTION AND EPE'S**  
3 **STRUCTURE POST-CLOSING.**

4 A. Merger Sub is a wholly-owned subsidiary of Sun Jupiter formed solely for the  
5 purpose of effecting the Proposed Transaction. As discussed, Merger Sub will merge  
6 with and into EPE. Post-closing, Merger Sub will cease to exist and EPE will  
7 continue as the surviving corporation and a wholly-owned subsidiary of Sun Jupiter.  
8 Attached as Exhibit B to the Application are pre- and post-closing corporate structure  
9 charts illustrating this ownership change. Additionally, Mr. Gilbert details EPE's  
10 post-closing upstream organizational structure in his direct testimony.

11 **Q. WILL ANY EPE PROPERTY, FACILITIES, OR SECURITIES BE**  
12 **TRANSFERRED AS A RESULT OF THE TRANSACTION?**

13 A. No assets of EPE will be sold, leased, or transferred under the Proposed Transaction.  
14 Sun Jupiter will acquire the EPE common stock at a premium over the existing book  
15 value and the pre-announcement market value, but as described below, no acquisition  
16 premium will be requested for recovery from EPE customers. The Proposed  
17 Transaction is simply a change in upstream ownership, and there will be no change in  
18 the value of EPE's facilities or property.

19 **Q. DID EPE CONDUCT ITS OWN, INDEPENDENT REVIEW OF THE**  
20 **PROPOSED TRANSACTION?**

21 A. Yes. EPE's management and the Board thoroughly reviewed the Proposed  
22 Transaction to understand the business implications and potential impacts to our  
23 diverse stakeholders. In addition, we worked hand-in-hand with IIF US 2 to ensure  
24 the Proposed Transaction firmly establishes a path forward for EPE to continue  
25 providing the quality of service EPE's customers and the Commission expect.

26 **Q. HOW WILL THE OWNERSHIP OF EPE CHANGE AS A RESULT OF THE**  
27 **TRANSACTION?**

28 A. As noted above, EPE is currently a public company with shares of its common stock  
29 listed on the NYSE. Currently, EPE's common stock is largely held by institutional

1 investors, such as investment companies, mutual funds, and hedge funds. In Exhibit  
2 B to the Application, these ownership interests are represented in the “Public  
3 Shareholders” box. Over 93% of EPE’s common stock is currently held by  
4 institutional investors, which is a high percentage of institutional holdings compared  
5 to other publicly-held electric utilities. Upon closing, EPE will have a single  
6 shareholder, Sun Jupiter, a wholly-owned subsidiary of IIF US 2.

7 **Q. HOW WILL THIS OWNERSHIP STRUCTURE BENEFIT EPE AND EPE’S**  
8 **STAKEHOLDERS?**

9 A. The new ownership structure coupled with IIF US 2’s long-term commitment to  
10 maintain a controlling ownership interest in EPE for at least ten years (discussed by  
11 Mr. Gilbert in his direct testimony) allows EPE and management to have an even  
12 greater focus on long-term results and make substantial long-term commitments. For  
13 example, having a single long-term owner of EPE allows EPE and IIF US 2 to make  
14 significant long-term regulatory (and community) commitments that would be  
15 difficult under the more fluid ownership structure that currently exists.

16 In addition to the Regulatory Commitments discussed next, this ownership  
17 structure will allow EPE efficient and reliable access to equity capital without  
18 needing to rely on the sometimes-volatile public markets or incur the cost of a public  
19 issuance, as discussed in more detail in the direct testimony of Ms. Lapson.

20 **Q. WHAT REGULATORY COMMITMENTS ACCOMPANY THE PROPOSED**  
21 **TRANSACTION?**

22 A. Exhibit C to the Application and Exhibit AEG-3 to Mr. Gilbert’s direct testimony set  
23 out Joint Applicants’ Regulatory Commitments. While I and other witnesses at times  
24 summarize these Regulatory Commitments, the specific details are set forth in the  
25 exhibits I just referenced.

26 Those Commitments are divided into five groups: (1) economic development  
27 and community commitments, (2) rate and capital expenditure commitments, (3) ring-  
28 fencing and corporate governance commitments, (4) local control and management  
29 commitments, and (5) employment commitments. I highlight a selection of this  
30 robust offering below:

## **Economic Development and Community Commitments**

- Dedicating \$100 million to promote economic development in EPE's service territory, including the City of El Paso, Texas and Las Cruces, New Mexico, to be funded and allocated at a level of \$5 million per year for 20 years. Contributions to the fund will not be recoverable in rates;
- Maintaining EPE's annual amount of charitable giving following the Proposed Transaction at EPE's average annual charitable giving level for the three-year period ending December 31, 2018;
- Creating 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;
- Creating apprenticeship programs for technical and professional positions for students in local high schools and colleges; and
- Continuing and enhancing utility supplier diversity by promoting the inclusion of minority-, women-, LGBTQ-, and veteran-owned businesses into EPE's supply chain.

## **Rate and Capital Expenditure Commitments**

- EPE will issue a rate credit to its Texas and New Mexico customers in a total aggregate amount for all customers of \$21 million. The rate credit will be distributed among customers in 36 monthly installments starting shortly after closing of the Proposed Transaction and EPE will not attempt to recover the value of the rate credit in future rate cases;
- No recovery in rates of acquisition premium or costs of the Proposed Transaction; and
- EPE will continue to make minimum capital expenditures equal to EPE's current five-year budget with certain allowable adjustments.

## **Ring-Fencing Commitments**

- Not entering into any inter-company debt transactions, unless approved by the Commission and the NMPRC, or sharing credit facilities with IIF US 2 or any of its affiliates;
- Providing a non-consolidation legal opinion that, in the event of a bankruptcy by IIF US 2 or any of its affiliates, EPE's assets and liabilities will not be consolidated with IIF US 2 or any of its affiliates;
- Creating and maintaining a special-purpose intermediate holding company to hold 100% of the equity interests in EPE;

- Maintaining an arm's length relationship with IIF US 2 and its affiliates;
- The equity component of EPE's debt-to-equity ratio will not fall below that established from time to time by the Commission and NMPRC and suspending payment of dividends or other distributions that would cause the equity component to fall below that level; and
- Maintaining separate books and records for EPE and providing the Commission and NMPRC access to the books and records of IIF US 2 and its affiliates, as necessary, for audits and review of affiliate transactions.

#### **Local Control and Management Commitments**

- EPE's board will have ten directors, with one being EPE's CEO; up to two being IIF US 2-level representatives; and the seven remaining directors, including the Chair, satisfying the definition of NYSE Independent Directors (of which, at least two directors will reside in EPE's service area, and at least two directors will either have served on EPE's Board prior to the Proposed Transaction, be local business/community leaders, or be from a university within EPE's service territory);
- EPE's headquarters will remain in the City of El Paso, Texas; and
- Company CEO and senior management will continue to have day-to-day control over operations; will continue to reside in the City of El Paso and Las Cruces, New Mexico area; and will remain the primary point of contact for all regulatory, operational, and community engagement matters.

#### **Employment Commitments**

- For at least five years post-closing, as a result of the Proposed Transaction, not implementing any material involuntary workforce reductions or changes to wages, benefits, and other terms of employment in effect prior to the Proposed Transaction; and
- EPE will honor EPE's collective bargaining agreements.

**Q. HOW CAN EPE AND THE COMMISSION ENSURE THESE REGULATORY COMMITMENTS WILL BE UPHELD?**

A. These Regulatory Commitments are part of the Proposed Transaction for which Joint Applicants seek Commission approval, and Joint Applicants have requested their inclusion in the final order. The Commission has broad powers under PURA, and particularly § 39.262(o), to assure compliance with its orders, including these Regulatory Commitments.



**Q. WHAT BENEFITS DOES THE PROPOSED TRANSACTION PROVIDE TO EACH OF EPE'S STAKEHOLDERS?**

A. For current customers, the Proposed Transaction provides \$21 million of rate credits over 36 months. In addition, customers will benefit from Joint Applicants' Regulatory Commitment to make minimum capital expenditures, to maintain local management and headquarters, and to ring-fence EPE to preserve its autonomy and independent financial standing. No EPE assets will transfer as a result of the Proposed Transaction, nor will the Proposed Transaction result in any adverse change in EPE's rates and services. EPE's customers will not experience any change from the reliable service they currently receive, as Mr. Buraczyk describes, and EPE will have consistent access to capital to further enhance its investment in safe, sustainable, reliable, and affordable service to customers.

We believe the Proposed Transaction will significantly benefit the communities EPE serves by (1) the expansion of EPE's business (a premier employer in the region) and job training programs, (2) the contribution of \$100 million over the next 20 years to promote significant, long-term economic development, and (3) development of renewable energy, distributed generation, and other new technologies. Maintaining EPE's headquarters and management in the City of El Paso, Texas, maintaining EPE's charitable giving levels and low-income assistance programs, providing entry-level training and apprenticeship programs, and enhancing supplier diversity further benefit local communities. The Proposed Transaction allows EPE to enhance its long-standing commitment to the communities it serves via good corporate citizenship.

EPE's valued employees will benefit from the Regulatory Commitments to honor existing collective bargaining agreements and to not implement, as a result of the Proposed Transaction, any material involuntary workforce reductions or changes to wages, benefits, and other terms of employment for at least five years after the Proposed Transaction closes—commitments that would not exist absent the Proposed Transaction. This continuity and certainty will help ensure EPE continues its history of providing safe and reliable service.

EPE shareholders will benefit by receiving a premium for their shares of EPE stock, a premium that will not be paid by customers. The Proposed Transaction will not close without shareholder approval, and such approval is anticipated in September 2019. EPE itself will benefit by being an IIF portfolio company, through IIF US 2, which provides the financial strength to support EPE's capital needs, as described in Ms. Lapson's direct testimony. At the same time, the ring-fencing commitments will insulate EPE if IIF US 2 or its affiliates experience any negative financial developments.

Finally, EPE's state and municipal regulators will see no change, as the local management presence and control will be maintained, and robust ring-fencing commitments designed to protect EPE's autonomy and financial strength will be in place.

## **VI. Transaction Accounting and Tax Implications**

**Q. PLEASE DESCRIBE ANY ACCOUNTING IMPACTS OF THE PROPOSED TRANSACTION ON EPE.**

A. EPE will continue to maintain its books and records pursuant to the accounting requirements of the Federal Energy Regulatory Commission, as set forth in its applicable Uniform System of Accounts and published accounting releases.

**Q. PLEASE EXPLAIN THE REGULATORY CAPITAL STRUCTURE OF EPE FOLLOWING THE CLOSING OF THE PROPOSED TRANSACTION.**

A. Pursuant to its last base rate case, Docket No. 46831, EPE's regulatory capital structure is 48.348% equity and 51.652% debt. Upon closing of the Proposed Transaction, EPE will continue to have a capital structure approximating the capital structure established in Docket No. 46831. Further, as noted above, EPE will have efficient access to capital, as necessary, to maintain and strengthen its capital structure.

1 **Q. WHAT IS GOODWILL?**

2 A. Goodwill in accounting is an intangible asset that may arise when a buyer acquires an  
3 existing business. Goodwill represents the excess of the consideration paid for a  
4 business over the value of its separately identifiable assets.

5 **Q. WHAT DO JOINT APPLICANTS PROPOSE REGARDING THE**  
6 **INCLUSION OF GOODWILL IN RATES?**

7 A. As set forth in Mr. Gilbert's testimony, Joint Applicants commit that any goodwill or  
8 amortization of goodwill recognized by IIF US 2 or its affiliates (including EPE) will  
9 not be included in rate base, cost of capital, or operating expenses in future EPE-  
10 related ratemaking proceedings.

11 **Q. WILL THE CUSTOMERS OF EPE BEAR THE TRANSACTION COSTS OF**  
12 **THE PROPOSED TRANSACTION?**

13 A. No. Based upon Joint Applicants' Regulatory Commitments, as detailed in Mr.  
14 Gilbert's testimony, no recovery in rates of transaction costs will be sought.

15 **Q. PLEASE DESCRIBE THE TAX CONSEQUENCES OF THE PROPOSED**  
16 **TRANSACTION, IF ANY.**

17 A. Although EPE will be party to a joint corporate tax return with Sun Jupiter, which  
18 will be carried out subject to a formal tax sharing agreement and policy, there are no  
19 tax implications for EPE for regulatory purposes. EPE will continue to calculate  
20 income taxes on a stand-alone basis for regulatory ratemaking purposes. The  
21 Proposed Transaction will have no impact on the Commission's authority to  
22 determine EPE's federal income tax expense for setting rates.

## 23 **VII. Consideration of Statutory and Other Factors**

24 **Q. IS THE PROPOSED TRANSACTION IN THE PUBLIC INTEREST?**

25 A. Yes. Given the statutory and other factors discussed below and in further detail by  
26 other Joint Applicant witnesses, it is my opinion that the Proposed Transaction is in  
27 the public interest. The Proposed Transaction will be marked by continuity in many  
28 respects while providing significant benefits to all stakeholders that would not occur  
29 otherwise. There are also meaningful protections to avert financial and related risks.

1 Collectively, these attributes advance the public interest. Mr. Schichtl further  
 2 describes how the attributes of this Proposed Transaction compare favorably to recent  
 3 change-in-control transactions before the Commission. IIF US 2 has made substantial  
 4 commitments to the Company, its employees, and its community to demonstrate  
 5 IIF US 2's desire and willingness to be a long-term partner.

6 **A. Statutory Factors**

7 **Q. WHAT STATUTORY FACTORS IS THE COMMISSION REQUIRED TO**  
 8 **CONSIDER IN REVIEWING THE PROPOSED TRANSACTION?**

9 A. Joint Applicants submit the Proposed Transaction to the Commission pursuant to  
 10 PURA §§ 14.101, 39.262, and 39.915. Under PURA § 14.101, the Commission must  
 11 consider the following factors in determining whether the Proposed Transaction is in  
 12 the public interest:

- 13 • The reasonable value of the property, facilities, or securities to be  
 14 acquired, disposed of, merged, transferred, or consolidated;
- 15 • Whether the Proposed Transaction will adversely affect the health or  
 16 safety of customers or employees;
- 17 • Whether the Proposed Transaction will result in the transfer of jobs of  
 18 citizens of Texas to workers domiciled outside Texas;
- 19 • Whether the Proposed Transaction will result in the decline of service;
- 20 • Whether the public utility will receive consideration equal to the  
 21 reasonable value of the assets when it sells, leases, or transfers assets; and
- 22 • Whether the Proposed Transaction is consistent with the public interest.

23 Under PURA §§ 39.262(m) and 39.915, the Commission must consider whether the  
 24 Proposed Transaction:

- 25 • Will adversely affect the reliability of service of the electric utility;
- 26 • Will adversely affect the availability of service of the electric utility; or
- 27 • Will adversely affect the cost of service of the electric utility.

28 **Q. TAKING THOSE FACTORS IN TURN, PLEASE ADDRESS THE**  
 29 **REASONABLE VALUE OF THE PROPERTY, FACILITIES, AND**  
 30 **SECURITIES TO BE TRANSFERRED?**

31 A. No assets or facilities of EPE are to be transferred in the Proposed Transaction.  
 32 Because the Proposed Transaction is simply a change in upstream ownership, there

1 will be no change in the value of the EPE's facilities or property. As for the value of  
2 securities, EPE's common stock is being acquired at a premium over the existing  
3 book value, but the premium will not impact customer rates due to Joint Applicants'  
4 Regulatory Commitment to not seek recovery of it.

5 **Q. WILL THE PROPOSED TRANSACTION ADVERSELY AFFECT THE**  
6 **HEALTH OR SAFETY OF CUSTOMERS OR EMPLOYEES?**

7 A. No. As Mr. Buraczyk discusses in further detail, the Proposed Transaction will not  
8 have an adverse impact on the daily operations of EPE, and EPE will continue to  
9 invest in infrastructure and operate its system using the same employees and  
10 processes. As a result, the health and safety of customers and employees will not, in  
11 my view, be adversely affected. In fact, as described by Mr. Gilbert, EPE will have  
12 access to the best practices of IIF's numerous energy portfolio companies, which may  
13 enhance our health and safety efforts.

14 **Q. WILL THE PROPOSED TRANSACTION RESULT IN THE TRANSFER OF**  
15 **JOBS OF CITIZENS OF TEXAS TO WORKERS DOMICILED IN OTHER**  
16 **STATES?**

17 A. No. By virtue of the Proposed Transaction, Joint Applicants have committed that  
18 EPE will not make any material changes to compensation or involuntary reductions to  
19 EPE's workforce for five years as a result of the Proposed Transaction. This is a  
20 commitment that does not currently exist. Joint Applicants have also committed to  
21 maintain EPE's headquarters and senior management in the City of El Paso, Texas.  
22 Consequently, no Texas jobs are expected to transfer to workers outside the state.  
23 Mr. Buraczyk also addresses this factor in his direct testimony. If anything, the \$100  
24 million Regulatory Commitment to fund economic development in EPE's service  
25 territory is actually expected to foster job growth in the region.

26 **Q. WILL THE PROPOSED TRANSACTION RESULT IN THE DECLINE OF**  
27 **SERVICE?**

28 A. No. The Proposed Transaction will not have a negative effect on EPE's operations,  
29 and thus, will not result in a decline of service. As noted previously, Joint Applicants

1 have committed to maintain minimum capital expenditure levels and not make  
2 material involuntary workforce reductions for five years as a result of the Proposed  
3 Transaction. These Regulatory Commitments to support the EPE capital expenditure  
4 plan and the EPE workforce ensures that EPE will continue to provide the safe and  
5 reliable service it has historically provided to customers. Mr. Buraczyk discusses  
6 EPE operations and the Proposed Transaction's impacts further in his direct  
7 testimony.

8 **Q. WILL EPE RECEIVE CONSIDERATION EQUAL TO THE REASONABLE**  
9 **VALUE OF THE ASSETS WHEN IT SELLS, LEASES, OR TRANSFERS**  
10 **ASSETS?**

11 A. I do not believe this statutory factor is applicable because no assets will be sold,  
12 leased, or transferred in the Proposed Transaction.

13 **Q. WILL THE PROPOSED TRANSACTION ADVERSELY AFFECT EPE'S**  
14 **RELIABILITY OR AVAILABILITY OF SERVICE?**

15 A. No. As noted above, Joint Applicants have committed to maintain minimum capital  
16 expenditure levels and not make material involuntary reductions to EPE's workforce  
17 or material changes to compensation levels for five years as a result of the Proposed  
18 Transaction. As Mr. Buraczyk testifies, there should be no adverse effects on EPE's  
19 reliability or availability of service.

20 **Q. HAVE YOU EVALUATED WHETHER EPE WILL HAVE SUFFICIENT**  
21 **FINANCIAL MEANS AND SUPPORT TO PROVIDE RELIABLE ELECTRIC**  
22 **SERVICE AND ENSURE THE AVAILABILITY OF SERVICE AFTER**  
23 **CLOSING?**

24 A. Yes, I have. As detailed below and in Mr. Gilbert's direct testimony, the Proposed  
25 Transaction will improve EPE's ability to continue providing reliable service and  
26 carry out its capital plan. In my opinion, after the Proposed Transaction closes, EPE  
27 will possess the financial means, support, and ability to continue providing safe,  
28 clean, affordable, and reliable electric service to the public.

**Q. HOW WILL THE PROPOSED TRANSACTION IMPROVE EPE'S CAPITAL PLAN?**

A. EPE plans to make construction expenditures of \$1.3 billion over the five-year period 2019–2023 to enhance system safety, reliability and service. The majority of the projected capital expenditures over the next five years are for upgrades and replacements at existing generating facilities, transmission and distribution plant additions to serve EPE's growing customer base, and general plant additions to support electric operations. In addition, these expenditures include the addition of a generating unit to the Newman power plant in 2023 to meet customer growth. IIF US 2 expressed strong support for the Company's capital plans as it evaluated EPE's business plan and has committed to funding no less than the capital expenditures currently planned over the next five years.

EPE uses a mix of long-term debt and equity capital to finance its construction requirements. In recent months, EPE has indicated that it would need to issue up to \$200 million of equity in the near future to help finance these construction expenditures and maintain a balanced capital structure. The ownership structure discussed above will allow EPE efficient access to equity capital without needing to rely on the sometimes-volatile public markets or incur the cost of a public issuance. Additionally, as a relatively small publicly-traded utility, certain economies of scale do not exist for EPE in the equity and debt markets. As such, EPE's affiliation with IIF, via IIF US 2, will allow EPE to access capital in an efficient and timely manner. EPE will also benefit from the significant network of lender relationships and enhanced access that come with being affiliated with a larger enterprise.

**Q. WILL THE PROPOSED TRANSACTION ADVERSELY AFFECT EPE'S COST OF SERVICE?**

A. No. For the reasons I previously discussed, there will not be any adverse impacts to EPE's cost of service. EPE's capital expenditure plan and operations remain intact and unchanged as a result of the Proposed Transaction. Further, Joint Applicants have committed that customers will not bear the costs of the Proposed Transaction, including the acquisition premium. Rather, customers will see a \$21 million rate credit if the Proposed Transaction closes. Mr. Schichtl addresses in more detail the

1 impacts of the Proposed Transaction on EPE's rates in relation to the Commission's  
2 public interest standard.

3 **Q. YOU DISCUSS THROUGHOUT YOUR TESTIMONY THAT JOINT**  
4 **APPLICANTS HAVE COMMITTED TO NOT MAKE ANY INVOLUNTARY**  
5 **WORKFORCE REDUCTIONS, INCLUDING TO MANAGEMENT, AS A**  
6 **RESULT OF THE PROPOSED TRANSACTION. CAN YOU PROVIDE**  
7 **ADDITIONAL INFORMATION REGARDING MARY KIPP'S DEPARTURE**  
8 **AS CEO OF EPE?**

9 A. Yes. EPE's former CEO, Mary Kipp, recently made a personal decision to leave EPE  
10 to pursue another opportunity. However, Adrian Rodriguez, EPE Senior Vice  
11 President, General Counsel, and Assistant Corporate Secretary, was appointed by the  
12 Board of EPE to serve as interim CEO and was recently appointed to fill the vacancy  
13 on the Board that was created when Ms. Kipp resigned. This change in CEOs was  
14 not due to the Proposed Transaction, but rather the result of a personal decision by  
15 Ms. Kipp. EPE does not expect its day-to-day operations to change with Ms. Kipp's  
16 departure. Additional details can be found in the Proxy Statement attached as Exhibit  
17 D to the Application.

18 **B. Other Factors**

19 **Q. WHAT DO YOU ADDRESS IN THIS SUBSECTION OF YOUR**  
20 **TESTIMONY?**

21 A. I address other factors the Commission has considered in change-in-control  
22 proceedings.

23 **1. Tangible and Quantifiable Benefits**

24 **Q. WHAT ARE JOINT APPLICANTS' MAJOR FINANCIAL REGULATORY**  
25 **COMMITMENTS, AND WHAT BENEFITS FLOW FROM THEM AND THE**  
26 **PROPOSED TRANSACTION GENERALLY?**

27 A. The Regulatory Commitments offer a robust package of tangible and quantifiable  
28 benefits to Texas customers. First, EPE customers will receive a direct \$21 million  
29 credit and will not be responsible for the premium and transaction costs associated



1 with Sun Jupiter's purchase of EPE. Second, Joint Applicants' capital expenditure  
 2 commitment will enhance EPE's ability to fulfill commitments to its customers and  
 3 the communities EPE serves, including investment in renewable energy resources,  
 4 local generation, and other infrastructure needs.

5 Third, the 20-year, \$100 million Community Economic Sustainability Fund in  
 6 combination with the job training and apprenticeship programs, will support job  
 7 creation and result in long-term economic benefits in the region. Regional charities  
 8 will continue to benefit from EPE's ongoing philanthropic efforts, low-income  
 9 customers will benefit from continuation and improvement of assistance programs,  
 10 and regional minority-owned businesses will benefit from inclusion in EPE's supply  
 11 chain.

12 Other major financial Regulatory Commitments being made by Joint  
 13 Applicants include maintenance of EPE's equity level as follows:

- 14 • EPE will suspend payment of dividends or other distributions, except for  
 15 contractual tax payments, until otherwise allowed by the Commission and  
 16 NMPRC, if issuance of the dividend or distribution would cause the equity  
 17 component of EPE's debt-to-equity ratio to fall below that established  
 18 from time-to-time by the Commission and the NMPRC for EPE for  
 19 ratemaking purposes; and
- 20 • The equity component of EPE's debt-to-equity ratio will not fall below  
 21 that established from time-to-time by the Commission and the NMPRC for  
 22 EPE for ratemaking purposes.

23 The benefits that flow from these Regulatory Commitments include  
 24 maintaining EPE's financial strength, enabling it to continue carrying out its service  
 25 obligations while providing tangible and quantifiable benefits to customers.

26 Finally, having a parent with the financial strength and resources of IIF US 2,  
 27 as detailed in the direct testimony of Mr. Gilbert, is clearly beneficial to EPE in that  
 28 IIF US 2 can provide EPE with capital resources for the significant infrastructure  
 29 investments that will be needed in EPE's growing service territory. Over the past 10  
 30 years, for example, the number of customers in EPE's service area has grown from  
 31 369,871 to 428,858 and the peak load demand has increased from 1,571 megawatts  
 32 ("MW") to 1,929 MW. EPE projects that peak demand will increase to 2,169 MW  
 33 over the next ten years. EPE's capital plans address expected growth in peak demand

1 and customers. Joint Applicants have committed that EPE will continue to make  
2 minimum capital expenditures in an amount equal to EPE's current five-year budget  
3 for the five-year period beginning January 1, 2021, subject to the following  
4 adjustments: EPE may reduce capital spending due to conditions not under EPE's  
5 control, including, without limitation, siting delays, cancellations of projects by third-  
6 parties, weaker than expected economic conditions, or if EPE determines that a  
7 particular expenditure would not be prudent.

8 In sum, the Proposed Transaction offers many tangible and quantifiable  
9 benefits to EPE customers in Texas. Mr. Schichtl also addresses the tangible and  
10 quantifiable benefits to EPE customers in his direct testimony.

## 11 2. Synergy Savings

### 12 Q. WHAT ARE "SYNERGY SAVINGS"?

13 A. The term "synergy savings" normally refers to savings in operating costs resulting  
14 from a transaction due to a consolidation of operations between companies, including  
15 headcount reduction, elimination of duplicate facilities, consolidation of general and  
16 administrative functions, and increased purchasing power.

### 17 Q. ARE SYNERGY SAVINGS EXPECTED IN THE PROPOSED 18 TRANSACTION?

19 A. No. The Proposed Transaction is not a "synergy play" transaction as may be the case  
20 where two or more utilities become affiliated for the purpose of sharing costs such as  
21 by consolidating operations. Accordingly, no significant synergy savings are  
22 expected due to the Proposed Transaction. As discussed above, the benefits from this  
23 transaction are in the form of meaningful Regulatory Commitments, as well as  
24 financial and other advantages that EPE can expect to enjoy as a result of being one  
25 of IIF's portfolio companies. EPE's customers, however, will experience significant  
26 savings over three years from the \$21 million rate credit.

27 Although the Proposed Transaction will leave the operations of EPE  
28 essentially unchanged, I would like to note that EPE management continually makes  
29 efforts to maintain or reduce our operating costs.

1                   **3.     Ring-Fencing**

2   **Q.     DOES THE PROPOSED TRANSACTION EXPOSE EPE TO ANY**  
3   **FINANCIAL RISK FROM ITS TO-BE PARENT OR AFFILIATES?**

4   A.    No. As Ms. Lapson discusses in detail in her direct testimony, Joint Applicants have  
5        agreed to a full suite of corporate governance provisions designed to maintain EPE as  
6        a separate and distinct entity from IIF US 2 and its affiliates, and as addressed by Mr.  
7        Gilbert, in keeping with IIF's general practice of maintaining its portfolio companies'  
8        existence as stand-alone companies. The Regulatory Commitments place many  
9        protections to ensure EPE remains an independent, financially-secure utility.

10   **Q.    HAVE JOINT APPLICANTS MADE A COMMITMENT REGARDING ANY**  
11   **ATTEMPT TO RECOVER COSTS OF IIF US 2 AFFILIATES?**

12   A.    Yes. As addressed in the "Ring-Fencing Commitments" in Exhibit C to the  
13        Application, Joint Applicants have committed that EPE will not seek to recover from  
14        EPE's customers any costs incurred as a result of a bankruptcy of Sun Jupiter or any  
15        of its affiliates (excluding EPE); EPE will not guarantee the debt or credit instruments  
16        of Sun Jupiter, IIF US 2, or any other affiliate of IIF US 2 (excluding EPE and Rio  
17        Grande Resources Trust II); and EPE's assets, revenues, or stock will not be pledged  
18        by Sun Jupiter, IIF US 2, or any of its affiliates or subsidiaries for the benefit of any  
19        entity other than EPE. Further, IIF US 2 has committed to obtain a non-consolidation  
20        legal opinion that provides that, in the event of a bankruptcy of IIF US 2 or any of its  
21        affiliates, a bankruptcy court will not consolidate the assets and liabilities of EPE with  
22        IIF US 2 or any affiliate of IIF US 2.

23   **Q.    HAVE JOINT APPLICANTS MADE A REGULATORY COMMITMENT**  
24   **REGARDING EPE MAINTAINING SEPARATE BOOKS AND RECORDS?**

25   A.    Yes. Joint Applicants have committed that EPE will remain separate and distinct  
26        from any other entity and that EPE will maintain books and records that are separate  
27        and distinct from any other entity.

1 **Q. HAVE JOINT APPLICANTS MADE COMMITMENTS REGARDING EPE'S**  
2 **CAPITAL STRUCTURE?**

3 A. Yes, as Ms. Lapson and Mr. Schichtl discuss in detail, Joint Applicants have  
4 committed to not allow the equity component of EPE's debt-to-equity ratio to fall  
5 below the levels established from time to time by the Commission and NMPRC,  
6 consistent with historical practice.

7 **4. Costs Corresponding to Benefits**

8 **Q. WILL THE PROPOSED TRANSACTION CAUSE TEXAS CUSTOMERS TO**  
9 **BEAR TRANSACTION COSTS UNRELATED TO CORRESPONDING**  
10 **BENEFITS TO TEXAS RATEPAYERS?**

11 A. No. Joint Applicants have committed that EPE customers will not bear the costs  
12 associated with the Proposed Transaction. As Mr. Schichtl discusses in detail, EPE  
13 customers will receive the benefits described above without bearing any costs directly  
14 associated with the Proposed Transaction.

15 **5. Jurisdiction and Regulatory Oversight**

16 **Q. WILL THE PROPOSED TRANSACTION AFFECT THE COMMISSION'S**  
17 **JURISDICTION OVER EPE?**

18 A. No. As Mr. Schichtl explains, the Commission's jurisdiction over EPE will not  
19 change after the Proposed Transaction closes.

20 **Q. WILL THE PROPOSED TRANSACTION AFFECT THE AUTHORITY OF**  
21 **ANY MUNICIPALITIES THAT HAVE ORIGINAL JURISDICTION OVER**  
22 **EPE?**

23 A. No. As Mr. Schichtl explains, no municipality's jurisdiction over EPE will change  
24 after the Proposed Transaction closes.

25 **Q. IS THE PROPOSED TRANSACTION A MEANS OF EVADING**  
26 **REGULATION?**

27 A. No. As Mr. Schichtl discusses, EPE will remain subject to the same regulatory  
28 oversight that it experiences today.

1                   **6. Competition Concerns**

2   **Q. DOES THE PROPOSED TRANSACTION IMPEDE OR INCREASE**  
3   **COMPETITION?**

4   A. The Proposed Transaction does not impede or promote competition. As noted above,  
5   EPE will continue to be subject to the same regulatory oversight that it experiences  
6   today, and currently EPE's service territory is not subject to retail competition under  
7   PURA § 39.553 and 16 Texas Administrative Code § 25.421.

8                   **VIII. Conclusion**

9   **Q. PLEASE SUMMARIZE YOUR DIRECT TESTIMONY.**

10   A. The Proposed Transaction is in the public interest. It brings significant value and  
11   benefits to all stakeholders—EPE, its customers, its employees, the communities it  
12   serves, and its shareholders. IIF US 2's investment will enhance EPE's ability to  
13   meet growing service area needs, including renewable energy and sustainability  
14   initiatives, while EPE remains an independently operated, locally managed, and  
15   financially sound regulated utility headquartered in Texas.

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

17   A. Yes.

**AFFIDAVIT OF NATHAN T. HIRSCHI**

THE STATE OF TEXAS

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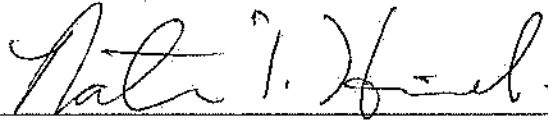
COUNTY OF EL PASO

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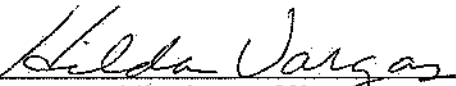
This day, Nathan T. Hirschi, the affiant, appeared in person before me, a notary public, who knows the affiant to be the person whose signature appears below. The affiant stated under oath:

My name is Nathan T. Hirschi. I am of legal age and a resident of the State of Texas. The foregoing testimony offered by me is true and correct, and the opinions stated therein are, to the best of my knowledge and belief, accurate, true and correct.



Nathan T. Hirschi  
Senior Vice President & Chief Financial Officer

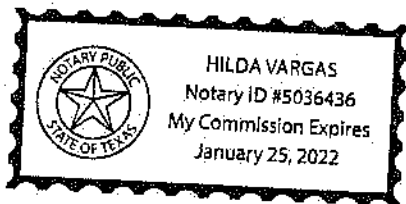
SUBSCRIBED AND SWORN TO BEFORE ME, notary public, on this the 7 day of August, 2019.



Notary Public, State of Texas

My Commission expires:

January 25, 2022



**DOCKET NO. \_\_\_\_\_**

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

**DIRECT TESTIMONY**  
**AND EXHIBITS**  
**OF**  
**JAMES SCHICHTL**  
**FOR**  
**EL PASO ELECTRIC COMPANY**

**AUGUST 13, 2019**

DOCKET NO. \_\_\_\_\_

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

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**EXHIBITS**

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| JS-1 | History of James Schichtl Direct Testimony in EPE Jurisdictional Proceedings |
| JS-2 | Public Interest Application – Proposed Findings and Approvals                |



**DIRECT TESTIMONY AND EXHIBITS OF JAMES SCHICHTL**

**I. Introduction and Qualifications**

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

A. My name is James Schichtl. My business address is 100 North Stanton Street, El Paso, Texas, 79901.

**Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

A. I am employed by El Paso Electric Company (“EPE” or “Company”) as Vice President of Regulatory Affairs.

**Q. ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

A. I am appearing on behalf of EPE.

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

A. I have been employed by EPE since February 2012. In June 2016, I was promoted from Director of Regulatory Affairs to Vice President of Regulatory Affairs. Prior to becoming Director, I was Manager of EPE’s Economic & Rate Research group, responsible for EPE’s jurisdictional cost of service, rate design analysis, and developing EPE’s retail rate schedules and charges. Prior to that, I was a Senior Regulatory Case Manager, responsible for the production, filing, and execution of regulatory applications before both the Public Utility Commission of Texas (“Commission”) and the New Mexico Public Regulation Commission (“NMPRC”).

Prior to joining EPE in February 2012, I spent 18 years in various regulatory positions at Southern California Edison Company (“SCE”), 12 of those in a managerial capacity. As Manager of Pricing Design and Research, I was responsible for SCE’s rates and tariffs during deregulation and changes required following the California power crisis in 2001. I was subsequently promoted to Manager of Tariffs and Advice Letters, with broad responsibility within regulatory for evaluating California statutes, rules, and regulations and managing regulatory efforts at the California Public Utilities Commission (“CPUC”). Those efforts included significant involvement in the transition back to a

regulated generation market as well as significant expansion of distributed generation in California.

I graduated with a Bachelor of Science in Mechanical Engineering in 1987 from The University of Texas at El Paso, where I also studied graduate level economics and econometrics. Throughout my career at EPE, I have attended and presented material for numerous seminars and workshops related to cost of service, rate and program design, and regulation.

**Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES WITH EPE?**

A. As Vice President of Regulatory Affairs, I am responsible for the oversight and direction of EPE's Economic Research, Rate Research, and Regulatory Accounting groups, as well as EPE's Regulatory Case Management group. Economic Research performs EPE's load research and analysis and forecasting functions. Rate Research encompasses EPE's rate research function, jurisdictional and class cost of service studies, rate design analysis, and the development of EPE's retail rate schedules and charges. The Regulatory Accounting group is responsible for the scheduling, preparation, and review of jurisdictional regulatory accounting and reporting. The Regulatory Case Management group coordinates and oversees regulatory filings made by EPE with the Commission, NMPRC, the Federal Energy Regulatory Commission ("FERC"), and local Texas municipal regulators.

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

A. Yes, I have previously filed testimony and testified before the Commission, NMPRC, FERC, and CPUC. My witness history includes major rate cases in these state jurisdictions, primarily focused on ratemaking and regulatory issues. Exhibit JS-1 to my testimony includes a list of cases in which I filed testimony in Texas and New Mexico over my career with EPE.

## II. Purpose of Testimony

**Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THIS PROCEEDING?**

A. Applicants to this proceeding include EPE, IIF US Holding 2 LP (“IIF US 2”), and Sun Jupiter Holdings LLC (“Sun Jupiter”) (collectively, “Joint Applicants”). As described in the direct testimony of Nathan Hirschi, the Joint Applicants propose that Sun Jupiter directly acquire the Company (the “Proposed Transaction”). I address the following issues in my testimony:

- How certain Regulatory Commitments offered by Joint Applicants in Exhibit C to the Application (and Exhibit AEG-3 to Andrew Gilbert’s direct testimony) address the Public Utility Regulatory Act’s (“PURA”) public interest standard as applied by the Commission in recent change-in-control proceedings;
- The impact of the Proposed Transaction on EPE’s rates and cost of service and the effect of the Proposed Transaction on continued compliance with Commission and other regulatory requirements; and
- The effect of the Proposed Transaction on the Commission’s and municipalities’ jurisdiction and regulatory policies.

**Q. WHAT EXHIBITS DO YOU SPONSOR IN CONNECTION WITH YOUR DIRECT TESTIMONY?**

A. I sponsor Exhibits JS-1 and JS-2 as listed in the index to my testimony.

**Q. WAS THIS TESTIMONY PREPARED BY YOU OR UNDER YOUR DIRECTION?**

A. Yes, this testimony was prepared by me or under my direction. The information contained in this testimony is true and correct as of filing to the best of my knowledge.

## III. Necessary Regulatory Approvals

**Q. WHAT REGULATORY APPROVALS ARE NECESSARY FOR THE PROPOSED TRANSACTION TO CLOSE?**

A. In order for the Proposed Transaction to close, it must be approved by the appropriate regulatory authorities, including this Commission, the NMPRC, and the FERC under the Federal Power Act. The Proposed Transaction also involves requisite clearance under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18A; approval by the Federal Communications Commission (“FCC”) to transfer or assign any applicable FCC licenses;

filings with, and consent of, the U.S. Nuclear Regulatory Commission (“NRC”) to transfer or assign any applicable NRC license; and filings with, and consent of, the City of El Paso, Texas.

**Q. WHAT REGULATORY APPROVALS ARE JOINT APPLICANTS SEEKING FROM THE COMMISSION?**

A. Joint Applicants request the Commission find that the Proposed Transaction is in the public interest because it will provide meaningful benefits to all stakeholders. In fact, the Proposed Transaction will enhance EPE’s ability to meet growing service area needs, including renewable energy and sustainability initiatives. The Proposed Transaction delivers a rate credit to customers, robust commitments to local communities, continuity of local EPE management and employees, and other protections.

The Proposed Transaction will not adversely affect the health or safety of customers or employees, the reliability or availability of service, or the cost of service provided by EPE, and it will not result in the transfer of jobs of citizens of Texas to workers domiciled outside this state. Joint Applicants also request the Commission find that the benefits of the Proposed Transaction, along with the substantial Regulatory Commitments proposed, support a public interest finding. Finally, Joint Applicants request that the Commission, upon finding the Proposed Transaction to be in the public interest, approve it under PURA §§ 14.101, 39.262(*l*)–(*m*), and 39.915.

Exhibit JS-2 includes a list of findings and approvals that EPE is requesting the Commission adopt in approving the Proposed Transaction.

**Q. WHAT IS THE STATUS OF EPE’S APPLICATIONS BEFORE THE FERC AND THE NMPRC?**

A. Concurrent with the filing of this Application at the Commission, EPE has also filed for required approvals in New Mexico and with the FERC.

1                                    **IV.     Overall Public Interest Analysis**

2    **Q.     IN YOUR OPINION, IS THE PROPOSED TRANSACTION IN THE PUBLIC**  
3    **INTEREST?**

4    A.     Yes. First, it is important to understand that the Proposed Transaction is simply a change  
5           in upstream ownership of EPE. The Proposed Transaction essentially results in Sun Jupiter  
6           directly replacing EPE's public shareholders at closing, with IIF US 2 as the indirect sole  
7           shareholder of EPE. It is not intended to result in synergy savings as may be the case where  
8           two or more utilities become affiliated. As further described by Mr. Hirschi, the Proposed  
9           Transaction also provides EPE with enhanced access to capital and a long-term investment  
10          orientation that would provide the Company with an ever-greater focus on long-term  
11          results. In addition, the Proposed Transaction delivers other significant benefits to all  
12          stakeholders, including a rate credit to current customers, robust commitments to local  
13          communities, continuity of local EPE management and employees, a premium for  
14          shareholders, and other protections. Each Joint Applicant witness (including myself)  
15          discusses these benefits in detail.

16   **Q.     WHAT IS YOUR APPROACH TO REVIEWING WHETHER THE PROPOSED**  
17   **TRANSACTION IS IN THE PUBLIC INTEREST?**

18   A.     In preparing my testimony, I reviewed the Regulatory Commitments considering the public  
19          interest standard provided in PURA §§ 14.101, 39.262(m), and 39.915 as applied by the  
20          Commission in recent change-in-control proceedings. In this section of my testimony I  
21          address each statutory and other factor generally. Following this section, I address in more  
22          detail the statutory factor relating to EPE's cost of service and other factors, including ring-  
23          fencing measures related to capital structure, compliance with regulatory requirements, and  
24          the Proposed Transaction's effect on the Commission's and municipalities' jurisdiction.

25           Additionally, I examined the Proposed Transaction in light of prior change-in-  
26          control applications that the Commission approved as being in the public interest. The  
27          Commission recently considered several proposals to acquire the majority ownership  
28          interest in Oncor Electric Delivery Company LLC ("Oncor") as well as Oncor's proposal  
29          to acquire InfraREIT, Inc., the entity that indirectly owned most of the assets operated by  
30          Sharyland Utilities, L.P. In each of those cases, the Commission considered the impact of

1 the transaction on stakeholders, including the utility, its customers, its communities, its  
2 regulators, and its employees. The Commission particularly focused on several factors  
3 while evaluating whether the transactions were in the public interest, including customer  
4 benefits, the utility's continuing commitment to and presence in its service area, and certain  
5 ring-fencing measures to support the utility's autonomy and protect its financial strength  
6 by insulating it from the financial affairs of its parent and affiliates.

7 **Q. BASED ON YOUR ANALYSIS, IS THE PROPOSED TRANSACTION IN THE**  
8 **PUBLIC INTEREST?**

9 A. Yes. As discussed later in my testimony and in that of other Joint Applicant witnesses, the  
10 Proposed Transaction will provide benefits to EPE's stakeholders, ensure EPE's  
11 commitment to its service area, and establish ring-fencing measures to protect EPE's  
12 autonomy and financial strength. Considering the Commission's recent evaluation of  
13 similar factors in other transactions, I conclude that the Proposed Transaction is in the  
14 public interest and should be approved.

15 **Q. WHAT REGULATORY COMMITMENTS ACCOMPANY THE PROPOSED**  
16 **TRANSACTION?**

17 A. As found in Exhibit C to the Application and further discussed by Mr. Hirschi and Mr.  
18 Gilbert, Joint Applicants' Regulatory Commitments are divided into five groups;  
19 (1) economic development and community commitments; (2) rates and capital  
20 expenditure commitments; (3) ring-fencing and corporate governance commitments;  
21 (4) local control and management commitments; and (5) employment commitments. I  
22 discuss in detail the rate Regulatory Commitments in Section V of my testimony, while  
23 other witnesses provide further detail on the other categories.

24 **Q. HOW DO JOINT APPLICANTS' REGULATORY COMMITMENTS COMPARE**  
25 **TO THOSE THE COMMISSION REVIEWED IN OTHER RECENT CHANGE-IN-**  
26 **CONTROL CASES?**

27 A. The Regulatory Commitments detailed in Application Exhibit C are substantial,  
28 demonstrating IIF US 2's extraordinary commitment to EPE, its customers, employees,  
29 and the communities it serves. As detailed in the Proxy Statement attached as Exhibit D

to the Application, the Joint Applicants were aware of the regulatory commitments made in utility merger cases both in the state of Texas and nationally. The Joint Applicants are firmly of the belief that the Proposed Transaction is in the best interest of all stakeholders. Given that belief and their strong interest in ensuring closing certainty, Joint Applicants specifically negotiated Regulatory Commitments in advance that would fully address the areas of concern that the Commission and other regulatory bodies have highlighted in similar matters as well as memorialize Joint Applicants' shared values. Joint Applicants are confident this final product is a robust package of benefits to and protections for all EPE stakeholders.

**Q. WHAT STATUTORY FACTORS WILL THE COMMISSION CONSIDER IN REVIEWING THE PROPOSED TRANSACTION?**

A. Under PURA § 14.101, the Commission must consider the following factors in determining whether the Proposed Transaction is in the public interest:

- the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged, transferred, or consolidated;
- whether the Proposed Transaction will adversely affect the health or safety of customers or employees;
- whether the Proposed Transaction will result in the transfer of jobs of citizens of Texas to workers domiciled outside Texas;
- whether the Proposed Transaction will result in a decline of service;
- whether the public utility will receive consideration equal to the reasonable value of the assets when it sells, leases, or transfers assets; and
- whether the Proposed Transaction is consistent with the public interest.

Under PURA §§ 39.262(m) and 39.915, the Commission must consider whether the Proposed Transaction:

- will adversely affect the reliability of service of the electric utility;
- will adversely affect the availability of service of the electric utility; or
- will adversely affect the cost of service of the electric utility.

**Q. TAKING THOSE FACTORS IN TURN, IS REASONABLE VALUE BEING PROVIDED FOR THE PROPERTY, FACILITIES, OR SECURITIES BEING**

**ACQUIRED, DISPOSED OF, MERGED, TRANSFERRED, OR CONSOLIDATED?**

A. Yes. As discussed by Mr. Hirschi, the per-share purchase price of \$68.25 cash represents a 17% premium to EPE's closing price on May 31, 2019, the last trading day prior to the announcement of the Merger Agreement. As detailed in Application Exhibit D, Lazard provided a fairness opinion regarding the consideration to be received by the holders of EPE common stock. Importantly, customer rates will not be impacted by that premium due to the Regulatory Commitment not to seek recovery of the acquisition premium in rates. Moreover, Joint Applicants have also committed to not seek recovery of transaction costs.

**Q. WILL THE PROPOSED TRANSACTION ADVERSELY AFFECT THE HEALTH OR SAFETY OF CUSTOMERS OR EMPLOYEES?**

A. No. Given the protections contained in the Regulatory Commitments, EPE's provision of safe, reliable service will not be affected by the Proposed Transaction. Steven Buraczyk discusses EPE's operations in greater detail in his direct testimony. As described by Mr. Gilbert, the safety and health of employees, customers, and communities is a top priority for IIF US 2.

**Q. WILL THE PROPOSED TRANSACTION RESULT IN THE TRANSFER OF JOBS OF CITIZENS OF TEXAS TO WORKERS DOMICILED IN OTHER STATES?**

A. No. Joint Applicants have committed that for at least five years after closing, as a result of the Proposed Transaction, no material involuntary workforce reductions will be made—a benefit that would not exist otherwise. As detailed in Application Exhibit D and discussed by Mr. Hirschi, no other bidders involved in the transaction process were willing to make such a substantial commitment. Joint Applicants have also committed to maintain EPE's headquarters and senior management in El Paso. The Proposed Transaction will thus not result in the transfer of jobs of citizens of Texas to workers domiciled in other states. If anything, the substantial commitment to fund economic development, apprenticeship programs, and job training in the EPE service territory should foster job growth in the region.



**Q. WILL THE PROPOSED TRANSACTION RESULT IN THE DECLINE OF SERVICE?**

A. No. Joint Applicants have committed to maintain EPE's capital expenditure levels and, for at least five years, as a result of the Proposed Transaction, not to make material involuntary workforce reductions. This commitment to support the EPE capital expenditure plan and EPE workforce will assure that EPE continues to provide safe and reliable service to customers. Mr. Buraczyk discusses EPE's operations in his direct testimony.

**Q. WILL EPE RECEIVE CONSIDERATION EQUAL TO THE REASONABLE VALUE OF THE ASSETS WHEN IT SELLS, LEASES, OR TRANSFERS ASSETS?**

A. This statutory factor is not applicable because the Proposed Transaction is a merger. No EPE assets will be sold, leased, or transferred.

**Q. WILL THE PROPOSED TRANSACTION ADVERSELY AFFECT EPE'S RELIABILITY OR AVAILABILITY OF SERVICE?**

A. No. As noted above, Joint Applicants have committed to maintain EPE's capital expenditure levels and, for at least five years, as a result of the Proposed Transaction, not to make material involuntary workforce reductions. The Proposed Transaction thus will not adversely affect EPE's reliability or availability of service. To the contrary, this commitment will benefit EPE's customers by assuring both the necessary capital and the necessary workforce to maintain reliability and availability of service. Mr. Buraczyk discusses implications of the acquisition on future EPE operations in his direct testimony.

**Q. WILL THE PROPOSED TRANSACTION ADVERSELY AFFECT EPE'S COST OF SERVICE?**

A. No. For the reasons discussed in Section V, EPE's cost to provide service will not be adversely impacted by the Proposed Transaction.

**Q. PLEASE EXPLAIN HOW EPE INTENDS TO IMPLEMENT THE REGULATORY COMMITMENTS THAT ADDRESS CAPITAL STRUCTURE.**

A. Two of the Regulatory Commitments provide as follows:

- EPE will suspend payment of dividends or other distributions, except for contractual

1 tax payments, until otherwise allowed by the Commission and NMPRC if issuance of  
2 the dividend or distribution would cause the equity component of EPE's debt-to-equity  
3 ratio to fall below that established from time to time by the Commission and NMPRC  
4 for EPE ratemaking purposes.

- 5 • The equity component of EPE's debt-to-equity ratio will not fall below that established  
6 from time to time by the Commission and NMPRC for EPE ratemaking purposes.

7 The Company intends to implement these Regulatory Commitments consistent with long-  
8 standing and accepted regulatory practices of the Commission and NMPRC, and in a  
9 manner that does not impede or interfere with the regulatory independence of either of  
10 them. Texas and New Mexico regulatory authorities routinely establish a debt-to-equity  
11 ratio for ratemaking purposes in rate cases and use the established equity ratio to monitor  
12 earnings. Historically for EPE, the Commission and NMPRC have authorized capital  
13 structures based on actual test-year end capital structure. Sometimes, mostly due to timing  
14 differences in setting rates, the established equity ratio is different in the two jurisdictions.  
15 Recognizing that the Company's equity ratio fluctuates modestly in a calendar year  
16 according to short term variations in cash flows and capital requirements, the Joint  
17 Applicants propose that the equity ratio that is required by this Regulatory Commitment  
18 will be reported annually in connection with an earnings monitoring review, in accordance  
19 with historical practice.

20 **Q. TURNING TO OTHER FACTORS, ARE THERE TANGIBLE AND**  
21 **QUANTIFIABLE BENEFITS TO EPE CUSTOMERS?**

22 A. Yes. As discussed in Section V of my testimony, the Proposed Transaction offers tangible  
23 and quantifiable benefits to EPE customers in Texas. In addition to the rate credit  
24 Regulatory Commitment discussed therein, Joint Applicants have committed to fund a  
25 \$100 million Community Economic Sustainability Fund and to maintain EPE's annual  
26 amount of charitable contributions at EPE's average annual charitable giving level for the  
27 three-year period ending December 31, 2018 (i.e., approximately \$1.2 million per year).  
28 Mr. Hirschi and Mr. Gilbert both also address this factor in their direct testimonies.

1 **Q. WILL THE PROPOSED TRANSACTION CAUSE TEXAS CUSTOMERS TO**  
2 **BEAR TRANSACTION COSTS UNRELATED TO CORRESPONDING**  
3 **BENEFITS TO TEXAS RATEPAYERS?**

4 A. No. As I discuss in more detail in Section V of my testimony, EPE customers will not bear  
5 any of the costs associated with the Proposed Transaction. Mr. Hirschi and Mr. Gilbert  
6 also address this factor in their direct testimonies.

7 **Q. IS THE PROPOSED TRANSACTION A MEANS OF EVADING REGULATION?**

8 A. No. EPE will remain subject to the same regulatory oversight that it experiences today.

9 **Q. DOES THE PROPOSED TRANSACTION RAISE ANY CONCERNS RELATED**  
10 **TO COMPETITION?**

11 A. No. As I noted, EPE will continue to be subject to the same regulatory oversight that it  
12 experiences today. Further, EPE's service territory is currently not subject to retail  
13 competition under PURA § 39.553 and 16 Texas Administrative Code § 25.421.

14 **Q. WILL THE PROPOSED TRANSACTION AFFECT THE COMMISSION'S OR**  
15 **MUNICIPALITIES' JURISDICTION OVER EPE?**

16 A. No. As I discuss in Sections VII and VIII of my testimony, neither the Commission's nor  
17 any municipalities' jurisdiction over EPE will change as a result of the Proposed  
18 Transaction.

19 **V. Impact of the Proposed Transaction on EPE's Rates**

20 **Q. YOU MENTIONED UNDER PURA §§ 39.262(m) AND 39.915, THE COMMISSION**  
21 **MUST CONSIDER WHETHER THE PROPOSED TRANSACTION WILL**  
22 **ADVERSELY AFFECT EPE'S COST OF SERVICE. PLEASE PROVIDE THE**  
23 **REASONING FOR YOUR CONCLUSION THAT EPE'S COST OF SERVICE**  
24 **WILL NOT BE ADVERSELY AFFECTED.**

25 A. EPE's cost to provide service will not increase as a result of the Proposed Transaction.  
26 Irrespective of any effect on EPE's cost of service, the rate credit commitment ensures that  
27 current Texas and New Mexico customers will receive a total, aggregate amount of \$21  
28 million over a three-year period. This is a significant benefit. Because neither the costs

1 incurred, nor any acquisition premium paid as part of the Proposed Transaction, will be  
 2 recovered from EPE's customers, the only impact on EPE's rates will be this rate credit  
 3 benefit. Capital investment and expenses associated with the continued operation of EPE  
 4 as a fully regulated electric utility will of course continue, and necessary cost of service  
 5 and rate adjustments in the normal course of business are to be expected sometime in the  
 6 future. However, these normal expenditures and rate adjustments would occur even in the  
 7 absence of the Proposed Transaction and are certainly not increased by the Proposed  
 8 Transaction.

9 **Q. IN ADDITION TO THIS STATUTORY FACTOR, ARE THERE OTHER RATE-**  
 10 **RELATED FACTORS THE COMMISSION CONSIDERS IN CHANGE-IN-**  
 11 **CONTROL PROCEEDINGS?**

12 A. Yes. In conducting its public interest determination, the Commission has historically  
 13 required the transaction to provide "tangible and quantifiable benefits" to ratepayers.  
 14 Related to this requirement, in recent change-in-control proceedings the Commission has  
 15 set forth the following issues to be addressed:

- 16 • Will this transaction result in any benefits to Texas customers on a timely basis?
- 17 • What are those benefits?
- 18 • What is a reasonable estimate of the amount of the benefits that result from this
- 19 transaction?
- 20 • What benefits, if any, cannot be quantified?
- 21 • Do the benefits of the transaction to Texas ratepayers exceed its corresponding costs
- 22 and risks to those same ratepayers? How should benefits that cannot be quantified be
- 23 addressed in this evaluation?
- 24 • What methods, if any, are necessary to ensure that ratepayers receive the benefits of
- 25 this transaction?
- 26 • Does the transaction do more than promise cost savings for Texas ratepayers?
- 27 • Does the transaction cause Texas ratepayers to bear transaction costs unrelated to
- 28 corresponding benefits to Texas ratepayers?
- 29 • Do the benefits of the transaction to Texas ratepayers exceed the corresponding costs
- 30 and risks to those same ratepayers over a medium- to long-term horizon?<sup>1</sup>

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<sup>1</sup> See, e.g., Docket No. 48929, Amended Preliminary Order at 9, 11, 13–14 (Feb. 28, 2019).

1 Joint Applicants expect the Commission to apply similar standards in this change-  
2 in-control proceeding.

3 **Q. HOW HAS THE COMMISSION HISTORICALLY ADDRESSED THESE**  
4 **PARTICULAR ISSUES?**

5 A. In addressing these issues as part of its public interest determination, the Commission has  
6 historically considered the impact of the transaction on the rates charged to customers and  
7 the impact on local communities. This is to ensure customers are adequately protected and  
8 that they will realize the benefits of any transaction—i.e., preventing benefits that are only  
9 one-sided in favor of the utility. Oftentimes, customer benefits consist of rate credits  
10 reflecting savings from the transaction and/or commitments that the utility will not raise  
11 rates or impose certain costs on customers.

12 In Docket No. 47675, the Commission, in approving the change-in-control  
13 proposed by Oncor and Sempra Energy, specifically found that “[a]t a minimum, Oncor  
14 will provide the following tangible and quantifiable benefits associated with the  
15 transaction. Oncor will provide bill credits to electric delivery rates for ultimate credits to  
16 customers in an amount equal to 90% of any interest-rates savings achieved until final rates  
17 are set in the next Oncor base-rate case . . . .”<sup>2</sup> Most recently, in approving the change-in-  
18 control in Docket No. 48929, the Commission specifically identified tangible and  
19 quantifiable benefits associated with interest rate savings, \$17 million in merger-savings  
20 rate credits, and Oncor’s agreement to not seek recovery of other cost items.<sup>3</sup>

21 **Q. DID JOINT APPLICANTS CONSIDER THIS HISTORICAL PREFERENCE IN**  
22 **AGREEING TO THE REGULATORY COMMITMENTS?**

23 A. Absolutely. I understand that Joint Applicants closely reviewed and considered this recent  
24 Commission precedent and the regulatory conditions approved in those cases, including  
25 those related to tangible and quantifiable benefits to ratepayers. Joint Applicants believe  
26 the Regulatory Commitments provided under Application Exhibit C not only address the  
27 Commission’s concerns in these prior cases, but in many instances offer more benefits  
28 despite involving a smaller utility with fewer customers.

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<sup>2</sup> Docket No. 47675, Order at 23–24 (Mar. 8, 2018).

<sup>3</sup> Docket No. 48929, Order at Finding of Fact Nos. 83, 84, 88, 89 (May 9, 2019).

1 **Q. WHAT TANGIBLE AND QUANTIFIABLE BENEFITS TO CUSTOMERS ARE**  
2 **INCLUDED IN JOINT APPLICANTS' REGULATORY COMMITMENTS?**

3 A. In support of the Proposed Transaction, EPE will issue a rate credit to its current Texas and  
4 New Mexico customers in a total aggregate amount for all customers of \$21 million. Mr.  
5 Gilbert also discusses this commitment in his testimony. This is a firm, quantifiable  
6 commitment, much more than a mere promise of future savings.

7 **Q. WILL EPE DISTRIBUTE THESE RATE CREDITS ON A TIMELY BASIS?**

8 A. Yes. After the Proposed Transaction closes, EPE will distribute the rate credits to current  
9 customers over three years in 36 monthly installments. EPE proposes to allocate the total  
10 Company credit between jurisdictions based on authorized base rates in effect at closing.  
11 The Company estimates, as calculated proportionately by state based on calendar year 2018  
12 base jurisdictional revenues, that the total rate credit for the Texas jurisdiction would be  
13 approximately \$16.8 million.

14 **Q. WHAT MECHANISM OR PROCESS WILL EPE USE TO ENSURE THESE**  
15 **CREDITS ARE PASSED ON TO ITS CUSTOMERS?**

16 A. With Commission approval and after the Proposed Transaction closes, EPE proposes to  
17 file for approval of a rate rider implementing the credit. EPE expects that the rate credit  
18 would be greater than any other cost savings associated with the Proposed Transaction.  
19 EPE expects the credit will be subject to annual update to ensure the full jurisdictional  
20 amount is provided to customers over the three-year period, and the credits will continue  
21 regardless of any base rate changes that may occur over that period.

22 **Q. WILL ANY COSTS ASSOCIATED WITH THE PROPOSED TRANSACTION BE**  
23 **PASSED ON TO EPE CUSTOMERS?**

24 A. No. As other witnesses and I have discussed, Joint Applicants have committed to not seek  
25 rate recovery of transaction costs or any acquisition premium.

26 **Q. GENERALLY, WHAT IMPACT WILL THE PROPOSED TRANSACTION HAVE**  
27 **ON EPE'S RATES?**

28 A. The Proposed Transaction should only have beneficial impacts on EPE's rates, primarily  
29 resulting from the \$21 million rate credit. The estimated Texas jurisdictional rate credit

1 amount of \$16.8 million represents a reduction to base rates of \$5.6 million annually. As  
2 described in the testimony of Mr. Hirschi and Mr. Buraczyk, EPE's management and  
3 operations will continue just as they did before the Proposed Transaction.

4 **Q. PLEASE DESCRIBE THE BASIS FOR EPE'S CURRENT RATES.**

5 A. EPE's current rates were established by the Commission-approved settlement of EPE's last  
6 base rate application on December 18, 2017, in Docket No. 46831. In addition, EPE has  
7 pending before the Commission a Transmission Cost Recovery Factor ("TCRF")  
8 application in Docket No. 49148, a Distribution Cost Recovery Factor ("DCRF")  
9 application in Docket No. 49395, and an Energy Efficiency Cost Recovery Factor  
10 ("EECRF") application in Docket No. 49496. EPE recovers its fuel costs through a  
11 formula-based fuel factor, which the Commission last adjusted in November 2018 in  
12 Docket No. 48781.

13 **Q. ARE JOINT APPLICANTS OTHERWISE PROPOSING TO CHANGE EPE'S**  
14 **RATES OR TARIFFS IN THIS PROCEEDING?**

15 A. No. Aside from the \$21 million rate credit, Joint Applicants are not proposing to change  
16 EPE's rates or tariffs in this proceeding. EPE will continue to provide services pursuant to  
17 its existing tariffs.

18 **Q. DOES THIS MEAN THE BENEFITS TO CUSTOMERS OUTWEIGH THE COST**  
19 **OF THE TRANSACTION?**

20 A. Yes. As discussed above, the only immediate change to customer rates resulting from this  
21 proceeding and the Proposed Transaction is the \$21 million rate credit. There is no  
22 corresponding increase in costs that would burden customers resulting from the Proposed  
23 Transaction. Accordingly, from a rate perspective, this is a clear net benefit to EPE's  
24 customers.

25 **Q. TO SUMMARIZE, HOW DO JOINT APPLICANTS' RATE COMMITMENTS**  
26 **BENEFIT AND PROTECT EPE STAKEHOLDERS?**

27 A. The benefits that flow from these Regulatory Commitments include a significant and  
28 tangible rate credit to customers in excess of recent merger cases and protection from  
29 transaction costs. In addition, the extraordinary protection provided to employees and the

1 local communities served by EPE demonstrate a long-term commitment to EPE and the  
2 region. These benefits, in combination with those described by other witnesses, fully  
3 support a public interest finding in this case.

#### 4 VI. Continued Compliance with Regulatory Requirements

5 **Q. WILL THE PROPOSED TRANSACTION HAVE ANY NEGATIVE IMPACT ON**  
6 **EPE'S CONTINUED COMPLIANCE WITH COMMISSION REQUIREMENTS?**

7 A. No. As I describe below, EPE will continue to be responsible for complying with all  
8 applicable Commission requirements just as it has done in the past and continues to do  
9 today. EPE's current management and personnel, who are very experienced in matters of  
10 Commission compliance, will be retained after the Proposed Transaction closes consistent  
11 with the Regulatory Commitments.

12 **Q. AFTER IMPLEMENTATION OF THE PROPOSED TRANSACTION, WILL**  
13 **THERE BE ANY SIGNIFICANT DIFFERENCES IN HOW EPE COMPLIES**  
14 **WITH COMMISSION REQUIREMENTS?**

15 A. No. EPE will continue to be responsible for compliance with all applicable Commission  
16 requirements, including the preparation and filing of an annual earnings monitoring report,  
17 any applicable affiliate transaction reports, and all other applicable rules, reports, and  
18 filings. In short, the current level of regulatory oversight of EPE will be maintained after  
19 the Proposed Transaction closes.

20 **Q. ARE JOINT APPLICANTS PROPOSING ANY CHANGES TO EPE'S CURRENT**  
21 **CODE OF CONDUCT?**

22 A. No, not at this time. After the Proposed Transaction closes, EPE will update and file its  
23 Code of Conduct with the Commission to reflect its new ownership and corporate structure.



1 **Q. WILL THE PROPOSED TRANSACTION HAVE ANY NEGATIVE IMPACT ON**  
2 **EPE'S CONTINUED COMPLIANCE WITH ANY OTHER APPLICABLE**  
3 **REQUIREMENTS?**

4 A. No. EPE, as an electric utility, will be responsible for compliance with all applicable  
5 requirements just as it is today. Please refer to the direct testimony of Mr. Buraczyk  
6 regarding EPE's continued compliance with reliability standards.

7 **Q. PLEASE DISCUSS THE REGULATORY COMMITMENTS RELATED TO**  
8 **STATE RENEWABLE PORTFOLIO STANDARD ("RPS") REQUIREMENTS.**

9 A. The Infrastructure Investments Fund ("IIF")<sup>4</sup> has extensive ownership and experience with  
10 renewable energy generation resources throughout their portfolio. The Regulatory  
11 Commitments accompanying the Proposed Transaction reflect support by IIF US 2 of the  
12 current and continuing efforts by EPE to expand the use of renewable resources in  
13 providing safe and reliable service to our customers and in meeting statutory and regulatory  
14 requirements by taking full advantage of recent dramatic price reductions in such resources.

15 **Q. DOES EPE EXPECT THAT THE PROPOSED TRANSACTION WILL HELP EPE**  
16 **IN EXPANDING THE USE OF RENEWABLE RESOURCES AND IN MEETING**  
17 **THESE STATE REQUIREMENTS?**

18 A. Yes. EPE is committed to reducing its carbon footprint, to meeting all statutory and  
19 regulatory requirements, and to taking advantage of lower cost renewable resources. But  
20 the Company's efforts will certainly benefit from the knowledge and experience that IIF  
21 brings in this area. IIF's practice of disseminating information and best practices among  
22 its portfolio companies provides EPE a wealth of experience to support its resource  
23 planning efforts for renewable generation.

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<sup>4</sup> Mr. Gilbert provides a description of the Infrastructure Investments Fund and its relationship to IIF US 2 in his direct testimony.

**VII. Effect of Proposed Transaction on Commission's Jurisdiction****Q. WILL THE PROPOSED TRANSACTION AFFECT OR REDUCE THE COMMISSION'S JURISDICTION OVER EPE?**

A. No. The Commission's jurisdiction over EPE will not change after the Proposed Transaction closes. The Commission will continue to have jurisdiction over EPE, just the same as it has today. Following implementation of the Proposed Transaction, EPE will continue to be an electric utility under PURA that is subject to regulation by the Commission. The Commission will also continue to have full access to EPE's books and records to the extent necessary for the Commission to carry out its regulatory responsibilities, including setting rates.

**VIII. Effect of Proposed Transaction on Municipal Jurisdiction and Policies****Q. WILL THE PROPOSED TRANSACTION AFFECT OR REDUCE THE AUTHORITY OF ANY OF THE MUNICIPALITIES THAT CURRENTLY HAVE ORIGINAL JURISDICTION OVER EPE?**

A. No. No municipality's jurisdiction over EPE will change as a result of the Proposed Transaction. All Texas municipalities will continue to have the same jurisdiction over EPE as they do today. Following implementation of the Proposed Transaction, EPE will continue to be an electric utility under PURA that is subject to regulation by the municipalities with original jurisdiction over the rates, operations, and services of EPE.

**Q. IF APPROVED, WILL THE PROPOSED TRANSACTION AFFECT ANY OF THE FRANCHISE AGREEMENTS EPE CURRENTLY HAS IN PLACE?**

A. No, but the franchise agreement with the City of El Paso provides that a change of control of EPE or an acquisition involving EPE is an event that results in the assignment of the franchise agreement to the surviving entity. Concurrent with the filing of this Application with the Commission, EPE is filing the required application for assignment of the existing franchise agreement with the City of El Paso. Until the franchise assignment is completed, the existing franchise remains in effect, and EPE will continue to observe, comply with, and follow the franchise agreement as it exists today. The franchise agreements with the

other municipalities do not require approvals related to the Proposed Transaction, and those franchise agreements will continue as they are today.

### IX. Conclusion

**Q. PLEASE SUMMARIZE EPE'S REQUEST IN THIS CASE.**

A. EPE requests that the Commission approve the Proposed Transaction as in the public interest. As described previously and in other testimony, the Proposed Transaction contains meaningful commitments that serve the public interest. Customers will benefit from \$21 million in credits on electric bills over 36 months and a continued commitment to safe, clean, affordable, and reliable energy with strong service levels. Local communities will benefit from a 20-year, \$100 million Community Economic Sustainability Fund to support EPE's service area while the Company will maintain approximately \$1.2 million in annual charitable contributions under EPE's existing Community Partner Program. Employees will benefit from a five-year period, as a result of the Proposed Transaction, of no material involuntary reduction in workforce, and the Company will continue as an independently operated, regulated utility with headquarters in El Paso, Texas

The Proposed Transaction neither affects EPE's cost of service nor changes any of EPE's obligations to comply with all applicable laws and regulations or to provide safe and reliable service at fair, just, and reasonable rates to its customers. Nor does it diminish or hinder the Commission or any other municipal or regulatory authority in the exercise of its jurisdiction to assure that EPE is complying with applicable laws and regulations.

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

A. Yes, it does.

**AFFIDAVIT OF JAMES A. SCHICHTL**

THE STATE OF TEXAS

)

COUNTY OF EL PASO

)

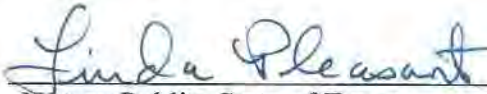
)

This day, James A. Schichtl, the affiant, appeared in person before me, a notary public, who knows the affiant to be the person whose signature appears below. The affiant stated under oath:

My name is James A. Schichtl. I am of legal age and a resident of the State of Texas. The foregoing testimony offered by me is true and correct, and the opinions stated therein are, to the best of my knowledge and belief, accurate, true and correct.

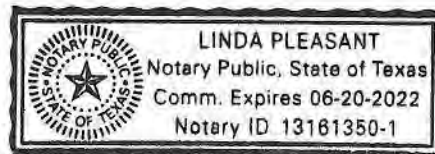
  
James A. Schichtl  
Vice President – Regulatory Affairs

SUBSCRIBED AND SWORN TO BEFORE ME, notary public, on this the 7<sup>th</sup> day of August, 2019.

  
Notary Public, State of Texas

My Commission expires:

June 20, 2022



| <b>EPE Witness James Schichtl - Listing of Public Utility Commission of Texas Cases</b> |                                                                                                                                                     |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Docket No.</b>                                                                       | <b>Case Description</b>                                                                                                                             |
| 42384                                                                                   | Petition of El Paso Electric Company for Authority to Revise Fixed Fuel Factor                                                                      |
| 42449                                                                                   | Application of El Paso Electric Company for Approval To Revise Its Energy Efficiency Cost Recovery Factor And Request To Establish Revised Cost Cap |
| 44800                                                                                   | Application of El Paso Electric Company to Implement A Voluntary Community Solar Pilot Program In Texas                                             |
| 44941                                                                                   | Application of El Paso Electric Company to Change Rates                                                                                             |
| 46308                                                                                   | Application of El Paso Electric Company to Reconcile Fuel Costs                                                                                     |
| 46831                                                                                   | Application Of El Paso Electric Company To Change Rates                                                                                             |
| 48181                                                                                   | Application of El Paso Electric Company To Expand Solar Generation Capacity and Change Rates for the Community Solar Pilot Program                  |
| 49148                                                                                   | Application of El Paso Electric Company for a Transmission Cost Recovery Factor                                                                     |
| 49395                                                                                   | Application of El Paso Electric Company for a Distribution Cost Recovery Factor                                                                     |

| <b>EPE Witness James Schichtl - Listing of New Mexico Public Regulation Commission Cases</b> |                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Case No.</b>                                                                              | <b>Case Description</b>                                                                                                                                                    |
| 13-00223-UT                                                                                  | El Paso Electric Company's 2013 Procurement Plan and Testimony In Support Thereof Pursuant to the Renewable Energy Act and 17.9.572 NMAC                                   |
| 14-00121-UT                                                                                  | El Paso Electric Company's 2014 Procurement Plan Application and Testimony In Support Thereof Pursuant to the Renewable Energy Act and 17.9.572 NMAC                       |
| 15-00099-UT                                                                                  | El Paso Electric Company's Application for a Certificate of Public Convenience and Necessity for a 20MW Solar Power Generation Project at the Fort Bliss Army Installation |
| 15-00117-UT                                                                                  | El Paso Electric Company's 2015 Procurement Plan Application and Testimony In Support Thereof Pursuant to the Renewable Energy Act and 17.9.572 NMAC                       |
| 15-00127-UT                                                                                  | El Paso Electric Company's General Rate Case and Advice Notice No. 236                                                                                                     |
| 15-00185-UT                                                                                  | El Paso Electric Company's Application for a Certificate of Public Convenience and Necessity for a 5 MW Solar Power Generation Project at Holloman Air Force Base          |
| 15-00241-UT                                                                                  | El Paso Electric Company's Direct Testimony Pursuant to the September 20, 2016 Issue Scoping and Procedural Order in Case No.15-00241-UT                                   |
| 16-00109-UT                                                                                  | El Paso Electric Company's 2016 Procurement Plan Application and Testimony in Support Thereof Pursuant to the Renewable Energy Act and Rule 17.9.572 NMAC                  |
| 17-00016-UT                                                                                  | E1 Paso Electric Company's Application for Expedited Approval to Implement a Demand Response Pilot Program and Advice Notice No. 244                                       |
| 17-00090-UT                                                                                  | El Paso Electric Company's 2017 Procurement Plan Application and Testimony in Support Thereof Pursuant to the Renewable Energy Act and Rule 17.9.572 NMAC                  |
| 18-00006-UT                                                                                  | El Paso Electric Company's Application for Continued use of its Fuel and Purchased Power Cost Adjustment Clause                                                            |
| 18-00016-UT                                                                                  | NMPRC Case No. 18-00016-UT, Original Rate No. 41 - Federal Tax Refund Credit; Compliance Advice Notice No. 25                                                              |

| <b>EPE Witness James Schichtl - Listing of New Mexico Public Regulation Commission Cases</b> |                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Case No.</b>                                                                              | <b>Case Description</b>                                                                                                                                                                                                          |
| 18-00099-UT                                                                                  | El Paso Electric Company's Application for a Certificate of Public Convenience and Necessity for a Two-MW Solar Power Generation Facility and Approval of a Community Solar Program and Advice Notice No. 256                    |
| 18-00109-UT                                                                                  | El Paso Electric Company's 2018 Annual Renewable Energy Plan Application, Revised Rate No. 38 - RPS Cost Rider Advice Notice No. 257, and Testimony in Support Thereof Pursuant to the Renewable Energy Act and Rule 17.9.572 NM |
| 19-00033-UT                                                                                  | EPE's Application to Issue Securities & Supporting Testimonies of James Schichtl & Lisa D. Budtke                                                                                                                                |

## Requested Findings and Approvals

### Findings of Fact

1. Based on the record evidence and regulatory commitments made by the Joint Applicants, a reasonable value is being paid for EPE's securities.
2. Based on the record evidence and regulatory commitments made by the Joint Applicants, the transaction will not adversely affect the health or safety of EPE's customers or employees.
3. Based on the record evidence and regulatory commitments made by the Joint Applicants, the transaction will not result in the transfer of jobs of citizens of this state to workers domiciled outside of this state.
4. Based on the record evidence and regulatory commitments made by the Joint Applicants, the transaction will not result in a decline in service to EPE's customers.
5. Based on the record evidence, the transaction does not involve the sale, lease, or transfer of EPE's assets.
6. Based on the record evidence and regulatory commitments relating to transaction costs and transition costs set forth in this Order, the transaction will not result in Texas ratepayers bearing transaction-related costs unrelated to the corresponding benefits to Texas ratepayers.
7. Based on the record evidence and regulatory commitments made by the Joint Applicants, the transaction will not adversely affect EPE's reliability of service, availability of service, or cost of service.
8. The regulatory commitments regarding rate credits ensure that Texas ratepayers will receive a benefit from the transaction in a timely manner.
9. The benefits of the transaction to Texas ratepayers exceed its corresponding costs and risks.
10. Base on the record evidence and regulatory commitments made by the Joint Applicants, the transaction is in the public interest.

**Conclusions of Law**

1. Given the record evidence and the regulatory commitments described in this Order, the transaction is in the public interest under PURA §§ 14.101, 39.262(*l*) through (o), and 39.915.

**Ordering Paragraphs**

1. The transaction described in Joint Applicants report and application is approved.
2. EPE's proposal to allocate \$16.8 million of the rate credit to Texas retail customers is approved.
3. After the close of the transaction, EPE shall file an application to implement the \$16.8 million rate credit over a 36 month period.



**DOCKET NO. \_\_\_\_\_**

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

**DIRECT TESTIMONY**  
**AND EXHIBITS**  
**OF**  
**STEVEN T. BURACZYK**  
**ON BEHALF OF**  
**EL PASO ELECTRIC COMPANY**

**August 13, 2019**

DOCKET NO. \_\_\_\_\_

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

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## EXHIBITS

|       |                                          |
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| STB-1 | Service Area Map                         |
| STB-2 | Operations Division Organizational Chart |
| STB-3 | Local Generation Fleet Map               |
| STB-4 | Regional Transmission System Map         |

**DIRECT TESTIMONY AND EXHIBITS OF STEVEN T. BURACZYK**

**I. Introduction and Qualifications**

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

A. My name is Steven T. Buraczyk. My business address is 100 N. Stanton, El Paso, Texas 79901.

**Q. HOW ARE YOU EMPLOYED?**

A. I am employed by El Paso Electric Company ("EPE" or "Company") as Senior Vice President-Operations.

**Q. ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

A. I am appearing on behalf of EPE.

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

A. I hold two degrees from The University of Texas at El Paso. I graduated with a Bachelor of Science in Electrical Engineering in 1991 and a Master of Business Administration in December 1997. Throughout my career at EPE I have attended numerous seminars and workshops related to power marketing, energy risk management, and operations planning.

In August 1993, I began working for EPE as a Contracts Engineer where my primary duties included analyzing, negotiating, and drafting transmission and wholesale purchase power and sales agreements with other entities. In December 1997, I began working as a Power Contracts and Marketing Specialist where I performed hourly trading and prescheduling, developed daily unit commitments, and analyzed and negotiated short-term and long-term purchase and sales agreements. In February 2002, I was promoted to Supervisor-Resource Management and was responsible for the energy accounting, day-ahead prescheduling, and long-term power sales and purchases. In August 2004, I was promoted to Manager of the Power Marketing Department, which includes the responsibilities for the Resource Management section, as well as the additional responsibilities of overseeing the Real-Time Marketing section. The Real-

Time Marketing section's responsibilities include the purchasing and selling of energy on an intra-day basis. In February 2006, as part of a functional reorganization, I assumed the fuel procurement responsibility for EPE in addition to the Power Marketing duties. In February 2006, the Fuels section was integrated into my responsibilities and my title became Manager-Power Marketing and Fuels. In August 2006, I was promoted to Director of the Power Marketing and Fuels Department and in July 2008, I was promoted to Vice President-Power Marketing & Fuels. In January 2011, I was named Vice President in charge of the System Operations & Planning function for EPE. In 2012, I was named Vice President of Power Marketing & Fuels & Resource Delivery Planning and in April 2013, I was named Vice President-Regulatory Affairs. In October 2013, I was promoted to my current position.

**Q. PLEASE DESCRIBE YOUR PRINCIPAL AREAS OF RESPONSIBILITY AT EPE CURRENTLY.**

A. I oversee the operations of, and planning for, the following areas of EPE: transmission, distribution, resource planning, power generation, power marketing & fuels, and system operations.

**Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE ANY REGULATORY AGENCY?**

A. Yes. I have previously presented testimony before the Public Utility Commission of Texas ("Commission"), the New Mexico Public Regulation Commission ("NMPRC"), and the Federal Energy Regulatory Commission ("FERC").

## **II. Purpose of Testimony**

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

A. The purpose of my testimony is to address EPE's operations and how, if at all, they will be affected by Sun Jupiter Holding LLC's ("Sun Jupiter") purchase of EPE ("Proposed Transaction") as proposed in this proceeding, the *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*. As explained by Andrew Gilbert in his direct testimony, Sun Jupiter is indirectly owned by IIF US Holding 2 LP

(“IIF US 2”), and IIF US 2 has agreed to provide the equity portion of the purchase priced needed by Sun Jupiter to purchase EPE. I refer to EPE, Sun Jupiter Holdings LLC, and IIF US 2 as “Joint Applicants” collectively throughout my testimony. Specifically:

- I provide an overview of EPE’s service area and system;
- I describe EPE’s operations organization;
- I describe EPE’s current level of reliability, availability, and quality of service;
- I describe EPE’s recent and planned capital expenditures;
- I describe my view that, after the Proposed Transaction, EPE will continue to provide safe, high quality, reliable service;
- I describe my view that the Proposed Transaction will not adversely affect the availability of service; and
- I describe my view that the Proposed Transaction will not adversely affect the health or safety of customers or EPE’s employees.

**Q. WHAT EXHIBITS DO YOU SPONSOR?**

A. The exhibits that I sponsor are identified below:

|               |                                          |
|---------------|------------------------------------------|
| Exhibit STB-1 | Service Area Map                         |
| Exhibit STB-2 | Operations Division Organizational Chart |
| Exhibit STB-3 | Local Generation Fleet Map               |
| Exhibit STB-4 | Regional Transmission System Map         |

**Q. WAS THIS TESTIMONY PREPARED BY YOU OR UNDER YOUR DIRECTION?**

A. Yes, this testimony was prepared by me or under my direction. The information contained in this testimony is true and correct as of filing to the best of my knowledge.

**III. Overview of EPE’s System and Operations**

**Q. PLEASE DESCRIBE EPE’S SERVICE AREA AND SYSTEM.**

A. EPE is a vertically-integrated electric utility that owns and operates generation, transmission, and distribution resources. With these resources, EPE serves retail customers in Texas and New Mexico and serves one full requirements wholesale customer, Rio Grande Electric Cooperative. EPE’s service territory covers

1 approximately 10,000 square miles extending from Van Horn, Texas, to El Paso, Texas,  
2 to Las Cruces, New Mexico, and then further north to Hatch, New Mexico. At the end of  
3 June 2019, EPE served 379,879 residential, 42,668 small commercial and industrial, 48  
4 large commercial and industrial, and 6,263 other public customers in its Texas and New  
5 Mexico service territory. Attached as Exhibit STB-1 is a map of EPE's service area.

6 EPE's wholesale operations are subject to the jurisdiction of the FERC. EPE is  
7 also a member of the Western Electricity Coordinating Council ("WECC").

8 **Q. WHAT FUNCTIONS ARE INCLUDED WITHIN THE OPERATIONS THAT**  
9 **YOU OVERSEE?**

10 A. The Operations Division at EPE, which I oversee, carries out its assignments through a  
11 number of divisions and departments under the Operations Division umbrella: The Power  
12 Generation Division, the Transmission and Distribution ("T&D") Division, the Resource  
13 Management & Planning Department, and the System Operations & Planning  
14 Department. Collectively, these groups are responsible for (1) supplying power through  
15 generation (and acquiring associated fuel) or wholesale power purchases, (2) transmitting  
16 that power through EPE's transmission system, (3) delivering that power to customers via  
17 the distribution system, and (4) performing all these tasks safely, reliably, and efficiently.

18 The Operations Division's departments operate 24 hours per day to generate and  
19 deliver energy to customers as well as to respond to outages due to accidents, equipment  
20 failure, or other reasons. The Operations Division's departments are also responsible for  
21 the planning and construction of new generation, transmission, and distribution plant and  
22 facilities to meet increasing customer demands for energy in a safe and reliable manner.  
23 In summary, my organization is responsible for ensuring that power is delivered to  
24 customers when and where it is needed.

25 **Q. DO YOU HAVE AN ORGANIZATIONAL CHART OF THE OPERATIONS**  
26 **DIVISION YOU JUST IDENTIFIED?**

27 A. Yes, I do. Exhibit STB-2 presents the organizational chart of EPE's Operations Division,  
28 including subdivisions and departments.

**IV. Organization and Function of Operations Division**

**Q. WHAT DO YOU ADDRESS IN THIS SECTION OF YOUR TESTIMONY?**

A. In this section, I describe the various functions of EPE's Operations Division. I discuss how Joint Applicants' Regulatory Commitments<sup>1</sup> ensure workforce continuity and that EPE's operations will not be disrupted as a result of the Proposed Transaction. I also address the transfer of jobs outside the state of Texas factor found in PURA § 14.101 in this section.

**Q. WHAT IS THE PRIMARY EVIDENCE YOU HAVE THAT THE ORGANIZATION, MANAGEMENT, OR STAFFING OF EPE'S OPERATIONS DIVISION WILL NOT BE CHANGED OR IMPAIRED AS A RESULT OF THE PROPOSED TRANSACTION?**

A. The Proposed Transaction provides significant benefits that will serve to support and enhance EPE's operations. As described by Mr. Nathan Hirschi, these benefits include enhanced access to capital, job training and apprenticeship programs, a long-term investment horizon, access to expertise in renewables through IIF US 2 (as a part of the Infrastructure Investments Fund ("IIF")<sup>2</sup>) and an unwavering commitment to the health and safety of employees, customers, and the local communities served by EPE. In addition, as described by Mr. Gilbert and as I understand, IIF encourages the sharing of best practices across portfolio companies, particularly in relation to health and safety as well as Environmental, Social and Governance ("ESG") initiatives. ESG is a particularly important tenet of IIF's approach to governance with a focus on resilience, diversity and inclusion, sustainable business plans, stakeholder engagement, cyber security, reporting, transparency, and measurement against third party benchmarks, all as Mr. Gilbert explains. As part of the Proposed Transaction, Joint Applicants have agreed to several Regulatory Commitments related to management, workforce, and capital expenditures that support the conclusion that EPE's operations organization will not be changed or

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<sup>1</sup> Joint Applicants' Regulatory Commitments are contained in Exhibit C to the Application and in Exhibit AEG-3 to Mr. Gilbert's direct testimony.

<sup>2</sup> Mr. Gilbert provides a description of the Infrastructure Investments Fund and its relationship to IIF US 2 in his direct testimony.



impaired, including no transfer of jobs outside the state, but will instead be marked by continuity:

- EPE’s CEO and EPE’s senior management will continue to have day-to-day control over EPE’s operations and senior management will continue to reside in the El Paso, Texas and Las Cruces, New Mexico vicinity.
- EPE’s local management will remain the primary point of contact for all regulatory, operational, and community engagement matters.
- For at least five (5) years post-closing, as a result of the Proposed Transaction, EPE will not implement any material involuntary workforce reductions or changes to wages, benefits and other terms and conditions of employment in effect prior to the Proposed Transaction.
- EPE will honor the terms of EPE’s existing collective bargaining agreements.

Joint Applicants’ commitments in this regard ensure that EPE’s management remains local and in place. Similarly, Joint Applicants’ commitments ensure that EPE’s workforce, including union and non-union employees, will remain in place. Further, the Regulatory Commitment to adopt EPE’s five-year capital expenditure plan, which I discuss below, ensures necessary infrastructure will be built to meet growing demand and maintain the high-quality, safe, and reliable service EPE delivers to its customers today.

#### **A. EPE’s Generation System**

#### **Q. PLEASE BRIEFLY DESCRIBE EPE’S GENERATION FLEET.**

A. EPE meets the bulk of its customers’ electrical requirements with power produced at its generating stations, which are fueled by a mix of natural gas, nuclear, and renewable resources. EPE’s generation fleet includes more than 2,000 megawatts (“MW”) of capacity.

EPE is a minority owner of the Palo Verde Nuclear Generating Station (“Palo Verde”), which is located in Arizona. Palo Verde is considered EPE’s remote generation, and EPE’s interest in that plant provides approximately 630 MW nominal net peak capacity. EPE’s local gas-fired generation is located in four power stations in or near the City of El Paso: Newman, Rio Grande, Montana, and Copper. Collectively, the local fleet provides approximately 1,400 MW of nominal net peak capacity.

1 EPE also owns several small solar facilities with a combined capacity of  
2 approximately eight MW and has renewable energy purchase power agreements with a  
3 nameplate capability of 108 MW.

4 Exhibit STB-3 is a map depicting the location of EPE's local generating stations.

5 **Q. HOW DOES EPE OPERATE AND MANAGE ITS GENERATION SYSTEM?**

6 A. EPE views its New Mexico, Texas, and FERC jurisdictional load requirements as one  
7 system and operates the system accordingly. EPE manages its system utilizing security-  
8 constrained economic dispatch, which means on a real-time basis, EPE meets load and  
9 reliability requirements with a combination of its own generators and purchased power,  
10 taking into account both reliability and system economics.

11 **B. Power Generation Division**

12 **Q. TURNING TO THE DIVISIONS AND DEPARTMENTS WITHIN THE**  
13 **OPERATIONS DIVISION, BRIEFLY DESCRIBE THE POWER GENERATION**  
14 **DIVISION AND ITS ASSIGNED TASKS.**

15 A. The Power Generation Division is responsible for the operation and maintenance of  
16 EPE's local generation fleet, which includes the Copper, Montana, Newman, and Rio  
17 Grande Power Stations. Within this Division are Engineering and Outage Management  
18 departments that support the reliable operation of the Generators and new generation  
19 projects.

20 EPE's Palo Verde Management Department, which is outside of the Power  
21 Generation Division but under the umbrella of Operations, represents EPE's interests  
22 regarding the ownership in the Palo Verde generating station. The ownership of Palo  
23 Verde is divided among seven southwestern utilities; EPE's ownership share is 15.80%.  
24 The organizational structure of the Power Generation Division can be found in Exhibit  
25 STB-2.

26 **Q. IS EPE'S POWER GENERATION DIVISION ORGANIZED AND STAFFED**  
27 **WITH QUALIFIED PERSONNEL TO PERFORM THESE TASKS SAFELY,**  
28 **RELIABLY, AND EFFICIENTLY?**

29 A. Yes, it is.

**Q. DO YOU BELIEVE THE PROPOSED TRANSACTION WILL RESULT IN ANY SIGNIFICANT CHANGES IN THE ORGANIZATION OR STAFFING OF THE POWER GENERATION DIVISION?**

A. No, I do not. For the reasons I discuss above, the Proposed Transaction will have no adverse impact on the Power Generation organization or staffing. Nor will it affect the amount or allocation of capital to meet growing customer demand.

**C. EPE's Transmission & Distribution System**

**Q. BRIEFLY DESCRIBE THE TRANSMISSION AND DISTRIBUTION ("T&D") DIVISION AND ITS ASSIGNED TASKS.**

A. The T&D Division is comprised of two field operations departments and two operational support departments. The field operations departments are the Transmission, Substation and Relay ("TSR") Department and the Distribution Design, Construction and Maintenance ("DDCM") Department. The two operational support departments are the Asset Management Services ("AMS") Department and the Asset Management Technologies ("AMT") Department. The organizational structure of the T&D Division can be found in Exhibit STB-2.

The two "Field Operations" departments are responsible for the physical construction and maintenance of the transmission, substation, and distribution systems. All of the union workforce, or skilled labor, of the T&D Division reports through one of these two Field Operations departments. Each of these departments also has a staff of engineers, technical specialists, and administrative positions that support the design, construction, maintenance, and operational viability of the transmission, substation, and distribution systems.

The "Operational Support" departments provide general support services for the Field Operations departments. The Asset Management Services Department provides accounting, budgeting, capital project scoping, contract administration, land management, and capital project management services. The Asset Management Technologies Department is responsible for the support technologies like the Geographical Information System for mapping and geo-location of assets, the Work

Management System for work order estimating and resource allocation, and the Standards group that maintains EPE's material and construction standards.

**Q. PLEASE DESCRIBE EPE'S 345-KILOVOLT ("KV") TRANSMISSION SYSTEM AND ITS INTERCONNECTIONS.**

A. EPE is an interconnected member of the WECC and is located in the far southeast corner of the WECC transmission grid. WECC spans a geographic area that, starting with EPE's west Texas service territory, reaches north to include two Canadian provinces and stretches west to include all or part of 14 western states as well as northern Baja California, Mexico. EPE is connected to the Southwest Power Pool ("SPP") through an asynchronous High Voltage Direct Current ("HVDC") tie located in the Eddy County Substation near Artesia, New Mexico. EPE is not interconnected to the Electric Reliability Council of Texas.

In total, EPE owns, in whole or in part, approximately 1,146 miles of multiple 345-kV transmission lines, most of which are located within New Mexico. A Regional Transmission System Map is attached to my direct testimony as Exhibit STB-4.

**Q. PLEASE DESCRIBE EPE'S LOCAL HIGH VOLTAGE ("HV") TRANSMISSION SYSTEM.**

A. EPE's local HV transmission system consists of 115-kV and 69-kV lines and substations above 69-kV in and around El Paso, Texas, and in and around Las Cruces, New Mexico. These transmission lines and substations are highly networked. This high level of networking increases the reliability of the system by allowing the power to re-route to other transmission lines during outages.

**Q. PLEASE DESCRIBE EPE'S DISTRIBUTION SYSTEM.**

A. EPE's distribution system is comprised of 121 distribution circuits<sup>3</sup> originating from 84 distribution substations.<sup>4</sup> EPE's standard distribution primary voltages are: 4.16 kV, 13.8

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<sup>3</sup> Represents the number of distribution circuits that provide service to ten or more customers.

<sup>4</sup> Represents the number of substations that serve distribution circuits, where at least one of the distribution circuits serves ten or more customers.

1 kV, and 23.9 kV. EPE has 5,364 miles of primary overhead distribution line and 2,430  
2 miles of underground distribution line.

3 **Q. IS EPE'S T&D DIVISION ORGANIZED AND STAFFED WITH QUALIFIED**  
4 **PERSONNEL TO PERFORM THESES TASKS SAFELY, RELIABLY, AND**  
5 **EFFICIENTLY?**

6 A. Yes, it is.

7 **Q. DO YOU BELIEVE THE PROPOSED TRANSACTION WILL RESULT IN ANY**  
8 **SIGNIFICANT CHANGES IN THE ORGANIZATION OR STAFFING OF THE**  
9 **T&D DIVISION?**

10 A. No, I do not. For the reasons I discuss above, the Proposed Transaction will have no  
11 adverse impact on the T&D Division's organization or staffing. Nor will it affect the  
12 amount or allocation of capital to meet growing customer demand. In fact, it is  
13 anticipated that EPE will have enhanced access to capital to invest in system safety and  
14 reliability as described by Mr. Hirschi and Ellen Lapson. Similarly, the Company  
15 expects that it will have additional resources and access to expertise to support the  
16 development of renewable energy.

17 **D. Resource Management & Planning Department**

18 **Q. BRIEFLY DESCRIBE THE RESOURCE MANAGEMENT & PLANNING**  
19 **DEPARTMENT AND ITS ASSIGNED TASKS.**

20 A. The Resource Management & Planning Department evaluates new alternatives and  
21 resources that will allow EPE to meet the load growth in its service territory and is  
22 responsible for EPE's wholesale power transactions, transmission scheduling, fuel  
23 procurement, meeting current year renewable requirements, and emission allowance  
24 procurement. This department develops next day and real time load forecasts utilized in  
25 the dispatch of EPE's resources to meet load and reserve obligations while maintaining  
26 compliance with North American Electric Reliability Corporation ("NERC") and FERC  
27 requirements. It also seeks to minimize fuel and purchased power costs for customers.  
28 The organizational structure of the Resource Management & Planning Department is  
29 included in Exhibit STB-2.

1 **Q. IS EPE'S RESOURCE MANAGEMENT & PLANNING DEPARTMENT**  
2 **ORGANIZED AND STAFFED WITH QUALIFIED PERSONNEL TO PERFORM**  
3 **THESE TASKS SAFELY, RELIABLY, AND EFFICIENTLY?**

4 A. Yes, it is.

5 **Q. DO YOU BELIEVE THE TRANSACTION WILL RESULT IN ANY ADVERSE**  
6 **CHANGES IN THE ORGANIZATION OR STAFFING OF THE RESOURCE**  
7 **MANAGEMENT & PLANNING DEPARTMENT?**

8 A. No, I do not. For the reasons I discuss above, the Proposed Transaction will have no  
9 adverse impact on the Resource Management & Planning Department's organization or  
10 staffing. Nor will it affect the amount or allocation of capital to meet growing customer  
11 demand. As noted previously, I expect the Proposed Transaction will provide EPE with  
12 additional resources to better meet the growing customer demand and regulatory  
13 requirements.

14 **E. System Operations & Planning Department**

15 **Q. BRIEFLY DESCRIBE THE SYSTEM OPERATIONS & PLANNING**  
16 **DEPARTMENT AND ITS ASSIGNED TASKS.**

17 A. The System Operations section within the Department is responsible for the reliable  
18 operation of EPE's electric grid. This includes the operation of the transmission, sub-  
19 transmission, and distribution system. Additionally, reliable operation includes the  
20 balance of loads and resources, which incorporates balanced interchange schedules  
21 between neighboring balancing areas and real time dispatch of EPE's generation.

22 The System Planning section is responsible for the planning of EPE's Bulk  
23 Electric System to account for load growth and federal and regional reliability  
24 requirements and coordinating that plan with neighboring systems and other regional  
25 entities. The section represents EPE in regional, interregional, and other transmission  
26 planning/modeling/coordinating related forums. The organizational structure of the  
27 System Operation & Planning Department is included in Exhibit STB-2.

1 **Q. IS EPE'S SYSTEM OPERATIONS & PLANNING DEPARTMENT ORGANIZED**  
2 **AND STAFFED WITH QUALIFIED PERSONNEL TO PERFORM THESE**  
3 **TASKS SAFELY, RELIABLY, AND EFFICIENTLY?**

4 A. Yes, it is.

5 **Q. DO YOU BELIEVE THE PROPOSED TRANSACTION WILL RESULT IN ANY**  
6 **ADVERSE CHANGES IN THE ORGANIZATION OR STAFFING OF THE**  
7 **SYSTEM OPERATIONS & PLANNING DEPARTMENT?**

8 A. No, I do not. For the reasons I discuss above, the Proposed Transaction will have no  
9 adverse impact on the System Operations & Planning Department's organization or  
10 staffing. Nor will it affect the amount or allocation of capital to meet growing customer  
11 demand.

12 **F. Conclusion about Operations Division**

13 **Q. IS EPE'S OPERATIONS DIVISION, TOGETHER WITH ITS UNDERLYING**  
14 **DIVISIONS AND DEPARTMENTS YOU DESCRIBED ABOVE, ORGANIZED,**  
15 **MANAGED, AND STAFFED TO PERFORM ITS ASSIGNED TASKS SAFELY,**  
16 **RELIABLY, AND EFFICIENTLY, AND WILL THAT CONTINUE IF THE**  
17 **COMMISSION APPROVES THE PROPOSED TRANSACTION?**

18 A. Yes. EPE has focused on running its Operations Division efficiently while providing safe  
19 and reliable service. The described organization allows the Operations Division to  
20 leverage synergies and maximize coordination across its multiple divisions and  
21 departments. This will continue if the Commission approves the Proposed Transaction.

22 **Q. DO YOU EXPECT THAT THE PROPOSED TRANSACTION WILL RESULT IN**  
23 **THE TRANSFER OF JOBS OF CITIZENS OF THIS STATE TO WORKERS**  
24 **DOMICILED OUTSIDE THIS STATE?**

25 A. No. EPE's Operations workers are currently located in EPE's New Mexico and Texas  
26 service areas. The Regulatory Commitments made as part of the Proposed Transaction  
27 also ensure that for at least five years post-closing, as a result of the Proposed  
28 Transaction, the Company will not implement any material involuntary workforce  
29 reductions. The Regulatory Commitments also ensure that Company will honor the

1 terms of its existing collective bargaining agreements. As for the operations area of EPE  
2 that I oversee, the Proposed Transaction will not result in the transfer of jobs of citizens  
3 of Texas to workers domiciled outside of Texas.

4 **V. Reliability, Availability, and Quality of Service**

5 **Q. WHAT DO YOU ADDRESS IN THIS SECTION OF YOUR TESTIMONY?**

6 A. In this section, I discuss EPE's current reliability, availability, and quality of service,  
7 which involves EPE's SAIDI and SAIFI scores and capital investment plans. I discuss  
8 how Joint Applicants' Regulatory Commitments ensure EPE's operations will not be  
9 disrupted as a result of the Proposed Transaction. Specifically, I address the decline in  
10 service factor found in PURA § 14.101 and the reliability and availability of service  
11 factors in PURA §§ 39.262(m) and 39.915.

12 **A. SAIDI and SAIFI**

13 **Q. WHAT IS EPE'S CURRENT LEVEL OF RELIABILITY, AVAILABILITY, AND**  
14 **QUALITY OF SERVICE?**

15 A. EPE provides a high level of reliability, availability, and quality of service. While no  
16 electric utility can deliver electricity without interruption, EPE has an excellent record for  
17 continuity of service and responsiveness to customer service interruptions. EPE strives to  
18 provide safe, reliable, and cost-effective service. EPE's reliability performance compares  
19 favorably to that of other utilities.

20 **Q. DO YOU HAVE ANY STATISTICAL DATA TO SUPPORT YOUR**  
21 **CONCLUSION THAT EPE PROVIDES HIGH QUALITY, RELIABLE**  
22 **SERVICE?**

23 A. Yes. EPE utilizes the industry standard indices defined in the Institute of Electrical and  
24 Electronic Engineers ("IEEE") Standard 1366-2012 to gauge system performance.  
25 Specifically, the two major indices commonly used by electric utilities are the System  
26 Average Interruption Duration Index ("SAIDI") and the System Average Interruption  
27 Frequency Index ("SAIFI"). EPE tracks and keeps record of every customer interruption  
28 event, and reports annual SAIDI and SAIFI figures, by jurisdiction, to the Commission  
29 and to NMPRC Staff.



1 **Q. PLEASE DESCRIBE THE SYSTEM AVERAGE INTERRUPTION FREQUENCY**  
2 **INDEX (SAIFI).**

3 A. SAIFI refers to the average number of times that a customer connected to an electric  
4 power system experienced an outage over a given time period. It is calculated by  
5 dividing the total number of customer interruptions during a given time period by the  
6 total number of customers being served over that same period.

7 **Q. PLEASE DESCRIBE THE SYSTEM AVERAGE INTERRUPTION DURATION**  
8 **INDEX (SAIDI)?**

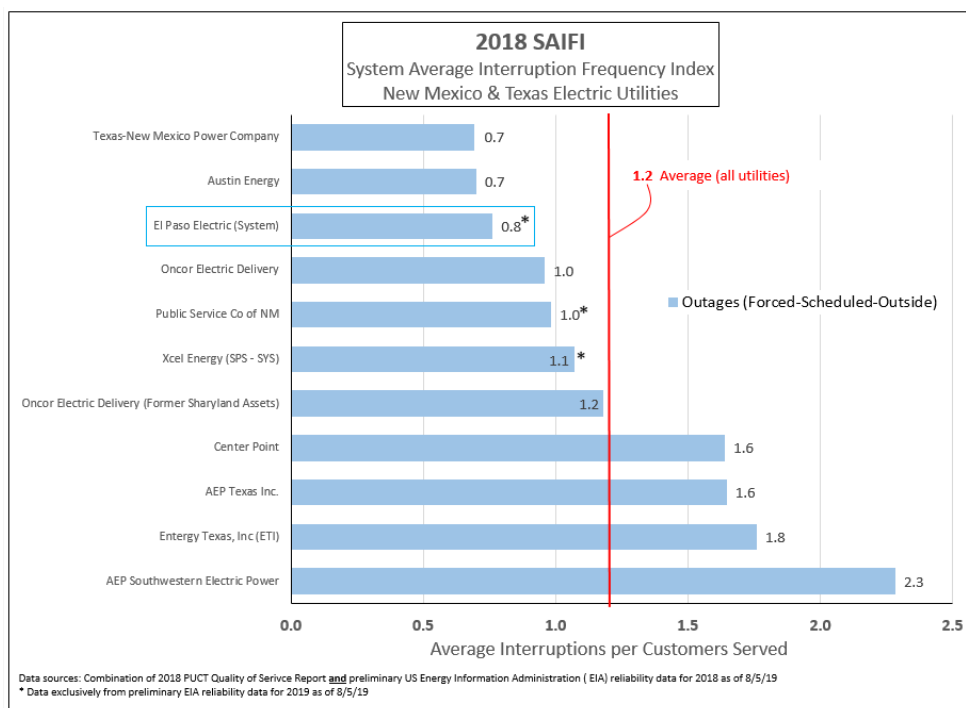
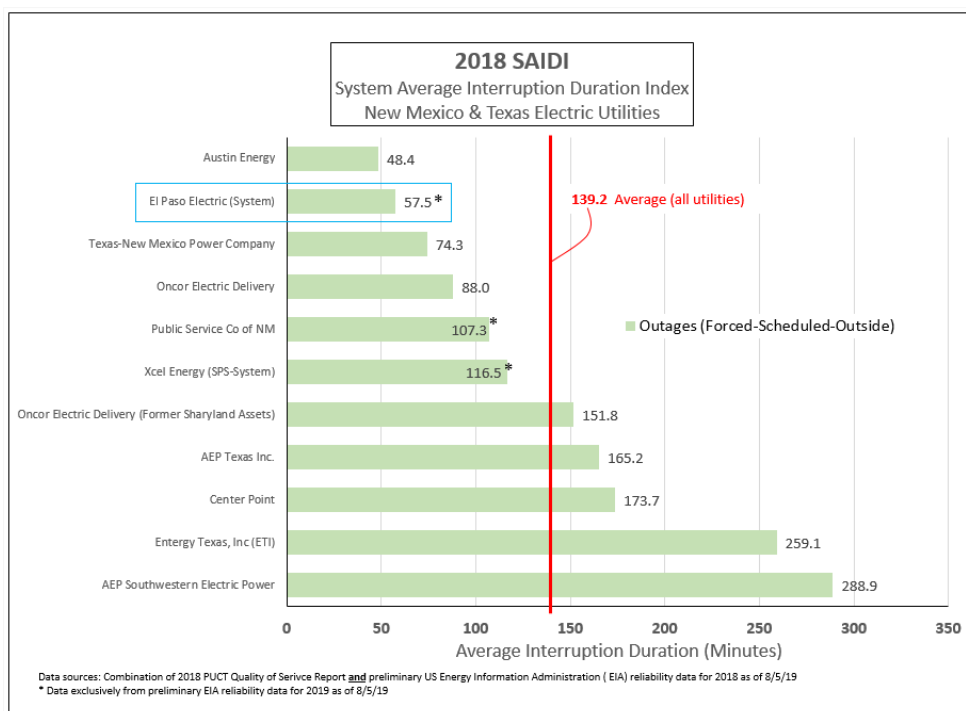
9 A. SAIDI refers to the average outage duration, in minutes, that a customer connected to an  
10 electric power system experienced over a given time period. It is calculated by dividing  
11 the total customer-interruption-minutes for a given time period by the total number of  
12 customers being served over that same period.

13 **Q. AS MEASURED BY SAIFI AND SAIDI, WHAT HAS BEEN THE LEVEL OF**  
14 **EPE'S QUALITY OF SERVICE IN TEXAS?**

15 A. EPE gauges its overall quality of service performance by comparison of EPE's SAIFI and  
16 SAIDI metrics to those of other utilities in New Mexico and Texas. The first comparison  
17 group of other utilities includes Austin Energy; Texas-New Mexico Power Company  
18 (Subsidiary of PNM Resources) ("TNMP"); Entergy Texas, Inc. ("ETI"); CenterPoint  
19 Energy Houston Electric, LLC ("CenterPoint"); Oncor Electric Delivery Company LLC  
20 ("Oncor"); Public Service Company of New Mexico; AEP-Southwestern Electric Power  
21 Company; AEP Texas Inc.; Oncor (former Sharyland Utilities, L.P. assets); and  
22 Southwestern Public Service Company (Subsidiary of Xcel Energy) ("SPS").

23 Figure STB-1 below presents a comparison of the SAIDI and SAIFI metrics for  
24 each utility for 2018.

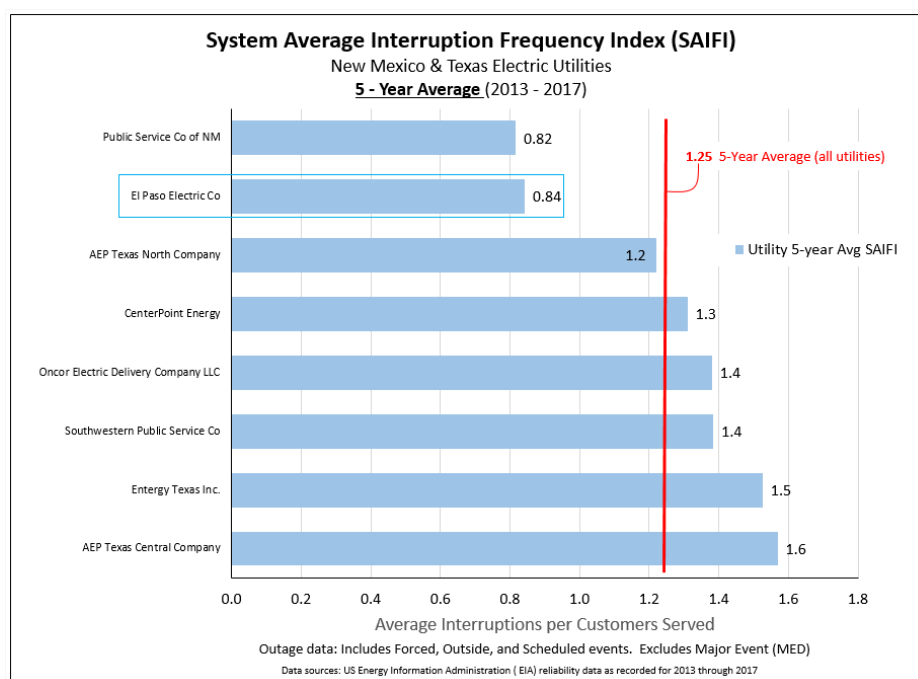
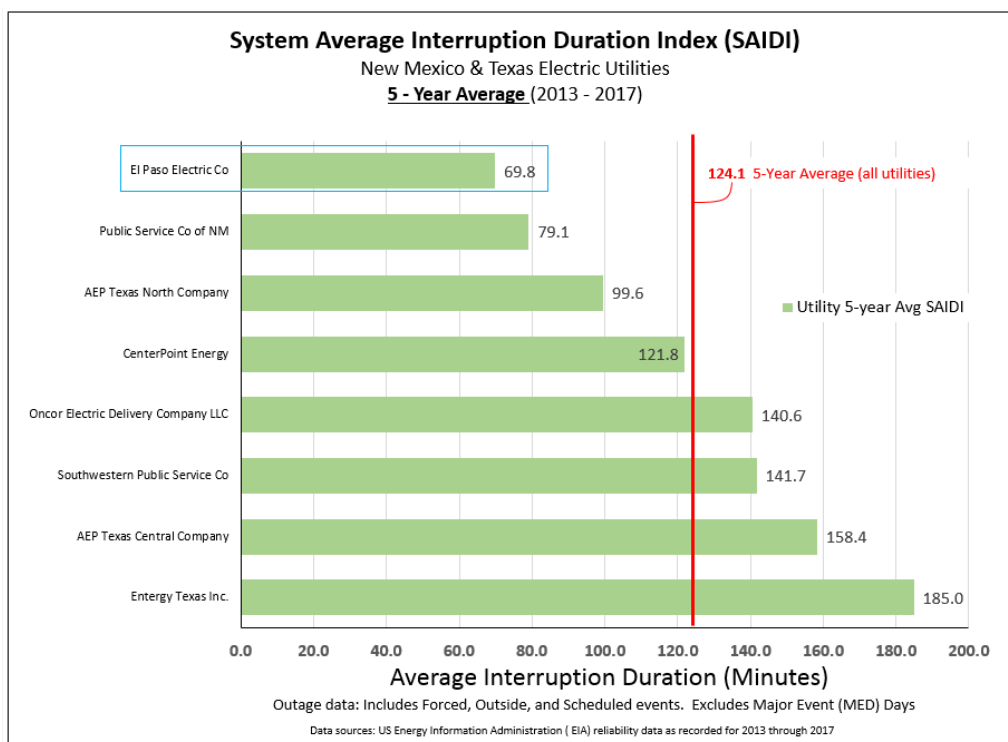
Figure STB-1



To gauge historical performance, we pulled data from the U.S. Energy Information Administration (“EIA”) database of electric utility reliability data as reported for the five years prior to 2018 (2013–2017). This second comparison group includes the

Public Service Company of New Mexico; AEP Texas North Company; CenterPoint; Oncor; SPS; ETI; and AEP Texas Central Company. Figure STB-2 below presents the five-year averages (2013–2017) for SAIDI and SAIFI for each utility.

**Figure STB-2**



1 The information above confirms EPE's track record of reliable service.

2 **Q. DOES EPE HAVE EXPERIENCED AND WELL-TRAINED EMPLOYEES TO**  
3 **SUPPORT THE CONTINUED SAFE AND RELIABLE PROVISION OF**  
4 **ELECTRIC SERVICE?**

5 A. Yes. EPE has a skilled and experienced workforce that on a daily basis supports EPE's  
6 safe and reliable provision of electric service, as I discussed above. EPE continually  
7 provides skills training to all employees. EPE also has an extensive employee  
8 development and training program and is fully committed to providing a safe working  
9 environment for our employees. Employees are provided safety training and actively  
10 participate in the development of safety procedures and programs. EPE's contractors are  
11 also required to conform to similar safety, training, and quality standards.

12 Neither EPE's workforce nor its training activities will negatively change as a  
13 result of the Proposed Transaction. It is anticipated that as part of the Proposed  
14 Transaction, job training, apprenticeship programs, and other best practices related to  
15 health and safety will be implemented. The Regulatory Commitments related to EPE's  
16 management and workforce allow EPE to continue to provide safe and reliable electric  
17 service without disruption.

18 **B. Capital Investment**

19 **Q. HAS EPE BEEN COMMITTED TO CONSTRUCTING NECESSARY**  
20 **GENERATION, TRANSMISSION, AND DISTRIBUTION INFRASTRUCTURE**  
21 **TO PROVIDE RELIABLE SERVICE TO ITS CUSTOMERS?**

22 A. Yes. Table STB-1 below presents data showing the level of capital investment in  
23 generation, transmission, and distribution that EPE has made for each of the last five  
24 years (2015 through 2019). A large portion of the total generation capital investment  
25 presented in the table below was for the new generation at EPE's Montana Power Station.  
26 The investment amounts for each year for Transmission and Distribution infrastructure  
27 represent investment in new plant and equipment or replacement and/or repair of existing  
28 plant and equipment.

This level of capital spending on system infrastructure illustrates EPE's commitment to the development and maintenance of an efficient and reliable system in its service area.

**Table STB-1**

***Actual/Forecasted Capital Spending 2015-2019***

| (in thousands of dollars)             |            |              |              |           |
|---------------------------------------|------------|--------------|--------------|-----------|
| Year                                  | Generation | Transmission | Distribution | Total     |
| 2015                                  | 177,416    | 28,143       | 62,008       | 267,567   |
| 2016                                  | 100,797    | 23,448       | 67,792       | 192,037   |
| 2017                                  | 82,924     | 25,069       | 75,975       | 183,968   |
| 2018                                  | 96,963     | 41,565       | 93,904       | 232,432   |
| 2019 <sup>5</sup>                     | 99,299     | 25,321       | 90,286       | 214,907   |
| 2015<br>through<br>2019<br>cumulative | 557,399    | 143,547      | 389,966      | 1,090,912 |

**Q. WHAT IS EPE'S EXPECTED INFRASTRUCTURE CAPITAL SPENDING OVER THE 2020–2025 TIMEFRAME?**

A. EPE's current long-range plan for capital expenditures through 2025 is shown in the table below:

---

<sup>5</sup> 2019 expenditures are estimated.

Table STB-2

*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<br>2025<br>cumulative | 654,912    | 209,640      | 637,005      | 1,501,556 |

**Q. WHAT IS THE PURPOSE OF THE CAPITAL EXPENDITURE PLAN?**

A. EPE goes through an extensive annual process to identify resources to meet the demands of customers over the next 10 years. In that process, EPE identifies the capital requirements to meet those needs.

**Q. IS THE CAPITAL EXPENDITURES COMMITMENT CONSISTENT WITH EPE'S LONG-RANGE CAPITAL PLAN?**

A. Yes. As described in Mr. Gilbert's and Mr. Hirschi's direct testimony, the Regulatory Commitments specify that EPE will continue its capital spending consistent with its pre-merger plans:

EPE will continue to make minimum capital expenditures in an amount equal to EPE's current five-year budget for the five-year period beginning January 1, 2021, subject to the following adjustments: EPE may reduce capital spending due to conditions not under EPE's control, including, without limitation, siting delays, cancellations of projects by third-parties, weaker than expected economic conditions, or if EPE determines that a particular expenditure would not be prudent.

1           Thus, IIF US 2 shares EPE's view that providing safe and reliable service is  
2 critical and that investment in infrastructure is and will be essential to achieving that goal.  
3 The Proposed Transaction will not diminish or adversely affect EPE's commitment to  
4 continuous and reliable service.

5           **C.     Conclusions about Reliability, Availability, and Quality of Service after**  
6           **Proposed Transaction**

7   **Q.     DO YOU EXPECT THE PROPOSED TRANSACTION TO CAUSE ANY**  
8   **DECLINE IN THE SERVICE EPE CURRENTLY PROVIDES?**

9   A.   No. I believe that after the Proposed Transaction, EPE can and will continue to  
10 successfully operate and maintain its system in a safe, reliable, and cost-effective manner,  
11 consistent with EPE's obligations as a regulated utility. As described in the testimony of  
12 Mr. Gilbert, EPE will see no changes to the day-to-day operations of the company and  
13 IIF US 2 is committed to supporting EPE's mission to provide the safe and reliable  
14 electric service that EPE customers and the commission expect and deserve. As I  
15 discussed above, the Proposed Transaction furthers continuity where operations are  
16 concerned, and helps ensure that EPE will continue to invest in system reliability and  
17 employ the workforce it needs to successfully operate its system.

18   **Q.     DO YOU EXPECT IIF US 2 TO SUPPORT EPE'S CURRENT LEVEL OF**  
19   **RELIABILITY PERFORMANCE?**

20   A.   Yes. As Mr. Gilbert's testimony demonstrates, IIF US 2 is committed to continuing  
21 EPE's safe and reliable delivery of electric service. As I described above, the Regulatory  
22 Commitments contemplate capital spending and maintenance of workforce levels along  
23 the lines of EPE's plans before the Proposed Transaction. In addition, after the Proposed  
24 Transaction, 16 Texas Administrative Code § 25.52 will continue to apply to EPE. That  
25 Commission rule lays out expectations for Reliability and Continuity of Service.

26           Thus, in my opinion, IIF US 2 has demonstrated a commitment to EPE's  
27 continued reliability of service.

**Q. DO YOU EXPECT THE PROPOSED TRANSACTION TO ADVERSELY AFFECT THE AVAILABILITY OF SERVICE?**

A. No. I believe that after the Proposed Transaction, EPE can and will continue to successfully operate and maintain its system so that availability of service to customers remains at a reasonable level, consistent with EPE's obligations as a regulated utility. As I described above, the Proposed Transaction will maintain continuity of EPE's operations for which I am responsible. Thus, I do not expect the Proposed Transaction to adversely affect the availability of service.

**Q. AFTER THE PROPOSED TRANSACTION, WILL EPE'S OPERATIONS CONTINUE TO BE SUBJECT TO THE RULES AND STANDARDS IMPOSED BY THE COMMISSION, THE FERC, THE WECC, AND THE NERC?**

A. Yes. The Proposed Transaction will have no impact on EPE's facilities or its status as a public utility within the State of Texas, and so EPE will continue to be subject to the rules and standards imposed by the Commission, the FERC, the WECC, and the NERC.

## **VI. Health and Safety of Customers and EPE's Employees**

**Q. WHAT DO YOU ADDRESS IN THIS SECTION OF YOUR TESTIMONY?**

A. In this section, I address the health and safety of customers and employees factor found in PURA § 14.101.

**Q. DO YOU EXPECT THE HEALTH AND SAFETY OF EPE'S CUSTOMERS AND EMPLOYEES TO BE ADVERSELY AFFECTED BY THE PROPOSED TRANSACTION?**

A. No. IIF US 2 shares our commitment to safety and health for employees, customers and communities and considers it to be a top priority. After consummation of the Proposed Transaction, EPE can and will continue to successfully operate and maintain its system safely and reliably, consistent with our obligations as a regulated utility and with EPE's policy to promote health and safety. In addition, EPE will benefit from the sharing of best practices across the IIF portfolio companies, as described by Mr. Gilbert. As I showed earlier, the Proposed Transaction will be marked by continuity of operations.



1 Therefore, the health and safety of EPE's customers, employees, and the public will not  
2 be adversely affected by the Proposed Transaction.

3 **VII. Conclusion**

4 **Q. PLEASE SUMMARIZE YOUR CONCLUSIONS.**

5 A. EPE's Operations Division is responsible for planning, operating, and maintaining EPE's  
6 generation, transmission, and distribution systems. That Division is staffed, managed and  
7 organized to complete its assigned tasks efficiently, reliably, and safely. The Proposed  
8 Transaction will not adversely affect how the Operations Division functions; rather, there  
9 will be continuity. The health and safety of EPE's customers, employees, and the public  
10 will not be adversely affected by the Proposed Transaction.

11 As for the operations area of EPE that I oversee, the Proposed Transaction will  
12 not result in the transfer of jobs of citizens of Texas to workers domiciled outside of  
13 Texas.

14 The Proposed Transaction will not adversely affect the reliability, availability, or  
15 quality of service that EPE provides. EPE's operations will continue to be subject to the  
16 rules and standards imposed by the Commission, the FERC, the WECC, and the NERC.

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

18 A. Yes, it does.

**AFFIDAVIT OF STEVEN T. BURACZYK**

THE STATE OF TEXAS  
COUNTY OF EL PASO

)  
)  
)

This day, Steven T. Buraczyk, the affiant, appeared in person before me, a notary public, who knows the affiant to be the person whose signature appears below. The affiant stated under oath:

My name is Steven T. Buraczyk. I am of legal age and a resident of the State of Texas. The foregoing testimony offered by me is true and correct, and the opinions stated therein are, to the best of my knowledge and belief, accurate, true and correct.



Steven T. Buraczyk  
Senior Vice President - Operations

SUBSCRIBED AND SWORN TO BEFORE ME, notary public, on this the 8 day of  
August, 2019.



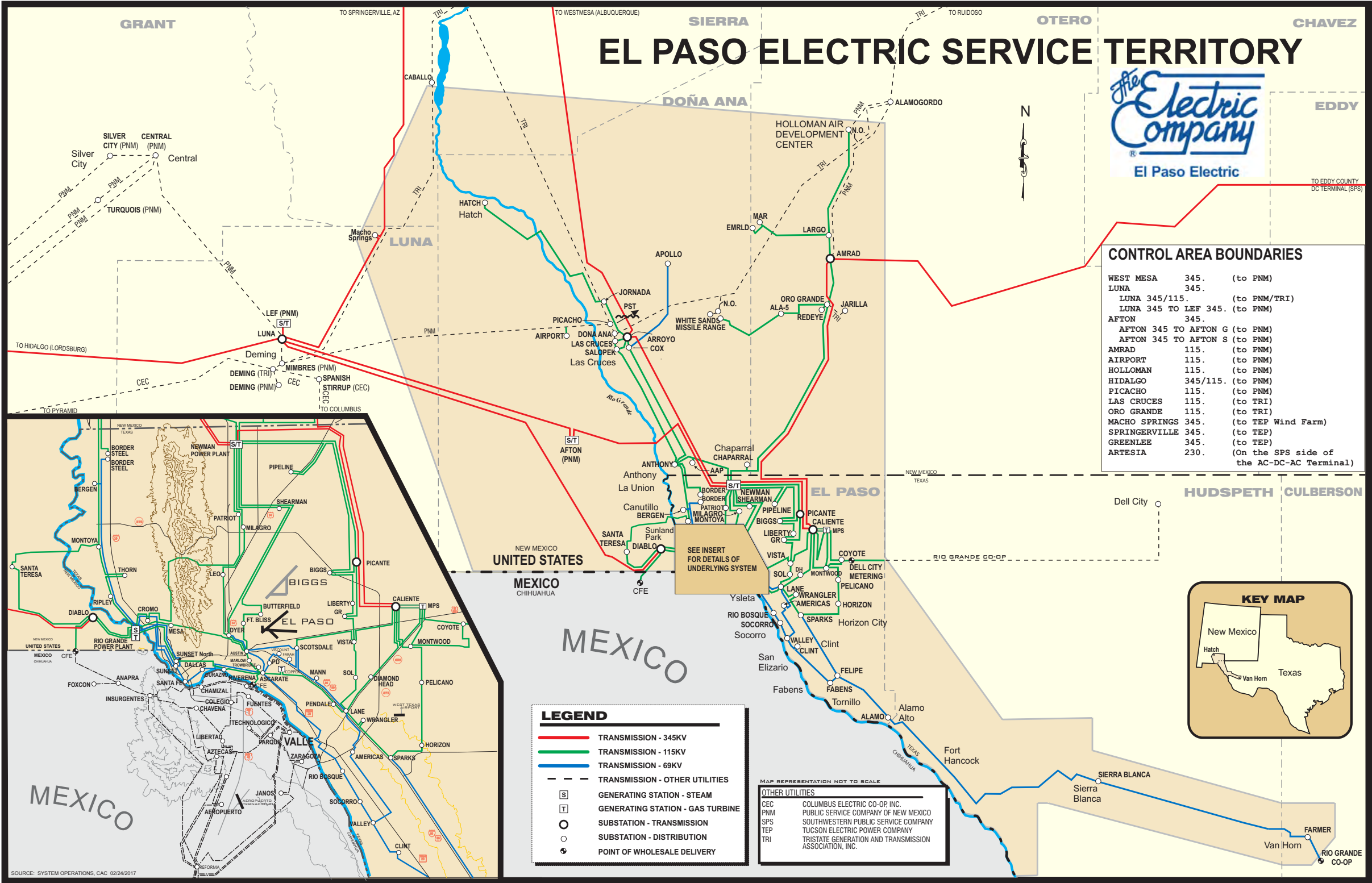
Notary Public, State of Texas

My Commission expires:

June 29, 2023



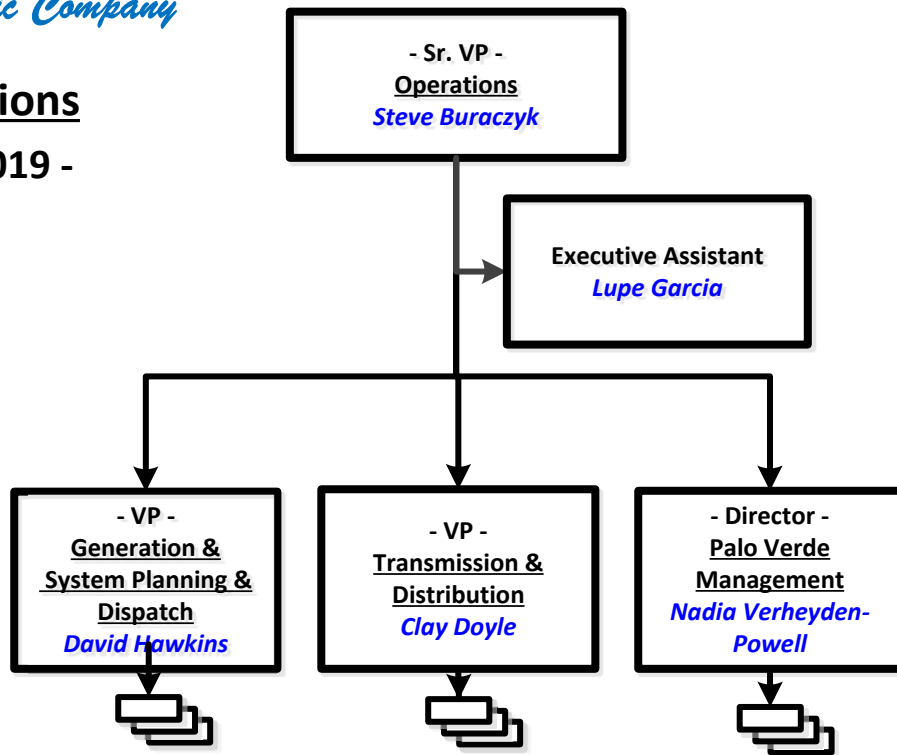
El Paso Electric Company Service Territory



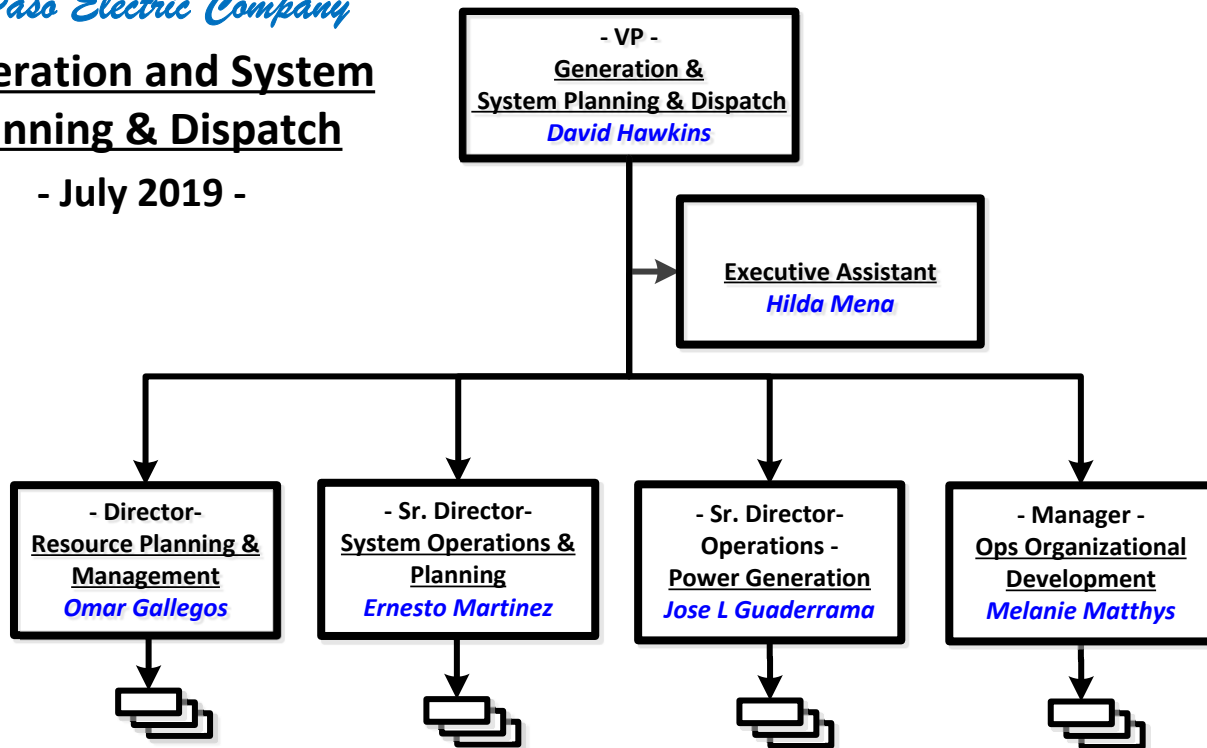
*El Paso Electric Company*

**Operations**

- July 2019 -



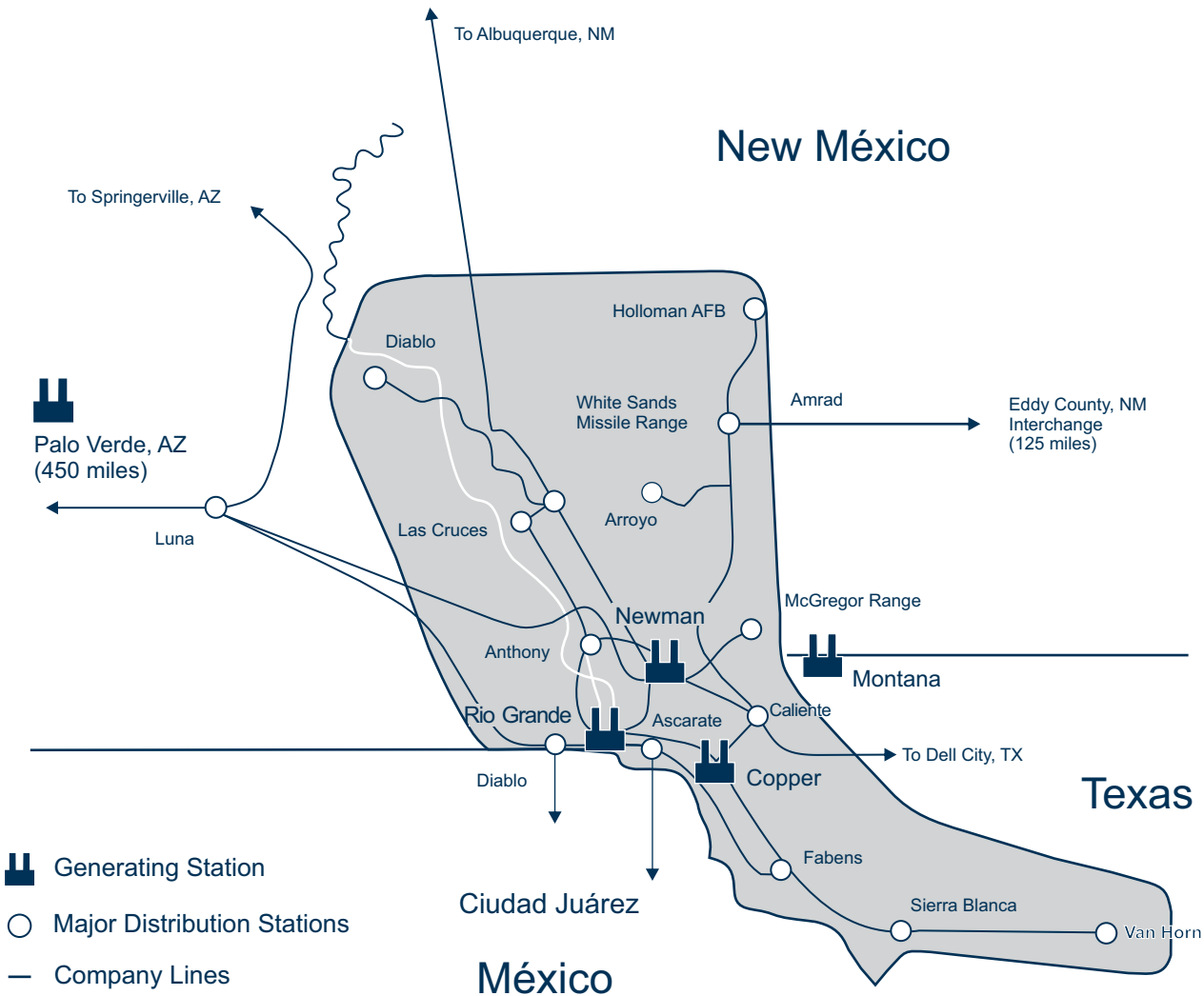
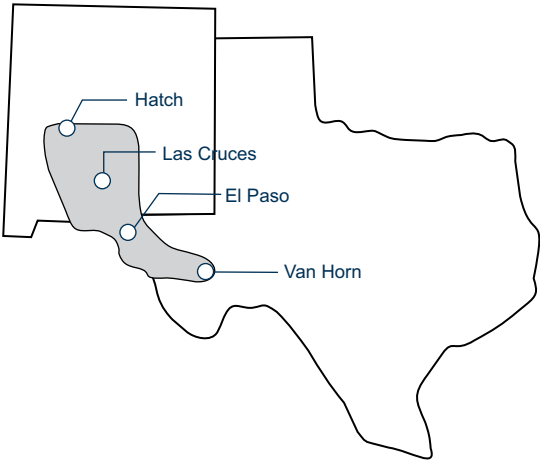
*El Paso Electric Company*  
**Generation and System  
Planning & Dispatch**  
- July 2019 -



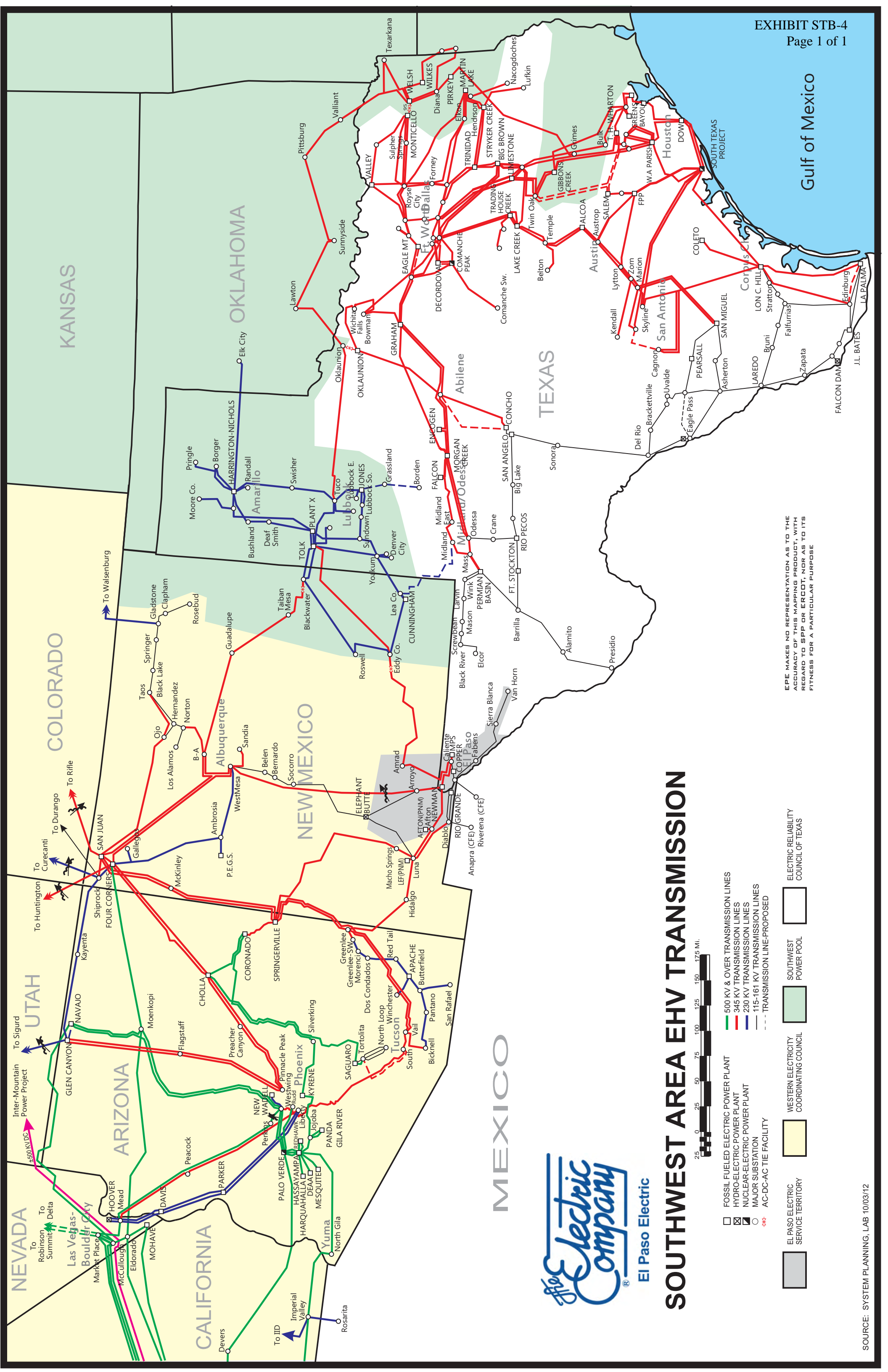
## Distribution Division

**- July 2019 -**











**DOCKET NO. \_\_\_\_\_**

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

**DIRECT TESTIMONY**  
**AND EXHIBITS**  
**OF**  
**ANDREW E. GILBERT**  
**ON BEHALF OF**  
**SUN JUPITER HOLDINGS LLC**  
**AND**  
**IIF US HOLDING 2 LP**

**August 13, 2019**

DOCKET NO. \_\_\_\_\_

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

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## **EXHIBITS**

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**DIRECT TESTIMONY AND EXHIBITS OF ANDREW E. GILBERT****I. Introduction**

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

A. My name is Andrew E. Gilbert. My business address is 277 Park Avenue, New York, New York 10172.

**Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

A. I am a Managing Director of J.P. Morgan Investment Management, Inc. (“JP Morgan”) dedicated to its Infrastructure Investments Group, which advises the Infrastructure Investments Fund (“IIF”). IIF is a long-term private investment fund that invests capital provided predominantly by institutional investors (such as pension funds and insurance companies) (the “IIF Investors”) into infrastructure companies in developed countries.

**Q. WHAT IS IIF’S RELATIONSHIP TO THE APPLICANTS IN THIS PROCEEDING?**

A. IIF is not an actual entity; instead, it is an umbrella name used to refer to the three master partnerships that hold all of IIF’s investments. These three master partnerships are: IIF US Holding LP (“IIF US 1”), a U.S. limited partnership; IIF US Holding 2 LP (“IIF US 2”), a U.S. limited partnership; and IIF Int’l Holding L.P. (“IIF Int’l”), a non-U.S. limited partnership. Each master partnership is an investor in multiple “portfolio companies,” and is generally best characterized as the sole or majority indirect shareholder in each of its respective portfolio companies. Ownership of portfolio companies is dependent on geography, with all non-U.S. IIF portfolio companies held by IIF Int’l and the U.S. portfolio companies held by either IIF US 1 or IIF US 2. The transaction proposed in this proceeding contemplates one of IIF’s master partnerships indirectly investing in El Paso Electric Company (“EPE”).

Specifically, Applicant IIF US 2 has agreed to provide the equity portion of the purchase price needed by Applicant Sun Jupiter Holdings LLC (“Sun Jupiter”) to purchase EPE for approximately \$4.3 billion in the transaction subject to this proceeding

(the “Proposed Transaction”).<sup>1</sup> Sun Jupiter is an indirect, wholly-owned subsidiary of IIF US 2, specifically created to hold 100% of the equity interests in EPE post-closing.

**Q. ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

A. I am appearing on behalf of Applicants Sun Jupiter and IIF US 2. Because Sun Jupiter is a holding company and IIF US 2 is providing the equity for the Proposed Transaction, I primarily use “IIF US 2” throughout my testimony when discussing the Regulatory Commitments<sup>2</sup> in the Proposed Transaction, though those commitments apply equally to Sun Jupiter.

Further, because IIF US 2 is part of the IIF umbrella as I just described, I sometimes discuss more broadly IIF’s philosophy in my testimony where appropriate. Finally, I sometimes refer to EPE, Sun Jupiter, and IIF US 2 individually as “Applicant” and collectively as “Joint Applicants.”

**A. Qualifications**

**Q. PLEASE DESCRIBE YOUR EDUCATIONAL QUALIFICATIONS AND PROFESSIONAL EXPERIENCE.**

A. As a Managing Director of JP Morgan dedicated to its Infrastructure Investments Group, I, and the rest of the group, have responsibility for the investment advisory services provided to IIF, which, as of June 30, 2019, had a net asset value of approximately \$12.2 billion and consisted of investments in 19 portfolio companies, including six utilities.

Prior to joining JP Morgan, I was a Vice President of Upstream Power at Direct Energy, LP. From 2006 to 2010, I served as Vice President of Business Development at International Power, leading the company’s expansion of its North American business through acquisitions and asset development. Before that, I spent ten years at Public Service Enterprise Group (“PSEG”)—a publicly traded diversified energy company headquartered in Newark, New Jersey—in corporate development within the power generation business as well as various roles in the retail and utility divisions.

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<sup>1</sup> Approximately \$2.3 billion of the total transaction value will be equity, as I discuss further below.

<sup>2</sup> The Regulatory Commitments Joint Applicants are making in connection with the Proposed Transaction are provided in Exhibit C to the Application and Exhibit AEG-3 to my direct testimony.

1        Additionally, I was a key member of the integration teams for the PSEG-Exelon  
2        transaction. I began my career at General Electric after earning my mechanical  
3        engineering degree from the University of Massachusetts.

4            As part of my responsibilities throughout my career, I have worked on matters  
5        before a number of regulatory agencies, including the Public Utility Commission of  
6        Texas (“Commission”), the Federal Energy Regulatory Commission (“FERC”), the  
7        Texas Commission on Environmental Quality, the Nuclear Regulatory Commission  
8        (“NRC”), and other various state and federal agencies. For example, I was involved in  
9        the acquisition of a power plant in Texas, various proceedings before FERC and the New  
10       York Public Service Commission related to the Cross Hudson Project, and matters related  
11       to the New Jersey Energy Master Plan.

12    **Q.    PLEASE DESCRIBE YOUR INVOLVEMENT IN THE PROPOSED**  
13    **TRANSACTION.**

14    A.    I am responsible for negotiating and executing the Proposed Transaction on behalf of Sun  
15        Jupiter and IIF US 2 in connection with the investment advisory services provided by the  
16        Infrastructure Investments Group to IIF.

17    **Q.    HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION OR ANY**  
18    **OTHER REGULATORY AUTHORITIES?**

19    A.    No.

20        **B.    Purpose of Testimony**

21    **Q.    WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THIS**  
22    **PROCEEDING?**

23    A.    The purpose of my testimony is to provide an overview of the Proposed Transaction;  
24        provide information about IIF generally, and IIF US 2 and Sun Jupiter more specifically;  
25        explain the Regulatory Commitments made by Joint Applicants as part of the Proposed  
26        Transaction; and discuss why the Proposed Transaction meets statutory and other criteria,  
27        is in the public interest, and should be approved.

1   **Q.   HOW DO YOU ORGANIZE THE REMAINDER OF YOUR TESTIMONY?**

2   A.   In Section II, I describe the mechanics of the Proposed Transaction, discuss the Proposed  
3       Transaction's impacts on EPE's operations, and identify the specific relief requested in  
4       this proceeding. Additionally, I highlight IIF's perspective on the Proposed Transaction.

5           In Section III, I introduce IIF and describe its presence in the markets. I provide  
6       additional detail about IIF US 2 and its affiliates, and explain our interest in acquiring  
7       EPE. I testify as to how IIF US 2 will finance the Proposed Transaction, EPE's corporate  
8       structure after closing, and that EPE's \$4.3 billion purchase price is reasonable. I also  
9       discuss why I believe IIF is the right long-term partner for EPE.

10          In Section IV, I walk through the full set of Regulatory Commitments the Joint  
11       Applicants have made in the Proposed Transaction. I explain our rationale for agreeing  
12       to such extensive and robust commitments related to economic development and the  
13       community, rates and capital expenditure, corporate governance, local control and  
14       management, and employment and how such Regulatory Commitments comport with  
15       IIF's values and long-term commitment to its portfolio companies.

16          Finally, in Section V, I describe the statutory and other factors historically  
17       considered by the Commission in change-in-control proceedings, including tangible and  
18       quantifiable benefits to customers. Considering each factor, I conclude the Proposed  
19       Transaction is in the public interest.

20   **Q.   DO YOU SPONSOR ANY EXHIBITS IN CONNECTION WITH YOUR DIRECT**  
21   **TESTIMONY?**

22   A.   Yes. I sponsor attached Exhibits AEG-1 through AEG-3. The information contained in  
23       these exhibits is true and correct as of filing to the best of my knowledge. Additionally, I  
24       co-sponsor the June 1, 2019 Agreement and Plan of Merger ("Merger Agreement")  
25       attached to the Application as Exhibit A.

26   **Q.   WAS THIS TESTIMONY PREPARED BY YOU OR UNDER YOUR**  
27   **DIRECTION?**

28   A.   Yes, this testimony was prepared by me or under my direction. The information  
29       contained in this testimony is true and correct as of filing to the best of my knowledge.

## II. The Proposed Transaction

**Q. WHAT IS EPE'S CURRENT OWNERSHIP STRUCTURE?**

A. EPE is currently a publicly traded company whose stock is traded on the New York Stock Exchange ("NYSE") under the ticker symbol "EE."

**Q. HOW DO JOINT APPLICANTS PROPOSE TO CHANGE THIS STRUCTURE?**

A. 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.

**Q. PLEASE PROVIDE AN OVERVIEW OF THE PROPOSED TRANSACTION.**

A. The Proposed Transaction is a straightforward merger transaction, which will occur in accordance with the 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, through IIF US 2, one of IIF's portfolio companies.

Under the Proposed Transaction, shares held by EPE's shareholders immediately before the merger's effective time will be cancelled and converted into the right to receive \$68.25 in cash per share without interest. 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. After the Proposed Transaction closes, EPE's common stock will be delisted from the NYSE.

EPE's Board of Directors (the "Board") unanimously approved the Merger Agreement and recommended that the existing shareholders vote in favor of the 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, and other customary closing conditions.

1 **Q. PLEASE PROVIDE ADDITIONAL DETAIL REGARDING THE MECHANICS**  
2 **OF THE PROPOSED TRANSACTION.**

3 A. Sun Jupiter is a newly created Delaware limited liability company formed solely for the  
4 purpose of entering into the Merger Agreement, completing the Proposed Transaction,  
5 and thereafter, owning 100% of the equity interests in EPE. Sun Jupiter conducts no  
6 business activities other than its ownership of Merger Sub and will become the sole  
7 owner of only EPE upon closing.

8 Merger Sub is a Texas corporation newly formed by Sun Jupiter solely for the  
9 purpose of entering into the Merger Agreement and completing the Proposed  
10 Transaction. Merger Sub is a wholly-owned subsidiary of Sun Jupiter and has not  
11 engaged in any business except for activities incidental to its formation and as  
12 contemplated by the Merger Agreement. Subject to the terms of the Merger Agreement,  
13 upon completion of the Proposed Transaction, Merger Sub will cease to exist and EPE  
14 will continue as the surviving corporation under Sun Jupiter.

15 **Q. PLEASE PROVIDE ADDITIONAL DETAIL REGARDING EPE'S STRUCTURE**  
16 **AFTER THE PROPOSED TRANSACTION CLOSES.**

17 A. I have attached an organizational chart illustrating the post-closing ownership structure as  
18 Exhibit AEG-1 to my direct testimony. As of the closing of the Proposed Transaction,  
19 IIF US 2 will indirectly own 100% of EPE through a series of newly formed, single  
20 purpose subsidiaries. Specifically, IIF US 2 owns 100% of IIF Sun Jupiter Holdings LLC  
21 (which is the General Partner of IIF Sun Jupiter Ultimate Holdings LP) and 100% of the  
22 limited partnership interests in IIF Sun Jupiter Ultimate Holdings LP. IIF Sun Jupiter  
23 Ultimate Holdings LP owns 100% of the membership interests in Sun Jupiter Topco  
24 LLC, which owns 100% of the membership interests in Sun Jupiter Parent LLC  
25 (collectively with IIF Sun Jupiter Holdings LLC, IIF Sun Jupiter Ultimate Holdings LP,  
26 and Sun Jupiter Topco LLC, the "Intermediate Companies").

27 The existence of the Intermediate Companies is desirable in order to implement  
28 debt financing that is non-recourse to EPE as well as provide structural flexibility during  
29 IIF US 2's long-term investment in EPE. None of the Intermediate Companies has any  
30 employees or officers, and each is managed by its direct parent. Accordingly, the



governance of Sun Jupiter and EPE will not be impacted by the existence of the Intermediate Companies post-closing.

**Q. WHAT ARE THE PROPOSED TRANSACTION'S IMPACTS ON EPE'S OPERATIONS?**

A. Because Sun Jupiter is simply stepping into the current public investors' shoes, Joint Applicants do 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 values including their vision for local job retention and growth, meaningful support of EPE's communities, and sustainable expansion of EPE's renewable energy resources. EPE's focus will remain on providing safe, clean, affordable, and reliable service to its customers.

Importantly, IIF US 2's investment in EPE will provide additional access to necessary funding for EPE's systems, operations, and growth. IIF US 2, as part of IIF, seeks to have stable and consistent access to equity (which is not always the case with public shareholders or closed-ended private equity funds with finite lives), as well as deep relationships and trust in the lending community (at a larger scale than EPE currently has). This ongoing access to long-term capital will enhance EPE's ability to fulfill commitments to its customers and the communities it serves, including investing in renewable energy resources, local generation, and other infrastructure needs.

IIF's established practice is to hold its portfolio companies as separate entities with individual dedicated governance structures, including standalone management teams integrated into local communities and dedicated, boards of directors made up of a majority independent directors with strong governance protocols. In addition, IIF encourages the sharing of best practices across portfolio companies, particularly in relation to health and safety as well as Environmental, Social and Governance ("ESG") initiatives. ESG is a particularly important tenet of IIF's approach to governance with a focus on resilience, diversity and inclusion, sustainable business plans, stakeholder engagement, cyber security, reporting, transparency, and measurement against third party benchmarks. IIF intends to approach the Proposed Transaction in the same way, which aligns well with EPE's existing practices.

1 In sum, I believe the Proposed Transaction minimizes disruption to the current  
2 management team and workforce, and will result in no disruption to EPE's communities  
3 and customers. Additionally I believe it will enhance EPE's ability to provide safe,  
4 clean, affordable, and reliable electric service while improving access to both debt and  
5 equity funding for future needed capital initiatives via IIF's scale and expertise in those  
6 funding markets.

7 **Q. WHAT ARE THE PRIMARY APPROVALS NEEDED TO CLOSE THE**  
8 **PROPOSED TRANSACTION?**

9 A. Sections 4 and 7 of the Merger Agreement identify the required regulatory approvals and  
10 other closing conditions that Joint Applicants must satisfy before the Proposed  
11 Transaction closes. Additionally, James Schichtl addresses the necessary regulatory  
12 approvals in his direct testimony. To summarize briefly, the Proposed Transaction is  
13 subject to approvals by EPE's shareholders; the Commission; the New Mexico Public  
14 Regulation Commission ("NMPRC"); the FERC; the Federal Communications  
15 Commission; and the NRC; as well as expiration or termination of the waiting period  
16 under the Hart-Scott-Rodino Act to satisfy antitrust requirements. EPE also intends to  
17 seek consent from the City of El Paso, Texas to transfer EPE's franchise agreement.

18 **Q. PLEASE DESCRIBE THE SPECIFIC RELIEF JOINT APPLICANTS REQUEST**  
19 **IN THIS PROCEEDING.**

20 A. Joint Applicants request a Commission order approving the Proposed Transaction and  
21 finding it is in the public interest. Joint Applicants also request a finding that the  
22 Regulatory Commitments satisfy the Commission's public interest determination. Please  
23 refer to Exhibit JS-2 of Mr. Schichtl's direct testimony for a list of specific findings Joint  
24 Applicants seek.

25 **Q. WHAT ARE YOUR KEY OBSERVATIONS ABOUT THE PROPOSED**  
26 **TRANSACTION?**

27 A. As discussed in more detail below and in other Joint Applicant witnesses' testimonies,  
28 the Proposed Transaction brings value to all stakeholders—EPE, EPE's Texas and New  
29 Mexico service territory customers, its employees, the communities where it operates,

1 and EPE's current shareholders. Further, it brings value to 40 million families whose  
2 capital IIF invests for the long-term, including approximately two million people across  
3 Texas and New Mexico.

4 In addition to the many positive benefits of the Proposed Transaction, IIF US 2  
5 and Sun Jupiter have committed to the following:

- 6 1. **\$21 Million Rate Credit.** The Proposed Transaction will provide tangible  
7 and quantifiable benefits through a \$21 million rate credit on electric bills  
8 to current EPE customers (on a total company basis) over a three-year  
9 period. Accordingly, current EPE customers will experience only a  
10 beneficial impact to rates compared to the status quo, as EPE will apply  
11 this credit without corresponding recovery of transaction-related costs.
- 12 2. **\$100 Million Community Economic Sustainability Fund.** The  
13 Proposed Transaction will establish a 20-year, \$100 million fund to  
14 support economic development in EPE's service territory. Consistent with  
15 IIF's and EPE's shared community engagement philosophy, we see an  
16 opportunity to increase employment in the local economies through  
17 growth, including of renewable energy, and job training programs. Joint  
18 Applicants have committed to continue and expand EPE's role as an  
19 active corporate citizen.
- 20 3. **Long-Term Financial Strength.** The Proposed Transaction will provide  
21 EPE with a new, financially strong indirect shareholder that has extensive  
22 resources and proven utility and renewable energy expertise. IIF US 2, as  
23 part of IIF, is a preferred long-term investor in utility businesses because,  
24 unlike most private equity funds, IIF is not a closed-ended vehicle and  
25 therefore does not need to exit an investment after a pre-defined hold  
26 period. Instead, IIF continually seeks to raise new capital, which it uses  
27 to, among other things, provide ongoing financing for the long-term  
28 capital requirements of its portfolio companies. Last year, IIF's existing  
29 portfolio companies used approximately 80% of the capital deployed by  
30 IIF. In addition, unlike the public equity markets that focus on quarterly  
31 returns, IIF has a long-term approach to its investments. This long-term

hold philosophy should give comfort to EPE's local communities and the Commission that IIF is a dedicated, long-term partner. IIF has significant experience managing and implementing regulatory proceedings; stakeholder engagement initiatives; customer service enhancements; operational improvements; and employee development, retention, and alignment. EPE and its customers will benefit from an experienced investor-partner that shares EPE's values and commitment to operational excellence and making the long-term investments necessary to maintain and support safe, clean, affordable, and reliable energy service.

4. **Focus on EPE's Workforce.** The Proposed Transaction provides workforce continuity. EPE's existing headquarters and management will remain separate and in El Paso, Texas with local offices in Las Cruces, New Mexico. Joint Applicants have agreed that for at least five years after closing, as a result of the Proposed Transaction, EPE will not implement any material involuntary workforce reductions or changes to wages, benefits, or other terms and conditions of employment in effect before the Proposed Transaction.
5. **Independence.** The Proposed Transaction includes a detailed package of ring-fencing provisions meant to protect EPE from the activities of IIF US 2 and its affiliates. Ellen Lapson describes in detail these provisions and the protections they provide EPE.

### III. IIF and Its Interest in EPE

#### A. IIF and IIF US 2

#### Q. PLEASE DESCRIBE IIF GENERALLY.

- A. Established in 2006 and advised by JP Morgan's Infrastructure Investments Group, IIF is a private investment fund with a long-term investment horizon that invests in infrastructure companies, including regulated utilities, transportation infrastructure, and contracted energy assets predominantly in developed countries. IIF is a perpetual life vehicle that seeks to raise capital on an ongoing basis that it can deploy into existing and new investments for the long term. Unlike closed-ended private equity funds that have

1 finite lives of no more than 10 years in most cases, and therefore can only own  
2 companies for five or so years before needing to sell to a new owner, we believe a  
3 perpetual life vehicle is appropriate for utility investments that require long-term  
4 investment and sustainable business plans with ongoing access to capital.

5 As noted earlier, structurally, IIF consists of three master partnerships (two  
6 domestic, including IIF US 2, and one international). Each master partnership is an  
7 investor in multiple “portfolio companies” and generally best characterized as the sole or  
8 majority shareholder in each of its respective portfolio companies. The IIF Investors,  
9 which are passive, constitute the investors providing capital for the activities of each  
10 master partnership and invest pro rata with each other in all three master partnerships.  
11 The IIF Investors were comprised of 517 direct limited partners as of June 30, 2019, and  
12 no limited partner owned more than 10% of IIF as of such date. Each master partnership  
13 also has a General Partner tasked with oversight of the applicable master partnership on  
14 behalf of the limited partners. The General Partner of each master partnership has  
15 engaged JP Morgan’s Infrastructure Investments Group as investment advisor. I note that  
16 JP Morgan owned less than 0.01% of the limited partnership interests in IIF as of June  
17 30, 2019 and is not affiliated with any of the General Partners of the master partnerships.

18 Each IIF portfolio company is a distinct, standalone entity that has its own Board  
19 of Directors and management team. Consistent with IIF’s established practice of  
20 implementing and maintaining strong and independent governance practices at each  
21 portfolio company in which it invests, no portfolio company, nor any subsidiary thereof,  
22 has the ability to exercise control over any other portfolio company.

23 As of June 30, 2019, IIF (through its three master partnerships) owned a portfolio  
24 with a gross asset value of over \$25 billion across 19 portfolio companies and 439 unique  
25 assets, diversified across 25 countries and 12 subsectors. IIF’s net asset value as of that  
26 same date was approximately \$12.2 billion. For the 12 months ending June 30, 2019, IIF  
27 received \$5.4 billion in new commitments and reinvested distributions from investors and  
28 invested approximately \$2.8 billion of equity in new acquisitions and into its existing  
29 portfolio companies.

30 As mentioned, IIF focuses on infrastructure and has investment interests in six  
31 utility companies globally, which collectively serve over 11 million electric, gas, water,

1 and heating customers under a variety of regulatory constructs. These companies are  
2 located in the United States and Western Europe. As of June 30, 2019, 29% of IIF's  
3 investments were comprised of utilities and distribution companies. IIF also owns a  
4 substantial portfolio of renewable and natural gas power generation assets, including  
5 interests in more than 3.6 gigawatts ("GW") of gross generating capacity in the United  
6 States and 6.5 GW of total gross capacity globally.

7 IIF's family of companies serves over 20 million customers and employs over  
8 9,000 people who actively engage in their communities by building strong relationships,  
9 provide open and ongoing communication and transparency on their activities, and give  
10 back through volunteer activities, community funding, and other philanthropic initiatives.

11 **Q. PLEASE DESCRIBE IIF'S MANAGEMENT TEAM.**

12 A. As mentioned, the Infrastructure Investments Group acts as investment advisor to IIF and  
13 provides such services subject to the authority of the General Partner of each of IIF's  
14 three master partnerships. The leadership of the Infrastructure Investments Group is  
15 composed of Paul Ryan, Portfolio Manager; Matthew LeBlanc, Chief Investment Officer;  
16 Brian Goodwin, Head of Portfolio Asset Management; and the Senior Team, a group of  
17 seven Managing Directors, myself included, tasked with providing advisory services to  
18 IIF, including fundraising, administration, new investment activity, and ongoing  
19 management of IIF's current portfolio of investments.

20 Our ongoing management of the portfolio companies is primarily enacted through  
21 strong board governance, with at least one professional from the Infrastructure  
22 Investments Group sitting on a portfolio company board alongside independent directors  
23 and company management. We partner with those independent directors and  
24 management teams to safeguard the capital of the 40 million families who are invested in  
25 IIF's master partnerships. We do not take positions within the portfolio companies'  
26 management teams and are not involved in the day-to-day operations of those portfolio  
27 companies. We back strong management teams and support them with strong  
28 governance structures, along with the resources and benefits of scale that are associated  
29 with being an IIF portfolio company.

**Q. PLEASE DESCRIBE IIF US 2'S ORGANIZATION AND MANAGEMENT SPECIFICALLY.**

A. IIF US 2 is a limited partnership organized under the laws of the state of Delaware. Its investments are in U.S.-based portfolio companies that provide essential services—such as energy, water, and transportation—to local communities under either regulatory constructs or long-term contracts. As part of the IIF umbrella, the IIF Investors constitute the investors providing capital for IIF US 2's activities. The IIF Investors are passive and, therefore, lack the ability to manage or control IIF US 2 or any of its portfolio companies (including, post-closing, EPE).

IIF US 2 is managed by its General Partner—IIF US 2 GP, LLC (“IIF US 2 GP”)—who has appointed JP Morgan's Infrastructure Investments Group as its investment advisor. IIF US 2 GP is formed under the laws of the state of Delaware. IIF US 2 GP is independent of JP Morgan and the Infrastructure Investments Group and acts in an independent capacity to oversee the Infrastructure Investments Group for the benefit of the IIF Investors. IIF US 2 GP approved the Proposed Transaction.

**B. IIF US 2's Utility Affiliates and Experience in the United States**

**Q. PLEASE DESCRIBE IIF'S INVESTMENTS IN UTILITIES WITHIN THE UNITED STATES.**

A. IIF's two domestic master partnerships—IIF US 1 and IIF US 2—together have investments in utilities operating across ten regulatory jurisdictions. IIF US 1 has investments in multiple natural gas-fired generation facilities in Colorado, California, Arizona, and New Mexico. The subsidiary owners of these generation facilities are FERC exempt wholesale generators authorized to sell electric energy, capacity, and ancillary services at wholesale market-based rates. IIF US 1 also owns a non-operating interest in three wind farms across the United States referred to as “Coastal Winds.”

IIF US 2 has invested in the following portfolio companies (1) a gas distribution company providing services in Arkansas, Colorado, Maine, Missouri, and Oklahoma; (2) a water and wastewater company providing services in California, Texas, South Carolina, Alabama, Oregon, and Oklahoma; (3) a liquid bulk storage company providing services in Louisiana and Georgia; and (4) wind and solar electric generating facilities throughout the United States.

**Q. HOW LONG HAS IIF HAD INVESTMENTS IN REGULATED UTILITIES IN THE UNITED STATES?**

A. IIF has had investments in utilities since making its first investment in a predecessor company to Summit Utilities Inc., a natural gas distribution company, in 2007.

**Q. HOW ARE EACH OF THESE UTILITIES MANAGED?**

A. Like its other portfolio companies, IIF master partnerships' utility investments are managed on a day-to-day basis by the respective utilities' management teams and governing boards. Generally, the boards of directors for each of these utilities consist of one director from the Infrastructure Investments Group and several independent directors.<sup>3</sup>

**Q. WHAT IIF US 2 PORTFOLIO COMPANIES DO YOU WISH TO HIGHLIGHT IN SUPPORT OF THIS APPLICATION?**

A. I would like to draw the Commission's attention to the following IIF US 2 portfolio companies:

- Summit Utilities Inc. ("Summit"), a Colorado-based company, with regulated natural gas distribution subsidiaries operating over 5,400 miles of pipeline in Arkansas, Colorado, Maine, Missouri, and Oklahoma.
- SouthWest Water Company ("SWWC"), a water and wastewater company headquartered in Sugar Land, Texas, with utility operations in six states: Alabama, California, Oklahoma, Oregon, South Carolina, and Texas.

**Q. PLEASE DESCRIBE IIF US 2'S EXPERIENCE WITH SUMMIT.**

A. Summit is IIF US 2's U.S.-regulated natural gas distribution platform company, serving over 100,000 customers in Arkansas, Colorado, Maine, Missouri, and Oklahoma. Summit is a growth-oriented utility focused on both organic expansion opportunities and inorganic merger and acquisition transactions. Since IIF US 2's investment, the company has acquired and integrated three existing utility businesses and a transformative greenfield expansion project, creating diversified utilities with significant scale. These

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<sup>3</sup> A board may have up to two delegates from the Infrastructure Investments Group if the board has ten or more members but generally, IIF's portfolio companies have boards of six to eight members. I note that the post-close EPE Board will have ten members and may therefore have up to two representatives of the Infrastructure Investments Group.



significant growth activities resulted in nearly \$675 million of IIF capital invested since 2013. In addition to growth expenditures, IIF US 2 also supports investment in capital projects. For example, following the acquisition of Arkansas Oklahoma Gas (“AOG”) by Summit, Summit management (with IIF US 2’s support) determined to preserve AOG’s Fort Smith office, retain AOG’s management team, and create additional jobs through its investments in the AOG system, which included significant and accelerated system integrity and reliability improvements. Before Summit’s acquisition of AOG, spending on pipeline integrity projects was approximately \$2.2 million during AOG’s fiscal year ending 2016. In 2019, Summit expects to spend \$14.9 million on pipeline safety enhancements in the AOG system in accordance with prudent utility investment standards.

**Q. PLEASE DESCRIBE IIF US 2’S EXPERIENCE WITH SWWC.**

A. SWWC currently owns and operates water and wastewater systems serving over half a million people in five states. SWWC takes pride in providing safe and reliable water, wastewater services, and resource management for homes, businesses, and communities.

SWWC has a long history in Texas, and IIF US 2 has strongly supported the team’s continued growth and reliability projects in this state. SWWC currently operates 120 water utility systems and 16 sewer utility systems in Texas, which are regulated by the Commission and several incorporated cities. SWWC’s water systems and wastewater systems in Texas serve approximately 106,800 and 39,200 customers, respectively, across 33 counties. SWWC employs 235 people in Texas and has invested \$49 million in the state over the past five years. The team intends to spend over \$71 million over the next five years in new investments across the state.

**Q. PLEASE BRIEFLY DESCRIBE IIF’S INVESTMENTS IN THE UNITED STATES OTHER THAN UTILITIES.**

A. IIF US 1 and IIF US 2 also have investments in the following:

- BW Terminals, which is an independent developer and operator of agricultural, petroleum, and chemical liquid terminal storage facilities in Louisiana and Georgia;

- Novatus Energy, which is a renewable energy company that owns and manages approximately 1.6 GW of wind and solar capacity in the United States;
- Southwest Generation, which owns and operates a portfolio of flexible natural gas-fired power generation assets across the Desert Southwest and California that provide reliable regulation for renewable technologies; and
- An investment in a non-operating interest in three wind farms across the United States, known as Coastal Winds.

**C. Interest in EPE**

**Q. HOW DID IIF IDENTIFY EPE AS A POTENTIAL ACQUISITION TARGET?**

A. IIF was contacted by EPE's financial advisor after the Board unanimously determined that the Board should evaluate potential alternatives to the current stand-alone plan that may enhance shareholder value and provide benefits to all EPE stakeholders. Utility investments are foundational to IIF's strategy. We recognized in EPE a shared operating philosophy, values, and culture based on safety, reliability, affordability, and compliance, as well as a very strong management team operating in vibrant communities. We seek investment opportunities that align with our philosophy and deliver stable, predictable value to our investors, and we believe EPE fits this profile. The Proposed Transaction would benefit EPE, allowing for enhanced access to capital for needed investments, maintaining service reliability, and improved opportunities for management and employees. EPE will also benefit from the resources and experience other IIF portfolio companies offer and will thereby continue to expand EPE's leadership as a provider of safe, clean, affordable, and reliable energy. Assuming the Proposed Transaction closes, EPE will be the flagship investment in IIF's portfolio as our premier, stand-alone electric utility operating in the United States, and we are excited to continue EPE's contribution to its attractive, dynamic surrounding communities.

**Q. HOW WILL THE PROPOSED TRANSACTION BE FINANCED?**

A. Sun Jupiter will purchase EPE for \$68.25 per share in cash representing an enterprise value of approximately \$4.3 billion, including EPE's net debt. At closing, IIF US 2 will provide \$2.3 billion in cash to Sun Jupiter pursuant to the Equity Commitment Agreement attached as Exhibit AEG-2 to my direct testimony. This, along with a

1 committed acquisition financing at Sun Jupiter (which will be outside the ring fence), will  
2 fund the purchase of EPE's equity. The balance of the transaction value is existing debt  
3 at EPE, which will be assumed as part of the deal.

4 **Q. IS THIS PURCHASE PRICE REASONABLE?**

5 A. Yes. As I mentioned, Sun Jupiter is paying a 17% premium for EPE's shares. The  
6 process leading to the Merger Agreement was robust and competitive—EPE considered  
7 several bids to acquire the company and ultimately the Board determined that it was in  
8 the best interest of EPE and its stakeholders to enter into the Proposed Transaction.

9 **Q. HAS IIF'S FINANCIAL STRENGTH HISTORICALLY SERVED ITS**  
10 **PORTFOLIO COMPANIES WELL?**

11 A. Yes. IIF's investing philosophy supports long-term, sustainable growth across its  
12 portfolio. In fact, over 60% of net capital invested since 2013 has been deployed through  
13 existing portfolio company investments to support growth, safety, reliability, compliance,  
14 and other capital expenditure initiatives. In 2018, this figure was approximately 80%.  
15 IIF and its investor base strongly believe in supporting existing portfolio companies  
16 through additional capital. In addition to this equity investment support, IIF has a  
17 significant network of global lending relationships, which are shared across its portfolio  
18 companies. IIF portfolio companies have closed, on average, approximately \$4 billion of  
19 debt facilities per year through new financing or refinancing activities since June 30,  
20 2017.

21 **Q. DO YOU EXPECT THE SAME FOR EPE?**

22 A. Yes. We expect IIF's financial strength, scale, and experience will enhance EPE's ability  
23 to meet its capital requirements to maintain reliable service to a growing customer base.

24 **Q. DO YOU BELIEVE IIF IS THE RIGHT PARTNER FOR EPE?**

25 A. Absolutely. I have spent considerable time with the EPE management team, and we see  
26 the opportunity to create a constructive and strategic relationship. With IIF's support and  
27 its long-term commitment to the community, EPE will be well-positioned to continue  
28 providing safe, clean, affordable, and reliable electric service and support to the local  
29 community for the long term.

#### IV. Regulatory Commitments

**Q. PLEASE INTRODUCE ALL THE REGULATORY COMMITMENTS JOINT APPLICANTS INCLUDED IN THE PROPOSED TRANSACTION.**

A. The 43 Regulatory Commitments fall into five major categories: (1) economic development and community, (2) rates and capital expenditure, (3) corporate governance, (4) local control and management, and (5) employment. These Regulatory Commitments are provided in Exhibit C to the Application and Exhibit AEG-3 to my direct testimony. I describe and summarize the Regulatory Commitments in my testimony, but the specific details are set forth in the exhibits I just mentioned. I sponsor IIF US 2's and Sun Jupiter's obligations under the Regulatory Commitments, though primarily use IIF US 2 for convenience when discussing them as mentioned on page 4 of my testimony.

**Q. WHY DID IIF US 2 AGREE TO THESE REGULATORY COMMITMENTS?**

A. Consistent with IIF's values, the Regulatory Commitments ensure all stakeholders, including EPE, its customers, its employees, and the communities it serves experience the Proposed Transaction's benefits. They memorialize EPE and IIF US 2's commitment to and shared vision for these stakeholders. IIF understands and appreciates that the Commission has a responsibility to ensure protection of EPE and its customers and the public interest. The Regulatory Commitments are the result of significant negotiations with a shared goal of providing a smooth path to regulatory approval. Keeping in mind recent change-in-control proceedings before the Commission, IIF US 2 agreed to these Regulatory Commitments to help demonstrate that the Proposed Transaction will secure EPE's ability to provide safe, clean, affordable, and reliable energy to its customers well into the future and that the Proposed Transaction is in the public interest.

I would also note that Exhibit B to the Merger Agreement, which is attached as Exhibit A to the Application, contains the regulatory commitments that were made as part of the Merger Agreement. Since execution of the Merger Agreement, Joint Applicants have added to and strengthened the corporate governance commitments to provide more protection to EPE based on the recommendations of Ms. Lapson, and these revised commitments (together with those made in Exhibit B to the Merger Agreement) are reflected in Exhibit A to the Application and Exhibit AEG-3 to my direct testimony. The

1 proposals set forth herein, which are reflected in their entirety in the exhibits I just  
2 referenced, are the only commitments for which we are requesting approval by the  
3 Commission.

4 **Q. YOU MENTIONED THE REGULATORY COMMITMENTS WERE PART OF**  
5 **IIF US 2 AND EPE'S NEGOTIATIONS. PLEASE EXPLAIN THIS FURTHER.**

6 A. As described in Mr. Hirschi's direct testimony, the Proposed Transaction was the result  
7 of an extensive review by EPE, which culminated in a competitive process run by a  
8 reputable advisor. The process involved several bidders, in addition to IIF US 2,  
9 proposing to acquire EPE. This process, which occurred over the course of several  
10 months, is detailed in the proxy statement recently filed with the Securities and Exchange  
11 Commission ("SEC") and attached as Exhibit D to the Application. As discussed in the  
12 proxy statement, EPE emphasized the provision of regulatory commitments to EPE's  
13 customers, its employees, and its communities in contemplating the likelihood of a  
14 transaction's consummation. Accordingly, the ability and willingness of a potential  
15 buyer to provide such commitments was a key consideration of EPE in this process.  
16 There was significant negotiation on the level of commitments this Commission and the  
17 other regulatory authorities would find attractive (based in part on precedent), and, as  
18 discussed in Mr. Hirschi's testimony, of the two final bidders, only IIF US 2 produced a  
19 slate of commitments that met with EPE's expectations for long-term commitments to  
20 EPE employees, customers, and local communities. Accordingly, after the robust and  
21 competitive process, the Board determined that it was in the best interest of EPE and its  
22 stakeholders to enter into the Proposed Transaction.

23 In short, to make this Proposed Transaction a reality, IIF US 2 agreed to  
24 significant Regulatory Commitments to the benefit of not only EPE but also its  
25 customers, employees, and communities, and we believe such commitments are more  
26 than sufficient to support the Commission's approval of the Proposed Transaction as in  
27 the public interest.

**Q. PLEASE EXPLAIN HOW THE REGULATORY COMMITMENTS WILL BE IMPLEMENTED AND MONITORED FOR COMPLIANCE.**

A. Joint Applicants made the Regulatory Commitments as part of the Proposed Transaction for which we are seeking Commission approval, and we request the Commission include them in its final order. The Commission has broad powers to investigate the activities of EPE and to assure compliance with its orders, including these commitments.

**A. Economic Development and Community**

**Q. PLEASE DESCRIBE JOINT APPLICANTS' ECONOMIC DEVELOPMENT AND COMMUNITY REGULATORY COMMITMENTS.**

A. To demonstrate their commitment to the citizens of Texas and New Mexico, Joint Applicants agreed to a robust package of economic development and community-focused items. As provided in Exhibit AEG-3, Joint Applicants commit to:

- Dedicate \$100 million to promote economic development in EPE's service territory, including the City of El Paso, Texas and in Las Cruces, New Mexico to be funded and allocated at a level of \$5 million per year for 20 years. The contributions to this fund will not be recoverable in rates.
- Maintain EPE's annual amount of charitable giving following the Proposed Transaction 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.
- Maintain EPE's existing low-income assistance programs while evaluating potential methods to improve such programs.
- 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.
- Create apprenticeship programs for technical and professional positions for students in local high schools and colleges.
- Continue and enhance utility supplier diversity by promoting the inclusion of minority-, women-, LGBTQ-, and veteran-owned businesses into EPE's supply chain.
- Study and evaluate growth opportunities related to electric vehicles, distributed generation, and battery storage in collaboration with The University of Texas at El Paso and New Mexico State University.
- Support Texas Renewable Portfolio Standards and the New Mexico Energy Transition Act.
- Report annually to the NMPRC the status of efforts during the prior calendar year to add renewable energy to its power supply portfolio and assure compliance toward the New Mexico Energy Transition Act. The report will include a description of efforts

1 to diversify the renewable energy sources considered and an explanation as to what  
2 determinations were made and the basis therefor.

3 **Q. WHY HAS IIF US 2 AGREED TO THESE ECONOMIC AND COMMUNITY**  
4 **DEVELOPMENT PROVISIONS SPECIFICALLY?**

5 A. IIF has great respect for EPE's role as an active corporate citizen that provides support  
6 for programs, organizations, and activities that positively impact communities across  
7 west Texas and southern New Mexico. These Regulatory Commitments demonstrate IIF  
8 US 2's desire to continue and expand EPE's corporate citizenship efforts and reflect the  
9 values of IIF and the 40 million families whose retirement savings we invest. We believe  
10 the programs described above will provide real benefits to the communities served by  
11 EPE.

12 **B. Rates and Capital Expenditures**

13 **Q. PLEASE DESCRIBE THE RATE REGULATORY COMMITMENTS**  
14 **ASSOCIATED WITH THE PROPOSED TRANSACTION.**

15 A. Joint Applicants have agreed to issue a rate credit to all of EPE's current Texas and New  
16 Mexico customers in a total aggregate amount of \$21 million. The rate credit will be  
17 distributed among those customers in 36 monthly installments starting shortly after  
18 closing of the Proposed Transaction.

19 **Q. HOW WILL EPE ALLOCATE THE \$21 MILLION TO TEXAS AND NEW**  
20 **MEXICO?**

21 A. EPE will allocate the total company credit between Texas and New Mexico using a  
22 jurisdictional base rate revenue allocator based on base rates in effect at closing of the  
23 Proposed Transaction. Based on calendar year 2018 base revenues, EPE estimates that  
24 the total rate credit for the Texas jurisdiction will be approximately \$16.8 million. Mr.  
25 Schichtl provides additional detail regarding EPE's implementation of the rate credit.

26 **Q. WILL EPE SEEK RECOVERY OF THIS \$21 MILLION THROUGH RATES?**

27 A. No. Joint Applicants will not attempt to recover this rate credit value in any future  
28 proceeding.

**Q. WILL EPE SEEK TO RECOVER THE COSTS OF THE PROPOSED TRANSACTION THROUGH RATES?**

A. No. Joint Applicants have agreed not to seek recovery in rates of the expenses associated with the Proposed Transaction.

**Q. WILL EPE SEEK TO RECOVER THE ACQUISITION PREMIUM THROUGH RATES?**

A. No. Joint Applicants have committed not to seek recovery in rates of the acquisition premium.

**Q. PLEASE DESCRIBE JOINT APPLICANTS' CAPITAL EXPENDITURE REGULATORY COMMITMENT.**

A. Joint Applicants have agreed that EPE will continue to make minimum capital expenditures in an amount equal to EPE's current five-year budget for the five-year period beginning January 1, 2021, subject to the following adjustments: EPE may reduce capital spending due to conditions not under EPE's control, including, without limitation, siting delays, cancellations of projects by third parties, weaker than expected economic conditions, or if EPE determines that a particular expenditure would not be prudent.

**Q. WHO WILL BE RESPONSIBLE FOR MAKING DECISIONS CONCERNING EPE'S FINANCIAL PLANS AND CAPITAL STRUCTURE?**

A. The post-closing EPE Board of Directors will be directly responsible for oversight of EPE's ongoing financing plans and capital structure.

**Q. HOW WILL EPE FUND ITS CAPITAL EXPENDITURES AFTER CLOSING?**

A. Consistent with the historical practice of EPE and other traditional utilities, EPE will fund prudent capital expenditures through a combination of operating cash flow, debt, and equity. IIF US 2, which manages capital dedicated to it for making investments in its portfolio companies, will directly source equity capital for EPE's future needs. EPE will continue to have access to the debt markets and will benefit from IIF's scale and deep relationships within the lending community as it seeks to minimize interest costs in the future. As I mentioned before, EPE will indirectly benefit from being part of IIF, which continually seeks to raise equity to fund capital projects across its portfolio. As



referenced previously, 80% of the capital deployed by IIF in 2018 was allocated to existing portfolio companies for capital expenditures and growth projects.

**Q. WHY HAS IIF US 2 AGREED TO THESE RATE AND CAPITAL EXPENDITURE PROVISIONS SPECIFICALLY?**

A. IIF understands and values the importance of EPE's mission to provide safe, clean, affordable, and reliable energy. IIF also appreciates that EPE's customers are an important stakeholder group that must see benefits from the Proposed Transaction and be protected from costs of the deal. We believe these Regulatory Commitments do just that.

**C. Ring-Fencing and Corporate Governance**

**Q. PLEASE IDENTIFY THE FULL SET OF RING-FENCING AND CORPORATE GOVERNANCE REGULATORY COMMITMENTS OF THE PROPOSED TRANSACTION.**

A. As set forth in Exhibit AEG-3, Joint Applicants have agreed to the following:

- EPE will maintain an existence that is separate and distinct from Sun Jupiter, IIF US 2, and any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II), including its separate name, logo, franchises, obligations and privileges.
- IIF US 2 shall take the actions necessary to ensure the existence of EPE stand-alone credit and debt ratings, as applicable.
- In connection with the Proposed Transaction, IIF US 2 has created Sun Jupiter, an indirect, wholly-owned special-purpose entity, to hold 100% of the equity interests in EPE.
- Sun Jupiter will be retained between EPE and IIF US 2 for so long as IIF US 2 owns EPE.
- EPE will not guarantee the debt or credit instruments of Sun Jupiter, IIF US 2, or any other affiliate (excluding EPE and Rio Grande Resources Trust II).
- EPE's assets, revenues, or stock shall not be pledged by Sun Jupiter, IIF US 2, or any of its affiliates or subsidiaries, for the benefit of any entity other than EPE.
- Neither EPE nor Sun Jupiter will enter into any inter-company debt transactions with IIF US 2 or any of its affiliates or subsidiaries post-closing, unless approved by the Commission and NMPRC.

- 1 • Neither EPE nor Sun Jupiter will share credit facilities with one another nor with IIF  
2 US 2 or any of its affiliates or subsidiaries.<sup>4</sup>
- 3 • EPE will not include in any of its debt or credit agreements cross-default provisions  
4 relating to Sun Jupiter, and neither EPE nor Sun Jupiter will include in any of its debt  
5 or credit agreements cross-default provisions relating to the securities of IIF US 2 or  
6 any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust  
7 II).
- 8 • EPE's debt or credit agreements will not include any financial covenants or rating-  
9 agency triggers related to Sun Jupiter or IIF US 2 or any of its affiliates or  
10 subsidiaries (excluding EPE and Rio Grande Resources Trust II), nor will Sun  
11 Jupiter's debt or credit agreements include any financial covenants or rating-agency  
12 triggers related to IIF US 2 or any of IIF US 2's affiliates or subsidiaries (excluding  
13 EPE and Rio Grande Resources Trust II).
- 14 • EPE will not incur, guaranty, or pledge assets for any new incremental debt related to  
15 the Proposed Transaction.
- 16 • Neither EPE nor Sun Jupiter will seek to recover from EPE's customers any costs  
17 incurred as a result of a bankruptcy of IIF US 2 or any of its affiliates (excluding  
18 EPE).
- 19 • Following closing of the Proposed Transaction, EPE's CEO and other senior  
20 management who directly report to the CEO will hold no positions with IIF US 2 or  
21 any of its affiliates or subsidiaries (excluding EPE and Sun Jupiter).
- 22 • IIF US 2 will obtain a non-consolidation legal opinion that provides that, in the event  
23 of a bankruptcy of IIF US 2, Sun Jupiter, or any of its affiliates, a bankruptcy court  
24 will not consolidate the assets and liabilities of EPE with IIF US 2, Sun Jupiter, or  
25 any affiliate of IIF US 2.
- 26 • Neither EPE nor Sun Jupiter will transfer any material assets or facilities to any  
27 affiliates, other than a transfer that is on an arm's-length basis consistent with the  
28 Commission and NMPRC affiliate standards as applicable to EPE.
- 29 • Each of EPE and Sun Jupiter will maintain an arm's-length relationship with one  
30 another and with IIF US 2 and its affiliates, consistent with the Commission and  
31 NMPRC affiliate standards as applicable to EPE.
- 32 • IIF US 2 will provide the Commission and NMPRC access to its books and records,  
33 as well as those of its affiliates, as necessary to facilitate either commission's audit or  
34 review of any affiliate transactions as between EPE and IIF US 2 or IIF US 2's  
35 affiliates.
- 36 • Each of EPE and Sun Jupiter will maintain accurate, appropriate, and detailed books,  
37 financial records and accounts, including checking and other bank accounts, and

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<sup>4</sup> Sun Jupiter Parent LLC will be a party to certain financing agreements for the limited purpose of providing a limited guarantee to the lenders at Sun Jupiter.

custodial and other securities safekeeping accounts that are separate and distinct from those of any other entity.

- EPE will suspend payment of dividends or other distributions, except for contractual tax payments, until otherwise allowed by the Commission and NMPRC, if issuance of the dividend or distribution would cause the equity component of EPE's debt-to-equity ratio to fall below that established from time to time by the Commission and NMPRC for EPE ratemaking purposes.
- The equity component of EPE's debt-to-equity ratio will not fall below that established from time to time by the Commission and NMPRC for EPE for ratemaking purposes.
- Sun Jupiter and its affiliates will not represent to the public or creditors that EPE has any liability for Sun Jupiter or IIF US 2 obligations.
- EPE will be a party to a consolidated corporate tax return with Sun Jupiter, which will be carried out subject to a formal tax sharing agreement and policy.

**Q. CAN YOU HIGHLIGHT A FEW OF THESE REGULATORY COMMITMENTS AND HOW THEY PROTECT CUSTOMERS?**

A. As Ms. Lapson also describes, Joint Applicants will maintain EPE as a separate and distinct entity from IIF US 2 and its affiliates and have placed many protections to ensure EPE's assets cannot be pledged as collateral on or used to satisfy the debt of IIF US 2 and its affiliates. IIF US 2 has committed to obtain a non-consolidation opinion confirming this in the event of a bankruptcy of IIF US 2 or any of its affiliates. Additionally, as discussed in further detail by Mr. Schichtl, the equity component of EPE's debt-to-equity ratio will not fall below that established from time to time by the Commission and NMPRC for ratemaking purposes. These corporate governance provisions ensure EPE is maintained as a separate entity protected from the actions of its new owners and affiliates.

**Q. WHY HAS IIF US 2 AGREED TO THESE CORPORATE GOVERNANCE PROVISIONS?**

A. IIF recognizes that the Commission and interested stakeholders have exhibited a preference for certain ring-fencing mechanisms to ensure utilities are not subject to potential risks associated with other business activities of their owners. IIF US 2 has agreed to the corporate governance provisions detailed above to ensure EPE remains an independent, financially secure utility. We view these Regulatory Commitments as best

practices with respect to corporate governance, and they are consistent with the approach at our other portfolio companies that have boards made up of majority independent directors. We believe the Regulatory Commitments offer a balanced approach to corporate governance that protects EPE's customers and are consistent with protections included in other recent sale, transfer, and merger Commission orders.

**D. Local Control and Management**

**Q. PLEASE DESCRIBE THE LOCAL CONTROL AND MANAGEMENT REGULATORY COMMITMENTS OF THE PROPOSED TRANSACTION.**

A. As detailed in Exhibit AEG-3, there are a number of items to ensure the Proposed Transaction does not have any adverse impacts on customers or other interested stakeholders, including the Commission. First, for at least five years after closing, as a result of the Proposed Transaction, there will be no material involuntary changes to EPE's workforce.<sup>5</sup> Second, EPE's existing headquarters will remain in El Paso, Texas, for so long as IIF US 2 is invested in EPE. Third, EPE's CEO and EPE's senior management will continue to have day-to-day control over EPE's operations and will continue to reside in the El Paso, Texas, and Las Cruces, New Mexico, vicinity. Fourth, EPE's local management will remain the primary point of contact for all regulatory, operational, and community engagement matters.

**Q. WHY HAS IIF US 2 AGREED TO THESE PROVISIONS SPECIFICALLY?**

A. IIF has great respect for EPE's strong leadership team and has made these Regulatory Commitments to ensure EPE's management remains local and in place. These Regulatory Commitments are also consistent with how IIF approaches its portfolio companies generally, which is to support a strong local management team and ensure appropriate oversight with qualified boards made up of predominantly independent directors. Not only do EPE's management team and workforce benefit from these

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<sup>5</sup> As discussed by Mr. Hirschi, EPE's former CEO, Mary Kipp, did recently make a personal choice to leave EPE to pursue another opportunity. However, Adrian Rodriguez, EPE Senior Vice President, General Counsel, and Assistant Corporate Secretary, was appointed by the Board of Directors of EPE to serve as interim CEO.

Regulatory Commitments, but EPE, its customers, and the community benefit from continued strong leadership and management.

**Q. ARE THERE OTHER MANAGEMENT REGULATORY COMMITMENTS?**

A. Yes. Joint Applicants also made Regulatory Commitments regarding the composition of EPE's Board of Directors. EPE currently has eight Directors on its Board. Pursuant to the Regulatory Commitments, EPE's post-closing Board of Directors will be comprised of ten Directors, of which:

- a. One will be EPE's CEO;
- b. Up to two will be IIF US 2-level representatives (members of the Infrastructure Investments Group); and
- c. The remaining seven Directors, including the Board's Chairperson, will satisfy the definition of NYSE Independent Directors. Of the seven NYSE Independent Directors:
  - i. at least two will reside within EPE's service territory; and
  - ii. at least two will be individuals that either served on EPE's Board immediately before the transaction, are local business/community leaders or are from a university within EPE's service territory.

In addition, EPE Board meetings will take place in Las Cruces, New Mexico at least once a year.

**Q. ARE THERE ANY OTHER CONTROL/MANAGEMENT REGULATORY COMMITMENTS?**

A. Yes. IIF US 2 has committed to maintain a controlling ownership interest in EPE for at least ten years after closing.

**Q. WHY HAS IIF US 2 AGREED TO MAINTAIN ITS INVESTMENT FOR AT LEAST TEN YEARS?**

A. As a perpetual life vehicle, IIF is "in it for the long haul." We invest in people and companies with business plans that we believe will be successful over a long period of time rather than looking for short-term investments, and we have no requirement to sell companies in any time horizon. EPE will be part of that strategy and will be a flagship investment in IIF's portfolio. To quell any concerns about "flipping" EPE, IIF US 2

1 committed to maintaining a controlling ownership interest in EPE for at least ten years,  
2 but IIF US 2 currently expects to hold the investment for much longer.

3 **E. Employment**

4 **Q. PLEASE DESCRIBE JOINT APPLICANTS' EMPLOYMENT REGULATORY**  
5 **COMMITMENTS.**

6 A. Joint Applicants have agreed that for at least five years after closing, as a result of the  
7 Proposed Transaction, EPE will not implement any material involuntary workforce  
8 reductions or changes to wages, benefits, and other terms and conditions of employment  
9 in effect before the Proposed Transaction.

10 **Q. ARE THERE ANY OTHER EMPLOYMENT-RELATED REGULATORY**  
11 **COMMITMENTS ASSOCIATED WITH THE TRANSACTION?**

12 A. Yes. Joint Applicants have agreed to honor the terms of EPE's existing collective  
13 bargaining agreements.

14 **Q. WHY HAS IIF US 2 MADE THESE REGULATORY COMMITMENTS?**

15 A. IIF US 2 made these Regulatory Commitments because they are consistent with IIF's and  
16 EPE's values and to ensure that EPE's workforce, including union and non-union  
17 employees and management, will remain in place for the benefit of this workforce and  
18 EPE's customers and communities.

19 **V. Statutory and Other Factors**

20 **Q. ARE YOU FAMILIAR WITH THE STATUTORY FACTORS THAT THE**  
21 **COMMISSION MUST CONSIDER IN EVALUATING THE PROPOSED**  
22 **TRANSACTION?**

23 A. Generally, yes. I am aware that the Commission has jurisdiction over this proceeding  
24 under Public Utility Regulatory Act ("PURA") §§ 14.101, 39.262, and 39.915.

1 **Q. PLEASE BRIEFLY DESCRIBE THE FACTORS THE COMMISSION MUST**  
2 **CONSIDER UNDER PURA § 14.101(b) AND (c).**

3 A. PURA § 14.101 requires the Commission consider whether the Proposed Transaction will  
4 (1) adversely affect the health or safety of customers or employees; (2) result in the  
5 transfer of jobs of citizens of the State of Texas to workers domiciled outside this state; or  
6 (3) result in the decline of service. PURA § 14.101 also requires the Commission to  
7 consider the reasonable value of the property, facilities, or securities to be acquired,  
8 disposed of, merged, transferred, or consolidated, and whether the utility will receive  
9 consideration equal to the reasonable value of the assets when it sells, leases, or transfers  
10 assets.

11 **Q. PLEASE BRIEFLY DESCRIBE THE FACTORS THE COMMISSION MUST**  
12 **CONSIDER UNDER PURA §§ 39.262 AND 39.915.**

13 A. PURA §§ 39.262 and 39.915 require an electric utility to report and obtain the  
14 Commission's approval before closing a transaction in which: (1) the electric utility will  
15 be merged or consolidated with another electric utility; (2) at least 50% of the stock of the  
16 electric utility will be transferred or sold; or (3) a controlling interest or operational  
17 control of the electric utility will be transferred. Similar to PURA § 14.101, to approve a  
18 transaction, the Commission must find that the proposed transaction is in the "public  
19 interest." In making its public interest determination under these provisions, the  
20 Commission must consider whether the transaction:

- 21 • Will adversely affect the reliability of service of the electric utility;
- 22 • Will adversely affect the availability of service of the electric utility; or
- 23 • Will adversely affect the cost of service of the electric utility.

24 **Q. WILL THE PROPOSED TRANSACTION ADVERSELY AFFECT THE HEALTH**  
25 **OR SAFETY OF CUSTOMERS OR EMPLOYEES?**

26 A. No. As all three EPE witnesses discuss, the Proposed Transaction will not adversely  
27 affect the health or safety of customers or employees. Based on the Regulatory  
28 Commitments and the business continuity offered by IIF US 2's ownership model, EPE  
29 will see no changes to the day-to-day operations of EPE. Health and safety is a top  
30 priority for IIF, and the Occupational Safety and Health Administration and other

regulatory bodies have recognized a number of IIF's portfolio companies for their excellent performance in this area.

**Q. WILL THE PROPOSED TRANSACTION RESULT IN THE TRANSFER OF JOBS OF TEXAS CITIZENS TO WORKERS DOMICILED OUTSIDE THIS STATE?**

A. No. As all three EPE witnesses discuss, after closing, the management team will remain headquartered in El Paso, and no Texas jobs will be transferred outside this state.

**Q. WILL THE PROPOSED TRANSACTION RESULT IN THE DECLINE OF SERVICE?**

A. No. Joint Applicants are committed to providing the safe, clean, affordable, and reliable electric service that customers and the Commission expect and deserve. That is why IIF US 2 has committed to funding EPE's current five-year capital expenditure plan and, for a period of five years, as a result of the Proposed Transaction, to no material involuntary layoffs. As all three EPE witnesses testify, EPE will continue to fulfill its statutory obligation to provide safe and reliable electric service with no decline in service quality.

**Q. WILL THE PROPOSED TRANSACTION ADVERSELY AFFECT EPE'S RELIABILITY OF SERVICE?**

A. No. For reasons I discuss above and as all three EPE witnesses discuss, the Proposed Transaction will not adversely affect the reliability of service. IIF has a track record of investing in reliability and safety projects and looks forward to supporting EPE in its efforts to continue providing reliable service to its customers.

**Q. WILL THE PROPOSED TRANSACTION ADVERSELY AFFECT EPE'S AVAILABILITY OF SERVICE?**

A. No. Joint Applicants are committed to the continued funding of the capital additions and improvements necessary to serve all of EPE's customers in a safe, clean, affordable, and reliable manner. All three EPE witnesses also address this question.



1 **Q. WILL THE PROPOSED TRANSACTION ADVERSELY AFFECT THE COST**  
2 **OF SERVICE OF EPE?**

3 A. No. The Proposed Transaction is a change in the upstream ownership of EPE that will  
4 not affect EPE's cost of service. Mr. Hirschi and Mr. Schichtl discuss this question as  
5 well. EPE's rates will be set in the same manner as they are today. Furthermore, as I  
6 previously discussed, Joint Applicants have committed not to seek recovery of the  
7 premium paid to shareholders or the costs associated with the Proposed Transaction.

8 **Q. DOES THE PROPOSED TRANSACTION RESULT IN TANGIBLE AND**  
9 **QUANTIFIABLE BENEFITS TO TEXAS CUSTOMERS ON A TIMELY BASIS?**

10 A. Yes. The Regulatory Commitments offer significant tangible and quantifiable benefits to  
11 Texas customers. First, EPE's current customers will benefit from the \$21 million credit,  
12 all the while not being responsible for the acquisition premium and transaction costs.  
13 Second, Joint Applicants' capital expenditure Regulatory Commitment will enhance  
14 EPE's ability to fulfill commitments to its customers and communities, including  
15 investment in renewable energy resources, local generation, and other infrastructure  
16 needs.

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

23 Mr. Hirschi and Mr. Schichtl also address these factors in their direct testimonies.

24 **Q. WILL THE PROPOSED TRANSACTIONS CAUSE TEXAS CUSTOMERS TO**  
25 **BEAR TRANSACTION COSTS UNRELATED TO CORRESPONDING**  
26 **BENEFITS TO TEXAS CUSTOMERS?**

27 A. No. As Mr. Hirschi and Mr. Schichtl also discuss, Joint Applicants have committed not  
28 to seek recovery in rates of the expenses related to the Proposed Transaction.

1 **Q. IS THE PROPOSED TRANSACTION A MEANS OF EVADING REGULATION?**

2 A. No. EPE will remain subject to the same regulatory oversight that it experiences today.  
3 The Commission's and municipalities' authority and jurisdiction will not change because  
4 of an upstream ownership change. Mr. Schichtl addresses these factors in more detail in  
5 his direct testimony.

6 **Q. IS THERE A DATE CERTAIN BY WHICH JOINT APPLICANTS MUST**  
7 **OBTAIN ALL APPROVALS FOR THE PROPOSED TRANSACTION?**

8 A. Article VIII of the Merger Agreement addresses termination rights. Subject to certain  
9 exceptions provided for in Section 8.01(b) of the Merger Agreement, either EPE or Sun  
10 Jupiter has the right to terminate the Merger Agreement if the Proposed Transaction has  
11 not closed by June 1, 2020.

12 **VI. Conclusion**

13 **Q. PLEASE SUMMARIZE YOUR DIRECT TESTIMONY.**

14 A. The Proposed Transaction is in the public interest. It brings value to all stakeholders—  
15 EPE, EPE's Texas and New Mexico service territory, EPE's employees, the communities  
16 within which EPE operates, and EPE's shareholders. IIF US 2's investment will enhance  
17 EPE's ability to meet growing service area needs, including renewable energy and  
18 sustainability initiatives, while EPE remains an independently operated, locally managed,  
19 regulated utility headquartered in El Paso, Texas.

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

21 A. Yes, it does.

**AFFIDAVIT OF ANDREW E. GILBERT**

THE STATE OF NEW YORK )  
 )  
COUNTY OF NEW YORK )

This day, Andrew E. Gilbert the affiant, appeared in person before me, a notary public, who knows the affiant to be the person whose signature appears below. The affiant stated under oath:

My name is Andrew E. Gilbert. I am of legal age and a resident of the State of New Jersey. The foregoing testimony offered by me is true and correct, and the opinions stated therein are, to the best of my knowledge, accurate, true, and correct.

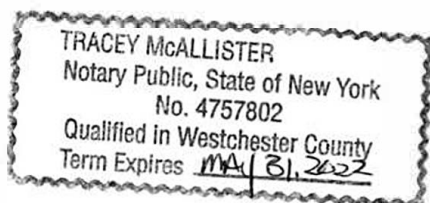
  
\_\_\_\_\_  
Andrew E. Gilbert

SUBSCRIBED AND SWORN TO BEFORE ME, notary public, on this the 12<sup>th</sup> day of August, 2019.

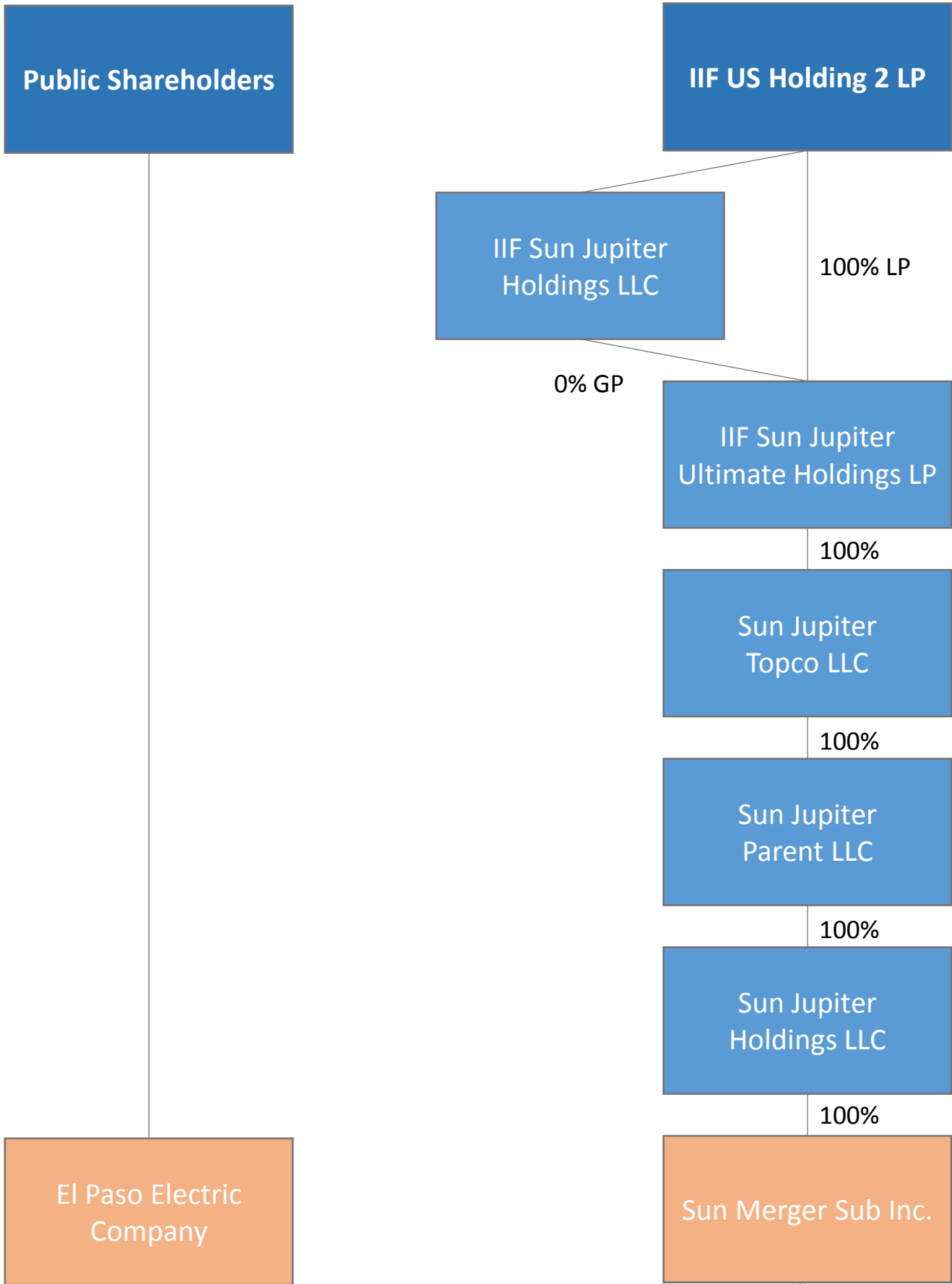
  
\_\_\_\_\_  
Notary Public, State of NEW YORK

My Commission expires:

MAY 31, 2022

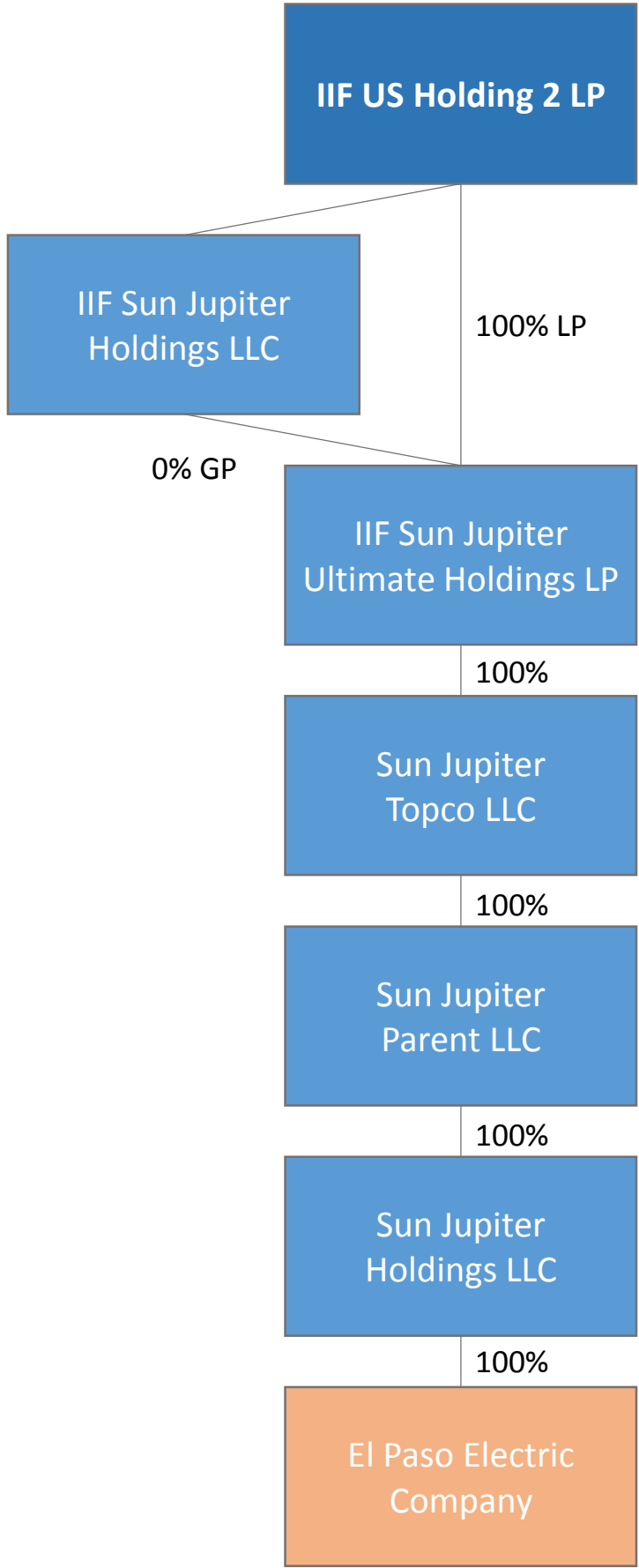


Pre-Closing Structures



*Transaction to be effected through the merger of El Paso Electric Company and a newly formed Merger Sub, with El Paso Electric Company surviving the merger*

Post-Closing Structure



**EXHIBIT AEG-2 (HSPM)**

This Exhibit contains information that is highly sensitive and will be provided under the terms of the Proposed Protective Order entered in this case.

## **REGULATORY COMMITMENTS**

### **Economic Development and Community Commitments**

1. Commitment to dedicate \$100 million to promote economic development in El Paso Electric Company's ("EPE") service territory, including the City of El Paso, Texas and Las Cruces, New Mexico, to be funded and allocated at a level of \$5 million per year for 20 years. Contributions to the fund will not be recoverable in rates.
2. Maintain EPE's annual amount of charitable giving following the Proposed Transaction at EPE's average annual charitable giving level for the three-year period ending December 31, 2018 (i.e., approximately \$1.2 million per year).
3. Maintain EPE's existing low-income assistance programs while evaluating potential methods to improve such programs.
4. 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.
5. Create apprenticeship programs for technical and professional positions for students in local high schools and colleges.
6. Continue and enhance utility supplier diversity by promoting the inclusion of minority-, women-, LGBTQ-, and veteran-owned businesses into EPE's supply chain.
7. Study and evaluate growth opportunities related to electric vehicles, distributed generation, and battery storage in collaboration with The University of Texas at El Paso and New Mexico State University.
8. EPE will support Texas Renewable Portfolio Standards and the New Mexico Energy Transition Act.
9. EPE shall report annually to the New Mexico Public Regulation Commission ("NMPRC") the status of efforts during the prior calendar year to add renewable energy to its power supply portfolio and assure compliance toward the New Mexico Energy Transition Act. Such report shall include a description of efforts to diversify the renewable energy sources considered and an explanation as to what determinations were made and the basis therefor.

### **Rate and Capital Expenditure Commitments**

10. EPE will issue a rate credit to its Texas and New Mexico customers in a total aggregate amount for all customers of \$21 million. The rate credit will be distributed among customers in 36 monthly installments starting shortly after closing of the Proposed Transaction. EPE will not attempt to recover the value of this rate credit in future rate cases.
11. No recovery in rates of acquisition premium will be sought.

12. No recovery in rates of transaction costs will be sought.
13. EPE will continue to make minimum capital expenditures in an amount equal to EPE's current five-year budget for the five-year period beginning January 1, 2021, subject to the following adjustments: EPE may reduce capital spending due to conditions not under EPE's control, including, without limitation, siting delays, cancellations of projects by third-parties, weaker than expected economic conditions, or if EPE determines that a particular expenditure would not be prudent.

### **Ring-Fencing Commitments**

14. EPE will maintain an existence that is separate and distinct from Sun Jupiter Holdings LLC ("Sun Jupiter"), IIF US Holding 2 LP ("IIF US 2"), and any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II), including, its separate name, logo, franchises, obligations, and privileges.
15. IIF US 2 shall take the actions necessary to ensure the existence of EPE's stand-alone credit and debt ratings, as applicable.
16. In connection with the Proposed Transaction, IIF US 2 has created Sun Jupiter, an indirect, wholly-owned special-purpose entity, to hold 100% of the equity interests in EPE.
17. Sun Jupiter will be retained between EPE and IIF US 2 for so long as IIF US 2 owns EPE.
18. EPE will not guarantee the debt or credit instruments of Sun Jupiter, IIF US 2, or any other affiliate (excluding EPE and Rio Grande Resources Trust II).
19. EPE's assets, revenues, or stock shall not be pledged by Sun Jupiter, IIF US 2, or any of its affiliates or subsidiaries, for the benefit of any entity other than EPE.
20. Neither EPE nor Sun Jupiter will enter into any inter-company debt transactions with IIF US 2 or any of its affiliates or subsidiaries post-closing, unless approved by the Public Utility Commission of Texas ("Commission") and NMPRC.
21. Neither EPE nor Sun Jupiter will share credit facilities with one another nor with IIF US 2 or any of its affiliates or subsidiaries.<sup>1</sup>
22. EPE will not include in any of its debt or credit agreements cross-default provisions relating to Sun Jupiter, and neither EPE nor Sun Jupiter will include in any of its debt or credit agreements cross-default provisions relating to the securities of IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II).
23. EPE's debt or credit agreements will not include any financial covenants or rating-agency triggers related to Sun Jupiter or IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II), nor will Sun Jupiter's debt or credit agreements

<sup>1</sup> Sun Jupiter Parent LLC will be a party to certain financing agreements for the limited purpose of providing a limited guarantee to the lenders to Sun Jupiter.

- include any financial covenants or rating-agency triggers related to IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II).
24. EPE will not incur, guaranty, or pledge assets for any new incremental debt related to the Proposed Transaction.
  25. Neither EPE nor Sun Jupiter will seek to recover from EPE's customers any costs incurred as a result of a bankruptcy of IIF US 2 or any of its affiliates (excluding EPE).
  26. Following closing of the Proposed Transaction, EPE's CEO and other senior management who directly report to the CEO will hold no positions with IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Sun Jupiter).
  27. IIF US 2 will obtain a non-consolidation legal opinion that provides that, in the event of a bankruptcy of IIF US 2, Sun Jupiter, or any of its affiliates, a bankruptcy court will not consolidate the assets and liabilities of EPE with IIF US 2, Sun Jupiter, or any affiliate of IIF US 2.
  28. Neither EPE nor Sun Jupiter will transfer any material assets or facilities to any affiliates, other than a transfer that is on an arm's-length basis consistent with the Commission and NMPRC affiliate standards as applicable to EPE.
  29. Each of EPE and Sun Jupiter will maintain an arm's-length relationship with one another and with IIF US 2 and its affiliates, consistent with the Commission and NMPRC affiliate standards as applicable to EPE.
  30. IIF US 2 will provide the Commission and NMPRC access to its books and records, as well as those of its affiliates, as necessary to facilitate either commission's audit or review of any affiliate transactions as between EPE and IIF US 2 or IIF US 2's affiliates.
  31. Each of EPE and Sun Jupiter will maintain accurate, appropriate, and detailed books, financial records and accounts, including checking and other bank accounts, and custodial and other securities safekeeping accounts that are separate and distinct from those of any other entity.
  32. EPE will suspend payment of dividends or other distributions, except for contractual tax payments, until otherwise allowed by the Commission and NMPRC if issuance of the dividend or distribution would cause the equity component of EPE's debt-to-equity ratio to fall below that established from time to time by the Commission and NMPRC for EPE ratemaking purposes.
  33. The equity component of EPE's debt-to-equity ratio will not fall below that established from time to time by the Commission and NMPRC for EPE ratemaking purposes.
  34. Sun Jupiter and its affiliates will not represent to the public or creditors that EPE has any liability for Sun Jupiter or IIF US 2 obligations.



35. EPE will be a party to a consolidated corporate tax return with Sun Jupiter, which will be carried out subject to a formal tax sharing agreement and policy.

### **Local Control and Management Commitments**

36. EPE's existing headquarters will remain in El Paso, Texas for so long as IIF US 2 owns EPE.
37. EPE's CEO and EPE's senior management will continue to have day-to-day control over EPE's operations and senior management will continue to reside in the El Paso, Texas and Las Cruces, New Mexico vicinity.
38. EPE's local management will remain the primary point of contact for all regulatory, operational, and community engagement matters.
39. EPE's post-closing Board of Directors will comprise of ten (10) Directors, of which:
- One (1) will be EPE's CEO;
  - Up to two (2) will be IIF US 2-level representatives (members of the Infrastructure Investments Group); and
  - The remaining seven (7), including the Board's Chairperson, will satisfy the definition of New York Stock Exchange ("NYSE") Independent Directors.

Of the seven (7) NYSE Independent Directors:

- At least two (2) will reside within EPE's service territory; and
  - At least two (2) will be individuals that either served on EPE's Board immediately prior to the Proposed Transaction, are local business/community leaders or are from a university within EPE's service territory.
40. EPE Board meetings will take place in Las Cruces, New Mexico at least once per year.
41. IIF US 2 will maintain a controlling ownership interest in EPE for at least ten (10) years post-closing.

### **Employment Commitments**

42. For at least five (5) years post-closing, as a result of the Proposed Transaction, EPE will not implement any material involuntary workforce reductions or changes to wages, benefits and other terms and conditions of employment in effect prior to the Proposed Transaction.
43. EPE will honor the terms of EPE's existing collective bargaining agreements.

**DOCKET NO. \_\_\_\_\_**

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

**DIRECT TESTIMONY**

**AND EXHIBITS**

**OF**

**ELLEN LAPSON**

**ON BEHALF OF**

**SUN JUPITER HOLDINGS LLC**

**AND**

**IIF US HOLDING 2 LP**

**August 13, 2019**

DOCKET NO. \_\_\_\_\_

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

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**EXHIBITS**

|              |                                                             |
|--------------|-------------------------------------------------------------|
| Exhibit EL-1 | Lapson Experience and Credentials                           |
| Exhibit EL-2 | Equity Market Capitalization of Electric and Gas Utilities  |
| Exhibit EL-3 | Equivalence of Credit Rating Scales                         |
| Exhibit EL-4 | Moody’s Reports on EPE Credit                               |
|              | 4.1 Moody’s Rating Action of March 26, 2018                 |
|              | 4.2 Moody’s Credit Opinion of March 27, 2019                |
|              | 4.3 Moody’s Rating Action of July 1, 2019                   |
| Exhibit EL-5 | S&P Reports on EPE Credit                                   |
|              | 5.1 S&P Summary of May 21, 2018                             |
|              | 5.2 S&P Research Update of June 5, 2019                     |
| Exhibit EL-6 | Ring-Fencing Standards                                      |
| Exhibit EL-7 | Evaluation of Applicants’ Proposed Ring-Fencing Commitments |
| Exhibit EL-8 | S&P Group Credit Methodology                                |

**GLOSSARY OF ACRONYMS AND DEFINED TERMS**

| <b><u>Acronym/Defined Term</u></b> | <b><u>Meaning</u></b>                                                                                                                                                                                     |
|------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cash Flow Leverage Metrics         | Ratios used by credit rating agencies to assess debt leverage by comparison of the level of debt and debt-like liabilities with a measure of operating cash flow.                                         |
| Commission                         | Public Utility Commission of Texas                                                                                                                                                                        |
| Company                            | El Paso Electric Company                                                                                                                                                                                  |
| EPE                                | El Paso Electric Company                                                                                                                                                                                  |
| Fitch                              | Fitch Ratings                                                                                                                                                                                             |
| IIF US 2                           | IIF US Holding 2 LP                                                                                                                                                                                       |
| Joint Applicants                   | EPE, Sun Jupiter, and IIF US 2                                                                                                                                                                            |
| Moody's                            | Moody's Investors Service                                                                                                                                                                                 |
| NMPRC                              | New Mexico Public Regulatory Commission                                                                                                                                                                   |
| S&P or S&P Global Ratings          | Standard & Poor's                                                                                                                                                                                         |
| SACP                               | Stand-alone credit profile (a partial component of S&P's final credit rating of entities that are subsidiary companies and whose formal ratings are produced using S&P's consolidated rating methodology) |
| Sun Jupiter                        | Sun Jupiter Holdings LLC                                                                                                                                                                                  |
| TCJA                               | Tax Cuts and Jobs Act of 2017                                                                                                                                                                             |
| Proposed Transaction               | Proposed acquisition of EPE by Sun Jupiter                                                                                                                                                                |

**DIRECT TESTIMONY AND EXHIBITS OF ELLEN LAPSON****I. INTRODUCTION**

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

A. My name is Ellen Lapson, CFA. My business address is 370 Riverside Drive, New York, New York 10025.

**Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

A. I am the founder and principal of Lapson Advisory, a private company that is a division of Trade Resources Analytics, LLC. Through Lapson Advisory, I provide independent consulting services relating to the financial strength of utilities and infrastructure companies. I advise client companies on access to capital and debt markets. I frequently testify as an expert witness relating to utility finance and utility capital market matters. Also, I develop and teach executive seminars about utility investment analysis, credit evaluation, and corporate finance.

**Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL EXPERIENCE.**

A. I am a Chartered Financial Analyst (“CFA”) and earned a Master of Business Administration from New York University Stern School of Business with a specialization in Accounting. I have worked in the capital markets space with particular focus on financing or analyzing the finances of regulated public utilities for the past 50 years. The list of my professional qualifications appears in Exhibit EL-1.

**Q. ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

A. I am appearing on behalf of applicants Sun Jupiter Holdings LLC (“Sun Jupiter”) and IIF US Holding 2 LP (“IIF US 2”) in an application regarding the proposed acquisition of El Paso Electric Company (“EPE”) by Sun Jupiter (the “Proposed Transaction”). Because Sun Jupiter is a holding company and IIF US 2 is providing the equity for the Proposed Transaction, I primarily use “IIF US 2” throughout my testimony when discussing the commitments made in the Proposed Transaction, though the commitments apply equally to Sun Jupiter. I refer to EPE, Sun Jupiter, and IIF US 2 as the “Joint Applicants.”

**Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS (“COMMISSION”) OR OTHER UTILITY REGULATORY COMMISSIONS?**

A. I have filed written testimony before the Commission in the following proceedings:

- Application of Entergy Texas, Inc. to Amend its Certificate of Convenience and Necessity to Construct Montgomery County Power Station in Montgomery County, Docket No. 46416, on behalf of Entergy Texas, Inc.;
- Application of Oncor Electric Delivery LLC for Authority to Change Rates, Docket No. 46957, on behalf of Oncor;
- Application of Southwestern Public Service for Authority to Change Rates, Docket No. 47527, in Supplemental Direct Testimony on behalf of Southwestern Public Service Co.;
- Application of Entergy Texas, Inc. to Change Retail Rates, Docket No. 48371, on behalf of Entergy Texas, Inc.;
- Application of Texas-New Mexico Power to Change Retail Rates, Docket No. 48401, on behalf of TNMP;
- Joint Report and Application of Oncor Electric Delivery Company LLC, Sharyland Distribution & Transmission Services, L.L.C., Sharyland Utilities, L.P., and Sempra Energy for Regulatory Approvals Under PURA §§ 14.101, 37.154, 39.262 and 39.915, Docket No. 48929, on behalf of Sharyland Utilities, L.P.; and
- Application of Centerpoint Energy Houston Electric, LLC for Authority to Change Rates, Docket No. 49421, on behalf of Centerpoint Energy Houston Electric, LLC.

I have also provided testimony as a financial expert in other state jurisdictions and at the Federal Energy Regulatory Commission, as summarized in Exhibit EL-1.

**Q. WHAT IS THE BASIS FOR YOUR EXPERTISE IN MATTERS RELATING TO UTILITY RING-FENCING REGIMES, CORPORATE SEPARATION, AND GOVERNANCE?**

A. Before I founded Lapson Advisory in 2012, I was a Senior Director and then a Managing Director at Fitch Ratings (“Fitch”), one of the three prominent credit rating agencies in the U.S. market. My team established and maintained the credit ratings of investor-owned electric, gas, and water utilities. For 17 years in that role at Fitch, I performed credit evaluations and supervised other analysts to rate hundreds of electric, gas, and water utilities. Also, I supervised and wrote the credit rating methodologies applied in the investor-owned electric, gas, and water sector including utility ring-fencing criteria.

While at Fitch, I was a member and then the chair of the Criteria Committee that oversaw Fitch's global corporate rating criteria, including its policies on the credit effects of corporate structure and ring-fencing. I closely studied the credit criteria and policies of the two other large credit rating agencies (i.e., Moody's Investors Service ("Moody's") and Standard & Poor's ("S&P Global Ratings" or "S&P")) with regard to the effects of corporate structure and ring fencing on their ratings of subsidiary companies.

Prior to joining Fitch Ratings, I was employed for 20 years from 1974 to 1994 in commercial banking and investment banking where my specialty was structuring transactions for regulated utilities, utility holding companies, and project financed energy and natural resource projects, often including bankruptcy-remote special purpose funding entities, partnership structures, and limited liability companies.

Since founding Lapson Advisory, I have served as an expert witness in regulatory proceedings involving the merger applications of several large electric or gas utilities on the topic of ring-fencing and the effect of their corporate structure and governance upon the utilities' future viability and financial strength.<sup>1</sup>

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

A. I am testifying as a financial expert on behalf of IIF US 2 and Sun Jupiter regarding the impact of the Transaction on the future financial condition of EPE and EPE's expected access to debt and equity capital. I will also evaluate the effectiveness of the Applicants' proposed ring-fencing and corporate governance commitments to protect the interests of EPE's customers and the public.

**Q. HOW IS YOUR TESTIMONY ORGANIZED?**

A. The remainder of my testimony is comprised of the following sections:

II. Executive Summary and Conclusions

III. Transaction Impact on EPE's Future Finances

A. EPE's Current Financial Circumstances

B. Impact of the Transaction on EPE's Access to Credit

---

<sup>1</sup> In this testimony, the term "corporate" in the context of "corporate structure," "corporate separation," or "corporate group" refers not only to entities structured as corporations but also to partnerships, limited partnerships, limited liability companies ("LLCs"), and related forms of enterprise ownership.

1 C. Impact of the Transaction on EPE's Access to Credit Equity

2 IV. Proposed Protective Measures

3 A. Background on Ring-Fencing Protective Measures

4 B. Evaluating the Ring-Fencing Conditions Proposed by Joint Applicants

5 V. Conclusion and Recommendations

## 6 II. EXECUTIVE SUMMARY AND CONCLUSIONS

7 I have reviewed the business combination agreed to by EPE and Sun Jupiter and  
8 in particular three financial topics relating to the combination of these entities.

9 First, EPE as a subsidiary of IIF US 2 will continue to have access to equity  
10 capital funding possibly superior to and at least as good as it now has as an independent  
11 entity. I conclude that IIF US 2 can provide common equity capital to its subsidiary EPE  
12 at least equivalent to EPE's current ability to raise equity capital as an independent  
13 company with shares listed on a national stock exchange. In fact, IIF US 2's ability to  
14 supply equity capital to meet EPE's future needs is possibly superior to EPE's current  
15 capability because equity infusions coming from IIF US 2's investor base would not be  
16 burdened by fees and commissions, legal fees and other overhead would be reduced, and  
17 EPE would not have to pay the bid-asked spread on new equity issues. In addition, it is  
18 likely to the advantage of EPE and EPE's customers that IIF US 2's equity investor base  
19 takes a longer-term investment perspective than typical equity market investors.

20 Second, EPE will continue to have comparable sources of debt funding from the  
21 debt capital market and bank credit facilities that it has currently. Additionally, given the  
22 size of the Infrastructure Investments Fund,<sup>2</sup> of which IIF US 2 is a part, and its strong  
23 relationships with the lending community, EPE will not only have access to the same  
24 sources of debt capital as it does today, but I would expect EPE to receive additional  
25 attention and consideration from entities that lend in the debt markets. EPE may benefit  
26 from a larger pool of potential investors in its debt securities. In my opinion, EPE's  
27 credit ratings will be protected from downgrade as a result of the financial protections

---

<sup>2</sup> Additional detail regarding the Infrastructure Investments Fund, including its investment size and footprint and its specific experience with owning regulated utilities, is provided in the direct testimony of Andrew E. Gilbert.