

1 included with the Proposed Transaction, although it is quite possible that EPE will  
2 experience a one-notch downgrade of its Moody's rating due to weaker cash flow,  
3 regardless of whether the Proposed Transaction is consummated. As is discussed below,  
4 Moody's placed EPE on negative credit outlook more than a year before the  
5 announcement of the Proposed Transaction, therefore any future downgrade by Moody's  
6 would likely be the result of factors unrelated to the Proposed Transaction. While both  
7 Moody's and S&P took ratings action following the announcement of the merger  
8 agreement, when the Proposed Transaction closes the protection of the credit ratings of  
9 EPE will be aided by the full and complete set of ring-fencing commitments proposed by  
10 the Joint Applicants.

11 In preparing my Direct Testimony, I compared the ring-fencing provisions  
12 proposed by the Joint Applicants against a systematic and comprehensive list of standards  
13 that reflects my prior experience regarding credit defaults and bankruptcies particularly in  
14 the utility and energy sector. This master list of standards incorporates the guidelines  
15 applied by the three major credit rating agencies. The Joint Applicants' proposed ring-  
16 fencing provisions satisfy every aspect of these standards. Taken together, these  
17 protective provisions will provide strong separation for EPE and EPE's customers and  
18 communities from risk of involuntary consolidation in bankruptcy with Sun Jupiter, IIF  
19 US 2, or any IIF US 2 affiliate. Equally important, the proposed ring-fencing provisions  
20 will enable EPE to retain access to all of its own financial and physical assets and cash  
21 flow so that EPE can properly conduct its business and remain viable, even in the case of  
22 financial distress of Sun Jupiter, IIF US 2, or any IIF US 2 affiliate.

23 Therefore, I recommend that the Commission approve the Proposed Transaction,  
24 including the proposed protective mechanisms.

### 25 III. TRANSACTION IMPACT ON EPE'S FUTURE FINANCES

#### 26 A. EPE's Current Financial Circumstances

27 **Q. PLEASE DESCRIBE EPE'S CURRENT CIRCUMSTANCES AS AN**  
28 **INDEPENDENT INVESTOR-OWNED ELECTRIC UTILITY.**

29 A. EPE is a relatively small independent investor-owned utility. Other electric operating  
30 utilities that are comparable in size to EPE are generally subsidiaries of larger holding

1 company groups, while EPE functions as a stand-alone company with a geographically  
2 concentrated customer base. EPE's shares are traded on the NYSE, where EPE is among  
3 the smallest shareholder-owned companies in the electric and gas utility sector. EPE's  
4 small size is evident from the information provided in Exhibit EL-2, which shows a  
5 comparison of 52 electric and gas utilities ranked by magnitude of market capitalization  
6 (that is, the value of an entity's common equity at the prevailing market price.)<sup>3</sup> EPE is  
7 48<sup>th</sup> out of 52 companies and represents a mere 0.3% of the aggregate market valuation of  
8 the sector.

9 **Q. WHAT IS EPE'S CURRENT FINANCIAL CONDITION?**

10 A. EPE is solvent and financially sound, with investment grade credit ratings in the broad  
11 category of Baa and BBB from both Moody's and S&P, respectively.<sup>4</sup>

12 Moody's Baa1 rating for EPE is only one notch below the sector median rating of  
13 A3 for Moody's portfolio of 111 rated U.S. investor-owned electric operating utilities.  
14 However, the agency placed EPE's rating on Outlook Negative over a year ago on March  
15 26, 2018 due to Moody's expectation that EPE's cash flows will decrease due to the  
16 implementation of the Tax Cut and Jobs Act of 2017 ("TCJA"), increasing capital  
17 expenditures, and rising dividends.<sup>5</sup> Prior to the announcement of EPE's merger  
18 agreement with Sun Jupiter, Moody's rating outlook for EPE was on Outlook Negative.  
19 In a credit update published on March 27, 2019, Moody's commented that "[EPE] has an  
20 adequate liquidity profile."

21 S&P rates the credit of EPE at BBB, equivalent to a rating one notch below  
22 Moody's Baa1 rating. S&P commented in a May 2018 report that "El Paso Electric has  
23 adequate liquidity and can more than cover its needs for the next 12 months, even if  
24 EBITDA declines by 10%."<sup>6</sup> S&P assessed EPE's business risk position as Strong and  
25 financial risk as Significant (using the rating agency's benchmarks for companies of

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<sup>3</sup> The 52 North American utilities with publicly-traded equity securities in Exhibit EL-2 were selected by Bank of America as potential competitors to EPE in the capital market or comparable companies.

<sup>4</sup> The correspondence of the rating scales of Moody's and S&P is presented in Exhibit EL-3.

<sup>5</sup> Moody's, "Rating Action: Moody's Affirms El Paso Electric at Baa1; Outlook Revised to Negative," March 26, 2018 (Exhibit EL-4.1).

<sup>6</sup> S&P Global Ratings, "Summary, El Paso Electric Co.," May 21, 2018 (Exhibit EL-5.1).

1 medial volatility). Immediately prior to the announcement of EPE's merger agreement  
2 with Sun Jupiter, S&P's rating outlook was Stable.

3 **Q. WHAT CHALLENGES DO INVESTORS SEE FOR EPE AS AN INDEPENDENT**  
4 **COMPANY?**

5 A. Equity and fixed income investors generally mention regulatory risk as a concern; they  
6 consider the regulatory jurisdictions of the City of El Paso and New Mexico to be  
7 challenging, and the Texas regulatory environment has been less supportive for integrated  
8 electric utilities like EPE than it has been for transmission and distribution utilities that  
9 are located within the Electric Reliability Council of Texas, Inc. Another concern is the  
10 heightened capital expenditures that EPE faces in the future, for which external financing  
11 will be required. Tax reform has raised concerns among fixed income investors and  
12 rating agencies about the erosion of EPE's cash flow metrics after implementation of  
13 TCJA and the termination of bonus depreciation; this issue affects credit and fixed  
14 income investment more than it does the equity market. Finally, EPE's small size is  
15 problematic as a trend of consolidation has increased the size of other participants in the  
16 utility sector. Regarding EPE's small size, Moody's commented in its March 2019  
17 Credit Opinion on EPE:

18 **SMALL SIZE AND SCALE CONSTRAIN THE CREDIT PROFILE**

19 [EPE]'s credit profile also factors in its relatively small size and scale as  
20 well as market concentration as it serves about 425,000 customers in a  
21 small area of Texas and New Mexico. Texas accounts for 80% of total  
22 non-fuel revenues, the majority of which are generated in the City of El  
23 Paso, while New Mexico accounts for about 20% of total revenues.  
24 Although [EPE]'s service area is concentrated, we acknowledge that  
25 customer and load growth is expected to continue to surpass national  
26 averages.<sup>7</sup>

27 One of the challenges that EPE faces as a relatively small utility is that it must  
28 compete with much larger utilities for access to lenders and attention from equity analysts  
29 and investors. EPE's market capitalization is only 0.3% of the aggregate market

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<sup>7</sup> Moody's, "Credit Opinion: El Paso Electric Company; Update to Credit Analysis," March 27, 2019 (Exhibit EL-4.2).

capitalization of 52 companies in the utility sector shown in Exhibit EL-2. The top ten companies in that exhibit comprise approximately 54% of the aggregate value of the group, and the top twenty companies comprise over 77% of the aggregate valuation. Investors and analysts have limited time and resources available to cover dozens of companies, so small companies tend to suffer from a dearth of analytical coverage. IIF US 2's indirect ownership of EPE and its greater access to equity capital and credit will resolve this issue.

**B. Impact of the Transaction on EPE's Access to Credit**

**Q. HOW WERE EPE'S CREDIT RATINGS AFFECTED BY THE ANNOUNCEMENT OF THE AGREEMENT TO MERGE WITH SUN JUPITER?**

A. After the announcement of the agreement between Sun Jupiter and EPE, Moody's and S&P each took actions on their rating outlooks. The resulting ratings and outlooks are shown below in Table 1.

**Table 1: El Paso Electric Credit Ratings as of July 24, 2019**

	Prior to Transaction		August 5, 2019	
	May 31, 2019		Credit Rating [1]	Outlook Status
	Credit Rating [1]	Outlook Status	Credit Rating [1]	Outlook Status
Moody's (a)	Baa1	Outlook Negative	Baa1	On Review for Downgrade
S&P (b)	BBB	Stable	BBB	Outlook Negative

(a) Moody's long-term senior unsecured debt rating

(b) S&P's long-term Issuer Credit Rating

[1] A rating of Baa1 by Moody's is equivalent to a credit rating of BBB+ by S&P, and Moody's Baa2 is equivalent to S&P's BBB rating. For the correspondence of credit rating scales of Moody's and S&P, please see Exhibit EL-3.

Moody's: Moody's affirmed the rating of Baa1 but changed EPE's outlook status to "On Watch for Possible Downgrade" from "Outlook Negative." The rationale expressed

1 in the announcement of that change on July 1 of this year indicates that the expected  
2 decline in credit metrics even in the absence of the merger transaction is the leading  
3 factor while the announced change of ownership is a secondary factor that could spur a  
4 downgrade of EPE's rating. Moody's states:

5 The review is prompted by a projected weakening in [EPE]'s financial  
6 metrics and credit profile together with uncertainty around the  
7 implications on [EPE]'s credit of a recently announced acquisition of the  
8 utility by Infrastructure Investments Fund (IIF, not rated), an investment  
9 vehicle advised by J.P. Morgan Investment Management Inc.<sup>8</sup>

10 S&P: In reaction to the merger announcement, S&P changed its outlook from Stable to  
11 Negative, citing the possibility that the combined entity to be formed by the Proposed  
12 Transaction would have higher consolidated debt leverage and uncertainty about the  
13 details of the outcome of the regulatory process. S&P explained the rationale for its  
14 change in outlook as follows:

15 The negative outlook reflects the potential for [EPE]'s consolidated  
16 financial measures to weaken following the proposed acquisition,  
17 including the possibility that IIF could implement financial policies  
18 toward [EPE] that weaken [EPE]'s credit quality. We will continue to  
19 monitor the regulatory approval process and assess the planned funding  
20 strategy for [EPE] and its proposed intermediary holding company as it  
21 develops.<sup>9</sup>

22 **Q. COULD YOU PLEASE EXPLAIN THE DIFFERENCE BETWEEN A CREDIT**  
23 **RATING AGENCY'S "NEGATIVE OUTLOOK" VERSUS "ON REVIEW FOR**  
24 **DOWNGRADE" OR "RATING WATCH NEGATIVE"?**

25 A. Yes. Essentially, rating outlooks communicate a trend over time in underlying credit  
26 fundamentals, while a review for rating change (or rating watch) generally responds to a  
27 specific event or new circumstance.

28 Rating agencies use outlooks to signal an opinion about the likely trend in the  
29 direction of a future change in ratings. A stable outlook indicates a low likelihood of a  
30 rating change over the medium term. A negative or positive outlook indicates a higher

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<sup>8</sup> Moody's, "Rating Action: Moody's places El Paso Electric on Review for Downgrade," July 1, 2019 (Exhibit EL-4.3).

<sup>9</sup> S&P Global Ratings, Research Update, "El Paso Electric Co. Outlook Revised To Negative From Stable On Acquisition By IIF; Ratings Affirmed," June 5, 2019. (Exhibit EL-5.2).

1 likelihood of a rating change in the indicated direction over the medium term. The  
 2 outlook may eventually culminate in a change in the rating or restoration of a stable  
 3 outlook at the original rating, but the timing is not defined.

4 Agencies designate ratings as “on review” (also known as on “rating watch”) when specific events warrant a rating action in the near term, but further information or  
 5 analysis is needed to reach a decision on the certainty of a rating change or the magnitude  
 6 of the potential change. When a rating is “On Review for Upgrade” or “On Review for  
 7 Downgrade,” a rating committee must resolve the rating as soon as the required  
 8 information can be made available.  
 9

10 **Q. WHAT IS YOUR ASSESSMENT OF THESE RESPONSES FROM THE CREDIT**  
 11 **RATING AGENCIES?**

12 A. I would say that the rating agency response was mild. First, as I have already mentioned,  
 13 there was a significant probability that Moody’s would lower EPE’s rating to Baa2 from  
 14 Baa1 simply based upon the stand-alone cash flow metrics of EPE, unless EPE is  
 15 successful in achieving additional cash flows through the regulatory process to offset the  
 16 reduction in cash flow produced by the implementation of TCJA and the elimination of  
 17 bonus depreciation, in combination with higher capital expenditures. Moody’s explained  
 18 its rating rationale as follows:

19 “With increasing, partly debt-funded capital expenditures and the ongoing  
 20 pressure on cash flow from tax reform, we project a decline in El Paso  
 21 Electric’s credit metrics”, said Nana Hamilton, Assistant Vice President.  
 22 These metrics include a ratio of cash flow from operations before working  
 23 capital changes (CFO pre-WC) to debt of around 16% in the near to  
 24 medium term, lower than recent historical levels of just above 18%. This  
 25 level is weak for the company’s Baa1 rating and more in line with slightly  
 26 lower rated vertically integrated peers.<sup>10</sup>

27 This comment suggests that the expected rating for EPE based on its projected cash flow  
 28 ratios with or without the Proposed Transaction will be Baa2, Moody’s rating equivalent  
 29 to the current and expected-to-continue S&P rating of BBB.

30 Second, S&P’s change in outlook from Stable to Negative is the expected  
 31 response to an announced transfer of ownership when the perception is that the acquirer

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<sup>10</sup> Moody’s, July 1, 2019, Exhib.EL-4.3, op.cit.

1 (in this case, Sun Jupiter as the proposed immediate parent) is not financially stronger  
2 than the acquired company and when the details of the transaction are still subject to  
3 change through the regulatory process. In my professional opinion, when the Proposed  
4 Transaction closes, S&P will give recognition to the completeness and robustness of the  
5 protective measures IIF US 2 is offering to separate Sun Jupiter, the direct parent of EPE,  
6 from IIF US 2 and to separate EPE from Sun Jupiter and IIF US 2. I explain these  
7 protective mechanisms further in Section IV of my Direct Testimony. The effect of such  
8 strong insulation of EPE from both Sun Jupiter and IIF US 2 will allow S&P to continue  
9 to rate EPE's credit at the current rating of BBB.

10 **Q. WILL SUN JUPITER SEEK CREDIT RATINGS?**

11 A. Not in the near term. It is my understanding that IIF US 2 has no plan to obtain a public  
12 credit rating for Sun Jupiter at this time. In the future, IIF US 2 will need to consider the  
13 economic costs of public ratings versus any market benefits of obtaining that rating. This  
14 is due to the significant fees to maintain public ratings and IIF US 2's ability at present to  
15 meet its funding needs through a multi-year bank credit facility and term loan facility that  
16 have already been committed. Sun Jupiter's moderate total amount of debt of a \$625  
17 million senior secured term loan facility and \$75 million senior secured revolving credit  
18 facility could be fulfilled with private placement funding, which may not require a credit  
19 rating for Sun Jupiter.

20 **Q. DOES IIF US 2 HAVE CREDIT RATINGS?**

21 A. No, it does not.

22 **Q. IN YOUR PROFESSIONAL OPINION, WILL OWNERSHIP BY IIF US 2 AND**  
23 **SUN JUPITER HAVE ANY ADVERSE EFFECT ON EPE'S ACCESS TO DEBT**  
24 **CAPITAL?**

25 A. No. I do not foresee any adverse change in EPE's means of accessing debt capital,  
26 except EPE may decide not to issue public debt in the future. In fact, for the reasons I  
27 previously discussed, EPE is likely to have comparable or greater access to debt funding  
28 as a result of its affiliation with IIF US 2, and being part of the Infrastructure Investments  
29 Fund.

1 First, EPE will continue to have access to its Revolving Credit Facility, as is  
2 currently the case. Second, it will use the same methods to sell long-term unsecured  
3 bonds to capital market investors in the future as it does at present. I expect that EPE will  
4 retain its current S&P credit rating of BBB. While there is a likely reduction of Moody's  
5 rating from Baa1 to Baa2, I view that as a consequence of EPE's intrinsic cash flow  
6 circumstances rather than an effect of the Proposed Transaction. A complete and robust  
7 suite of protective measures will insulate EPE's ratings from the debt at Sun Jupiter and  
8 from the activities of IIF US 2 and IIF US 2 affiliates, and that will help to maintain  
9 EPE's ability to borrow. In summary, I foresee no reduction in EPE's access to debt  
10 funding as a consequence of the change in ownership, and EPE's affiliation with IIF US 2  
11 may actually improve EPE's access to the capital markets.

12 **C. Impact of the Transaction on EPE's Access to Equity**

13 **Q. WHAT MEANS DOES EPE HAVE CURRENTLY TO MEET ITS NEEDS FOR**  
14 **EQUITY CAPITAL?**

15 A. Currently, EPE's shares are listed on the New York Stock Exchange, and EPE could  
16 issue common shares on the public market.

17 **Q. HOW WILL EPE OBTAIN INCREMENTAL EQUITY CAPITAL AS A DIRECT**  
18 **SUBSIDIARY OF SUN JUPITER AND INDIRECT SUBSIDIARY OF IIF US 2?**

19 A. After the closing of the Proposed Transaction, IIF US 2 will provide infusions of equity  
20 to its indirect subsidiary if new equity is needed to balance EPE's capital structure and  
21 maintain the authorized equity ratio. IIF US 2 is an open-ended private investment  
22 vehicle that receives significant new cash inflows and reinvestments from predominantly  
23 institutional investors seeking to participate in low-volatility infrastructure investment  
24 opportunities. These investors, in turn, represent over 40 million families' retirement  
25 savings. Cash flow becomes available to IIF US 2 for investment because IIF US 2's  
26 cash inflows from investors exceed redemptions by investors, producing substantial net  
27 cash inflows. If equity funding is needed at EPE, IIF US 2 would make an equity  
28 investment in Sun Jupiter, and Sun Jupiter would in turn invest those funds as additional  
29 paid in capital.

1 Andrew E. Gilbert's testimony indicates that the Infrastructure Investments Fund  
2 received \$5.4 billion in new commitments and reinvested distributions in the 12 months  
3 ended June 30, 2019, and invested \$2.8 billion during the same period. I consider this a  
4 sign that IIF US 2 has more than ample sources of funding relative to any prospective  
5 needs at EPE.

6 **Q. DO YOU SEE ANY BENEFITS FOR EPE OF OBTAINING EQUITY INFUSIONS**  
7 **FROM IIF US 2 VIA SUN JUPITER?**

8 A. Yes. This source of funding has very low overhead; there are no fees or commissions to  
9 be paid and no bid-offer spread. Additionally, there would be no minimum size limit on  
10 equity infusions, making it easy for IIF US 2 to meet its commitment to maintain the  
11 authorized ratio of equity to debt from time to time, even if the amount of funding needed  
12 in a particular time period is small. Moreover, if EPE's equity needs are larger than those  
13 of the period 1999–2018 because of the increased level of capital investment expected in  
14 the future and other factors, such as the effects of the TCJA, IIF US 2's investors would  
15 be a more efficient and reliable source of such funding, and likely on better terms, than if  
16 EPE as an independent entity were to launch a common stock offering.

17 **Q. IN WHAT WAYS WOULD AFFILIATION WITH IIF US 2 ADDRESS MAJOR**  
18 **CHALLENGES THAT EPE CURRENTLY FACES AS AN INDIVIDUAL,**  
19 **SHAREHOLDER-OWNED COMPANY?**

20 A. In particular, affiliation with IIF US 2 and access to IIF US 2's investor group would be  
21 helpful to EPE with regard to managing and funding future capital investment projects.  
22 EPE is contemplating making investments in renewable energy and forms of energy  
23 efficiency to satisfy customer growth needs and to replace existing energy sources. The  
24 management of IIF US 2 and portfolio companies within IIF US 2 can offer expertise in  
25 managing and financing projects of that type, and EPE will be able to draw upon  
26 experience from within IIF US 2 and the broader Infrastructure Investments Fund.

27 Second, I have already mentioned that small utilities such as EPE suffer a  
28 disadvantage attracting the attention of, and raising capital, in the equity market. IIF US  
29 2 is well suited to supply common equity to EPE if equity is needed to balance debt  
30 funding for future capital expenditures.

1 Third, as a part of a private company, EPE will be spared from the demands of  
2 public shareholders for a constant pattern of quarterly growth in reported earnings and  
3 dividends. The investment focus of IIF US 2's investors is oriented to a much longer  
4 time horizon than the short-term focus of mark-to-market investors in the public equity  
5 market.

6 Also, there may be scale benefits for EPE from association with a larger  
7 enterprise, such as more attention from debt lenders and credit providers, as I discussed  
8 above. Furthermore, IIF US 2 and the Infrastructure Investments Fund has expertise in  
9 renewable development and operations, strong relationships throughout the industry at  
10 both the management and board levels, and a network of professionals to share best  
11 practices on important priorities such as health and safety, cybersecurity, operational  
12 excellence, and other areas of shared interest.

13 **Q. DO YOU ANTICIPATE RISKS OR EXPOSURES TO EPE OF OWNERSHIP BY**  
14 **IIF US 2 AND SUN JUPITER?**

15 A. No, I do not see risks or exposures that are not fully mitigated by the protective features  
16 that IIF US 2 has proposed in its application.

17 **IV. PROPOSED PROTECTIVE MEASURES**

18 **A. Background on Ring-Fencing Protective Measures**

19 **Q. WHAT DO YOU MEAN BY RING-FENCING?**

20 A. The term describes methods used to separate and protect one enterprise or business  
21 activity from invasion, contagion, or harm due to mingling with other businesses or  
22 activities.

23 **Q: WHY ARE FINANCIAL PROTECTIVE MEASURES APPLIED?**

24 A. Protective ring-fencing methods typically serve one of two purposes:

- 25 1. When a financial sponsor bundles together a portfolio of loans or mortgages in  
26 structures that can be financed by issuing loans or securities, ring-fencing  
27 mechanisms separate the bundled loan assets from the bankruptcy risk of the  
28 transaction's sponsor or the seller of the assets. This provides the opportunity to  
29 achieve funding justified by the quality of the underlying assets rather than the credit

1 of the sponsor or seller. Protective mechanisms are used by the financial service  
2 industry in this context in banking, leasing, real estate development and ownership,  
3 shipping, and transportation to prevent cross-collateralization of different collections  
4 of assets that are financed separately.

- 5 2. Ring-fencing structures are also used for a slightly different purpose. In the context  
6 of corporate finance, ring-fencing structures are used to protect a company and its  
7 stakeholders from financial risks associated with its parents, sister companies, or  
8 subsidiaries, while maintaining the company's ability to access necessary capital and  
9 funding for ongoing investment.

10 In either case, the purpose of the ring fence is to protect the asset portfolio or  
11 business so that the portfolio or business can sustain its viability without interruption or  
12 adverse effects from the potential financial distress of other related entities. In the case of  
13 ring-fencing structures for a company, the ring-fencing also allows for the company to  
14 raise capital on an ongoing basis to fund investment.

15 **Q. WHAT IS THE PURPOSE OF A RING FENCE IN THE UTILITY SECTOR?**

- 16 A. Electric utilities generally have a legal obligation to reliably operate and maintain their  
17 systems for existing customers and to expand their facilities and systems to meet  
18 customer growth. Thus, some capital expenditures are not discretionary, but are required  
19 so that the utility can fulfill its franchise and satisfy the requirements of the regulatory  
20 authority. These capital investments require access to funding from internal and, in many  
21 cases, external sources. Thus, it is important for the utility to retain access to its own  
22 resources including its bank accounts, accounts receivable, and the ability to draw under  
23 its credit arrangements, even if its parent or an affiliate is under stress. If internal sources  
24 of cash flow are not sufficient, as is often the case, utilities need to access funding from  
25 the debt market. Without adequate protection, the utility's credit worthiness and access  
26 to the debt market could be impaired if its owner is in default or bankruptcy. Ring-  
27 fencing mechanisms have been successfully used to protect utilities from risky parents or  
28 sister companies to ensure the utility can continue to serve its current and future  
29 customers.

1 **Q. WHY HAVE THE JOINT APPLICANTS VOLUNTEERED TO ADOPT RING-**  
2 **FENCING COMMITMENTS IN THIS PROCEEDING?**

3 A. Ring-fencing commitments will provide a full and robust insulation of EPE from any  
4 liabilities of Sun Jupiter and from IIF US 2 and all other IIF US 2-owned companies.  
5 Currently, EPE is an independent entity owned by public shareholders. As a result of the  
6 Proposed Transaction, EPE will be a direct subsidiary of Sun Jupiter and an indirect  
7 subsidiary of IIF US 2, which has a variety of other holdings as discussed in detail in Mr.  
8 Gilbert's direct testimony. The Joint Applicants have proposed a set of commitments to  
9 protect the financial condition of the operating utility (*i.e.*, EPE) from any potential  
10 exposure related to IIF US 2, Sun Jupiter, and their affiliates.

11 **B. Evaluating the Ring-Fencing Conditions Proposed by the Joint Applicants**

12 **Q. IS THERE A METHODOLOGY FOR EVALUATING A SET OF RING-**  
13 **FENCING MECHANISMS?**

14 A. Yes, and I believe that it is important to apply a systematic approach to compare an  
15 entity's ring fence to a list of the objectives for the protection of an entity relative to  
16 related companies. To evaluate ring-fencing provisions, I employ a checklist that I  
17 developed while at Fitch Ratings as a leader in the utility rating group. Each rating  
18 agency maintains an internal checklist that its analysts use to assess the effectiveness of  
19 utility ring-fencing practices; there is quite a bit of commonality among the agencies  
20 when it comes to these standards, since the standards are founded upon shared experience  
21 the agencies drew from prior defaults and from bankruptcy court precedents. For use in  
22 my consulting practice, I combined and harmonized the elements that the three major  
23 rating agencies employed in their separate checklists to create a master list of standards to  
24 evaluate the adequacy of intercorporate separation. This list of desirable ring-fencing  
25 practices and policies is provided as Exhibit EL-6.

26 The master checklist is based on the understanding that in order to safeguard the  
27 viability of a protected company, two types of protection are needed:

28 (I) Assurance that the protected company will maintain access to its own  
29 assets, both physical and financial, and funding sources, despite the  
30 financial distress or bankruptcy of its parent or affiliate; and

1 (II) Practices and policies that reduce or eliminate the risk that the  
2 protected company will be drawn into the bankruptcy of a bankrupt parent  
3 or affiliate.

4 Consequently, the master checklist has two tracks: Track I contains practices that  
5 allow a company (called “the Protected Company” in Exhibit EL-6) to preserve its own  
6 identity, to remain viable, to fund itself and defend its own assets and liabilities even if a  
7 parent or affiliate is in distress (page 1 of Exhibit EL-6); and Track II contains practices  
8 that protect a company from involuntary consolidation with its parent or affiliate in a  
9 bankruptcy proceeding (page 2 of the same exhibit). Fortunately, some practices do  
10 double duty, helping to achieve the objectives of both Tracks I and II.

11 **Q. WHAT ARE THE ELEMENTS THAT MAKE UP TRACK I?**

12 A. Track I includes all the factors that allow a subsidiary company within an ownership  
13 group to preserve its independent viability in the event of the financial distress of its  
14 parent or other companies in its group. Within Track I, I identify four categories of  
15 measures. These are:

16 I-A. The Protected Company’s assets are protected from diversion by  
17 having a separate legal identity, separate bank accounts and asset  
18 accounts, with no commingling of assets. Fixed assets needed to  
19 carry out the business should be in the Protected Company’s own  
20 name. Transfers of goods, services, and supplies with other  
21 members of the group should be conducted on an arm’s length  
22 basis. The Protected Company should not lend to parents or sister  
23 companies.

24 I-B. The Protected Company should maintain its own access to funding  
25 and to sources of liquidity. This entails having a separate credit  
26 agreement, and drawing under the credit agreement should be  
27 available despite the default of the company’s parent or sister  
28 companies. The default by a parent or affiliate should not trigger  
29 a cross default or cross acceleration of the Protected Company’s  
30 debt. Independent access to funding is enhanced if the company is  
31 an accepted issuer of debt in its own name in the public or private  
32 debt market and maintaining a credit rating can be helpful to  
33 achieve that objective.

34 I-C. The Protected Company is insulated from the liabilities of its  
35 parent and sister companies. It does not guarantee the debt or  
36 obligations of other members of its group. The other members of  
37 the group never represent to the public or to counterparties that the  
38 Protected Company is responsible for the obligations of other

1 group members. (Often, there is some potential joint liability on  
2 the part of the Protected Company as a member of a consolidated  
3 tax return or as a participant in a pension plan with other  
4 companies in its group, which may be acceptable depending upon  
5 the circumstances.)

6 I-D. The Protected Company protects its viability by limiting its  
7 individual leverage and preserving its individual solvency.

8 **Q. PLEASE EXPLAIN THE ELEMENTS OF TRACK II.**

9 A. Track II involves steps to avoid the involuntary consolidation of the Protected Company  
10 in the bankruptcy of its parent or an affiliate. Several of the practices that are important  
11 in Track I to maintain the company's separate financial viability are also necessary to  
12 avoid involuntary consolidation by way of the doctrine of substantive consolidation. In  
13 an extreme case, a company might be vulnerable to substantive consolidation along with  
14 its bankrupt parent or affiliate if the resources, assets, and liabilities of the two companies  
15 are so entangled and poorly documented that it is difficult for the bankruptcy court to  
16 untangle them. Keeping good books and records and maintaining separate books of  
17 account are important protections. Also, the Protected Company should never represent  
18 to creditors of the parent or affiliate that the Protected Company is responsible for its  
19 affiliate's obligations. Additional elements are listed in Exhibit EL-6, page 2.

20 **Q. HOW HAVE YOU EMPLOYED THE MASTER LIST OF STANDARDS IN THIS**  
21 **PROCEEDING?**

22 A. Using the standards that appear in the master list as a guideline, I analyzed the ring-  
23 fencing commitments proposed by the Joint Applicants and matched them with the listed  
24 standards that contribute to robust protection. The results of that analysis are presented in  
25 the Exhibit EL-7.

26 **Q. WHAT CONCLUSIONS DID YOU DRAW FROM THIS ANALYSIS?**

27 A. The results of that study appear on Exhibit EL-7. Using this systematic approach reveals  
28 that the ring-fence commitments proposed by the Joint Applicants cover every one of the  
29 standards for a robust protective regime as listed in Exhibit EL-6. In my opinion, the  
30 resulting practices will provide a full and robust separation of EPE from any risks related  
31 to the debt of its direct parent, Sun Jupiter, and from any liabilities or activities of IIF US

1 2 and IIF US 2's other affiliates. Observing these commitments, EPE will be able to  
2 maintain access to sources of funding and control its own assets and liquidity despite any  
3 potential financial distress of its direct parent Sun Jupiter or its indirect parent, IIF US 2,  
4 or their affiliates. Furthermore, these practices will insulate EPE from exposure to an  
5 involuntary bankruptcy (that is, substantive consolidation in the bankruptcy of its direct  
6 or indirect parent or its affiliates). EPE will be able to maintain access to its own  
7 resources and sustain its business on an individual basis if that becomes necessary.

8 **Q. THE JOINT APPLICANTS HAVE PROPOSED SOME COMMITMENTS THAT**  
9 **DO NOT CORRESPOND WITH THE STANDARDS FOR ADEQUATE**  
10 **PROTECTION IN EXHIBIT EL-6. PLEASE EXPLAIN.**

11 A. Additional commitments are proposed by the Joint Applicants over and above those that  
12 promote the continuing viability of EPE despite the potential distress of its direct parent,  
13 ultimate parent, or its affiliates and protect EPE from substantive consolidation in the  
14 bankruptcy of any other entity. These include, among others, voluntary commitments to  
15 maintain local headquarters, to have representation by local management and residents of  
16 the service territory on EPE's Board of Directors, to hold at least one meeting of the  
17 Directors annually in Las Cruces, NM, and to have local management as the primary  
18 interface with the regulatory authorities. Other commitments are intended to facilitate the  
19 regulatory authorities' ability to regulate EPE and its parent, including the voluntary  
20 commitment to provide access to the books and records of IIF US 2 or IIF US 2's  
21 affiliates to the Commission and NMPRC to the extent that those entities have transfers  
22 or dealings with EPE. While the commitment by IIF US 2 to continue to own EPE for at  
23 least ten years does not provide any ring-fencing protection by itself, Moody's points out  
24 that this commitment may provide some credit support for EPE:

25 Furthermore, IIF has committed to a 10-year minimum holding period  
26 which helps to alleviate Moody's concern that [EPE]'s credit profile could  
27 be constrained by aggressive financial policies that often come with  
28 ownership by private funds with a short term investment horizon.<sup>11</sup>

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<sup>11</sup> Moody's, Issuer Comment: El Paso Electric Agrees to be Acquired by Infrastructure Investment Fund," June 5, 2019 (Included in Exhibit EL-4).

1 A non-consolidation opinion regarding the unlikelihood of a substantive consolidation of  
2 EPE in the bankruptcy of Sun Jupiter, IIF US 2 or IIF US 2's affiliates does not in itself  
3 provide any protection against bankruptcy or insolvency, but it can provide assurance to  
4 the regulatory authority in reviewing of Proposed Transaction and may provide comfort  
5 to current and prospective lenders and rating agencies. Finally, there are two  
6 commitments by the Joint Applicants to address the concerns of labor.

7 **Q. DOES THE SUPERVISION OF THE COMMISSION ENHANCE CONFIDENCE**  
8 **IN THE EFFECTIVENESS OF THE PROTECTIVE COMMITMENTS?**

9 A. Yes. The Commission's controls in such areas as the utility's transactions with affiliates  
10 and issuance of debt provide added assurance to creditors and credit rating agencies of  
11 the strength of the ring-fencing commitments.

12 **Q. WHAT EFFECT DO YOU EXPECT THE PROPOSED PROTECTIONS WILL**  
13 **HAVE UPON THE CREDIT RATINGS OF EPE?**

14 A. It is my opinion that the Joint Applicants' strong protective plan that is proposed will  
15 enable EPE's credit ratings and reputation in the credit market to avoid any adverse  
16 consequences of ownership by Sun Jupiter and IIF US 2. IIF US 2 currently does not  
17 plan to seek public credit ratings for itself or for Sun Jupiter. Nonetheless, Moody's and  
18 S&P internally will formulate unpublished "implied" ratings for Sun Jupiter as a  
19 component in their rating evaluation of EPE. It is likely that Sun Jupiter's rating would  
20 be lower than and dependent upon the rating of EPE.

21 Because the ring-fencing commitments will provide a full and robust insulation of  
22 EPE from any liabilities of Sun Jupiter and from IIF US 2 and all other IIF US 2-owned  
23 companies, Moody's will analyze EPE on a stand-alone basis and will not attribute the  
24 debt of Sun Jupiter or IIF US 2 to EPE when formulating the rating of EPE. That is, I  
25 expect that Moody's credit rating of EPE will be consistent with EPE's individual  
26 financial condition and will not be subject to any constraint due to group linkage.  
27 However, ring-fencing will not protect EPE from a downgrade of a single notch by  
28 Moody's to Baa2 from Baa1 if there is erosion in EPE's individual cash flow metrics and  
29 key credit ratios that is unrelated to the change in ownership.

1 S&P follows a different methodology; it is more likely to assess the consolidated  
2 financial statements of EPE along with its direct parent Sun Jupiter and produce a  
3 consolidated financial risk score that considers the added debt at Sun Jupiter. However, I  
4 predict that will not affect S&P's current BBB credit rating of EPE because S&P will  
5 take into consideration the robust suite of protective measures. S&P has recently  
6 instituted a new group credit methodology applicable to holding companies and operating  
7 companies in the utility sector and certain other sectors.<sup>12</sup> Applying the new guidelines,  
8 S&P may determine the rating of EPE to be at either one, two or three notches above the  
9 implied consolidated issuer credit rating, but no higher than EPE's standalone credit  
10 profile. I estimate that the strength of the ring-fencing commitments proposed by the  
11 Joint Applicants would allow the rating of EPE to be at least two notches higher than the  
12 group rating. We know that S&P currently views EPE on a standalone basis at a BBB  
13 rating, and I do not anticipate any increase or reduction in EPE's S&P rating as a result of  
14 the Proposed Transaction.

## 15 V. CONCLUSION AND RECOMMENDATIONS

### 16 Q. PLEASE SUMMARIZE YOUR DIRECT TESTIMONY.

17 A. The Proposed Transaction creates no new risks to EPE or to EPE's shareholders. After  
18 the closing, EPE will have at least similar and possibly superior access to common equity  
19 funding via Sun Jupiter and IIF US 2, whenever it needs to raise equity capital in the  
20 future. Furthermore, EPE will have comparable access to the debt capital and superior  
21 access to bank credit as an operating utility subsidiary of IIF US 2 (especially as part of  
22 the Infrastructure Investments Fund) relative to its current situation as an individual  
23 company. Investors and credit rating agencies will not have reason for concerns that EPE  
24 will be adversely affected by the debt obligations of IIF US 2 or Sun Jupiter, thanks to the  
25 full array of protective measures that IIF US 2 has proposed in its application.

26 After reviewing the protective measures proposed by the Joint Applicants, I  
27 conclude that these measures will offer excellent and robust insulation. They will  
28 provide strong separation for EPE and EPE's customers and communities from risks of

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<sup>12</sup> S&P Global, "General Criteria: Group Rating Methodology," July 1, 2019 (Exhibit EL-8).

1 involuntary consolidation in bankruptcy with Sun Jupiter, IIF US 2, or any IIF US 2  
2 affiliate. Also, the proposed ring-fencing provisions will assure that EPE maintains  
3 access to all of its own resources and cash flow so that EPE can conduct its business and  
4 remain viable, even in the case of financial distress of Sun Jupiter, IIF US 2, or any IIF  
5 US 2 affiliate.

6 Therefore, I recommend that the Commission approve the Proposed Transaction  
7 and adopt the protective measures as proposed by the Joint Applicants.

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

9 A. Yes, it does.

**AFFIDAVIT OF ELLEN LAPSON**

THE STATE OF NEW YORK

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)  
)

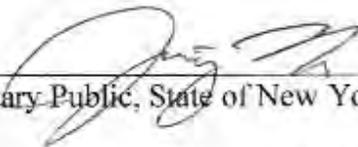
COUNTY OF NEW YORK

This day, Ellen Lapson, 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 Ellen Lapson. I am of legal age and a resident of the State of New York. 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.

  
\_\_\_\_\_  
Ellen Lapson, CFA

SUBSCRIBED AND SWORN TO BEFORE ME, notary public, on this the 5 day of August, 2019.

  
\_\_\_\_\_  
Notary Public, State of New York

My Commission expires:

September 20, 2020

JIMMY MA  
Notary Public, State of New York  
No. 01MA6116017  
Qualified in New York County  
Commission Expires Sept. 20, 2020

## EXPERIENCE AND QUALIFICATIONS ELLEN LAPSON, CFA

**LAPSON ADVISORY**  
Financial Consulting  
Expert Testimony  
Financial Training

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### SUMMARY OF QUALIFICATIONS

Industry expert on financing utilities and infrastructure projects. 50 years of professional experience in commercial and investment banking, securities analysis, and credit ratings. Focus on utilities, power generation and alternative energy sources, natural gas and fuels, corporate and project finance. Provide credit rating advisory services.

Develop financial training programs and materials; provide executive training in utility financial analysis and credit analysis.

Consult and provide expert witness testimony in matters involving capital access for infrastructure, energy and utilities. (See pages 3-5.)

MBA in accounting and finance; Chartered Financial Analyst (CFA).

### EMPLOYMENT

#### **Lapson Advisory**

Principal

Dec. 2011 to present

Financial consulting services to utilities and developers of infrastructure projects. Financial strategy and credit advisory for power, energy, infrastructure companies, and utilities. Expert witness testimony on financial and regulatory topics relating to utilities and infrastructure finance. Design and conduct financial and credit training.

#### **Fitch Ratings**

Utilities, Power & Gas

Managing Director

1999-2011

Senior Director

1994-1999

Chair of Fitch's global Corporate Finance Criteria Committee overseeing criteria for rating corporations, financial institutions, insurers, REITs, and project finance transactions (2010-2011).

Manager or primary analyst on credit ratings of over 200 utility, pipeline, power generation companies. Utility tariff monetization. Senior member of rating committees for utilities and energy and power-related projects.

Liaison with utility sector fixed income investors, focusing on 50 largest institutional investors holding utility and power bonds, buy-side and sell-side analysts, and utility bankers.

<p><b>JP Morgan Chase</b> (formerly Chemical NY Corp.) Vice President 1975-94 Asst. Vice President 1974-1975</p>	<p>Managed financial advisory transactions, structured debt private placements, syndicated credit facilities for utilities, mining and metals, project finance. Structured financing for utility regulatory assets (first of its kind “stranded cost” securitization transaction) for Puget Energy, 1992-94. Led financing for bankrupt utility as debtor-in-possession; prepared financing plans for distressed utilities; structured exit financing for reorganization of two utilities emerging from Chapter 11. Divisional Controller - 1981-1986</p>
<p><b>Argus Research Corp.</b> Equity Security Analyst – Utilities 1969-1974</p>	<p>Equity analysis of U.S. electric and gas utilities, natural gas pipelines, and telecommunications companies. Modeling and projecting corporate financial statements. Research coverage and reports.</p>

## EDUCATION & CHARTER

Stern School of Business, New York University, MBA, 1975

Major concentration: Accounting

Master’s Thesis: Cash Flow vs. Accrual Accounting Data in Utility Equity Valuation

Chartered Financial Analyst (CFA) since 1978

Barnard College, Columbia University, BA, 1969

## PROFESSIONAL ASSOCIATIONS

Institute of Chartered Financial Analysts, 1978 - present

Wall Street Utility Group, 1996 - present

## ADVISORY COUNCILS AND BOARD SERVICE

Rocky Mountain Institute Sustainable Finance Advisory Board member. 2016 to 2018.

Represented U.S. investment community in advisory panel on International Accounting Standard Board proposals for financial reporting for rate-regulated activities, sponsored by Edison Electric Institute and American Gas Association, Dec. 2014

National Academy of Sciences/ National Research Council, Resilient America Forum, July 2014.

MIT Energy Institute, External Advisory Council, The Future of Solar Energy, 2012-2014.

Electric Power Research Institute, Advisory Council, 2004-2011; Chair, 2009 and 2010.

**EXPERT WITNESS TESTIMONY**

<b>Jurisdiction</b>	<b>Proceeding</b>	<b>Topic</b>
Public Utility Commission Texas	Docket No. 49421, Application of CenterPoint Energy Houston to Change Rates, on behalf of CenterPoint Energy Houston Electric (2019)	Ring-fencing in context of a rate proceeding; financial strength
Public Utility Commission Texas	Docket No. 48929, Application of Oncor Electric Delivery Co. LLC, Sharyland Utilities LP, and Sempra Energy..., on behalf of Sharyland Utilities (2019)	Ring-fencing for formation of an electric transmission utility
Public Utilities Commission of Colorado	Proceeding No. 17AL-0363G, Filing to Revise Gas Tariff, on behalf of Xcel Public Service Co, of Colorado (2018)	Cash flow and credit impacts of tax reform; capital structure
South Carolina Public Service Commission	Docket No. 2017-370-E; Joint Application for Merger and for Prudency Determination, on behalf of South Carolina Electric & Gas Company (2018)	Benefits of merger and proposed rate plan; implications for cash flow and access to capital.
U.S. Federal District Court, District of SC	Civil Action No.: 3:18-cv-01795-JMC, Motion for Preliminary Injunction, on behalf of South Carolina Electric & Gas	Financial harm of Commission ordered rate cut compliant with Act
Public Utility Commission Texas	Docket No. 48401, Texas-New Mexico Power Co. Application to Change Retail Rates, on behalf of TNMP (2018)	Cash flow and credit impacts of tax reform
Public Utility Commission Texas	Docket No. 48371, Entergy Texas Inc., Application to Change Retail Rates, on behalf of ETI (2018)	Cash flow and credit impacts of tax reform
Public Utility Commission Texas	Docket No. 47527, Southwestern Public Service Co. Application for Retail Rates, on behalf of SPS Co. (2018)	Adverse cash flow and credit impacts of tax reform; cap structure
New Mexico Public Regulation Commission	Case No. 17-00255-UT, Southwestern Public Service Co. Application for Retail Rates, on behalf of SPS Co. 2018)	Adverse cash flow and credit impacts of tax reform; cap structure
South Carolina Public Service Commission	Docket No. 2017-305-E, Response to ORS Request for Rate Relief, on behalf of S. Carolina Electric and Gas (2017)	Adverse financial implications of rate reduction sought by ORS
DC Public Service Commission	Formal Case No. 1142, Merger Application of AltaGas Ltd. and Washington Gas Light, Inc. (2017)	Ring-fencing for utility merger; financial strength
Public Service Commission of Maryland	Docket No. 9449, In the Matter of the Merger of AltaGas Ltd. and Washington Gas Light, Inc. (2017)	Ring-fencing for utility merger; financial strength
Public Utility Commission Texas	Docket No. 46957, Application of Oncor Electric Delivery LLC to Change Rates, on behalf of Oncor. (2017)	Appropriate capital structure. Financial strength.

Public Utility Commission Texas	Docket No. 46416, Application of Entergy Texas, Inc. for a Certificate of Convenience and Necessity, Montgomery County, on behalf of Entergy Texas (2016-2017)	Debt equivalence and capital cost associated with capacity purchase obligations (PPA)
U.S. Federal Energy Regulatory Commission	Dockets No. EL16-29 and EL16-30, NCEMC, et al. vs Duke Energy Carolinas and Duke Energy Progress, on behalf of the Respondents (2016)	Capital market environment affecting the determination of the cost of equity capital
Hawaii Public Utilities Commission	Docket No. 2015-0022, Merger Application on behalf of NextEra Energy and Hawaiian Electric Inc. (2015)	Ring-fencing and financial strength
U.S. Federal Energy Regulatory Commission	Dockets No. EL14-12 and EL15-45, ABATE, vs MISO, Inc. et al., on behalf of MISO Transmission Owners (2015)	Capital market environment; capital spending and risk
U.S. Federal Energy Regulatory Commission	Dockets No. EL12-59 and 13-78, Golden Spread Electric Coop., on behalf of Southwestern Public Service Co. (2015)	Capital market environment; capital spending and risk
U.S. Federal Energy Regulatory Commission	Dockets No. EL13-33 and EL14-86, ENE et al. vs. Bangor Hydro-Electric Co. et al., on behalf of New England Transmission Owners. (2015)	Capital market environment affecting the measurement of the cost of equity capital
U.S. Federal Energy Regulatory Commission	Dockets No. ER13-1508 et alia, Entergy Arkansas, Inc. and other Entergy utility subsidiaries, on behalf of Entergy Services Inc. (2014)	Capital market environment affecting the measurement of the cost of equity capital
Delaware Public Service Commission	DE Case 14-193, Merger of Exelon Corp. and Pepco Holdings, Inc. on behalf of the Joint Applicants (2015)	Ring-fencing for utility merger; avoidance of financial harm
Maryland Public Service Commission	Case No. 9361, Merger of Exelon Corp. and Pepco Holdings, Inc. on behalf of the Joint Applicants (2015)	Ring-fencing for utility merger; avoidance of financial harm
New Jersey Board of Public Utilities	BPU Docket No. EM 14060581, Merger of Exelon Corp. and Pepco Holdings, Inc., on behalf of the Joint Applicants (2015)	Ring-fencing for utility merger; avoidance of financial harm
U.S. Federal Energy Regulatory Commission	Docket ER15-572 Application of New York Transco, LLC, on behalf of NY Transco, LLC. (2015)	Incentive compensation for electric transmission; capital market and financial strength
U.S. Federal Energy Regulatory Commission	Docket EL 14-90-000 Seminole Electric Cooperative, Inc. and Florida Municipal Power Agency vs. Duke Energy FL on behalf of Duke Energy (2014)	Capital market environment affecting the determination of the cost of equity capital

DC Public Service Commission	Formal Case No. 1119 Merger of Exelon Corp. and Pepco Holdings Inc., on behalf of the Joint Applicants (2014-2015)	Ring-fencing for utility merger; avoidance of financial harm
U.S. Federal Energy Regulatory Commission	Docket EL14-86-000 Attorney General of Massachusetts et. al. vs. Bangor Hydro-Electric Company, et. al on behalf of New England Transmission Owners (2014)	Return on Equity; capital market environment
Arkansas Public Service Commission	Docket No. 13-028-U. Rehearing direct testimony on behalf of Entergy Arkansas. (2014)	Investor and rating agency reactions to ROE set by Order.
Illinois Commerce Commission	Docket No. 12-0560 Rock Island Clean Line LLC, on behalf of Commonwealth Edison Company, an intervenor (2013)	Access to capital for a merchant electric transmission line.
U.S. Federal Energy Regulatory Commission	Docket EL13-48-000 Delaware Division of the Public Advocate, et. al. vs. Baltimore Gas and Electric Company and PEPCO Holdings et al., on behalf of (i) Baltimore Gas and Electric and (ii) PEPCO and subsidiaries (2013)	Return on Equity; capital market view of transmission investment
U.S. Federal Energy Regulatory Commission	Docket EL11-66-000 Martha Coakley et. al. vs. Bangor Hydro-Electric Company, et. al on behalf of a group of New England Transmission Owners (2012-13)	Return on Equity; capital market view of transmission investment
New York Public Service Commission	Cases 13-E-0030; 13-G-0031; and 13-S-0032 on behalf of Consolidated Edison Company of New York. (2013)	Cash flow and financial strength; regulatory mechanisms
Public Service Commission of Maryland	Case. 9214 “In The Matter Of Whether New Generating Facilities Are Needed To Meet Long-Term Demand For Standard Offer Service”, on behalf of Baltimore Gas and Electric Co., Potomac Electric Power Co., and Delmarva Power & Light (2012)	Effect of certain power contracts on the credit and financial strength of MD utility counterparties

## CONSULTING & ADVISORY ASSIGNMENTS

NJ American Water Co. 2018	Analyzed impacts of tax reform on water utility’s cash flow and ratings. Objective: Regulatory strategy
AltaGas Ltd. 2017	Credit advisory on ratings under merger and no-merger cases. Objective: Compare strategic alternatives, M&A
Entergy Texas, Inc. 2016	Research study on debt equivalence and capital cost associated with capacity purchase obligations. Impact of new GAAP lease accounting standard on PPAs.

	Objective: Economic comparison of resource options.
Utility (Undisclosed) 2014	Evaluated debt equivalence of power purchase obligations. Objective: Clarify credit impact of various contract obligations.
International Money Center Bank (Undisclosed) 2014	Research study and recommendations on estimating Loss Given Default and historical experience of default and recovery in the regulated utility sector. Objective: Efficient capital allocation for loan portfolio.
GenOn Energy Inc. 2012	White Paper on appropriate industry peers for a competitive power generation and energy company. Objective: Improve peer comparisons in shareholder communications and for compensation studies.
Transmission Utility (Undisclosed) 2012	Recommended the appropriate capital structure and debt leverage during a period of high capital spending. Objective: Make efficient use of equity during multi-year capex project; preserve existing credit ratings.
Toll Highway (Undisclosed) 2011	Advised on adding debt while minimizing risk of downgrade. Recommended strategy for added leverage and rating agency communications. Objectives: Increase leverage and free up equity for alternate growth investments, while preserving credit ratings.
District Thermal Cooling Company (Undisclosed)	Recommended a project loan structure to deal with seasonal cash flow. Optimized payment schedule, form and timing of financial covenants. Objectives: Reduce default risk; efficient borrowing structure.
<b>PROFESSIONAL AND EXECUTIVE TRAINING</b>	
In-house Training, Southern California Edison Co., Rosemead CA	Designed and delivered in-house training program on evaluating the credit of energy market counterparties, Nov. 2016
In-house Training, Undisclosed Financial Institution, NYC	Developed corporate credit case for internal credit training program and coordinated use in training exercise, 2016
CoBank, Denver CO	Designed and delivered "Midstream Gas and MLPs: Advanced Credit Training", 2014
Empire District Electric Co., Joppa MO	Designed and delivered in-house executive training session Utility Sector Financial Evaluation, 2014
PPL Energy Corp, Allentown PA	Designed and delivered in-house Financial Training, 2014
SNL Knowledge Center Courses	"Credit Analysis for the Power & Gas Sector", 2011-2014 "Analyst Training in the Power & Gas Sectors: Financial Statement Analysis", 2013-2014
EI Transmission and	"Financing and Access to Capital", 2012

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Wholesale Markets School

---

National Rural Utilities      “Credit Analysis for the Power Sector”, 2012  
Coop Finance Corp.

---

Judicial Institute of      “Utility Regulation and the Courts: Impact of Court Decisions on  
Maryland (Private seminar      Financial Markets and Credit”, Annapolis MD, 2007  
for MD judges)

---

Edison Electric Institute      “New Analyst Training Institute: Fixed Income Analysis and Credit  
Ratings”, 2008 and 2004

---

## **PUBLICATIONS/ BOOK CHAPTERS**

“Managing Credit Risk in the Electricity Market”, Ellen Lapson and Denise Furey, chapter 21 in Managing Energy Price Risk, 4<sup>th</sup> Edition, Vincent Kaminski ed., Risk Publications, London, 2016.

“Standard Market Design: Credit of Some Sectors Will Be Affected by SMD”, Ellen Lapson. Chapter in: Electric & Natural Gas Business: Understanding It, 2003 and Beyond, Robert E. Willett ed., Financial Communications Company, Houston, TX, 2003.

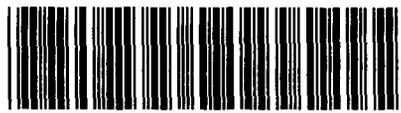
Energy Modeling and the Management of Uncertainty, Robert Jameson ed., Risk Publications, London, 1999. “Managing Risks Through Contract Technology: Know Your Counterparty”, Ellen Lapson, pp 154-155.

“Managing Credit Risk in the Electricity Market”, Ellen Lapson (pp 281-291). Chapter in: The US Power Market: Restructuring and Risk Management, Robert Jameson ed., Risk Publications, London, 1997.

Deregulation of the Electric Utility Industry – Proceedings of the AIMR Seminar; ed. AIMR (CFA Institute), Charlottesville, VA, 1997. Speaker 3: E. Lapson.

**: EL-2: Equity Market Capitalization of Selected Investor-Owned  
U.S. and Canadian Electric and Gas Utilities**

Name	Equity Market Cap. (US \$ Billions)*	Percent of Total Market Capital
NextEra Energy, Inc.	\$100.2	10.9%
Duke Energy Corporation	\$63.3	6.9%
Dominion Energy Inc	\$60.3	6.5%
Southern Company	\$58.0	6.3%
Exelon Corporation	\$44.5	4.8%
American Electric Power Company, Inc.	\$43.9	4.8%
Sempra Energy	\$38.5	4.2%
Xcel Energy Inc.	\$31.1	3.4%
Public Service Enterprise Group Inc	\$30.1	3.3%
Consolidated Edison, Inc.	\$28.2	3.1%
WEC Energy Group Inc	\$27.3	3.0%
Eversource Energy	\$24.5	2.7%
DTE Energy Company	\$23.7	2.6%
FirstEnergy Corp.	\$23.4	2.5%
Edison International	\$23.1	2.5%
PPL Corporation	\$21.9	2.4%
Entergy Corporation	\$19.7	2.1%
Ameren Corporation	\$18.8	2.0%
Fortis Inc.	\$17.0	1.8%
CMS Energy Corporation	\$16.7	1.8%
Avangrid, Inc.	\$15.1	1.6%
Evergy, Inc.	\$14.8	1.6%
CenterPoint Energy, Inc.	\$14.5	1.6%
Atmos Energy Corporation	\$12.6	1.4%
Alliant Energy Corp	\$11.8	1.3%
NiSource Inc	\$11.0	1.2%
Hydro One Limited	\$10.5	1.1%
Pinnacle West Capital Corporation	\$10.3	1.1%



Control Number: 49849



Item Number: 8

Addendum StartPage: 0

2019 AUG 20 11:45 AM  
PUBLIC UTILITY COMMISSION  
FILING CLERK

August 20, 2019

**Via Hand Delivery**

Ana Trevino, Filing Clerk  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, TX 78711

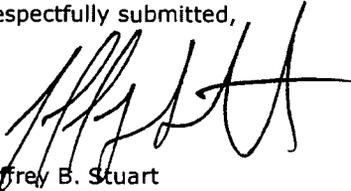
**Re: Docket No. 49849** – *Joint Report and Application of El Paso Electric Company, Sun Jupiter Holdings LLC, and IIF US Holding 2 LP for Regulatory Approvals Under PURA §§ 14.101, 39.262, and 39.915*

**Errata Exhibit EL-2**

Dear Ms. Trevino:

On August 13, 2019, El Paso Electric Company, Sun Jupiter Holdings LLC and IIF US Holding 2 LP ("Joint Applicants") filed their Joint Report and Application in the above-referenced docket. At the time of filing, page 2 of Exhibit EL-2 to Ellen Lapson's direct testimony was inadvertently omitted. The corrected exhibit, Errata Exhibit EL-2, is attached hereto.

Respectfully submitted,



Jeffrey B. Stuart

*Attorney for Sun Jupiter Holdings LLC  
and IIF US Holding 2 LP*



**Exhibit EL-2: Equity Market Capitalization of Selected Investor-Owned  
U.S. and Canadian Electric and Gas Utilities**

Size Rank	Ticker Symbol	Name	Equity Market Cap. (US \$ Billions)*	Percent of Total Market Capital	Percentage of Aggregate Market Capital
1	NEE	NextEra Energy, Inc.	\$100.2	10.9%	
2	DUK	Duke Energy Corporation	\$63.3	6.9%	
3	D	Dominion Energy Inc	\$60.3	6.5%	
4	SO	Southern Company	\$58.0	6.3%	
5	EXC	Exelon Corporation	\$44.5	4.8%	
6	AEP	American Electric Power Company, Inc.	\$43.9	4.8%	
7	SRE	Sempra Energy	\$38.5	4.2%	
8	XEL	Xcel Energy Inc.	\$31.1	3.4%	
9	PEG	Public Service Enterprise Group Inc	\$30.1	3.3%	
10	ED	Consolidated Edison, Inc.	\$28.2	3.1%	53.9%
11	WEC	WEC Energy Group Inc	\$27.3	3.0%	
12	ES	Eversource Energy	\$24.5	2.7%	
13	DTE	DTE Energy Company	\$23.7	2.6%	
14	FE	FirstEnergy Corp.	\$23.4	2.5%	
15	EIX	Edison International	\$23.1	2.5%	
16	PPL	PPL Corporation	\$21.9	2.4%	
17	ETR	Entergy Corporation	\$19.7	2.1%	
18	AEE	Ameren Corporation	\$18.8	2.0%	
19	FTS	Fortis Inc.	\$17.0	1.8%	
20	CMS	CMS Energy Corporation	\$16.7	1.8%	77.3%
21	AGR	Avangrid, Inc.	\$15.1	1.6%	
22	EVRG	Evergy, Inc.	\$14.8	1.6%	
23	CNP	CenterPoint Energy, Inc.	\$14.5	1.6%	
24	ATO	Atmos Energy Corporation	\$12.6	1.4%	
25	LNT	Alliant Energy Corp	\$11.8	1.3%	
26	NI	NiSource Inc	\$11.0	1.2%	
27	H-CA	Hydro One Limited	\$10.5	1.1%	
28	PNW	Pinnacle West Capital Corporation	\$10.3	1.1%	
29	EMA-CA	Emera Incorporated	\$9.8	1.1%	
30	OGE	OGE Energy Corp.	\$8.5	0.9%	90.2%
31	CU-CA	Canadian Utilities Limited Class A	\$7.3	0.8%	
32	AQN-CA	Algonquin Power & Utilities Corp.	\$6.1	0.7%	
33	IDA	IDACORP, Inc.	\$5.2	0.6%	
34	MDU	MDU Resources Group Inc	\$5.1	0.6%	
35	POR	Portland General Electric Company	\$4.9	0.5%	

36 HE	Hawaiian Electric Industries, Inc.	\$4.9	0.5%	
37 BKH	Black Hills Corporation	\$4.8	0.5%	
38 OGS	ONE Gas, Inc.	\$4.8	0.5%	
39 SWX	Southwest Gas Holdings, Inc.	\$4.8	0.5%	
40 NJR	New Jersey Resources Corporation	\$4.5	0.5%	95.9%
41 ALE	ALLETE, Inc.	\$4.5	0.5%	
42 SR	Spire Inc.	\$4.3	0.5%	
43 ALA-CA	AltaGas Ltd.	\$4.3	0.5%	
44 PNM	PNM Resources, Inc.	\$4.0	0.4%	
45 NWE	NorthWestern Corporation	\$3.6	0.4%	
46 SJI	South Jersey Industries, Inc.	\$3.1	0.3%	
47 AVA	Avista Corporation	\$3.0	0.3%	
48 EE	El Paso Electric Company	\$2.7	0.3%	
49 MGEE	MGE Energy, Inc.	\$2.6	0.3%	
50 NWN	Northwest Natural Holding Co.	\$2.2	0.2%	99.6%
51 OTTR	Otter Tail Corporation	\$2.1	0.2%	
52 CPK	Chesapeake Utilities Corporation	\$1.5	0.2%	100.0%
SUM		\$923.5		

Source: Bank of America Merrill Lynch. \*Data as of July 26, 2019.

Exhibit EL-3:

**Equivalence of Credit Rating Scales**

**Long-Term Credit Rating Correspondences**

<b>Moody's</b>	<b>S&amp;P (Formal Rating)</b>	<b>S&amp;P Stand-alone credit profile</b>
Aaa	AAA	aaa
Aa1	AA+	aa+
Aa2	AA	aa
Aa3	AA-	aa-
A1	A+	a+
A2	A	a
A3	A-	a-
Baa1	BBB+	bbb+
Baa2	BBB	bbb
Baa3	BBB-	bbb-
Ba1	BB+	bb+
Ba2	BB	bb
Ba3	BB-	bb-
B1	B+	b+
B2	B	b
B3	B-	b-
Caa1	CCC+	ccc+
Caa2	CCC	ccc
Caa3	CCC-	ccc-
D	D	d
	SD*	sd*

\*SD and sd denote a selective default on specific debt instruments rather than a general default



## Rating Action **Moody's affirms El Paso Electric at Baa1; outlook revised to negative**

26 Mar 2018

### Approximately \$1 billion of rated debt securities affected

New York, March 26, 2018 -- Moody's Investors Service ("Moody's") affirms El Paso Electric Company's (EPE) Baa1 issuer and senior unsecured ratings and changed the company's outlook to negative from stable.

#### RATINGS RATIONALE

"The change in outlook to negative reflects our expectation that financial ratios will weaken as a result of reduced cash flows associated with tax reform under the Tax Cuts and Jobs Act, higher capital expenditures and an increasing dividend", said Nana Hamir, Analyst.

With the reduction in EPE's corporate tax rate and the discontinuation of bonus depreciation, the company estimates that cash flows will decrease by approximately \$26 million - \$31 million in 2018. We anticipate that in the absence of material targeted financial policies to offset this cash flow leakage, EPE will produce lower cash flows going forward, putting downward pressure on cash flow coverage metrics.

Exacerbating the likely decline in credit metrics is an increase in the company's forecasted levels of capital spending, which we expect to be partly funded with debt. EPE's most recent published capital expenditure forecast of approximately \$750 million from the 2018-2020 period is about \$125 million higher than the company's previous forecast, driven by robust customer growth in the company's service territory. Furthermore, EPE intends to continue with its plan to increase its dividend with a goal of achieving a dividend payout ratio in the 55% - 65% range by 2020. EPE's dividend payout ratio at the end of 2017 was 54%.

Taking all of these factors into consideration, although EPE generally had a pre-WC/debt of 18.3% in FY 2017, absent mitigation measures on the part of the company or state regulatory response to tax reform, we expect financial ratios to decline to levels that are more appropriate for a Baa2 credit profile under the Electric and Gas Utilities Rating Methodology, including CFO pre-WC/debt 15% range.

#### Affirmations:

- ..Issuer: El Paso Electric Company
- .... Issuer Rating, Affirmed Baa1
- ....Senior Unsecured Regular Bond/Debenture, Affirmed Baa1
- ..Issuer: Maricopa (County of) AZ, Putil Corp.
- ....Senior Unsecured Revenue Bonds, Affirmed Baa1

#### Outlook Actions:

- ..Issuer: El Paso Electric Company
- ....Outlook, Changed to Negative from Stable

EPE's negative outlook reflects anticipated lower financial ratios as a result of a reduction in cash flows due to tax reform, the company's elevated capital spending plans, and an increasing dividend. We project that CFO pre-WC/debt will be sustained around 15% going forward, absent mitigation measures, than historical levels.

#### What Could Change the Rating -- Up

An upgrade in the near term is unlikely given the negative outlook. However, EPE's rating could experience

positive movement if the company produces stronger than expected financial ratios on a sustained basis, including CFO pre-WC to debt above 18%.

#### What Could Change the Rating -- Down

EPE could be downgraded if the company's ratio of CFO pre-WC declines to the 15% range or below; if EPE implements more aggressive shareholder friendly policies beyond the dividend increase already anticipated, including share repurchases and/or dividend distributions financed through an increase in leverage; if a more contentious political or regulatory environment emerges in Texas, Mexico, or if political intervention at the El Paso City Council creates uncertainty over cost or investment recovery.

The principal methodology used in these ratings was Regulated Electric Gas Utilities published in June 2017. Please see the Rating Methodologies page on [www.moodys.com](http://www.moodys.com) for a copy of the methodology.

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## CREDIT OPINION

27 March 2019

Update

 Rate this Research

### RATINGS

#### El Paso Electric Company

Domicile	El Paso, Texas, United States
Long Term Rating	Baa1
Type	LT Issuer Rating
Outlook	Negative

Please see the [ratings section](#) at the end of this report for more information. The ratings and outlook shown reflect information as of the publication date.

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## El Paso Electric Company

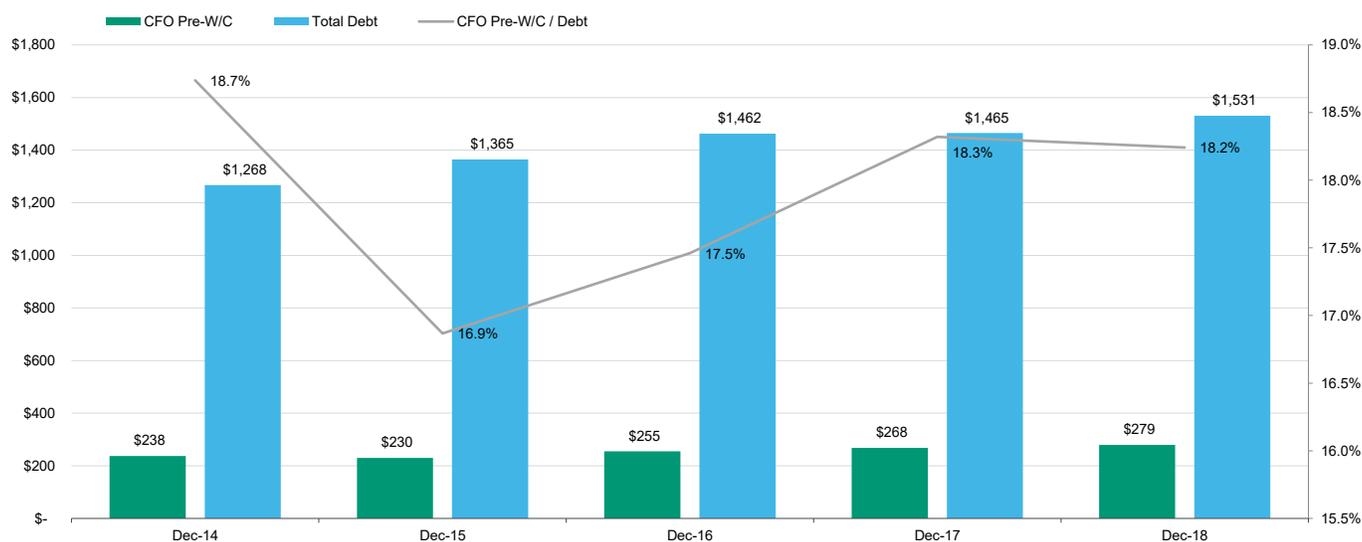
### Update to credit analysis

#### Summary

El Paso Electric Company's (EE) credit profile reflects its operations in predominantly constructive regulatory environments, driven by Texas where the company derives approximately 80% of its non-fuel base revenues. The remaining 20% of its revenues is generated in New Mexico, where the regulatory environment is less constructive. The company's electrical service is primarily regulated by the Public Utility Commission of Texas (PUCT), the New Mexico Public Regulation Commission (NMPRC) and the Federal Energy Regulatory Commission (FERC). However, EE's rates and services are also regulated by incorporated municipalities in its Texas service territory, the City of El Paso being the largest. Base rate decisions made by municipalities are ultimately subject to review and approval by the PUCT. While the regulatory framework in New Mexico has historically been less credit supportive than in Texas, EE's regulatory process in Texas has at times been impeded by political intervention by the El Paso City Council. We expect that EE will continue to manage its relationship with the El Paso City Council and its state regulators such that political intervention is limited and regulatory lag or recovery of prudent costs and investments continues to improve through rate case proceedings. EE's credit is constrained by its relatively small size and market concentration.

Over the next few years, we expect EE's financial metrics to deteriorate as cash flows will continue to be negatively impacted by the 2017 Tax Cuts and Jobs Act. The cash flow decline will be further exacerbated due to increased debt levels because of a higher capital expenditure program to support its solid customer and load growth in its service territory. The company also plans to continue to grow its dividend annually, but maintain a payout ratio in the 55-65% range. As a result, we expect EE's credit metrics to decline from current levels to levels similar to the mid-Baa rating category. In particular, we expect its ratio of cash flow from operations pre-working capital changes (CFO pre-W/C) to debt to be in the 15% range from about 18% and its ratio of CFO pre-W/C – Dividends or Retained Cash Flow (RCF) to debt to be on the 10%-12% range from about 15%.

Exhibit 1

**Historical CFO pre-W/C, Total Debt, and CFO Pre-WC to Debt (\$ MM)**

Source: Moody's Financial Metrics

**Credit Strengths**

- » Constructive regulatory environment in Texas with credit supportive capital investment trackers
- » Solid customer and load growth driving rate base growth
- » Lack of coal-fired generation positions the company well to meet future environmental requirements

**Credit Challenges**

- » Small size and scale
- » Heightened capital expenditure program will lead to a decline in financial metrics
- » Increasing dividend payout ratio over the near to medium term
- » Less supportive regulatory environment in New Mexico relative to other jurisdictions

**Rating Outlook**

EE's negative outlook reflects our expectation of a decline in the company's financial metrics as a result of a reduction in cash flows due to tax reform and increased debt levels due to elevated capital spending plans. We expect EE's ratio of CFO pre-W/C/debt will decline to around 15% going forward, absent any mitigating measures.

**Factors that Could Lead to an Upgrade**

An upgrade in the near term is unlikely given the negative outlook. However, EE's rating could experience positive movement if the company produces stronger than expected financial ratios on a sustained basis, including a ratio of CFO pre-W/C to debt above 18%.

**Factors that Could Lead to a Downgrade**

EE could be downgraded if the company's ratio of CFO pre-W/C to debt declines to the 15% range or below; if EE implements more aggressive shareholder friendly policies beyond the dividend increases already anticipated, including share repurchases and/or dividend

This publication does not announce a credit rating action. For any credit ratings referenced in this publication, please see the ratings tab on the issuer/entity page on [www.moody's.com](http://www.moody's.com) for the most updated credit rating action information and rating history.

distributions financed through an increase in leverage; if a more contentious political or regulatory environment emerges in Texas or New Mexico; or if political intervention at the El Paso City Council creates uncertainty over cost or investment recovery.

## Key Indicators

Exhibit 2

### El Paso Electric Company [1]

	Dec-14	Dec-15	Dec-16	Dec-17	Dec-18
CFO Pre-W/C + Interest / Interest	4.7x	4.3x	4.4x	3.8x	4.2x
CFO Pre-W/C / Debt	18.7%	16.9%	17.5%	18.3%	18.2%
CFO Pre-W/C – Dividends / Debt	15.2%	13.4%	14.1%	14.7%	14.5%
Debt / Capitalization	46.7%	47.6%	47.5%	50.4%	50.7%

[1] All ratios are based on 'Adjusted' financial data and incorporate Moody's Global Standard Adjustments for Non-Financial Corporations.

Source: Moody's Financial Metrics

## Profile

El Paso Electric Company is a vertically integrated regulated utility that provides electric service to approximately 425,000 retail customers in a 10,000 square mile area in the Rio Grande valley in west Texas and southern New Mexico with concentrations in the cities of El Paso, TX and Las Cruces, NM. Texas accounts for about 80% of revenues. EE has generating capacity of 2,085 MW, of which approximately 70% is fueled by natural gas, 30% from nuclear and less than 1% from renewables. EE is primarily regulated by the Public Utility Commission of Texas and the New Mexico Public Regulation Commission.

Exhibit 3

### El Paso Electric's Service Territory



Source: Company Presentations

## Detailed Credit Considerations

### CREDIT SUPPORTIVE REGULATORY ENVIRONMENT IN TEXAS

Given that approximately 80% of EE's revenues are generated in Texas, we attribute more weight to the credit supportiveness of the PUCT relative to the NMPRC. We believe the Texas regulatory framework is fundamentally credit supportive given that historically, EE has been able to earn close to its allowed return on equity (ROE) and generate solid financial metrics. There is risk of political intervention by the incorporated municipalities, which can weigh on EE's credit if it leads to insufficient recovery of prudently incurred costs and investments or significant regulatory lag, both credit negatives. For now, we do not incorporate a view that a contentious political or regulatory environment is likely.

On 18 December 2017, the PUCT issued a final order approving a negotiated settlement on EE's Texas rate case initially filed on 13 February 2017. The approved settlement included a non-fuel base rate increase of \$14.5 million (approximately 37% of EE's modified base rate increase request of \$39.2 million), and an ROE of 9.65% along with an approval to include all new plant in service in rate base. In addition, new residential customers with distributed generation will be subject to a \$30 minimum monthly charge which enables EE to recover grid and customer-related service costs. New rates became effective in January 2018, with a surcharge for rates associated with electric consumption on or after 18 July 2017.

In addition, as part of the rate case settlement, a baseline revenue requirement was established for Transmission and Distribution Cost Recovery Factors, which allows EE to recover incremental transmission and distribution costs periodically outside of a general rate, a credit positive. This will help mitigate regulatory lag and allow EE to recover on associated cost without the need to wait for its next general rate case. In January 2019, EE filed a Transmission Cost Recovery Factor (TCRF) to recover a requested \$8.2 million of Texas transmission revenues for transmission-related investments placed in service from 1 October 2016 through 30 September 2018, since these costs are not a part of EE's base rate. Similarly, EE anticipates filing its Distribution Cost Recovery Factor (DCRF) in March, seeking recovery of distribution-related cost incurred from 1 October 2016 through 31 December 2018. A decision on the TCRF and DCRF filings are expected during the second half of the year.

In both Texas and New Mexico, EE is able to recover its costs for fuel and purchased power via rate adjustment mechanisms which reduce the time for recovery of these costs, a credit positive. As a result of EE's 2010 rate case order in Texas, the company was able to streamline the process for periodic adjustments to its fuel factor. Fuel rates can be adjusted three times per year to reflect changes in current and projected fuel and purchased power costs and EE can recover/refund deferred balances, generally over the following twelve months. Fuel cost recovery in Texas requires that the company request to refund over-collections in any month they become significant (in excess of 4% of the previous twelve months costs) and request a surcharge when under-collections become just as material. Volatility in fuel prices can result in frequent adjustments to EE's fuel factors and fairly significant swings in its fuel deferral balances. In both Texas and New Mexico, recoveries made under these mechanisms are subject to periodic review by the state regulatory body and subject to potential refund. At 31 December 2018, EE had a net fuel over-recovery balance of \$11.0 million, including a net over-recovery of \$8.9 million in Texas and an over-recovery of \$2.0 million in New Mexico. The over-recoveries are refunded through EE's fuel adjustment clauses during the year.

### **LESS SUPPORTIVE REGULATORY ENVIRONMENT IN NEW MEXICO**

The NMPRC regulatory framework has historically been less predictable and transparent compared to those of other US jurisdictions. New Mexico allows certain practices that mitigate regulatory lag, such as the use of rate adjustment mechanisms and the use of a forecasted test year in rate cases. However, it has taken issue on a number of occasions with cases using future test years, such as Southwestern Public Service Company's (SPS: Baa2 stable) rate case rejected in April 2017. EE continues to file its New Mexico rate cases using a historic test year, which considering that EE's New Mexico rate cases can take over a year to be finalized, exacerbates regulatory lag, which can be somewhat offset by growth. While we view the New Mexico regulatory environment as more challenging than most US jurisdictions, only about 20% of EE's revenues comes from its New Mexico services.

EE's most recent rate case in New Mexico was finalized on 8 June 2016, when the NMPRC issued a final order approving an annual revenue increase of \$1.1 million, an allowed ROE of 9.48% and an equity ratio of 49.29%. EE's original request was for a non-fuel base rate increase of \$8.6 million based on an authorized ROE of 9.95% with an equity ratio of 49.29% based on a rate case test year-end of 2014. On 12 April 2017, the NMPRC issued an order requiring EE to file its next New Mexico rate case by 31 July 2019, using a historical test year period. EE is expected to file this rate case by July 2019.

### **SOLID CUSTOMER GROWTH DRIVING RATE BASE GROWTH**

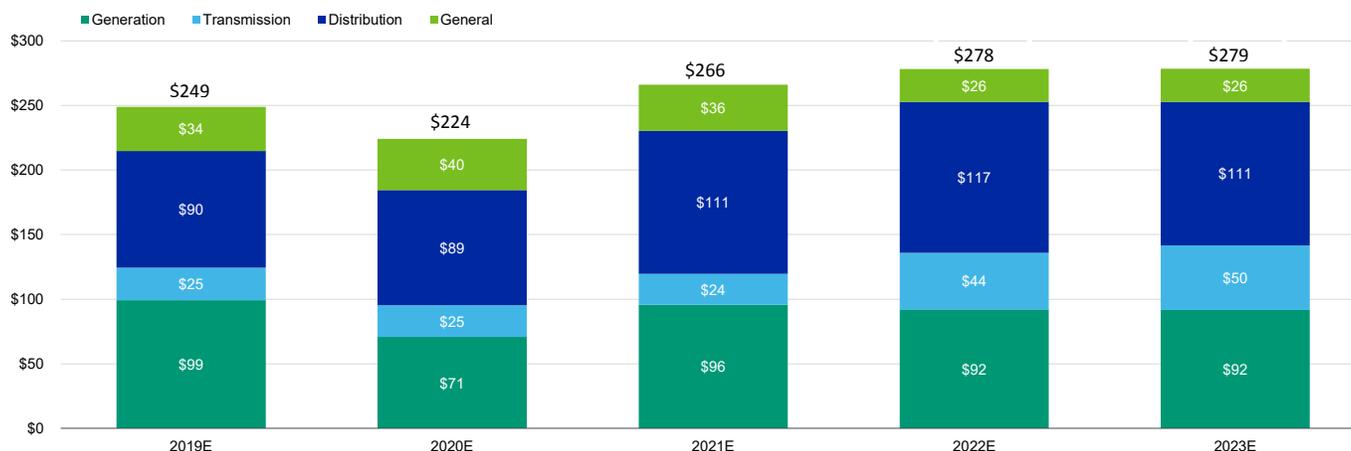
EE has seen solid customer and load growth historically, which is atypical for the utility sector. For the 10-year period from 2006-2016, EE experienced 10-year compound annual growth rates (CAGR) of 1.62% and 1.24% in residential customer growth and usage per residential customer, respectively. This compared favorably to the national industry averages in residential customer growth of 0.86% and usage per residential customer of -0.34% over the same period. The company demonstrated a 1.57% CAGR for residential customers growth within their territory for the 10 years ending in 2018. The increase in residential growth and customer demand in EE's service territory has been primarily driven by population increases and infrastructure investment associated with the US military's base realignment program at Fort Bliss in Texas, the construction of Union Pacific (UP) intermodal rail and the increase in cross-border trade between El Paso and Mexico. In addition to the stable military presence in its service territory, El Paso is also benefiting from sizable economic growth from the expansion of other sectors including industrial, medical and financial services. We expect the solid customer growth and demand usage to continue to outpace the national average over the next few years given the economic growth in the region.

To support above average customer growth, EE has increased its capital investments over the last few years with peak spending of \$282 million in 2015. The significant capital investment program was used to add generation capacity as well as expand its transmission and distribution systems. A substantial portion of the peak capex levels was associated with the construction of the new Montana Power Station (MPS), which consists of four simple-cycle natural gas combustion turbine units. Each unit generates approximately 88 MW of peak power. Construction of MPS Units 1 & 2 was completed and the units were placed into service in March 2015, while Units 3 & 4 came online in May and September 2016, respectively.

EE plans to invest about \$1.3 billion (excluding nuclear fuel costs) in capital additions over the 2019 through 2023 period to support continued customer and load growth. The height of the company's expected capex investments is expected in the 2021-2023 time frame driven by the need for additional generation resources. In 2018, EE announced the winning bids for the request for proposal (RFP) process that it initiated in June 2017, which includes the construction of a 226 MW natural gas combustion turbine unit at Newman (anticipated in-service date of 2023), a purchase power agreement of 200 MW of solar, and 100 MW of battery storage.

Exhibit 4

#### Five Year Forecasted Capital Expenditure Plan [1&2] (\$ in millions)



(1) Includes the construction of a 226 MW natural gas combustion turbine at Newman, with an expected cost of \$143 million

(2) Excludes PPAs for 200 MW of utility scale solar and 100 MW of battery storage

Source: Company Presentation

### SMALL SIZE AND SCALE CONSTRAIN THE CREDIT PROFILE

EE's credit profile also factors in its relatively small size and scale as well as market concentration as it serves about 425,000 customers in a small area of Texas and New Mexico. Texas accounts for 80% of total non-fuel revenues, the majority of which are generated in the City of El Paso, while New Mexico accounts for about 20% of total revenues. Although EE's service area is concentrated, we acknowledge that customer and load growth is expected to continue to surpass national averages.

## FINANCIAL METRICS EXPECTED TO WEAKEN AS A RESULT OF TAX REFORM AND CAPITAL EXPENDITURE PROGRAM

EE currently has solid financial metrics that support the rating, however, we expect them to weaken due to the impact from 2017 tax reform and increased capital investments which will increase debt levels. For fiscal year 2018, EE's ratio of CFO pre-W/C to debt was 18.2% and its cash flow interest coverage was 4.2x, in line with US regulated electric and gas utilities in the mid-to-high Baa rating category.

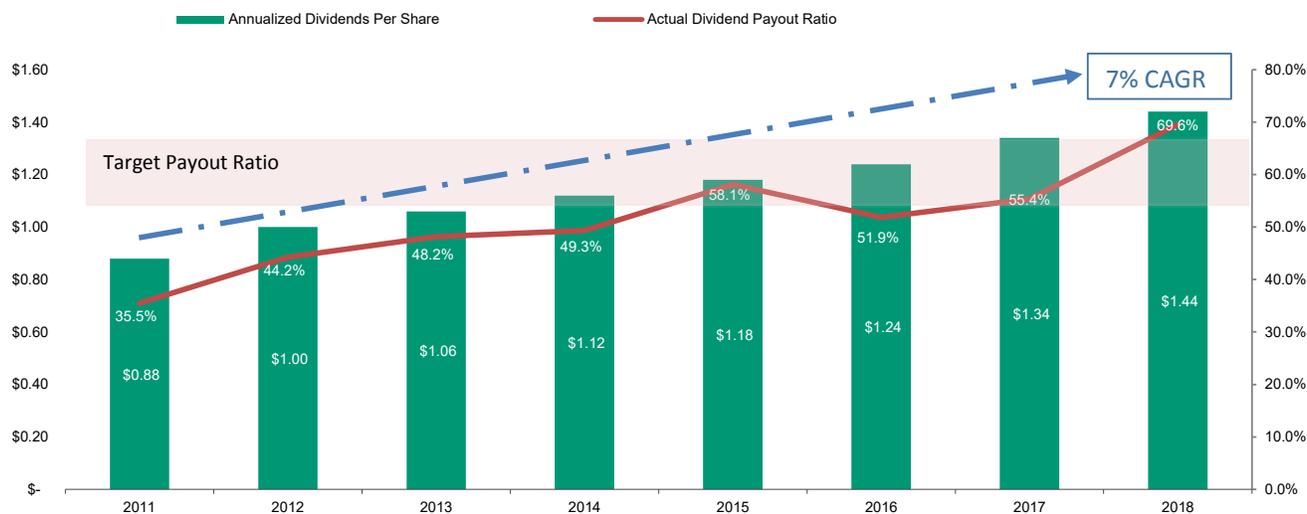
However, with the anticipated cash flow loss associated with tax reform, along with an expected increase in debt and equity issuances used to finance increased capital investments to support growth in its service territory, we expect EE's financial profile to deteriorate going forward. At year-end 2018 EE refunded approximately \$28.2 million to its customers as a result of tax reform. However, the negative impact was partially offset by a \$7.7 million rate base increase as a result of its 2017 rate case and favorable weather conditions. Going forward, as the company becomes a cash taxpayer in 2020 and executes on its capex plan, we expect EE's ratio of CFO pre-W/C to debt to decline to about 15% over the next 2 years, which is more consistent with Baa2 rated peers.

## INCREASING DIVIDEND PAYOUT RATIO

In November 2016, management announced that it was refining its shareholder dividend policy with in an objective to achieve an annual dividend payout ratio in the range of 55% - 65% of net income, similar to the industry average, by 2020. EE's average dividend payout ratio for the last three years was about 58% and it has been steadily increasing each year. EE increased its dividend by 7.5% in the second quarter of 2018 and the company's board of directors will continue to consider possible dividend increases each year. With the anticipated impacts of tax reform and increasing capital expenditures, we project a retained cash flow to debt metric in the 10-12% range over the next three years, assuming annual dividend increases in the 8-10% range. This level of retained cash flow is also more consistent with Baa2 rated peers.

Exhibit 5

### El Paso Electric Historical Dividend Growth



Source: Company Filings

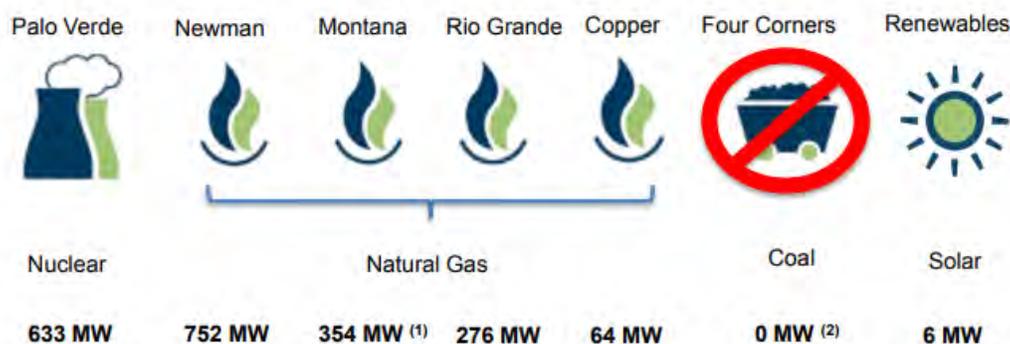
## MODERATE CARBON TRANSITION RISK WITHIN THE REGULATED UTILITY SECTOR

EE has a moderate carbon transition risk within the regulated utility sector. As an integrated utility, its generation ownership places it at a higher risk profile than T&D companies, which are considered low. However, EE has no coal-fired generation in its portfolio that lowers its carbon transition risk relative to many other integrated utilities. Moody's framework for assessing carbon transition risk in this industry is set out in "Prudent regulation key to mitigating risk, capturing opportunities of decarbonization" (2 Nov. 2017).

At year-end 2018, EE's generation portfolio consisted of approximately 70% natural gas fired generation, 30% nuclear generation and less than 1% solar. In July 2016 EE became the first utility in Texas and New Mexico to completely eliminate coal-fired generation after it sold its 7% stake in the Four Corners coal power plant to Arizona Public Service Company (A2 stable). By divesting its ownership interest in Four Corners, EE is in a good position to meet future environmental mandates.

Exhibit 6

### 2018 El Paso Electric Company's Owned Generation Mix



(1) Montana Power Station ("MPS") includes Units 1 & 2 (88 MW per unit), Units 3 & 4 (89 MW per unit).

(2) In July 2016, EE became coal free following the sale of its 7% minority ownership interest in Four Corners Units 4 & 5 and common facilities

(3) Solar purchased power represented approximately 70% of their capacity during the summer peak period

Source: Company Presentation

Aside from successfully divesting its interest in Four Corners, EE completed the construction of the aforementioned MPS facility to bolster its generation capacity to meet its customer and load growth needs. EE is also placing a greater emphasis on increasing its renewable resource generation capacity. EE launched a 3 MW community solar program in Texas during the second quarter of 2017, and added an additional 5 MW of dedicated solar on the Holloman Air Force Base in October 2018. In addition, the company is seeking an expansion of the Texas Community Solar Facility by 2MW, with a final order expected in the first half of 2019.

By exiting coal generation and increasing their renewables renewable generation, EE is expected to be able to comply with the renewable mandates imposed by both Texas and New Mexico. EE is required under Texas law to obtain 5% of its total generation from renewable resources. In New Mexico, EE is required to meet 15% of its current retail sales with renewable resources, which will increase to 20% in 2020. We expect EE to be well positioned to meet these requirements through power purchase agreements, and by expanding its own renewable energy portfolio.

### Liquidity Analysis

EE has an adequate liquidity profile given its stable cash flow and good external availability. As of 31 December 2018, EE generated cash from operations of \$285 million which largely covered its \$247 million of capital expenditures (including capitalized interest during construction but excluding nuclear fuel additions) and \$58 million of shareholder dividends. Nuclear fuel addition costs (\$38 million at year-end 2018), which are typically funded through fixed rate senior note issuances and borrowings on EE's revolving credit facility, are recovered from customers through EE's fuel recovery mechanism as the fuel is consumed.

EE has a \$350 million revolving credit facility which expires in September 2023. The revolver includes an option to increase the size by an additional \$50 million with lender approval and an option to exercise a two-year renewal options. The facility is available for direct borrowings by a trust that is used to finance EE's nuclear fuel inventory purchases and for general corporate purposes, including the issuance of letters of credit. As of 31 December 2018, EE had \$300.7 million of availability on its revolver. There is no material adverse change (MAC) clause that could limit incremental borrowings. As of year-end 2018, EE was in compliance with its only financial covenant, a maximum debt to capital ratio of 65%. As of 31 December 2018, the ratio was approximately 55%.

EE has no significant debt maturities in the near-term. EE has \$45 million of Rio Grande Resources Trust II bonds due in August 2020 and \$150 million of Senior notes maturing in December 2022.

## Rating Methodology and Scorecard Factors

Exhibit 8

### Rating Factors

El Paso Electric Company

#### Regulated Electric and Gas Utilities Industry Grid [1][2]

	Current FY 12/31/2018		Moody's 12-18 Month Forward View As of Date Published [3]	
	Measure	Score	Measure	Score
<b>Factor 1 : Regulatory Framework (25%)</b>				
a) Legislative and Judicial Underpinnings of the Regulatory Framework	A	A	A	A
b) Consistency and Predictability of Regulation	Baa	Baa	Baa	Baa
<b>Factor 2 : Ability to Recover Costs and Earn Returns (25%)</b>				
a) Timeliness of Recovery of Operating and Capital Costs	Baa	Baa	Baa	Baa
b) Sufficiency of Rates and Returns	A	A	A	A
<b>Factor 3 : Diversification (10%)</b>				
a) Market Position	Ba	Ba	Ba	Ba
b) Generation and Fuel Diversity	A	A	A	A
<b>Factor 4 : Financial Strength (40%)</b>				
a) CFO pre-WC + Interest / Interest (3 Year Avg)	4.1x	Baa	3.7x - 4.2x	Baa
b) CFO pre-WC / Debt (3 Year Avg)	18.0%	Baa	13% - 18%	Baa
c) CFO pre-WC – Dividends / Debt (3 Year Avg)	14.4%	Baa	10% - 14%	Baa
d) Debt / Capitalization (3 Year Avg)	49.5%	Baa	46% - 51%	Baa
<b>Rating:</b>				
Grid-Indicated Rating Before Notching Adjustment		Baa1		Baa1
HoldCo Structural Subordination Notching	0	0	0	0
a) Indicated Rating from Grid		Baa1		Baa1
b) Actual Rating Assigned		Baa1		Baa1

[1] All ratios are based on 'Adjusted' financial data and incorporate Moody's Global Standard Adjustments for Non-Financial Corporations.

[2] As of 12/31/2018

[3] This represents Moody's forward view; not the view of the issuer; and unless noted in the text, does not incorporate significant acquisitions and divestitures.

Source: Moody's Financial Metrics

## Appendix

Exhibit 9

### Cash Flow and Credit Metrics [1]

CF Metrics	Dec-14	Dec-15	Dec-16	Dec-17	Dec-18
As Adjusted					
EBITDA	311	309	341	367	328
FFO	240	231	270	280	280
- Div	45	47	50	53	58
RCF	195	184	221	226	222
FFO	240	231	270	280	280
+/- ΔWC	(4)	8	(31)	16	8
+/- Other	(3)	(1)	(15)	(11)	(0)
CFO	234	239	224	284	287
- Div	45	47	50	53	58
- Capex	317	325	269	240	289
FCF	(127)	(134)	(95)	(10)	(60)
Debt / EBITDA	4.1x	4.4x	4.3x	4.0x	4.7x
EBITDA / Interest	4.9x	4.4x	4.5x	3.9x	3.7x
FFO / Debt	18.9%	16.9%	18.5%	19.1%	18.3%
RCF / Debt	15.4%	13.5%	15.1%	15.4%	14.5%
Revenue	918	850	887	917	904
Cost of Good Sold	314	240	234	244	228
Interest Expense	64	71	76	95	88
Net Income	82	62	87	90	57
Total Assets	3,053	3,196	3,373	3,486	3,635
Total Liabilities	2,078	2,188	2,305	2,349	2,471
Total Equity	975	1,008	1,068	1,137	1,164

[1] All figures and ratios are calculated using Moody's estimates and standard adjustments. Periods are Financial Year-End unless indicated. LTM = Last Twelve Months.

Source: Moody's Financial Metrics

Exhibit 10

### Peer Comparison Table [1]

(in US millions)	El Paso Electric Company			Tucson Electric Power Company			Public Service Company of New Mexico			Texas-New Mexico Power Company		
	Baa1 Negative			A3 Stable			Baa2 Stable			A3 Stable		
	FYE Dec-16	FYE Dec-17	FYE Dec-18	FYE Dec-16	FYE Dec-17	LTM Sept-18	FYE Dec-16	FYE Dec-17	LTM Sept-18	FYE Dec-16	FYE Dec-17	LTM Sept-18
Revenue	887	917	904	1,235	1,341	1,392	1,036	1,104	1,081	327	341	344
EBITDA	341	367	328	418	515	482	442	499	456	162	166	168
CFO Pre-W/C / Debt	17.5%	18.3%	18.2%	24.3%	28.1%	27.5%	17.0%	19.4%	18.8%	24.0%	22.0%	18.6%
CFO Pre-W/C – Dividends / Debt	14.1%	14.7%	14.5%	21.2%	23.7%	23.2%	16.8%	16.2%	15.5%	16.9%	13.2%	11.8%
Debt / EBITDA	4.3x	4.0x	4.7x	3.9x	3.1x	3.6x	4.4x	3.8x	4.1x	2.8x	3.0x	3.6x
Debt / Capitalization	47.5%	50.4%	50.7%	43.9%	45.1%	44.6%	46.7%	49.7%	47.4%	34.8%	39.6%	43.8%
EBITDA / Interest Expense	4.5x	3.9x	3.7x	6.3x	7.8x	7.3x	4.3x	5.1x	4.8x	5.4x	5.4x	5.3x

[1] All figures & ratios calculated using Moody's estimates & standard adjustments. FYE = Financial Year-End. LTM = Last Twelve Months. RUR\* = Ratings under Review, where UPG = for upgrade and DNG = for downgrade.

Source: Moody's Financial Metrics

## Ratings

Exhibit 11

Category	Moody's Rating
<b>EL PASO ELECTRIC COMPANY</b>	
Outlook	Negative
Issuer Rating	Baa1
Senior Unsecured	Baa1

Source: Moody's Investors Service

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## Rating Action Moody's places El Paso Electric on review for downgrade

01 Jul 2019

### Approximately \$1.2 billion of debt securities affected

New York, July 01, 2019 -- Moody's Investors Service ("Moody's") placed the issuer and senior unsecured ratings of El Paso Electric Company (EE) on review for downgrade. The review is prompted by projected weakening in EE's financial metrics and credit profile together with uncertainty around the implications on EE's credit of a recently announced acquisition of the utility by Infrastructure Investments (IIF, not rated), an investment vehicle advised by Morgan Investment Management Inc.

#### On Review for Downgrade:

..Issuer: El Paso Electric Company

.... Issuer Rating, Placed on Review for Downgrade, currently Baa1

....Senior Unsecured Regular Bond/Debenture, Placed on Review for Downgrade, currently Baa1

..Issuer: Maricopa (County of) AZ, Ctl. Corp.

....Senior Unsecured Revenue Bonds, Placed on Review for Downgrade, currently Baa1

#### Outlook Actions:

..Issuer: El Paso Electric Company

....Outlook, Changed To Rating Under Review From Negative

#### RATINGS RATIONALE

"With increasing, partly debt-funded capital expenditures and the ongoing pressure on cash flow from tax reform, we project a decline in El Paso Electric's credit metrics", Naina Hamilton, Assistant Vice President. These metrics include the ratio of cash flow from operations before working capital changes (CFO) to debt of around 16% in the near to medium term, lower than recent historical levels of just above 18%. This level is weak for the company's Baa1 rating and more in line with slightly lower rated vertically integrated peers.

Furthermore, EE announced on June 3 that it had agreed to be acquired for about \$4.3 billion in cash. The equity interests in EE will be held by an indirect special purpose intermediate company, wholly owned by IIF. While IIF's application to EE's regulators for transaction approval includes a number of ring-fencing provisions and other commitments, there is still some uncertainty available on the proposed acquisition financials, presenting some uncertainty on the credit implications of the transaction for EE.

The review of EE's ratings will focus on the company's financing plans for its higher capital expenditures, regulatory strategies for the recovery of these costs, and the prospects that cash flow ratios could return to historical levels over the next few years. The review will also consider the financing plans associated with the acquisition; the impact of the ring-fencing provisions that have been proposed; regulatory and other stakeholder responses to the acquisition, and other potential credit implications of the transaction.

El Paso Electric Company is a vertically integrated electric utility headquartered in El Paso, Texas.

The principal methodology used in these ratings was Regulated Electric Gas Utilities published in June 2017. Please see the Rating Methodologies page on [www.moody's.com](http://www.moody's.com) for a copy of the methodology.

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## Summary:

# El Paso Electric Co.

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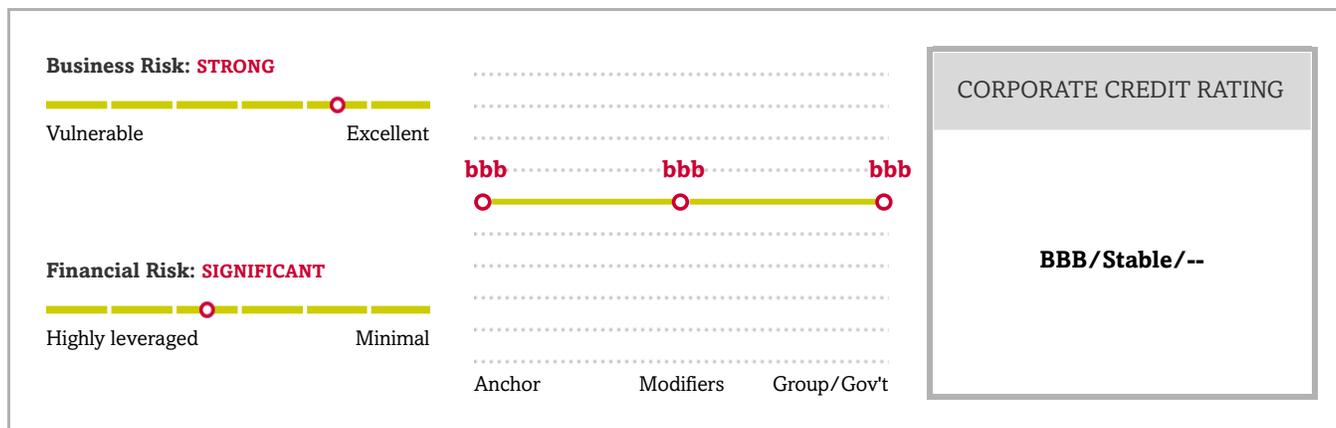
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## Summary: El Paso Electric Co.



### Rationale

Business Risk: Strong	Financial Risk: Significant
<ul style="list-style-type: none"> <li>• A low-risk, vertically integrated, regulated electric utility with no non-regulated operations.</li> <li>• Gradually improving management of regulatory risk.</li> <li>• Some regulatory diversity with approximately 80% of sales in Texas and 20% in New Mexico.</li> <li>• Heavy reliance on nuclear power.</li> </ul>	<ul style="list-style-type: none"> <li>• We evaluate the company's financial measures using moderate financial benchmarks compared to that of a typical corporate issuer, reflecting El Paso Electric's mostly low-risk, regulated business and average management of regulatory risk.</li> <li>• We expect financial measures to be weaker because of rate reductions related to U.S. corporate tax reform.</li> <li>• The company has negative discretionary cash flow primarily due to elevated capital expenditures.</li> </ul>

## Outlook: Stable

The stable outlook on El Paso Electric Co. reflects S&P Global Ratings' view of the company's management of regulatory risk, which has historically been viewed as challenging primarily because of regulation from the City of El Paso, but is gradually improving. We expect the company will maintain cash flow measures in the lower half of significant financial risk profile category largely due to U.S. tax reform-related customer rate reductions. Under our base case scenario, we expect funds from operations (FFO) to debt of about 14% over next two years, partly mitigated by our expectations for a gradual improvement in the company's management of regulatory risk.

### Upside scenario

We could raise the rating on El Paso Electric over the next 12 months if the company consistently demonstrates ongoing improvements to its overall management of regulatory risk, particularly in Texas, strengthening its overall business risk profile and maintaining its financial measures in line with base-case expectations.

### Downside scenario

We could lower the ratings over the next 12 months if credit measures weaken such that FFO to debt consistently trends below 14% combined with worsening regulatory risk. This could occur if there is persistent regulatory lag in recovery of major costs and investments or the company receives adverse regulatory outcomes.

## Our Base-Case Scenario

Assumptions	Key Metrics			
<ul style="list-style-type: none"> <li>• Tax reform-related rate reductions of about \$27 million in Texas and New Mexico;</li> <li>• Average customer growth;</li> <li>• Capital spending of about \$270 million in 2018;</li> <li>• Dividends of about \$55 million;</li> <li>• Gradually improving management of regulatory risk; and</li> <li>• Continued use of existing regulatory riders.</li> </ul>	<b>2017A</b>	<b>2018E</b>	<b>2019E</b>	
	FFO/debt (%)	17.0	14-15	14-15
	Debt/EBITDA (x)	4.5	4.6-5.0	4.3-4.5
	FFO cash interest coverage (x)	5.0	4.4-4.8	3.5-4.0
<p>A--Actual. E--Estimated. FFO--Funds from operations.</p>				

## Company Description

El Paso Electric is a utility engaged in the generation, transmission, and distribution of electricity in west Texas and southern New Mexico serving 417,000 customers.

## Business Risk: Strong

Our business risk assessment for El Paso Electric reflects the company's low-risk regulated utility operations and management of regulatory risk in Texas and New Mexico. El Paso Electric is regulated primarily by the Public Utility Commission of Texas (PUCT) in Texas and the New Mexico Public Regulation Commission (NMPRC) in New Mexico. The City of El Paso can temporarily change rates in the company's Texas service territory. The company's last rate order in December 2017 was credit supportive. The order allowed a \$14.5 million non-fuel base rate increase over a 9.6% return on equity and allowed the inclusion of all new capital investment in rate base. Additionally, the order approved two new cost recovery factors for transmission and distribution costs, which should reduce lag in collection of these costs and improve stability of financial performance. The company will request for first increase under these mechanisms in January 2019.

Our business risk assessment for El Paso Electric also reflects moderate regulatory diversity, and a stable customer base that supports credit quality. The company serves about 417,000 customers in western Texas and southern New Mexico, which account for approximately 80% and 20% of sales, respectively. Furthermore, El Paso Electric has about 2,082 megawatts of generating capacity, and our business risk assessment incorporates higher operating risks associated with its exposure to nuclear generation.

## Financial Risk: Significant

We assess the company's financial risk profile using moderate financial benchmarks compared with those used for a typical corporate issuer reflecting the low-risk, regulated utility business and average management of regulatory risk. Under our base-case scenario, we expect El Paso Electric's FFO to debt to be about 14% over the next two years. Our base-case scenario assumes capital spending of about \$270 million, dividend payments of about \$55 million, \$27 million tax reform-related rate reductions, and average customer growth.

## Liquidity: Adequate

El Paso Electric has adequate liquidity and can more than cover its needs for the next 12 months, even if EBITDA declines by 10%. We expect the company's liquidity sources over the next 12 months will exceed uses by more than 1.1x. El Paso Electric's liquidity benefits from the company's ability to absorb a high-impact, low-probability event with limited need for refinancing, well-established relationships with banks, a satisfactory standing in the credit markets, and manageable debt maturities over the next few years.

Principal liquidity sources	Principal liquidity uses
<ul style="list-style-type: none"> <li>• Credit facility availability of about \$350 million; and</li> <li>• FFO of about \$240 million.</li> </ul>	<ul style="list-style-type: none"> <li>• Maintenance capital spending of about \$270 million;</li> <li>• No long-term debt maturities; and</li> <li>• Dividend payments of about \$55 million.</li> </ul>

## Issue Ratings--Subordination Risk Analysis

### Capital structure

El Paso Electric's capital structure consists of \$1.19 billion of senior notes and unsecured Pollution Control Bonds debt obligations.

### Analytical conclusions

We rate the unsecured debt issued by El Paso Electric 'BBB', the same as the issuer credit rating, because it's the debt of a qualifying investment-grade utility.

## Related Criteria

- Criteria - Corporates - General: Reflecting Subordination Risk In Corporate Issue Ratings, Sept. 21, 2017
- Criteria - Corporates - General: Methodology And Assumptions: Liquidity Descriptors For Global Corporate Issuers, Dec. 16, 2014
- Criteria - Corporates - General: Corporate Methodology: Ratios And Adjustments, Nov. 19, 2013
- Criteria - Corporates - General: Corporate Methodology, Nov. 19, 2013
- Criteria - Corporates - Utilities: Key Credit Factors For The Regulated Utilities Industry, Nov. 19, 2013
- General Criteria: Methodology: Industry Risk, Nov. 19, 2013
- General Criteria: Country Risk Assessment Methodology And Assumptions, Nov. 19, 2013
- General Criteria: Group Rating Methodology, Nov. 19, 2013
- General Criteria: Methodology: Management And Governance Credit Factors For Corporate Entities And Insurers, Nov. 13, 2012
- General Criteria: Use Of CreditWatch And Outlooks, Sept. 14, 2009

Business And Financial Risk Matrix						
Business Risk Profile	Financial Risk Profile					
	Minimal	Modest	Intermediate	Significant	Aggressive	Highly leveraged
Excellent	aaa/aa+	aa	a+/a	a-	bbb	bbb-/bb+
<b>Strong</b>	aa/aa-	a+/a	a-/bbb+	<b>bbb</b>	bb+	bb
Satisfactory	a/a-	bbb+	bbb/bbb-	bbb-/bb+	bb	b+
Fair	bbb/bbb-	bbb-	bb+	bb	bb-	b
Weak	bb+	bb+	bb	bb-	b+	b/b-
Vulnerable	bb-	bb-	bb-/b+	b+	b	b-

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Research Update:

# El Paso Electric Co. Outlook Revised To Negative From Stable On Acquisition By IIF; Ratings Affirmed

June 5, 2019

## Rating Action Overview

- El Paso Electric Co. (EE) has announced that it entered into a definitive agreement to be acquired by Infrastructure Investments Fund (IIF), an investment vehicle advised by J.P. Morgan Investment Management Inc.
- We are affirming our ratings on EE, including our 'BBB' issuer credit rating, and revising the outlook to negative from stable. Our ratings on EE's senior unsecured debt are unchanged.
- The negative outlook reflects the potential for EE's consolidated financial measures to weaken following the proposed acquisition, including the possibility that IIF could implement financial policies toward EE that weaken EE's credit quality. We will continue to monitor the regulatory approval process and assess the planned funding strategy for EE and its proposed intermediary holding company as it develops.

## Rating Action Rationale

The outlook revision reflects uncertainties related to EE's proposed acquisition by IIF, including the potential that IIF could implement financial policies toward EE that weaken its credit quality despite several proposed credit-protection commitments, including:

- There is an inability to have EE guarantee the debt or credit instruments of IIF, an intermediary holding company, or any other affiliates not already connected with EE;
- EE's assets, revenues, or stock shall not be pledged by IIF, the intermediary holding company, or any other affiliates not already connected with EE for the benefit of any entity other than EE;
- Neither EE nor the intermediary holding company will incur, guarantee, or pledge assets for any new incremental debt related to the merger;
- A nonconsolidation opinion 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 EE with IIF or any affiliate of IIF;
- An arm's-length relationship between EE and IIF and its affiliates is maintained;

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- Dividend restrictions, such that payments by EE will be suspended until otherwise allowed by regulators if the issuance of the dividend would cause the equity component of EE's debt-to-equity ratio to fall below what is authorized for ratemaking purposes;
- Independent directors will make up 70% of EE's board;
- Credit facilities at EE and the intermediary holding company are separate from IIF and its affiliates; and
- A minimum equity ratio will be maintained at EE.

Although these proposed measures broadly suggest a commitment to protect EE's credit quality, how these measures will be implemented, monitored, and enforced is uncertain should the acquisition be approved. In addition, other concerns, including IIF's use of leverage within the proposed organizational structure, are unclear.

Our ratings on EE are based on its strong business risk profile and significant financial risk profile.

Our business risk assessment reflects its lower-risk regulated utility operations and management of regulatory risk in Texas and New Mexico. EE is regulated primarily by the Public Utility Commission of Texas and the New Mexico Public Regulation Commission. In addition, the City of El Paso, Texas, can temporarily change rates in the city's boundaries, collectively heightening regulatory risk. Nevertheless, EE's last rate case order in 2017 was fairly constructive despite being based on a historical test year. Specifically, it allowed for two new cost recovery factors for transmission and distribution costs, which we expect will reduce regulatory lag.

Our assessment also incorporates EE's small size yet stable customer base. It serves about 425,000 customers in western Texas and southern New Mexico, which account for approximately 80% and 20% of sales, respectively. Furthermore, EE has about 2,085 megawatts of generating capacity, and our assessment incorporates the higher operating risks associated with its exposure to nuclear generation.

We assess EE's financial measures using our medial volatility financial benchmark table. This reflects EE's lower-risk, rate-regulated utility operations and management of regulatory risk.

Our current base-case scenario includes capital spending averaging about \$320 million annually, dividends averaging about \$70 million annually, a growth funding strategy consistent with EE's capital structure, cost recovery factors for transmission and distribution investments, and future rate cases. Thus, we expect funds from operations (FFO) to debt between 13% and 15%. However, this is subject to change pending the resolution of EE's proposed acquisition.

## Outlook

The negative outlook reflects the potential that EE's consolidated financial measures will weaken following the proposed acquisition, including the possibility that IIF implements financial policies toward EE that could weaken its credit quality. We will continue to monitor the regulatory approval process and assess the planned funding strategy for EE and its proposed intermediary holding company as it develops.

## Downside scenario

We could lower the rating on EE over the next 12 months if the merger is approved and we project that consolidated credit measures (inclusive of the proposed intermediary holding company) will be weaker than current measures at EE, such that FFO to debt consistently trends below 14%. We

could also lower the ratings if EE's management of regulatory risk weakens.

## Upside scenario

We could revise the outlook to stable over the next 12 months upon the merger approval if we project the proposed consolidated company's FFO to debt to be consistently above 14%, with no deterioration in EE's regulatory risk management. This could occur if the future funding strategy and financial policies do not impair EE's credit quality. We could also revise the outlook to stable if the merger is not completed and EE's financial measures consistently reflect FFO to debt greater than 14%.

## Company Description

EE is a utility engaged in the generation, transmission, and distribution of electricity in west Texas and southern New Mexico, serving about 425,000 customers.

## Liquidity

EE has adequate liquidity, in our view, and can more than cover its needs for the next 12 months, even if EBITDA declines by 10%. We expect sources over the next 12 months will exceed uses by more than 1.1x. Under our stress scenario, we don't expect EE to require access to the capital markets during that period to meet its liquidity needs.

In addition, EE has sound relationships with its banks and a satisfactory standing in the credit markets.

Principal liquidity sources:

- Credit facility availability of about \$150 million;
- FFO of about \$280 million over the next 12 months; and
- Minimal cash on hand.

Principal liquidity uses:

- Maintenance capital spending of about \$185 million over the next 12 months;
- Dividend payments of about \$65 million over the next 12 months; and
- Long-term debt maturities of about \$40 million over the next 12 months.

## Issue Ratings - Subordination Risk Analysis

We rate EE's senior unsecured debt 'BBB', the same as the issuer credit rating, because it is the debt of a qualifying investment-grade utility under our criteria.

## Ratings Score Snapshot

<b>Issuer Credit Rating</b>	BBB/Negative/--
<b>Business risk</b>	Strong
Country risk	Very low
Industry risk	Very low
Competitive position	Satisfactory
<b>Financial risk</b>	Significant
Cash flow/Leverage	Significant
<b>Anchor</b>	bbb
<b>Modifiers</b>	
Diversification/Portfolio effect	Neutral (no impact)
Capital structure	Neutral (no impact)
Financial policy	Neutral (no impact)
Liquidity	Adequate (no impact)
Management and governance	Satisfactory (no impact)
Comparable rating analysis	Neutral (no impact)
<b>Stand-alone credit profile</b>	bbb
Group credit profile	bbb

## Related Criteria

- Criteria | Corporates | General: Corporate Methodology: Ratios And Adjustments, April 1, 2019
- Criteria | Corporates | General: Reflecting Subordination Risk In Corporate Issue Ratings, March 28, 2018
- Criteria | Corporates | General: Methodology And Assumptions: Liquidity Descriptors For Global Corporate Issuers, Dec. 16, 2014
- Criteria | Corporates | General: Corporate Methodology, Nov. 19, 2013
- Criteria | Corporates | Utilities: Key Credit Factors For The Regulated Utilities Industry, Nov. 19, 2013
- General Criteria: Methodology: Industry Risk, Nov. 19, 2013
- General Criteria: Country Risk Assessment Methodology And Assumptions, Nov. 19, 2013
- General Criteria: Group Rating Methodology, Nov. 19, 2013
- General Criteria: Methodology: Management And Governance Credit Factors For Corporate Entities And Insurers, Nov. 13, 2012
- General Criteria: Use Of CreditWatch And Outlooks, Sept. 14, 2009

## Ratings List

**Ratings Affirmed; CreditWatch/Outlook Action**

	To	From
<b>El Paso Electric Co.</b>		
Issuer Credit Rating	BBB/Negative/--	BBB/Stable/--

**Ratings Affirmed**

<b>El Paso Electric Co.</b>		
Senior Unsecured	BBB	

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## Exhibit EL-6: Ring-Fencing Standards

### *Protective Policies and Practices (1)*

#### **TRACK I: Preserves Individual Viability**

#### **I. Viability: Able to Maintain Its Assets and Solvency**

##### **I-A Prevent the diversion of Protected Co. assets**

- a. Is a separate legal entity; maintains its separate name and identity
- b. Maintains separate financial accounts in its own name; no commingling of assets.
- c. Protected Company owns all of its physical assets in its own name.
- d. Has policy/procedures to control dividends from Protected Co.
- e. Has policy/procedures to control asset transfers and asset diversion from the Protected Company to parent or sister companies.
- f. Assets are not pledged for the benefit of parent or sister companies.
- g. Transfers of assets, services, and supplies between the Protected Company and its parent or sister companies are subject to an arm's length standard.
- h. Protected Co. does not lend to parent or affiliates

##### **I-B**

- i. Protected Company has separate 3rd party borrowing sources; has credit ratings in its own name.
- j. Protected Company's ability to borrow is not contingent on financial condition of parent or affiliates.
  - j 1. .. No Cross default / cross acceleration with parent or affiliates
  - j 2. .. No covenants tied to ratings of parent or affiliates

##### **I-C**

- k. Protected Co. does not guarantee the liabilities of affiliates
- l. Parent and affiliates do not represent to the public or creditors that the Protected Co. is liable for parent or affiliate obligations
- m. Not subject to joint tax liability, other than as required by law

##### **I-D**

- n. Avoids excessive debt leverage

1. A provision may appear in more than one category if appropriate. Source: Lapson Advisory.

*Protective Policies and Practices (1)*

*Protective Policies and Practices, continued (1)*

**TRACK II: Avoids Consolidation in Bankruptcy of Parent or Affiliates**

**II-A Has barriers to involuntary consolidation**

Is a separate legal entity; separate name and identity

[Same as 'a' above]

Maintains separate financial accounts. No commingling of assets.

[Same as 'b' above]

Arm's length standard for transfers of assets, services and supplies

[Same as 'e' and 'g' above]

Protected Co. does not represent that it is responsible for obligations of parent or affiliates.

[Same as 'l' above.]

- o. Protected Co. has separate accounting books & records.
- p. Protected Co. maintains all legal formalities to preserve its existence.
- q. Protected Co. does not own shares of parents or affiliates

1. A provision may appear in more than one category if appropriate. Source: Lapson Advisory.

**Exhibit EL-7: Evaluating the Joint Applicants' Proposed Protective Provisions (1)**

<i>Standards of Protection (from Exhibit EL-6)</i>	<i>The Commitment</i>	<i>Comment</i>
<b>I. Viability: Able to Maintain Its Assets and Solvency</b>		
<b>I-A Prevent the diversion of Protected Co. assets</b>		
a. Separate legal entity; separate name and identity	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.	Conforms to RF standard
b. Separate financial accounts in its own name.	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.	Conforms to RF standard
c. Protected Company owns all of its physical assets in its own name.	Acquisition and divestiture of any major utility assets is subject to regulatory approvals. Also: 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.	Conforms to RF standard
d. Controls on dividends from Protected Co.	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 for ratemaking purposes.	Conforms to RF standard.
e. Controls on asset transfers and asset diversion	Acquisition and divestiture of any major utility assets is subject to regulatory approvals. Also: 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.	Conforms to RF standard
f. Assets are not pledged for the benefit of parent or sister companies.	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.	Conforms to RF standard
g. Arm’s length standard for transfers of assets, services and supplies	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.	Conforms to RF standard
h. Protected Co. does not lend to parent or affiliates	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. Also: Loans from EPE to Parent or affiliates (or other third parties) are subject to the Commission’s approval.	Conforms to RF standard

1. A provision may appear in more than one category if appropriate. Source: Lapson Advisory;

Standards of Protection (from Exhibit EL-6)

The Commitment

Comment

**I-B Maintains access to its own liquidity**

<p>i. Has separate 3rd party borrowing sources.  Has credit ratings in its own name.</p>	<p>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. Also,  15. IIF US 2 shall take the actions necessary to ensure the existence of EPE stand-alone credit and debt ratings, as applicable.</p>	<p>Conforms to RF standard  Conforms to RF standard</p>
<p>j. Able to borrow on its own, not contingent on parent or affiliates  j 1. No Cross default / cross acceleration with parent or affiliates  j 2. No covenants tied to ratings of parent or affiliates</p>	<p>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 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).</p>	<p>Conforms to RF standard  Conforms to RF standard</p>

**I-C Is insulated from liabilities of parent and affiliates**

<p>k. Protected Co. does not guarantee the liabilities of affiliates</p>	<p>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).</p>	<p>Conforms to RF standard</p>
<p>l. Parent and affiliates do not represent to the public or creditors that the Protected Co. is liable for parent or affiliate obligations</p>	<p>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.</p>	<p>Conforms to RF standard</p>
<p>m. Not subject to joint tax liability, other than as required by law</p>	<p>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.</p>	<p>Conforms to RF standard</p>

**I-D Enhances Financial Viability by controlling financial leverage**

<p>n. Utility avoids excessive debt leverage</p>	<p>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. Also: 24. EPE will not incur, guaranty, or pledge assets for any new incremental debt related to the Proposed Transaction. Also: EPE's revolving credit and senior note agreements place certain limits on the ratio of debt to total capitalization.</p>	<p>Conforms to RF standard</p>
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1. A provision may appear in more than one category if appropriate. Source: Lapson Advisory;

Standards of Protection (from Exhibit EL-6)

The Commitment

Comment

**II. Avoids Consolidation in Bankruptcy of Parent or Affiliates**

**II-A Has barriers to involuntary consolidation**

<p>Separate legal entity; separate name and identity</p>	<p>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.</p>	<p>Same as 'a' above - Conforms to RF Standard</p>
<p>Separate financial accounts. No commingling of assets</p>	<p>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.</p>	<p>Same as 'b' above - Conforms to RF standard</p>
<p>Arm's length standard for transfers of assets, services and supplies</p>	<p>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. Also: 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.</p>	<p>Same as 'e' and 'g' above - Cconforms to RF standard</p>
<p>Protected Co. does not represent that it is responsible for obligations of parent or affiliates.</p>	<p>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.</p>	<p>Same as 'l' above - Conforms to RF standard</p>
<p>o. Protected Co. has separate accounting books &amp; records</p>	<p>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.</p>	<p>Conforms to RF standard</p>
<p>p. Protected Co. maintains all corporate formalities</p>	<p>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. Also: 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; and 17. Sun Jupiter will be retained between EPE and IIF US 2 for so long as IIF US 2 owns EPE.</p>	<p>Conforms to RF standard</p>
<p>q. Protected Co. does not own shares of parents or affiliates</p>	<p>There is no plan for EPE to own shares of Parent or IIF or other affiliates. Furthermore: EPE's acquisition of ownership interest in another company would be subject to the Commission's approval.</p>	<p>Conforms to RF standard</p>

*Standards of Protection (from Exhibit EL-6)*

*The Commitment*

*Comment*

1. A provision may appear in more than one category if appropriate. Source: Lapsen Advisory;

**Additional Regulatory Conditions**

	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.	Facilitates regulatory review
	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).	Avoids potential future regulatory issues
	11. No recovery in rates of acquisition premium will be sought.	Avoids potential future regulatory issues
	12. No recovery in rates of transaction costs will be sought.	Avoids potential future regulatory issues
	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.	Maintains planned level of new investment
	30. IIF US 2 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 EPE and IIF US 2 or IIF US 2’s affiliates.	Facilitates regulatory monitoring and control
	41. IIF US 2 will maintain a controlling ownership interest in EPE for at least ten (10) years post-closing.	Fosters stability
	36. EPE’s existing Headquarters will remain in El Paso, Texas for so long as IIF US 2 owns EPE.	Maintains local presence & management
	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.	Maintains local presence & management
	38. EPE’s local management will remain the primary point of contact for all regulatory, operational, and community engagement matters.	Maintains local presence & management
	40. EPE Board meetings will take place in Las Cruces, New Mexico at least once per year.	Maintains local presence & management
	39. EPE’s post-closing Board of Directors will comprise of ten (10) Directors, of which: ...	Maintains local presence & management and independent directors.

**Additional Employment Commitments**

*Standards of Protection (from Exhibit EL-6)**The Commitment**Comment*

	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.	Maintains labor relations
	43. EPE will honor the terms of EPE's existing collective bargaining agreements.	Maintain labor relations

General Criteria:

# Group Rating Methodology

July 1, 2019

## OVERVIEW AND SCOPE

1. This article describes S&P Global Ratings' methodology for rating entities that are part of corporate, financial institutions, insurance, and international public finance groups, as well as U.S. public finance obligated groups. For the related guidance article, see "Guidance: General Criteria: Group Rating Methodology."
2. These criteria articulate the steps in determining an issuer credit rating (ICR) on group members and their holding companies. This involves assessing the group credit profile (GCP; i.e. the group's overall creditworthiness), the stand-alone credit profiles (SACP) of group members, and the status of an entity relative to other group entities.
3. The criteria also describe how we assess the potential for support (or negative intervention) from group entities, or from other external sources such as a government.
4. These criteria apply to corporate, financial institution, insurance, and international public finance entities that we consider part of a group and U.S. public finance entities that we consider part of an obligated group. For these entities, we believe that their ownership, control, influence, or support by or to another entity could have a material bearing on their credit quality. Examples of entities that are outside the scope of these criteria include project finance and corporate securitizations.
5. These criteria may complement other criteria that address sector-specific support considerations.
6. This methodology follows our request for comment, "Request for Comment: Group Rating Methodology," published Dec. 12, 2018.

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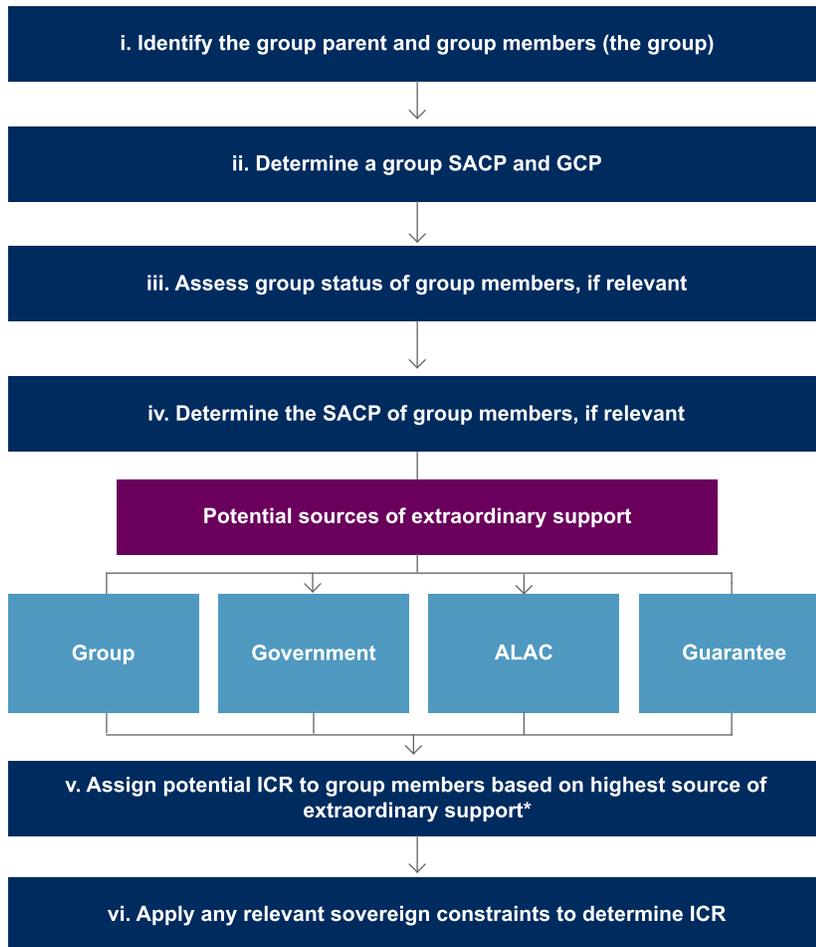
## Key Publication Dates

- Original publication date: July 1, 2019
- Effective date: Immediately, except in those markets that require prior notification to and/or registration by the local regulator, where the criteria will become effective when so notified by S&P Global Ratings and/or registered by the regulator.
- These criteria address the fundamentals set out in "Principles Of Credit Ratings."

## METHODOLOGY

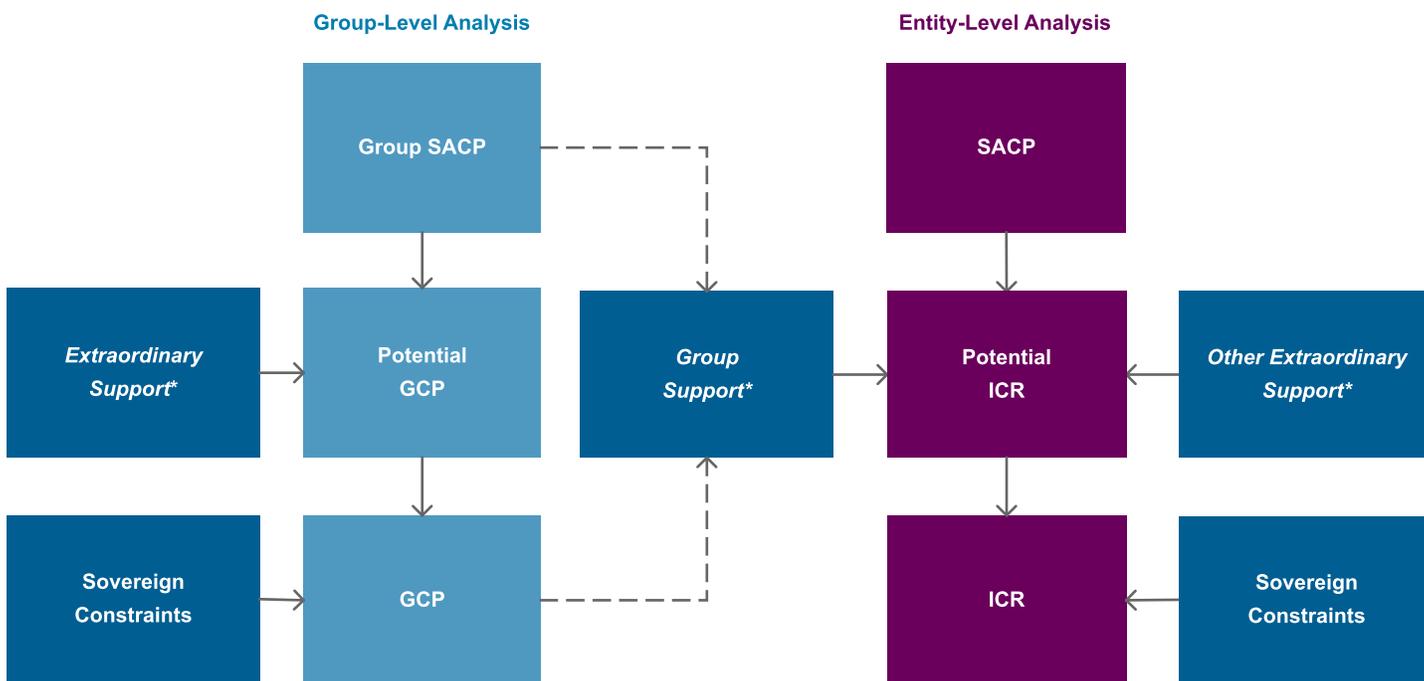
7. These criteria explain how we factor the potential for extraordinary support (or extraordinary negative intervention) into the ICR of an entity that is a member of a group. Such extraordinary support (or negative intervention) is beyond that which we already factor into the entity's SACP, as explained in "Stand-Alone Credit Profiles: One Component Of A Rating."
8. We factor the potential for extraordinary support or extraordinary negative intervention into the ICR even when the need for such support or the possibility for such negative intervention may appear remote.
9. We apply a six-step process for determining the ICR of group members (see chart 1), as follows:
  - (i) Identify the group parent and the group members (together called the group).
  - (ii) Assess the creditworthiness of the group (or subgroup) to determine a group SACP and GCP. The potential GCP is based on the group SACP, adjusted for potential external sources of extraordinary support if we believe such support will be extended to the group, or potential extraordinary negative intervention. Finally, we apply any relevant sovereign constraints to determine the GCP (see chart 2). See "Ratings Above The Sovereign—Corporate And Government Ratings: Methodology And Assumptions."
  - (iii) Assess the group status of each group member to be rated, if relevant.
  - (iv) Determine the SACPs of group members to be rated, if relevant.
  - (v) Assign a potential (indicative) ICR to group members. The potential ICR is based on the entity's SACP, if relevant, and the potential for extraordinary support (or extraordinary negative intervention). Extraordinary support is the higher of any group or government influence, or other external support factors (such as additional loss-absorbing capacity (ALAC) support or a guarantee). This step also factors in the degree of insulation, if any, that a group member has from potential negative influence by other weaker group entities.
  - (vi) Assign the final ICR after taking into consideration any relevant sovereign constraints (see "Ratings Above The Sovereign—Corporate And Government Ratings: Methodology And Assumptions").

**Chart 1**  
**Determining The Issuer Credit Rating On Group Members**



\*Subject to any insulation. GCP--Group credit profile. Group SACP--Group stand-alone credit profile. SACP--Stand-alone credit profile. ALAC--Additional loss-absorbing capacity (applies to certain prudentially regulated entities or groups). ICR--Issuer credit rating.  
Source: S&P Global Ratings. Copyright © 2019 by Standard & Poor's Financial Services LLC. All rights reserved.

Chart 2--Group Rating Methodology Framework



- - -> The relevant reference for determining the impact of group support is either the group SACP or GCP.

GCP--Group credit profile. Group SACP--Group stand-alone credit profile. SACP--Stand-alone credit profile. ICR--Issuer credit rating. \*Or negative intervention.

Source: S&P Global Ratings. Copyright © 2019 by Standard & Poor's Financial Services LLC. All rights reserved.

10. These criteria define five categories of group status: core, highly strategic, strategically important, moderately strategic, and nonstrategic. These categories indicate our view of the likelihood that a group member will receive extraordinary support from the group (see table 1).

Table 1

**Summary Of Associating An Entity's Group Status With A Potential ICR**

Group status	Brief definition	Potential ICR*
Core	Integral to the group's current identity and future strategy. The rest of the group is likely to support these entities under any foreseeable circumstances.	GCP
Highly strategic	Almost integral to the group's current identity and future strategy. The rest of the group is likely to support these group members under almost all foreseeable circumstances.	One notch lower than the GCP, unless the SACP on that entity is equal to, or higher than, the GCP. In such a case, the potential ICR is equal to the GCP.
Strategically important	Less integral to the group than "highly strategic" group members. The rest of the group is likely to provide support in most foreseeable circumstances. However, some factors raise doubts about the extent of group support.	Three notches above SACP. This is subject to a cap of one notch below the GCP, unless the SACP is at least equal to the GCP, in which case the potential ICR is equal to the GCP.

**General Criteria: Group Rating Methodology**

Table 1

**Summary Of Associating An Entity's Group Status With A Potential ICR (cont.)**

<b>Group status</b>	<b>Brief definition</b>	<b>Potential ICR*</b>
Moderately strategic	Not important enough to warrant support from the rest of the group in some foreseeable circumstances. Nevertheless, there is potential for some support from the group.	One notch above SACP. This is subject to a cap of one notch below the GCP, unless the SACP is at least equal to the GCP, in which case, the potential ICR is equal to the GCP.
Nonstrategic	No strategic importance to the group.	SACP, subject to a cap defined by the GCP.

\* The above conventions do not apply where: potential ICRs exceed the GCP due to insulation (see "Insulated Entities" section); the group SACP is used to determine uplift for group support (see "External support factors in the GCP" section); the GCP is 'ccc+' or lower (see paragraph 13); and when paragraph 42 applies.

11. A potential ICR on a group member that exceeds its SACP reflects our view of the likelihood of that entity, in a credit-stress scenario, receiving timely and sufficient group or government support (beyond that already factored into the SACP), thereby strengthening its creditworthiness. Examples of support include additional liquidity or capital to the group member, or one-off transfers of risk from the group member.
12. A potential ICR on a group member that is lower than its SACP reflects our view that if the group or relevant government were in a credit-stress scenario, the group or government would draw resources from the group member (an example of extraordinary negative intervention), thereby weakening its creditworthiness.
13. If the GCP is 'ccc+' or lower, the potential ICR on a group member cannot be lower than 'b-' unless the conditions for a potential ICR of 'ccc+' or lower are met (see "Criteria For Assigning 'CCC+', 'CCC-', 'CCC-', And 'CC' Ratings," henceforth referred to as "CCC criteria"). The potential ICR would include the potential for extraordinary negative intervention from the group or government.

**Identifying The Group And Its Members**

14. For the purposes of these criteria, the term "group" refers to the group parent and all the entities (also referred to as group members) over which the group parent has direct or indirect control.
15. The group parent is not necessarily the ultimate holding company in the group structure but is the top entity in the structure that we believe is relevant to the group's credit quality. Accordingly, additional holding companies may exist above the group parent, but be excluded from our group assessment if we believe they have no material liabilities or operating assets and therefore no bearing on the group's overall credit quality. The control chain may include several successive layers of controlling or joint-control interest in other entities. We would generally not consider a natural person, or entities such as family firms, foundations, managed fund, or financial sponsors, to be a group parent. Where we determine that an entity (for instance, an investment holding company) does not have control of an investee company, we do not consider that entity to be the group parent.
16. "Control" refers to the ability to direct a group member's strategy and the disposition of its cash flow. Control may be present even if the group owns 50% or less of the group member's shareholder capital.
17. We generally apply this methodology to an entire group, but may also apply it to a distinct subgroup. A subgroup focus may be appropriate when the subgroup and its components have a distinct credit profile that is separate from that of the broader group. This could be due to factors

**General Criteria: Group Rating Methodology**

such as jurisdictional location, regulatory oversight, or support factors that apply only to the subgroup. References to the term "group" in this methodology can apply to either a subgroup or a group viewed in its entirety.

**The Group SACP And Group Credit Profile (GCP)**

18. The group SACP and GCP are our opinions of a group's creditworthiness as if it were a single legal entity (subject to any potential restrictions on cash flows associated with insulated entities).
19. The group SACP and GCP are not ratings. They are components contributing to the determination of the ICRs on group members. The group SACP does not take into account sources of potential extraordinary support or negative intervention that we consider external to the assessed group. However, the potential GCP incorporates extraordinary external support that we believe is available to the group, or conversely, extraordinary negative intervention. Finally, the GCP takes into consideration any relevant sovereign constraints. See "Ratings Above The Sovereign—Corporate And Government Ratings: Methodology And Assumptions."
20. Group SACP and GCPs range from 'aaa' (the highest assessment) to 'd' (the lowest assessment), on a scale that parallels the ICR ('AAA' to 'D'). The lowercase letters indicate their status as a component of a rating rather than as a rating. Like ICRs, group SACP and GCPs can carry the modifier "+" or "-". Typically, a group SACP or GCP is 'd' only in the case of a generalized group default. In the case of a legal entity within a group, we lower the ICR on that entity to 'D' or 'SD' (selective default) only if we determine the entity is in default (see "S&P Global Ratings Definitions").
21. To determine the group SACP and GCP, we assess the consolidated group using the relevant sector methodologies. The assessed group includes all group entities that we believe have a bearing on the group's credit quality (as per the explanation detailed in the section "Identifying The Group And Its Members"), and may potentially deconsolidate insulated entities as per the "Insulated Entities" section. We typically conduct the assessment of the group SACP and GCP as though the group were a single legal entity.
22. For cross-sector groups (including their holding companies), the specific rating methodology applied to assess the group SACP is the one relevant for the operations that most strongly influence the group's credit profile. This influence can reflect the amount of capital employed, level of earnings, cash flow, dividend contribution, or other relevant metric. However, where the analysis of consolidated financial statements using a single sector's criteria framework may not produce a meaningful picture of credit quality, we may apply a combination of rating methodologies to assess the group SACP. This may be done by applying the relevant methodologies to determine SACP for the different group members. We would then aggregate these SACP to derive the overall group SACP. The group SACP would also include adjustments to account for any benefits or risks not captured in the aggregation of the component SACP.

**a) Multiple ownership and joint ventures**

23. If a group member is under the joint control of at least two parents--for example, a joint venture (JV)--the insolvency or financial difficulty of one parent may have less impact than if the entity had a single parent.
24. For JVs, we may attribute support from one of its owners (JV partner) even if the JV partner does not have majority ownership in the JV. We typically attribute support from the JV partner that would result in the highest potential ICR on the JV. This would apply where we believe the JV partner would support the JV, regardless of the actions of the other owners. This could include

## General Criteria: Group Rating Methodology

situations where that JV partner makes day-to-day business decisions, or the JV is of critical importance to the supporting JV partner's operations or strategy. In such cases, however, the group status of the JV to the JV partner would typically not exceed strategically important. In addition, we would also take the potential resource demands of the JV on the JV partner into consideration when determining the JV partner's credit profile.

25. The analytical approach for a group's jointly owned business operations, such as whether to fully consolidate, partially consolidate, or equity account the operations when assessing the group SACP, is determined by the relevant methodologies for assessing corporates, financial institutions, insurance companies, or other entity types.
26. In cases where a shareholder agreement or similar arrangement exists that we believe would prevent an otherwise controlling parent from directing the strategy and cash flows of a group member, we may assess that control is not present. When we determine control is not present, we would typically treat the member as an equity affiliate and consider only the projected dividend flows from that member in our group SACP assessment.

### b) Insulated entities

27. Where we determine that consolidating an insulated group member does not adequately capture the impact on the group SACP of any material restrictions on cash flows or financial resources within the group, we either:
  - Adjust the group SACP down (typically by one or two notches); or
  - Treat an insulated group member as an equity affiliate, and reflect this deconsolidated approach in determining the group SACP.
28. When assessing a group that has a bank subsidiary with a potential ICR that is above the GCP either because it is of high systemic or moderate systemic importance (as per "Banks: Rating Methodology And Assumptions"), in the country where it is domiciled, or because of ALAC support, the group SACP will take into account the impact of any local restrictions on the flow of capital, funding, and liquidity, and any implications for the business and risk positions of the parent.

### c) Entities owned by a financial sponsor

29. If the owner of a group entity is a "financial sponsor" (see Glossary), the potential ICR on that group entity does not directly factor in the likelihood of support from the financial sponsor, nor is it directly constrained by our view of the financial sponsor's creditworthiness. However, the financial sponsor's ownership may still affect the potential ICR through the application of the relevant sector-specific criteria.
30. The group SACP for a group owned by a financial sponsor may, however, include one or more intermediate holding companies of the operating entity, but would exclude the financial sponsor's own financials and its other holdings. This approach reflects our view that an intermediate holding company's primary purpose is to acquire, control, fund, or secure financing for its operating companies, and is generally reliant on those companies' cash flow to service its financial obligations.

### d) U.S. public finance obligated groups

31. U.S. public finance obligated groups typically consist of a group of entities that are cross-obligated as security for specific debt. Obligated group structures are most commonly used

### General Criteria: Group Rating Methodology

by not-for-profit hospitals, health systems, and senior living organizations.

32. Obligated groups are created for purposes of securing debt, and do not have operating or governance independence from the larger group. While debt covenants may contain some restrictions, for example limitations on the transfer of assets out of the obligated group, covenants are generally not strong enough to insulate the obligated group from the strategic and operating influence of the group. An obligated group, therefore, is typically not rated higher than the GCP.
33. Individual obligated group members may have separate legal incorporation and varying strategic value to the group. However, since the purpose of the obligated group is to secure debt on a joint and several basis, group status will be determined for the obligated group as a whole, not for its individual members. In applying these criteria, we consider obligated groups a single entity.
34. Most U.S. public finance ratings are issue ratings, although we sometimes assign ICRs. The issue rating could differ from the ICR based on the specific security package for the rated bonds. We expect that, barring subordination or structural enhancement, U.S. public finance issue ratings will generally be the same as the ICR.

### e) External support factors in the GCP

35. **Government support.** The potential for extraordinary government support can be factored into either the ICRs of certain group members or the GCP, depending on the nature of this support (see Rating Government-Related Entities: Methodology And Assumptions [GRE criteria], and Banks: Rating Methodology And Assumptions). We use the group SACP as a basis from which to determine the GCP when using the government support tables in the GRE criteria or bank criteria.
36. The assessment considers whether government support, driven by GRE status or systemic importance, would likely accrue to all or only some members of the group (see table 2).
37. To determine the potential ICR for a particular group member, where the assessment indicates that the government:
  - Is likely to extend such extraordinary support directly to that entity (bypassing the group), any uplift for such support is added to the SACP of that entity in determining the potential ICR;
  - Is likely to extend such extraordinary support indirectly, via the group, to the entity, the reference point for determining any uplift for group support (or negative group intervention) is the GCP (which would include uplift, if any, for extraordinary government support); or
  - Is unlikely to extend such extraordinary support to the entity, the reference point for determining any uplift for group support is the lower of the group SACP or the GCP.

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Table 2

**Rating Government-Supported Entities--Likelihood Of Government Support Versus Group Support**

SACP level	If the subsidiary is likely to benefit directly from extraordinary government support *	If the subsidiary is likely to benefit from extraordinary government support indirectly through the group	If the subsidiary is unlikely to benefit from extraordinary government support either directly or indirectly
SACP is lower than the group SACP	Potential ICR = Higher of (i) the SACP plus uplift for government support, or (ii) SACP plus uplift for group support. The outcome is subject to a cap at the level of the GCP (unless the subsidiary is insulated).	Potential ICR = SACP plus uplift for group support (with reference to the GCP)	Potential ICR = SACP plus uplift for group support (with reference to the lower of the group SACP or the GCP)
SACP is higher than or equal to the group SACP	Potential ICR = SACP plus uplift for government support, subject to a cap at the level of the GCP (unless the subsidiary is insulated)	If SACP < GCP, potential ICR = SACP plus uplift for group support (with reference to the GCP). If SACP >= GCP, potential ICR = SACP, subject to a cap at the level of the GCP (unless the subsidiary is insulated).	Potential ICR = SACP, subject to a cap at the level of the GCP (unless the subsidiary is insulated)
No SACP	SACP required, unless subsidiary is a GRE with almost certain likelihood of government support*	If core, potential ICR = GCP. If highly strategic, potential ICR = GCP - 1.	If core, potential ICR = lower of the GCP or group SACP. If highly strategic, potential ICR = lower of the GCP - 1 or group SACP - 1.

\* See GRE criteria for further details, including when an SACP is not required for entities with almost certain likelihood of government support. SACP--Stand-alone credit profile. ICR--Issuer credit rating.

38. **ALAC support.** The potential for extraordinary external ALAC support can be factored into either the ICRs on certain group members or the GCP, depending on the nature of this support (see "Bank Rating Methodology And Assumptions: Additional Loss-Absorbing Capacity"). To determine the potential ICR on a particular group member, where the assessment indicates that ALAC support in the GCP:
- Is likely to extend indirectly, via the group, to the entity, the reference point for determining any uplift for group support (or negative group intervention) is the GCP; or
  - Is unlikely to extend to the entity, the reference point for determining any uplift for group support is the lower of the group SACP or the GCP.

**Assigning The Issuer Credit Rating**

39. A potential ICR on a group member reflects its SACP (if relevant) and the potential for external extraordinary support (or negative intervention). We then determine the final ICR by applying any relevant sovereign constraints to the potential ICR.
40. We determine the potential ICR as follows, unless paragraph 41 applies:
- Core group entity is equal to the GCP;
  - Highly strategic entity is one notch lower than the GCP, unless the SACP on that entity is equal to, or higher than, the GCP. In such a case, the potential ICR is equal to the GCP;
  - Strategically important entity is rated three notches higher than its SACP. This is subject to a

### General Criteria: Group Rating Methodology

- cap of one notch below the GCP, unless the SACP is at least equal to the GCP, in which case the potential ICR is equal to the GCP;
- Moderately strategic entity is rated one notch higher than that entity's SACP. This is subject to a cap of one notch below the GCP, unless the SACP is at least equal to the GCP, in which case, the potential ICR is equal to the GCP; or
  - Nonstrategic entity is rated the same as that entity's SACP, subject to a cap defined by the GCP.
41. The above conventions do not apply where: the potential ICR exceeds the GCP due to insulation (see "Insulated Entities" section); the group SACP is used to determine uplift for group support (see "External support factors in the GCP" section); the GCP is 'ccc+' or lower (see paragraph 13); or when paragraph 42 applies.
42. We may apply a one-notch adjustment to determine the potential ICR (as described in paragraph 40) to better reflect our holistic view of potential extraordinary group support. This adjustment is only applicable if we have determined an SACP and the gap between the potential ICRs, based on group status assessments of highly strategic and strategically important, is at least three notches. The adjustment, if applicable, is as follows:
- When the group status is highly strategic, we may apply a negative one-notch adjustment. The potential ICR could, therefore, be two notches lower than the GCP rather than one notch; or
  - When the group status is strategically important, we may apply a positive one-notch adjustment. The potential ICR could, therefore, be four notches higher than its SACP rather than three notches.
  - For example, if we determine an entity exhibits characteristics consistent with a highly strategic entity, while a change in group status to strategically important could lead to a potential ICR change of three notches, the potential ICR could be two notches below GCP while the group status remains highly strategic; alternatively, if we determine the entity now exhibits characteristics consistent with a strategically important entity, we will revise the group status to strategically important and the potential ICR could be four notches above the SACP.

### Group Status Of Individual Members

43. A group member's group status reflects the extent and timeliness of extraordinary support we expect it will receive from the rest of the group when that entity is under credit stress. We may also assess a group member's group status to a subgroup and the group status of a subgroup to a broader group. This section describes the framework that supports the classification of a member's group status into one of five categories:
- Core;
  - Highly strategic;
  - Strategically important;
  - Moderately strategic; or
  - Nonstrategic.
44. The determination of an SACP for a group member categorized as core or highly strategic is not necessary unless otherwise required or analytically relevant. A group status is not necessary for insulated entities, unless otherwise required or analytically relevant.

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**a) Core entities**

45. A core entity exhibits features highly consistent with the group's franchise, supports the realization of group strategic objectives, and is expected to attract extraordinary support, if required, under any foreseeable circumstance. A core entity would also generally be expected to exhibit all the following characteristics:
- Is highly unlikely to be sold;
  - Operates in lines of business or functions (which may include group risk management and financing) that are very closely aligned with the group's mainstream business and customer base. The entity also often operates in the same target markets;
  - Has a strong, long-term commitment of support from the group in benign and under stressful conditions, or incentives exist to induce such support (e.g., cross-default clauses in financing documents, or the entity plays an integral role in group risk management or financing);
  - Is reasonably successful at what it does or does not have ongoing performance problems that could result in underperformance against the group's specific targets and group earnings norms over the medium to long term;
  - Either constitutes a significant proportion of the consolidated group or is fully integrated with the group;
  - Is closely linked to the group's reputation, name, brand, or risk management;
  - Has typically been operating for about five years or more; and
  - Has been established as a separate entity for legal, regulatory or tax reasons, but otherwise operates more as part of a profit center or division integral to the group.

**b) Highly strategic entities**

46. A highly strategic group entity generally exhibits almost all of the characteristics of a core entity, and differs only narrowly regarding the extent of expected extraordinary support from the group. An entity assessed as highly strategic is generally expected to have a long-term commitment from the group. There may be situations in which support for the highly strategic entity will be limited, for instance, to preserve the viability of core entities of the group.

**c) Strategically important entities**

47. We assess an entity as strategically important when we expect it to receive extraordinary support from the group in most foreseeable circumstances; however, there are some doubts about the extent of group support that precludes it from a higher support category. Strategically important subsidiaries would however typically exhibit all the following characteristics:
- Is unlikely to be sold;
  - Is important to the group's long-term strategy;
  - Has the long-term commitment of the group, or incentives exist to induce such support (e.g., cross-default clauses in financing documents); and
  - Is reasonably successful at what it does or has realistic medium-term prospects of success relative to the group's specific expectations or group earnings norms.

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**d) Moderately strategic entities**

48. When an entity does not exhibit the characteristics for a higher level of group support, but we expect it to receive extraordinary support in some foreseeable circumstances, it is typically considered moderately strategic. Moderately strategic entities are also typically important to the group's long-term strategy or are (or are expected to become) reasonably successful at what they do.

**e) Nonstrategic entities**

49. When an entity does not exhibit the characteristics of core, highly strategic, strategically important, or moderately strategic, it is categorized as nonstrategic.

**Captive (re)insurer**

50. A captive (re)insurer may also be assessed as core if it sources its (re)insurance business from companies within the group and writes no, or an immaterial amount, of third-party business. A captive (re)insurer may also be assessed as highly strategic if third-party business is a modest portion of its overall business operations.

**Captive finance**

51. When assessing group status for captive finance subsidiaries, the attributes we examine to determine group status should be considered within the context of all the following unique factors that captive finance subsidiaries typically provide to their group's marketing efforts:
- The percentage of the group's products sold via the subsidiary (penetration rate). For diversified groups, the percentage of total sales may be less important than the percentage of certain specific product lines. In turn, we consider the importance of these products to the overall performance of the group;
  - The alternatives available to sell the group's products; and
  - The costs and challenges in conducting its own financing. For some entities, funding costs may outweigh the benefits--or it may become difficult to gain access to capital.

**Branches**

52. For financial services entities, a branch is part of a legal entity that is typically at another geographic location. A branch therefore has the same creditworthiness as the legal entity, unless the branch is in another country and the actions of that sovereign could affect the branch's ability to service its obligations. See "Ratings Above The Sovereign--Corporate And Government Ratings." With respect to financial institutions, see also "Assessing Bank Branch Creditworthiness."

**U.S. public finance obligated groups**

53. U.S. public finance obligated groups could be considered core if they contain the majority of the organization's primary operating facilities, such as its hospitals or senior living facilities.

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**Financing subsidiaries**

54. A financing subsidiary of a financial institution or corporate group may be assessed as core when it plays an integral role in group financing, its sole activity is to raise debt on behalf of the group, and it is wholly owned. Such subsidiaries often share a related corporate name with their parents.
55. A financing subsidiary of an insurance group, while generally not assessed as core, is typically assigned a rating as if it is a holding company.

**Credit-substitution guarantee of group entities**

56. When all of a group member's present and future financial obligations are guaranteed, and the guarantor is obliged to pay that group member's obligations even if the group member defaults, we assign a rating to the group member that reflects the higher of two outcomes:
- A rating reflecting the creditworthiness of the group member absent the benefit of the guarantee; or
  - A rating reflecting the creditworthiness of the guarantor (see "Guarantee Criteria").
57. Our assessment of the terms of any intragroup guarantees determines whether a payment default on the part of a group entity is viewed as a default by the guarantor (see "General Criteria: Guarantee Default: Assessing The Impact On The Guarantor's Issuer Credit Rating").

**Loan participation notes (LPNs)**

58. We rate LPNs and equivalent securities (such as trust preferred) issued by a special-purpose vehicle (SPV) on behalf of a corporate, financial institution, or insurance entity (including their holding companies) at the same level as we would rate an equivalent-ranking debt of its underlying borrower (the LPN sponsor) (and treat the contractual obligations of the SPV as financial obligations of the LPN sponsor) provided that all the following conditions are met:
- All of the SPV's debt obligations are backed by equivalent-ranking obligations with equivalent payment terms issued by the LPN sponsor;
  - The SPV is a strategic financing entity for the LPN sponsor set up solely to raise debt on behalf of the LPN sponsor's group; and
  - We believe the LPN sponsor is willing and able to support the SPV to ensure full and timely payment of interest and principal when due on the debt issued by the SPV, including payment of any expenses of the SPV.
59. As a consequence, we assign a 'D' or 'SD' ICR to the LPN sponsor if the SPV fails to make payments on the debt when due, as we would typically do in case of default on a similarly ranking debt issuance of the LPN sponsor (see also "Methodology: Timeliness Of Payments: Grace Periods, Guarantees, And Use Of 'D' And 'SD' Ratings").
60. For multiple LPN sponsor SPVs, or SPVs that do not meet all the conditions above, the relevant structured finance criteria apply, which may include "Asset Isolation And Special-Purpose Entity Criteria—Structured Finance" and "Global Methodology For Rating Repackaged Securities."

### **Dedicated supplier/purchaser relationships**

61. Group members are typically owned or controlled by the group parent. However, a dedicated supplier/purchaser relationship can create an economic incentive for the supplier to support the purchaser, despite having only a minority ownership interest or none at all. We define the group in this instance as the supplier and the purchaser. A supplier may provide support sufficient for the purchaser to be considered moderately strategic to the supplier when the purchaser comprises a meaningful portion of the supplier's sales, cash flow, volume, or other measure. Such relationships typically have all the following characteristics:
- The term of the supplier/purchaser agreement is either perpetual or long term;
  - There is evidence of the supplier's willingness and ability to provide financial support to the purchaser. We determine this by looking at prior loans, capital investments, or marketing support given to the purchaser; and
  - The purchaser is closely linked to the supplier's reputation, name, or brand.

### **Entities with interlocking business relations**

62. We can apply this methodology to groups of entities with interlocking business relations even in the absence of control, as defined in the criteria. Group membership will be based on meeting at least four of the following conditions:
- Name affiliation;
  - Common management;
  - Common board composition or common board control;
  - Shared corporate history;
  - Common business ties;
  - Common financing of group entities;
  - Shared corporate support functions; or
  - Cross ownership holdings.

In such cases, we determine the GCP by considering the group members' SACPs. Members of this type of group can only be assigned a group status of strategically important, moderately strategic, or nonstrategic.

### **Insulated Entities**

63. Financial stress within the group can negatively affect the creditworthiness of group entities. Accordingly, in such cases a potential ICR on an entity is typically limited by the GCP. This is notably because:
- The group could potentially transfer assets from one group entity to another during financial stress, contributing to credit stress at other group entities;
  - The distress at the group could trigger business or financial difficulties at the group member. For instance, the group's problems could cause reputational damage of the group member and

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a loss of business;

- The group member might rely on operational support from the group on an ongoing basis; and
- In some jurisdictions, a bankruptcy petition by one group entity could include or cause other group entities to go into bankruptcy or similar measures.

64. Some entities (which for the purposes of this section, could also apply to a subgroup) may be insulated, segmented, or ring-fenced from their group, from a credit risk perspective. Such insulation may lead to the rating on the entity being higher than the GCP. The lower the likelihood that the creditworthiness of the entity would be impaired by a credit stress scenario for the group, the greater the potential difference between the potential ICR on the entity and the GCP.

65. The potential ICR of an insulated entity is one notch higher than the GCP in cases where the entity is operationally separated from the group and the entity's SACP (or the SACP plus the potential for government support or ALAC) is at least one notch higher than the GCP. Key characteristics of an operationally separated entity would generally include all of the following:

- The entity holds itself out as a separate entity, its financial performance and funding are highly independent from the group, it has no significant operational dependence on other group entities, and it maintains its own records and funding arrangements and does not commingle funds, assets, or cash flows with them;
- There is a strong economic basis for the group to preserve the entity's credit strength; and
- We do not expect a default of other group entities to directly lead to a default of the insulated entity.

66. The potential ICR of an insulated entity is two notches above the GCP if, in addition to being eligible for one notch of insulation, the group's control of the entity is limited by independent parties, and the entity's SACP (or the SACP plus the potential for government support or ALAC) is at least two notches above the GCP. Limited control would generally be characterized by at least one of the following:

- There are significant minority shareholders with an active economic interest;
- Independent directors have effective influence on decision making, including dividend policy and bankruptcy filings; or
- There are strong legislative, regulatory or similar restrictions that would inhibit the entity from supporting the group to an extent that would unduly impair the entity's stand-alone creditworthiness.

67. The potential ICR on an insulated entity is three notches above the GCP if, in addition to the entity being eligible for two notches of insulation, there are material structural safeguards to protect the entity from group influence, and the entity's SACP (or the SACP plus the potential for government support or ALAC) is at least three notches above the GCP. Structural safeguards that protect the entity from group influence would generally include at least one of the following:

- The regulator or appropriate legislative body is expected to act, or has acted, to protect the credit quality of the entity, for example to prevent the entity from supporting the group to an extent that would in turn impair its stand-alone creditworthiness;
- There are both: protective governance arrangements (such as independent directors with an effective influence on decision making); and either significant minority shareholders or joint venture partners, with an active economic interest;

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- There is an independent trustee or equivalent governance arrangement that can enforce the rights of third parties, and we expect the trustee (or equivalent) to act upon that right; or
- The government or other governmental agency (i) has the authority to change ownership of the entity via existing legislation or other legal powers to separate it from a troubled group; and (ii) we expect it to act upon that right, based, for example, on a statement of intent to do so, or a track record of proactive stress management under similar circumstances.

68. The potential ICR of an insulated entity could be de-linked and therefore not constrained by the creditworthiness of the group if the conditions in either (a) or (b) are met:

(a) In addition to being eligible for three notches of insulation as described in the preceding paragraph:

- We believe that the parent company doesn't exert control due to substantial creditor protections and as a result is unable to adversely impact the entity's credit quality; and
- The entity benefits from governance constraints that severely limit the influence of the parent, preventing it from determining matters such as strategy, material change of business, dividend payments and other material cash flows, and bankruptcy filings. These may arise, for example, due to statutory powers or contractual constraints.

(b) We determine that there is sufficient evidence that significant group credit stress has had minimal impact on the entity's credit profile, and that we do not expect it to have a material negative influence going forward.

69. With respect to our assessment of insulation of captive finance subsidiaries, we could view a captive finance entity as operationally separated from the group when it is able to stand on its own by taking over or subcontracting certain functions previously provided by other group entities. Given the nature of a captive finance entity's business model, we would expect it to retain commercial ties with its group.

70. The potential ICR of a bank subsidiary is typically not subject to a cap linked to the GCP where either: (i) the entity's SACP plus the potential for government support is above the GCP because it is of high systemic or moderate systemic importance (according to "Banks: Rating Methodology and Assumptions"), in the country where it is domiciled; or (ii) the entity's SACP plus the potential for ALAC support is above the GCP (see ALAC criteria). However, where we expect the nature and extent of extraordinary negative group intervention could impact the entity's creditworthiness, although to an extent sufficiently limited that a cap linked to the GCP would not apply, we may apply a one-notch negative adjustment when determining the potential ICR. This adjustment is to better capture our holistic view of potential extraordinary negative group intervention.

### Holding Companies

71. For holding companies of corporate groups and nonregulated nonbank financial institutions, the ICR is typically the same as the GCP. For intermediate holding companies of corporate groups and nonregulated nonbank financial institutions, the ICR is typically the same as the rating on its core operating entities.

### Holding companies of prudentially regulated financial services groups

72. Holding companies are typically reliant on dividends and other distributions from operating companies to meet their obligations. The rating of holding companies of prudentially regulated

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financial services groups reflects the difference in their creditworthiness relative to the group's operating entities. The rating differential is mainly due to the increased credit risk that arises from possible regulatory constraints to upstream resources and potentially different treatment under a default scenario.

73. For holding companies of prudentially regulated financial institution groups, the ICR is generally:
- One notch lower than the GCP if the GCP is 'bbb-' or higher; or
  - At least two notches lower than the GCP if the GCP is 'bb+' or lower.
74. For holding companies of insurance groups, the ICR is generally:
- Two notches lower than the GCP if potential regulatory restrictions to payments are considered low in jurisdictions accounting for the majority of distributions (typically as measured by dividends, cash flows, or earnings) from operating entities to the holding company; or
  - Three notches lower than the GCP if potential regulatory restrictions to payments are considered high in jurisdictions accounting for the majority of distributions (typically as measured by dividends, cash flows, or earnings) from operating entities to the holding company.
75. The notching from the GCP to derive the ICR of a holding company of a financial services group may be narrower than the standard notching in paragraphs 73 or 74, or potentially eliminated, if:
- The holding company directly controls multiple material operating units that are sufficiently diverse and independent such that the suspension of cash flows from any of its operating entities would not substantially weaken the holding company's financial position;
  - The potential for regulatory restrictions to payments is significantly lower than we typically observe for prudentially regulated entities and is not adequately reflected in the standard notching;
  - The holding company generates sufficient cash flows from its own business activities or from unregulated operating subsidiaries to meet its obligations; or
  - The potential for regulatory restrictions on distributions from operating entities is mitigated by our expectation that the holding company will regularly maintain significant unencumbered cash or high quality liquid fixed income investments to meet its obligations.
76. The notching from the GCP to derive the ICR on a holding company of a financial services group may be wider than the standard notching in paragraphs 73 or 74 if:
- The holding company itself carries significant asset or liability risks that are not fully captured in our standard notching;
  - There are elevated liquidity risks at the holding company, most notably when it has significant debt maturities and other financial obligations relative to its unencumbered cash and liquid assets held or to which it has ready access. For example, high double leverage for a financial institution can reflect elevated liquidity risks;
  - There are heightened risks of regulatory constraints or other material restrictions to payments that are not adequately captured in the standard notching; or
  - The GCP is higher than the group SACP owing to external extraordinary support that is not expected to accrue to the holding company. In this case, we apply the typical notching from the group SACP rather than the GCP.

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77. If the GCP is 'b-' or lower, or if notching would otherwise result in a rating of 'CCC+' or lower, the ICR on a holding company is no lower than 'B-' unless the conditions for an ICR of 'CCC+' or lower are met (see "CCC criteria").
78. We typically notch down the ICR on an intermediate holding company of a financial services group or subgroup from the rating assigned to its core operating entities by applying the same notching we would to a holding company of the group. We may, however, narrow the notching or potentially eliminate the notching if we expect the group to provide extraordinary support for the subsidiaries of the intermediate holding company by investing in the intermediate holding company. We may widen the notching if there are additional risks relating to cash flows from its operating entities or risk relating to the expected extraordinary support from the group.

### Rating Group Entities Above The Sovereign

79. The general criteria for rating a group member above the relevant sovereign rating, which is usually the country of domicile of the group member, are in ratings above the sovereign criteria (see Related Criteria).
80. The ICR on a group member is the lower of the potential ICR derived from these criteria or the relevant foreign currency sovereign rating. This would not be the case, however, in the situations outlined below, where we determine the group member's ICR as the highest of a, b, or c:
  - (a) If the group member passes the appropriate sovereign stress test (without considering group or government support), the result from the combination of the potential ICR derived from these criteria (excluding uplift for group or government support) and the provisions in our ratings above the sovereign criteria;
  - (b) For a group member where the relevant foreign currency sovereign rating is lower than 'B-', the ICR is no lower than 'B-' (unless T&C restrictions in Ratings Above the Sovereign criteria are applicable) if the conditions for an ICR of 'CCC+' or lower are not met (see "CCC criteria"); or
  - (c) If we believe the group is willing and able to sufficiently support the group member during the stress associated with a sovereign default, the highest of (i) to (v) below:
    - (i) For a group member that has a potential ICR based on a guarantee that meets our credit substitution criteria, the potential ICR;
    - (ii) For a financial institution or insurance group member that has less than 10% exposure to the jurisdiction of domicile and we consider the risks (e.g. a deposit freeze or monetary-union exit) associated with that jurisdiction are immaterial, the potential ICR;
    - (iii) For core group members of financial institution groups, the lower of the potential ICR derived from these criteria, or up to two notches above the relevant foreign currency sovereign rating;
    - (iv) For core group members of insurance or corporate groups, the lower of the potential ICR derived from these criteria, or three notches above the relevant foreign currency sovereign rating; or
    - (v) For highly strategic group members of insurance or corporate groups, the lower of the potential ICR derived from these criteria, or two notches above the relevant foreign currency sovereign rating.

**GLOSSARY**

81. ALAC: Additional loss-absorbing capacity. These are securities issued by certain prudentially regulated entities (see Related Criteria) that can absorb losses at or near non-viability--for example, in the event of a bank resolution, in a way that reduces the risk of the bank defaulting, according to our definitions, on its senior unsecured obligations.
82. Captive finance subsidiary: A captive finance subsidiary (as opposed to a financing subsidiary) provides financing for the purchase of the group's products. (For a full definition, see "The Impact of Captive Finance Operations On Nonfinancial Corporate Issuers").
83. Captive (re)insurer: A member of an insurance, corporate, or financial institutions (FI) group that mainly insures risks of other group entities. Captive (re)insurers typically show a very high degree of integration with a group's financial and risk management strategy.
84. Double leverage (for financial institutions only): We define double leverage (DL) for FI groups as holding company investment in subsidiaries divided by holding company (unconsolidated) shareholder equity. Holding companies often issue hybrid capital securities that build regulatory capital. They invest the proceeds in operating subsidiaries as equity or as similarly structured hybrid securities. We calculate DL in two ways: (1) with a common equity double-leverage measure that treats hybrid capital as debt, and (2) with a total equity double leverage measure that treats hybrid capital as equity.
85. Equity affiliate: Also defined in our corporate criteria as "unconsolidated equity affiliates." These are entities that are not consolidated in an issuer's financial statements. Therefore, the earnings and cash flows of the affiliate are not typically included in our primary metrics (see "Corporate Methodology").
86. Extraordinary negative intervention: Potential extraordinary negative intervention by one or more members of a group. Examples include the extraction of unexpected extraordinary dividends or asset or cash stripping the issuer at the behest of the group to service other obligations of the group.
87. Extraordinary support: We consider support as extraordinary when it is entity specific, nonrecurring, and typically related to financial stress at the entity. Examples include but are not limited to recapitalization with common equity or hybrids, liquidity injections to the group member, or one-off transfers of risk from the group member.
88. Financial institution: Entities that are in-scope for our bank and nonbank FI methodologies.
89. Financial services sector: Consists of financial institutions and insurance companies.
90. Financial sponsor: We define a financial sponsor as an owner that does not have a long-term strategic interest in a company. Rather, the financial sponsor is a financial investment firm primarily motivated to increase the value of its investment by improving its management, capital, or both, typically with the ultimate goal of liquidating the investment. Financial sponsors include, but are not limited to, private-equity firms, hedge funds, and venture capital firms.
91. Holding company (may also be referred to as a group parent): A legal entity that is the owner of at least one group member that conducts business activities, though it may not carry out its own business activities (e.g. a non-operating holding company). A holding company may also provide services to subsidiaries such as investment and treasury management.
92. Insurance company (or insurers): Entities that are in scope for our insurance ratings methodologies.
93. Intermediate holding company: A legal entity that is a group member and legal owner of at least

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one other group member that conducts business activities, though it may not carry out its own business activities.

94. Parent: An entity with controlling or joint-control interest in another entity or a joint venture.
95. Prudentially regulated: This refers to the regulation of a financial services entity by one or more regulatory authorities who set standards for, among other things, capital adequacy and potential restrictions on distributions. We generally regard banks and insurers as prudentially regulated sectors.

### IMPACT ON OUTSTANDING RATINGS

96. We are revising our group rating methodology to provide greater clarity and transparency, and enhance cross-sector consistency. While the underlying fundamentals remain the same, the new criteria also increases scope for analytical adjustments.
97. The new criteria includes the following analytical changes:
- a greater scope for analytical adjustments in how we determine the group SACP, particularly for cross-sector groups and those with insulated group members;
  - a greater scope for analytical adjustments in how we determine the group status of group members;
  - the ability to apply a one-notch adjustment for highly strategic and for strategically important entities for a modest sub-set of issuers where the gap between the GCP and the SACP is at least seven notches;
  - greater alignment in our treatment of insulated entities across sectors;
  - a clarifying change to the term "Unsupported GCP" (under the former criteria), which is now broadly equivalent to "group SACP" in the new criteria;
  - for a group member where the relevant foreign currency sovereign rating is lower than 'B-', we have established that the ICR can be no lower than 'B-' (unless transfer and convertibility restrictions are applicable) if the conditions for an ICR of 'CCC+' or lower are not met;
  - for insurers, we have changed the reference point for rating above the sovereign (from local currency to foreign currency sovereign rating) and we now allow highly strategic entities to be rated up to two notches above the relevant sovereign rating, to bring greater alignment across sectors;
  - for insurers, we have removed explicit sovereign limitations for branches and guaranteed entities to enhance cross-sector consistency;
  - we have provided greater scope for analytical adjustments to widen or narrow notching of holding companies of prudentially regulated financial services groups;
  - we now allow a one-notch negative adjustment when determining the potential ICR of certain bank subsidiaries that we rate above the GCP; and
  - we have widened the scope of analytical adjustments to rate a core group member of an FI group up to two notches above the relevant foreign currency sovereign rating based on uplift for group support.
98. The potential rating impact of the new criteria on issuer credit ratings differs by sector.
99. The criteria could lead to modest credit rating actions on no more than about 2% of ratings in the insurance sector, with more upgrades than downgrades. The potential rating actions are mostly

## General Criteria: Group Rating Methodology

due to changes relating to rating issuers above the sovereign rating. Other, mostly single-notch rating actions, will mostly result from greater scope for analytical adjustments in the criteria.

100. The criteria could lead to modest issuer credit rating actions in the corporate and infrastructure sector, where we anticipate rating actions for about 1% of the rated universe. We expect a more pronounced rating impact in the infrastructure sector in particular, where we anticipate rating actions for up to about 4% of those entities. The clear majority of anticipated rating actions in the corporate and infrastructure sectors will be limited to an upgrade of one notch and primarily in the regulated utilities sector, where we have changed how we assess insulation that is sufficient for a potential ICR that is one notch higher than the GCP.
101. The criteria could lead to extremely modest (under 1%), and mostly positive rating actions in the financial institutions sector. Where rating actions will occur, we anticipate that they will be mostly limited to upgrades and downgrades of one notch as a result of greater scope for analytical adjustments in the criteria.
102. We do not expect the criteria to affect the ratings on U.S. public finance and international public finance entities.

## RELATED PUBLICATIONS

### Superseded Criteria

- Group Rating Methodology, Nov. 19, 2013.

### Related Criteria

- Insurers Rating Methodology, July 1, 2019
- Guarantee Criteria, Oct. 21, 2016
- The Impact Of Captive Finance Operations On Nonfinancial Corporate Issuers, Dec. 14, 2015
- Methodology: Investment Holding Companies, Dec. 1, 2015
- Bank Rating Methodology And Assumptions: Additional Loss-Absorbing Capacity, April 27, 2015
- Rating Government-Related Entities: Methodology And Assumptions, March 25, 2015
- Corporate Methodology, Nov. 19, 2013
- Ratings Above The Sovereign--Corporate And Government Ratings: Methodology And Assumptions, Nov. 19, 2013
- Methodology: Timeliness Of Payments: Grace Periods, Guarantees, And Use Of 'D' And 'SD' Ratings, Oct. 24, 2013
- Assessing Bank Branch Creditworthiness, Oct. 14, 2013
- Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings, Oct. 1, 2012
- Guarantee Default: Assessing The Impact On The Guarantor's Issuer Credit Rating, May 11, 2012
- Banks: Rating Methodology And Assumptions, Nov. 9, 2011

**General Criteria: Group Rating Methodology**

- Principles Of Credit Ratings, Feb. 16, 2011
- Stand-Alone Credit Profiles: One Component Of A Rating, Oct. 1, 2010

**Related Guidance**

- Guidance: General Criteria: Group Rating Methodology, July 1, 2019

This report does not constitute a rating action.

These criteria represent the specific application of fundamental principles that define credit risk and ratings opinions. Their use is determined by issuer- or issue-specific attributes as well as S&P Global Ratings assessment of the credit and, if applicable, structural risks for a given issuer or issue rating. Methodology and assumptions may change from time to time as a result of market and economic conditions, issuer- or issue-specific factors, or new empirical evidence that would affect our credit judgment.

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**General Criteria: Group Rating Methodology**

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**CITY OF EL PASO, TEXAS  
FRANCHISE ASSIGNMENT APPLICATION**

Below are El Paso Electric Company's ("EPE") supplemental responses to the Franchise Assignment Application it filed with the City of El Paso, Texas, ("City") on September 20, 2019. Additionally, please find EPE's response to the City's revision to Question V.O.

**Question II.E.**

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

*Please refer to Exhibit A.*

**Question II.F.**

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

*Please refer to Exhibit A.*

**Question II.G.**

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

*Please refer to Exhibit A.*

**Question II.H.**

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

*Please refer to Exhibit A.*

**Question II.J.**

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

*Please refer to Exhibit J, Attachment 5.*

**Question II.K.**

- K. If AA, or any parent or affiliated company of AA, or any part to this application is a franchise assignment applicant, franchisee or licensee in any other county or municipality

in any state, including Texas, for the same or similar type of franchise that AA is seeking, supply the following information for each such county or municipality as **Exhibit B**:

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

*Please refer to Exhibit B.*

**Question V.C.1.a**

1. Attach as **Exhibit C** a copy of:
  - a. the latest annual report to stockholders;

*Please refer to Exhibit C.*

**Question V.C.2.**

2. Attach as **Exhibit D** a list of creditors who hold 10% or greater of the outstanding indebtedness as of the date of this application and supply the following information concerning each listed creditor.
  - a. the name of each creditor holding such indebtedness;
  - b. the amount of indebtedness in dollar held by such creditors;
  - c. the percentage of total indebtedness held by such creditors; and
  - d. copies of the terms of each debt agreement with such creditor.

*No single creditor holds 10% or greater of the outstanding indebtedness of EPE.*

**Question V.F.**

- F. For each corporation, individual, or legal entity having a 10% or greater ownership interest in the AA:
  1. indicate the name and the percentage of stock owned or other ownership interest owned by such corporation, individual or legal entity; and

*The equity owners of EPE with a greater than 10% interest are BlackRock, Inc. (15.74%) and The Vanguard Group (11.36%). These numbers were reported in EPE's Securities and Exchange Commission Form 13F and Form 13D, filed on September 30, 2019, and October 11, 2019, respectively.*

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

*Please refer to Exhibit J, Attachment 6*

**Question V.O.**

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

*EPE filed for bankruptcy protection on January 8, 1992, and emerged from bankruptcy on January 9, 1996.*

**Question VI.F.**

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

*Please refer to Exhibit H.*

**CITY OF EL PASO, TEXAS  
FRANCHISE ASSIGNMENT APPLICATION**

**STATEMENT UNDER THE FRANCHISE ASSIGNMENT APPLICATION  
DESIGNATING CONFIDENTIAL MATERIALS**

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

Exhibit A is exempt from public disclosure in accordance with sections 552.101, 552.104, and 552.110 of the PIA, while Exhibit H is exempt due to sections 552.101 and 552.110. Exhibit A contains “information related to critical infrastructure” as that phrase is understood in Texas Government Code section 418.181. Moreover, both Exhibit A and Exhibit H contain information that qualifies as trade secrets, as the information is not generally known and provides a commercial advantage to its owner. Additionally, if the information contained in both exhibits was released it would give advantage to a competitor.

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

Respectfully Submitted,



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**EXHIBIT A**  
**PROPOSED ENCROACHMENT AND**  
**ENCROACHMENT ROUTES**

*CITY PROVIDED TEMPORARY ACCESS TO ELECTRONIC FILE ROOM FOR REVIEW*

*DOCUMENTS CONTAIN HIGHLY SENSITIVE AND CONFIDENTIAL CRITICAL  
INFRASTRUCTURE INFORMATION*

**EXHIBIT B**  
**OTHER FRANCHISES AND CERTIFICATIONS**

Attachment 1 – City of San Elizario, Texas

Attachment 2 – Town of Anthony, Texas

Attachment 3 – Town of Clint, Texas

Attachment 4 – Town of Horizon City, Texas

Attachment 5 – Town of Socorro, Texas

Attachment 6 – Town of Van Horn, Texas

Attachment 7 – Village of Vinton, Texas

Attachment 8 – Ysleta del Sur Pueblo

Attachment 9 – City of Anthony, New Mexico

Attachment 10 – City of Las Cruces, New Mexico

Attachment 11 – City of Sunland Park New Mexico

Attachment 12 – Dõna Ana County, New Mexico

Attachment 13 – Sierra County New Mexico

Attachment 14 – Town of Mesilla, New Mexico

Attachment 15 – Village of Hatch, New Mexico

Attachment 16 – FCC and EPA Items

Attachment 17 – New Mexico CCN

**ATTACHMENT 1  
CITY OF SAN ELIZARIO, TEXAS**

1. the name of the municipality, county, and state;

*City of San Elizario, Texas*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*January 27, 2017*

4. if franchisee or licensee, the date franchise or license expires;

*January 27, 2047*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 1.*

Maya Sanchez  
Mayor

Leticia Miranda  
Aldersperson Pl. 1

David Cantu  
Aldersperson Pl. 2



Miguel Najera Jr.  
Aldersperson Pl. 3

Rebecca Martinez-Juarez  
Aldersperson Pl. 4

George Almanzar  
Aldersperson Pl. 5

## City of San Elizario

### ORDINANCE NO. 1516.01

#### **AN ORDINANCE GRANTING TO EL PASO ELECTRIC COMPANY A FRANCHISE TO USE STREETS, ALLEYS, THOROUGHFARES AND OTHER PUBLIC RIGHTS-OF-WAY TO OPERATE AND MAINTAIN AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM IN THE CITY OF SAN ELIZARIO, EL PASO COUNTY, TEXAS.**

**WHEREAS**, the provision for and the opportunity to receive electric service for residential and commercial use is a benefit to the City of San Elizario ("City"), its citizens and business owners; and

**WHEREAS**, the City is authorized to grant franchise rights to utilities for the privilege of use of City Streets, alleys and thoroughfares and other public rights-of-way to operate and maintain utility systems; and

**WHEREAS**, El Paso Electric Company ("Company") seeks a franchise to operate and maintain an electric transmission and distribution system in the City; and

**WHEREAS**, as a condition of receiving this franchise, the Company has agreed to abide by the City's current and future policies, ordinances and regulations regarding infrastructure usage, street-cuts and rights-of-way, and agrees that the franchise, whether it be so provided in the ordinance or not, shall be subject to the rights of the City as set forth thereunder; provided that such policies, ordinances, regulations, and rights allow for the safe and reliable distribution and transmission of electricity; and

**WHEREAS**, the City Council of the City of San Elizario desires to approve a franchise agreement and regulations for El Paso Electric Company to provide an electric transmission and distribution system in the City; and

**WHEREAS**, pursuant to Texas Utilities Code Section 33.008, a municipality may impose on an electric utility that provides distribution services within the municipality a reasonable charge for the use of a municipal street, alley, or public way to deliver electricity to a retail customer.

NOW THEREFORE: BE IT ORDAINED by the City Council of the City of San Elizario:

I. GRANT OF FRANCHISE

Section 1. Grant of Authority

There is hereby granted to El Paso Electric Company, a Texas corporation, its legal representatives, successors, and assigns, for the term of thirty (30) years from the effective date of this Ordinance, a Franchise, pursuant to Section 33.008 of the Texas Utilities Code, as may be amended, the right, privilege, and franchise to: (i) construct, extend, reconstruct, repair, access, maintain, use, and operate in, along, across, over or under the present and future streets, highways, alleys, sidewalks, bridges, public ways, parks, public utility easements, and public places and extensions thereof (collectively, "rights-of-way") of the City of San Elizario, Texas, electric power lines and facilities with all necessary or desirable appurtenances (including poles, towers, wires, underground conduits, related telephone and communication lines) for the transmission and distribution of electrical energy ("system"); and (ii) promote, construct, extend, reconstruct, repair, access, maintain, use, build, equip, conduct, or otherwise establish and operate in said City, works or systems and plants to generate, manufacture, use, store, sell, distribute, transmit, serve, supply, furnish, and convey electrical energy; in each instance whether now installed and in operation or as may be hereafter installed and operated in the City for the use of the City, its inhabitants thereof and properties therein, and persons, firms, and corporations beyond the corporate limits thereof.

Section 2. Police Power

Work done in connection with the construction, repair, maintenance and operation of distribution facilities is subject to the continuing police power and requirements of the City and applicable federal and state rules and regulations, and the Company shall comply with all present and future laws, ordinances, regulations, and standards except such as conflicts with any provision hereof lawfully surrendering the City's authority.

The City shall have the power at any time to require the Company to change the route and position of its distribution facilities such as poles, lines, conduits, or other related construction at Company's expense when the City Council ("Council") shall find, by resolution, that such change is necessary in the closing, opening, or relocation of streets or alleys, or water or sewer lines, and the changing of grade of streets or alleys, which the Council shall find necessary under the lawful exercise of its police power; provided, however, the Company shall be entitled to be paid for its costs and expenses of any relocation, raising or lowering of its poles, lines, conduits, or other construction required by the City if (i) such costs and expenses are reimbursable or payable to the Company or to the City by the State of Texas, the United States, or any agency or subdivision of either, or by any other party, or (ii) such move is for the benefit or convenience of or at the request of a third party, including a private developer or development. The City shall not be liable to the Company for any damages to poles, lines, conduits, or other construction occurring in the change of the grade of streets, alleys, or public places after notice to the Company. The City shall consult and confer with the Company before requiring any such relocation or raising or lowering of distribution facilities, with a view toward accomplishing the result reasonably and economically for both parties.

The Company shall within a reasonable time restore to their original condition as before working thereon as nearly as reasonably possible all streets excavated by it. The Company shall not excavate any pavement or street at any time without first obtaining a permit to do so and paying for a permit if

required by the City, but such permit shall be given if the proposed excavation is necessary and in accordance with this Franchise, City ordinance, or state or federal law or regulation. In the event of an emergency requiring immediate excavation, the Company shall notify the City as soon as practicable thereafter.

If the City abandons any public rights-of-ways in which the Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former public rights-of-ways and on the obligation of the party to whom the public rights-of-way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the public rights-of-way.

### Section 3. Interference with Public or Private Property

All poles placed within the City and all excavations or other construction in the streets, alleys or public places shall be done so as to minimize interference with the use of streets, alleys, and public places and with the use of private property as may be reasonably accomplished, in accordance with direction given by or under the authority of the Council under the police and regulatory power of the City. Future installations of the Company shall not conflict with then existing gas pipes, water pipes, telephone lines or conduits, or sewers, except with the consent of the City. Nothing herein shall be construed in any way to restrict or limit the Company's right of eminent domain as to private property.

### Section 4. Trimming Trees

The Company may trim trees or vegetation upon and overhanging the streets, alleys, sidewalks, and public places of the City so as to eliminate or minimize interference with the wires, cables, or system of the Company.

### Section 5. Wire Changes to Permit Moving of Structures

The Company on request of any person shall within a reasonable period of time remove, rearrange, raise, or lower its aerial distribution cables or wires temporarily to permit the moving of houses, machinery, or other objects or structures. The expense of such temporary removal, rearrangement, raising, or lowering of the aerial distribution cables or wires shall be paid by the benefited party or parties, and the Company may require such payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

### Section 6. Furnishing Service

The Company shall furnish service under approved tariffs, service rules, and regulations to any person, firm, or corporation that shall request service within the City, subject to regulation as provided in Section 10 of this Franchise, and shall make connections therefore on request, without unreasonable delay, provided that the extension of service demanded is not prohibited by state or federal law.

The Company shall have the right to operate and control all meters, wires, appliances, and appurtenances owned by the Company. In case of refusal or failure on the part of any customer to pay the Company proper charges for electricity consumed and other related services, or to observe approved rules and regulations established by the Company, the Company shall have the right to disconnect its service and wires to the premises of such customer and to remove all facilities furnished and owned by the Company.

#### Section 7. Other Utility Installations

The City reserves the right to install and permit to be installed, gas, water, other utility lines, cable television lines, fiber optic lines and facilities and permits to be done any work that may be deemed necessary or proper by the Council in, across, over, or under any street, alley, or public place occupied by the Company and to change any curb or sidewalk or the grade of any street. However, such installation shall not interfere with the operations or assets of the Company or violate safety standards and the City shall not require the Company to allow others use of Company's assets without prior express written permission of the Company. In doing or permitting such reasonable work, the City shall not be liable to the Company for any damage so occasioned. However, the City shall not require the Company (except as provided in Section 2) to move its line(s) entirely from any street, alley, or public place. If the City shall require the Company to adapt or conform its lines or in any way or manner to alter, relocate, or change its property to enable any other corporation or person except the City to use with greater convenience such street, alley, or public place, the Company shall not be bound to make any such changes until such other corporation or person shall have undertaken with solvent bond to reimburse the Company for any loss and relocation of the Company property; provided, however, that the City shall not be liable for such reimbursement.

#### Section 8. Indemnification

Company shall indemnify, save, and hold harmless the City for any and all claims for damages for which the City shall or might become liable to the extent caused by any negligent act or omission of Company, its agents or contractors in the construction and operation of the system; provided, however, that in the event of such claim or claims being prosecuted against the City, Company shall have the right to defend against the same, and to settle or discharge same in such manner as it may see fit, and the City shall give prompt written notice to Company of the presentation or prosecution of such claims.

The City, to the extent permitted by Texas law, shall indemnify, save, and hold harmless Company for any and all claims for damages for which the Company shall or might become liable to the extent caused by any negligent act or omission of the City or its agents, contractors or subcontractors; provided, however, that in the event of such claim or claims being prosecuted against the Company, City shall have the right to defend against the same, and to settle or discharge same in such manner as it may see fit, and the Company shall give prompt written notice to City of the presentation or prosecution of such claims.

#### Section 9. Quality of System and Service

The Company shall construct, install, and maintain its system with appropriate apparatus and equipment in reasonable operating condition at all normal times. The service shall be sufficient to meet reasonable demands without undue interruption or fluctuation, except when interrupted, prevented, or impaired by fire, strikes, riots, war, storms, floods, state or federal restrictions, reliability or safety standards, or any other occurrences beyond the control of the Company in any of which events the Company shall do all things reasonably within its power to restore service, but shall not be liable for claims, demands, causes of action, or damages occasioned by interruption or fluctuations so caused. It is understood and agreed that the settlement of strikes, walkouts, lockouts, or other labor disputes shall be entirely within the discretion of the Company.

#### Section 10. Regulation

It is recognized that the rates, operations, and services of the Company are regulated pursuant to the Public Utility Regulatory Act (the "Act"), Title 2 of the Texas Utilities Code, as the same may be

amended from time to time. In the event of any conflict between any of the provisions of this Franchise and the Act, the Act shall govern.

#### Section 11. Reports

The City shall have the right to be kept informed as to the operation and services of the Company within the incorporated limits of the City. The Company will make available such pertinent information as may from time to time be reasonably required by the City related to information furnished to the Public Utility Commission of Texas, or its successor agency, and the records of the Company related to its operations within the incorporated limits of the City. The Company shall make the information available for inspection by the City at its corporate offices in El Paso, Texas at a reasonable time; provided that such information can be produced from the Company's records existing at the time of the request without unreasonable burden or expense. Further, Company shall have no obligation to provide any information to the extent such disclosure is limited by any law, regulation, or confidentiality agreement.

Upon request of the City, the Company will file with the City Clerk an operating statement for the previous calendar year.

#### Section 12. Compensation

As full compensation for the rights herein granted, the Company will pay the City during the life of its Franchise, a sum of money equal to three and one quarter percent (3.25%) of the Company's gross revenues, excluding revenues from the City or its departments, received by the Company from the sale of electric energy within the corporate limits of the City including any extension of those City limits from time to time. Said payments shall be payable on: (i) the fifteenth day of February (or the following business day if the fifteenth day is on a weekend or legal holiday) each year for the preceding July through December, and (ii) the fifteenth day of August (or the following business day if the fifteenth day is on a weekend or legal holiday) each year for the preceding January through June. Calculation of the initial payment will be based on gross receipts from meter readings taken on or after the first day of the first calendar month following sixty (60) days after the effective date of this Franchise.

The consideration set forth above in this Section shall be in lieu of any other tax, fee, or charge, by whatever name called, for the privileges granted in this Franchise. The City will not assess against the Company any additional street rental charge, pole tax, inspection tax, or charge for the occupancy or use of the places to which this Franchise relates under Section 1, or tax on this Franchise as property. This does not bar the City from assessing against the Company or its property ad valorem taxes levied on property generally, fees charged generally to the public for the services of departments or agencies of the City, excise taxes levied generally, or other taxes, fees, and charges that are general and not compensation for the privileges herein granted.

Should the City not have the legal authority to agree that payment of the foregoing consideration shall be in lieu of any of the additional taxes or charges as above set forth, the City will apply so much of such payments set forth in this Section as may be necessary to the satisfaction of the Company's obligation to pay the additional tax charged here and agreed to be waived.

The payment or rendition of the consideration provided in this Grant shall not, except as otherwise provided herein, in any way limit any of the privileges or rights of the City that it may now or hereafter have under the Constitution and laws of the State Texas.

The provisions of Section 12 shall not be construed to excuse the Company from collecting from its electric service customers and paying over to the City or the state for the benefit of the City additional municipal sales tax levied in the event said City or state shall, at any time during the term of this Franchise, enact such additional municipal sales tax.

The City shall notify the Company (Attention: Tax Department) in writing of any changes in the municipal boundaries of the City within thirty (30) days of any annexation, deannexation, extension, or contraction of boundaries becoming effective. The notice shall provide a description of the new and former municipal boundaries and provide Company copies of all relevant ordinances and maps. Company shall have no obligation to calculate, collect, or pay the Franchise fee attributable to any newly extended municipal boundaries until at least sixty (60) days have elapsed from Company's receipt of such notice.

### Section 13. Dispute Resolution

Resolution of any dispute arising under this Franchise Ordinance between the City and the Company, or any of its affiliates (collectively the "Parties, or individually a Party") shall first be attempted by submitting the dispute to mediation. The dispute shall be submitted to mediation upon the written demand of either party. Within thirty (30) calendar days following demand, the mediation shall be held in El Paso County, Texas at the location designated by the party demanding the mediation. Mediation of any dispute shall be a condition precedent to filing a lawsuit, except that nothing herein shall preclude a party from seeking a mandatory or prohibitive injunction, or equitable relief from any court of competent jurisdiction to enforce or maintain the status quo pending mediation of any dispute. If mediation is unsuccessful, either party may bring suit to enforce the terms of this ordinance in the courts of El Paso County, Texas.

Failure by the City or the Company to enforce rights under this Franchise does not constitute a waiver of the rights.

### Section 14. Acceptance

This Franchise shall not take effect unless, within sixty (60) days after its passage and approval, the Company files its written acceptance with the City Clerk or designated city official.

### Section 15. Assignment and Rights of Successors

Company is expressly given the power and privilege to sell, transfer or assign this Franchise Ordinance, or any part of this Franchise Ordinance, to any person, entity or corporation. Company will provide written notice to the City one-hundred eighty (180) days prior to an assignment.

This Franchise shall be binding upon the legal representatives, successors, lessees, and assigns of the parties hereto.

### Section 16. Invalidation of Provision

If any section, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be declared or adjudged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part of the provisions hereof, other than the part so determined to be invalid or unconstitutional.

### Section 17. Supersedes Previous Ordinances

This Franchise shall supersede any and all other franchises granted by the City to Company, its

predecessors and assigns.

**Section 18. Interpretation and Governing Law**

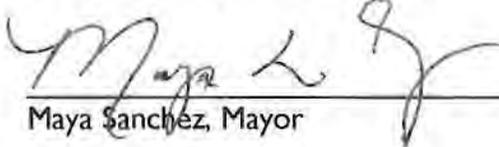
This Franchise is subject to, and shall be interpreted to conform with all applicable state and federal laws, rules, orders and regulations including, but not limited to, the laws, rules, orders and regulations of the Public Utility Commission of Texas. Any changes in applicable laws, rules, orders and regulations shall become effective with regard to this Franchise and any other agreements made pursuant to it as of the effective date of such law, rule, order or regulation.

**II. FINDINGS OF FACT**

This ordinance is duly enacted, and such is evidenced by the signatures below; and further that the foregoing recitals are incorporated into this ordinance by reference as findings of fact.

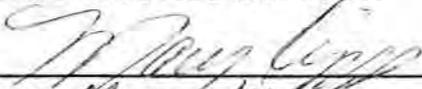
PASSED and APPROVED this, the 27 day of January, 2015 by a vote of 3  
(ayes) to 0 (nays) to 2 (abstentions) of the City Council of the City of San Elizario, Texas.

CITY OF SAN ELIZARIO, TEXAS:

  
\_\_\_\_\_  
Maya Sanchez, Mayor

ACCEPTED by El Paso Electric Company, a Texas corporation, this 20th day of February, 2015.

EL PASO ELECTRIC COMPANY

By:   
Name: Mary Kipp  
Title: President

APPROVED AS TO FORM:

  
Office of the General Counsel

**APPROVED AS TO FORM**

OFFICE OF THE GENERAL COUNSEL 

**ATTACHMENT 2**  
**TOWN OF ANTHONY, TEXAS**

1. the name of the municipality, county, and state;

*Town of Anthony, Texas*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*November 27, 2007*

4. if franchisee or licensee, the date franchise or license expires;

*November 27, 2027*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 2.*

ORDINANCE 449

AN ORDINANCE OF THE TOWN OF ANTHONY, EL PASO COUNTY, TEXAS DULY AND LEGALLY INCORPORATED UNDER THE GENERAL LAWS OF THE STATE OF TEXAS, GRANTING TO EL PASO ELECTRIC COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE WITH THE RIGHT TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN, REPAIR, RECONSTRUCT AND OPERATE AN ELECTRIC LIGHT AND POWER PLANT AND SYSTEM IN ANTHONY, TEXAS, AND TO ERECT, MAINTAIN, CONSTRUCT, OPERATE AND INSTALL A SYSTEM OF POWER LINES OVER, ACROSS, UPON, ALONG AND UNDER THE PRESENT EXISTING AND HEREAFTER CONSTRUCTED HIGHWAYS, PUBLIC ROADS, STREETS, ALLEYS, BRIDGES, VIADUCTS, PUBLIC GROUNDS, PUBLIC PROPERTY AND PUBLIC PARKS AND PLACES IN THE TOWN OF ANTHONY FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING ELECTRIC POWER TO THE INHABITANTS WITHIN THE SAID TOWN FOR DOMESTIC AND INDUSTRIAL PURPOSES FOR A TERM OF TWENTY YEARS TO EXPIRE ON THE \_\_\_\_th DAY OF \_\_\_\_\_, TWO THOUSAND TWENTY SEVEN (2027) AND PROVIDING FOR A CONSIDERATION FOR THE FRANCHISE AND FOR REGULATIONS BY THE TOWN GOVERNING THE CONDUCT, OPERATION, SERVICE AND RATES OF SAID COMPANY, AND THE DURATION AND TERMINATION OF THE FRANCHISE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ANTHONY, TEXAS AS FOLLOWS:

SECTION I. The word "Grantee" as employed in this Ordinance shall denote and mean El Paso Electric Company, a Texas corporation, its lessees, associates, successors and assigns.

The word "Grantor" as employed in this Ordinance shall denote and mean the incorporated Town of Anthony, El Paso County, Texas.

The words "Town Council" as employed in this Ordinance shall denote and mean the present Town Council and successors elected as provided by law in the Town of Anthony, El Paso County, Texas, or the incumbents of any office or offices hereafter created by law or by charter performing the same or similar function.

SECTION II. (a). The Grantee, its successors and assigns shall be and are hereby granted a franchise for a period of twenty years, with full right, power and authority to acquire, erect, construct, extend, maintain, repair, reconstruct, remove and change poles, wires and any and all other necessary apparatus and appliances within the corporate limits of the Town as they now exist or as hereafter extended, for the purpose of generating, transmitting and distributing to said Town and its inhabitants electricity for light and power, and for said purposes it is granted the right and privilege to enter upon and use the streets, avenues, highways, underpasses, alleys, public parks and other public grounds and places of said Town to erect, construct, operate, maintain, repair and remove such poles, wires, apparatus, appliances, connections and attachments as may be necessary and proper, subject to the terms hereinafter provided, and authority is likewise granted to lay underground wires, cables and conduits in the streets, alleys

and highways and to break up the surface thereof and to make proper excavations and lay conduits and duct systems under the streets and sidewalks.

All work done in the streets, alleys, highways or other public grounds of the Town by the Grantee shall be performed with reasonable diligence, and it shall within a reasonable time restore the streets, alleys and public grounds excavated by it to their original condition as nearly as possible; and said work shall be done, subject to the approval and supervision of the Town or some official designated by it, provided that in laying all conduits, wires or other such structures and in the repairing of same the Town shall be held harmless from all damages on account of any excavations for conduits and other structures, and the Grantee shall assume all liability or risk of damage to persons or property which may arise from negligence in the construction or operation of any or all of said plant or plants and shall save the Town, its officers and agents harmless from any and all liability which may arise or be incurred from the erection, construction or operation of same.

There is also granted to the Grantee, El Paso Electric Company, the franchise and the right, if it so elects, to erect, operate and maintain an electric light and power generating plant in the said Town of Anthony, Texas.

(b). The right, license and privilege and permission is given to the Grantee to trim trees upon and overhanging the streets, alleys, sidewalks and public places of the Town so as to prevent the branches of such trees from coming in contact with the wires or cables of the Grantee and when so ordered by the Town said trimming shall be done under the supervision and direction of an officer or agent of the Town to whom said duty has been or may be delegated by the Council or Board of Aldermen.

SECTION III. The Town Council may require the placing of electric lines located upon or to be located upon or crossed any public street or highways of any town in the business area as described in Exhibit A, attached hereto and hereby incorporated by reference, underground and conduits wherever public travel, public safety and convenience in the use or occupation of such public street or streets or highways shall reasonably require, but in the event of exercising this right the Grantee shall have the right to increase any rates to meet any expenses in connection with the construction, and when this might be exercised it shall be by Ordinance and the Town may likewise by proper action of the municipal council have the right to require the relocation of any poles, lines, conduits and other appliances for the transmission of electricity to conform to changing, improving or widening of streets and public alleys and the alteration of the course and with thereof, or where necessary to provide for the lane or changing of water lines, sewer lines, or other public utility lines owned by the Town and where the cost of making such changes in the relocation of poles, lines, conduits and other appliances for the transmission of electricity so required the Grantee shall be entitled to an increase in its rates.

SECTION IV. The Town of Anthony grants unto the Grantee herein its successors, lessees, and assigns the right to operate and control all meters, wires, appliances or appurtenances owned by it, and in the case of a refusal or failure on the part of any customer to pay the proper charges for current consumed or to observe the established rules and regulations of the Grantee to disconnect its service and wires from the premises of the consumer and to remove all meters and other

materials, appliances or appurtenances furnished for service and owned by it; provided that the Grantee shall in connection with the furnishing of current upon the demand of any customer or user of electric power or current upon request of any consumer have any meter read and tested as provided under Texas law at its own cost and expense if such test shall determine incorrectness of or defect in the meter, but if the meter test shows no incorrectness or defect in the meter, then the cost of making said test shall be at the expense of the consumer so requesting said test and reading.

SECTION V. The Grantee may be required to extend its lines for service for light or power to any person, firm or corporation within the corporate limits where it is economically sound to do so and where there will be a reasonable and compensatory return upon the expense of making such extension.

The Grantee shall abide by the provisions of this franchise and any authority granted to the Town of Anthony by the State Legislature under its charter provisions and any lawful Ordinances of the Town enacted pursuant thereto.

SECTION VI. All current for light, heat or power shall be upon a meter basis, except in such cases as where a flat rate is established for certain classes of service, but the flat rate shall not be compulsory and the right may be reserved by any customer to demand service through a meter in any class of service to which it otherwise would be entitled and obtain current for light, heat, or power at metered rates for any of the different classes of service, provided that it furnishes proper security for prompt payment of bills when due. However, the Grantee shall not be obligated to furnish meters for the purpose of enabling customers to check energy used by them in or for different departments on the same premises and for the benefit of customers only. Such meters shall be furnished by customers at their own cost and expense.

SECTION VII. The Grantee shall not discriminate between its consumers, that is, it shall charge all consumers in the same class the same rate for the same service; provided that special rates may be made by said Grantee where it may become necessary to meet competition with other light, heat or power service of any person; firm or corporation operating in the Town of Anthony, Texas.

Where authorized by the general laws of Texas, the Town may regulate and fix rates and charges allowed and required to be paid by customer such charges and rates to provide a reasonable and fair return upon the fair value of the Grantee's investment.

SECTION VIII. Grantee may establish optional rates and where applicable, the consumer reserving the option shall be bound thereby.

SECTION IX. The Grantee may require the payment of a reasonable deposit on the part of a customer as a condition precedent to furnishing service in accordance with the general laws of Texas.

Section X. Grantee may require of consumer the right of ingress to and egress from the premises of the consumer for the purpose of installing, moving, changing and reading meters and for the purpose of testing same in this connection at any reasonable time.

SECTION XI. Grantee may refuse to supply electric service to any person, firm or corporation demanding or applying for service unless such person, firm or corporation agrees to use the service furnished by the Grantee for its own use and legitimate purposes and in no event for resale without the express consent of the Grantee, and in the event that any customer violates said provisions Grantee may disconnect and discontinue service, as well as disconnect or discontinue any service to any consumer who is in arrears in the payment of his bill for service.

SECTION XII. (a). Grantee, its successors and assigns for and in consideration of the granting of this franchise and as rental for the occupation and use and easement over, upon and beneath the streets, highways, alleys, parks and other public places in the Town of Anthony as aforesaid shall pay quarterly to the Town a total aggregate sum of 3.25% of the gross receipts of the Grantee, its successors, lessees and assigns beginning with the date hereinafter set forth during all the time this provision shall remain in force and effect derived from the sale of electricity, used or consumed within the corporate limits of the Town of Anthony, such gross receipts to consist of the total amount received from users of electricity for light, heat and power within the corporate limits of the Town under the Grantee's rights for electricity furnished to the Town of Anthony, Texas, excepting therefrom such receipts for electricity furnished the Town and all municipal, county, state and Federal agencies and institutions. Such payment shall be based on said gross quarterly receipts beginning on meter readings commencing January 2, 2008, and said payments shall be made to the Town on or after the expiration of 30 days from and after the first day of January, April, July and October for the preceding quarter of each and every year, from and after and during all the time this provision shall remain in force and effect.

(b). For the purpose of determining said revenue, the revenue accounts of the Grantee shall at all reasonable times be subject to inspection by duly authorized Town officials and said payments shall be made in lieu of any and all other franchise, privilege, pole, easement, wire or instrument, occupation, excise or revenue taxes, and all other exactions except general ad valorem property taxes upon business, revenues, property, poles, wire instruments, conduits, pipes, fixtures or other appurtenances of the Grantee and all other property or equipment of the Grantee or any part thereof in said Town during the term of this franchise; provided that anything to the contrary notwithstanding, said payments shall continue only so long as the Grantee is not prohibited from making such payments by any lawful authority having jurisdiction in the premises, and so long as the Town does not impose, charge, levy or collect any other franchise, license, privilege, occupation, excise or revenue taxes, and if any lawful authority having jurisdiction in the premises hereafter prohibits said payments or if the Town does impose, levy, charge or collect or attempt to impose, charge, levy or collect any such other franchise, license, privilege, occupation, excise or revenue tax or other exactions or charge other than ad valorem taxes, the obligation to make such payments hereinabove provided for shall forthwith cease.

SECTION XIII. This franchise shall be accepted by the Grantee in writing within thirty (30) days from its passage and approval; and it is hereby made an essential condition in the granting of this franchise and in its use and enjoyment by the Grantee, its successors, lessees and assigns of the

franchise and the rights and privileges hereby granted, shall be the acceptance by the Grantee, its successors, lessees and assigns of all the conditions, reservations and restrictions herein provided and contained; and when this franchise has been accepted as aforesaid this Ordinance shall be and become a contract duly executed by and between the aforesaid Town of Anthony and said Grantee.

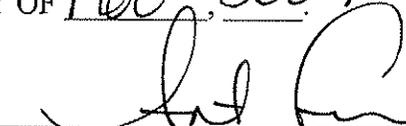
SECTION XIV. Upon the passage, approval and acceptance of this franchise, the same shall take effect and be in force for the period of twenty years from and after the adoption and approval of this Ordinance and its acceptance.

SECTION XV. Nothing herein contained shall be construed as giving to the Grantee any exclusive franchise.

SECTION XVI. If any section, paragraph, subdivision, clause, phrase or provision of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.

SECTION XVII. This Agreement is subject to, and shall be interpreted to conform with, all applicable laws, rules, orders, and regulations, including, but not limited to, the laws, rules, orders, and regulations of the Public Utility Commission of Texas. Any changes in applicable laws, rules, orders, or regulations shall become effective with regard to this Agreement, and any other agreements made pursuant to it, as of the effective date of the law, rule, order, or regulation. This Agreement shall terminate if EPE is required by any law, rule, order, or regulation to cease providing one or more of the services or obligations EPE agrees to perform pursuant to this Agreement.

PASSED AND APPROVED THIS 27<sup>th</sup> DAY OF Nov, 2007

  
\_\_\_\_\_  
Art Franco Meyer  
Name Title

ATTEST: (seal)

  
\_\_\_\_\_  
Office Manager

Accepted:

  
\_\_\_\_\_  
J. Frank Bates  
Interim President and CEO  
El Paso Electric Company

02/29/2008  
Date

**RIDER RELATING TO BOUNDARIES,**  
**EXHIBIT A TO SECTION III OF FRANCHISE**

Bounded on the north by the Texas-New Mexico State Line, on the west by the easterly property line of the Santa Fe Railway right of way, on the south by the southerly line of Magnolia Street and on the east by the westerly line of the first alley or street east of Main Street, which is also known as U.S. Highway 80. In the block bounded by Main Street, Franklin Street, South Third Street and Tamarisk Street and in the block between Poplar Street and Magnolia Street where no public alley now exists, the easterly boundary line shall be approximately 150 feet east of the east line of Main Street.

**ATTACHMENT 3  
TOWN OF CLINT, TEXAS**

1. the name of the municipality, county, and state;

*Town of Clint, Texas*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*November 13, 2007*

4. if franchisee or licensee, the date franchise or license expires;

*November 13, 2037*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 3.*

A

ORDINANCE GRANTING A FRANCHISE TO  
EL PASO ELECTRIC COMPANY

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CLINT:

Section 1. Grant. There is hereby granted to El Paso Electric Company (the "Company"), a Texas corporation, its successors and assigns, for the term of thirty (30) years from the effective date of this ordinance, a franchise to construct, reconstruct, repair, maintain, use and operate in, over, or under the present and future streets, alleys, public ways, parks, and public places of the Town of Clint (the "Town") facilities for the transmission and distribution of electrical energy for the use of the Town and the inhabitants thereof and properties therein, with all usual and customary appurtenances for such transmission and distribution. Provided, this franchise does not include places where the Town's authority to permit such installations is or hereafter may be withdrawn by the State, or where the Texas Highway Department or other State agency constructs or maintains such public facility or place and lawfully excludes the authority of the Town to permit such public utility installations therein.

Section 2. Police Power. Work done in connection with the construction, repair, maintenance and operation of such facilities is subject to the continuing police power of the Town, and the Company shall comply with all present and future laws, ordinances and regulations, except such as conflict with any provision hereof lawfully surrendering the Town's authority.

The Town shall have power at any time to require. The Company to remove and abate at its own expense any installation or structure that is dangerous to life or property, and in case the Company, after notice, fails or refuses to act, the Town shall have the power to remove or abate the same at the expense of the Company, all without compensation or liability for damages to the Company.

The Town shall have the power at any time to require the Company to change the route and position of its poles, lines, conduits or other construction at the Company's expense when the Town Council (the "Council") shall find, by resolution, that such change is necessary in the closing, opening or relocation of streets or alleys, or water or sewer lines, the changing of grade of streets or alleys, the construction and maintenance of parks and public improvements, the construction of private buildings, the construction or use of driveways, and under other conditions which the Council shall find necessary under the lawful exercise of its police power. Provided, however, the Company shall be entitled to be paid for its costs and expense of any relocation, raising or lowering of its poles, lines, conduits or other construction required by the Town if such expenses or costs are reimbursable or payable to the Company or to the Town by the State of Texas, the United States, or any agency or subdivision of either, whether directly or indirectly, or by any other party. The Town shall not be liable to the Company for any damages to poles, lines, conduits or other construction occurring in the change of the grade of streets, alleys or public places after notice to the Company. The Town shall use its best reasonable efforts to consult and confer with the Company before requiring any such relocation, raising or lowering, with a view to accomplishing the result reasonably and economically.

The Company shall promptly restore to as good condition as before working thereon, and to the reasonable satisfaction of the Town, all streets excavated by it. The Company shall never tear up nor excavate any pavement or street at any time without first obtaining permission of the Town, but such permission shall be given if the proposed excavation is necessary and in accordance with this franchise.

Section 3. Interference with Public or Private Property. All poles placed within the Town and all excavations or other construction in the streets, alleys or public places shall be

done as to interfere as little as possible with the use of streets, alleys and public places and with the use of private property, in accordance with any direction given by or under the authority of the Council under the police and regulatory power of the Town. Future installations of the Company shall not conflict with then existing gas pipes, water pipes, telephone lines or conduits, or sewers, except with the consent of the Town. Nothing herein shall be construed in any way to restrict or limit the Company's right of eminent domain as to private property.

Section 4. Trimming Trees. The Company may trim trees upon and overhanging the streets, alleys, sidewalks and public places of the Town so as to prevent the branches of such trees from coming in contact with the wires or cables of the Company. When so ordered by the Town, such trimming shall be done under the supervision and direction of any Town official to whom such duty may be delegated. The Council may require pole lines that border on public parks to be relocated or removed to adjacent alleys.

Section 5. Wire Changes to Permit Moving of Structure. The Company on request of any person shall remove or raise or lower its wires temporarily to permit the moving of houses or other bulky structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and the Company may require such payment in advance. The Company shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.

Section 6. Furnishing Service. The Company shall furnish service under fair rules and regulations (which rules and regulations shall be subject to supervision and control of the Council) to any person, firm or corporation which shall demand service within the Town, upon such terms and conditions as may be required by the Town, and shall make connections therefor

on demand without unreasonable delay, provided that the extension of service demanded is not prohibited by State or Federal law.

The Company shall have the right to operate and control all meters, wires, appliances and appurtenances owned by the Company. In case of refusal or failure on the part of any customer to pay the Company proper charges for electricity consumed, or to observe reasonable rules and regulations established by the Company, the Company shall have the right to disconnect its service and wires to the premises of such customer and to remove all facilities furnished and owned by the Company.

Section 7. Other Utility Installations. The Town reserves the right to install and permit to be installed gas, water and other utility lines and do and permit to be done any work that may be deemed necessary or proper by the Council in, across, over or under any street, alley, or public place occupied by the Company and to change any curb or sidewalk or the grade of any street. In doing or permitting such work, the Town shall not be liable to the Company for any damage so occasioned. Provided, however, the Town shall not require the Company (except as provided in Section 2) to move its lines entirely from any street, alley, or public place. If the Town shall require the Company to adapt or conform its lines or in any way or manner to alter, relocate or change its property to enable any other corporation or person except the Town to use with greater convenience such street, alley, or public place, the Company shall not be bound to make any such changes until such other corporation or person shall have undertaken with solvent bond to reimburse the Company for any loss and expense which will be caused by or arise out of such change, alteration or relocation of the Company property provided, however, that the Town shall never be liable for such reimbursement.

Section 8. Indemnification. The Company shall indemnify and save the Town harmless from all claims, demands or causes of action against the Town for injury to persons or property occasioned by or arising out of the construction, reconstruction, maintenance, repair or operation of its system or by the conduct of its business in the Town.

Section 9. Quality of System and Service. The Company shall construct, install and maintain its system with economical and up-to-date apparatus and equipment in reasonable operating condition at all normal times. The service shall be sufficient to meet all reasonable demands without undue interruption or fluctuation, except when interrupted, prevented, or impaired by fires, strikes, riots, war, storms, floods, State or Federal restrictions, or other occurrences beyond the control of the Company, in any of which events the Company shall do all things reasonably within its power to restore normal, efficient and economical service.

Section 10. Reports. The Town shall have the right to keep informed as to the construction, reconstruction, maintenance, repair and operation of the properties of the Company, and its accounting in connection therewith, as affect the rates charged and service rendered within the Town, and to keep informed of the reasonableness of the Company's rates. The Company will furnish such pertinent information as may from time to time be reasonably required by the Town, and the original records of the Company shall be open to inspection by the Town at any reasonable time.

Annually not later than March 31, the Company will file with the Town Clerk a detailed operating statement for the previous calendar year, showing income, expenditures, profit, and rate of return, and the basis therefor.

Section 11. Rate Regulation. The Town shall have the power to fix and regulate the rates and charges of the Company so far as not prohibited by law or the Town Charter.

If the Company applies to the Town for an increase in its rates or charges, it shall furnish the Council with all proof necessary for the Council to act advisedly and shall provide all facts, data and information demanded by the Council. When such application is made, the Council may employ such engineers, accountants, attorneys and other special representatives as the Council may deem necessary in determining the reasonableness of the rates and charges, and the reasonable compensation and expenses of such investigation and hearing shall be paid by the Company.

The Company will not resort to any court action with reference to the establishment or regulation of its rates, charges of service without first making application to the Council and allowing reasonable time for full investigation and hearing.

If the Town shall order a reduction in rates and the courts shall sustain such rates as set by the Town or shall approve any rate lower than the rate contended for by the Company, the rate sustained by the courts shall be retroactive to the date when the rate contended for by the Town was first ordered by the Town to go into effect, and any excess collected by the Company shall be refunded to the persons paying the same, and the Company shall pay all costs and expenses incurred by the Town in preparing for and conducting such litigation, to the extent that such costs and expenses shall be approved as reasonable by the courts in which such litigation is tried.

Section 12. Compensation. As full compensation for the rights herein granted, the Company will pay to the Town annually during the life of this franchise a sum of money equal to three and one quarter percent (3.25%) of the annual gross receipts for the preceding calendar year received by the Company from the sale of electric energy within the corporate limits of the

Town. Such annual sum shall be payable on the fifteenth day of February following the year with respect to which such sum shall be payable.

The consideration set forth above in this section shall be in lieu of any other tax or charge, by whatever name called, for the privileges granted in this franchise. The Town will not assess against the Company any additional street rental charge, pole tax, inspection tax, charge for the occupancy of the places to which this franchise relates under Section 1, or tax on this franchise as property. This does not bar the Town from assessing against the Company or its property ad valorem taxes levied on property generally, fees charged generally to the public for the services of departments or agencies of the Town, excise taxes levied generally, or other taxes, fees and charges which are general and not compensation for the privileges herein granted.

Should the Town not have the legal power to agree that payment of the foregoing consideration shall be in lieu of any of the additional taxes or charges as above set forth, the Town will apply so much of such payment set forth in this section as may be necessary to the satisfaction of the Company's obligation to pay the additional tax or charge herein agreed to be waived.

The payment or rendition of the consideration provided in this grant shall not, except as otherwise provided herein, in any way limit any of the privileges or rights of the Town which it may now or hereafter have under the Constitution and laws of Texas and the Charter of the Town.

Section 13. Company's Property Upon Termination of Franchise. Upon termination of this franchise, the Town shall have the option to purchase all of the property of the Company within the Town (including leases and contracts of the Company pertaining thereto), excepting cash on hand, in banks and in transit, negotiable securities, and property necessary for the

Company's business outside the Town, such property to be acquired being hereinafter referred to as the Company's property.

The price to be paid for the Company's property shall be the fair market value thereof on the date one year prior to the end of the term, subject to the following adjustments:

- (a) Change in the amount of current assets (excluding unbilled revenues) between such date and the end of the term;
- (b) Plus the cost of renewals and replacements and fixed capital additions made by the Company with the consent of the Town during such year;
- (c) Less the amount received by the Company for any property disposed of by it during such year;
- (d) Less the amount of any loss or damage to the Company's property during such year, in excess of any insurance proceeds or claims for insurance on account thereof paid over or assigned by the Company to the Town;
- (e) Less depreciation computed at two percent of the original cost of depreciable property averaged as of the first and last day of the last year of the term.

This option shall not be deemed to constitute a lien on the property of the Company, nor to conflict in any manner with the right of the Company to sell, dispose of, or encumber any or all of its property, except that any sale, disposal, or encumbrance of the Company's property as an entirety shall be subject to the option.

The purchase price to be paid by the Town to the Company for the Company's property shall be the fair value of the Company's property adjusted as aforesaid.

The fair value of the Company's property shall mean the cost of reproduction new thereof as of the date one year prior to the end of the term of this franchise as the Company's property

then actually exists, but exclusive of any element of value on account of the Company's good will or going concern value and exclusive also of any value which may attach to this franchise or any payment made by the Company on account of this franchise, less observed depreciation (including obsolescence and inadequacy) sustained by the Company's property as of the date one year prior to the end of the term of this franchise after giving effect to all renewals and replacements of the Company's property theretofore made by the Company. The Company shall properly maintain its property during the year preceding the end of the term. The aforesaid option on the part of the Town is subject to the following conditions:

(1) On the date one year prior to the end of the term, the Town shall notify the Company in writing that the Town elects to purchase the Company's property as aforesaid.

(2) Promptly after the giving of such notice of election by the Town, the Town and the Company acting through their duly authorized officers or representatives shall meet and endeavor to agree upon the fair value of the Company's property as aforesaid. If the Company and the Town are unable to agree upon such fair value within one hundred and twenty days after the date of such notice, then the fair value of the Company's property shall be determined by a board of three arbitrators, one of whom shall be appointed by the Town and one by the Company. The two arbitrators so appointed shall select the third arbitrator. If either party shall fail promptly to select an arbitrator as aforesaid, such arbitrator shall, upon application of the other party, be appointed by the Senior Federal Judge of the District having jurisdiction in El Paso, and if the two arbitrators appointed shall be unable to agree upon and promptly select the third arbitrator, such third arbitrator shall, upon application of either party, be appointed by the aforesaid Senior Federal Judge. The three arbitrators so appointed shall each make an oath fairly and impartially to perform their duties and to make a just award and shall promptly

determine and fix the fair value of the Company's property as of the date one year prior to the end of the term. Prior to making such determination, the arbitrators shall hold a hearing, of which the Town and the Company shall each be entitled to ten days' notice and at which each shall be entitled to submit evidence as to the fair value of the Company's property. The findings of fact and the determination and fixing of the fair value of the Company's property by a majority of the arbitrators shall be set forth in a written report, a copy of which shall be delivered to the Town and to the Company respectively and shall be final and binding upon the Town and the Company if supported by evidence, but either the Town or the Company shall have the right to apply within thirty days after receipt of the report of the arbitrators to have the findings and determination of the arbitrators reviewed by any court of competent jurisdiction for any partiality, irregularity or misconduct of the arbitrators in the procedure and conduct of the hearings, and in receiving or rejecting admissible evidence at the hearings, to which partiality, irregularity or misconduct such party shall seasonably and duly have objected. Any dispute arising between the Town and the Company as to any adjustments to be made to the fair value of the Company's property in the determination of the purchase price may likewise be submitted by the Town or by the Company to arbitration in the manner aforesaid.

(3) Following the determination of the fair value of the Company's property, then the Town shall be held and firmly bound to purchase and acquire the Company's property and to assume its leases and contracts at the end of the term, and the Company shall be held and firmly bound to convey, transfer and deliver the same to the Town on said option to purchase date, upon payment to the Company by the Town in cash or by certified check of the purchase price therefor, determined as herein provided, concurrently with the delivery or tender of delivery by

the Company to the Town of all necessary deeds, assignments or other instruments in writing to accomplish the conveyance, transfer and delivery of the same.

(4) If the Company shall assign this franchise to any other person or corporation acquiring and duly authorized to acquire, own and operate the Company's property and to carry on the Company's business as then conducted, such other person or corporation shall execute and deliver to the Town an agreement in writing to recognize this option on the part of the Town and to be bound by all of the Company's obligations, liabilities and undertakings under this franchise, and such other person or corporation shall thereupon be deemed to be substituted for the Company, and the Company shall stand released from all obligations under this franchise except such as have already accrued. If the assignee fails to file such agreement within thirty days after said assignment this franchise shall terminate.

Section 14. Forfeiture. After reasonable notice and opportunity to be heard, and a reasonable time for correcting any violation of this franchise, the Council may forfeit this franchise if the Company fails to maintain its property in good order or to furnish efficient public service at reasonable rates. If court proceedings are instituted to determine the legality of such forfeiture, the losing party will pay the reasonable expenses, including reasonable attorneys' fees, incurred by the prevailing party in connection with such litigation. If such forfeiture be accepted by the Company as valid, or its validity be established by litigation, the Town may give notice of intent to exercise its option to purchase the Company's property, as nearly as may be in accordance with the provisions of Section 12. The right to forfeit the franchise shall be in addition to the penalties provided by law.

Section 15. Acceptance. This franchise shall not take effect unless, within thirty days after its passage and approval, the Company shall file its written acceptance with the Town Clerk. Upon such acceptance this franchise shall become effective.

Section 16. This Agreement is subject to, and shall be interpreted to conform with, all applicable laws, rules, orders, and regulations, including, but not limited to, the laws, rules, orders, and regulations of the Public Utility Commission of Texas. Any changes in applicable laws, rules, orders, or regulations shall become effective with regard to this Agreement, and any other agreements made pursuant to it, as of the effective date of the law, rule, order, or regulation. This Agreement shall terminate if EPE is required by any law, rule, order, or regulation to cease providing one or more of the services or obligations EPE agrees to perform pursuant to this Agreement.

PASSED AND APPROVED this 13<sup>th</sup> day of November,  
2007.

Joe T. [Signature]  
Mayor

ATTEST:

[Signature]  
Town Clerk

**ATTACHMENT 4**  
**TOWN OF HORIZON CITY, TEXAS**

1. the name of the municipality, county, and state;

*Town of Horizon City, Texas*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*April 9, 2019*

4. if franchisee or licensee, the date franchise or license expires;

*March 31, 2039*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 4.*

ORDINANCE NO. 00251

**AN ORDINANCE GRANTING A FRANCHISE TO EL PASO ELECTRIC COMPANY TO MAINTAIN, ERECT, CONSTRUCT, EQUIP, AND OPERATE ITS ELECTRIC UTILITY BUSINESS WITHIN THE TOWN OF HORIZON CITY, TEXAS ON THE PRESCRIBED TERMS AND CONDITIONS FOR TWENTY YEARS FOR COMPENSATION EQUAL TO 3.25% OF GROSS REVENUES, OR AS MAY BE INCREASED TO NO MORE THAN 3.5% AS SET FORTH IN THIS ORDINANCE; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; REPEALER; SEVERABILITY; PROPER NOTICE AND MEETING.**

**WHEREAS**, the El Paso Electric Company is a Texas corporation and a regulated public utility that operates with the city limits of the Town of Horizon City, Texas, to provide electric utility services to the Town's residents and other users; and

**WHEREAS**, the Town of Horizon City, Texas, is a home rule city and has, in accordance with chapter 33 of the Texas Utilities Code, exclusive and original jurisdiction over the rates, operations, and services of the El Paso Electric Company within its city limits; and

**WHEREAS**, pursuant to state law and the City Charter, the Town of Horizon City may, by ordinance, grant, amend, or renew a franchise of public utility operating with its city limits; and

**WHEREAS**, the El Paso Electric Company recognizes that the grant of a franchise does not impair the Town of Horizon City's ability to exercise its original jurisdiction over utility matters; and

**WHEREAS**, the parties wish to renew the franchise previously granted to the El Paso Electric on March 28, 1989.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF HORIZON CITY:**

**A. FINDINGS OF FACT**

The foregoing recitals are adopted as facts and incorporated fully herein.

**B. ENACTMENT OF PROVISIONS**

**Section 1. Grant of Authority.** There is hereby granted to El Paso Electric Company (the "Company"), its legal representatives, successors, and assigns, for the term of twenty (20) years beginning on the Effective Date of this Franchise (defined below) through March 31, 2039(notwithstanding any payment to be due on or before April 30, 2039), a franchise to operate within the Town's city limits, pursuant to section 33.008 of the Texas Utilities Code, as may be

amended, the right, privilege, and franchise to: (i) construct, extend, reconstruct, repair, access, maintain, use, and operate in, along, across, over, or under the present and future streets, highways, alleys, sidewalks, bridges, public ways, and public utility easements, and, any easement granted to Company in, along, across, over or under any City parks and public places, and extensions thereof of the Town of Horizon City, Texas (the "Town"), electric power lines and facilities with all necessary appurtenances (including poles, towers, wires, underground conduits, and related telephone and communication lines) for the transmission and distribution of electrical energy; and (ii) promote, construct, extend, reconstruct, repair, access, maintain, use, build, equip, conduct, or otherwise establish and operate in the Town, works or systems and plants to generate, manufacture, use, store, sell, distribute, transmit, serve, supply, furnish, and convey electrical energy; in each instance whether now installed and in operation or as may be hereafter installed and operated in the Town for the use of the Town, its inhabitants thereof and properties therein, and persons, firms, and corporations beyond the corporate limits thereof, provided this franchise does not include places where the Town authority to permit such installations is or hereafter may be withdrawn from the State, or where the Texas Department of Transportation (or its successor agency) or other State agency constructs or maintains such public facility or place and lawfully excludes the authority of the Town to permit such utility installations therein.

**Section 2. Police Power.**

- a. Work done in connection with the construction, repair, maintenance, and operation of such facilities is subject to the continuing police power of the Town, and the Company shall comply with all present and future laws, ordinances, regulations, and standards except such as conflicts with any provisions hereof lawfully surrendering the Town's authority.
- b. The Company shall not excavate any pavement or street at any time without first obtaining permission of the Town if required by the Town, but such permission shall be given if such action is necessary, reasonable, and in accordance with this Franchise, Town ordinance, or state or federal law or regulation. In the event of an emergency requiring immediate excavation, the Company shall notify the Town as soon as practicable thereafter. The Company shall within a reasonable time restore to as good condition as before working thereon as nearly as reasonably possible all streets excavated by it.
- c. If the Town abandons any public rights-of-ways in which the Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former public rights-of-ways and on the obligation of the party to whom the public rights-of-way is abandoned to reimburse the Company for all removal or relocation expenses if the Company agrees to the removal or relocation of its facilities following abandonment of the public rights-of-way.
- d. The Town shall have the power at any time to require the Company to change the route and position of its transmission or distribution facilities such as poles, lines, conduits or other related construction located on the property identified and pursuant to the rights granted in **Section 1** at the Company's expense when the Town of

Horizon City Council (the "City Council") shall find, by resolution, that such change is necessary in the closing, opening, or relocating of streets or alleys, or water or sewer lines, to the extent that they are a part of a city project, or the changing of grade of streets or alleys, the construction and maintenance of parks and public improvements, the construction or use of driveways, and under other conditions which the City Council shall find necessary under the lawful exercise of its police power. PROVIDED, however, the Company shall be entitled to be paid for its costs and expense of any relocation, raising, or lowering of its wires or cables required by the Town if (i) such expenses or costs are reimbursable or payable to the Company or to the Town by the State of Texas, the United States, or any agency or subdivision of either, or by any other party, whether directly or indirectly; or (ii) such move is for the benefit and convenience of or at the request of a third party, including a private developer or development, except any third party public entity as may be required by applicable law. The Town shall not be liable to the Company for any damages to poles, lines, conduits, or other construction occurring in the change of the grade of streets, alleys, or public places after notice to the Company has been provided. The Town shall consult and confer with the Company before requiring any such relocation or raising or lowering of its lines or cables for its facilities.

**Section 3. Interference with Public or Private Property.**

All poles placed within the Town and all excavations or other construction in the streets, alleys, or public places shall be done so as to minimize interference with the use of streets, alleys, and public places and with the use of private property as may be reasonably accomplished, in accordance with direction given by or under the authority of the City Council under the police and regulatory power of the Town. Future installations of the Company shall not conflict with then existing gas pipes, water pipes, telephone lines or conduits, or sewers, except with the consent of the Town. Nothing herein shall be construed in any way to restrict or limit the Company's right of eminent domain as to private property.

**Section 4. Trimming Trees.** The Company may trim trees or vegetation upon and overhanging the streets, alleys, sidewalks, and public places of the Town so as to eliminate or minimize interference with the wires, cables, or system of the Company; provided, however, upon streets bordered by parks, whenever trees shall have attained a size or height which interferes with pole lines, the City Council may require such pole lines to be relocated or removed to adjacent alleys when feasible and when such relocation or removal will not entail excessive or unreasonable cost.

**Section 5. Wire Changes to Permit Moving of Structure.** The Company on request of any person shall within a reasonable period of time remove, rearrange, raise, or lower its aerial distribution cables or wires temporarily to permit the moving of houses, machinery, or other objects or structures. The expense of such temporary removal, rearrangement, raising, or lowering of the aerial distribution cables or wires shall be paid by the benefited party or parties, and the Company may require such payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

**Section 6. Furnishing Service.**

- a. The Company shall furnish service under approved laws, tariffs, service rules, and regulations to any person, firm, or corporation that shall request service within the Town and shall make connections therefore on request, without unreasonable delay, provided that the extension of service demanded is not prohibited by state or federal law.
- b. The Company shall have the right to operate and control all meters, wires, appliances, and appurtenances owned by the Company. In case of refusal or failure on the part of any customer to pay the Company proper charges for electricity consumed and other related services, or to observe approved rules and regulations established by the Company, the Company shall have the right to disconnect its service and wires to the premises of such customer and to remove all facilities furnished and owned by the Company.

**Section 7. Other Utility Installations.** The Town reserves the right to install, and permit to be installed, gas, water, other utility lines, cable television lines, fiber optic lines, and facilities and permits to be done any work that may be deemed necessary or proper by the City Council in, across, over, or under any street, alley, or public place occupied by the Company and to change any curb or sidewalk or the grade of any street. However, such installation shall not interfere with the operations or assets of the Company or violate safety standards and the Town shall not require the Company to allow others use of the Company's assets without prior express written permission of the Company. In doing or permitting such reasonable work, the Town shall not be liable to the Company for any damage so occasioned. However, the Town shall not require the Company (except as provided in **Section 2.d** above) to move its line(s) entirely from any street, alley, or public place. If the Town shall require the Company to adapt or conform its lines or in any way or manner to alter, relocate, or change its property to enable any other corporation or person except the Town to use with greater convenience such street, alley, or public place, the Company shall not be bound to make any such changes until such other corporation or person shall have undertaken with solvent bond to reimburse the Company for any loss and relocation of the Company property; provided, however, that the Town shall not be liable for such reimbursement.

**Section 8. Indemnification.**

The Company shall indemnify and save the Town harmless from and against all claims, demands, or causes of action against the Town for injury to persons or property occasioned by or arising out of the construction, reconstruction, maintenance, repair, or operation of the Company's system or by the conduct of its business in the Town.

**Section 9. Quality of System and Service**

The Company shall construct, install, and maintain its system with appropriate apparatus and equipment in reasonable operating condition at all normal times. The service shall be sufficient to meet reasonable demands without undue interruption or fluctuation, except when interrupted, prevented, or impaired by fire, strikes, riots, war, storms, floods, state or federal restrictions,

reliability or safety standards, or any other occurrences beyond the control of the Company in any of which events the Company shall do all things reasonably within its power to restore service, but shall not be liable for claims, demands, causes of action, or damages occasioned by interruption or fluctuations so caused. It is understood and agreed that the settlement of strikes, walkouts, lockouts, or other labor disputes shall be entirely within the discretion of the Company.

**Section 10. Reports.** The Town shall have the right to keep informed as to the operation and services of the Company within the incorporated limits of the Town. The Company will make available such pertinent information as may from time to time be reasonably required by the Town related to information furnished to the Public Utility Commission of Texas, or its successor agency, and the records of the Company related to its operations within the incorporated limits of the Town. The Company shall make the information available for inspection by the Town at its corporate offices in El Paso, Texas, at a reasonable time; provided that such information can be produced from the Company's records existing at the time of the request without unreasonable burden or expense. Further, the Company shall have no obligation to provide any information to the extent such disclosure is limited by any law, regulation, or confidentiality agreement.

**Section 11. Compensation.**

- a. As full compensation for the rights herein granted, the Company (i) will pay the Town the Initial Payment (as defined below) and (ii) will pay the Town quarterly during the remaining life of its Franchise, a sum of money equal to 3.25% of the quarterly gross revenues, excluding revenues from the Town or its departments, and all municipal, county, state, and federal government agencies and institutions received by the Company, its successors, lessees, and assigns, from the sale of electric energy within the corporate limits of the Town including any extension of those Town limits from time to time ("Franchise Fee"). Franchise Fee payments shall be based on gross receipts for each calendar quarter beginning July 1, 2019. Such sums shall be payable no later than the last day of January, April, July, and October of each year (or the following business day if payment is due on a weekend or legal holiday) following the quarter with respect to which sum shall be payable.
- b. The Initial Payment for the Transition Period under this Franchise shall be a sum of money equal to two percent (2%) of the quarterly gross revenues, excluding revenues from the Town or its departments, and all municipal, county, state, and federal government agencies and institutions received by the Company, its successors, lessees, and assigns, from the sale of electric energy within the corporate limits of the Town including any extension of those Town limits for the single quarter beginning April 1, 2019, and ending June 30, 2019 ("Transition Period"). Such sum shall be payable no later than the last day of July 2019.
- c. The Town may increase the Franchise Fee may after March 31, 2029, by an amount not to exceed 0.25% ("Franchise Fee Increase"), so that the total Franchise Fee never exceeds 3.5% during the term of this Franchise Agreement. Any Franchise Fee Increase must be approved by the Town through an ordinance and be accepted by the Company in accordance with **Section 13**. The Town must provide the Company's

general counsel with written notice of any proposed increase thirty (30) days prior to the date an ordinance authorizing a Franchise Fee Increase is voted on by the Town Council. The effective date of any Franchise Fee Increase will be the first day of the second calendar quarter following the date the Company files its acceptance of Franchise Fee Increase with the Town Clerk.

- d. The consideration set forth above in this **Section 11** shall be in lieu of any other tax, fee, or charge, by whatever name called, for the privileges granted in this Franchise. The Town will not assess against the Company any additional street rental charge, pole tax, inspection tax, or charge for the occupancy or use of the places to which this Franchise relates under **Section 1**, or tax on this Franchise as property. This does not bar the Town from assessing against the Company or its property ad valorem taxes levied on property generally, fees charged generally to the public for the services of departments or agencies of the Town, excise taxes levied generally, or other taxes, fees, and charges that are general and not compensation for the privileges herein granted.
- e. Should the Town not have the legal power to agree that payment of the foregoing, consideration shall be in lieu of any of the additional taxes or charges as above set forth. The Town will apply so much of such payments set forth in this section as may be necessary to the satisfaction of the Company's obligation to pay the additional tax charged here and agreed to be waived.
- f. The payment or rendition of the consideration provided in this Franchise shall not, except as otherwise provided herein, in any way limit any of the privileges or rights of the Town that it may now or hereafter have under the Constitution and laws of the State Texas.
- g. The provisions of **Section 11** shall not be construed to excuse the Company from collecting from its electric service customers and paying over to the Town or the state for the benefit of the Town additional municipal sales tax levied in the event said Town or state shall, at any time during the term of this Franchise, enact such additional municipal sales tax.
- h. The Town shall notify the Company (Attention: Tax Department) in writing of any changes in the municipal boundaries of the Town within thirty (30) days of any annexation, de-annexation, extension, or contraction of boundaries becoming effective. The notice shall provide a description of the new and former municipal boundaries and provide the Company copies of all relevant ordinances and maps. The Company shall have no obligation to calculate, collect, or pay the Franchise fee attributable to any newly extended municipal boundaries until at least ninety (90) days have elapsed from Company's receipt of such notice.

## **Section 12. Dispute Resolution**

- a. Resolution of any dispute arising under this Franchise between the Town and the Company shall first be attempted by submitting the dispute to mediation. The dispute shall be submitted to mediation upon the written demand of either the Town or the Company. Within thirty (30) calendar days following demand, the mediation shall be held in El Paso County, Texas, at the location designated by the party demanding the mediation. Mediation of any dispute shall be a condition precedent to filing a lawsuit, except that nothing herein shall preclude a party from seeking a mandatory or prohibitive injunction or equitable relief from any court of competent jurisdiction to enforce or maintain the status quo pending mediation of any dispute. If mediation is unsuccessful, either party may bring suit to enforce the terms of this Franchise in the courts of El Paso County, Texas.
- b. Failure by the Town or the Company to enforce rights under this Franchise does not constitute a waiver of those rights. Following unsuccessful resolution of the dispute under this **Section 12** and after reasonable notice and opportunity to be heard, and a reasonable time for correcting any violation of this Franchise, the City Council may forfeit this Franchise if the Company fails to perform its obligations under this Franchise.
- c. If court proceedings are instituted to determine the legality of such forfeiture and the Company does not prevail, the Company will pay the reasonable expenses incurred by the Town in connection with such litigation. If the Company does prevail, the Town will pay the reasonable expenses incurred by the Company in connection with such litigation. In the absence of agreement between the Town and the Company, the reasonableness of any litigation expenses pursuant to this **Section 12** will be determined by an appropriate court of law.

## **Section 13. Acceptance**

This Franchise or any Franchise Fee Increase shall not take effect unless, within thirty (30) days of receipt of the Franchise or Franchise Fee Increase after its passage and approval, the Company files its written acceptance with the Town Clerk.

## **Section 14. Assignment and Rights of Successors**

- a. When this Franchise has been accepted as aforesaid, this Ordinance shall be and become a contract duly executed by and between the aforesaid Town and this Company. Any transfer or assignment of this Franchise shall be governed by section 8.03 of the Town Charter as it exists on the Effective Date, reading as follows: "No public utility franchise may be transferred or assigned by the holder except with the approval of the City Council."
- b. The Franchise shall be binding upon the legal representatives, successors, lessees, and assigns of the parties hereto.

**Section 15. Invalidation of Provision**

If any section, paragraph, subdivision, clause, phrase, or provision of this Ordinance shall be declared or adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part of the provisions hereof, other than the part so determined to be invalid or unconstitutional.

**Section 16. Supersedes Previous Ordinances**

This Franchise shall supersede any and all other franchises granted by the Town to the Company, its predecessors and assigns.

**Section 17. Interpretation**

This Franchise is subject to, interpreted to conform to, governed by, and construed pursuant to all applicable laws of the State of Texas. Except for the provision of law referenced in **Section 14** of this Franchise, any changes in applicable laws, rules, orders and regulations shall become effective with regard to this Franchise and any other agreements made pursuant to it as of the effective date of such law. The Company shall have the right and option to terminate this Franchise upon written notice to the Town if the Company is required by any law, rule, order, or regulation to cease providing one or more of the services or obligations that the Company has agreed to perform under the terms of this Franchise.

**Section 18. Effective Date**

Subject to **Section 13**, this Franchise is effective upon approval of this Ordinance in accordance with section 3.14 of the Town Charter.

**C. REPEALER**

To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

**D. SEVERABILITY**

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

**E. PROPER NOTICE & MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

PASSED AND APPROVED this the 9<sup>th</sup> day of April, 2019, by a vote of 6 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of the Town of Horizon City, Texas.

**TOWN OF HORIZON CITY, TEXAS**

By: [Signature]  
Ruben Mendoza, Mayor

**ATTEST:**

By: [Signature]  
Elvia Schuller, City Clerk



**APPROVED AS TO FORM:**

[Signature]  
Bertha A. Ontiveros, Asst. City Attorney

First Reading: 03/12/2019  
Second Reading: 04/09/2019

**ACCEPTED BY:**

[Signature]  
Print Name: Mary E Kipp  
El Paso Electric Company

4-10-19  
Date

**APPROVED AS TO FORM**  
**OFFICE OF THE GENERAL COUNSEL** [Signature]

**ATTACHMENT 5  
TOWN OF SOCORRO, TEXAS**

1. the name of the municipality, county, and state;

*Town of Socorro, Texas*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*January 26, 2017*

4. if franchisee or licensee, the date franchise or license expires;

*July 31, 2046*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 5.*

**Gloria M. Rodriguez**  
Mayor

**Rene Rodriguez**  
At-Large  
Mayor ProTem

**Maria Reyes**  
District 1



**Alejandro Garcia**  
District 2

**Victor Perez**  
District 3

**Yvonne Colon-Villalobos**  
District 4

**Adriana Rodarte**  
City Manager

ORDINANCE NO. 408

AN ORDINANCE GRANTING A FRANCHISE  
TO EL PASO ELECTRIC COMPANY TO MAINTAIN, ERECT,  
CONSTRUCT, EQUIP AND OPERATE ITS BUSINESS WITHIN THE  
CITY OF SOCORRO, TEXAS, AND TO PRESCRIBE THE TERMS  
AND CONDITIONS OF SUCH GRANT.

BE IT ORDAINED BY THE GOVERNING BODY  
OF THE CITY OF SOCORRO, TEXAS:

Section 1. Grant of Authority

There is hereby granted to El Paso Electric Company (the "Company"), a Texas corporation, its legal representatives, successors, and assigns, for the term beginning on the Effective Date of this Franchise (defined below) through June 30, 2046 (notwithstanding any payment to be due on or before July 31, 2046), a Franchise, pursuant to Section 33.008 of the Texas Utilities Code, as may be amended, the right, privilege, and franchise to: (i) construct, extend, reconstruct, repair, access, maintain, use, and operate in, along, across, over or under the present and future streets, highways, alleys, sidewalks, bridges, public ways, parks, public utility easements, and public places and extensions thereof of the City of Socorro, Texas (the "City"), electric power lines and facilities with all necessary or desirable appurtenances (including poles, towers, wires, underground conduits, related telephone and communication lines) for the transmission and distribution of electrical energy; and (ii) promote, construct, extend, reconstruct, repair, access, maintain, use, build, equip, conduct, or otherwise establish and operate in said City, works or systems and plants to generate, manufacture, use, store, sell, distribute, transmit, serve, supply, furnish, and convey electrical energy; in each instance whether now installed and in operation or as may be hereafter installed and operated in the City for the use of the City, its inhabitants thereof and properties therein, and persons, firms, and corporations beyond the corporate limits thereof.

Section 2. Police Power

Work done in connection with the construction, repair, maintenance and operation of distribution facilities is subject to the continuing police power of the City, and the Company shall comply with all present and future laws, ordinances, regulations, and standards except such as conflicts with any provision hereof lawfully surrendering the City's authority.

The Company shall within a reasonable time restore to their original condition as before working thereon as nearly as reasonably possible all streets excavated by it. In the event

of an emergency requiring immediate excavation, the Company shall notify the City as soon as practicable thereafter.

If the City abandons any public rights-of-ways in which the Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former public rights-of-ways and on the obligation of the party to whom the public rights-of-way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the public rights-of-way.

The City shall have the power at any time to require the Company to change the route and position of its transmission or distribution facilities such as poles, lines, conduits or other related construction located on the property identified and pursuant to the rights granted in Section 1 at the Company's expense when the Socorro City Council (the "City Council") shall find, by resolution, that such change is necessary in the closing, opening, or relocating of streets or alleys, or water or sewer lines, or the changing of grade of streets or alleys, the construction and maintenance of parks and public improvements, the construction or use of driveways, and under other conditions which the City Council shall find necessary under the lawful exercise of its police power. Provided, however, the Company shall be entitled to be paid for its costs and expense of any relocation, raising or lowering of its wires or cables required by the City if (i) such expenses or costs are reimbursable or payable to the Company or to the City by the State of Texas, the United States, or any agency or subdivision of either, or by any other party, whether directly or indirectly; or (ii) such move is for the benefit and convenience of or at the request of a third party, including a private developer or development. Furthermore, such change is subject to applicable laws and regulations that may or may not require an amendment to the Company's certificate of convenience and necessity and industry standards for the safe and reliable operation and maintenance of an electric utility system. The City shall not be liable to the Company for any damages to poles, lines, conduits or other construction occurring in the change of the grade of streets, alleys or public places after notice to the Company has been provided. The City shall consult and confer with the Company before requiring any such relocation or raising or lowering of its lines or cables for its facilities. The Company shall within a reasonable time restore to as good condition as before working thereon as nearly as reasonably possible all streets excavated by it. The Company shall not excavate any pavement or street at any time without first obtaining permission of the City if required by the City, but such permission shall be given if such action is necessary, reasonable and in accordance with this Franchise, City ordinance, or state or federal law or regulation. In the event of an emergency requiring immediate excavation, the Company shall notify the City as soon as practicable thereafter.

### Section 3. Interference with Public or Private Property

All poles placed within the City and all excavations or other construction in the streets, alleys or public places shall be done so as to minimize interference with the use of streets, alleys, and public places and with the use of private property as may be reasonably accomplished, in accordance with direction given by or under the authority of the City Council under the police and regulatory power of the City. Future installations of the Company shall not conflict with then existing gas pipes, water pipes, telephone lines or conduits, or sewers, except with the consent of the City. Nothing herein shall be construed in any way to restrict or limit the Company's right of eminent domain as to private property.

#### Section 4. Trimming Trees

The Company may trim trees or vegetation upon and overhanging the streets, alleys, sidewalks, and public places of the City so as to eliminate or minimize interference with the wires, cables, or system of the Company; provided, however, upon streets bordered by parks, whenever trees shall have attained a size or height which interferes with pole lines) the City Council may require such pole lines to be relocated or removed to adjacent alleys when feasible and when such relocation or removal will not entail excessive or unreasonable cost.

#### Section 5. Wire Changes to Permit Moving of Structures

The Company on request of any person shall within a reasonable period of time remove, rearrange, raise, or lower its aerial distribution cables or wires temporarily to permit the moving of houses, machinery, or other objects or structures. The expense of such temporary removal, rearrangement, raising, or lowering of the aerial distribution cables or wires shall be paid by the benefited party or parties, and the Company may require such payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

#### Section 6. Furnishing Service

The Company shall furnish service under approved laws, tariffs, service rules, and regulations to any person, firm, or corporation that shall request service within the City and shall make connections therefore on request, without unreasonable delay, provided that the extension of service demanded is not prohibited by state or federal law.

The Company shall have the right to operate and control all meters, wires, appliances, and appurtenances owned by the Company. In case of refusal or failure on the part of any customer to pay the Company proper charges for electricity consumed and other related services, or to observe approved rules and regulations established by the Company, the Company shall have the right to disconnect its service and wires to the premises of such customer and to remove all facilities furnished and owned by the Company.

#### Section 7. Other Utility Installations

The City reserves the right to install and permit to be installed, gas, water, other utility lines, cable television lines, fiber optic lines and facilities and permits to be done any work that may be deemed necessary or proper by the City Council in, across, over, or under any street, alley, or public place occupied by the Company and to change any curb or sidewalk or the grade of any street. However, such installation shall not interfere with the operations or assets of the Company or violate safety standards and the City shall not require the Company to allow others use of Company's assets without prior express written permission of the Company. In doing or permitting such reasonable work, the City shall not be liable to the Company for any damage so occasioned. However, the City shall not require the Company (except as provided in Section 2) to move its line(s) entirely from any street, alley, or public place. If the City shall require the Company to adapt or conform its lines or in any way or manner to alter, relocate, or change its property to enable any other corporation or person except the City to use with greater convenience such street, alley, or public place, the Company shall not be bound to make any such changes until such other corporation or person shall have undertaken with

solvent bond to reimburse the Company for any loss and relocation of the Company property; provided, however, that the City shall not be liable for such reimbursement.

Section 8. Indemnification

The Company shall indemnify and save the City harmless from and against all claims, demands, or causes of action against the City for injury to persons or property occasioned by or arising out of the construction, reconstruction, maintenance, repair, or operation of its system or by the conduct of its business in the City.

Section 9. Quality of System and Service

The Company shall construct, install, and maintain its system with appropriate apparatus and equipment in reasonable operating condition at all normal times. The service shall be sufficient to meet reasonable demands without undue interruption or fluctuation, except when interrupted, prevented, or impaired by fire, strikes, riots, war, storms, floods, state or federal restrictions, reliability or safety standards, or any other occurrences beyond the control of the Company in any of which events the Company shall do all things reasonably within its power to restore service, but shall not be liable for claims, demands, causes of action, or damages occasioned by interruption or fluctuations so caused. It is understood and agreed that the settlement of strikes, walkouts, lockouts, or other labor disputes shall be entirely within the discretion of the Company.

Section 10. Reports

The City shall have the right to keep informed as to the operation and services of the Company within the incorporated limits of the City. The Company will make available such pertinent information as may from time to time be reasonably required by the City related to information furnished to the Public Utility Commission of Texas, or its successor agency, and the records of the Company related to its operations within the incorporated limits of the City. The Company shall make the information available for inspection by the City at its corporate offices in El Paso, Texas, at a reasonable time; provided that such information can be produced from the Company's records existing at the time of the request without unreasonable burden or expense. Further, the Company shall have no obligation to provide any information to the extent such disclosure is limited by any law, regulation, or confidentiality agreement.

Upon request of the City, the Company will file with the City Clerk an operating statement for the previous calendar year.

Section 11. Compensation

As full compensation for the rights herein granted, the Company (i) will pay the City the Initial Payment (as defined below) and (ii) will pay the City quarterly during the remaining life of its Franchise, a sum of money equal to three and one quarter percent (3.25%) of the quarterly gross revenues, excluding revenues from the City or its departments, and all municipal, county, state and Federal government agencies and institutions received by the Company, its successors, lessees and assigns, from the sale of electric energy within the corporate limits of the City including any extension of those City limits from time to time. Said payments shall be based on gross receipts for each calendar quarter beginning January 1, 2017. Such sums shall be payable no later than the last day of January, April, July, and October of each year (or the following business day

if payment is due on a weekend or legal holiday) following the quarter with respect to which sum shall be payable.

The Initial Payment under this Franchise shall be a sum of money equal to two percent (2%) of the quarterly gross revenues, excluding revenues from the City or its departments, and all municipal, county, state and Federal government agencies and institutions received by the Company, its successors, lessees and assigns, from the sale of electric energy within the corporate limits of the City including any extension of those City limits for the quarter beginning October 1, 2016, and ending December 31, 2016. Such sum shall be payable no later than the later of (i) the last day of January 2017 or (ii) the Effective Date of this Franchise. The payment of such sum shall be in lieu of, and not in addition to, any payment due based on quarterly gross revenues on or after October 1, 2016, under the Ordinance passed and approved by the City on November 3, 1986, and accepted by the Company on November 14, 1986.

The consideration set forth above in this Section shall be in lieu of any other tax, fee, or charge, by whatever name called, for the privileges granted in this Franchise. The City will not assess against the Company any additional street rental charge, pole tax, inspection tax, or charge for the occupancy or use of the places to which this Franchise relates under Section 1, or tax on this Franchise as property. This does not bar the City from assessing against the Company or its property ad valorem taxes levied on property generally, fees charged generally to the public for the services of departments or agencies of the City, excise taxes levied generally, or other taxes, fees, and charges that are general and not compensation for the privileges herein granted.

Should the City not have the legal power to agree that payment of the foregoing consideration shall be in lieu of any of the additional taxes or charges as above set forth, the City will apply so much of such payments set forth in this Section as may be necessary to the satisfaction of the Company's obligation to pay the additional tax charged here and agreed to be waived.

The payment or rendition of the consideration provided in this Grant shall not, except as otherwise provided herein, in any way limit any of the privileges or rights of the City that it may now or hereafter have under the Constitution and laws of the State Texas.

The provisions of Section 11 shall not be construed to excuse the Company from collecting from its electric service customers and paying over to the City or the state for the benefit of the City additional municipal sales tax levied in the event said City or state shall, at any time during the term of this Franchise, enact such additional municipal sales tax.

The City shall notify the Company (Attention: Tax Department) in writing of any changes in the municipal boundaries of the City within thirty (30) days of any annexation, de-annexation, extension, or contraction of boundaries becoming effective. The notice shall provide a description of the new and former municipal boundaries and provide Company copies of all relevant ordinances and maps. Company shall have no obligation to calculate, collect, or pay the Franchise fee attributable to any newly extended municipal boundaries until at least sixty (60) days have elapsed from Company's receipt of such notice.

#### Section 12. Dispute Resolution

Resolution of any dispute arising under this Franchise between the City and the Company shall first be attempted by submitting the dispute to mediation. The dispute shall be submitted to mediation upon the written demand of either the City or the Company.

Within thirty (30) calendar days following demand, the mediation shall be held in El Paso County, Texas, at the location designated by the party demanding the mediation. Mediation of any dispute shall be a condition precedent to filing a lawsuit, except that nothing herein shall preclude a party from seeking a mandatory or prohibitive injunction, or equitable relief from any court of competent jurisdiction to enforce or maintain the status quo pending mediation of any dispute. If mediation is unsuccessful, either party may bring suit to enforce the terms of this Ordinance in the courts of El Paso County, Texas.

Failure by the City or the Company to enforce rights under this Franchise does not constitute a waiver of the rights. Following unsuccessful resolution of the dispute under this Section and after reasonable notice and opportunity to be heard, and a reasonable time for correcting any violation of this Franchise, the City Council may forfeit this Franchise if the Company fails to perform its obligations under this Franchise.

If court proceedings are instituted to determine the legality of such forfeiture and the Company does not prevail, the Company will pay the reasonable expenses incurred by the City in connection with such litigation. If the Company does prevail, the City will pay the reasonable expenses incurred by the Company in connection with such litigation. In the absence of agreement between the City and the Company, the reasonableness of any litigation expenses pursuant to this Section will be determined by an appropriate court of law.

#### Section 13. Acceptance

This Franchise shall not take effect unless, within sixty (60) days of receipt of the Franchise after its passage and approval, the Company files its written acceptance with the City clerk.

#### Section 14. Assignment and Rights of Successors

Any transfer or assignment of this Franchise shall be governed by Section 8.03 of the City Charter as it exists on the Effective Date, reading as follows: "No public utility franchise may be transferred or assigned by the holder except with the approval of the City Council."

This Franchise shall be binding upon the legal representatives, successors, lessees, and assigns of the parties hereto.

#### Section 15. Invalidation of Provision

If any section, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be declared or adjudged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part of the provisions hereof, other than the part so determined to be invalid or unconstitutional.

#### Section 16. Supersedes Previous Ordinances

This Franchise shall supersede any and all other franchises granted by the City to Company, its predecessors and assigns.

#### Section 17. Interpretation

This Franchise is subject to, interpreted to conform to, governed by, and construed pursuant to all applicable laws of the State of Texas. Except for the provision of law referenced in Section 14 of this Franchise, any changes in applicable laws, rules, orders

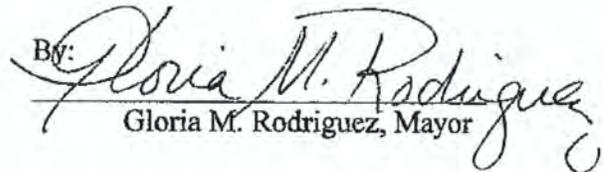
and regulations shall become effective with regard to this Franchise and any other agreements made pursuant to it as of the effective date of such law. The Company shall have the right and option to terminate this Franchise upon written notice to the City if the Company is required by any law, rule, order or regulation to cease providing one or more of the services or obligations that the Company has agreed to perform under the terms of this Franchise.

Section 18. Effective Date

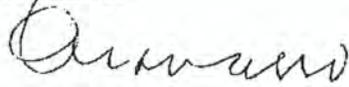
Subject to Section 13, this Franchise is effective pursuant to Section 8.01(a) of the City Charter.

PASSED AND APPROVED this 26 day of January, 2017.

CITY OF SOCORRO, TEXAS

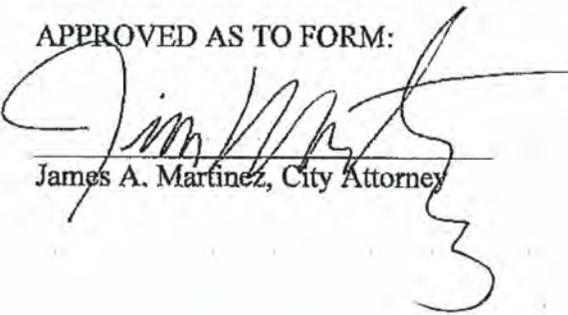
By:   
Gloria M. Rodriguez, Mayor

ATTEST:



Olivia Navarro, City Clerk

APPROVED AS TO FORM:

  
James A. Martinez, City Attorney

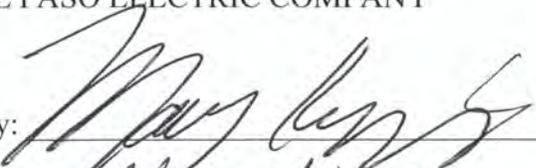
ACCEPTED by El Paso Electric Company, a Texas corporation, this 31st day of January, 2017.

EL PASO ELECTRIC COMPANY

By:

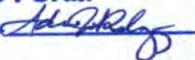
Name:

Title:

  
\_\_\_\_\_  
Mary Kipp  
\_\_\_\_\_  
Chief Executive Officer  
\_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Office of the General Counsel

**APPROVED AS TO FORM**  
OFFICE OF THE GENERAL COUNSEL 

**ATTACHMENT 6**  
**TOWN OF VAN HORN, TEXAS**

1. the name of the municipality, county, and state;

*Town of Van Horn, Texas*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*February 6, 2007*

4. if franchisee or licensee, the date franchise or license expires;

*February 6, 2027*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 6.*

## **ORDINANCE NO. 07-02-316**

**AN ORDINANCE GRANTING TO THE EL PASO ELECTRIC COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF TEXAS, ITS LEGAL REPRESENTATIVES, SUCCESSORS, LESSEES AND ASSIGNS, CERTAIN POWERS, LICENSES, RIGHTS OF WAY AND PRIVILEGES TO MAINTAIN, ERECT, CONSTRUCT, EQUIP, CONDUCT AND OPERATE IN THE TOWN OF VAN HORN, TEXAS, WORKS, SYSTEMS AND PLANTS TO MANUFACTURE, USE, STORE, SELL, DISTRIBUTE, CONVEY OR OTHERWISE USE, CONDUCT, SERVE, SUPPLY AND FURNISH SAID TOWN OF VAN HORN, ITS INHABITANTS AND OTHERS, ELECTRICITY FOR LIGHT, HEAT AND POWER, AND OTHER USEFUL SERVICE AND TO USE THE STREETS, AVENUES, ALLEYS, HIGHWAYS, SIDEWALKS, BRIDGES AND OTHER STRUCTURES AND PLACES AND PUBLIC GROUNDS IN SAID TOWN FOR A PERIOD OF TWENTY (20) YEARS, AND PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREIN MENTIONED.**

**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF VAN HORN; CULBERSON COUNTY, TEXAS:**

### **SECTION I**

That the Town of Van Horn, Texas ("Town"), hereby grants unto and vests in the El Paso Electric Company, a corporation organized and existing under and by virtue of the laws of the State of Texas, and authorized to transact business in the State of Texas, hereinafter called the "Company", its legal representatives, successors, lessees and assigns, a franchise with the right to operate its electric plant, systems and works now installed and in operation in said Town, the authority, license, power and privilege to promote, maintain, construct, build, equip, conduct or otherwise establish and operate in said Town, works or systems and plants to manufacture, use, store, sell, distribute, convey or otherwise establish, conduct, serve, supply and furnish, the inhabitants of said Town and others, and said Town, whenever said inhabitants or others, or said Town, shall desire to contract therefore, with electricity for light, heat, power and other useful service, and elements and materials incidental to the use of same, including the sale of electrical appliances, and the said Company is hereby granted passage, right-of-way and lawful way during the life of this Franchise, every and any and all streets, avenues, alleys, highways, sidewalks, bridges, and other structures and places and public grounds of said Town both above and beneath the surface of said Town, as said streets, avenues, alleys, highways, sidewalks, bridges and other structures and places and public grounds of said Town now exist, or may be hereafter extended, or such as may be hereafter created within the corporate limits of said Town, or as same may be hereafter extended, for every and any such service, use, effect and lawful purpose.

## SECTION II

Said Company is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges herein mentioned and granted by this Franchise, including the making of necessary excavations and the right to acquire, erect and maintain and operate its poles, wires and appliances in and on any and all of the streets, lanes, alleys and other public grounds and places in said Town, and to extend and conduct its wires, connections and appliances through, over, across and under any and all of the streets, lanes, alleys and other public grounds and places in said Town, provided that such are existing; and that all work done in said streets, alleys, highways or other public grounds of said Town by said Company shall be performed with reasonable diligence; and said Company shall, within a reasonable time, restore such streets, alleys and public grounds excavated by it to their original condition as nearly as possible; and said work shall be done subject to the approval and supervision of said Town or of such person as it may designate. PROVIDED, in laying all conduits, wires or other such structures, and in the repairing of the same, the Town shall be held harmless for all damages on account of all excavations for conduits or other structures, and the said Company shall assume all liability or risk of damage to persons or property which may arise from negligence in the construction or operation of any or all of said plant or plants, and shall save the said Town, its officers and agents, harmless from any and all liability which may arise or be incurred from the erection, construction or operation of same.

## SECTION III

That said Town, acting as aforesaid, hereby grants unto the aforesaid Company, its successors, lessees and assigns, the right to operate and control all meters, wires, appliances or appurtenances owned by said Company, and in case of refusal or failure on the part of any customer to pay the Company proper charges for electricity consumed, or to observe the established rules and regulations of said Company, to disconnect the service and wires of said Company connecting to the premises of such consumer, and to remove all meters and other materials, appliances or appurtenances furnished and owned by the Company; provided, however, that said actions by the Company shall be in accordance with all applicable statutes, rules, regulations, and orders governing or issued by the Public Utility Commission of Texas or the tariffs of the Company on file with said Town or the Public Utility Commission of Texas, or both, as long as the Public Utility Commission continues in existence as a body corporate and politic of the State of Texas. This Section shall not, however, be construed as an election by the said Town to dedicate its original jurisdiction over the Company to the Public Utility Commission of Texas as provided in Section 17(b) of the Public Utility Regulatory Act.

## SECTION IV

The Company shall have and is hereby granted the right to trim branches from trees along the streets and alleys where its poles are or may be erected and its wires extended wherever necessary to do so; provided, however, upon streets bordered by parks, whenever trees shall have attained a size or height which interferes with pole lines, the

Town Council of said Town may require such pole lines to be relocated, or removed to adjacent alleys when feasible and when such relocation or removal will not entail excessive or unreasonable cost.

## SECTION V

The Company, its successors, lessees and assigns, for and in consideration of the granting of this Franchise, and as rental or tax for the occupation and use or easement over, upon and beneath the streets, highways, alleys, parks and other public grounds and places in said Town as aforesaid, shall pay quarterly of said Town a total aggregate sum of three and one-quarter percent (**3.25%**) of the gross receipts of the Company, its successors, lessees and assigns, beginning with the date hereinafter set forth, and thereafter during all the time this provision shall remain in force and effect, derived from the sales of electricity use or consumed within the corporate limits of said Town, such gross receipts to consist of the total amount received from users of electricity for light, heat and power within the corporate limits of said Town under the Company's rates in existence at the time of payment, excepting therefrom such receipts for electricity furnished said Town, and all municipal and county institutions. Said payments shall be based in such gross receipts beginning on meter readings on and after **February 6, 2007**, and shall be made of said Town on or after the expiration of thirty (30) days from and after the first day of April, July, October and January of each year from and after and during all the time this provision shall remain in force and effect.

For the purpose of determining said revenue, the revenue accounts of said Company shall at all times be subject to inspection by duly authorized Town officials. Said payments shall be made in lieu of any and all other franchise, license, privilege, pole, easement, wire or instrument, occupation, excise or revenue taxes and all other exactions, except genera ad valorem property taxes upon business, revenues, property, poles, wires, instruments, conduits, pipes, fixtures or other appurtenances of the Company, and all other property or equipment of the Company or any part hereof, in said Town during the term of this Franchise; PROVIDED, that anything to the contrary herein notwithstanding, said payments shall continue only so long as said Company is not prohibited from making such payments by any lawful authority having jurisdiction in the premises, and so long as said Town does not impose, charge, levy or collect, or attempt to impose, charge, levy or collect any other franchise, license, privilege, occupation, excise or revenue taxes or other exactions hereinbefore mentioned, other than ad valorem taxes, and if any lawful authority having jurisdiction in the premises hereafter prohibits said payments or if said Town does impose, levy, charge or collect, or attempt to impose, levy, charge or collect any such other franchise, license, privilege, occupation, excise or revenue tax or other exactions or charge, other than ad valorem taxes, the obligation to make such payments hereinabove provided for, shall forthwith cease.

## SECTION VI

This Franchise shall be accepted by the Company in writing. It is hereby made an essential condition in the granting of this Franchise, and in its use and enjoyment by the Company, its successors, lessees and assigns, that the acceptance by the Company, its successors, lessees and assigns of the Franchise, and the rights and privileges hereby

granted, shall be the acceptance by the Company, its successors, lessees and assigns of all the conditions, reservations and restrictions herein provided and contained. When this Franchise has been accepted as aforesaid, this Ordinance shall be and become a contract duly executed by and between the aforesaid Town and said Company.

## SECTION VII

Upon the passage, approval and acceptance of this Franchise, the same shall take effect and be in force for the period of Twenty (20) Years from and after the adoption and approval of this Ordinance.

## SECTION VIII

This Ordinance is an amendment and renewal and extension of the Franchise granted to El Paso Electric Company under an Ordinance numbered 6 passed and approved by the Board of Aldermen of the Town of Van Horn, Texas, on February 15, 1983, and is enacted with the consent and approval of El Paso Electric Company.

## SECTION IX

If any section, paragraph, subdivision, clause, phrase or provision of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part of provision thereof, other than the part so decided to be invalid or unconstitutional.

## SECTION X

This Agreement is subject to, and shall be interpreted to conform with, all applicable laws, rules, orders, and regulations, including, but not limited to, the laws, rules, orders, and regulations of the Public Utility Commission of Texas. Any changes in applicable laws, rules, orders, or regulations shall become effective with regard to this Agreement, and any other agreements made pursuant to it, as of the effective date of the law, rule, order, or regulation. This Agreement shall terminate if EPE is required by any law, rule, order, or regulation to cease providing one or more of the services or obligations EPE agrees to perform pursuant to this Agreement.

The above Ordinance of the Town of Van Horn, Texas is hereby accepted as to all of its terms, conditions and provision.

**PASSED AND APPROVED THIS THE 6TH OF FEBRUARY, 2007.**

APPROVED:

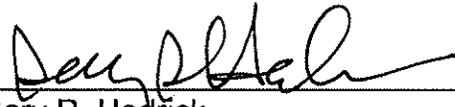
  
\_\_\_\_\_  
Okey D. Lucas, Mayor

ATTEST:

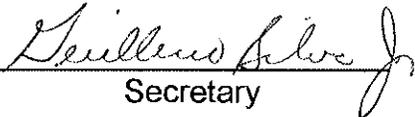
  
\_\_\_\_\_  
Rebecca L. Brewster  
City Secretary

DATED AT VAN HORN, TEXAS THIS 6<sup>th</sup> DAY OF February, 2007.

EL PASO ELECTRIC COMPANY  
A Texas Corporation.

Signed:   
\_\_\_\_\_  
Gary R. Hedrick  
President and Chief Executive Officer

ATTEST:

Signed:   
\_\_\_\_\_  
Secretary

**ATTACHMENT 7**  
**VILLAGE OF VINTON, TEXAS**

1. the name of the municipality, county, and state;

*Village of Vinton, Texas*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*December 2, 2009*

4. if franchisee or licensee, the date franchise or license expires;

*December 2, 2039*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 7.*

**ORDINANCE # 2009-11-17-4**  
**AN ORDINANCE GRANTING A FRANCHISE**  
**TO EL PASO ELECTRIC COMPANY**

BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF VINTON:

Section 1. Grant. There is hereby granted to El Paso Electric Company (the "Company"), a Texas corporation, its successors and assigns, for the term of thirty years from the effective date of this ordinance, a franchise to construct, reconstruct, repair, maintain, use and operate in, over, or under the present and future streets, alleys, public ways, parks, and public places of the Village of Vinton (the "Village") facilities for the transmission and distribution of electrical energy for the use of the Village and the inhabitants thereof and properties therein, with all usual and customary appurtenances for such transmission and distribution; provided, this franchise does not include places where the Village's authority to permit such installations is or hereafter may be withdrawn by the State, or where the Texas Highway Department or other State agency constructs or maintains such public facility or place and lawfully excludes the authority of the Village to permit such public utility installations therein.

Section 2. Police Power. Work done in connection with the construction, repair, maintenance and operation of such facilities is subject to the continuing police power of the Village, and the Company shall comply with all present and future laws, ordinances and regulations, except such as conflict with any provision hereof lawfully surrendering the Village's authority.

The Village shall have power at any time to require the Company to remove and abate at its own expense any installation or structure that is dangerous to life or property, and in case the Company, after notice, fails or refuses to act, the Village shall have the

power to remove or abate the same at the expense of the Company, all without compensation or liability for damages to the Company.

The Village shall have the power at any time to require the Company to change the route and position of its poles, lines, conduits or other construction at the Company's expense when the Village Council (the "Council") shall find, by resolution, that such change is necessary in the closing, opening or relocation of streets or alleys, or water or sewer lines, the changing of grade of streets or alleys, the construction and maintenance of parks and public improvements, the construction of private buildings, the construction or use of driveways, and under other conditions which the Council shall find necessary under the lawful exercise of its police power; provided, however, the Company shall be entitled to be paid for its costs and expense of any relocation, raising or lowering of its poles, lines, conduits or other construction required by the Village if such expenses or costs are reimbursable or payable to the Company or to the Village by the State of Texas, the United States, or any agency or subdivision of either, whether directly or indirectly, or by any other party. The Village shall not be liable to the Company for any damages to poles, lines, conduits or other construction occurring in the change of the grade of streets, alleys or public places after notice to the Company.

The Village shall use its best reasonable efforts to consult and confer with the Company before requiring any such relocation, raising or lowering, with a view to accomplishing the result reasonably and economically.

The Company shall promptly restore to as good condition as before working thereon, and to the reasonable satisfaction of the Village, all streets excavated by it. The Company shall never tear up nor excavate any pavement or street at any time without first

obtaining permission of the Village, but such permission shall be given if the proposed excavation is necessary and in accordance with this franchise.

Section 3. Interference with Public or Private Property. All poles placed within the Village and all excavations or other construction in the streets, alleys or public places shall be done as to interfere as little as possible with the use of streets, alleys and public places and with the use of private property, in accordance with any direction given by or under the authority of the Council under the police and regulatory power of the Village. Future installations of the Company shall not conflict with then existing gas pipes, water pipes, telephone lines or conduits, or sewers, except with the consent of the Village. Nothing herein shall be construed in any way to restrict or limit the Company's right of eminent domain as to private property.

Section 4. Trimming Trees. The Company may trim trees upon and overhanging the streets, alleys, sidewalks and public places of the Village so as to prevent the branches of such trees from coming in contact with the wires or cables of the Company. When so ordered by the Village, such trimming shall be done under the supervision and direction of any Village official to whom such duty may be delegated. The Council may require pole lines that border on public parks to be relocated or removed to adjacent alleys.

Section 5. Wire Changes to Permit Moving of Structure. The Company on request of any person shall remove or raise or lower its wires temporarily to permit the moving of houses or other bulky structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and the

Company may require such payment in advance. The Company shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.

Section 6. Furnishing Service. The Company shall furnish service under fair rules and regulations (which rules and regulations shall be subject to supervision and control of the Council) to any person, firm or corporation which shall demand service within the Village, upon such terms and conditions as may be required by the Village, and shall make connections therefor on, demand without unreasonable delay, provided that the extension of service demanded is not prohibited by State or Federal law.

The Company shall have the right to operate and control all meters, wires, appliances and appurtenances owned by the Company. In case of refusal or failure on the part of any customer to pay the Company proper charges for electricity consumed, or to observe reasonable rules and regulations established by the Company, the Company shall have the right to disconnect its service and wires to the premises of such customer and to remove all facilities furnished and owned by the Company.

Section 7. Other Utility Installations. The Village reserves the right to install and permit to be installed gas, water and other utility lines and do and permit to be done any work that may be deemed necessary or proper by the Council in, across, over or under any street, alley, or public place occupied by the Company and to change any curb or sidewalk or the grade of any street. In doing or permitting such work, the Village shall not be liable to the Company for any damage so occasioned; provided, however, the Village shall not require the Company (except as provided in Section 2) to move its lines entirely from any street, alley, or public place. If the Village shall require the Company to adapt or conform its lines or in any way or manner to alter, relocate or change its property to

enable any other corporation or person except the Village to use with greater convenience such street, alley, or public place, the Company shall not be bound to make any such changes until such other corporation or person shall have undertaken with solvent bond to reimburse the Company for any loss and expense which will be caused by or arise out of such change, alteration or relocation of the Company property; provided, however, that the Village shall never be liable for such reimbursement.

Section 8. Indemnification. The Company shall indemnify and save the Village harmless from all claims, demands or causes of action against the Village for injury to persons or property occasioned by or arising out of the construction, reconstruction, maintenance, repair or operation of its system or by the conduct of its business in the Village.

Section 9. Quality of System and Service. The Company shall construct, install and maintain its system with economical and up-to-date apparatus and equipment in reasonable operating condition at all normal times. The service shall be sufficient to meet all reasonable demands without undue interruption or fluctuation, except when interrupted, prevented, or impaired by fires, strikes, riots, war, storms, floods, State or Federal restrictions, or other occurrences beyond the control of the Company, in any of which events the Company shall do all things reasonably within its power to restore normal, efficient and economical service.

Section 10. Reports. The Village shall have the right to keep informed as to the construction, reconstruction, maintenance, repair and operation of the properties of the Company, and its accounting in connection therewith, as affect the rates charged and service rendered within the Village, and to keep informed of the reasonableness of the

Company's rates. The Company will furnish such pertinent information as may from time to time be reasonably required by the Village, and the original records of the Company shall be open to inspection by the Village at any reasonable time.

Upon request of the Village, the Company will file with the Village Clerk a detailed operating statement for the previous calendar year, showing income, expenditures, profit, and rate of return, and the basis therefor.

Section 11. Rate Regulation. Pursuant to Chapter 33 of the Public Utility Regulatory Act, the Public Utility Commission of Texas shall have the power to fix and regulate the rates and charges of the Company.

Section 12. Compensation. As full compensation for the rights herein granted, the Company will pay to the Village annually during the life of this franchise a sum of money equal to three and one-quarter percent (3.25%) of the annual gross receipts for the preceding calendar year received by the Company from the sale of electric energy within the corporate limits of the Village. Such annual sum shall be payable on the fifteenth day of February following the year with respect to which such sum shall be payable.

The consideration set forth above in this section shall be in lieu of any other tax or charge, by whatever name called, for the privileges granted in this franchise. The Village will not assess against the Company any additional street rental charge, pole tax, inspection tax, charge for the occupancy of the places to which this franchise relates under Section 1, or tax on this franchise as property. This does not bar the Village from assessing against the Company or its property ad valorem taxes levied on property generally, fees charged generally to the public for the services of departments or

agencies of the Village, excise taxes levied generally, or other taxes, fees and charges which are general and not compensation for the privileges herein granted.

Should the Village not have the legal power to agree that payment of the foregoing consideration shall be in lieu of any of the additional taxes or charges as above set forth, the Village will apply so much of such payment set forth in this section as may be necessary to the satisfaction of the Company's obligation to pay the additional tax or charge herein agreed to be waived.

The payment or rendition of the consideration provided in this grant shall not, except as otherwise provided herein, in any way limit any of the privileges or rights of the Village which it may now or hereafter have under the Constitution and laws of Texas and the Charter of the Village.

Section 14. Forfeiture. After reasonable notice and opportunity to be heard, and a reasonable time for correcting any violation of this franchise, the Council may forfeit this franchise if the Company fails to maintain its property in good order or to furnish efficient public service at reasonable rates. If court proceedings are instituted to determine the legality of such forfeiture, the losing party will pay the reasonable expenses, including reasonable attorneys' fees, incurred by the prevailing party in connection with such litigation.

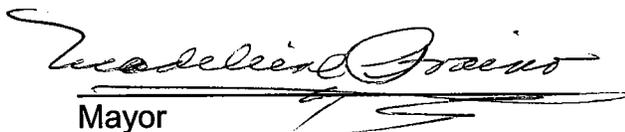
The right to forfeit the franchise shall be in addition to the penalties provided by law.

Section 15. Interpretation. This franchise is subject to, and shall be interpreted to conform with, all applicable laws, rules, orders and regulations including, but not limited to, the laws, rules, orders and regulations of the Public Utility Commission of Texas. Any

changes in applicable laws, rules, orders and regulations shall become effective with regard to this franchise and any other agreements made pursuant to it as of the effective date of such law, rule, order or regulation. The Company shall have the right and option to terminate this franchise upon written notice to the Village if the Company is required by any law, rule, order or regulation to cease providing one or more of the services or obligations which the Company has agreed to perform under the terms of this franchise.

Section 16. Acceptance. This franchise shall not take effect unless, within thirty days after its passage and approval, the Company shall file its written acceptance with the Village Clerk. Upon such acceptance this franchise shall become effective.

PASSED AND APPROVED this 17 day of November, 2009.

  
Mayor

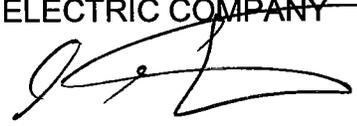
ATTEST:

By:   
Village Clerk

### ACCEPTANCE

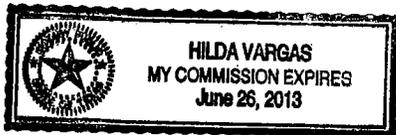
This franchise granted by the Village of Vinton on November 17, 2009 is hereby accepted by El Paso Electric Company on December 2, 2009.

EL PASO ELECTRIC COMPANY

By:   
Name: David W. Stevens  
Title: CEO

Reviewed & Approved by Legal  
GS  
12/2/09

SWORN TO AND SUBSCRIBED before me on December 2, 2009.



Hilda Vargas

Notary Public, State of Texas

My commission expires: 6/26/2009

**ATTACHMENT 8**  
**YSLETA DEL SUR PUEBLO**

1. the name of the municipality, county, and state;

*Ysleta del Sur Pueblo, Texas*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*March 7, 1995*

4. if franchisee or licensee, the date franchise or license expires;

*None*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 8.*



# Tigua Indian Reservation

Ysleta Del Sur Pueblo

119 S. Old Pueblo Rd. • P.O. Box 17579 • El Paso, Texas 79917 • (915) 859-7913 • Fax = 859-2988

March 7, 1995

El Paso Electric Company  
303 N. Oregon  
El Paso, Texas 79901

Attn: Billing Department

Dear Sir/Madam:

Please be advised that the Ysleta del Sur Pueblo, a federally recognized Indian tribe, with trust lands located inside the City of El Paso, as a federal Indian enclave, has adopted by resolution, a 2% gross receipt charge on electric utilities sold on tribal trust lands. We respectfully request that you initiate the collection procedure on behalf of the Tribe from all clients within the trust lands on your April 1, 1995 billing cycle. The trust lands involved are as follows:

1. Ysleta Grant Block 44, Tract 1A, B, C, and D.
2. Ysleta Grant Block 48, Tract 11A and B.
3. Ysleta Grant Block 49, Tracts 1A, 3B, 15, 16A, 16B, 17A, 17B, 17C, 17D, 18A, 18B, 18B-1, and 18C.

The tribe owns other trust lands located within the County of El Paso but there are no utility services currently to said lands. I am enclosing a copy of the deed from the Governor of Texas placing the lands in trust status and a copy of the Restoration Act provisions that established trust status and a copy of a map with certain of the above described lands indicated in yellow outline along with the Tribal Resolution levying a two percent (2%) gross receipt charge. If you have any questions with respect to this matter, please contact me.

Sincerely,

Pete Chavez, Comptroller

cc: Chief Legal Officer  
El Paso Electric Company

CONTROL  
MAR 14 1995

YSLETA DEL SUR PUEBLO  
TRIBAL RESOLUTION TC- 15 -95

WHEREAS, the Tribal Council (the "Council") of the Ysleta del Sur Pueblo (the "Pueblo"), is the duly constituted traditional governing body of the Ysleta del Sur Pueblo exercising all inherent governmental power, fiscal authority, and tribal sovereignty as recognized in sections 101 and 104 of the Act of August 18, 1987 (The Ysleta del Sur Pueblo Restoration Act), 101 stat. 666, Public Law No. 100-89; and

WHEREAS, the Pueblo has operated from time immemorial as a Native American political sovereign without organic or written constitution, charter, or by-laws, and

WHEREAS, the Pueblo governs itself by oral tradition; and

WHEREAS, the "Council", has authorized the Governor of the Pueblo to act for the Tribe in the signing of this resolution; and

WHEREAS, the civil and criminal law authority of the Pueblo is vested in the "Council" consisting of the Cacique, the Governor, the Lieutenant Governor and five (5) Councilmembers;

WHEREAS, the El Paso Electric Company (the "Electric Company") makes use of streets and other right-of-way within the Ysleta del Sur Pueblo Reservation (the "Reservation"); and

WHEREAS, it distributes electricity in the course of its business within the limits of the Ysleta del Sur Pueblo Reservation;

NOW, THEREFORE, BE IT RESOLVED, in consideration of the premises, a two percent (2%) gross receipts charge in lieu of any other franchise or street rental charge is herewith levied upon said Electric Company with respect to all of its gross receipts generated on the Reservation. Said gross receipts charge shall be collected starting with the billing period beginning 1 April, 1995 and shall be paid to the office of the Comptroller of the Ysleta del Sur Pueblo (the "Pueblo").

WHEREAS, heretofore the Electric Company has negotiated a franchise agreement with the City of El Paso with respect to the Reservation;

NOW, THEREFORE, BE IT RESOLVED, in consideration of the premises, said franchise agreement is ratified with respect to the Reservation and the Electric Company until such time as another franchise agreement can be negotiated.

ADOPTED this the 7 day of March, 1995.

### CERTIFICATION

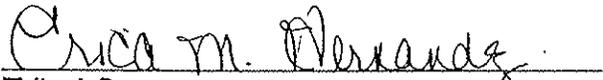
I, the undersigned, as Governor of the Ysleta del Sur Pueblo hereby certify that the Ysleta del Sur Tribal Council, at a duly called Tribal Council Meeting, convened and held on the 7<sup>th</sup> day of March, 1995, at the Ysleta del Sur Pueblo approved the foregoing Resolution, a quorum being present, and that 6 voted for, 0 opposed, \_\_\_\_\_ abstain.

Ysleta del Sur Pueblo



ELIAS TORRES  
Tribal Governor

ATTEST:

  
Tribal Secretary



THE STATE OF TEXAS  
EXECUTIVE DEPARTMENT  
OFFICE OF THE GOVERNOR  
AUSTIN, TEXAS

JULY 25, 1989

EXECUTIVE ORDER WPC-89-14

TRANSFERRING TO THE UNITED STATES OF AMERICA BY AND THROUGH THE SECRETARY OF THE INTERIOR ALL OF THE LANDS, TOGETHER WITH IMPROVEMENTS THEREON, HELD IN TRUST BY THE STATE OF TEXAS FOR THE BENEFIT OF THE YSLETA DEL SUR PUEBLO

WHEREAS, the United States Congress has enacted the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (the "Act") (Public Law No. 100-89, 101 Statutes-at-Large 669, August 18, 1987, codified at 25 United States Code Sections 1300g through 1300g-7), which provides for restoration of the trust relationship between the United States of America and the Ysleta del Sur Pueblo (designated as such by the Act, having formerly been designated under federal law as the Tiwa Indians of Ysleta, Texas, and also having formerly been known generally and under Texas law as the Tiwa or Tigua Indian Tribe of Texas, and referred to in this Executive Order as the "Ysleta del Sur Pueblo"), and provides further that the United States of America shall accept any offer from the State of Texas to convey to the United States of America by and through the Secretary of the Interior all land and improvements on that land that are held in trust by the State of Texas for the benefit of the Ysleta del Sur Pueblo and that the United States of America by and through the Secretary of the Interior shall hold such land and improvements, upon conveyance by the State of Texas, in trust for the benefit of the Ysleta del Sur Pueblo; and,

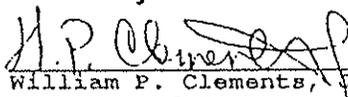
WHEREAS, the Texas Legislature has enacted Senate Bill No. 610 (Acts 1987, 70th Legislature, Chapter 668, Texas Revised Civil Statutes Article 5421c-2), which provides that upon the restoration of such trust relationship the Governor of Texas shall transfer by executive order to the United States of America by and through the Secretary of the Interior, as soon as possible after the effective date of the federal legislation restoring such trust relationship, all assets held in trust by the State of Texas for the benefit of the Ysleta del Sur Pueblo, including all real property and buildings and improvements on such property, to be held in trust for the Ysleta del Sur Pueblo;

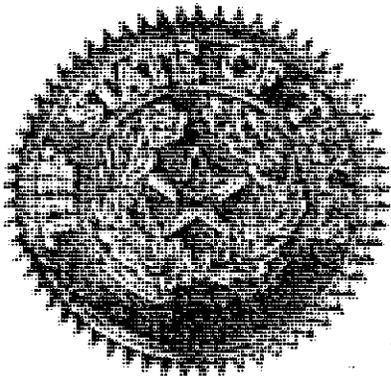
NOW, THEREFORE, know all men by these presents that I, William P. Clements, Jr., Governor of Texas, under the authority vested in me, for and in consideration of these presents, and in compliance with the directive above-cited, by these presents do hereby grant, transfer and convey to the United States of America by and through the Secretary of the Interior, in trust for the benefit of the Ysleta del Sur Pueblo, all the real property, including all buildings and improvements affixed to such property, that are presently held in trust by the State of Texas for the Ysleta del Sur Pueblo, as the same is more fully described in Exhibit A attached hereto and incorporated herein by reference, subject to any exceptions, reservations, easements, restrictions, covenants, conditions, rights-of-way, and oil, gas and mineral leases which are valid, subsisting and of record, provided that any omission from Exhibit A shall not limit the inclusiveness of the general description herein set out, to have and to hold the above-described premises, together with all and singular the rights, appurtenances and privileges thereto belonging, to the United States of America by and through the Secretary of the Interior, in trust as hereinbefore set out, and to his successors and assigns forever.

FURTHER, I do hereby direct all appropriate state officers and personnel to take immediately all steps necessary to make the grant, transfer and conveyance provided for by, and to effectuate the intent of, this Executive Order.

This Executive Order shall be effective immediately and remain in full force and effect until modified, amended or rescinded by me.

Given under my hand this 25th day of July, 1989.

  
\_\_\_\_\_  
William P. Clements, Jr.  
Governor of Texas



Filed in the Office of  
Secretary of State

JUL 25 1989

Statutory Filings Division  
Statutory Documents

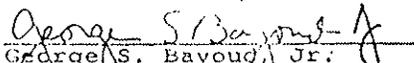
  
\_\_\_\_\_  
George S. Bayoud, Jr.  
Secretary of State

EXHIBIT A

To Executive Order Transferring TO THE UNITED STATES OF AMERICA BY AND THROUGH THE SECRETARY OF THE INTERIOR ALL OF THE LANDS, TOGETHER WITH IMPROVEMENTS THEREON, HELD IN TRUST BY THE STATE OF TEXAS FOR THE BENEFIT OF THE YSLETA DEL SUR PUEBLO

1. That parcel of land described by metes and bounds and conveyed in a deed dated September 22, 1971, from Charles C. Gaither, individually and as attorney-in-fact for Mary M. Gaither, et al., to the State of Texas, an undivided one quarter interest in Tracts II-A and II-B, Block 48, Ysleta Grant, El Paso County, Texas, which tracts are more particularly described in said deed, and containing 2.432 acres, more or less, which deed is recorded in Book 360, Pages 1521, et seq. of the Deed Records of El Paso County, Texas.

2. That parcel of land described by metes and bounds and conveyed by deed of gift dated November 28, 1970 from Charles C. Gaither, et al., to the State of Texas, an undivided three-quarters interest in Tracts II-A and II-B, Block 48, Ysleta Grant, El Paso County, Texas, which tracts are more particularly described in said deed, and containing 2.432 acres, more or less, which deed is recorded in Book 321, Pages 1650, et seq. of the Deed Records of El Paso County, Texas.

3. That parcel of land described and conveyed in a deed dated December 30, 1969, from Mary Alice Armendariz, et al., to the State of Texas, covering Tracts 1A, 1B, 1C and 1D, of Block 44, Ysleta Grant, El Paso County, Texas, which tracts are more particularly described in said deed, and containing

3.0584 acres, more or less, which deed is recorded in Book 282, Page 1682 of the Deed Records of El Paso County, Texas.

4. That parcel of land described by metes and bounds and conveyed in a deed dated February 12, 1970 from Jack R. Williamson and Jesusita D. Williamson, to the State of Texas, described as containing 0.483 acres, more or less, and being a part of Tract 6-F-1, in Block 47 of the Ysleta Grant of El Paso County, Texas, which deed is recorded in Book 285, Page 1608 of the Deed Records of El Paso County, Texas.

5. That parcel of land described and conveyed by deed dated July 10, 1981, from Efren L. Franco and Margarita H. Franco, to the Tigua Indian Tribe and the State of Texas, covering Lots 1, 2 and 3, Block 1, Teresa Gardens, El Paso County, Texas, as more particularly described in said deed, which deed is recorded in Book 1189, Page 0797 of the Deed Records of El Paso County, Texas.

6. That parcel of land described by metes and bounds and conveyed by deed dated February 2, 1971, from Bernard J. Wieland to the State of Texas, described as containing 15.1996 acres, more or less, being part of Section 10, Block 77, Township 1 of the Texas and Pacific Railway Company Surveys, El Paso County, Texas, which deed is recorded in Volume 336, Page 0119 of the Deed Records of El Paso County, Texas.

7. That parcel of land described by metes and bounds and conveyed by deed dated February 18, 1969 from Horizon Properties Corporation to the State of Texas, described as containing 20.328 acres, more or less, and being a part of

Section 18, Public School Lands, Block 7, El Paso County, Texas, which deed is recorded in Volume 244, Page 0806 of the Deed Records of El Paso County, Texas.

8. That parcel of land described by metes and bounds and conveyed in a deed dated April 26, 1972 from Vaughn R. Wilson and Pauline O. Wilson to the State of Texas, described as 15.006 acres, more or less, and being a portion of Block 49 of Ysleta Grant, El Paso County, Texas, which deed is recorded in Book 388, Page 0871 of the Deed Records of El Paso County, Texas.

9. That parcel of land described by metes and bounds and conveyed in a deed dated April 26, 1972, from Alfredo Acosta, Jr. and Esperanza Acosta to the State of Texas, described as being 1.499 acres, more or less, and being a portion of Tracts 18A and 18B, Block 49, Ysleta Grant, El Paso County, Texas, which deed is recorded in Book 388, Page 422 of the Deed Records of El Paso County, Texas.

10. That parcel of land described by metes and bounds and conveyed in a deed dated July 19, 1972 from Vaughn R. Wilson, et al., to the State of Texas, described as being 1.253 acres, more or less, and being a part of Tract 16, Block 49, Ysleta Grant, El Paso County, Texas, which deed is recorded in Book 401, Page 0812 of the Deed Records of El Paso County, Texas.

11. That parcel of land described by metes and bounds and conveyed in a deed dated October 6, 1977 from Leavell Properties, Inc., d/b/a EBC & Associates II, to the State of Texas, described as containing 215,619.635 square feet or

4.950 acres, more or less, being Tract 15, Block 49, Ysleta Grant, El Paso County, Texas, as more particularly described therein, which deed is recorded in Book 829, Page 005 of the Deed Records of El Paso County, Texas.

12. That parcel of land described by metes and bounds and conveyed in a deed dated September 3, 1981 from Paso Pak Chili Company Inc. to the Tigua Indian Tribe of Texas, described as containing 2 acres of land, more or less, and being a part of Tract 1B, Block 2, San Elizario Grant, El Paso County, Texas, which deed is recorded in Book 1204, Page 0645 of the Deed Records of El Paso County, Texas. (Clerk's Filing Number 06079).

# VALLUMBROSA

ESTRADA  
ADDITION

S-D

S-D  
C

R-F

R-F  
M

C-1  
SC

C-2  
SC

R-4

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CY

CANDELARIA

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SECT 1  
S

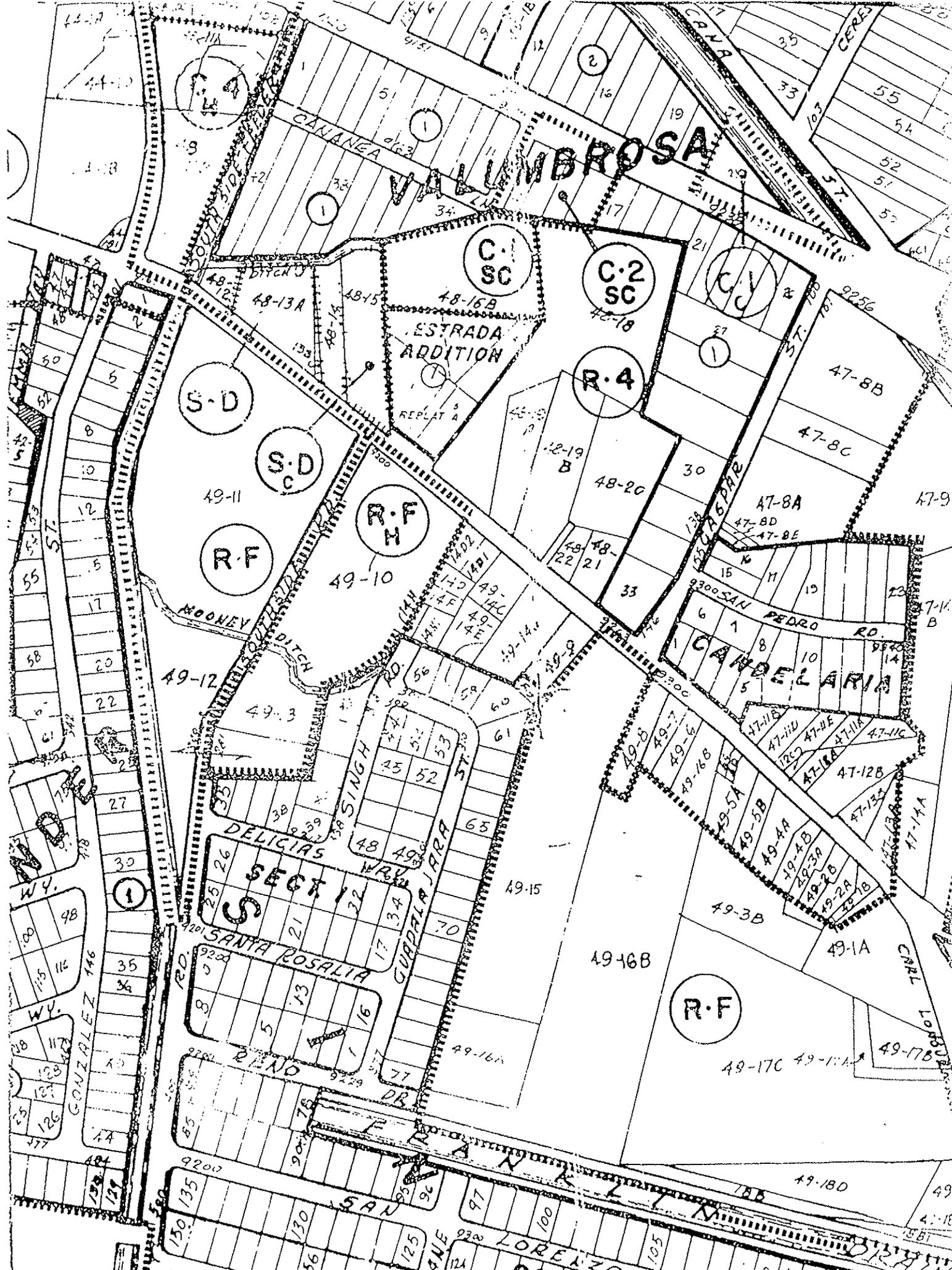
SANTA ROSALIA

RENDO

FRANCA

LORENZO

DIRAIN



**ATTACHMENT 9**  
**CITY OF ANTHONY, NEW MEXICO**

1. the name of the municipality, county, and state;

*City of Anthony, New Mexico*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*July 17, 2011*

4. if franchisee or licensee, the date franchise or license expires;

*July 17, 2021*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 9.*

ORDINANCE NO. 2011-08  
AN ORDINANCE GRANTING A FRANCHISE  
TO EL PASO ELECTRIC COMPANY

BE IT ORDAINED BY THE GOVERNING BODY  
OF THE CITY OF ANTHONY, NEW MEXICO:

Section 1. Grant

There is hereby granted to El Paso Electric Company (the "Company"), a Texas corporation authorized to transact business in the State of New Mexico, its legal representatives, successors, and assigns, for the term of 10 years from the effective date of this Ordinance, a Franchise, pursuant to Section 3-42-1 et seq. NMSA 1978, to construct, reconstruct, repair, maintain, use and operate in, over or under the present and future streets and extensions thereof, alleys, public ways, parks, and public places of the City of Anthony, New Mexico (the "City") facilities for the transmission and distribution of electrical energy now installed and in operation or such facilities as herein described as may be hereafter installed and operated in the City for the use of the City and the inhabitants thereof and properties therein, with all usual and customary appurtenances for such transmission and distribution and privileges to promote, maintain, construct, reconstruct, build, equip, conduct, or otherwise establish and operate in said City, works or systems and plants to generate, manufacture, use store, sell, distribute, convey electrical energy or otherwise establish, conduct, serve, supply, and furnish the inhabitants of said City, whenever the inhabitants of said City desire to contract therefore, with electrical energy for light, heat, power and other useful service and elements and materials necessarily incidental to the use of same.

Said Company is hereby granted passage, right-of-way and the right to continue to use and occupy, and to use and occupy during the term of this Franchise, every and any and all streets, avenues, alleys, highways, public ways, sidewalks, bridges, and other public structures and public places and public grounds of said City, both above and beneath the surface of said City and said streets, avenues, alleys, highways, public ways, sidewalks, bridges and other public structures and public places and public grounds of said City as may now exist or may be hereafter extended or created within the territorial and jurisdictional limits of said City, or as said territorial and jurisdictional limits of said City may be extended hereafter, for the purpose of carrying out the Company's business as is authorized by the City pursuant to the terms of this Franchise.

Section 2. Police Power

Work done in connection with the construction, repair, maintenance and operation of such facilities is subject to the continuing police power of the City, and the Company shall comply with all present and future laws, ordinances and regulations, except such as conflicts with any provision hereof lawfully surrendering the City's authority.

The City shall have power at any time to require the Company to remove and abate at its own expense any installation or structure that is dangerous to life or property and in case the Company,

after notice fails or refuses to act, the City shall have the power to remove or abate the same at the expense of the Company, all without compensation or liability for damages to the Company.

The City shall have the power at any time to require the Company to change the route and position of its poles, lines conduits or other construction at Company's expense when the City Council ("the Council") shall find, by resolution, that such change is necessary in the closing, opening or relocation of streets or alleys, bridges, public ways, or water or sewer lines, the changing of grade of streets or alleys, the construction and maintenance of streets (including re-routing, improving, or widening), bridges, public ways, parks and public improvements, and under other conditions, which the Council shall find necessary under the lawful exercise of its police power; provided, however the Company shall be entitled to be paid for its costs and expenses of any relocation, raising or lowering of its poles, lines, conduits or other construction required by the City if (i) such costs and expenses are directly reimbursable or payable to the Company or to the City by the State of New Mexico, the United States, or any agency or subdivision of either, by any other party, or (ii) such move is for the benefit or convenience of or at the request of a third party, including a private developer or development. In such case, the third party, including a private developer or development, shall be solely responsible for the payment of same to the Company. The City shall not be responsible for any such payment. The City shall not be liable to the Company for any damages to poles, lines, conduits or other construction occurring in the change of the grade of streets, alleys, or public places after notice to the Company. The City shall use its best reasonable efforts to consult and confer with the Company before requiring any such relocation, raising or lowering, with a view toward accomplishing the result reasonably and economically.

The Company shall promptly restore to their original condition as before working thereon as nearly as possible, and to the reasonable satisfaction of the Mayor and Council of the City, all places excavated by it or damaged by it. The Company shall not tear up, disturb, or excavate any place at any time without first obtaining a permit to do so and paying a permit as required by the City, but such permit shall not be unreasonably withheld if the proposed excavation is necessary and in accordance with this Franchise and City ordinance.

### Section 3. Underground Facilities

The Company agrees to promote and encourage the use of underground facilities in new subdivisions where the differential costs of underground versus overhead distribution is agreeable to both the Company and the property owner. If an adjoining subdivision is served from underground facilities, every effort will be made to design, operate and maintain these facilities for future expansion to other subdivisions in the immediate areas.

### Section 4. Interference with Public or Private Property

All poles placed within the City and all excavations, disturbances, or other construction in the streets, alleys, public ways, or public places shall be done so as to minimize any interference with the use of streets, alleys, public ways, and public places and with the use of private property, in accordance with any direction given by or under the authority of the Council under the police and regulatory power of the City. Future installations of the Company shall not conflict with then existing gas pipes, water pipes, telephone lines or conduits, or sewers, except with the consent of the City. Nothing herein shall be construed in any way to restrict or limit the Company's right of eminent domain as to private property.

### Section 5. Trimming Trees

The Company may trim trees upon and overhanging the streets, alleys, public ways, sidewalks, and public places of the City so as to prevent the branches of such trees from coming into contact with the wires or cables of the Company. When so ordered by the City, such trimming shall be done under the supervision and direction of any City official to whom such duty may be delegated. The Council may require pole lines that are directly adjacent to the public parks to be relocated or removed to adjacent alleys.

### Section 6. Wire Changes to Permit Moving of Structures

The Company on request of any person shall within a reasonable period of time remove, rearrange, or raise or lower its aerial cables or wires temporarily to permit the moving of houses, machinery, or other objects or structures. The expense of such temporary removal, rearrangement, raising or lowering of the aerial cables or wires, shall be paid by the benefited party or parties (other than the City), and the Company may require such payment in advance. The Company shall be given not less than 48 hours advance notice to arrange for such temporary aerial cables or wire changes.

### Section 7. Furnishing Service

The Company shall furnish service under approved rules and regulations to any person, firm or corporation which shall demand service within the City, upon such terms and conditions as may be reasonably required by the Company, subject to regulation as provided in Section 10 of this Franchise, and shall make connections therefore on demand, without unreasonable delay, provided that the extension of service demanded is not prohibited by State or Federal law.

The Company shall have the right to operate and control all meters, wires, appliances and appurtenances owned by the Company. In case of refusal or failure on the part of any customer to pay the Company proper charges for electricity consumed, or to observe approved rules and regulations established by the Company, the Company shall have the right to disconnect its service and wires to the premises of such customer and to remove all facilities furnished and owned by the Company.

### Section 8. Other Utility Installations

The City reserves the right to install and permit to be installed, gas, water, other utility lines and cable television lines and facilities and permit to be done any work that may be deemed necessary or proper by the Council in, across, over or under any street, alley or public place occupied by the Company and to change any curb or sidewalk or the grade of any street. In doing or permitting such work, the City shall not be liable to the Company for any damage so occasioned. However, the City shall not require the Company (except as provided in Section 2) to move its line entirely from any street, alley or public place. If the City shall require the Company to adapt or conform its lines or in any way or manner to alter, relocate or change its property to enable any other corporation or person except the City to use with greater convenience such street, alley, or public place, the Company shall not be bound to make any such changes until such other corporation or person shall have undertaken with

solvent bond to reimburse the Company for any loss and relocation of the Company property; provided, however, that the City shall not be liable for such reimbursement.

#### Section 9. Indemnification

The Company shall indemnify and save the City, its governing body, officers, agents, and employees harmless from and against all claims, demands, liabilities, or causes of action (including the costs, expenses, and reasonable attorney's fees on account thereof) against the City for injury to persons or property occasioned by or arising out of the construction, reconstruction, maintenance, repair or operation of its system or by the conduct of its business in the City.

#### Section 10. A Quality of System and Service

The Company shall construct, install and maintain its system with economical and up-to-date apparatus and equipment in reasonable operating condition at all normal times and in accordance with industry standard engineering practices. The service shall be sufficient to meet all reasonable demands without undue interruption for fluctuation, except when interrupted, prevented, or impaired by fire, strikes, riots, war, storms, floods, State or Federal restrictions, or any other occurrences beyond the control of the Company in any of which events the Company shall do all things reasonably within its power to restore normal, efficient, and economical service, but shall not be liable for claims, demands, causes of action or damages occasioned by interruption or fluctuations so caused. It is understood and agreed that the settlement of strikes, walkouts, lockouts, or other labor disputes shall be entirely within the discretion of the Company. The Company shall use reasonable means to limit inconvenience to the City and its inhabitants or damage or injury to City's property or property of its inhabitants during the course of work done in connection with the construction, repair, maintenance and operation of such facilities.

#### Section 11. Regulation

It is recognized that the rates, operations and services of the Company are regulated pursuant to the Public Utility Act (the "Act"), Chapter 62, New Mexico statutes annotated, 1978 Compilation, as the same may be amended from time to time. In the event of any conflict between any of the provisions of this Franchise and the Act, the Act shall govern.

#### Section 12. Reports

The City shall have the right to be kept informed as to the operation and services of the Company within the incorporated limits of the City. The Company will furnish such pertinent information as may from time to time be reasonably required by the City, including, but not limited, copies of the reports and information furnished to the Commission and the original records of the Company related to its operations within the incorporated limits of the City shall be opened to inspection by the City at any reasonable time. In addition, upon written request, the Company shall provide to the City copies of maps or other reports showing the location of the Company's systems, facilities, equipment and infrastructure within the City's limits or immediately adjacent to the City's limits *provided that* such maps or reports can be produced from the Company's records existing at the time of the request without unreasonable burden or expense. Further, upon request, the Company shall provide to the

City copies of deeds, leases or easements relating to the Company's facilities within the City's limits or immediately adjacent to the City's limits.

### Section 13. Compensation

As full compensation for the rights herein granted, the Company will pay the City monthly during the life of its Franchise, a sum of money equal to 3% of the gross receipts for the preceding calendar month received by the Company from the sale of electric energy within the corporate limits of the City including any extension of those City limits from time to time excluding, however, the gross receipts from the retail sale of electric energy to the City and all municipal, county, state and federal government agencies and institutions. . Such sums shall be payable on the 28<sup>th</sup> day following the month with respect to which such sum shall be payable.

Upon written request, the Company shall provide to the City a report showing in reasonable detail the calculation of the monthly franchise fee. If the City has a reasonable basis to question the accuracy of such calculation, the Company, upon written request from the City, shall make available to the City for inspection the books and records supporting such calculation or reasonably related thereto. Any such inspection shall be conducted at the City's sole expense during regular business hours after reasonable advance notice.

The consideration set forth above in this Section shall be in lieu of any other tax or charge, by whatever name called, for the privileges granted in this Franchise. The City will not assess against the Company any additional street rental charge, rental charge, pole tax, inspection tax, or charge for the occupancy of the places to which this Franchise relates under Section 1. This does not bar the City from assessing against the Company or its property ad valorem taxes levied on property generally, fees charged generally to the public for the services of departments or agencies of the City, excise taxes levied generally, or other taxes, fees and charges which are general and not compensation for the privileges herein granted.

Should the City not have the legal power to agree that payment of the foregoing consideration shall be in lieu of any of the additional taxes or charges as above set forth, the City will apply so much of such payments set forth in this Section as may be necessary to the satisfaction of the Company's obligation to pay the additional tax charged here and agreed to be waived.

The payment or rendition of the consideration provided in this Grant shall not, except as otherwise provided herein, in any way limit any of the privileges or rights of the City which it may now or hereafter have under the laws of the State of new Mexico.

The provisions of Section 12 shall not be construed to excuse the Company from collecting from its electric service customers and paying over to the City or the State for the benefit of the City additional municipal sales tax levied in the event said City or State shall, at any time during the term of this Franchise, enact such additional municipal sales tax.

### Section 14. Acceptance

This Franchise shall not take effect unless, within 30 days after its passage and approval, the Company shall file its written acceptance with the City clerk. Upon such acceptance this Franchise shall become effective after notice pursuant to Section 3-42-1 et seq. NMSA 1978 and filing with the Commission.

Section 15. Rights of Successors

This Franchise Ordinance shall be binding upon the legal representatives, successors, lessees and assigns of the parties hereto.

Section 16. Invalidation of Provision

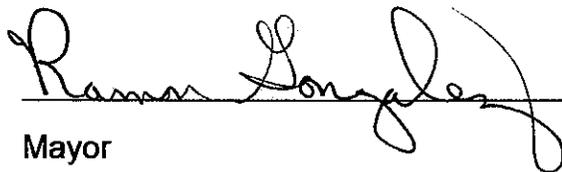
If any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be declared or adjudged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part of the provisions hereof, other than the part so determined to be invalid or unconstitutional.

Section 17. Attorney's Fees and Costs

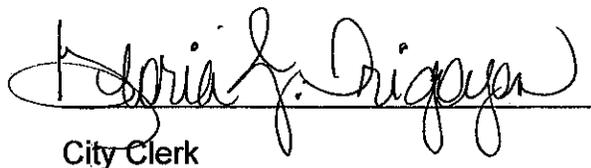
In the event of breach of this agreement by either party hereto, the prevailing party shall enjoy all rights and remedies allowed in law or equity and shall recover reasonable attorney's fees in any suit from the breach or enforcement of this agreement.

PASSED AND APPROVED this 18th day of May, 2011.

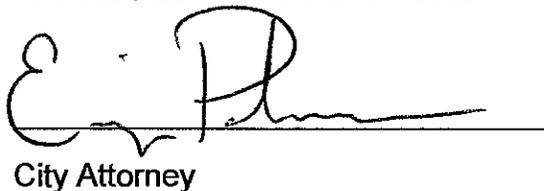
APPROVED:

  
Mayor

ATTEST BY:

  
City Clerk

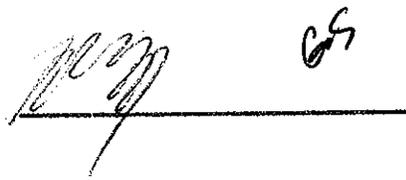
APPROVED AS TO FORM ONLY:

  
City Attorney

ACCEPTED BY EL PASO ELECTRIC COMPANY ON THIS 17<sup>th</sup> DAY OF June, 2011:

By:   
Name: ROBERT CLAY DOYLE  
Title: VP- NEW MEXICO AFFAIRS

Reviewed and Approved  
Legal Department



**ATTACHMENT 10**  
**CITY OF LAS CRUCES, NEW MEXICO**

1. the name of the municipality, county, and state;

*City of Las Cruces, New Mexico*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*May 3, 2000*

4. if franchisee or licensee, the date franchise or license expires;

*April 30, 2009 (El Paso Electric Company and the City of Las Cruces, New Mexico, have not entered into a new franchise agreement since the expiration. El Paso Electric Company continues to abide by the terms of the franchise.)*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 10.*

**FRANCHISE ORDINANCE/AGREEMENT**

**SECTION 1: PURPOSE - COMPANY'S USE OF STREETS**

That the City of Las Cruces, New Mexico (hereinafter called the "City"), hereby grants unto and vests in the El Paso Electric Company, a Corporation organized and existing under and by virtue of the laws of the State of Texas, and authorized to transact business in the State of New Mexico, (hereinafter called the "Company"), its legal representatives, successors, lessees and assigns, AN ELECTRICAL FRANCHISE. This Franchise Ordinance gives the Company the right to operate its electric plant, systems and works now installed and in operation or hereafter installed and operated in the City of Las Cruces, New Mexico, and the authority, license, power and privileges to promote, maintain, construct, build, equip, conduct, or otherwise establish and operate in the City, works or systems and plants to generate, manufacture, use, store, sell, distribute, convey, or otherwise establish, conduct, serve, supply and furnish, the inhabitants of the City, whenever the inhabitants of the City and others, and/or the City shall desire to contract therefor, with electricity for light, heat, power and other useful service, and elements and materials necessarily incidental to the use of same, including the sale of electrical appliances. The Company is hereby granted passage right of way and the right to continued use and occupancy, and to occupy and use during the life of this Franchise Ordinance, every and any and all streets, avenues, alleys, highways, public ways, sidewalks, bridges, and other public structures and public places, and public grounds of the City, both above and beneath the surface of the City, as (said streets,

avenues, alleys, highways, public ways, sidewalks, bridges, and other public structures and public places, and public grounds of the City) they now exist, or may be hereafter extended, or such as may be hereafter created within the corporate limits of the City, or as same may be hereafter extended, for the purpose of carrying out that part of its business as is authorized by the City pursuant to the terms of this Franchise Ordinance.

SECTION 2: LICENSE - POLE RELOCATION - REPLACEMENT OF PAVEMENT - APPEALS - BOND - HOLD HARMLESS AGREEMENT

The Company is hereby authorized, licensed and empowered to do any and all things necessary and proper in executing the powers and utilizing the privileges herein mentioned and granted by this Franchise Ordinance, including the making of necessary excavations and the right to acquire, erect and maintain and operate its poles, wires and appurtenances in and on any and all of the streets, avenues, alleys, highways, public ways, sidewalks, bridges, and other public structures and public places, and public grounds of the City. The Company is hereby authorized to extend, construct, place, locate its poles, lines, wires, connections, and appurtenances through, over, across, and under any and all of the streets, avenues, highways, public ways, sidewalks, bridges, and other public structures and public places, and public grounds of the City, subject, however, to the express approval of the City's Planning Department and provided that such installation does not conflict with existing water and/or gas and/or sewer lines. No part of the expense of the above-described work shall be borne by the City.

Both parties acknowledge the long range importance to the City in having appropriate coordination between various construction programs now in progress or contemplated for some future year by the various agencies authorized to make use of City streets, avenues, alleys, highways, public ways, sidewalks, bridges, and other public structures and public places, and public grounds of the City. In order that such coordination shall be effective, and that possible conflicts between power poles and future street or City utility system improvements be eliminated, the Company, prior to commencement of such work, will review and coordinate the work with the City's Planning Department. It shall be considered that projects (new construction and/or emergency replacement) consisting of four primary in-line poles or less are not of sufficient magnitude to warrant the review and coordination study by the City's Planning Department as above mentioned.

Where existing poles and facilities are installed in City streets, and street right-of-ways, alleys, highways, public ways, sidewalks, bridges, and other public structures and public places, and public grounds of the City and it is determined that such poles and facilities are in conflict with authorized street widening and street improvements, the project to relocate the poles and facilities to a mutually acceptable location shall be subject to the approval of the City's Planning Department. All of such pole relocation work and installation shall be performed by the Company at no expense to the City. All work done in said streets, alleys, highways, public ways, sidewalks, bridges, and other public structures and public places, and public grounds of the City by the Company, shall be performed with

reasonable diligence; and the Company shall, within a reasonable time, restore such streets, alleys, and public grounds excavated by it, to their original condition as nearly as possible; and said work shall be done subject to the approval and acceptance of the City's Planning Department.

No trench excavations or pavement cuts in any public way shall be commenced under the license herein granted until a permit to commence such work is secured from the City's Planning Department.

The replacement of pavement shall be performed in accordance to City standards and ordinances. All expenses associated with such replacement of pavement shall be borne by the Company, whether completed by private contractors or by City work force.

Appeals from decisions of the City's Planning Department may be taken to the City Council. During the term of this Franchise Ordinance, the Company shall have in force for the benefit of the City, a bond in the sum of Ten Thousand Dollars (\$10,000) securing prompt performance of all of its duties and obligations under the terms of this Franchise Ordinance.

The City and its officers, agents and employees shall be indemnified and held harmless for all claims, losses and damages to persons or property on account of or resulting from the Company's operation, work, duties, and obligations pursuant to the terms of this Franchise Ordinance.

SECTION 3:            COMPANY'S RIGHT TO TURN-OFF

The City, acting as aforesaid, hereby grants unto the Company, its successors, lessees and assigns, the right to operate and control all meters, wires, appliances and/or appurtenances owned by the Company, and in case of refusal or failure on the part of any customer to pay the Company proper charges for electricity consumed, or to observe the established rules and regulations of the Company to disconnect the service and wires of the Company connecting to the premises of such consumer, and to remove all meters and other materials, appliances or appurtenances furnished and owned by the Company.

SECTION 4:            COMPANY RIGHT TO TREE-TRIM

The Company shall have the authority to trim trees upon and overhanging streets, avenues, highways, public ways, sidewalks, bridges, and other public structures, public places, and public grounds of the City so as to prevent the branches of such trees from coming in contact with the wires of the Company. All tree trimming to be done under the supervision and direction of the Company and at the expense and liability of the Company.

SECTION 5:            EXTENSION OF OVERHEAD WIRES

Whenever an applicant for electric service shall have complied with established rules and regulations of the Company and whenever necessary, the Company shall, without charge, extend its overhead wires a distance of three hundred (300) feet per customer, and provide a reasonable overhead service from the nearest pole to the customer's building;

PROVIDED, however, that the Company shall not be so required in cases where there exists any physical obstruction within said three hundred (300) feet making such extension impractical, or when the permission of some third party is required and is refused.

SECTION 6: FRANCHISE TAX - EXEMPTIONS

The Company, its successors, lessees and assigns, for and in consideration of the granting of this Franchise Ordinance, and as rental and/or tax for the occupation and use or easement over, upon, and beneath the streets, avenues, alleys, highways, public ways, sidewalks, bridges, and other public structures and public places, and public grounds of the City, shall pay monthly to the City, beginning with the time hereinafter set forth, and thereafter during all the time this provision shall remain in force and effect, a total aggregate sum of two percent (2%) of the gross receipts of the Company, its successors, lessees and assigns, derived from (1) the sales of electricity used or consumed within the corporate limits of the City, (2) from the lease of poles and equipment, excepting poles used under joint use agreements by Mountain States Telephone and Telegraph Company, Western Union Telegraph Company, New Mexico State University, the United States Government, and Community Antenna TV (Cable) Companies, and (3) from all revenue whatsoever from whatever source under the Company's rate, fees or charges, in existence at the time of payment, excepting therefrom such receipts for electricity furnished schools, colleges and universities operated by a Governmental Agency; PROVIDED, HOWEVER, that until such

time as said two percent of the annual gross receipts of the Company shall have exceeded sixty thousand dollars (\$60,000.00) per annum, the Company shall be obliged to make in lieu thereof to the City an annual minimum payment of sixty thousand dollars (\$60,000.00). Said payments shall be based on such gross receipts beginning on meter reading on first day of calendar month next following the effective date of this instrument and shall be made to the City on or after the expiration of thirty (30) days from and after the first day of each month of each year from and after and during all the time this Franchise Ordinance shall remain in force and effect.

For the purpose of determining said revenue, the revenue accounts of the Company shall at all times be subject to inspection by duly authorized City Officials. Said payments shall be made in lieu of any and all other Franchise Ordinance, license, privileges, pole, easement, wire or instrument, excise or revenue taxes except municipal occupation taxes, on all sales or revenues from any source other than electrical energy sales, and all other exactions except general ad valorem property taxes upon business, revenues, property, poles, wires, instruments, conduits, pipes, fixtures or other appurtenances of the Company, and all other property or equipment of the Company or any part thereof, in the City during the term of this Franchise Ordinance.

SECTION 7:            COLLECTION OF ADDITIONAL MUNICIPAL GROSS RECEIPTS TAX

The provisions of Section 6 shall not be construed to excuse the Company from

collecting from its electric service customers and paying over to the City additional municipal gross receipts tax levied, in the event the City shall, at any time during the term of this Franchise Ordinance, enact such additional municipal gross receipts tax.

SECTION 8:            NOTICE OF FILING

The Company will not make application to the New Mexico Public Regulatory Commission for a change in any of the various rate schedules applicable to services required by the City and in effect at the time the Franchise Ordinance becomes effective without first discussing the matter with the City. Should such an application be presented to the New Mexico Public Regulatory Commission, the Company agrees that reasonable advance notice of such hearing will be given the City in order to afford the City an opportunity to intervene in the formal hearing before the New Mexico Public Regulatory Commission. In such instance, the Company agrees to provide the City with available engineering, statistical, billing and other data pertinent to the rate change application.

SECTION 9:            UNDERGROUND FACILITIES

The Company shall encourage and promote the design and use of underground cables and facilities for the downtown redevelopment area at the request of the City and PROVIDED, however, that the City and the property owners involved are agreeable in supporting the cost differential for this project. The Company also agrees to promote and encourage the use of underground facilities in new subdivisions where the differential costs

of underground versus overhead distribution is agreeable to both the Company and the property owner. If an adjoining subdivision is served from underground facilities, every effort will be made to design, operate and maintain these facilities for future expansion to other subdivisions in the immediate areas.

SECTION 10:        SWITCHING FACILITIES - STAND-BY AUXILIARY SERVICE

The Company shall establish and shall maintain during the term of this Franchise Ordinance such switching facilities as may be required to provide alternate circuits to supply electrical power for emergency installations within the City limits, limited to the following: Memorial Medical Center and such other City-County Hospital (or hospitals) as may be constructed during the term of this Franchise Ordinance, and at the county jail and/or City public safety buildings and at a Civil Defense Headquarters Center as the same may be constructed during the term of this Franchise Ordinance.

Upon written request the Company will provide standby and/or auxiliary service to customers having other power or power generating equipment and facilities. The service will be provided in accordance with the Company's published RULES AND REGULATIONS and billed under approved tariff schedules on file with the New Mexico Public Regulatory Commission.

SECTION 11:        ACCEPTANCE OF FRANCHISE

This Franchise Ordinance shall be accepted by the Company in writing within 30 days

from the date this Franchise Ordinance is passed by the City Council. If not so accepted this Franchise Ordinance shall be repealed and negotiation for a new Franchise Ordinance may take place between the City and the Company; PROVIDED, that in any such negotiation neither party shall be bound by the terms of this Franchise Ordinance. It is hereby made an essential condition in the granting of this Franchise Ordinance, and its use and enjoyment by the Company, its successors, lessees, and assigns, that the acceptance by the Company, its successors, lessees, and assigns, of the Franchise Ordinance and the rights and privileges hereby granted shall be the acceptance by the Company, its successors, lessees and assigns, of all the conditions, reservations and restrictions herein provided and contained; and when this Franchise Ordinance has been accepted as aforesaid in the space provided at the end of this instrument, this Franchise Ordinance shall be and become a contract duly executed by and between the City and the Company, PROVIDED, however, that excepting for mortgages, stockholders, bondholders, or any others having any lien or claim of whatever sort against the Company including its rights and privileges as herein granted, the Company will make no transfer, assignment, lease, or other succession of or to the rights herein granted, without the approval of the City, which approval shall be granted as to any person or entity which provides information sufficient to demonstrate that it is financially sound and technically qualified to provide electric distribution service, and the regulatory agencies having jurisdiction over the Company's operations.

SECTION 12:        REPEAL OF CONFLICTING ORDINANCES

All other ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 13:        SCOPE

Except for the written Settlement Agreement between the parties dated as of February 24, 2000 (hereinafter called the "Settlement Agreement"), this Franchise Ordinance incorporates all of the agreements, covenants and understandings between the Parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Franchise Ordinance. Except for the written Settlement Agreement, no prior agreement or understanding, verbally or otherwise, of the parties or their agents, shall be enforceable unless embodied in this Franchise Ordinance.

SECTION 14:        AMENDMENTS

This Franchise Ordinance shall not be altered, changed or amended except by ordinance in writing and executed by the parties hereto.

SECTION 15:        RIGHTS OF SUCCESSORS

This Franchise Ordinance shall be binding upon the successors, lessees and assigns of the parties hereto.

SECTION 16:        PARAGRAPH HEADINGS

The paragraph headings of this Franchise Ordinance are inserted only for reference

and in no way define, limit or describe the scope or intent of this Franchise Ordinance nor affect its terms and provisions.

SECTION 17: TERM

This Franchise Ordinance shall expire on April 30, 2007, unless the City does not timely exercise the purchase option granted it under the Settlement Agreement in accordance with the terms set forth therein, in which event this Franchise Ordinance shall remain in effect and shall automatically be extended for an additional two (2) years through April 30, 2009. This Franchise Ordinance shall take effect and be in force 30 days after the passage and adoption of this Franchise Ordinance, the date of passage and adoption being set forth below. However, after such passage and adoption and during the aforementioned 30 day period, this Franchise Ordinance (1) must be published at the expense of the Company in full, in two weekly issues of a newspaper published in the City of Las Cruces, New Mexico, said publications not less than seven days apart; (2) proof of such publication must be submitted by affidavit from the publisher and placed in the appropriate City records, and (3) this Franchise Ordinance must be accepted in writing by the Company in the space provided at the end of this instrument; otherwise, this Franchise Ordinance shall be null and void.

SECTION 18: NON-EXCLUSIVE FRANCHISE - CITY OPTION TO PURCHASE

A. The City in granting this Franchise Ordinance grants only a non-exclusive Franchise Ordinance. Furthermore, the City in granting this Franchise Ordinance, reserves

the right, under applicable provisions of New Mexico law, to purchase electricity from other parties on a retail basis, including being an aggregator for its citizens or businesses operating within the City of Las Cruces.

B. This Franchise Ordinance is subject to an option to purchase by the City of the Company's distribution system within the City of Las Cruces as contained in the Settlement Agreement, which option to purchase is incorporated herein by reference.

SECTION 19: SAVINGS CLAUSE - REPEAL

If any section, paragraph, subdivision, clause, phrase or provision of this Franchise Ordinance except the provision containing the Franchise Ordinance rental or tax shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise Ordinance as a whole, or any part or provisions thereof other than the part so decided to be invalid or unconstitutional. If the Franchise tax or rental is declared invalid, or unconstitutional, then this entire Franchise Ordinance shall be null and void.

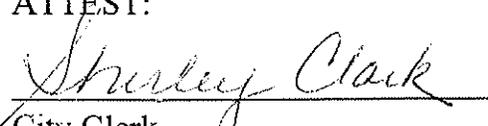
DATED this 3<sup>rd</sup> day of April, 2000.

CITY OF LAS CRUCES

By 

Ruben A. Smith, Mayor

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

Harry S. (Pete) Connelly  
Harry S. (Pete) Connelly  
Deputy City Attorney

**ACCEPTANCE**

The above Franchise Ordinance/Agreement is hereby accepted as to all of its terms, conditions, and provisions on this 18<sup>th</sup> day of April, 2000.

EL PASO ELECTRIC COMPANY  
A Texas Corporation

By James Haines  
President

ATTEST:

Guillermo Salva Jr.  
Secretary



City of Las Cruces

**COUNCIL ACTION FORM**

For Meeting of April 3, 2000

**TITLE:**

AN ORDINANCE GRANTING TO EL PASO ELECTRIC COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF TEXAS, ITS LEGAL REPRESENTATIVES, SUCCESSORS, LESSEES AND ASSIGNS, CERTAIN POWERS, LICENSES, RIGHTS OF WAY AND PRIVILEGES TO MAINTAIN, ERECT, CONSTRUCT, EQUIP, CONDUCT AND OPERATE IN THE CITY OF LAS CRUCES, NEW MEXICO, WORKS, SYSTEMS, AND PLANTS TO GENERATE, MANUFACTURE, USE, STORE, SELL, DISTRIBUTE, CONVEY, OR OTHERWISE USE, CONDUCT, SERVE, SUPPLY AND FURNISH SAID CITY, ITS INHABITANTS AND OTHERS ELECTRICITY FOR LIGHT, HEAT AND POWER, AND OTHER USEFUL SERVICE, AND TO USE THE STREETS, AVENUES, ALLEYS, HIGHWAYS, PUBLIC WAYS, SIDEWALKS, BRIDGES, AND GROUNDS OF SAID CITY, FOR A PERIOD OF UP TO NINE (9) YEARS, AND PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREIN MENTIONED.

**BACKGROUND, SUPPORT INFORMATION, AND COUNCIL OPTIONS (in order):**

On February 24, 2000, the City Council passed Resolution No. 00-238, which resolution approved a global settlement agreement between the City of Las Cruces ("City") and El Paso Electric Company ("EPE").

As part of the settlement agreement, the City is required to grant a franchise ordinance/agreement to EPE for an initial term of seven (7) years which is to be similar to the 1983 franchise ordinance/agreement between EPE and the City. This franchise ordinance/agreement will

(Continued)

Name of Drafter: Harry S. (Pete) Connelly	Division/Department: LEGAL	Phone: 541-2128
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Division/Department	Signature	Phone	Division/Department	Signature	Phone
Community Services & Facilities			Development Services		
Fire			Administration		
Police			Legal	<i>[Signature]</i>	
Utilities			Budget		
Finance			Acting City Manager	<i>[Signature]</i>	2100

**BACKGROUND, SUPPORT INFORMATION, AND COUNCIL OPTIONS (in order):**

remain in effect and shall automatically be extended for an additional two (2) years if the City does not timely exercise its purchase options granted it under the Settlement Agreement in accordance with the terms set forth therein.

The global settlement agreement concerning the franchise ordinance/agreement is attached hereto as Exhibit "A." Paragraphs 3 and 4 of same are the two paragraphs which address the granting of the franchise ordinance/agreement and the City's option to purchase EPE's distribution system.

The proposed Franchise Ordinance/Agreement partially implements the settlement agreement and is similar to the 1983 franchise ordinance/agreement between the City and EPE. The enactment of the proposed Franchise Ordinance/Agreement by the City Council will assist in bringing the settlement agreement between the City and EPE closer to completion.

**SUPPORT INFORMATION:**

1. Ordinance.
2. Proposed Franchise Ordinance/Agreement.
3. Copy of Settlement Agreement as Exhibit "A".

**COUNCIL OPTIONS:**

1. Approve the ordinance as drafted.
2. Not approve the ordinance and provide direction to staff as to how to proceed.

**EXHIBIT "D" TO  
SETTLEMENT AGREEMENT DATED FEBRUARY 24, 2000  
BETWEEN THE CITY OF LAS CRUCES AND EL PASO ELECTRIC COMPANY**

**REAL ESTATE:**

A parcel of land situate within the corporate limits of the City of Las Cruces, Dona Ana County, New Mexico in the NW 1/4 of Section 34, T. 23 S., R. 1 W., N.M.P.M. of the U.S.G.L.O. Surveys. Being part of the West Mesa Industrial Park as acquired and filed on May 31, 1985 in Deed Record 296 at Page 378 of the records of Dona Ana County, New Mexico and more particularly described as follows, to-wit:

BEGINNING at a ½ inch rebar with City of Las Cruces identification cap set on the south right-of-way of Interstate 10 (N.M.P. No. IR-010-2(63) 129 and N.M.P. No. I-010-2(30) 130) for the Northwest corner of the parcel herein described, whence a Highway Right-of-Way Marker Sta. 739+67.24 found at the intersection with the West section line of said Section 34 bears S. 82° 18' 23" W., a distance of 65.60 feet;

THENCE from the point of beginning along said right-of-way N. 82° 18' 23" E., 344.20 feet to a ½ inch rebar with City of Las Cruces identification cap set for the Northeast corner of the parcel herein described;

THENCE leaving the right of way S. 00° 02' 03" W., 406.28 feet to a ½ inch rebar with City of Las Cruces identification cap set for the southeast corner of the parcel herein described;

THENCE N. 89° 57' 57" W., 341.08 feet to a ½ inch rebar set on the east side of a 65 foot wide right-of-way for the Southwest corner of the parcel herein described;

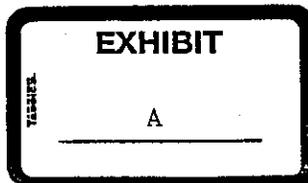
THENCE along the right-of-way N. 00° 02' 03" E., 360.00 feet to the point of beginning containing 3.0000 acres of land more or less.

The City of Las Cruces reserves a 35' utility easement as shown on Exhibit "D-1" attached hereto, which utility easement may be used by Grantee for electric lines and may be used by Grantor to install other utilities and by other franchisees of Grantor to install utilities.

## AGREED TERMS OF SETTLEMENT PROPOSAL

The following settlement proposal has been negotiated between the authorized representatives of El Paso Electric Company and The City of Las Cruces. The terms of this agreement are subject to the final approval of the City Council of Las Cruces and the El Paso Electric Board of Directors by February 25, 2000. The terms of the settlement, subject to final agreement being drafted, are as follows:

1. Payment of \$ 21.0 million dollars by EPE to CLC, payment to be made by wire transfer to CLC within 5 business days of execution of a written settlement agreement by the parties and passage of the franchise ordinance referred to in paragraph 3.
2. Transfer of ownership of the CLC West Mesa substation to EPE. The City is to provide verification that its costs of building its substation and related distribution and transmission lines, and obtaining the land, have been no less than \$4.5 million dollars, with a dollar for dollar offset to the one time payment described in Paragraph 1 above for all amounts not verified by CLC.
3. CLC will adopt by ordinance and the parties will execute a seven (7) year franchise with EPE, similar to the 1983 franchise agreement, for the provision of electric distribution service with a standstill agreement which will insure that during the seven year period no action will be taken by CLC to attempt to condemn EPE's system, otherwise acquire the system, or attempt to operate or build in any fashion its own electric distribution system.
4. At the conclusion of the seven (7) year franchise agreement, CLC shall for ninety (90) days have the non-assignable option to purchase EPE's distribution system at EPE's accounting book value at the time of such purchase plus a 30% premium. If CLC exercises its option to purchase the distribution system, it shall be prohibited from reselling the property for a period of two (2) years. If CLC does not act to exercise its option, the franchise agreement and standstill agreement shall remain in effect for an additional two years.
5. All existing CLC customer contracts shall be assigned to EPE as they currently exist. In order to verify the billing under the signed contracts, both copies of the contracts and each customer's last month's bill shall be provided to the Company.

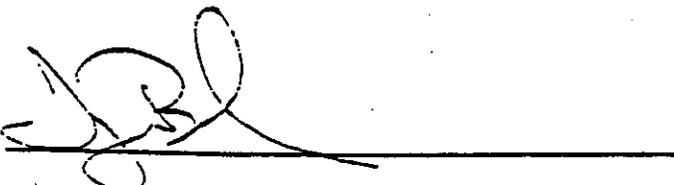


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6. In any future New Mexico Public Regulatory Commission proceedings, CLC shall not contest the calculation of EPE's stranded costs as long as such a calculation of the amount to be charged customers does not exceed that amount ordered by the Federal Energy Regulatory Commission in its initial order (\$52.9 million declining over time) in the pending EPE/CLC stranded cost proceeding. This prohibition shall not extend to any proceeding unrelated to the calculation of stranded cost.
7. The parties will dismiss all existing litigation (including all litigation pending before the FERC) and take any such other actions necessary to terminate all adversarial proceedings involving the parties (including, if necessary, withdrawal from proceedings brought by others in which they have intervened). Appropriate releases and covenants not to sue shall be included in the settlement agreement.
8. The parties shall agree on the terms of an amicable joint press release announcing the settlement.
9. The terms of this agreement shall be reduced to a final writing executed by the parties. The parties agree that they shall obtain authorization from, respectively, the EPE Board and the CLC Council for drafting and execution of the final settlement agreement by authorized representatives (so that no further Board/Council approval is required). In the event of a dispute in the drafting and execution of the final settlement agreement, the parties agree promptly to mediate the dispute before the Honorable Karen Moizen.

Dated as of this 21<sup>st</sup> day of February, 2000:

  
\_\_\_\_\_  
For the City of Las Cruces

  
\_\_\_\_\_  
For El Paso Electric Company

**ATTACHMENT 11**  
**CITY OF SUNLAND PARK, NEW MEXICO**

1. the name of the municipality, county, and state;

*City of Sunland Park, New Mexico*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*October 26, 2011*

4. if franchisee or licensee, the date franchise or license expires;

*October 26, 2026*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 11.*

AN ORDINANCE GRANTING A FRANCHISE  
TO EL PASO ELECTRIC COMPANY

BE IT ORDAINED BY THE GOVERNING BODY  
OF THE CITY OF SUNLAND PARK, NEW MEXICO:

Section 1. Grant

There is hereby granted to El Paso Electric Company (the "Company"), a Texas corporation authorized to transact business in the State of New Mexico, its legal representatives, successors, and assigns, for the term of 15 years from the effective date of this Ordinance, a Franchise, pursuant to Section 3-42-1 et seq. NMSA 1978, to construct, reconstruct, repair, maintain, use and operate in, over or under the present and future streets and extensions thereof, alleys, public ways, parks, and public places of the City of Sunland Park (the "City") facilities for the transmission and distribution of electrical energy now installed and in operation or such facilities as herein described as may be hereafter installed and operated in the City for the use of the City and the inhabitants thereof and properties therein, with all usual and customary appurtenances for such transmission and distribution and privileges to promote, maintain, construct, reconstruct, build, equip, conduct, or otherwise establish and operate in said City, works or systems and plants to generate, manufacture, use store, sell, distribute, convey electrical energy or otherwise establish, conduct, serve, supply, and furnish the inhabitants of said City, whenever the inhabitants of said City desire to contract therefore, with electrical energy for light, heat, power and other useful service and elements and materials necessarily incidental to the use of same.

Said Company is hereby granted passage, right-of-way and the right to continue to use and occupy, and to use and occupy during the term of this Franchise, every and any and all streets avenues, alleys, highways, public ways, sidewalks, bridges, and other public structures and public places and public grounds of said City, both above and beneath the surface of said City and said streets, avenues, alleys, highways, public ways, sidewalks, bridges and other public structures and public places and public grounds of said City as may now exist or may be hereafter extended or created within the territorial and jurisdictional limits of said City, or as said territorial and jurisdictional limits of said City may be extended hereafter, for the purpose of carrying out the Company's business as is authorized by the City pursuant to the terms of this Franchise.

Section 2. Police Power

Work done in connection with the construction, repair, maintenance and operation of such facilities is subject to the continuing police power of the City, and the Company shall comply with all present and future laws, ordinances and regulations, except such as conflicts with any provision hereof lawfully surrendering the City's authority.

The City shall have power at any time to require the Company to remove and abate at its own expense any installation or structure that is dangerous to life or property and in case the Company, after notice fails or refuses to act, the City shall have the power to remove or abate the same at the expense of the Company, all without compensation or liability for damages to the Company.

The City shall have the power at any time to require the Company to change the route and position of its poles, lines conduits or other construction at Company's expense when the City Council ("the Council") shall find, by resolution, that such change is necessary in the closing, opening or relocation streets or alleys, or water or sewer lines, the changing of grade of streets or alleys, the construction and maintenance of parks and public improvements, and under other conditions, which the Council shall find necessary under the lawful exercise of its police power; provided, however the Company shall be entitled to be paid for its costs and expenses of any relocation, raising or lowering of its poles, lines, conduits or other construction required by the City if such costs and expenses are reimbursable or payable to the Company or to the City by the State of New Mexico, the United States, or any agency or subdivision of either, whether directly or indirectly, or by any other party. The City shall not be liable to the Company for any damages to poles, lines, conduits or other construction occurring in the change of the grade of streets, alleys, or public places after notice to the Company. The City shall use its best reasonable efforts to consult and confer with the Company before requiring any such relocation, raising or lowering, with a view toward accomplishing the result reasonably and economically.

The Company shall promptly restore to their original condition as before working thereon as nearly as possible, and to the reasonable satisfaction of the Mayor and Council of the City, all streets excavated by it. The Company shall not tear up or excavate any pavement or street at any time without first obtaining a permit to do so and paying a permit as required by the City, but such permit shall not be unreasonably withheld if the proposed excavation is necessary and in accordance with this Franchise and City ordinance.

### Section 3. Underground Facilities

The Company agrees to promote and encourage the use of underground facilities in new subdivisions where the differential costs of underground versus overhead distribution is agreeable to both the Company and the property owner. If an adjoining subdivision is served from underground facilities, every effort will be made to design, operate and maintain these facilities for future expansion to other subdivisions in the immediate areas.

### Section 4. Interference with Public or Private Property

All poles placed within the City and all excavations or other construction in the streets, alleys or public places shall be done so as to minimize any interference with the use of streets, alleys and public places and with the use of private property, in accordance with any direction given by or under the authority of the Council under the police and regulatory power of the City. Future installations of the Company shall not conflict with then existing gas pipes, water pipes, telephone lines or conduits, or sewers, except with the consent of the City. Nothing herein shall be construed in any way to restrict or limit the Company's or the City's right of eminent domain as to private property.

### Section 5. Trimming Trees

The Company may trim trees upon and overhanging the streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming into contact with the wires or cables of the Company. When so ordered by the City, such trimming shall be done under the

supervision and direction of any City official to whom such duty may be delegated. The Council may require pole lines that are directly adjacent to the public parks to be relocated or removed to adjacent alleys.

#### Section 6. Wire Changes to Permit Moving of Structures

The Company on request of any person shall remove or raise or lower its wires temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of the wires, shall be paid by the benefited party or parties, and the Company may require such payment in advance. The Company shall be given not less than 48 hours advance notice to arrange for such temporary wire changes.

#### Section 7. Furnishing Service

The Company shall furnish service under approved rules and regulation to any person, firm or corporation which shall demand service within the City, upon such terms and conditions as may be reasonably required by the Company, subject to regulation as provided in Section 10 of this Franchise, and shall make connections therefore on demand, without unreasonable delay, provided that the extension of service demanded is not prohibited by State or Federal law.

The Company shall have the right to operate and control all meters, wires, appliances and appurtenances owned by the Company. In case of refusal or failure on the part of any customer to pay the Company proper charges for electricity consumed, or to observe approved rules and regulations established by the Company, the Company shall have the right to disconnect its service and wires to the premises of such customer and to remove all facilities furnished and owned by the Company.

#### Section 8. Other Utility Installations

The City reserves the right to install and permit to be installed, gas, water, other utility lines and cable television lines and facilities and permit to be done any work that may be deemed necessary or proper by the Council in, across, over or under any street, alley or public place occupied by the Company and to change any curb or sidewalk or the grade of any street. In doing or permitting such work, the City shall not be liable to the Company for any damage so occasioned. However, the City shall not require the Company (except as provided in Section 2) to move its line entirely from any street, alley or public place. If the City shall require the company to adapt or conform its lines or in any way or manner to alter, relocate or change its property to enable any other corporation or person except the City to use with greater convenience such street, alley, or public place, the Company shall not be bound to make any such changes until such other corporation or person shall have undertaken with solvent bond to reimburse the company for any loss and relocation of the Company property; provided, however, that the City shall not be liable for such reimbursement.

### Section 9. Indemnification

The Company shall indemnify and save the City harmless from all claims, demands or causes of action against the City for injury to persons or property occasioned by or arising out of the construction, reconstruction, maintenance, repair or operation of its system or by the conduct of its business in the City.

### Section 10. A Quality of System and Service

The Company shall construct, install and maintain its system with economical and up-to-date apparatus and equipment in reasonable operating condition at all normal times. The service shall be sufficient to meet all reasonable demands without undue interruption for fluctuation, except when interrupted, prevented, or impaired by fire, strikes, riots, war, storms, floods, State or Federal restrictions, or any other occurrences beyond the control of the Company in any of which events the company shall do all things reasonably within its power to restore normal, efficient, and economical service, but shall not be liable for claims, demands, causes of action or damages occasioned by interruption or fluctuations so caused. It is understood and agreed that the settlement of strikes, walkouts, lockouts, or other labor disputes shall be entirely within the discretion of the Company.

### Section 11. Regulation

It is recognized that the rates, operations and services of the Company are regulated pursuant to the Public Utility Act (the "Act"), Chapter 62, New Mexico statutes annotated, 1978 Compilation, as the same may be amended from time to time. In the event of any conflict between any of the provisions of this Franchise and the Act, the Act shall govern.

### Section 12. Reports

The City shall have the right to be kept informed as to the operation and services of the Company within the incorporated limits of the City. The Company will furnish such pertinent information as may from time to time be reasonably required by the City, including, but not limited, copies of the reports and information furnished to the Commission and the original records of the Company related to its operations within the incorporated limits of the City shall be opened to inspection by the City at any reasonable time.

### Section 13. Compensation

As full compensation for the rights herein granted, the Company will pay the City quarterly during the life of its Franchise, a sum of money equal to 3% of the gross receipts for the preceding calendar quarter received by the Company from the sale of electric energy within the corporate limits of the City excluding, however, the gross receipts of the retail sale of electric energy furnished to the City of Sunland Park, and all municipal, county, state and federal government agencies and institutions. Such sums shall be payable on the 45<sup>th</sup> day following the quarter with respect to which such sum shall be payable.

The consideration set forth above in this Section shall be in lieu of any other tax or charge, by whatever name called, for the privileges granted in this Franchise. The City will not assess against the Company any additional street rental charge, pole tax, inspection tax, charge for the occupancy of the places to which this Franchise relates under Section 1 with tax on this Franchise as property. This does not bar the City from assessing against the Company or its property ad valorem taxes levied on property generally, fees charged generally to the public for the services of departments or agencies of the City, excise taxes levied generally, or other taxes, fees and charges which are general and not compensation for the privileges herein granted.

Should the City not have the legal power to agree that payment of the foregoing consideration shall be in lieu of any of the additional taxes or charges as above set forth, the City will apply so much of such payments set forth in this Section as may be necessary to the satisfaction of the Company's obligation to pay the additional tax charged here and agreed to be waived.

The payment or rendition of the consideration provided in this Grant shall not, except as otherwise provided herein, in any way limit any of the privileges or rights of the City which it may now or hereafter have under the laws of the State of New Mexico.

The provisions of Section 12 shall not be construed to excuse the Company from collecting from its electric service customers and paying over to the City or the State for the benefit of the City additional municipal sales tax levied in the event said City or State shall, at any time during the term of this Franchise, enact such additional municipal sales tax.

#### Section 14. Acceptance

This Franchise shall not take effect unless, within 30 days after its passage and approval, the Company shall file its written acceptance with the City clerk. Upon such acceptance this Franchise shall become effective after notice pursuant to Section 3-42-1 et seq. NMSA 1978 and filing with the Commission.

#### Section 15. Rights of Successors

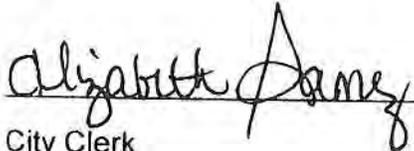
This Franchise Ordinance shall be binding upon the legal representatives, successors, lessees and assigns of the parties hereto.

PASSED AND APPROVED this 26<sup>th</sup> day of September, 2011.

  
\_\_\_\_\_  
Mayor Pro Tem

ATTEST BY:

ACCEPTED BY EL PASO ELECTRIC COMPANY:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
By: David W. Stevens  
Chief Executive Officer

Reviewed and Approved  
Finance Department

\_\_\_\_\_  
City Attorney

  
\_\_\_\_\_  
12/11/11

**ATTACHMENT 12**  
**DOÑA ANA COUNTY, NEW MEXICO**

1. the name of the municipality, county, and state;

*Doña Ana County, New Mexico*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*April 8, 1999*

4. if franchisee or licensee, the date franchise or license expires;

*November 1, 2023*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 12.*

**AMENDMENT TO RIGHT OF WAY AGREEMENT**

Doña Ana County ("County") and El Paso Electric Company ("Company") hereby amend Section 8 ("Fees") of the Right of Way Agreement ("Agreement") the two Parties entered into on March 9, 1999, as follows:

1. This Amendment is made under the authority of and provisions of Section 14 of the Agreement.
2. Section 8 of the Agreement is hereby amended to provide for an increase from two percent (2%) to three percent (3%) of the Company's gross revenues for its use of the County's rights of way.
3. Accordingly, commencing the first day of the first calendar month following sixty (60) days after the execution of this amendment by the last party to sign, the Company shall pay to the County three percent (3%) of its gross receipts, as defined in and for the periods and at the times set forth in the Section 8 of the Agreement.
4. The percentage increase provided for herein shall apply to gross receipts from meter readings taken by and other qualifying income received by the Company on or after the commencement date of this Amendment.
5. With the exception of this Amendment, all other terms and conditions of the Agreement remain unchanged and in force.

The above Amendment is hereby approved as to all of its terms and conditions.

**EL PASO ELECTRIC**

Dated: 7/28/14

By: TV Shockley CEO  
Name THOMAS V. SHOCKLEY Title

**APPROVED AS TO FORM**  
OFFICE OF THE GENERAL COUNSEL [Signature]  
DOÑA ANA COUNTY

Dated: 17 June 2014

By: [Signature]  
Julia T. Brown, Esq. County Manager

ACKNOWLEDGMENT

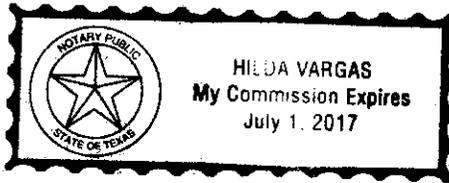
STATE OF NEW MEXICO )  
 )  
COUNTY OF DOÑA ANA )

This instrument was sworn to and acknowledged before me this 28<sup>th</sup> day of July, 2014, by T. V. Shockley, for El Paso Electric Company.

Hilda Vargas  
Notary Public

My Commission Expires:

July 1, 2017



ACKNOWLEDGMENT

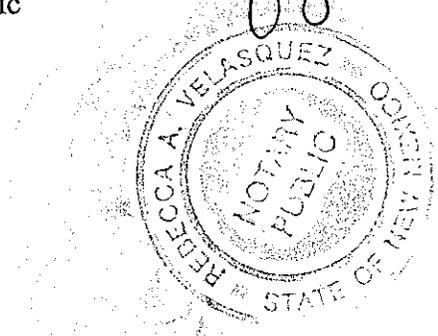
STATE OF NEW MEXICO )  
 )  
COUNTY OF DOÑA ANA )

This instrument was sworn to and acknowledged before me this 17 day of June, 2014, by Julia T. Brown, for Doña Ana County.

Rebecca A. Velasquez  
Notary Public

My Commission Expires:

11/22/15



*Tom Figero*

**AMENDED**  
**ORDINANCE NO. 179-99, 88**

**AN ORDINANCE GRANTING A RIGHT OF WAY AGREEMENT BETWEEN THE COUNTY OF DOÑA ANA, NEW MEXICO AND EL PASO ELECTRIC COMPANY.**

The County Commission is informed that:

It is in the best interest of the health, welfare and prosperity of the County of Doña Ana, New Mexico to grant a Right of Way Agreement to El Paso Electric Company.

BE IT ORDAINED by the governing body of the County of Doña Ana, New Mexico that a Right of Way Agreement between El Paso Electric Company and the County of Doña Ana, New Mexico be entered into upon the following terms:

**SECTION 1: DEFINITIONS**

Whenever in this Ordinance the word "Doña Ana" or "County" is used, it shall be held to mean and include the County of Doña Ana, New Mexico, excluding any incorporated municipality, town or other local governmental entity within the corporate boundary of Doña Ana County. Whenever the word "Company" is used herein, it shall be held to mean El Paso Electric Company, a corporation organized and existing under the laws of the State of Texas and authorized to do business in the State of New Mexico, its legal representatives, successors, and assigns. Whenever the word "Agreement" is used herein, it shall be held to mean this Right of Way Agreement between the County and the Company. Whenever the word the "County Property" is used herein, it shall be held to mean every, any and all roads, streets, right-of-ways, avenues, alleys, highways, public ways, sidewalks, bridges, easements and other public structures, public places or public grounds of said County both above and beneath the surface of said County, as they now exist, or may be hereafter extended, or such as may be hereafter created within the corporate limits of said County, or as same may be hereafter extended.

**SECTION 2: PURPOSE - COMPANY'S USE OF ROADS, ETC.**

The County hereby grants unto and vests in the Company, AN ELECTRICAL RIGHT OF WAY. This Right of Way grants the Company passage right of way and the right to continued use and occupancy, and to occupy and use during the life of this Agreement the County Property for the purpose of constructing, reconstructing, maintaining and operating electric lines together with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, and transmission lines for its own use) for the purpose of supplying electricity to the County and the inhabitants thereof and persons, firms and corporations beyond the County's corporate limits.

The poles, wires, anchors, cables, manholes, conduits and other plant construction and appurtenances used in or incident to the giving of electric services, and to the maintenance of any electricity generating, transmission and distribution business and system by the Company in the County, may remain as now constructed (usual repair, maintenance and reconstruction expected), subject to such changes as under the limitations and conditions herein prescribed may be considered necessary by the agreement of the County and the Company. The Company in its discretion shall have the right to place, remove, construct and reconstruct, extend and maintain its said plant and appurtenances as it may from time to time require along, across, on, over, through, above and under all of the County Property subject to the regulations, limitations and conditions herein prescribed.

The poles, wires, anchors, cables, manholes, conduits and other plant construction and appurtenances used in or incident to the giving of electric service, and to the maintenance of an electricity generating, transmission and distribution business and system by the Company in the County are and will remain the personalty of the Company. The County and the Company stipulate that said poles, wires, anchors,

cables, manholes, conduits and other plant construction are and will remain the property of the Company.

**SECTION 3: QUALITY OF SERVICE**

(A) The Company shall, to the fullest extent possible, provide electric service within the County honestly, prudently, efficiently and economically, adequate and sufficient to meet all reasonable needs and demands of the actual and potential users thereof within the County.

(B) It shall be the Company's obligation to furnish good quality and efficient service to the public and to maintain its property in good repair and working order, except when prevented from doing so by forces and conditions not reasonably within the control of the Company.

**SECTION 4: TECHNOLOGICAL IMPROVEMENTS**

The Company shall use its best efforts to incorporate technological advances into its equipment and service when such advances have been shown to be technically and economically feasible and safe and beneficial. The Company shall review technological advances which have occurred in the electric utility industry and if it believes it appropriate to incorporate such advances into the Company's operations, will do so.

**SECTION 5: STATE REGULATION**

The rates to be charged by the Company for electric service shall be such as are approved from time to time by the New Mexico Public Utility Commission and/or its successor or other duly constituted governmental authority as shall have jurisdiction thereof (herein "Commission"). All rules and regulations of the Commission applicable to tenants, privileges and authority granted by this Ordinance shall govern. The Company's line extension policy as filed by the Company and approved by the Commission shall apply to all extensions of service in the County.

Nothing in this Agreement should be construed or interpreted to effect or impair the jurisdiction of the Commission or to effect or impair the Company's rights and obligations under the New Mexico Public Utility Act, NMSA 1978, §62-3-1 et seq. (the "Public Utility Act"), including, but not limited to, the Company's right to operate a utility and provide electric utility service as recognized and authorized by the Commission or otherwise granted by law. The parties agree that the County has no jurisdiction to regulate the rates or the conditions of service of the Company or do anything inconsistent with the Public Utility Act.

**SECTION 6: LICENSE - POLE RELOCATION - REPLACEMENT OF PAVEMENT -**

**APPEALS - HOLD HARMLESS AGREEMENT**

The Company is hereby authorized, licensed and empowered to do any and all things necessary and proper in executing the powers and utilizing the privileges herein mentioned and granted by this Agreement, including the making of necessary excavations and the right to acquire, erect and maintain and operate its poles, wires and appurtenances in and on any and all of the County Property. After reasonable notice to the County Manager or his/her designated representative, the Company is hereby authorized to extend, construct, place, locate its poles, lines, wires, connections, and appurtenances through, over, along, on, across, and under any and all of the County Property, provided that such installation does not conflict with existing water and/or gas and/or sewer lines. Unless an emergency exists, the Company shall perform work on public right-of-ways at such times and in such a manner that will reasonably minimize interference with normal traffic flow. No part of the expense of the above-described work shall be borne by the County unless the above-described work is provided to the County as a customer.

Where existing poles and facilities are installed in the County Property and it is determined that such poles and facilities are in conflict with authorized street widening and street improvements, the project to relocate the poles and facilities to a

mutually acceptable location shall be subject to the approval of the Office of the County Manager or his/her designated representative under terms and conditions, including payment terms and conditions, mutually agreeable to the County and the Company. All of such pole relocation work and installation shall be performed by the Company.

All work done by the Company in the County Property shall be performed with reasonable diligence; and the Company shall, within a reasonable time, restore such County Property excavated by it, to its original condition as nearly as possible; and said work shall be done subject to the approval and acceptance of the County Manager or his/her designated representative.

No pavement cuts in any public way shall be commenced under the agreement until approval to commence such work is secured from the appropriate County Department. The replacement of pavement shall be performed in accordance with County standards and ordinances. All expenses associated with such replacement of pavement shall be borne by the Company, whether completed by private contractors or by County work force.

The Company shall have the right to appeal decisions of the County Manager or his/her designee to the County Commission. In the event of any appeal, the Company shall be accorded full due process rights.

The County and its officers, agents and employees shall be indemnified and held harmless for all claims, losses and damages to persons or property on account of or resulting from the Company's operation, work, duties, and obligations pursuant to the terms of this Agreement.

#### SECTION 7: COMPANY RIGHT TO TRIM TREES

The Company shall have the authority to trim trees upon and overhanging the County Property so as to prevent the branches of such trees from coming in contact with the wires of the Company. All tree trimming shall be done under the supervision and direction of the Company and at the expense and liability of the Company.

## SECTION 8: FEES

The Company, for and in consideration of the granting of this Agreement, and as rental and/or tax for the occupation and use or easement and right of way over, upon, and beneath the County Property, as aforesaid, shall pay in advance annually to the County on January 30 of each year, beginning from and after the effective date of this Agreement, and thereafter during all the time this provision shall remain in force and effect, the estimated sum of two percent (2%) of the gross receipts of the Company for the following twelve months, derived from (1) the sales of electricity used or consumed within the unincorporated limits of said County excepting those areas of the incorporated municipalities, receipts from public schools, colleges, universities and other state and federal agencies; and (2) from the lease of poles and equipment, excepting poles used under joint use agreements by and between the Company and third parties who are paying to the County franchise or right of way fees, New Mexico State University, and the United States Government. The Company, for and in consideration of the granting of this Agreement, shall pay in addition to the two percent (2%) of gross receipts, the annual amount of \$105,000 beginning on the January 30, 1999 annual payment and continuing for five years until the January 30, 2003 payment.

Prior to December 1 of each calendar year following the effective date of this Agreement, the Company shall calculate the actual amount due to the County for the previous year. Such calculation shall be performed in accordance with the formula set out in the foregoing paragraph. The Company shall notify the County of the results of such calculation by December 1 of each year. The January 30 payment due after such calculation shall be adjusted upward or downward to reflect the actual amount due to the County for the previous calendar year.

For the purpose of determining payments to the County, the revenue accounts of the Company shall at all times be subject to inspection by duly authorized County Officials or the County's authorized representative or consultant. Such payments

shall be made in lieu of any and all other franchise, license, privileges, pole, easement, wire or instrument, excise or revenue taxes except municipal occupation taxes, on all sales or revenues from any source and all other exactions except general ad valorem property taxes upon business, revenues, property, poles, wires, instruments, conduits, pipes, fixtures or other appurtenances of the Company, and all other property or equipment of the Company or any part thereof, in said County during the term of this Agreement.

The Company agrees not to seek to pass on to customers the right of way payments made pursuant to this Agreement in its utility rates until its next rate case filing with the Commission, or unless otherwise ordered by the Commission.

**SECTION 9: COLLECTION OF ADDITIONAL COUNTY SALES TAX**

The provisions of Section 8 shall not be construed to excuse the Company from collecting from its electric service customers and paying over to the County additional County sales tax levied, in the event said County shall, at any time during the term of this Agreement, enact such sales tax.

**SECTION 10: NOTICE OF FILING**

The Company agrees that it will advise the County prior to making any application to the Commission for 1) a rate increase in any of the various rate schedules applicable to services required by the County as a customer of the Company and in effect at the time this Agreement becomes effective; 2) to merge or consolidate with another public utility; or 3) to sell any utility plant or property constituting an operating unit or system or any substantial part thereof. Should any such application be filed with the Commission, the Company agrees 1) that reasonable advance notice of such filing will be given to the County in order to afford the County an opportunity to intervene in the formal hearing before the Commission; 2) that it will not oppose any application for intervention made by the County in any such case filed by the Company; and 3) to

provide the County with a copy of its complete application within a reasonable time after the application is filed at the Commission.

**SECTION 11: ACCEPTANCE OF AGREEMENT**

This Agreement shall be acted upon by the Board of County Commissioners within forty-five (45) days from the date this Agreement is approved in writing by the Company. When this Agreement has been approved by the County, the Agreement shall be and become a contract duly executed by and between the aforesaid County and the Company.

**SECTION 12: REPEAL OF CONFLICTING ORDINANCES**

All other ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 13: SCOPE**

This Agreement represents the entire agreement between the parties hereto concerning the subject matter hereof, and all covenants, agreements, and understandings between the parties have been merged into this written Agreement. All prior agreements, understandings and/or franchises, whether written or oral, and all negotiations and other discussions (including, without limitation, oral promises regarding the terms hereof) of the parties or their agents, related to the subject matter hereof are merged herein.

**SECTION 14: AMENDMENTS**

In the event the Company enters into a right of way agreement or other similar agreement, including, but not limited to, a franchise agreement, with another county or incorporated municipality the terms of which agreement are more favorable than the terms and conditions contained in this Agreement, the Company shall mail a copy of any such agreement to the County within thirty (30) days of execution by the other county or incorporated municipality. The County, in its sole discretion, may determine whether such terms and conditions are more favorable. If the County

determines that such terms and conditions are more favorable to the other governmental entity than the terms and conditions contained in this Agreement, the Company shall agree to amend this Agreement and offer the same terms and conditions to the County within thirty (30) days of written notice by the County that it has determined that the terms and conditions granted the other governmental entity are more favorable.

In the event the County enters into a right of way agreement or other similar agreement, including, but not limited to, a franchise agreement, with another electric public utility, the terms and conditions of which agreement are more favorable than the terms and conditions contained herein, the County shall mail a copy of any such agreement to the Company within thirty (30) days of execution by the other utility. The Company, in its sole discretion, may determine whether such terms and conditions are more favorable. If the Company determines that such terms and conditions are more favorable to the other electric public utility than the terms and conditions contained in this Agreement, the County shall agree to amend this Agreement by ordinance and offer the same terms and conditions to the Company within forty-five (45) days of written notice by the Company that it has determined that the terms and conditions granted the other electric utility are more favorable. Alternatively, the Company may terminate this Agreement and cease all payments to the County under Section 8 of this Agreement.

**SECTION 15: RIGHTS OF SUCCESSORS**

This Agreement shall be binding upon the successors and assigns of the parties hereto. Prior approval of the County is not required by the Company to sell or assign its rights in this Agreement.

**SECTION 16: PARAGRAPH HEADINGS**

The paragraph headings of this Agreement are inserted only for reference and in no way define, limit or describe the scope or intent of this Agreement nor affect its terms and provisions.

**SECTION 17: TERM**

This Agreement shall be for a period of twenty-five years and shall expire no later than November 1, 2023. This Agreement shall take effect and be in force 30 days after adoption of this Ordinance by the Board of County Commissioners.

**SECTION 18: NOTICES**

Any notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed given (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

<b>County:</b>	<b>County Manager</b> <b>Doña Ana County, New Mexico</b> <b>800 West Amador Avenue</b> <b>Las Cruces, New Mexico 88001-1202</b>
<b>Grantee:</b>	<b>El Paso Electric Company</b> <b>Vice President – New Mexico Affairs</b> <b>201 North Water</b> <b>Las Cruces, New Mexico 88001</b>

**SECTION 19: EXPIRATION**

The Company and County hereby expressly agree that only the following provision shall survive the termination or expiration of this Agreement. Upon the termination or expiration of this Agreement, if the Company shall not have acquired and accepted an extension or renewal hereof, it may remove its facilities and system within

the County or, may continue operating its facilities and system within the County, but it shall be required to obtain proper permits each time it makes additional extensions upon, over, along, across, and under the public rights-of-way within the County unless or until such time as a new right of way agreement is obtained or the system and facilities are removed or are acquired by the County through negotiation between the County and the Company.

**SECTION 20: EARLY TERMINATION CLAUSE**

The County shall have the right but shall not be obligated to terminate this Agreement by ordinance upon 360 days prior written notice by the County to the Company, at any time during the term of the Agreement that the Company is granted a base rate increase on an average unit cost basis excluding fuel of 10% or greater by the Commission and such increase results in the Company's average unit cost of electricity including fuel to be greater than 15% above the average unit cost for the preceding twelve consecutive months of electricity including fuel of all utilities, whether investor, cooperative, or publicly owned, engaged in the retail sale of electricity in New Mexico. The parties agree to utilize the records on file at the Commission, where available, in making the aforementioned calculations. In the event the County notices the Company of its intent to terminate this Agreement, the Parties agree that the Company's rights and obligations under the Public Utility Act and its certificates of public convenience and necessity granted by the Commission or otherwise granted by law shall not be impaired or otherwise affected, and the Company's obligation to pay to the County the right of way fees under paragraph 8 herein shall immediately cease.

The Company shall have the right but shall not be obligated to terminate this Agreement upon 360 days prior written notice by the Company to the County, if at any time during the term of the Agreement the County by ordinance, evidences its intent to jointly or separately, form, construct, acquire or operate an electric utility or electric utility facilities. The Company reserves the right to challenge any decision by the

County to jointly or separately form, construct, acquire or operate an electric utility or electric utility facilities. The County agrees not to act by ordinance or otherwise to jointly or separately, form, construct, acquire or operate an electric utility or electric utility facilities for thirty (30) months after September 24, 1998, the date of the final order in NMPUC Docket No. 2722.

**SECTION 21: ARBITRATION**

In the event of a dispute between Company and County in regard to the terms, provisions or application of this Agreement, Company and County agree that, prior to instituting any court action, the parties will submit the dispute to non-binding arbitration.

**SECTION 22: UTILITY PLANNING AND COORDINATION COMMITTEE**

The parties agree to establish a utility planning and coordination committee consisting of three representatives of the Company and three representatives of the County. The Committee shall be chaired by one of the representatives of the County. The Committee's responsibilities shall be to promote the coordination between the Company and the County in the expansion, extension, and modifications to the Company's utility facilities and the County's road system in order to (1) encourage the efficient and orderly expansion, extension and modification of those facilities; (2) avoid arbitrary and reasonably avoidable interference with the facilities of others; and (3) minimize the costs associated with the expansion, extension and modification of Company facilities. The parties agree to seek the participation of other interested units of government, including, but not limited to, incorporated municipalities and state and federal agencies, in the activity of the Utility Planning Coordination Committee. Nothing in this Section shall be construed or interpreted as an agreement by the parties to subject the Company to service regulation by the County or to impair or limit the jurisdiction of the Commission. All orders, rules, and regulations of the Commission and all rules, and tariffs of the Company shall govern any inconsistencies between the

actions of the Utility Planning and Coordination Committee and said orders, rules, regulations and tariffs.

Passed and approved this ninth day of March, 1999, ~~1998~~ A.D.

The County Commission of Doña Ana County, New Mexico

By: Gilbert H. Johnson  
Chairman

ATTEST:

Rita Torres  
County Clerk

Approved as to Form:

by Thomas R. Figart  
Kevin Elkins  
Attorney for  
Doña Ana County

Acceptance: The above Ordinance of the County of Doña Ana is hereby approved as to all of its terms, conditions and provisions.

DATED AT Las Cruces, New Mexico, this 28<sup>th</sup> day of October, 1998:

State of N. Mex. Co. of Doña Ana, as  
RECEPTION NO. 6526 hereby  
certify that this instrument was filed  
for recording and duly recorded on

EL PASO ELECTRIC COMPANY,  
a Texas corporation

By: James S. Haines, Jr.  
James S. Haines, Jr.  
President

MAR 10 1999

10:29 a'clock A M  
Book 270 Page 157 of the  
Records of said County,  
Rita Torres, County Clerk  
Rita Torres DEPUTY

ATTEST:

Guillermo Salvo Jr.  
Secretary

**ATTACHMENT 13**  
**SIERRA COUNTY, NEW MEXICO**

1. the name of the municipality, county, and state;

*Sierra County, New Mexico*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*November 18, 2006*

4. if franchisee or licensee, the date franchise or license expires;

*November 18, 2031*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 13.*

FRANCHISE

Book 107  
Page 2606

WHEREAS, at a regular meeting of the Board of County Commissioners within and for the County of Sierra, State of New Mexico, held on this, the 19<sup>th</sup> day of October, 2006, there was presented by the EL PASO ELECTRIC COMPANY of El Paso, Texas, a corporation organized and existing under and by virtue of the laws of the State of Texas, duly authorized to transact business in the State of New Mexico, hereinafter called the "Company", an Application for a Franchise authorizing its continued use of the public roads and highways and of the streets and alleys of unincorporated towns within the County of Sierra, for the installation and continued maintenance of pipes, poles, wires, cables, conduits, towers, transformer stations and other necessary fixtures, appliances and structures, by virtue and in accordance with the provisions of the statutes in such cases made and provided; and there having been submitted a draft of the proposed and desired Franchise; and the Board having read and carefully considered the contents thereof, and it appearing to the satisfaction of the Board that the proposed Franchise is based upon in conformity with the statutes, under the provisions of which the Board is authorized to act in the premises; and the Board being satisfied that the welfare of the citizens of Sierra County will be properly served and safeguard by the approval and granting of said Application:

NOW, THEREFORE, BE IT RESOLVED:

I. That by virtue of the power and authority in them vested by the provisions of Section 62-1-3 NMSA 1978, and Section 4-38-13 NMSA 1978, and in consideration of the sum of One Dollar (\$1.00), lawful money of the United States of America, to them in hand paid by the Company, the receipt whereof is hereby acknowledged, and other valuable considerations, the Board of County Commissioners of Sierra County,

New Mexico, hereby grants, and there is hereby granted, to the Company, its successors and assigns, for the period of twenty-five (25) years from the date hereof, a Franchise authorizing its continued use of the public roads and highways and of the streets and alleys of unincorporated towns within the aforesaid County of Sierra, as the same now exist or may be hereafter extended or such as may be hereafter created, for the installation and continued maintenance of pipes, poles, wires, cables, conduits, towers, transformer stations and other necessary fixtures, appliances and structures for the purpose of providing, furnishing, distributing and selling electricity for power, light and other useful service and elements incidental to the use of same, to the inhabitants of said county and others who may desire to contract therefore.

II. That during the life of this Franchise, the Company shall have continuous access to and right-of-way over, across and upon all such roads and streets and alleys of unincorporated towns, both above and beneath the surface, for any and every lawful purpose incident to the exercise of its powers and privileges hereunder. However the Company, understands and accepts that this Agreement in no way conveys any property interest to the Company or the Company's successors or assigns, beyond simple permission to use a County Road in the manner specified in this Agreement. The Company understands and accepts that this Agreement does not provide any guarantee or otherwise warrant the condition of the County's title to any particular easement or County Road.

The Company understands and accepts that this Agreement does not obligate the County in any way with respect to maintenance of the County Road, or maintaining the location of the County Road, or with preserving the Company's, or the Company's successors or assigns', use of the County Road.

III. That the Company shall be, and hereby is, authorized to do and perform all things necessary and proper to be done and performed in the exercise of its powers and privileges hereunder, including the making of excavations, and to erect, maintain and operate its poles, wires, and other facilities, and including the privilege to extend the same as necessary.

IV. That all installation work shall be performed with reasonable diligence, and that the Company shall within a reasonable time restore roads, streets and alleys whereon excavations are made, to their original condition, as nearly as possible; such work to be subject to supervision by the Board or its duly authorized agent. PROVIDED, that in the laying of conduits and the installation of wires or other structures, and/or in the repairing of same, the County of Sierra shall be held harmless against any claim for damages resulting from excavations for conduits or other structural activities; and by its acceptance of this Franchise, the Company assumes liability for or on account of any claim for damages or injury to person or property which may be attributable to negligence by the Company or its employees incident to the installation or operation of any of its facilities.

That the Company's installation work shall conform to the following conditions:

- a. The Company agrees to repair and replace the road surface disturbed by the project to at least the quality of the surface prior to the project.
- b. The Company agrees to adequately compact and smooth the road surface immediately upon completion of the project.
- c. The Company agrees to conduct the project in a manner so that one (1) lane of through-traffic is available on the roadway at all times, unless advance special permission is obtained for complete closure.
- d. The Company agrees to adequately mark the project and notify the public using the affected roadway of work in progress.

- e. The Company agrees to bury any cable or other infrastructure a minimum depth of twenty-four inches (24").
- f. The Company agrees to put of barriers and warning devices and to light the work in progress so as to warn the public using the affected roadway of any danger.

V. That the Company shall have, and is hereby granted, the exclusive right to install, operate and control all poles, wires, meters, and other appliances, appurtenances and facilities installed, or structures erected and owned by it. The Company will adhere to all New Mexico Public Regulation Commission ("NMPRC") rules, regulations and procedures regarding provision of electric services to customers. Subject to NMPRC rules, regulations and procedures, in the case of refusal or failure on the part of any customer to pay the Company proper charges for electricity consumed or to observe reasonable rules, regulations and procedures established by the Company, the Company shall have the right to disconnect its service and wires to the premises of such customer and to remove all facilities furnished or owned by the Company.

VI. That the Company shall also have, and is hereby granted the right to trim branches from trees along its pole lines whenever same interfere with or impair the transmission and delivery of electric current.

VII. That the acceptance of this Franchise, evidenced by the signature of the Company at the foot hereof, is hereby made an essential condition to the granting hereof, and such acceptance thus verified shall be and become the acceptance by the Company, its successors and assigns, of all conditions, reservations and restrictions herein set forth; and thereupon this Franchise shall be and become a contract by and

between the County of Sierra, State of New Mexico, acting by and through its Board of County Commissioners, thereunto duly authorized by statute, and the Company.

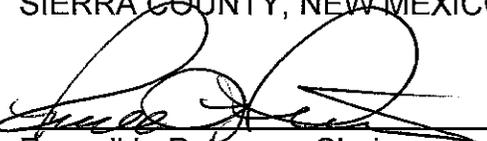
VIII. That this Franchise and all of its provisions, privileges, reservations and restrictions, shall enure, extend to, and be binding upon the successors and assigns of the Company.

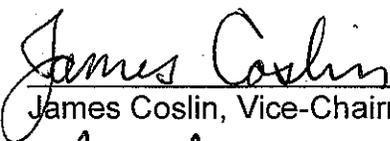
IX. That if any section, paragraph, subdivision, clause, phrase, or provision of this Franchise shall be adjudged invalid or unconstitutional, same shall not affect the validity of this Franchise as a whole, or any part or provision thereof other than such part decided to be invalid or unconstitutional.

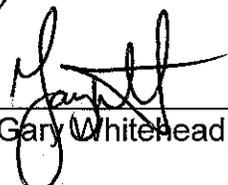
X. That this Franchise shall be duly filed and recorded as a part of the records of the Board of County Commissioners of Sierra County and in the records in the office of the County Clerk of said County; and when so filed and recorded, same shall be delivered to the Company or to its duly authorized agent or attorney.

Approved at Truth or Consequences, Sierra County, New Mexico, this 19<sup>th</sup> day of October, 2006.

BOARD OF COUNTY COMMISSIONERS OF  
SIERRA COUNTY, NEW MEXICO

By:   
Russell L. Peterson, Chairman

  
James Coslin, Vice-Chairman

  
Gary Whitehead, Member

  
ATTEST  
  
County Clerk



**ATTACHMENT 14**  
**TOWN OF MESILLA, NEW MEXICO**

1. the name of the municipality, county, and state;

*Town of Mesilla, New Mexico*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*August 8, 2012*

4. if franchisee or licensee, the date franchise or license expires;

*August 8, 2037*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 14.*

Nora L. Barraza  
Mayor

Jesus M. Caro, Jr  
Mayor Pro Tem



Sam Bernal  
Trustee

Carlos Arzabal  
Trustee

Linda L. Flores  
Trustee

## Section 1. Grant

There is hereby granted to El Paso Electric Company (the "Company"), a Texas corporation authorized to transact business in the State of New Mexico, its legal representatives, successors, and assigns, for the term of 25 years from the effective date of this Ordinance, a Franchise, pursuant to Section 3-42-1 et seq. NMSA 1978, to construct, reconstruct, repair, maintain, use and operate in, over or under the present and future streets and extensions thereof, alleys, public ways, parks, and public places of the Town of Mesilla, New Mexico (the "Town") facilities for the transmission and distribution of electrical energy now installed and in operation or such facilities as herein described as may be hereafter installed and operated in the Town for the use of the Town and the inhabitants thereof and properties therein, with all usual and customary appurtenances for such transmission and distribution and privileges to promote, maintain, construct, reconstruct, build, equip, conduct, or otherwise establish and operate in said Town, works or systems and plants to generate, manufacture, use store, sell, distribute, convey electrical energy or otherwise establish, conduct, serve, supply, and furnish the inhabitants of said Town, whenever the inhabitants of said Town desire to contract therefore, with electrical energy for light, heat, power and other useful service and elements and materials necessarily incidental to the use of same.

Said Company is hereby granted passage, right-of-way and the right to continue to use and occupy, and to use and occupy during the term of this Franchise, every and any and all streets, avenues, alleys, highways, public ways, sidewalks, bridges, and other public structures and public places and public grounds of said Town, both above and beneath the surface of said Town and said streets, avenues, alleys, highways, public ways, sidewalks, bridges and other public structures and public places and public grounds of said Town as may now exist or may be hereafter extended or created within the territorial and jurisdictional limits of said Town, or as said territorial and jurisdictional limits of said Town may be extended hereafter, for the purpose of carrying out the Company's business as is authorized by the Town pursuant to the terms of this Franchise.

## Section 2. Police Power

Work done in connection with the construction, repair, maintenance and operation of such facilities is subject to the continuing police power of the Town, and the Company shall comply with all present and future laws, ordinances and regulations, except such as conflicts with any provision hereof lawfully surrendering the Town's authority.

The Town shall have power at any time to require the Company to remove and abate at its own expense any installation or structure that is dangerous to life or property and in case the Company, after notice fails or refuses to act within a reasonable amount of time, the Town shall have the power to remove or abate the same at the expense of the Company, all without compensation or liability for damages to the Company.

The Town shall have the power at any time to require the Company to change the route and position of its poles, lines conduits or other construction at Company's expense when the Town Board of Trustees ("the BOT") shall find, by resolution, that such change is necessary in the closing, opening or relocation of streets or alleys, bridges, public ways, or water or sewer lines, the changing of grade of streets or alleys, the construction and maintenance of streets (including re-routing, improving, or widening), bridges, public ways, parks and public improvements, and under other conditions, which the BOT shall reasonably find necessary under the lawful exercise of its police power; provided, however the Company shall be entitled to be paid for its costs and expenses of any relocation, raising or lowering of its poles, lines, conduits or other construction required by the Town if (i) such costs and expenses are directly reimbursable or payable to the Company or to the Town by the State of New Mexico, the United States, or any agency or subdivision of either, by any other party, or (ii) such move is for the benefit or convenience of or at the request of a third party, including a private developer or development. In such case, the third party, including a private developer or development, shall be solely responsible for the payment of same to the Company. The Town shall not be responsible for any such payment. The Town shall not be liable to the Company for any damages to poles, lines, conduits or other construction occurring in the change of the grade of streets, alleys, or public places after notice to the Company. The Town shall use its best reasonable efforts to consult and confer with the Company before requiring any such relocation, raising or lowering, with a view toward accomplishing the result reasonably and economically.

The Company shall promptly restore to their original condition as before working thereon as nearly as possible, and to the reasonable satisfaction of the Mayor and BOT of the Town, all places excavated by it or damaged by it. The Company shall not tear up, disturb, or excavate any place at any time without first obtaining a permit to do so and paying a permit as required by the Town, but such permit shall not be unreasonably withheld if the proposed excavation is necessary and in accordance with this Franchise and Town ordinance.

### Section 3. Underground Facilities

The Company agrees to promote and encourage the use of underground facilities in new subdivisions where the differential costs of underground versus overhead distribution is agreeable to both the Company and the property owner. If an adjoining subdivision is served from underground facilities, reasonable efforts will be made to design, operate and maintain these facilities for future expansion to other subdivisions in the immediate areas.

### Section 4. Interference with Public or Private Property

All poles placed within the Town and all excavations, disturbances, or other construction in the streets, alleys, public ways, or public places shall be done so as to minimize any interference with the use of streets, alleys, public ways, and public places and with the use of private property, in accordance with any direction given by or under the authority of the BOT under the police and regulatory power of the Town. Future installations of the Company shall not conflict with then existing

gas pipes, water pipes, telephone lines or conduits, or sewers, except with the consent of the Town. Nothing herein shall be construed in any way to restrict or limit the Company's right of eminent domain as to private property.

#### Section 5. Trimming Trees

The Company may trim trees upon and overhanging the streets, alleys, public ways, sidewalks, and public places of the Town so as to prevent the branches of such trees from coming into contact with the wires or cables of the Company. When so ordered by the Town, such trimming shall be done under the supervision and direction of any Town official to whom such duty may be delegated. The BOT may require pole lines that are directly adjacent to the public parks to be relocated or removed to adjacent alleys.

#### Section 6. Wire Changes to Permit Moving of Structures

The Company on request of any person shall within a reasonable period of time remove, rearrange, or raise or lower its aerial cables or wires temporarily to permit the moving of houses, machinery, or other objects or structures. The expense of such temporary removal, rearrangement, raising or lowering of the aerial cables or wires, shall be paid by the benefited party or parties (other than the Town), and the Company may require such payment in advance. The Company shall be given not less than 48 hours advance notice to arrange for such temporary aerial cables or wire changes.

#### Section 7. Furnishing Service

The Company shall furnish service under approved rules and regulations to any person, firm or corporation which shall demand service within the Town, upon such terms and conditions as may be reasonably required by the Company, subject to regulation as provided in Section 10 of this Franchise, and shall make connections therefore on demand, without unreasonable delay, provided that the extension of service demanded is not prohibited by State or Federal law.

The Company shall have the right to operate and control all meters, wires, appliances and appurtenances owned by the Company. In case of refusal or failure on the part of any customer to pay the Company proper charges for electricity consumed and other related services, or to observe approved rules and regulations established by the Company, the Company shall have the right to disconnect its service and wires to the premises of such customer and to remove all facilities furnished and owned by the Company.

#### Section 8. Other Utility Installations

The Town reserves the right to install and permit to be installed, gas, water, other utility lines and cable television lines and facilities and permit to be done any work that may be deemed reasonably necessary or proper by the BOT in, across, over or under any street, alley or public place occupied by the Company and to change any curb or sidewalk or the grade of any street. In doing or permitting such reasonable work, the Town shall not be liable to the Company for any damage so occasioned. However, the Town shall not require the Company (except as provided in Section 2) to move its line

entirely from any street, alley or public place. If the Town shall require the Company to adapt or conform its lines or in any way or manner to alter, relocate or change its property to enable any other corporation or person except the Town to use with greater convenience such street, alley, or public place, the Company shall not be bound to make any such changes until such other corporation or person shall have undertaken with solvent bond to reimburse the Company for any loss and relocation of the Company property; provided, however, that the Town shall not be liable for such reimbursement.

#### Section 9. Indemnification

The Company shall indemnify and save the Town, its governing body, officers, agents, and employees harmless from and against all claims, demands, liabilities, or causes of action (including the costs, expenses, and reasonable attorney's fees on account thereof) against the Town for injury to persons or property occasioned by or arising out of the construction, reconstruction, maintenance, repair or operation of its system or by the conduct of its business in the Town.

#### Section 10. A Quality of System and Service

The Company shall construct, install and maintain its system with economical and up-to-date apparatus and equipment in reasonable operating condition at all normal times and in accordance with industry standard engineering practices. The service shall be sufficient to meet all reasonable demands without undue interruption for fluctuation, except when interrupted, prevented, or impaired by fire, strikes, riots, war, storms, floods, State or Federal restrictions, or any other occurrences beyond the control of the Company in any of which events the Company shall do all things reasonably within its power to restore normal, efficient, and economical service, but shall not be liable for claims, demands, causes of action or damages occasioned by interruption or fluctuations so caused. It is understood and agreed that the settlement of strikes, walkouts, lockouts, or other labor disputes shall be entirely within the discretion of the Company. The Company shall use reasonable means to limit inconvenience to the Town and its inhabitants or damage or injury to Town's property or property of its inhabitants during the course of work done in connection with the construction, repair, maintenance and operation of such facilities.

#### Section 11. Regulation

It is recognized that the rates, operations and services of the Company are regulated pursuant to the Public Utility Act (the "Act"), Chapter 62, New Mexico statutes annotated, 1978 Compilation, as the same may be amended from time to time. In the event of any conflict between any of the provisions of this Franchise and the Act, the Act shall govern.

#### Section 12. Reports

The Town shall have the right to be kept informed as to the operation and services of the Company within the incorporated limits of the Town. The Company will furnish such pertinent information as may from time to time be reasonably required by the Town, including, but not limited, copies of the reports and information furnished to the Commission and the original records of the Company related

to its operations within the incorporated limits of the Town shall be opened to inspection by the Town at any reasonable time. In addition, upon written request, the Company shall provide to the Town copies of maps or other reports showing the location of the Company's systems, facilities, equipment and infrastructure within the Town's limits or immediately adjacent to the Town's limits *provided that* such maps or reports can be produced from the Company's records existing at the time of the request without unreasonable burden or expense. In the event the requested copies of maps or other reports address or implicate information concerning critical energy infrastructure or critical infrastructure, as those terms are defined by 18 C.F.R. § 388.113, EPE agrees to provide the requested information to the Town only upon and pursuant to the terms of a duly executed confidentiality agreement between the Company and the Town as provided by the Company. Further, upon request, the Company shall provide to the Town copies of deeds, leases or easements relating to the Company's facilities within the Town's limits or immediately adjacent to the Town's limits.

### Section 13. Compensation

As full compensation for the rights herein granted, the Company will pay the Town quarterly during the life of its Franchise, a sum of money equal to 2% of the gross receipts for the preceding calendar quarter received by the Company from the sale of electric energy within the corporate limits of the Town including any extension of those Town limits from time to time excluding, however, the gross receipts from the retail sale of electric energy to the Town and all municipal, county, state and federal government agencies and institutions. Such gross receipts to consist of the total amount received from users of electricity for light, heat and power within the corporate limits of the Town under the Company's rates in existence at the time of payment, excepting therefrom such receipts for electricity furnished the Town and all municipal, county, state and Federal government agencies and institutions. Said payments shall be based on gross receipts beginning on meter readings on and after August 1, 2012. Such sums shall be payable on or after the expiration of thirty (30) days from and after the first day of April, July, October and January of each year from and after and during all the time this provision shall remain in force and effect.

In the event that 2% of the gross receipts attributable to the Town during any calendar quarter equals less than \$6,350.00, the Company will pay the Town as a minimum payment for the franchise granted herein, the sum of \$6,350.00 for such quarter, said payment to be in lieu of and not in addition to the payment which would otherwise be made under the 2% of gross receipts formula.

Upon written request, the Company shall provide to the Town a report showing in reasonable detail the calculation of the monthly franchise fee. If the Town has a reasonable basis to question the accuracy of such calculation, the Company, upon written request from the Town, shall make available to the Town for inspection the books and records supporting such calculation or reasonably related thereto. Any such inspection shall be conducted at the Town's sole expense during regular business hours after reasonable advance notice.

The consideration set forth above in this Section shall be in lieu of any other tax or charge, by whatever name called, for the privileges granted in this Franchise. The Town will not assess against the Company any additional street rental charge, rental charge, pole tax, inspection tax, or charge for the occupancy or use of the places to which this Franchise relates under Section 1. This does not bar the Town from assessing against the Company or its property ad valorem taxes levied on property generally, fees charged generally to the public for the services of departments or agencies of the Town, excise taxes levied generally, or other taxes, fees and charges which are general and not compensation for the privileges herein granted.

Should the Town not have the legal power to agree that payment of the foregoing consideration shall be in lieu of any of the additional taxes or charges as above set forth, the Town will apply so much of such payments set forth in this Section as may be necessary to the satisfaction of the Company's obligation to pay the additional tax charged here and agreed to be waived.

The payment or rendition of the consideration provided in this Grant shall not, except as otherwise provided herein, in any way limit any of the privileges or rights of the Town which it may now or hereafter have under the laws of the State of New Mexico.

The provisions of Section 12 shall not be construed to excuse the Company from collecting from its electric service customers and paying over to the Town or the State for the benefit of the Town additional municipal sales tax levied in the event said Town or State shall, at any time during the term of this Franchise, enact such additional municipal sales tax.

Upon four months written notice to the Company, but no earlier than the 1-year anniversary of the effective date of the Ordinance, the Town may request renegotiation of the rate of compensation payable under the terms hereof to an amount no greater than a sum of money equal to 3% of the gross receipts for the preceding calendar quarter to be effective, upon agreement of the parties, for the remainder of the term of this franchise agreement. Further, upon a change in the laws of the State of New Mexico altering the method for calculating the taxable gross receipts for franchise fees, either party hereto may request renegotiation of the minimum payment payable under the terms hereof. In such event, the parties agree to conduct such negotiations in good faith with the goal of establishing a fair and equitable payment according to the prevailing circumstances at the time. However, if such good faith negotiation fails to result in an agreement to amend the payment provisions of this Franchise Agreement the continued effectiveness of this Franchise Agreement as presently agreed to and as evidenced hereby shall be in no way diminished and the terms hereof shall continue to govern the relationship between the parties for the remainder of the term herein recited.

#### Section 14. Acceptance

This Franchise shall not take effect unless, within 30 days after its passage and approval, the Company shall file its written acceptance with the Town clerk. Upon such acceptance this Franchise shall become effective after notice pursuant to Section 3-42-1 et seq. NMSA 1978 and filing with the Commission.

#### Section 15. Rights of Successors

This Franchise Ordinance shall be binding upon the legal representatives, successors, lessees and assigns of the parties hereto.

#### Section 16. Invalidation of Provision

If any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be declared or adjudged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part of the provisions hereof, other than the part so determined to be invalid or unconstitutional.

Section 17. Attorney's Fees and Costs

In the event of breach of this agreement by either party hereto, the prevailing party shall enjoy all rights and remedies allowed in law or equity and shall recover reasonable attorneys' fees in any suit from the breach or enforcement of this agreement.

PASSED AND APPROVED this 9<sup>th</sup> day of July, 2012.

Aye - Trustee Flores  
Aye - Trustee Bernal  
Aye - Mayor Pro-Tem Arzabal  
Absent - Trustee Caro

APPROVED:

Nora L. Barraza  
Nora L. Barraza, Mayor

ATTEST BY:

[Signature]  
Nick Eckert, Town Clerk

APPROVED AS TO FORM ONLY:

[Signature]  
Town Attorney

ACCEPTED BY EL PASO ELECTRIC COMPANY ON THIS 1 DAY OF October, 2012:

By: [Signature]  
Name: Thomas V. Shockley  
Title: Chief Executive Officer

[Signature]  
**APPROVED AS TO FORM**  
OFFICE OF THE GENERAL COUNSEL LN 09.28.12

**ATTACHMENT 15**  
**VILLAGE OF HATCH, NEW MEXICO**

1. the name of the municipality, county, and state;

*Village of Hatch, New Mexico*

2. the interest of the applicant or franchisee or licensee;

*Franchisee*

3. if franchisee or licensee, the date franchise or license was acquired;

*October 11, 2018*

4. if franchisee or licensee, the date franchise or license expires;

*October 11, 2043*

5. a copy of state-issued certificate of public convenience and necessity;

*N/A*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*A copy of the franchise agreement can be found in this Attachment 15.*



# VILLAGE OF HATCH

## ORDINANCE NO. 391

**AN ORDINANCE GRANTING TO EL PASO ELECTRIC COMPANY, A TEXAS CORPORATION, ITS LEGAL REPRESENTATIVES, SUCCESSORS, LESSEES, AND ASSIGNS CERTAIN POWERS, LICENSES, RIGHTS-OF-WAY, PRIVILEGES, AND FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN IN THE VILLAGE OF HATCH, NEW MEXICO, AS NOW OR HEREAFTER CONSTITUTED, ITS PIPES, POLES, WIRES, CABLES, CONDUITS, TOWERS, TRANSFORMERS, STATIONS, AND OTHER FIXTURES, APPLIANCES, AND STRUCTURES FOR THE SALE, PROVISION, FURNISHING, AND DISTRIBUTION OF ELECTRIC POWER OUT OF AND THROUGH THE VILLAGE OF HATCH TO ITS INHABITANTS AND OTHERS, INCLUDING CUSTOMERS INSIDE, BEYOND, AND OUTSIDE THE LIMITS OF THE VILLAGE OF HATCH; TO USE THE PUBLIC RIGHTS-OF-WAY, STREETS, ALLEYS, AND HIGHWAYS IN THE VILLAGE OF HATCH FOR A PERIOD OF TWENTY-FIVE (25) YEARS; AND PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS HEREIN MENTIONED.**

**WHEREAS**, at a regular meeting of the Board of Trustees of the VILLAGE OF HATCH, State of New Mexico, hereinafter called the "Board", held on the 11<sup>th</sup> day of September, 2018, there was presented by EL PASO ELECTRIC COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Texas, duly authorized to transact business in the State of New Mexico, hereinafter called the "Company", an application for a franchise authorizing the use of the public rights-of-way, highways, streets, and alleys within the Village of Hatch for the Company's pipes, poles, wires, cables, conduits, towers, transformer stations, and other fixtures, appliances, and structures, under and by virtue of the provisions of the statutes of the State of New Mexico in such cases made and provided, for the period of twenty-five (25) years from and after the date hereof, and there having been submitted a draft of the proposed and desired franchise, and the Board having read and carefully considered the contents thereof and it appearing to the satisfaction of the Board that the proposed franchise is based upon and in conformity with the statutes under the provisions of which the Board is authorized to act in the premises; and the Board being satisfied that the welfare of the citizens of the Village of Hatch will be properly served and safeguarded by the approval and granting of said application,

**NOW, THEREFORE, BE IT ORDAINED:**

**Section 1. Grant of Authority**

That by the virtue of the power and authority in it vested by the provisions of New Mexico Statutes Annotated 1978 (NMSA 1978), Section 3-42-1, and in consideration of the amounts listed in Section 8 of this Franchise, the Board hereby grants, and there is hereby granted to the Company, its successors, and assigns, for the period of twenty-five (25) years from date a franchise authorizing its use of the public rights-of-way, highways, streets,

- a. alleys, sidewalks, bridges, parks, public utility easements, and public places (collectively, "public places") within the Village of Hatch, as the same now exist or may be hereafter extended or such as may be hereafter created, for (i) the construction, installation, extensions, reconstructions, repair, access, use, operation, and maintenance of electric power lines and facilities with all necessary or desirable appurtenances (including pipes, poles, wires, cables, underground conduits, towers, transformers, substations, and related telephone and communication lines for the transmission and distribution of electric energy for the use of the Village of Hatch, its inhabitants thereof, and properties therein and persons, entities, and inhabitants beyond the limits thereof.
- b. That during the life of this Franchise, the Company shall have continuous access to and right-of-way over, across, and upon all such public places of the Village of Hatch, both above and beneath the surface, for any and every lawful purpose incident to the exercise of its powers and privileges hereunder. If the Village of Hatch abandons any public places in which the Company has facilities, such abandonment shall be conditioned on the Company's right to maintain its use of the former public places and on the obligation of the party to whom the public place is abandoned to reimburse the Company for all removal or relocation expenses if the Company agrees to the removal or relocation of its facilities following abandonment of the public place.
- c. That the Company shall be, and hereby is, authorized to do and perform all things necessary and proper to be done and performed in the exercise of its powers and privileges hereunder, including the making of excavations and to erect, maintain, and operate its poles, wires, and other facilities, including the privilege to extend the same as necessary.

**Section 2. Police Power**

- a. Work done in connection with the construction, repair, maintenance, and operation

of such facilities is subject to the continuing police power of the Village of Hatch, and the Company shall comply with all present and future laws, ordinances, and regulations, except such as conflicts with any provisions hereof lawfully surrendering the Village of Hatch's authority.

b. In the event of any change by the Village of Hatch in said public place or in the grades or drains thereof, all affected pipes, poles, wires, cables, conduits, towers, transformers, stations, fixtures, appliances, and other structures ("Improvements") related to the distribution of electricity of the Company shall be reset, relocated, or changed by the Company at its expense to a location mutually acceptable to the Village of Hatch and the Company. Provided, however, the Company shall be entitled to be paid for its costs and expense of any relocation of its Improvements (including the raising or lowering of its wires or cables) required by the Village of Hatch if (i) such expenses or costs are reimbursable or payable to the Company or to the Village of Hatch by the State of New Mexico, the United States, or any agency or subdivision of either, or by any other party, whether directly or indirectly; (ii) such relocation is for the benefit and convenience of or at the request of a third party, including a private developer or development; (iii) that the Village of Hatch makes such a change affecting the same Improvements twice in any one year period; and (iv) the request for relocation relates to Improvements related to the transmission of electricity. Before the Village of Hatch shall authorize any such change requiring the resetting, relocation, or changing of any of said Improvements by the Company, notice at least sixty (60) days in advance of the commencement of the contemplated changes shall be given to the Company in writing so that it may have sufficient time within which to make recommendations intended to minimize its cost of resetting, relocating, or changing its facilities. The Village of Hatch agrees that it will use its good faith and best efforts to cooperate with the Company in attempting to implement the Company's recommendations. Any relocation of Improvements is subject to the applicable laws and regulations (including but not limited to any laws or regulations that may or may not require an amendment to a certificate of convenience and necessity) and prudent utility practices as determined by the Company. Notwithstanding the foregoing, the Company shall be entitled to reimbursement of costs for any legal expenses for legal proceedings or regulatory approvals required for the relocation of Improvements.

c. That all installation work shall be performed with reasonable diligence, and that the

Company shall within a reasonable time restore public places whereon excavations are made to their condition prior to the work, as nearly as possible, with such work subject to supervision by the Board or its duly authorized agent. In the event that any installation work to be placed along, across, or under any public place is anticipated by the Company to obstruct vehicle traffic for any period of time in excess of one hour, the Company in non-emergency situations shall endeavor to notify the Village of Hatch at least twenty-four (24) hours in advance and shall exercise reasonable caution in warning motorists of the work in progress.

**Section 3. Indemnification**

Subject to the applicable laws and regulations of the State of New Mexico or customer rules of service, the Company shall indemnify and save harmless the Village of Hatch, its governing body, officers, agents, and employees from and against any and all claims or obligations caused by any acts of negligence of the Company, its officers, agents, or employees, contractors, or subcontractors in connection with the installation, repair, operation, or maintenance of any of the Company's facilities or in any work done as authorized or required by this Franchise. The Village of Hatch shall give prompt notice to the Company of any claim or suit arising under this Franchise and the Company or its insurer shall have the option to compromise and defend the same to the extent of their own interest. Nothing in this section shall be construed to depart from the present or future law of New Mexico concerning contribution among or between joint tortfeasors.

**Section 4. Furnishing Service**

- a. The Company shall furnish service under approved rules and regulations to any person, firm, entity, or corporation that shall demand service within the Village of Hatch, upon such terms and conditions as may be reasonably required by the Company, subject to regulation of Section 10 of this Franchise, and shall make connections therefore on demand, without unreasonable delay, provided that the extension of service demanded is not prohibited by state or federal law.
- b. That the Company shall have, and is hereby granted, the exclusive right to install, operate, and control all poles, wires, meters, and other appliances, appurtenances, and facilities installed or structures erected and owned by it; and in case of failure or refusal by any customer to pay proper charges fixed by the Company for electricity furnished to and consumed by any such customer or if any such customer shall fail or refuse to observe the established rules and regulations of the Company, in either of such events, the Company shall be, and it hereby is, authorized and empowered to discontinue service and to disconnect and remove wires connecting

with the premises of the customer, together with all meters and other materials, appliances, and appurtenances furnished and owned by the Company, and to take any other action permitted or authorized by the rules and regulations of the New Mexico Public Regulation Commission.

**Section 5. Trimming Trees**

That the Company shall also have, and is hereby granted, the right to trim branches from vegetation, including trees, along its pole lines or facilities whenever same interfere with or may potentially impair the transmission or distribution and delivery of electric current.

**Section 6. Acceptance**

That the acceptance of this Franchise, evidenced by the written acceptance of the Company within thirty (30) days of the this ordinance becoming effective in accordance with NMSA 1978, Section 3-42-1, is hereby made an essential condition to the granting hereof, and such acceptance thus verified shall be and become the acceptance by the Company, its successors, and assigns, of all conditions, reservations, and restrictions herein set forth; and thereupon, this Franchise shall be and become a contract by and between the Village of Hatch, State of New Mexico, acting by and through its Board, thereunto duly authorized by statute, and the Company.

**Section 7. Non-Exclusivity**

- a. Subject to the laws of the State of New Mexico, this Franchise shall be non-exclusive with and additional to any franchise heretofore granted and now existing with any other agency or company engaged in the distribution and sale of electrical energy and power in the Village of Hatch, New Mexico. The Village of Hatch, in granting this Franchise, surrenders no privileges or rights that it may have of owning or installing any system of light, heat, power, or communication and furnishing the same to the Village of Hatch and the inhabitants thereof.
- b. The Village of Hatch reserves the right to install and permit to be installed, gas, water, other utility lines, cable television lines, fiber optic lines, and facilities and permits to be done any work that may be deemed necessary or proper by the Board in, across, over, or under any public place occupied by the Company and to change any curb or sidewalk or the grade of any street. However, such installation shall not interfere with the operations or assets of the Company or violate safety standards and the Village of Hatch shall not require the Company to allow others use of Company's assets without prior express written permission of the Company. In doing or permitting such reasonable work, the Village of Hatch shall not be liable to

the Company for any damage so occasioned. However, the Village of Hatch shall not require the Company, except as provided in Section 2 of this Franchise, to move its line entirely from any public place. If the Village of Hatch shall require the Company to adapt or conform its lines or in any way or manner to alter, relocate, or change its property to enable any other corporation or person except the Village to use with greater convenience such street, alley, or public place, the Company shall not be bound to make any such changes until such other corporation or person shall have undertaken with solvent bond to reimburse the Company for any loss and relocation of the Company property; provided, however, that the City shall not be liable for such reimbursement.

**Section 8. Compensation**

- a. As full compensation for the rights herein granted, the Company will pay the Village of Hatch quarterly during the life of this Franchise, a sum of money equal to three percent (3%) of the quarterly gross revenues, excluding revenues from the Village of Hatch or its departments, and all municipal, county, state and Federal government agencies and institutions, including public school districts, received by the Company, its successors, lessees and assigns, from the sale of electric energy within the limits of the Village of Hatch including any extension of those limits. Said payments shall be based on gross receipts from meter readings taken on or after the first billing cycle of the first calendar month following sixty (60) days after the date of Acceptance as described in Section 6 of this Franchise. Such sums shall be payable on the fifteenth (15<sup>th</sup>) day of February, fifteenth (15<sup>th</sup>) day of May, fifteenth (15<sup>th</sup>) day of August, and fifteenth (15<sup>th</sup>) day of November each year or the following business day if the fifteenth (15<sup>th</sup>) day is a weekend or legal holiday following the date with respect to which sum shall be payable. Said payments shall be representative of the reasonable actual expenses incurred in the granting of this Franchise.
- b. The consideration set forth above in this section shall be in lieu of any other tax, fee, or charge, by whatever name called, for the privileges granted in this Franchise. The Village of Hatch shall not assess against the Company any additional street rental charge, pole tax, inspection tax, or charge for the occupancy or use of the places to which this Franchise relates under Section 1, or tax on this Franchise as property. This does not bar the Village of Hatch from assessing against the Company or its property ad valorem taxes levied on property generally, fees charged generally

to the public for the services of departments or agencies of the Village of Hatch, excise taxes levied generally, or other taxes, fees, and charges that are general and not compensation for the privileges herein granted.

- c. Should the Village of Hatch not have the legal power to agree that payment of the foregoing consideration shall be in lieu of any of the additional taxes or charges as above set forth, the Village of Hatch will apply so much of such payments set forth in this section as may be necessary to the satisfaction of the Company's obligation to pay the additional tax charged here and agreed to be waived.
- d. The provisions of this section shall not be construed to excuse the Company from collecting from its electric service customers and paying over to the Village of Hatch or the State of New Mexico for the benefit of the Village of Hatch additional applicable city sales tax levied in the event the Village of Hatch or the State of New Mexico shall, at any time during the term of this Franchise, enact such additional sales tax.
- e. The Village of Hatch shall notify the Company (Attention: Tax Department) in writing of any changes in the boundaries of the Village of Hatch within thirty (30) days of any annexation, deannexation, extension, or contraction of boundaries becoming effective. The notice shall provide a description of the new and former boundaries and provide the Company copies of all relevant ordinances and maps. The Company shall have no obligation to calculate, collect, or pay the franchise fee attributable to any newly extended boundaries until at least sixty (60) days have elapsed from the Company's receipt of such notice.

**Section 9. Dispute Resolution**

- a. Resolution of any dispute arising under this Franchise between the Village of Hatch and the Company shall first be attempted by submitting the dispute to mediation. The dispute shall be submitted to mediation upon the written demand of either the Village of Hatch or the Company. Within thirty (30) calendar days following demand, the mediation shall be held in Doña Ana County, New Mexico, at the location designated by the party demanding the mediation. Mediation of any dispute shall be a condition precedent to filing a lawsuit, except that nothing herein shall preclude a party from seeking a mandatory or prohibitive injunction, or equitable relief from any court of competent jurisdiction to enforce or maintain the status

quo pending mediation of any dispute. If mediation is unsuccessful, either party may bring suit to enforce the terms of this Ordinance in the courts of Doña Ana County, New Mexico.

- b. Failure by the Village of Hatch or the Company to enforce rights under this Franchise does not constitute a waiver of the rights. Following unsuccessful resolution of the dispute under this section and after reasonable notice and opportunity to be heard, and a reasonable time for correcting any violation of this Franchise, the Village of Hatch Board of Trustees may forfeit this Franchise if the Company fails to perform its obligations under this Franchise.
- c. If court proceedings are instituted to determine the legality of such forfeiture and the Company does not prevail, the Company will pay the reasonable expenses incurred by the Village of Hatch in connection with such litigation. If the Company does prevail, the Village of Hatch will pay the reasonable expenses incurred by the Company in connection with such litigation. In the absence of agreement between the Village of Hatch and the Company, the reasonableness of any litigation expenses pursuant to this section will be determined by an appropriate court of law.

#### **Section 10. Regulation**

It is recognized that the rates, operations, and services of the Company are regulated pursuant to the Public Utility Act (“Act”), Chapter 62, New Mexico Statutes Annotated, 1978 Compilation, as the same may be amended from time to time. In the event of any conflict between any of the provisions of this Franchise and the Act, the Act shall govern.

#### **Section 11. Successors and Assigns**

That this Franchise and all of its provisions, privileges, reservations, and restrictions, shall inure, extend to, and be binding upon the successors and assigns of the Company.

#### **Section 12. Supersedes Previous Ordinances or Agreements**

This Franchise shall supersede any and all other franchises granted by the Village of Hatch to the Company, its predecessors, and assigns.

#### **Section 13. Invalidation Provisions**

That if any section, paragraph, subdivision, clause, phrase, or provision of this Franchise shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise as a

whole or any part or provision thereof other than such part decided to be invalid or unconstitutional.

**Section 14.** Applicable Laws

This Franchise is subject to and shall be governed by the applicable laws of the State of New Mexico.

**Section 15.** Recording

That this Franchise shall be duly filed and recorded as a part of the ordinance records of the Board of Trustees of the Village of Hatch, and in the records of the Municipal Clerk of the Village of Hatch.

[SIGNATURES AND ACCEPTANCE BEGIN ON NEXT PAGE]

PASSED, APPROVED, AND ADOPTED this 11<sup>th</sup> day of September, 2018.

*[Signature]*  
Andy Nunez, Mayor

ATTEST:

*[Signature]*  
Elizabeth J. Porras, Deputy Clerk

VOTE: Trustee Crist Aye  
Trustee Martinez Aye  
Trustee Torres Aye  
Trustee Whitlock Aye

Moved by: Trustee Martinez

Seconded by: Trustee Torres

ACCEPTANCE

The Franchise granted by the Village of Hatch is hereby accepted by the El Paso Electric Company on this 2<sup>nd</sup> day of November, 2018.

EL PASO ELECTRIC COMPANY

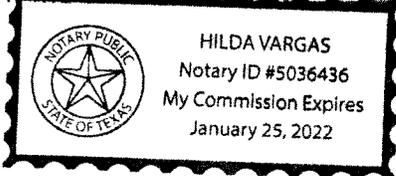
By: *[Signature]*  
Mary E. Kipp  
President and Chief Executive Officer

STATE OF TEXAS §  
COUNTY OF EL PASO §

This instrument was acknowledged before me this 2<sup>nd</sup> day of November, 2018, by Mary E. Kipp, President and Chief Executive Officer of El Paso Electric Company, a Texas corporation, on behalf of said corporation.

*[Signature]*  
Notary Public in and for the

APPROVED AS TO FORM  
OFFICE OF THE GENERAL COUNSEL *[Signature]*



**ATTACHMENT 16  
FCC AND EPA ITEMS**

1. the name of the municipality, county, and state;

N/A

2. the interest of the applicant or franchisee or licensee;

N/A

3. if franchisee or licensee, the date franchise or license was acquired;

N/A

4. if franchisee or licensee, the date franchise or license expires;

N/A

5. a copy of state-issued certificate of public convenience and necessity;

N/A

6. the date of FCC certification, EPA licensing, or other certification;

*El Paso Electric Company (“EPE”) received the Federal Communications Commission’s consent to transfer of control to Sun Jupiter Holdings, LLC on December 4, 2019. A copy of the Public Notice can be found in this Attachment-16.*

*Below are the original issuance dates and most recent renewals for EPE’s Title V Federal Operating Permits for its Texas generating facilities. The United States Environmental Protection Agency delegates administration of the Title V program to the Texas Commission on Environmental Quality.*

	<b>Original Issuance Date</b>	<b>Most Recent Renewal</b>
Newman Power Station	12/9/1999	7/20/2016
Copper Station	2/10/1999	3/6/2019
Montana Power Station	3/23/2016	

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*N/A*



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

Report Number: 14584

Date of Report: 12/11/2019

## Wireless Telecommunications Bureau

### Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, *De Facto* Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action

This Public Notice contains a listing of applications that have been acted upon by the Commission.

#### Assignment of License Authorization Applications and Transfer of Control of Licensee Applications

Purpose	File Number	Parties	Action Date	Action
TC	0008144732	<b>Licensee:</b> Southern Illinois Riverboat Casino Cruises Inc. <b>Transferor:</b> Caesars Entertainment Operating Company Inc. <b>Transferee:</b> CEOC, LLC	12/04/2019	Z

#### Transfer of Control

**Call Sign or Lead Call Sign:** WPQB542

#### Radio Service Code(s)

IG

Purpose	File Number	Parties	Action Date	Action
TC	0008145220	<b>Licensee:</b> Chester Downs & Marina LLC <b>Transferor:</b> Caesars Entertainment Operating Company Inc. <b>Transferee:</b> CEOC, LLC	12/04/2019	Z

**Transfer of Control**

**Call Sign or Lead Call Sign:** WQFH602

**Radio Service Code(s)**

IG

AA	0008151303	<b>Assignor:</b> The Board of Trustees of Jay County Hospital <b>Assignee:</b> Indiana University Health Jay, Inc	12/04/2019	Z
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**Full Assignment**

**Call Sign or Lead Call Sign:**

**Radio Service Code(s)**

IG

AA	0008689836	<b>Assignor:</b> Pacific Wireless Systems, LLC <b>Assignee:</b> Accel Net Inc.	12/05/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WNEQ516

**Radio Service Code(s)**

CF

AM	0008737430	<b>Licensee:</b> El Paso Electric Company <b>Transferor:</b> El Paso Electric Company <b>Transferee:</b> Sun Jupiter Holdings LLC	12/04/2019	C
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WAA785

**Radio Service Code(s)**

IG

MG

Purpose	File Number	Parties	Action Date	Action
AM	0008738034	<b>Assignor:</b> Fusion Cloud Services, LLC - debtor-in-possession <b>Assignee:</b> Fusion Cloud Services, LLC	12/04/2019	Z

**Full Assignment**

**Call Sign or Lead Call Sign:** WPSJ472

**Radio Service Code(s)**

CF

NN

TC	0008768452	<b>Licensee:</b> Carville Energy Center <b>Transferor:</b> Natgen Southeast Power, LLC <b>Transferee:</b> AMF Florence LLC	12/04/2019	M
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WPTL752

**Radio Service Code(s)**

IG

AA	0008782572	<b>Assignor:</b> Gateway Telecom, LLC <b>Assignee:</b> Hardy Cellular Telephone Company	12/05/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WRAY954

**Radio Service Code(s)**

UU

AA	0008792834	<b>Assignor:</b> Emmis License Corporation of New York <b>Assignee:</b> Mediaco WQHT License LLC	12/07/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WRDB765

**Radio Service Code(s)**

MG

Purpose	File Number	Parties	Action Date	Action
AM	0008811970	<b>Assignor:</b> GULF COAST PRESTRESS INC <b>Assignee:</b> GULF COAST PRESTRESS PARTNERS LTD	12/03/2019	C

**Full Assignment**

**Call Sign or Lead Call Sign:** KNIM632

**Radio Service Code(s)**

IG

AA	0008817758	<b>Assignor:</b> Cypress Cellular, LP <b>Assignee:</b> Cellco Partnership	12/04/2019	C
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQXD432

**Radio Service Code(s)**

AT

AM	0008821693	<b>Assignor:</b> Wittenberg Telephone Company <b>Assignee:</b> Nsight Spectrum, LLC	12/02/2019	C
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQGD646

**Radio Service Code(s)**

AW

AA	0008822646	<b>Assignor:</b> NSAC, LLC <b>Assignee:</b> People's Choice TV of St. Louis, LLC	12/07/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WMX640

**Radio Service Code(s)**

ED

Purpose	File Number	Parties	Action Date	Action
TC	0008824506	<b>Licensee:</b> Rarus Railway Co. <b>Transferor:</b> SteelRiver Infrastructure Fund North America LP <b>Transferee:</b> Global Diversified Infrastructure Fund (North America) LP	12/06/2019	M

**Transfer of Control**

**Call Sign or Lead Call Sign:** WQRQ549

**Radio Service Code(s)**

IG

TC	0008829486	<b>Licensee:</b> Golden Triangle Railroad LLC <b>Transferor:</b> SteelRiver Infrastructure Fund North America LP <b>Transferee:</b> Global Diversified Infrastructure Fund (North America) LP	12/06/2019	M
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**Transfer of Control**

**Call Sign or Lead Call Sign:** KNAU476

**Radio Service Code(s)**

IG

TC	0008829508	<b>Licensee:</b> Kingman Terminal Railroad <b>Transferor:</b> SteelRiver Infrastructure Fund North America LP <b>Transferee:</b> Global Diversified Infrastructure Fund (North America) LP	12/06/2019	M
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WQQM326

**Radio Service Code(s)**

IG

TC	0008829562	<b>Licensee:</b> Louisiana and North W Railroad Company <b>Transferor:</b> SteelRiver Infrastructure Fund North America LP <b>Transferee:</b> Global Diversified Infrastructure Fund (North America) LP	12/06/2019	M
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**Transfer of Control**

**Call Sign or Lead Call Sign:** KKA250

**Radio Service Code(s)**

IG

Purpose	File Number	Parties	Action Date	Action
TC	0008829575	<b>Licensee:</b> Sacramento Valley Railroad <b>Transferor:</b> SteelRiver Infrastructure Fund North America LP <b>Transferee:</b> Global Diversified Infrastructure Fund (North America) LP	12/06/2019	M

**Transfer of Control**

**Call Sign or Lead Call Sign:** WQIJ210

**Radio Service Code(s)**

IG

TC	0008829587	<b>Licensee:</b> Temple & Central Texas Railroad <b>Transferor:</b> SteelRiver Infrastructure Fund North America LP <b>Transferee:</b> Global Diversified Infrastructure Fund (North America) LP	12/06/2019	M
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WQKE200

**Radio Service Code(s)**

IG

TC	0008829613	<b>Licensee:</b> Tennessee Southern Railroad LLC <b>Transferor:</b> SteelRiver Infrastructure Fund North America LP <b>Transferee:</b> Global Diversified Infrastructure Fund (North America) LP	12/06/2019	M
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WQUW669

**Radio Service Code(s)**

IG

TC	0008829622	<b>Licensee:</b> Utah Central Railway <b>Transferor:</b> SteelRiver Infrastructure Fund North America LP <b>Transferee:</b> Global Diversified Infrastructure Fund (North America) LP	12/06/2019	M
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WPRI940

**Radio Service Code(s)**

IG

Purpose	File Number	Parties	Action Date	Action
TC	0008829628	<b>Licensee:</b> Portus <b>Transferor:</b> SteelRiver Infrastructure Fund North America LP <b>Transferee:</b> Global Diversified Infrastructure Fund (North America) LP	12/06/2019	M

**Transfer of Control**

**Call Sign or Lead Call Sign:** WRCU888

**Radio Service Code(s)**

IG

TC	0008829631	<b>Licensee:</b> ICS Logistics <b>Transferor:</b> SteelRiver Infrastructure Fund North America LP <b>Transferee:</b> Global Diversified Infrastructure Fund (North America) LP	12/06/2019	M
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WPHF946

**Radio Service Code(s)**

IG

TC	0008829636	<b>Licensee:</b> Columbia & Cowlitz Railway LLC <b>Transferor:</b> SteelRiver Infrastructure Fund North America LP <b>Transferee:</b> Global Diversified Infrastructure Fund (North America) LP	12/05/2019	M
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**Transfer of Control**

**Call Sign or Lead Call Sign:** KEG881

**Radio Service Code(s)**

IG

TC	0008829638	<b>Licensee:</b> DeQueen and Eastern Railroad LLC <b>Transferor:</b> SteelRiver Infrastructure Fund North America LP <b>Transferee:</b> Global Diversified Infrastructure Fund (North America) LP	12/05/2019	M
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WPAG621

**Radio Service Code(s)**

IG

Purpose	File Number	Parties	Action Date	Action
TC	0008834236	<b>Licensee:</b> Bucksport Generation, LLC <b>Transferor:</b> Bucksport Generation, LLC <b>Transferee:</b> Iron-clad Energy Partners LLC	12/06/2019	M

**Transfer of Control**

**Call Sign or Lead Call Sign:** WPJU219

**Radio Service Code(s)**

YO

AA	0008834500	<b>Assignor:</b> Allcomm Wireless, Inc. <b>Assignee:</b> Tallapoosa County E9-1-1	12/05/2019	M
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**Partitioning AND/OR Disaggregation**

**Call Sign or Lead Call Sign:** WQVE508

**Radio Service Code(s)**

CP

AA	0008838845	<b>Assignor:</b> All West Wireless, Inc. <b>Assignee:</b> Cellco Partnership	12/05/2019	C
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQKX565

**Radio Service Code(s)**

AT

AW

CW

AA	0008844235	<b>Assignor:</b> Carolina Pride Foods, Inc. n/k/a Greenwood Packing, Inc. <b>Assignee:</b> Carolina Pride Foods LLC	12/05/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQVR866

**Radio Service Code(s)**

IG

Purpose	File Number	Parties	Action Date	Action
AA	0008844365	<b>Assignor:</b> Frontier Communications Corporation <b>Assignee:</b> Frontier North Inc.	12/07/2019	M

**Full Assignment**

**Call Sign or Lead Call Sign:** WREH822

**Radio Service Code(s)**

UU

AA	0008844493	<b>Assignor:</b> Frontier Communications Corporation <b>Assignee:</b> Frontier West Virginia Inc.	12/07/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WREH823

**Radio Service Code(s)**

UU

AA	0008849826	<b>Assignor:</b> Lehigh Valley Cooperative Telephone Association <b>Assignee:</b> Cellco Partnership	12/04/2019	C
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQND995

**Radio Service Code(s)**

CW

AA	0008850247	<b>Assignor:</b> Environmental LLC <b>Assignee:</b> Eversource Energy Service Company	12/04/2019	C
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**Partitioning AND/OR Disaggregation**

**Call Sign or Lead Call Sign:** WQCP810

**Radio Service Code(s)**

PC

Purpose	File Number	Parties	Action Date	Action
TC	0008852185	<b>Licensee:</b> Celgene Corporation <b>Transferor:</b> Celgene Corporation <b>Transferee:</b> Bristol-Myers Squibb Company	12/05/2019	M

**Transfer of Control**

**Call Sign or Lead Call Sign:** WQXE776

**Radio Service Code(s)**

IG

TC	0008852203	<b>Licensee:</b> Celgene Corporation <b>Transferor:</b> Celgene Corporation <b>Transferee:</b> Bristol-Myers Squibb Company	12/04/2019	M
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WPWR720

**Radio Service Code(s)**

IG

AM	0008855537	<b>Assignor:</b> QUADRANT EPP <b>Assignee:</b> MITSUBISHI CHEMICAL ADVANCED MATERIALS INC	12/06/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQTR713

**Radio Service Code(s)**

IG

AM	0008856353	<b>Licensee:</b> SUNTALK LLC <b>Transferor:</b> SUNTALK LLC <b>Transferee:</b> FITZGERALD, JANET	12/10/2019	Z
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**Transfer of Control**

**Call Sign or Lead Call Sign:** KVT941

**Radio Service Code(s)**

CP

IG

YG

Purpose	File Number	Parties	Action Date	Action
AM	0008856378	<b>Licensee:</b> FLA LIC, LLC <b>Transferor:</b> FLA LIC, LLC <b>Transferee:</b> FITZGERALD, JANET	12/10/2019	Z

**Transfer of Control**

**Call Sign or Lead Call Sign:** WPMU427

**Radio Service Code(s)**

CP

YG

AA	0008857553	<b>Assignor:</b> Progressive Barge Lines <b>Assignee:</b> Savage Inland Marine	12/06/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WDF9141

**Radio Service Code(s)**

SB

TC	0008863094	<b>Licensee:</b> ILLINOIS AND MIDLAND RAILROAD INC <b>Transferor:</b> Genesee & Wyoming Inc. <b>Transferee:</b> DJP XX, LLC	12/04/2019	C
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WQTL554

**Radio Service Code(s)**

IG

AM	0008863275	<b>Licensee:</b> Tazewell & Peoria Railroad, Inc. <b>Transferor:</b> Genesee & Wyoming Inc. <b>Transferee:</b> DJP XX, LLC	12/04/2019	C
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**Transfer of Control**

**Call Sign or Lead Call Sign:** KSD870

**Radio Service Code(s)**

IG

Purpose	File Number	Parties	Action Date	Action
TC	0008864187	<b>Licensee:</b> KWT RAILWAY INC <b>Transferor:</b> Genesee & Wyoming Inc. <b>Transferee:</b> DJP XX, LLC	12/04/2019	C

**Transfer of Control**

**Call Sign or Lead Call Sign:** WNIE355

**Radio Service Code(s)**

IG

TC	0008864221	<b>Licensee:</b> LITTLE ROCK & WESTERN RAILWAY <b>Transferor:</b> Genesee & Wyoming Inc. <b>Transferee:</b> DJP XX, LLC	12/04/2019	C
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WQG669

**Radio Service Code(s)**

IG

AA	0008864449	<b>Assignor:</b> CHEWELAH BASIN SKI CORPORATION <b>Assignee:</b> CMR Lands, LLC	12/04/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** KVC732

**Radio Service Code(s)**

IG

TC	0008864718	<b>Licensee:</b> EAST TENNESSEE RAILWAY L P <b>Transferor:</b> Genesee & Wyoming Inc. <b>Transferee:</b> DJP XX, LLC	12/04/2019	C
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**Transfer of Control**

**Call Sign or Lead Call Sign:** KNHK468

**Radio Service Code(s)**

IG

Purpose	File Number	Parties	Action Date	Action
TC	0008865391	<b>Licensee:</b> Luxapalila Valley Railroad Inc. <b>Transferor:</b> Genesee & Wyoming Inc. <b>Transferee:</b> DJP XX, LLC	12/04/2019	C

**Transfer of Control**

**Call Sign or Lead Call Sign:** WPYX528

**Radio Service Code(s)**

IG

TC	0008865421	<b>Licensee:</b> MISSOURI & NORTHERN ARKANSAS RR INC <b>Transferor:</b> Genesee & Wyoming Inc. <b>Transferee:</b> DJP XX, LLC	12/04/2019	C
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WPVX801

**Radio Service Code(s)**

IG

AM	0008866537	<b>Assignor:</b> Xvergent <b>Assignee:</b> Technology Analysis Corporation DBA Xvergent Networks	12/02/2019	C
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQKR637

**Radio Service Code(s)**

MG

NN

AA	0008867738	<b>Assignor:</b> Tivcorp, Inc. d/b/a Webjogger Internet Services <b>Assignee:</b> NCN Data, LLC	12/05/2019	Z
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQUH787

**Radio Service Code(s)**

MG

NN

Purpose	File Number	Parties	Action Date	Action
TC	0008867741	<b>Licensee:</b> Point Comfort & Northern Railway Company <b>Transferor:</b> Genesee & Wyoming Inc. <b>Transferee:</b> DJP XX, LLC	12/04/2019	C

**Transfer of Control**

**Call Sign or Lead Call Sign:** WPYC333

**Radio Service Code(s)**

IG

AA	0008878525	<b>Assignor:</b> Contact Network, Inc. <b>Assignee:</b> Contact Network, LLC	12/06/2019	C
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQTY613

**Radio Service Code(s)**

CF

NN

AA	0008878773	<b>Assignor:</b> D'Arcangelo, John M <b>Assignee:</b> Olderbak, Mark J	12/05/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WDJ8900

**Radio Service Code(s)**

SA

TC	0008879350	<b>Licensee:</b> Empire Burbank Studios, LLC <b>Transferor:</b> Shareholders of Liberman Broadcasting, Inc. <b>Transferee:</b> SLF LBI Aggregator, LLC	12/07/2019	Z
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WPJK927

**Radio Service Code(s)**

IG

Purpose	File Number	Parties	Action Date	Action
TC	0008885631	<b>Licensee:</b> Kinder Morgan Cochin LLC <b>Transferor:</b> Kinder Morgan Cochin LLC <b>Transferee:</b> Pembina U.S. Corporation	12/06/2019	C

**Transfer of Control**

**Call Sign or Lead Call Sign:** WQUY394

**Radio Service Code(s)**

IG

AA	0008885949	<b>Assignor:</b> Cargill, Incorporated <b>Assignee:</b> Boortmalt USA	12/06/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQIB599

**Radio Service Code(s)**

IG

AA	0008886890	<b>Assignor:</b> CETC LLC <b>Assignee:</b> TEXAS RADIOS LLC	12/04/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQNL815

**Radio Service Code(s)**

YX

AA	0008889426	<b>Assignor:</b> Iota Networks, LLC <b>Assignee:</b> DOWNS, CAROLE L	12/04/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQWE322

**Radio Service Code(s)**

YM

Purpose	File Number	Parties	Action Date	Action
AA	0008890597	<b>Assignor:</b> kaanapali kai charters, inc <b>Assignee:</b> McGrail & Rowley, Inc.	12/05/2019	M

**Full Assignment**

**Call Sign or Lead Call Sign:** WDA2147

**Radio Service Code(s)**

SB

AA	0008892734	<b>Assignor:</b> GEO Care, LLC- Columbia <b>Assignee:</b> CORRECT CARE LLC	12/04/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQLA358

**Radio Service Code(s)**

IG

AA	0008892874	<b>Assignor:</b> A2 900 SPECTRUM COMMUNICATIONS, LLC <b>Assignee:</b> Iota Spectrum Partners, LP	12/04/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQWC277

**Radio Service Code(s)**

GM

YM

AA	0008892988	<b>Assignor:</b> ALTURK, NAJIB M <b>Assignee:</b> Iota Spectrum Partners, LP	12/04/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WRDX206

**Radio Service Code(s)**

YM

Purpose	File Number	Parties	Action Date	Action
AA	0008893071	<b>Assignor:</b> BALDWIN, PAUL E <b>Assignee:</b> Iota Spectrum Partners, LP	12/04/2019	M

**Full Assignment**

**Call Sign or Lead Call Sign:** WQZZ868

**Radio Service Code(s)**

YM

AA	0008893092	<b>Assignor:</b> BETA ZETA COMMUNICATIONS, LLC <b>Assignee:</b> Iota Spectrum Partners, LP	12/04/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQSG620

**Radio Service Code(s)**

YM

AA	0008893483	<b>Assignor:</b> BHAVIN PATEL D.D.S., P.C. RETIREMENT PLAN, FBO DI <b>Assignee:</b> Iota Spectrum Partners, LP	12/04/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WRCM237

**Radio Service Code(s)**

YM

AA	0008893510	<b>Assignor:</b> CIMINO, ANTHONY B <b>Assignee:</b> Iota Spectrum Partners, LP	12/04/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WRAR259

**Radio Service Code(s)**

YM

Purpose	File Number	Parties	Action Date	Action
AA	0008893569	<b>Assignor:</b> CLINKENBEARD INVESTMENTS, LLC <b>Assignee:</b> Iota Spectrum Partners, LP	12/04/2019	M

**Full Assignment**

**Call Sign or Lead Call Sign:** WRDQ626

**Radio Service Code(s)**

YM

AA	0008894497	<b>Assignor:</b> Schmitt, Randall <b>Assignee:</b> PDV Spectrum Holding Company	12/05/2019	C
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**Partial Assignment**

**Call Sign or Lead Call Sign:** WNQL213

**Radio Service Code(s)**

YS

AA	0008894517	<b>Assignor:</b> Triangle Communications, Inc <b>Assignee:</b> PDV Spectrum Holding Company	12/05/2019	C
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**Full Assignment**

**Call Sign or Lead Call Sign:** WPHP495

**Radio Service Code(s)**

GU

AA	0008894769	<b>Assignor:</b> Ancom Communications Inc <b>Assignee:</b> Anoka-Hennepin School District	12/05/2019	C
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**Full Assignment**

**Call Sign or Lead Call Sign:** WRDH993

**Radio Service Code(s)**

YJ

Purpose	File Number	Parties	Action Date	Action
AA	0008895823	<b>Assignor:</b> BOOTH SCRAPYARD & RECYCLING CENTER LLC <b>Assignee:</b> DIREKT RECOVERY BLOOMSBURG LLC	12/05/2019	C

**Full Assignment**

**Call Sign or Lead Call Sign:** WRBN674

**Radio Service Code(s)**

IG

AM	0008895876	<b>Licensee:</b> INDYCAR, LLC <b>Transferor:</b> Hulman & Company <b>Transferee:</b> Penske Entertainment Corp.	12/03/2019	C
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WQLW735

**Radio Service Code(s)**

NN

AA	0008896377	<b>Assignor:</b> Brookdale Senior Living <b>Assignee:</b> Freedom Plaza Operating Company, LLC	12/04/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQVQ289

**Radio Service Code(s)**

IG

AA	0008897023	<b>Assignor:</b> Southcross CCNG Gathering Ltd. <b>Assignee:</b> Third Coast Alabama, LLC	12/07/2019	C
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**Full Assignment**

**Call Sign or Lead Call Sign:** WPZY220

**Radio Service Code(s)**

MG

Purpose	File Number	Parties	Action Date	Action
AA	0008897113	<b>Assignor:</b> BP America Production Company <b>Assignee:</b> Tecolote Energy	12/06/2019	C

**Partial Assignment**

**Call Sign or Lead Call Sign:** KNDT545

**Radio Service Code(s)**

IG

AA	0008897121	<b>Assignor:</b> BP America Production Company <b>Assignee:</b> Latigo Petroleum, LLC	12/06/2019	C
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**Partial Assignment**

**Call Sign or Lead Call Sign:** KNDT545

**Radio Service Code(s)**

IG

AA	0008898521	<b>Assignor:</b> HARRIS, KEVIN <b>Assignee:</b> KEVIN HARRIS FARMS LLC	12/05/2019	C
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQTL547

**Radio Service Code(s)**

IG

AA	0008898526	<b>Assignor:</b> MARK MATHIEU CONSTRUCTION <b>Assignee:</b> MARK MATHIEU CONSTRUCTION INC	12/05/2019	C
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQTS282

**Radio Service Code(s)**

IG

Purpose	File Number	Parties	Action Date	Action
TC	0008898753	<b>Licensee:</b> Nunley, Buck W <b>Transferor:</b> Stillwell, Mark <b>Transferee:</b> Nunley, Buck W	12/04/2019	D

**Transfer of Control**

**Call Sign or Lead Call Sign:** WDK4808

**Radio Service Code(s)**

SA

AA	0008899744	<b>Assignor:</b> BLUE SKY SPECTRUM, LLC <b>Assignee:</b> Iota Spectrum Partners, LP	12/05/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQWN481

**Radio Service Code(s)**

YM

AA	0008899765	<b>Assignor:</b> Breede, Michael E <b>Assignee:</b> Iota Spectrum Partners, LP	12/05/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WRRC681

**Radio Service Code(s)**

YM

AA	0008899831	<b>Assignor:</b> CARLSON, MICHAEL R <b>Assignee:</b> Iota Spectrum Partners, LP	12/05/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WRFC436

**Radio Service Code(s)**

YM

Purpose	File Number	Parties	Action Date	Action
AA	0008899847	<b>Assignor:</b> CCD 900 COMMUNICATIONS, LLC <b>Assignee:</b> Iota Spectrum Partners, LP	12/05/2019	M

**Full Assignment**

**Call Sign or Lead Call Sign:** WQWB674

**Radio Service Code(s)**

YM

AA	0008899866	<b>Assignor:</b> DONALD S. BIRGER REVOCABLE TRUST DATED AUGL 12/05/2019 <b>Assignee:</b> Iota Spectrum Partners, LP		M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WRCB947

**Radio Service Code(s)**

YM

AA	0008899959	<b>Assignor:</b> Enabled Connections, LLC <b>Assignee:</b> Iota Spectrum Partners, LP	12/05/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQWD589

**Radio Service Code(s)**

GM

YM

AA	0008900004	<b>Assignor:</b> EQUITY TRUST COMPANY CUSTODIAN FBO ROBERT I <b>Assignee:</b> Iota Spectrum Partners, LP	12/05/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQYU730

**Radio Service Code(s)**

GM

YM

Purpose	File Number	Parties	Action Date	Action
AA	0008900025	<b>Assignor:</b> FINKEN TRACKING AND COMMUNICATIONS, LLC <b>Assignee:</b> Iota Spectrum Partners, LP	12/05/2019	M

**Full Assignment**

**Call Sign or Lead Call Sign:** WQWB978

**Radio Service Code(s)**

GM

YM

AA	0008900123	<b>Assignor:</b> S & E SPECTRUM NETWORKS, INC. <b>Assignee:</b> Iota Spectrum Partners, LP	12/05/2019	M
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQXZ540

**Radio Service Code(s)**

GM

YM

TC	0008901191	<b>Licensee:</b> Tiger 9 LLC <b>Transferor:</b> Tiger 9 LLC <b>Transferee:</b> Young Brothers, LLC	12/04/2019	C
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**Transfer of Control**

**Call Sign or Lead Call Sign:** WDF3003

**Radio Service Code(s)**

SB

AA	0008901445	<b>Assignor:</b> Griffin Gate Marriott Resort <b>Assignee:</b> HOSP LEXKY GG LLC	12/04/2019	C
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**Full Assignment**

**Call Sign or Lead Call Sign:** WQEU392

**Radio Service Code(s)**

IG

Purpose	File Number	Parties	Action Date	Action
TC	0008901540	<b>Licensee:</b> Yager Materials Corp. <b>Transferor:</b> Cameuse Lime, Inc. <b>Transferee:</b> CUS Operations Holding Co.	12/05/2019	C

**Transfer of Control**

**Call Sign or Lead Call Sign:** KGO756

**Radio Service Code(s)**

IG

SB

AA	0008901593	<b>Assignor:</b> A & A MIDWEST <b>Assignee:</b> AS Legacy Inc DBA A&A Midwest Rebuilders Suppliers	12/06/2019	C
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**Partial Assignment**

**Call Sign or Lead Call Sign:** WPPH714

**Radio Service Code(s)**

IG

AA	0008904239	<b>Assignor:</b> A & A MIDWEST <b>Assignee:</b> ENGINEQUEST LLC	12/06/2019	C
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**Partial Assignment**

**Call Sign or Lead Call Sign:** WPPH714

**Radio Service Code(s)**

IG

AA	0008905925	<b>Assignor:</b> Reynolds Metals Company <b>Assignee:</b> Elemental Environmental Solutions LLC	12/07/2019	C
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**Full Assignment**

**Call Sign or Lead Call Sign:** WPWX988

**Radio Service Code(s)**

IG

**De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications Action**

Purpose	File Number	Parties	Action Date	Action
AM	0008785750	<b>Licensee:</b> New Cingular Wireless PCS, LLC <b>Lessee:</b> Shawntech Communications, Inc	12/06/2019	G

**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** KNLF251

**Radio Service Code(s)**

CW

LN	0008836564	<b>Licensee:</b> Rockne Educational Television, Inc. <b>Lessee:</b> Clearwire Spectrum Holdings III, LLC	12/03/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** WLX830

**Radio Service Code(s)**

ED

LN	0008839787	<b>Licensee:</b> Seabury Hall <b>Lessee:</b> Clearwire Spectrum Holdings III, LLC	12/03/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** WNC226

**Radio Service Code(s)**

ED

LN	0008851598	<b>Licensee:</b> Otsego Public Schools <b>Lessee:</b> Clearwire Spectrum Holdings III, LLC	12/05/2019	Z
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** WNC483

**Radio Service Code(s)**

ED

Purpose	File Number	Parties	Action Date	Action
LN	0008854560	<b>Licensee:</b> Rural Cellular Corporation <b>Lessee:</b> Screened Images, Inc.	12/04/2019	G

**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** KNKN638

**Radio Service Code(s)**

CL

LE	0008864073	<b>Licensee:</b> Parma BD/ED Parma City School Dist. <b>Lessee:</b> NSAC, LLC	12/07/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** L000001313

**Radio Service Code(s)**

ED

LN	0008864203	<b>Licensee:</b> LAREDO CATHOLIC COMMUNICATIONS, INC. <b>Lessee:</b> Clearwire Spectrum Holdings III, LLC	12/05/2019	Z
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** WLX777

**Radio Service Code(s)**

ED

LN	0008869645	<b>Licensee:</b> Allied Wireless Communications (OH), LLC <b>Lessee:</b> Shawntech Communications, Inc	12/04/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** KNKQ312

**Radio Service Code(s)**

CL

Purpose	File Number	Parties	Action Date	Action
LN	0008869669	<b>Licensee:</b> Waseca Public Schools <b>Lessee:</b> Clearwire Spectrum Holdings III, LLC	12/05/2019	Z

**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** WLX449

**Radio Service Code(s)**

ED

LN	0008870088	<b>Licensee:</b> New Cingular Wireless PCS, LLC <b>Lessee:</b> Shawntech Communications, Inc	12/04/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** KNKQ295

**Radio Service Code(s)**

CL

LN	0008874866	<b>Licensee:</b> New Cingular Wireless PCS, LLC <b>Lessee:</b> Shawntech Communications, Inc	12/06/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** WQGA794

**Radio Service Code(s)**

AW

LN	0008874886	<b>Licensee:</b> New Cingular Wireless PCS, LLC <b>Lessee:</b> Shawntech Communications, Inc	12/04/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** KNKN713

**Radio Service Code(s)**

CL

Purpose	File Number	Parties	Action Date	Action
LN	0008874908	<b>Licensee:</b> New Cingular Wireless PCS, LLC <b>Lessee:</b> Shawntech Communications, Inc	12/04/2019	G

**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** KNKN756

**Radio Service Code(s)**

CL

LN	0008874917	<b>Licensee:</b> New Cingular Wireless PCS, LLC <b>Lessee:</b> Shawntech Communications, Inc	12/04/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** KNKA288

**Radio Service Code(s)**

CL

LN	0008874923	<b>Licensee:</b> New Cingular Wireless PCS, LLC <b>Lessee:</b> Shawntech Communications, Inc	12/04/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** KNKA285

**Radio Service Code(s)**

CL

LN	0008874929	<b>Licensee:</b> New Cingular Wireless PCS, LLC <b>Lessee:</b> Shawntech Communications, Inc	12/04/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** KNKA288

**Radio Service Code(s)**

CL

Purpose	File Number	Parties	Action Date	Action
LN	0008874943	<b>Licensee:</b> New Cingular Wireless PCS, LLC <b>Lessee:</b> Shawntech Communications, Inc	12/04/2019	G

**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** KNKA318

**Radio Service Code(s)**

CL

LN	0008874946	<b>Licensee:</b> New Cingular Wireless PCS, LLC <b>Lessee:</b> Shawntech Communications, Inc	12/04/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** KNKA505

**Radio Service Code(s)**

CL

LN	0008874970	<b>Licensee:</b> New Cingular Wireless PCS, LLC <b>Lessee:</b> Shawntech Communications, Inc	12/04/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** KNKA550

**Radio Service Code(s)**

CL

LN	0008874973	<b>Licensee:</b> Ohio RSA 5 Limited Partnership <b>Lessee:</b> Shawntech Communications, Inc	12/04/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** KNKN942

**Radio Service Code(s)**

CL

Purpose	File Number	Parties	Action Date	Action
LT	0008896189	<b>Lessee:</b> CellBlox Acquisitions, LLC <b>Transferor:</b> Securus Technologies, Inc. <b>Transferee:</b> Securus Technologies, LLC	12/04/2019	Q

**Spectrum Manager Lease**

**Call Sign or Lead Call Sign:** L000039489

**Radio Service Code(s)**

CW

LC	0008905131	<b>Licensee:</b> Iota Spectrum Partners, LP <b>Lessee:</b> IOTA NETWORKS, LLC	12/07/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** L000031230

**Radio Service Code(s)**

YM

LC	0008905134	<b>Licensee:</b> Iota Spectrum Partners, LP <b>Lessee:</b> IOTA NETWORKS, LLC	12/07/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** L000031227

**Radio Service Code(s)**

YM

LC	0008902885	<b>Licensee:</b> Iota Spectrum Partners, LP <b>Lessee:</b> IOTA NETWORKS, LLC	12/05/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** L000020529

**Radio Service Code(s)**

GM

YM

Purpose	File Number	Parties	Action Date	Action
LC	0008904036	<b>Licensee:</b> Iota Spectrum Partners, LP <b>Lessee:</b> IOTA NETWORKS, LLC	12/06/2019	G

**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** L000031942

**Radio Service Code(s)**

GM

YM

LT	0008896175	<b>Lessee:</b> CellBlox Acquisitions, LLC <b>Transferor:</b> Securus Technologies, Inc. <b>Transferee:</b> Securus Technologies, LLC	12/04/2019	Q
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**Spectrum Manager Lease**

**Call Sign or Lead Call Sign:** L000032173

**Radio Service Code(s)**

AT

AW

CW

WT

WY

LT	0008877373	<b>Lessee:</b> CellBlox Acquisitions, LLC <b>Transferor:</b> Securus Technologies, Inc. <b>Transferee:</b> Securus Technologies, LLC	12/04/2019	G
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**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** L000024321

**Radio Service Code(s)**

AT

AW

CL

CW

CY

Purpose	File Number	Parties	Action Date	Action
LT	0008877373	<b>Lessee:</b> CellBlox Acquisitions, LLC <b>Transferor:</b> Securus Technologies, Inc. <b>Transferee:</b> Securus Technologies, LLC	12/04/2019	G

**De Facto Transfer Lease**

**Call Sign or Lead Call Sign:** L000024321

**Radio Service Code(s)**

WS

WU

WY

WZ

**De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications  
Action**

Purpose	File Number	Parties	Action Date	Action
LE	6054QASL19	<b>Licensee:</b> PTC-220, LLC <b>Lessee:</b> CSX Transportation, Inc. <b>Sublessee:</b> Florida Department of Transportation	12/04/2019	Q
<i>Spectrum Manager Sublease</i>				
<b>Call Sign or Lead Call Sign:</b> WPOI701				
<b>Lead Lease Identifier:</b> L000025161				
<b><u>Radio Service Code(s):</u></b> QA				
LE	6055NCSL19	<b>Licensee:</b> PTC-220, LLC <b>Lessee:</b> CSX Transportation, Inc. <b>Sublessee:</b> Florida Department of Transportation	12/04//2019	Q
<i>Spectrum Manager Sublease</i>				
<b>Call Sign or Lead Call Sign:</b> WPFR284				
<b>Lead Lease Identifier:</b> L000025154				
<b><u>Radio Service Code(s):</u></b> NC				
LE	6056QASL19	<b>Licensee:</b> PTC-220, LLC <b>Lessee:</b> BNSF Railway Co. <b>Sublessee:</b> Dallas Area Rapid Transit	12/04/2019	Q
<i>Spectrum Manager Sublease</i>				
<b>Call Sign or Lead Call Sign:</b> WPOI701				
<b>Lead Lease Identifier:</b> L000025125				
<b><u>Radio Service Code(s):</u></b> QA				
LE	6057NCSL19	<b>Licensee:</b> PTC-220, LLC <b>Lessee:</b> BNSF Railway Co. <b>Sublessee:</b> Dallas Area Rapid Transit	12/04/2019	Q
<i>Spectrum Manager Sublease</i>				
<b>Call Sign or Lead Call Sign:</b> WPFR284				
<b>Lead Lease Identifier:</b> L000025134				
<b><u>Radio Service Code(s):</u></b> NC				

**De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications  
Action**

Purpose	File Number	Parties	Action Date	Action
LE	6058NCSL19	<b>Licensee:</b> PTC-220, LLC <b>Lessee:</b> BNSF Railway Co. <b>Sublessee:</b> Kansas City Terminal Railway Company	12/04/2019	Q
<i>Spectrum Manager Sublease</i>				
<b>Call Sign or Lead Call Sign:</b> WPFR284				
<b>Lead Lease Identifier:</b> L000025134				
<b><u>Radio Service Code(s):</u></b> NC				
LE	6059QASL19	<b>Licensee:</b> PTC-220, LLC <b>Lessee:</b> BNSF Railway Co. <b>Sublessee:</b> Kansas City Terminal Railway Company	12/04/2019	Q
<i>Spectrum Manager Sublease</i>				
<b>Call Sign or Lead Call Sign:</b> WPOI701				
<b>Lead Lease Identifier:</b> L000025125				
<b><u>Radio Service Code(s):</u></b> QA				
LN	6060QASL19	<b>Licensee:</b> Association of American Railroads <b>Lessee:</b> PTC-220, LLC <b>Sublessee:</b> CSX Transportation, Inc.	12/04/2019	Q
<i>Spectrum Manager Sublease</i>				
<b>Call Sign or Lead Call Sign:</b> WPOI702				
<b>Lead Lease Identifier:</b> L000032846				
<b><u>Radio Service Code(s):</u></b> QA				
LN	6061QASL19	<b>Licensee:</b> Association of American Railroads <b>Lessee:</b> PTC-220, LLC <b>Sublessee:</b> NS Spectrum Corporation	12/04/2019	Q
<i>Spectrum Manager Sublease</i>				
<b>Call Sign or Lead Call Sign:</b> WPOI702				
<b>Lead Lease Identifier:</b> L000032846				
<b><u>Radio Service Code(s):</u></b> QA				

**De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications  
Action**

Purpose	File Number	Parties	Action Date	Action
LE	6062QASL19	<b>Licensee:</b> PTC-220, LLC <b>Lessee:</b> CSX Transportation, Inc. <b>Sublessee:</b> South Florida Regional Transportation Authority	12/04/2019	Q
<i>Spectrum Manager Sublease</i>				
<b>Call Sign or Lead Call Sign:</b> WPOI701				
<b>Lead Lease Identifier:</b> L000025161				
<b><u>Radio Service Code(s):</u></b> QA				
LE	6063NCSL19	<b>Licensee:</b> PTC-220, LLC <b>Lessee:</b> CSX Transportation, Inc. <b>Sublessee:</b> South Florida Regional Transportation Authority	12/04/2019	Q
<i>Spectrum Manager Sublease</i>				
<b>Call Sign or Lead Call Sign:</b> WPFR284				
<b>Lead Lease Identifier:</b> L000025154				
<b><u>Radio Service Code(s):</u></b> NC				
LN	6062YDSL20	<b>Licensee:</b> PDV Spectrum Holding Company, LLC <b>Lessee:</b> Motorola Solutions, Inc. <b>Sublessee:</b> Space Exploration Technologies Corporation	10/31/2019	G
<i>De Facto Transfer Sublease</i>				
<b>Call Sign or Lead Call Sign:</b> KNNX767				
<b>Lead Lease Identifier:</b> L000039934				
<b><u>Radio Service Code(s):</u></b> YD				

**Purpose Key:**

AA	Assignment of Authorization	LM	Modification of a Lease/Sublease/Private Commons Arrangement
AM	Amendment	LN	New Lease/Sublease/Private Commons Arrangement
AR	DE Annual Report	LT	Transfer of Control of a Lessee/Sublessee
LC	Cancel of a Lease/Sublease/Private Commons Arrangement	RE	DE Reportable Event
LE	Extend the Term of a Lease/Sublease/Private Commons Arrangement	TC	Transfer of Control
		WD	Withdrawal

**Action Key:**

C	Consented	P	Returned to pending
D	Dismissed	Q	Accepted
G	Granted	R	Returned
K	Killed	T	Terminated
M	Consummated	W	Withdrawn
		Z	Application removed from GAP

**Radio Service Key:**

AA	Aviation Auxiliary Group	LV	Low Power Wireless Assist Video Devices
AB	Aural Microwave Booster	LW	902-928 MHz Location Wideband (Grandfathered AVM)
AC	Aircraft	MA	Marine Auxiliary Group
AD	AWS-4	MC	Coastal Group
AF	Aeronautical and Fixed	MG	Microwave Industrial/Business Pool
AH	AWS-H Block (1915-1920 MHz and 1995-2000 MHz)	MK	Alaska Group
AI	Aural Intercity Relay	MM	Millimeter Wave 70/80/90 GHz Service
AR	Aviation Radionavigation	MR	Marine Radiolocation Land
AS	Aural Studio Transmitter Link	MS	Multiple Address Service, Auctioned
AT	AWS-3 (1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz)	NC	Nationwide Commercial 5 Channel, 220 MHz
AW	AWS, 1710-1755/2110-2155 MHz bands	NN	3650-3700 MHz
BA	1390-1392 MHz Band, Market Area	PC	Public Coast Stations, Auctioned
BB	1392-1395 and 1432-1435 MHz Bands, Market Area	PE	Digital Electronic Message Service - Private
BC	1670-1675 MHz Band, Market Area	QA	220-222 MHz Band Auction
BR	Broadband Radio Service	QD	Non-Nationwide Data, 220 MHz
CA	Commercial Air-ground Radiotelephone	QO	Non-Nationwide Other, 220 MHz
CB	BETRS	QQ	Intelligent Transportation Service (Non-Public Safety)
CD	Paging and Radiotelephone	QT	Non-Nationwide 5 Channel Trunked, 220 MHz
CE	Digital Electronic Message Service	RP	Broadcast Auxiliary Remote Pickup
CF	Point to Point Microwave	RS	Land Mobile Radiolocation
CG	Air-ground Radiotelephone	TB	TV Microwave Booster
CJ	Commercial Aviation Air-Ground Radiotelephone (800 MHz band)	TI	TV Intercity Relay
CL	Cellular	TN	39 GHz, Auctioned
CN	PCS Narrowband	TP	TV Pickup
CO	Offshore Radiotelephone	TS	TV Studio Transmitter Link
CP	Part 22 VHF/UHF Paging (excluding 931MHz)	TT	TV Translator Relay
CR	Rural Radiotelephone	TZ	24 GHz Service
CT	Local Television Transmission	WA	Microwave Aviation
CW	PCS Broadband	WM	Microwave Marine
CY	1910-1915/1990-1995 MHz Bands, Market Area	WP	700 MHz Upper Band (Block D)
CZ	Paging and Radiotelephone, Auctioned	WR	Microwave Radiolocation
DV	Multichannel Video Distribution AND Data Service	WS	Wireless Communications Service
ED	Educational Broadband Service	WT	600 MHz Band
GB	Business, 806-821/851-866 MHz, Conventional	WU	700 MHz Upper Band (Block C)
GC	929-930 MHz Paging Systems, Auction	WX	700 MHz Guardband
GI	Other Indust/Land Transp, 896-901/935-940 MHz, Conv.	WY	700 MHz Lower Band (Blocks A, B, E)
GJ	Business and Industrial/Land Transportation (809 - 824 and 8)	WZ	Lower 700 MHz Bands
GL	900 MHz Conventional SMR (SMR, Site-Specific)	YB	Business, 806-821/851-866 MHz, Trunked
GM	800 MHz Conventional SMR (SMR, Site-specific)	YC	SMR, 806-821/851-866 MHz, Trunked, Auctioned
GO	Other Indust/Land Transp, 806-821/851-866 MHz, Conv.	YD	SMR, 896-901/935-940 MHz, Auctioned
GR	SMR, 896-901/935-940 MHz, Conventional	YG	Industrial/Business Pool, Trunked
GS	Private Carrier Paging, 929-930 MHz	YH	SMR, 806-821/851-866 MHz, Auctioned (Rebanded YC license)
GU	Business, 896-901/935-940 MHz, Conventional	YI	Other Indust/Land Transp. 896-901/935-940 MHz, Trunked
GX	SMR, 806-821/851-866 MHz, Conventional	YJ	Business and Industrial/Land Transportation (809 - 824 and 8)
IG	Industrial/Business Pool, Conventional	YK	Industrial/Business Pool - Commercial, Trunked
IK	Industrial/Business Pool - Commercial, Conventional	YL	900 MHz Trunked SMR (SMR, Site-Specific)
LD	Local Multipoint Distribution Service	YM	800 MHz Trunked SMR (SMR, Site-specific)
LN	902-928 MHz Location Narrowband (Non-Multilateration)	YO	Other Indust/Land Transp. 806-821/851-866 MHz, Trunked
LP	Broadcast Auxiliary Low Power	YS	SMR, 896-901/935-940 MHz, Trunked
LS	Location and Monitoring Service, Multilateration (LMS)	YU	Business, 896-901/935-940 MHz, Trunked
		YX	SMR, 806-821/851-866 MHz, Trunked
		ZV	Interactive Video and Data Service

\* If the purpose of application is Amendment or Withdrawal and the disposition action indicates that a Dismissal occurred, there may be a previous version of that application still pending in ULS. You are encouraged to utilize ULS Application Search to research the disposition status of all versions of a particular filing.

The Bureau's weekly Public Notices only provide basic information regarding applications filed and actions taken. Specifically, our Public Notices do not list detailed transaction descriptions or new call signs assigned by the Bureau as a result of assignments of authorization. The detailed instructions below are intended to guide interested parties in obtaining more detailed information via ULS.

**How to view an application listed on this Public Notice via ULS.**

- \* Note the 10-digit file number listed on the Public Notice;
- \* Access the ULS (instructions are on the internet at <http://wireless.fcc.gov/uls>);
- \* From the ULS Online Systems Menu in the center of the screen, scroll down to the "Search" section and click on the "Applications" button;
- \* Type the application's 10-digit file number into the "File Number:" field on the Application Search screen and click the "Search" button;
- \* When the search is completed, the application will be listed by file number on the screen;
- \* Click on the file number (in hypertext) to view the application and attachments.

**How to find new call signs created as a result of an assignment of authorization.**

- \* View the assignment application in ULS as listed above in "How to view an application on this Public Notice via ULS";
- \* At the bottom of the application display screen, select "History" from the "Application Options" and click on the "Go" button;
- \* From the History screen, locate the Application Consented Date, this will be the Grant Date of the new call sign generated as a result of a consummated assignment of authorization;
- \* Click on the "Home" button at the bottom of the screen to return to the ULS Online Systems page;
- \* Scroll to the "Search" section and click on "Licenses";
- \* On the License Search screen, click the "Advanced License Search" link;
- \* In the Licensee Name field, key the name of the Assignor of the Assignment, under License Detail Dates, select "Grant Date", select the "To" and "From" dates and enter the Application Consented Date in both the "To" and "From" fields;
- \* Scroll to the bottom of the screen and click "Submit";
- \* Click on the call sign (in hypertext) to view the license details.

**ATTACHMENT 17  
NEW MEXICO CCN**

1. the name of the municipality, county, and state;

*N/A*

2. the interest of the applicant or franchisee or licensee;

*N/A*

3. if franchisee or licensee, the date franchise or license was acquired;

*N/A*

4. if franchisee or licensee, the date franchise or license expires;

*N/A*

5. a copy of state-issued certificate of public convenience and necessity;

*In accordance with New Mexico Statutes Annotated section 62-9-1.A, EPE is exempt from securing a certificate of convenience and necessity for its service territory as it existed prior to June 13, 1941. EPE has and will continue to abide by New Mexico law in respect to expansions within New Mexico.*

6. the date of FCC certification, EPA licensing, or other certification;

*N/A*

7. the percentage of construction completed; and

*N/A*

8. a copy of each franchise application, franchise and license on file in any other municipality in any state, including, Texas.

*N/A*

**EXHIBIT C**  
**CORPORATE INFORMATION**

Question V.C.1.a: Requested documents attached as Attachment 1.

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

Question V.C.1.c: Requested documents attached as Attachment 2. (*Provided with original Franchise Application filed on September 20, 2019.*)

**ATTACHMENT 1**  
**EPE'S 2018 10-K**



ANNUAL  
REPORT

20  
18

The Electric  
Company

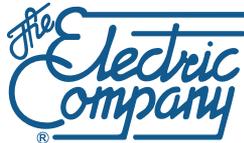
El Paso Electric

**ANNUAL  
REPORT**

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**20  
18**

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El Paso Electric



2018 was an exceptional year for El Paso Electric Company, (“EE” or the “Company”), as we were able to make significant advances that will enable us to expand and improve our service options and prepare for the energy and sustainability future of our community.

In response to growing customer demand in our service territory, EE issued an All Source Request for Proposals (“RFP”) in 2017 for 370 megawatts of additional generation resources that will be needed by the 2023 summer peak season. Resource planning is key to meeting the future energy needs of our growing region, and the planning and selection process ensures that the Company chooses the optimal mix of long-term, affordable and reliable electric resources. After extensive evaluation of numerous proposals, we announced the results of the RFP at the end of 2018 with a diversified mix of resource additions, which are comprised of 200 megawatts (“MW”) of utility scale solar, 100 MW of battery storage, and a 226 MW natural gas combustion turbine. Additionally, we expect to pursue the purchase of 50 to 150 MW of wind and solar generated power for fuel diversity and energy cost savings in the future. This mix of new capacity emphasizes our strategic goal of planning for the future while advancing in renewable energy sources and cleaner technologies. In addition to this expansion of future resources, EE is continuing to invest in local generation programs to support the long-term reliability of our power generation assets.

We were also pleased to see our goal to add renewable resources in a responsible and cost-effective manner and achieved another milestone when we celebrated the commercial operation of the Holloman Air Force Base Solar Facility in October 2018. The 42-acre Holloman Atlas Solar Array is the first customer-dedicated resource that EE has built to serve a U.S. military installation. The output from the five MW solar facility generates enough electricity to power more than 1,700 homes annually and helps the Air Force meet its renewable and energy security goals. In addition, in March 2018, we filed for approval to expand our Texas Community Solar Program to include two MW of solar-powered generation from a 10 MW solar facility located at the Company’s Newman Power Station in El Paso, TX.

In August 2018, we released our first annual Corporate Sustainability Report, celebrating a major milestone for our Company. As we recognized the need to transparently communicate our efforts and achievements regarding our environmental and corporate sustainability initiatives, we developed a report that highlights these accomplishments, including our divestment from coal, our efforts in energy efficiency, our impactful internship programs, and our partnerships with local organizations. We are committed to establishing long-term goals to further improve our carbon footprint and continue reporting on our progress through future Corporate Sustainability Reports.

As we look forward to the potential for adding new technologies and the opportunity to improve customer service, we are pleased to have engaged our local leaders and our community in 2018 to discuss the benefits of implementing Advanced Metering Infrastructure or AMI, which is the backbone of a smart community. We are excited to continuing these discussions, and to build a business case that would allow us to make investments to modernize our electric grid that will further improve our operational efficiency, while expanding customer products and services such as smart pricing options, high usage alerts, and online energy management tools.

2019 will also be an important year in terms of our regulatory objectives. We have filed our requests in Texas for a Transmission Cost Recovery Factor and a Distribution Cost Recovery Factor, which allow us to recover on the capital investments we have made in transmission and distribution infrastructure in a timely manner. Additionally, in 2019, we will be filing a general rate case in New Mexico, as well as a general rate case with the Federal Energy Regulatory Commission.

Our accomplishments over the previous year and future objectives are all possible due to the dedication and hard work of our employees. We cannot serve our customers reliably and effectively without the valued contributions of our International Brotherhood of Electrical Workers local 960 team members, who represent approximately 37% of our local workforce. In 2018, we achieved our highest customer service ratings since we began surveying customers in 2009 to measure their satisfaction with the level of service they receive. In September 2018, the Company was awarded the first ever Community Partner Award from the El Paso Neighborhood Association Coalition, in recognition of our continued partnership and community outreach efforts with the City of El Paso’s neighborhood associations. Additionally, we were also named a 2018 ENERGY STAR® Partner of the Year for our efforts in kilowatt-hour savings and increased education regarding energy efficiency. We will continue to look for ways to build on our customer experience and are committed to improving service to our customers.

As we continue to strengthen our Company and our partnerships with the community, we look forward to upholding our mission of providing safe, clean, reliable, and affordable energy to those we serve.



**Mary E. Kipp**  
President and  
Chief Executive Officer



**Charles A. Yamarone**  
Chairman of the Board  
of Directors

# BOARD OF DIRECTORS

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## Charles A. Yamarone

Chairman of the Board  
El Paso Electric Company /  
Chief Corporate Governance and  
Compliance Officer  
Houlihan Lokey, a global investment bank

## Edward Escudero

Vice Chairman of the Board  
El Paso Electric Company /  
President and Chief Executive Officer  
High Desert Capital, LLC,  
a finance company

## Catherine A. Allen

Founder, Chairman and  
Chief Executive Officer  
The Santa Fe Group,  
a strategic consulting company

# OFFICERS

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## Mary E. Kipp

President and Chief Executive Officer

## Elaina L. Ball

Senior Vice President and  
Chief Administrative Officer

## Steven T. Buraczyk

Senior Vice President, Operations

## Nathan T. Hirschi

Senior Vice President and  
Chief Financial Officer

## Rocky R. Miracle

Senior Vice President, Corporate  
Development and Chief Compliance Officer

## Adrian J. Rodriguez

Senior Vice President,  
General Counsel and Assistant Secretary

## R. Clay Doyle

Vice President,  
Transmission and Distribution

## Paul M. Barbas

Director, Dynegy Inc., an energy company /  
Retired President and Chief Executive  
Officer, DPL Inc. and its principal subsidiary,  
The Dayton Power and Light Company

## James W. Cicconi

Retired Senior Executive Vice President  
External and Legislative Affairs,  
AT&T Services, Inc.

## Mary E. Kipp

President and Chief Executive Officer  
El Paso Electric Company

## Raymond Palacios, Jr.

President, Bravo Cadillac,  
El Paso, Texas and Bravo Chevrolet Cadillac,  
Las Cruces, New Mexico, car dealerships

## Eric B. Siegel

Retired Limited Partner of Apollo Advisors, LP  
Senior Consultant and Special Advisor to  
the Chairman of the Milwaukee Brewers  
Baseball Club

## Stephen N. Wertheimer

Managing Director and Founding Partner,  
W Capital Partners, a private equity firm

## Russell G. Gibson

Vice President, Controller

## Eduardo Gutiérrez

Vice President, Strategic Communications,  
Customer and Community Engagement

## David C. Hawkins

Vice President, Generation,  
System Planning and Dispatch

## Patrick V. Reinhart

Vice President, Governmental Affairs

## Victor F. Rueda

Vice President, Human Resources

## James A. Schichtl

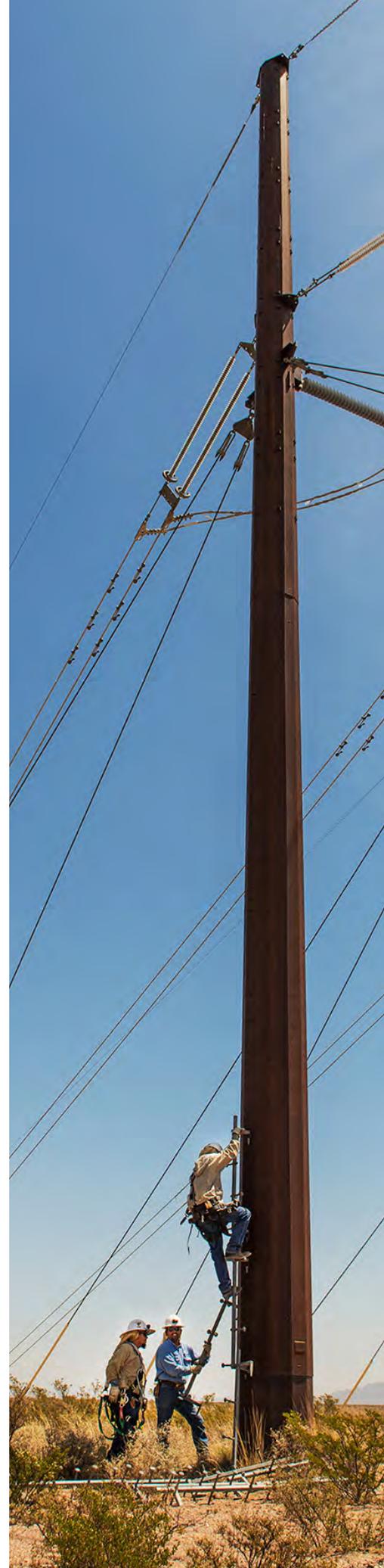
Vice President, Regulatory Affairs

## H. Wayne Soza

Vice President,  
Compliance and Chief Risk Officer

## Richard E. Turner

Vice President, Business Development



**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**Form 10-K**

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2018

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 001-14206

**El Paso Electric Company**  
(Exact name of registrant as specified in its charter)

**Texas**

(State or other jurisdiction  
of incorporation or organization)

**Stanton Tower, 100 North Stanton, El Paso, Texas**

(Address of principal executive offices)

**74-0607870**

(I.R.S. Employer  
Identification No.)

**79901**

(Zip Code)

Registrant's telephone number, including area code: **(915) 543-5711**

**Securities Registered Pursuant to Section 12(b) of the Act:**

Title of each class  
**Common Stock, No Par Value**

Name of each exchange on which registered  
**New York Stock Exchange**

**Securities Registered Pursuant to Section 12(g) of the Act:**

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES  NO

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. YES  NO

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES  NO

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). YES  NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). YES  NO

As of June 30, 2018, the aggregate market value of the voting stock held by non-affiliates of the registrant was \$2,196,858,522 (based on the closing price as quoted on the New York Stock Exchange on that date).

As of January 31, 2019, there were 40,740,080 shares of the Company's common stock outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive Proxy Statement for the 2019 annual meeting of its shareholders are incorporated by reference into Part III of this report.

## DEFINITIONS

The following abbreviations, acronyms or defined terms used in this report are defined below:

Abbreviations, Acronyms or Defined Terms	Terms
A&G .....	Administrative and general
ABFUDC .....	Allowance for Borrowed Funds Used During Construction
AEFUDC .....	Allowance for Equity Funds Used During Construction
AFUDC .....	Allowance for Funds Used During Construction
ANPP Participation Agreement.....	Arizona Nuclear Power Project Participation Agreement dated August 23, 1973, as amended
AOCI .....	Accumulated Other Comprehensive Income
APS.....	Arizona Public Service Company
ARO .....	Asset Retirement Obligations
ASU .....	Accounting Standards Update
Company .....	El Paso Electric Company
CWIP .....	Construction Work In Progress
Copper .....	The Company's Copper Power Station
D.C. Circuit .....	U.S. Court of Appeals for the District of Columbia Circuit
DOE.....	U.S. Department of Energy
El Paso.....	City of El Paso, Texas
EOC .....	The Company's Eastside Operations Center
EPA.....	U.S. Environmental Protection Agency
Exchange Act.....	The Securities Exchange Act of 1934, as amended
FASB .....	Financial Accounting Standards Board
FERC .....	Federal Energy Regulatory Commission
Fort Bliss .....	Fort Bliss, the U.S. Army post next to El Paso, Texas
Four Corners.....	Four Corners Generating Station
FPPCAC .....	New Mexico Fuel and Purchased Power Cost Adjustment Clause
GAAP .....	U.S. Generally Accepted Accounting Principles
GHG .....	Greenhouse Gas
HAFB .....	Holloman Air Force Base
kW .....	Kilowatt(s)
kWh.....	Kilowatt-hour(s)
Las Cruces .....	City of Las Cruces, New Mexico
MPS.....	The Company's Montana Power Station
MW.....	Megawatt(s)
MWh.....	Megawatt-hour(s)
NAAQS .....	National Ambient Air Quality Standards
NAV.....	Net Asset Value
NDT.....	The Company's Palo Verde nuclear decommissioning trust funds
Net dependable generating capability	The maximum load net of plant operating requirements that a generating plant can supply under specified conditions for a given time interval, without exceeding approved limits of temperature and stress
Newman .....	The Company's Newman Power Station
NMPRC .....	New Mexico Public Regulation Commission
NMPRC Final Order .....	NMPRC Final Order in Case No. 15-00127-UT
NOL.....	Net Operating Losses

Abbreviations, Acronyms or Defined Terms	Terms
NOL carryforwards .....	Net Operating Loss carryforwards
NRC.....	Nuclear Regulatory Commission
OPEB Plan.....	The Company's other post-retirement benefits plan, including health care benefits for retired employees and their eligible dependents and life insurance benefits for retired employees only
O&M .....	Operations and maintenance
Palo Verde.....	Palo Verde Generating Station
Palo Verde Participants.....	Those utilities that share in power and energy entitlements, and bear certain allocated costs, with respect to Palo Verde pursuant to the ANPP Participation Agreement
PCBs.....	Pollution Control Bonds
PUCT.....	Public Utility Commission of Texas
PURA .....	Public Utility Regulatory Act
RCF .....	The Company's Revolving Credit Facility
Retirement Plan .....	The Company's Retirement Income Plan
RGEC .....	Rio Grande Electric Cooperative
RGRT.....	Rio Grande Resources Trust II
Rio Grande .....	The Company's Rio Grande Power Station
RPS.....	Renewable Portfolio Standard
SAB 118 .....	SEC Staff Accounting Bulletin No. 118
SEC.....	U.S. Securities and Exchange Commission
Securities Act.....	The Securities Act of 1933, as amended
Standard Contract .....	Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste
TCJA.....	The federal legislation commonly referred to as the Tax Cuts and Jobs Act of 2017
U.S.....	United States
White Sands.....	White Sands Missile Range
2016 PUCT Final Order .....	PUCT Final Order in Docket No. 44941
2016 Study.....	2016 Palo Verde Decommissioning Study
2017 All Source RFP.....	2017 All Source Request for Proposals for Electric Power Supply and Load Management Resources
2017 PUCT Final Order .....	PUCT Final Order in Docket No. 46831
2019 Proxy Statement .....	Proxy statement for the Company's 2019 Annual Meeting of Shareholders
2019 TCRF rate filing .....	Transmission Cost Recovery Factor rate filing in PUCT Docket No. 49148

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## FORWARD-LOOKING STATEMENTS

Certain matters discussed in this Annual Report on Form 10-K, other than statements of historical fact, are "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended ("Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended ("Exchange Act"). Forward-looking statements often include words like "believe", "anticipate", "target", "project", "expect", "predict", "pro forma", "estimate", "intend", "will", "is designed to", "plan" and words of similar meaning, or are indicated by the El Paso Electric Company's (the "Company") discussion of strategies or trends. Forward-looking statements describe the Company's future plans, objectives, expectations or goals. Although the Company believes that the expectations reflected in such forward-looking statements are reasonable, no assurances can be given that these expectations will prove to be correct. Such statements address future events and conditions and include, but are not limited to:

- capital expenditures,
- earnings,
- liquidity and capital resources,
- ratemaking/regulatory/compliance matters,
- litigation,
- accounting matters, including accounting for taxes and leases,
- possible corporate restructurings, acquisitions and dispositions,
- compliance with debt and other restrictive covenants,
- interest rates and dividends,
- environmental matters,
- nuclear operations,
- operation of the Company's generating units and its transmission and distribution systems,
- the availability and costs of new and /or emerging technologies, and
- the overall economy of the Company's service area.

These forward-looking statements are based on assumptions and analyses in light of the Company's experience and perception of historical trends, current conditions, expected future developments and other factors the Company believes were appropriate in the circumstances when the statements were made. Forward-looking statements by their nature involve substantial risks and uncertainties that could significantly impact expected results, and actual future results could differ materially from those described in such statements. While it is not possible to identify all factors, the Company continues to face many risks and uncertainties. Factors that would cause or contribute to such differences include, but are not limited to:

- decisions and actions of the Company's regulators and the resulting impact on the Company's operations, cost of capital, sales, and profitability,
- the Company's ability to fully and timely recover its costs and earn a reasonable rate of return on its invested capital through the rates that it is permitted to charge,
- rates, cost recovery mechanisms and other regulatory matters including the ability to recover fuel costs on a timely basis,
- the ability of the Company's operating partners to maintain plant operations and manage operations and maintenance ("O&M") costs at the Palo Verde Generating Station ("Palo Verde"), including costs to comply with any new or expanded regulatory or environmental requirements,
- reductions in output at generation plants operated by the Company,
- the size of the Company's construction program and its ability to complete construction on budget and on time,
- the receipt of required approvals by regulators and other permits related to the Company's construction programs,
- the Company's reliance on significant customers,
- the credit worthiness of the Company's customers,

- unscheduled outages of generating units including outages at Palo Verde,
- changes in customers' demand for electricity as a result of energy efficiency initiatives and emerging competing services and technologies, including distributed generation and battery storage,
- individual customer groups, including distributed generation customers, may not pay their full cost of service, and other customers may or may not be required to pay the difference,
- changes in, and the assumptions used for, pension and other post-retirement and post-employment benefit liability calculations, as well as actual and assumed investment returns on pension plan and other post-retirement plan assets,
- the impact of changing cost escalation and other assumptions on the Company's nuclear decommissioning liability for Palo Verde, as well as actual and assumed investment returns on assets in the Company's Palo Verde nuclear decommissioning trust funds ("NDT"),
- disruptions in the Company's transmission and distribution systems, and in particular the lines that deliver power from its remote generating facilities,
- the sufficiency of the Company's insurance coverage, including availability, cost, coverage and terms,
- electric utility deregulation or re-regulation,
- regulated and competitive markets,
- ongoing municipal, state and federal activities,
- cuts in military spending or prolonged shutdowns of the federal government that reduce demand for the Company's services from military and governmental customers,
- political, legislative, judicial and regulatory developments,
- homeland security considerations, including those associated with the United States ("U.S.)/Mexico border region and the energy industry,
- changes in environmental laws and regulations and the enforcement or interpretation thereof, including those related to air, water or greenhouse gas ("GHG") emissions or other environmental matters,
- economic, commercial bank, financial and capital market conditions,
- increases in cost of capital,
- the impact of changes in interest rates or rates of inflation,
- actions by credit rating agencies,
- changes in accounting requirements and other accounting matters,
- changing weather trends and the impact of severe weather conditions,
- possible physical or cyber attacks, intrusions or other catastrophic events,
- the impact of lawsuits filed against the Company,
- Texas, New Mexico and electric industry utility service reliability standards and service requirements,
- uranium, natural gas, oil and wholesale electricity prices and availability,
- possible income tax and interest payments as a result of audit adjustments proposed by the U.S. Internal Revenue Service or state taxing authorities,
- the impact of recent changes to U.S. tax laws,
- the impact of international trade and tariff negotiations,
- the impact of U.S. health care reform legislation,
- the effectiveness of the Company's risk management activities,
- the Company's ability to successfully renegotiate its collective bargaining agreement,
- loss of key personnel, the Company's ability to recruit and retain qualified employees and the Company's ability to successfully implement succession planning, and

- other circumstances affecting anticipated operations, sales and costs.

These lists are not all-inclusive because it is not possible to predict all factors. A discussion of some of these factors is included in this Annual Report on Form 10-K under the headings "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations –Summary of Critical Accounting Policies and Estimates" and "Management's Discussion and Analysis of Financial Condition and Results of Operations –Liquidity and Capital Resources." This Annual Report on Form 10-K should be read in its entirety. Management cautions against putting undue reliance on forward-looking statements or projecting any future results based on such statements or present or prior earnings levels. Any forward-looking statement speaks only as of the date such statement was made, and the Company is not obligated to update any forward-looking statement to reflect events or circumstances after the date on which such statement was made, except as required by applicable laws or regulations.

## PART I

### Item 1. Business

#### General

El Paso Electric Company (the "Company") is a public utility engaged in the generation, transmission and distribution of electricity in an area of approximately 10,000 square miles in west Texas and southern New Mexico. The Company also serves a full requirements wholesale customer in Texas. The Company owns or has significant ownership interests in several electrical generating facilities providing it with a net dependable generating capacity of approximately 2,085 megawatts ("MW"). For the year ended December 31, 2018, the Company's energy sources consisted of approximately 44% nuclear fuel, 44% natural gas, 12% purchased power and less than 1% generated by Company-owned solar photovoltaic panels. As of December 31, 2018, the Company had power purchase agreements for 107 MW from solar photovoltaic generation facilities and intends to expand its portfolio of renewable energy sources, particularly solar photovoltaic generation. See "Energy Sources – Purchased Power."

The Company serves approximately 425,000 residential, commercial, industrial, public authority and wholesale customers. The Company distributes electricity to retail customers principally in El Paso, Texas and Las Cruces, New Mexico (representing approximately 64% and 11%, respectively, of the Company's retail revenues for the year ended December 31, 2018). In addition, the Company's wholesale sales include sales for resale to other electric utilities and power marketers. Principal industrial, public authority and other large retail customers of the Company include U.S. military installations, such as Fort Bliss in Texas and White Sands Missile Range ("White Sands") and Holloman Air Force Base ("HAFB") in New Mexico, an oil refinery, several medical centers, two large universities and a steel production facility.

The Company's principal offices are located at the Stanton Tower, 100 North Stanton, El Paso, Texas 79901 (telephone: 915-543-5711). The Company was incorporated in Texas in 1901. As of January 31, 2019, the Company had approximately 1,100 employees, 37% of whom are covered by a collective bargaining agreement.

The Company makes available free of charge through its website, [www.epelectric.com](http://www.epelectric.com), its Annual Report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy statement and all amendments to those reports as soon as reasonably practicable after such material is electronically filed with or furnished to the U.S. Securities and Exchange Commission ("SEC"). In addition, copies of this Annual Report on Form 10-K will be made available free of charge upon written request. The SEC also maintains an internet site that contains reports, proxy and information statements and other information for issuers that file electronically with the SEC. The address of that site is [www.sec.gov](http://www.sec.gov). The information on the Company's website is not incorporated by reference into this Annual Report on Form 10-K.

#### Facilities

As of December 31, 2018, the Company's net dependable generating capability of approximately 2,085 MW consists of the following:

Station	Primary Fuel Type	Company's Share of Net Dependable Generating Capability* (MW)	Company Ownership Interest	Location
Newman Power Station	Natural Gas	752	100%	El Paso, Texas
Palo Verde	Nuclear	633	15.8%	Wintersburg, Arizona
Rio Grande Power Station	Natural Gas	276	100%	Sunland Park, New Mexico
Montana Power Station (Units 1, 2, 3 and 4)	Natural Gas	354	100%	El Paso County, Texas
Copper Power Station	Natural Gas	64	100%	El Paso County, Texas
Renewables**	Solar	6	100%	Culberson County and El Paso County, Texas; Doña Ana County and Otero County, New Mexico
Total		<u>2,085</u>		

\* During summer peak period.

\*\* Renewable nameplates are 8 MW with 70% contribution at time of peak.

## Palo Verde

The Company owns an interest, along with six other utilities, in the three nuclear generating units and common facilities ("Common Facilities") at Palo Verde. Arizona Public Service Company ("APS") serves as operating agent for Palo Verde, and under the Arizona Nuclear Power Project Participation Agreement dated August 23, 1973, as amended ("ANPP Participation Agreement"), the Company has limited ability to influence operations and costs at Palo Verde.

- *Palo Verde Operating Licenses.* Operation of each of the three Palo Verde Units requires an operating license from the U.S. Nuclear Regulatory Commission ("NRC"). The NRC issued full power operating licenses for Unit 1 in June 1985, Unit 2 in April 1986 and Unit 3 in November 1987 and issued renewed operating licenses for each of the three units in April 2011, which extended the licenses for Units 1, 2 and 3 to June 2045, April 2046 and November 2047, respectively.
- *Decommissioning.* Pursuant to the ANPP Participation Agreement and federal law, the Company must fund its share of the estimated costs to decommission Palo Verde Units 1, 2 and 3, including the Common Facilities, through the term of their respective operating licenses. In 2017, the Palo Verde Participants approved the 2016 Palo Verde decommissioning study ("2016 Study"), which estimated that the Company must fund approximately \$432.8 million (stated in 2016 dollars) to cover its share of decommissioning costs. At December 31, 2018, the Company's decommissioning trust fund had a balance of \$276.9 million. Although the 2016 Study was based on the latest available information, there can be no assurance that decommissioning cost estimates will not increase in the future or that regulatory requirements will not change.
- *Spent Fuel and Waste Disposal.* Pursuant to the Nuclear Waste Policy Act of 1982, as amended in 1987, the U.S. Department of Energy ("DOE") is legally obligated to accept and dispose of all spent nuclear fuel and other high-level radioactive waste generated by all domestic power reactors by 1998. The DOE's obligations are reflected in a contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste ("Standard Contract") with each nuclear power plant. The DOE failed to begin accepting spent nuclear fuel by 1998. On December 19, 2012, APS, acting on behalf of itself and the Palo Verde Participants, filed a second breach of contract lawsuit against the DOE. This lawsuit sought to recover damages incurred due to the DOE's failure to accept Palo Verde's spent nuclear fuel for the period beginning January 1, 2007 through June 30, 2011. Pursuant to the terms of the August 18, 2014 settlement agreement, and as amended with the DOE, APS files annual claims for the period July 1 of the then-previous year to June 30 of the then-current year on behalf of itself and those utilities that share in power and energy entitlements, and bear certain allocated costs, with respect to Palo Verde based upon the ANPP Participation Agreement dated August 23, 1973. The settlement agreement, as amended, provides APS with a method for submitting claims and receiving recovery for costs incurred through December 31, 2016, which has been extended to December 31, 2019. The Company's share of costs recovered in 2018, 2017, and 2016, respectively are presented below (in thousands):

Costs Recovery Period	Amount Refunded	Amount Credited to Customers through Fuel Adjustment Clauses	Period Credited to Customers
July 2016 - June 2017	\$ 1,413	\$ 1,121	March 2018
July 2015 - June 2016	1,779	1,432	March 2017
July 2014 - June 2015	1,884	1,581	March 2016

On October 31, 2018, APS filed a \$10.2 million claim for the period July 1, 2017 through June 30, 2018. The Company's share of this claim is approximately \$1.6 million. This claim is pending DOE review. The majority of the reimbursement received by the Company is expected to be credited to customers through the applicable fuel adjustment clauses.

- *DOE's Construction Authorization Application for Yucca Mountain.* The DOE had planned to meet its disposal obligations by designing, licensing, constructing and operating a permanent geologic repository in Yucca Mountain, Nevada. In March 2010, the DOE filed a motion to dismiss with prejudice its Yucca Mountain construction authorization application that was pending before the NRC. Several interested parties have intervened in the NRC proceeding. Additionally, a number of interested parties have filed a variety of lawsuits in different jurisdictions around the country challenging the DOE's authority to withdraw the Yucca Mountain construction authorization application and NRC's cessation of its review of the Yucca Mountain construction authorization application. The cases have been consolidated into one matter at the U.S. Court of Appeals for the

District of Columbia Circuit ("D.C. Circuit"). In August 2013, the D.C. Circuit ordered the NRC to resume its review of the application with available appropriated funds.

On October 16, 2014, the NRC issued Volume 3 of the safety evaluation report developed as part of the Yucca Mountain construction authorization application. This volume addresses repository safety after permanent closure, and the issuance of Volume 3 is a key milestone in the Yucca Mountain licensing process. Volume 3 contains the NRC staff's finding that the DOE's repository design meets the requirements that apply after the repository is permanently closed, including but not limited to the post-closure performance objectives in the NRC's regulations.

On December 18, 2014, the NRC issued Volume 4 of the safety evaluation report developed as part of the Yucca Mountain construction authorization application. This volume covers administrative and programmatic requirements for the repository. It documents the NRC staff's evaluation of whether the DOE's research and development and performance confirmation programs, as well as other administrative controls and systems, meet applicable NRC requirements. Volume 4 contains the NRC staff's finding that most administrative and programmatic requirements in NRC regulations are met, except for certain requirements relating to ownership of land and water rights.

Publication of Volumes 3 and 4 does not signal whether or when the NRC might authorize construction of the repository. The Company cannot predict when spent fuel shipments to the DOE will commence.

- *Waste Confidence and Continued Storage.* On June 8, 2012, the D.C. Circuit issued its decision on a challenge by several states and environmental groups of the NRC's rulemaking regarding temporary storage and permanent disposal of high level nuclear waste and spent nuclear fuel. The petitioners challenged the NRC's 2010 update to the agency's Waste Confidence Decision and temporary storage rule ("Waste Confidence Decision").

The D.C. Circuit found that the agency's 2010 Waste Confidence Decision update constituted a major federal action, which, consistent with the National Environmental Policy Act ("NEPA"), requires either an environmental impact statement or a finding of no significant impact from the agency's actions. The D.C. Circuit found that the NRC's evaluation of the environmental risks from spent nuclear fuel was deficient, and therefore remanded the 2010 Waste Confidence Decision update for further action consistent with NEPA.

On September 6, 2012, the NRC Commissioners issued a directive to the NRC staff to proceed directly with development of a generic environmental impact statement to support an updated Waste Confidence Decision. The NRC Commissioners also directed the NRC staff to establish a schedule to publish a final rule and environmental impact study within 24 months of September 6, 2012.

In September 2013, the NRC issued its draft Generic Environmental Impact Statement ("GEIS") to support an updated Waste Confidence Decision. On August 26, 2014, the NRC approved a final rule on the environmental effects of continued storage of spent nuclear fuel. Renamed the Continued Storage Rule, the NRC's decision adopted the findings of the GEIS regarding the environmental impacts of storing spent fuel at any reactor site after the reactor's licensed period of operations. As a result, those generic impacts do not need to be re-analyzed in the environmental reviews for individual licenses. Although Palo Verde has not been involved in any licensing actions affected by the D.C. Circuit's June 8, 2012 decision, the NRC lifted its suspension on final licensing actions on all nuclear power plant licenses and renewals that went into effect when the D.C. Circuit issued its June 2012 decision. The final Continued Storage Rule was subject to continuing legal challenges before the NRC and the Court of Appeals. In June 2016, the D.C. Circuit issued its final decision, rejecting all remaining legal challenges to the Continue Storage Rule. On August 8, 2016, the D.C. Circuit denied a petition for rehearing.

Palo Verde has sufficient capacity at its on-site independent spent fuel storage installation ("ISFSI") to store all of the nuclear fuel that will be irradiated during the initial operating license period, which ends in December 2027. Additionally, Palo Verde has sufficient capacity at its on-site ISFSI to store a portion of the fuel that will be irradiated during the period of extended operation, which ends in November 2047. If uncertainties regarding the U.S. government's obligation to accept and store spent fuel are not favorably resolved, APS will evaluate alternative storage solutions that may obviate the need to expand the ISFSI to accommodate all of the fuel that will be irradiated during the period of extended operation.

- *The One-Mill Fee.* In 2011, the National Association of Regulatory Utility Commissioners and the Nuclear Energy Institute challenged the DOE's 2010 determination of the adequacy of the one tenth of a cent per kilowatt-hour ("kWh") fee ("one-mill fee") paid by the nation's commercial nuclear power plant owners pursuant to their individual obligations under the Standard Contract. This fee was recovered by the Company through applicable

fuel adjustment clauses. In June 2012, the D.C. Circuit held that the DOE failed to conduct a sufficient fee analysis in making the 2010 determination. The D.C. Circuit remanded the 2010 determination to the Secretary of the DOE with instructions to conduct a new fee adequacy determination within six months. In February 2013, upon completion of the DOE's revised one-mill fee adequacy determination, the court reopened the proceedings. On November 19, 2013, the D.C. Circuit ordered the Secretary of the DOE to notify Congress of his intent to suspend collecting annual fees for nuclear waste disposal from nuclear power plant operators, as he is required to do pursuant to the NWPA and the court's order. On January 3, 2014, the Secretary of the DOE notified Congress of his intention to suspend collection of the one-mill fee, subject to Congress' disapproval and on May 16, 2014, the DOE notified all commercial nuclear power plant operators, effective May 16, 2014, the one-mill fee was suspended. Electricity generated at Palo Verde and sold on or after May 16, 2014 is no longer subjected to the one-mill fee.

- *NRC Oversight of the Nuclear Energy Industry in the Wake of the Earthquake and Tsunami in Japan.* The NRC regulates the operation of all commercial nuclear power reactors in the U.S., including Palo Verde. The NRC periodically conducts inspections of nuclear facilities and monitors performance indicators to enable the agency to arrive at objective conclusions about a licensee's safety performance. Following the March 11, 2011 earthquake and tsunami in Japan, the NRC established a task force to conduct a systematic and methodical review of NRC processes and regulations to determine whether the agency should make additional improvements to its regulatory system. On March 12, 2012, the NRC issued the first regulatory requirements based on the recommendations of the NRC's Near Term Task Force. With respect to Palo Verde, the NRC issued two orders requiring safety enhancements regarding: (1) mitigation strategies to respond to extreme natural events resulting in the loss of power at plants and (2) enhancement of spent fuel pool instrumentation.

The NRC has issued a series of interim staff guidance documents regarding implementation of these requirements. Palo Verde has met the NRC's imposed deadlines for the installation of equipment to address these requirements. Palo Verde has spent approximately \$125.4 million (the Company's share is \$19.8 million) on capital enhancements related to these requirements as of December 31, 2018.

- *Liability and Insurance Matters.* The Palo Verde Participants have insurance for public liability resulting from nuclear energy hazards, covered by primary liability insurance provided by commercial insurance carriers and an industry-wide retrospective assessment program. If a loss at a nuclear power plant covered by the programs exceeds the accumulated funds in the primary level of protection, the Company could be assessed retrospective premium adjustments on a per incident basis up to \$62.1 million, with an annual payment limitation of approximately \$9.7 million. The Palo Verde Participants also maintain \$2.8 billion of "all risk" nuclear property insurance. The insurance provides coverage for property damage and decontamination at Palo Verde. For covered incidents involving property damage not accompanied by a release of radioactive material, the policy's coverage limit is \$2.3 billion. In addition, the Company has secured insurance against portions of any increased cost of generation or purchased power and business interruption resulting from a sudden and unforeseen outage at Palo Verde.

## **Fossil-Fueled Plants**

The Company owns the Newman Power Station ("Newman"), which consists of three conventional steam-electric generating units and two combined cycle generating units. The station operates primarily on natural gas but the conventional steam-electric generating units can also operate on fuel oil.

The Company owns the Rio Grande Power Station ("Rio Grande"), which consists of two conventional steam-electric generating units and one aeroderivative unit that operates on natural gas. Rio Grande Unit 6 with net capacity of 42.5 MW, was initially placed in inactive reserve status in 2015, and has been activated as needed.

The Company owns the Montana Power Station ("MPS"), which consists of four aeroderivative generating units that operate on natural gas. The units can also operate on fuel oil.

The Company owns the Copper Power Station ("Copper"), which consists of a natural gas combustion turbine used primarily to meet peak demand.

Prior to July 6, 2016, the Company owned a 7% interest in Units 4 and 5 at Four Corners Generating Station ("Four Corners"). The Company shared power entitlements and certain allocated costs of the two units with APS (the Four Corners operating agent) and the other Four Corners participants. On July 6, 2016, the Company sold its interests in Four Corners for \$32.0 million to 4C Acquisition, LLC, an affiliate of APS ("APS's affiliate"), and Pinnacle West Capital Corporation ("Pinnacle West"), the parent company of APS and APS's affiliate. No significant gain or loss was recorded for this sale. APS's affiliate assumed responsibility

for all Four Corners capital expenditures made after July 6, 2016, which assumption is guaranteed by Pinnacle West. In addition, APS's affiliate will indemnify the Company against certain liabilities and costs related to the future operation of Four Corners, which indemnification is guaranteed by Pinnacle West. See Part II, Item 8, Financial Statements and Supplementary Data, Note D and Note F of Notes to Financial Statements for further discussions.

### Solar Photovoltaic Facilities

The Company's Texas Community solar facility, a 3 MW utility-scale solar plant located at MPS, and the El Paso Electric Holloman Atlas Solar Array, a 5 MW utility-scale solar plant located on HAFB, began commercial operations on May 31, 2017, and October 18, 2018, respectively. The Company also owns six other solar photovoltaic facilities with a total capacity of 0.2 MW.

### Transmission and Distribution Lines and Agreements

The Company owns, or has significant ownership interests in, four 345 kilovolt ("kV") transmission lines in New Mexico and Arizona and three 500 kV lines in Arizona. These lines enable the Company to deliver its energy entitlements from its remote generation at Palo Verde to its service area (pursuant to various transmission and power exchange agreements to which the Company is a party). The Company also owns the transmission and distribution network within its New Mexico and Texas retail service area and operates these facilities under franchise agreements with various municipalities. Pursuant to standards established by the North American Electric Reliability Corporation and the Western Electricity Coordinating Council, the Company operates its transmission system in a way that allows it to maintain system integrity in the event that any one of these transmission lines is out of service.

In addition to the transmission and distribution lines within our service territory, the Company's transmission network and associated substations include the following:

Line	Length (miles)	Voltage (kV)	Company Ownership Interest
Springerville-Macho Springs-Luna-Diablo Line (1)	310	345	100.0%
West Mesa-Arroyo Line (2)	202	345	100.0%
Greenlee-Hidalgo-Luna-Newman Line (3)			
Greenlee-Hidalgo	60	345	40.0%
Hidalgo-Luna	50	345	57.2%
Luna-Newman	86	345	100.0%
Eddy County-AMRAD Line (4)	125	345	66.7%
Palo Verde Transmission			
Palo Verde-Westwing (5)	45	500	18.7%
Palo Verde-Jojoba-Kyrene (6)	75	500	18.7%

- (1) Runs from Tucson Electric Power Company's ("TEP") Springerville Generating Plant near Springerville, Arizona, to the Company's Diablo Substation near Sunland Park, New Mexico.
- (2) Runs from Public Service Company of New Mexico's ("PNM") West Mesa Substation near Albuquerque, New Mexico, to the Company's Arroyo Substation near Las Cruces, New Mexico.
- (3) Runs from TEP's Greenlee Substation near Duncan, Arizona to Newman.
- (4) Runs from the Company's and PNM's high voltage direct current terminal at the Eddy County Substation near Artesia, New Mexico to the AMRAD Substation near Oro Grande, New Mexico.
- (5) Represents two 45-mile, 500 kV lines running from Palo Verde to the Westwing Substation located northwest of Phoenix near Peoria, Arizona.
- (6) Runs from Palo Verde to the Jojoba Substation near Gila Bend, Arizona, then to the Kyrene Substation near Tempe, Arizona.

## Environmental Matters

*General.* The Company is subject to extensive laws, regulations and permit requirements with respect to air and GHG emissions, water discharges, soil and water quality, waste management and disposal, natural resources and other environmental matters by federal, state, regional, tribal and local authorities. Failure to comply with such laws, regulations and requirements can result in actions by authorities or other third parties that might seek to impose on the Company administrative, civil and/or criminal penalties or other sanctions. In addition, releases of pollutants or contaminants into the environment can result in costly cleanup liabilities. These laws, regulations and requirements are subject to change through modification or reinterpretation, or the introduction of new laws and regulations, and, as a result, the Company may face additional capital and operating costs to comply. Certain key environmental issues, laws and regulations facing the Company are described further below.

In March 2017, the Company entered into a Compliance Agreement ("Compliance Agreement") with the Texas Commission on Environmental Quality under the Texas Environmental, Health and Safety Audit Privilege Act to address certain water and waste compliance issues associated with the integrity of the synthetic liner of the evaporation pond at Newman. The Company has initiated a capital project to extend the life of evaporation pond and in doing so will complete its obligation of the Compliance Agreement. The Compliance Agreement remains in effect.

*Air Emissions.* The U.S. Clean Air Act ("CAA"), associated regulations and comparable state and local laws and regulations relating to air emissions impose, among other obligations, limitations on pollutants generated during the operations of the Company's facilities and assets, including sulfur dioxide, particulate matter and nitrogen oxides.

*National Ambient Air Quality Standards ("NAAQS").* Under the CAA, the U.S. Environmental Protection Agency ("EPA") sets NAAQS for six criteria pollutants considered harmful to public health and the environment, including particulate matter, nitrogen oxide, carbon monoxide, ozone and sulfur dioxide. On October 1, 2015, the EPA released a final rule tightening the primary and secondary NAAQS for ground-level ozone from its 2008 standard levels of 75 parts per billion ("ppb") to 70 ppb. The EPA published the Final Rule on June 4, 2018, designating El Paso County, Texas, as "attainment/unclassifiable" under the 2015 ozone NAAQS and designating a section of southern Doña Ana County, New Mexico, as "nonattainment." In August, several petitions for review of the Final Rule were filed in the D.C. Circuit. One of these petitions, filed by the City of Sunland Park, New Mexico, specifically challenges the "attainment/unclassifiable" designation of El Paso County, Texas. The Company and other intervenors filed and were granted motions to intervene in the challenges to EPA's 2015 ozone NAAQS designations. A briefing schedule extending through July 2019 has been established for the case.

States, including New Mexico, that contain any areas designated as nonattainment are required to complete development of implementation plans in the 2020-2021 timeframe. Most nonattainment areas are expected to have until 2020 or 2023 to meet the primary (health) standard, with the exact attainment date varying based on the ozone level in the area. The Company continues to evaluate what impact these final and proposed NAAQS could have on its operations. If the Company is required to install additional equipment to control emissions at its facilities, the NAAQS, individually or in the aggregate, could have a material impact on its operations and financial results.

*Other Laws and Regulations and Risks.* The Company sold its interest in Four Corners to APS's affiliate on July 6, 2016 at the expiration of the 50-year participation agreement. As of the closing date of the sale, the Company's environmental liabilities associated with Four Corners were limited to conditions that existed at the time of the sale and further limited to the portion thereof for which the Company would have been financially responsible if Four Corners had fully ceased operation on July 6, 2016. Pursuant to the terms of the asset purchase agreement ("Purchase and Sale Agreement"), neither APS's affiliate nor APS assumed the Company's pre-closing obligations under environmental laws with respect to its interest in Four Corners. The Company may be subject to certain future claims under environmental laws and regulations as a former owner of Four Corners. The extent of such claims, if any, cannot be predicted with certainty.

*Climate Change.* There has been a wide-ranging policy debate, at the local, state, national and international levels, regarding the impact of GHG and possible means for their regulation. Efforts continue to be made in the international community toward the adoption of international treaties or protocols that would address global climate change issues. In April 2016, the United States signed the Paris Agreement, which requires countries to review and "represent a progression" in their intended nationally determined contributions, which set GHG emission reduction goals, every five years beginning in 2020. In August 2017, the United States formally documented to the United Nations its intent to withdraw from the Paris Agreement. The earliest possible effective withdrawal date from the Paris Agreement is November 2020. At the state level, several states have already adopted measures requiring GHG emissions to be reduced within state boundaries. For example, the governor of New Mexico signed an executive order in January 2019 that supports the Paris Agreement and includes a goal of reducing statewide GHG emissions by at least 45% by 2030. The executive order also creates a Climate Change Task Force to evaluate and develop regulatory strategies to reach the 45% reduction goal. Although the Company cannot currently determine the effect of potential regulatory strategies that may be

suggested by the New Mexico Climate Change Task Force, if implemented, they could be material to the Company's business, reputation, financial condition or results of operations.

The federal government has considered, proposed and/or finalized legislation or regulations limiting GHG emissions, including carbon dioxide. In particular, the U.S. Congress has considered legislation to restrict or regulate GHG emissions. In October 2015, the EPA published a rule establishing guidelines for states to regulate carbon dioxide emissions from existing power plants, known as the Clean Power Plan ("CPP"). Legal challenges to the CPP are ongoing. On August 31, 2018, the EPA published a proposal to replace the CPP called the Affordable Clean Energy ("ACE") rule. The ACE rule has not yet been finalized. At this time the Company cannot determine the impact that the CPP, the ACE rule, and related proposals and legal challenges may have on our financial position, results of operations or cash flows.

A significant portion of the Company's generation assets are nuclear or gas-fired, and as a result, the Company believes that its GHG emissions are low relative to electric power companies who rely more on coal-fired generation. Current and future legislation and regulation of GHG or any future related litigation could impose significant costs and/or operating restrictions on the Company, reduce demand for the power the Company generates, and/or require the Company to purchase rights to emit GHG, any of which could be material to the Company's business, reputation, financial condition or results of operations.

Climate change also has potential physical effects that could be relevant to the Company's business. Climate change could affect the Company's service area by causing higher temperatures, less winter precipitation and less spring runoff, as well as by causing more extreme weather events. Such developments could change the demand for power in the region and could also impact the price or ready availability of water supplies or affect maintenance needs and the reliability of Company equipment. The Company believes that material effects on the Company's business or results of operations may result from the physical consequences of climate change, the regulatory approach to climate change ultimately selected and implemented by governmental authorities, or both. Given the significant uncertainties regarding whether and how these issues will be regulated, as well as the timing and severity of any physical effects of climate change, the Company believes it is not possible to meaningfully quantify the costs of these potential impacts at present.

*Environmental Litigation and Investigations.* Since July 2011, the U.S. Department of Justice, on behalf of the EPA, and APS have been engaged in substantive settlement negotiations in an effort to resolve certain pending matters. The allegations being addressed through settlement negotiations are that APS failed to obtain the necessary permits and install the controls necessary under the CAA to reduce sulfur dioxide, nitrogen oxides, and particulate matter, and that APS failed to obtain an operating permit under Title V of the CAA that reflects applicable requirements imposed by law. On June 24, 2015, the parties filed with the U.S. District Court for the District of New Mexico a settlement agreement ("CAA Settlement Agreement") resolving this matter. On August 17, 2015, the U.S. District Court entered the CAA Settlement Agreement. The agreement imposes a total civil penalty payable by the co-owners of Four Corners collectively in the amount of \$1.5 million, and it requires the co-owners to pay \$6.7 million for environmental mitigation projects. At December 31, 2018, the Company has accrued its remaining unpaid share of approximately \$0.2 million related to this matter.

## Construction Program

Utility construction expenditures reflected in the following table consist primarily of local generation, expanding and updating the transmission and distribution systems, the cost of capital improvements and replacements at Palo Verde and other generating facilities, and other property and equipment. Studies indicate that the Company will need additional power generation resources to meet increasing load requirements on its system and to replace retiring plants. After evaluation of the competitive 2017 All Source Request for Proposals for Electric Power Supply and Load Management Resources ("2017 All Source RFP"), the winning bids include the construction of a 226 MW natural gas combustion turbine generating unit at Newman in El Paso with an anticipated operational date in 2023. The costs of the new generating unit are included in the table below. The winning bids also included purchased power agreements for 200 MW of utility scale solar resources and 100 MW of battery storage, which are not included in the construction program. The selected proposals are subject to the execution of contracts following negotiations with the winning bidders, obtaining the applicable environmental and construction related permits, and obtaining necessary approvals by the Public Utility Commission of Texas ("PUCT") and the New Mexico Public Regulation Commission ("NMPRC").

The Company's estimated cash construction costs for 2019 through 2023 are approximately \$1.3 billion. Actual costs may vary from the construction program estimates shown. Such estimates are under continuous review and subject to ongoing adjustment and are updated periodically to reflect changed conditions.

By Year (1)(2)(3) (estimates in millions)	By Function (estimates in millions)
2019..... \$ 249	Production (1)(2) ..... \$ 450
2020..... 224	Transmission..... 167
2021..... 266	Distribution (3) ..... 518
2022..... 278	General..... 161
2023..... 279	
Total ..... \$ 1,296	Total ..... \$ 1,296

(1) Does not include acquisition costs for nuclear fuel. See "Energy Sources – Nuclear Fuel."

(2) Estimated production costs consist of:

a. \$185 million for new generating capacity, including:

i. \$143 million of construction costs from 2019 through 2023 for a 226 MW combustion turbine generating unit at Newman with an anticipated operational date in 2023 as a result of the 2017 All Source RFP.

ii. \$42 million of initial construction costs from 2019 through 2023 for a 320 MW combined cycle generating unit to be completed in 2027.

b. \$265 million of other generation costs, including \$185 million for Palo Verde.

(3) Estimated distribution costs include:

a. \$85 million of initial project costs for Advanced Metering Infrastructure ("AMI"), including deployment of the back-office systems and meters. Legislative proposals regarding the clarification of the regulatory process to implement AMI are anticipated during the Texas legislative session that convened in January 2019. With legislative clarification, the Company would then have the opportunity to request regulatory approval for the deployment of AMI.

## Energy Sources

### General

The following table summarizes the percentage contribution of nuclear fuel, natural gas, coal and purchased power to the total kWh energy mix of the Company. Energy generated by Company-owned solar photovoltaic panels and wind turbines accounted for less than 1% of the total kWh energy mix of the Company.

<u>Power Source</u>	<u>Years Ended December 31,</u>		
	<u>2018</u>	<u>2017</u>	<u>2016</u>
	<b>(percentage of total kWh energy mix)</b>		
Nuclear .....	44%	49%	49%
Natural gas.....	44%	36%	34%
Coal .....	—%	—%	2%
Purchased power .....	12%	15%	15%
Total.....	100%	100%	100%

Allocated fuel and purchased power costs are generally recoverable from customers in Texas and New Mexico pursuant to applicable regulations. Historical fuel costs and revenues are reconciled periodically in proceedings before the PUCT and the NMPRC. See Part II, Item 8, Financial Statements and Supplementary Data, Note D of Notes to Financial Statements for further discussion on Texas and New Mexico Regulatory Matters.

### Nuclear Fuel

The nuclear fuel cycle for Palo Verde consists of the following stages: the mining and milling of uranium ore to produce uranium concentrates, the conversion of the uranium concentrates to uranium hexafluoride ("conversion services"), the enrichment of uranium hexafluoride ("enrichment services"), the fabrication of fuel assemblies ("fabrication services"), the utilization of the fuel assemblies in the reactors, and the storage and disposal of the spent fuel.

Pursuant to the ANPP Participation Agreement, the Company owns an undivided interest in nuclear fuel purchased in connection with Palo Verde. The Palo Verde Participants are continually identifying their future nuclear fuel resource needs and negotiating arrangements to fill those needs. The Palo Verde Participants have contracted for 100% of Palo Verde's requirements for uranium concentrates through 2025 and 15% of its requirements through 2028. The participants have contracted for 100% of Palo Verde's requirement for conversion services through 2025 and 40% of its requirements through 2028. The participants have also contracted for 100% of Palo Verde's requirement for enrichment services through 2021 and 90% of its requirement for 2022, and 80% for 2023 through 2026 and all of Palo Verde's requirement for fuel assembly fabrication services through 2027.

*Nuclear Fuel Financing.* The Company's financing of nuclear fuel is accomplished through Rio Grande Resources Trust II ("RGRT"), a Texas grantor trust, which is consolidated in the Company's financial statements. As of December 31, 2018, RGRT has \$110 million aggregate principal amount of senior notes due 2020 and 2025. On June 28, 2018, RGRT completed the sale of \$65 million aggregate principal amount of senior notes due August 15, 2025. The Company guarantees the payment of principal and interest on the RGRT senior notes. The proceeds from the sale of the RGRT senior notes were used by RGRT to repay amounts borrowed under the then-existing revolving credit facility and enable future nuclear fuel financing requirements of RGRT to be met with a combination of the senior notes and amounts borrowed under the Company's Revolving Credit Facility ("RCF").

### Natural Gas

The Company manages its natural gas requirements through a combination of a long-term (greater than a year) supply contract, several medium-term (greater than a month but less than one year) supply contracts and spot or short-term (daily to a month) market purchases. The long-term supply contract provides for firm deliveries of gas at market-based index prices. Medium-term and spot agreements are either fixed priced and/or index priced depending on the market. Through March 2018, the Company's natural gas requirements at Newman, Rio Grande and MPS were met with short-term, medium-term and long-term natural gas purchases from various suppliers; thereafter, there were only short-term and medium term natural gas purchases, and this practice is expected to continue in 2019. Interstate gas is delivered under a base firm transportation contract. The Company has expanded its firm interstate transportation contract to include MPS. The Company anticipates it will continue to purchase natural gas at spot market prices on a monthly basis for a portion of the fuel needs for Newman, Rio Grande and MPS. The Company will continue to evaluate the availability of short-term natural gas supplies versus medium and long-term supplies to maintain a reliable and economical supply for its local generating stations.

Natural gas for Newman and Copper was also delivered pursuant to a long-term intrastate natural gas contract for firm transportation that became effective October 1, 2009 and continued through March 31, 2018. Beginning April 1, 2018, intrastate natural gas reservation and storage for Newman and Copper has been provided through new contracts with ONEOK WesTex Transmission, LLC and ONEOK Texas Gas Storage, LLC, respectively, that continue through March 31, 2028. It is anticipated that deliveries of intrastate natural gas to MPS may begin in the first quarter of 2019. Under this new contract, intrastate gas supply will be sourced in the same manner as interstate gas through a variety of medium and short-term purchase contracts.

## **Purchased Power**

To supplement its own generation and operating reserve requirements, and to meet its Renewable Portfolio Standard ("RPS") requirements, the Company engages in power purchase arrangements that may vary in duration and amount based on an evaluation of the Company's resource needs, the economics of the transactions and specific RPS requirements.

The Company has a firm 100 MW Power Purchase and Sale Agreement ("Power Purchase and Sale Agreement") with Freeport-McMoran Copper and Gold Energy Services LLC ("Freeport"), pursuant to which Freeport will deliver energy to the Company from the Luna Energy Facility (a natural gas-fired combined cycle generation facility located in Luna County, New Mexico) and the Company will deliver a like amount of energy at Greenlee, Arizona. The Company may purchase up to the contracted MW amount at a specified price at times when energy is not exchanged under the Power Purchase and Sale Agreement. The Power Purchase and Sale Agreement was approved by the Federal Energy Regulatory Commission ("FERC") and will continue through an initial term ending December 31, 2021, with subsequent rollovers until terminated. Upon mutual agreement, the Power Purchase and Sale Agreement allows the parties to increase the amount of energy that is purchased and sold thereunder. The parties have agreed to increase the amount up to 125 MW through December 2021.

The Company has entered into several power purchase agreements to help meet its RPS requirements. Specifically, the Company has a 25-year power purchase agreement with Hatch Solar Energy Center I, LLC for a 5 MW solar photovoltaic project located in southern New Mexico, which began commercial operation in July 2011. In June 2015, the Company entered into a consent agreement with Hatch Solar Energy Center I, LLC to provide for additional or replacement photovoltaic modules. The Company also entered into a 20-year contract with Solar Roadrunner, LLC, a subsidiary of Global Infrastructure Partners, (formerly known as NRG Solar Roadrunner LLC) for the purchase of all of the output of a 20 MW solar photovoltaic plant built in southern New Mexico, which began commercial operation in August 2011. In addition, the Company has 25-year power purchase agreements to purchase all of the output of two additional solar photovoltaic projects located in southern New Mexico, SunE EPE1, LLC (10 MW) and SunE EPE2, LLC (12 MW), which began commercial operation in June 2012 and May 2012, respectively. In September 2017, Longroad Solar Portfolio Holdings, LLC purchased SunE EPE1, LLC, and in October 2017, Silicon Ranch Corporation purchased SunE EPE2, LLC with the Company's consent per the terms of both power purchase agreements.

Furthermore, the Company has a 20-year power purchase agreement with Macho Springs Solar, LLC to purchase the entire generation output delivered from the 50 MW Macho Springs solar photovoltaic project located in Luna County, New Mexico which began commercial operation in May 2014. Finally, the Company has a 30-year power purchase agreement with Newman Solar LLC to purchase the total output, which is approximately 10 MW, from a solar photovoltaic generation plant on land subleased from the Company in proximity to Newman. This solar project began commercial operation in December 2014.

Other purchases of shorter duration were made during 2018 to supplement the Company's generation resources during planned and unplanned outages, for economic reasons and to supply off-system sales.

The Company recently concluded and announced its selection of resources from its 2017 All Source RFP. In addition to conventional natural gas generation, the Company will be initiating contract negotiations during 2019 for power purchase agreements from both solar and battery storage resources. Furthermore, the Company will pursue negotiations for possible additional solar and wind purchase power if there are potential energy cost savings.

## Operating Statistics

	Years Ended December 31,		
	2018	2017	2016
Operating revenues (in thousands):			
Non-fuel base revenues:			
Retail:			
Residential.....	\$ 297,597	\$ 287,884	\$ 278,774
Commercial and industrial, small .....	194,341	198,799	194,942
Commercial and industrial, large .....	34,920	38,403	39,070
Sales to public authorities .....	95,460	97,890	96,881
Total retail base revenues.....	622,318	622,976	609,667
Wholesale:			
Sales for resale - full requirement customer .....	2,780	2,730	2,407
Total non-fuel base revenues .....	625,098	625,706	612,074
Fuel revenues:			
Recovered from customers during the period.....	156,493	218,380	148,397
Under (over) collection of fuel .....	(4,736)	(17,133)	14,893
New Mexico fuel in base rates.....	—	—	33,279
Total fuel revenues .....	151,757	201,247	196,569
Off-system sales.....	86,418	58,986	45,702
Wheeling revenues.....	19,026	18,114	21,966
Energy efficiency cost recovery.....	8,888	—	—
Miscellaneous .....	8,188	8,229	7,034
Total revenues from customers .....	899,375	912,282	883,345
Other .....	4,228	4,515	3,591
Total operating revenues .....	<u>\$ 903,603</u>	<u>\$ 916,797</u>	<u>\$ 886,936</u>
Number of customers (end of year) (1):			
Residential.....	376,651	370,054	363,987
Commercial and industrial, small .....	42,141	42,291	41,741
Commercial and industrial, large .....	48	48	49
Other .....	6,170	5,500	5,285
Total .....	<u>425,010</u>	<u>417,893</u>	<u>411,062</u>
Average annual kWh use per residential customer .....			
	<u>7,988</u>	<u>7,671</u>	<u>7,748</u>
Energy supplied, net, kWh (in thousands):			
Generated .....	9,943,721	8,950,875	8,820,006
Purchased and interchanged.....	1,355,309	1,540,841	1,552,251
Total .....	<u>11,299,030</u>	<u>10,491,716</u>	<u>10,372,257</u>
Energy sales, kWh (in thousands):			
Retail:			
Residential .....	2,988,695	2,823,260	2,805,789
Commercial and industrial, small .....	2,431,920	2,410,710	2,403,447
Commercial and industrial, large.....	1,050,834	1,045,319	1,030,745
Sales to public authorities .....	1,563,227	1,564,670	1,572,510
Total retail .....	<u>8,034,676</u>	<u>7,843,959</u>	<u>7,812,491</u>
Wholesale:			
Sales for resale - full requirement customer .....	58,991	62,887	62,086
Off-system sales.....	2,687,961	2,042,884	1,927,508
Total wholesale.....	<u>2,746,952</u>	<u>2,105,771</u>	<u>1,989,594</u>
Total energy sales.....	10,781,628	9,949,730	9,802,085
Losses and Company use.....	517,402	541,986	570,172
Total .....	<u>11,299,030</u>	<u>10,491,716</u>	<u>10,372,257</u>
Native system:			
Peak load, kW .....	1,929,000	1,935,000	1,892,000
Net dependable generating capability for peak, kW .....	<u>2,085,000</u>	<u>2,082,000</u>	<u>2,080,000</u>
Total system:			
Peak load, kW (2) .....	2,006,000	1,982,000	2,027,000
Net dependable generating capability for peak, kW .....	<u>2,085,000</u>	<u>2,082,000</u>	<u>2,080,000</u>

(1) The number of retail customers presented is based on the number of service locations.

(2) Includes spot sales and net losses of 77,000 kilowatts ("kW"), 47,000 kW and 135,000 kW for 2018, 2017 and 2016, respectively.

## **Regulation**

### **General**

The rates and services of the Company are regulated by incorporated municipalities in Texas, the PUCT, the NMPRC and the FERC. Municipal orders, ordinances and other agreements regarding rates and services adopted by Texas municipalities are subject to review and approval by the PUCT. The FERC has jurisdiction over the Company's wholesale (sales for resale - full requirement customer) transactions, transmission service and compliance with federally-mandated reliability standards. The decisions of the PUCT, the NMPRC and the FERC are subject to judicial review. See Part II, Item 8, Financial Statements and Supplementary Data, Note D of Notes to Financial Statements for further discussion on Regulatory Matters.

### **Power Sales Contracts**

The Company has entered into several short-term (three months or less) off-system sales contracts throughout 2018.

### **Franchises and Significant Customers**

#### **Franchises**

The Company operates under franchise agreements with several cities in its service territory, including one with El Paso, Texas, the largest city it serves. The franchise agreement allows the Company to utilize public rights-of-way necessary to serve its customers within El Paso. Pursuant to the El Paso franchise agreement, the Company pays to the City of El Paso, on a quarterly basis, a fee equal to 5.00% of gross revenues the Company receives for the generation, transmission and distribution of electrical energy and other services within the city. The 2005 El Paso franchise agreement set the franchise fee at 3.25% of gross revenues, but that amount has since been adjusted by two amendments. The 2010 amendment added an incremental fee equal to 0.75% of gross revenues to be placed in a restricted fund to be used by the city solely for economic development and renewable energy purposes. The 2018 amendment, approved on March 20, 2018, and applicable to bills issued on or after October 1, 2018, increased the dedicated incremental fee by 1.00% of gross revenues and extended the term of the franchise agreement by 30 years. Any assignment of the franchise agreement, including a deemed assignment as a result of a change in control of the Company, requires the consent of the City of El Paso. The El Paso franchise agreement is set to expire on July 31, 2060.

The Company does not have a written franchise agreement with Las Cruces, New Mexico, the second largest city in its service territory. The Company utilizes public rights-of-way necessary to service its customers within Las Cruces under an implied franchise pursuant to state law by satisfying all obligations under the franchise agreement that expired on April 30, 2009. The Company pays the City of Las Cruces a franchise fee of 2.00% of gross revenues the Company receives from services within the City of Las Cruces.

The Company also maintains franchise agreements with other municipalities, and applicable counties, within its service territories.

#### **Military Installations**

The Company serves HAFB, White Sands and Fort Bliss. These military installations represent approximately 2.6% of the Company's annual retail revenues. In July 2014, the Company signed an agreement with Fort Bliss under which Fort Bliss takes retail electric service from the Company under the applicable Texas tariffs. The Company serves White Sands under the applicable New Mexico tariffs. In August 2016, the Company signed a contract with HAFB under which the Company provides retail electric service and limited wheeling services to HAFB under the applicable New Mexico tariffs. As stated in the contract, HAFB will purchase the full output of a Company-owned 5 MW solar facility upon its completed construction, which occurred on October 18, 2018. HAFB's other power requirements are provided under the applicable New Mexico tariffs with limited wheeling services under the contract.

#### **Other Information**

Investors should note that we announce material financial information in our filings with the SEC, press releases and public conference calls. Based on guidance from the SEC, we may also use the Investor Relations section of our website ([www.epelectric.com](http://www.epelectric.com)) to communicate with investors about the Company. It is possible that the financial information we post there could be deemed to be material information. The information contained on or accessible from our website is not incorporated by reference into and does not constitute a part of this Annual Report on Form 10-K.

## **Item 1A. Risk Factors**

Like other companies in our industry, our financial results are impacted by weather, the economy of our service territory, market prices for power, fuel prices, and the decisions of regulatory agencies. Our common stock price and creditworthiness will be affected by local, regional and national macroeconomic trends, general market conditions and the expectations of the investment community, all of which are largely beyond our control. In addition, the following statements highlight risk factors that may affect our financial condition and results of operations. These are not intended to be an exhaustive discussion of all such risks, and the statements below must be read together with factors discussed elsewhere in this Annual Report on Form 10-K and in our other filings with the SEC.

### **Our Revenues and Profitability Depend Upon Regulated Rates**

Our rates are governed by Texas, New Mexico and federal laws and regulations, with our retail rates subject to regulation by incorporated municipalities in Texas, the PUCT, the NMPRC and our wholesale rates subject to regulation by the FERC. There can be no assurance that the laws and regulations or the application thereof in our different jurisdictions will be similar or consistent, which could lead to different treatment of certain matters by our regulators in different jurisdictions. The PUCT Final Order in Docket No. 46831 ("2017 PUCT Final Order") established our current retail base rates in Texas, effective July 18, 2017. In addition, the NMPRC Final Order in Case No. 15-00127-UT ("NMPRC Final Order") established rates in New Mexico that became effective in July 2016.

Our profitability depends on our ability to recover the costs, including a reasonable return on invested capital, of providing electric service to our customers through base rates approved by our regulators. These rates are generally established based on an analysis of the expenses we incur in a historical test year, and as a result, the rates ultimately approved by our regulators may or may not match our expenses at any given time and recovery of expenses may lag behind the occurrence of those expenses. Rates in New Mexico may be established using projected costs and investment for a future test year period in certain instances. While rate regulation is based on the assumption that we will have a reasonable opportunity to recover our costs and earn a reasonable rate of return on our invested capital, there can be no assurance that our future Texas rate cases, New Mexico rate cases, or FERC rate cases will result in rates that will allow us to fully recover our costs including a reasonable return on invested capital, or that our regulators will make similar or consistent determinations with respect to our rates, operations or other matters before our regulators. There can be no assurance that regulators will determine that all of our costs are reasonable and have been prudently incurred including costs associated with future plant retirements. It is also likely that third parties will intervene in any cases and challenge whether our costs are reasonable and necessary. If all of our costs are not recovered, or timely recovered, through the retail rates ultimately approved by our regulators, our profitability and cash flow could be adversely affected which, over time, could adversely affect our ability to meet our financial obligations.

### **We May Not Be Able To Recover All Costs of New Generation and Transmission Assets**

We received approval, both from the PUCT and the NMPRC, to construct Units 3 and 4, two 89 MW simple-cycle aeroderivative combustion turbines at MPS. In 2016, we completed construction of these units, which began commercial operation in May 2016 and September 2016, respectively. The PUCT approved the inclusion of the Texas jurisdictional portion of MPS Units 3 and 4 in base rates in the 2017 PUCT Final Order. However, the New Mexico jurisdiction portion of MPS Units 3 and 4 have not yet been approved by the NMPRC for inclusion in customer base rates. Accordingly, we are exposed to the risk of failing to recover these costs as well as costs associated with the construction of other new units and transmission and distribution assets.

We announced the results of the 2017 All Source RFP on December 26, 2018, that includes a diverse generation mix. The selected proposals are subject to the execution of contracts following negotiations with the winning bidders, obtaining the applicable environmental and construction related permits and obtaining necessary approvals by the PUCT and the NMPRC.

In addition, for all resource additions, if the contracts, permits, approvals, or the construction of the new unit is not completed on time, we may be required to purchase power or operate less efficient generating units to meet customer requirements. Any replacement purchased power or fuel costs will be subject to regulatory review by the PUCT and the NMPRC. We face financial risks to the extent that recovery is not allowed for any replacement fuel costs resulting from delays in the completion of these new units or other new units.

### **Weakness in the Economy and Uncertainty in the Financial Markets Could Reduce Our Sales, Hinder Our Capital Programs and Increase Our Funding Obligations for Pensions and Decommissioning**

The global credit and equity markets and the overall economy can be extremely volatile which could have a number of adverse effects on our operations, funding obligations and capital programs. For example, tight credit and capital markets could make it difficult and more expensive to raise capital to fund our operations and capital programs. If we are unable to access the

credit markets, we could be required to defer or eliminate important capital projects in the future. In addition, declines in stock market performance may reduce the value of our financial assets and decommissioning trust investments and negatively impact our results of operations. Similarly, inflationary increases will increase our future decommission obligations. Such market results may also increase our funding obligations for our pension plans, other post-retirement benefit plans and the NDT. Changes in the corporate interest rates that we use as the discount rate to determine our pension and other post-retirement liabilities may have an impact on our funding obligations for such plans and trusts.

Further, an economic downturn may result in reduced customer demand, both in the retail and wholesale markets, and increases in customer delinquencies and write-offs. Uncertainty in the credit markets may negatively impact the ability of our customers to finance purchases of our services and could adversely affect the collectability of our receivables. The credit markets and overall economy (including inflationary increases) may also adversely impact our ability to arrange future financings on acceptable terms and therefore our ability to refinance our existing indebtedness could be limited. Furthermore, the credit markets and overall economy may also adversely impact the financial health of our suppliers. If that were to occur, our access to and prices for inventory, supplies and capital equipment could be adversely affected. Our power trading counterparties could also be adversely impacted by the market and economic conditions which could result in reduced wholesale power sales or increased counterparty credit risk.

Similarly, actions or inaction of Congress and of governmental agencies can impact our operations. Partial government shutdowns, such as occurred in 2013 and the end of 2018 and the beginning of 2019, can impact both sales and timely receivables from public authorities, commercial, industrial and residential customers. The occurrence of any of these events could have a material adverse effect on our results of operations, financial condition and cash flows.

### **There are Inherent Risks in the Ownership of Nuclear Facilities**

Our 15.8% ownership interest in Palo Verde, which is the largest nuclear electric generating facility in the U.S., subjects us to a number of risks. A significant percentage of our generating capacity, off-system sales margins, assets and operating expenses is attributable to Palo Verde. Our interest in each of the three Palo Verde units totals approximately 633 MW of generating capacity. Palo Verde represents approximately 30% of our available net generating capacity and provided approximately 44% of our energy requirements for the twelve months ended December 31, 2018. Palo Verde comprises approximately 24% of our total net plant-in-service and Palo Verde expenses comprise a significant portion of O&M expenses. APS is the operating agent for Palo Verde, and we have limited ability under the ANPP Participation Agreement to influence operations and costs at Palo Verde. Palo Verde operated at a capacity factor of 90.2% and 93.8% in the twelve months ended December 31, 2018 and 2017, respectively.

We participate in Palo Verde with one or more parties who may not have the same goals, strategies, priorities or resources as we do and may compete with us. Furthermore, regulatory compliance issues and financial restraints could cause these parties to make decisions that could potentially be adverse to us. Additionally, if one or more of the participants defaults in performance of its obligations under the ANPP Participation Agreement, the non-defaulting participants must bear all operating, maintenance, and other costs otherwise payable by the defaulting participant (and will receive the generation share of the defaulting participant) in the ratio of their respective share to the total shares of all non-defaulting participants.

As Palo Verde is a nuclear electric generating facility, it is subject to environmental, health and financial risks, such as the ability to obtain adequate supplies of nuclear fuel and water; the ability to dispose of spent nuclear fuel; increases in decommissioning costs due to inflation and regulatory changes, the ability to maintain adequate trust fund reserves for decommissioning; potential liabilities arising out of the operation of these facilities; the costs of securing the facilities against possible terrorist attacks; cyber attacks, or other causes; and unscheduled outages due to equipment and other problems. If a nuclear incident were to occur at Palo Verde, it could materially and adversely affect our results of operations and financial condition. A major incident at a nuclear facility anywhere in the world could cause regulatory bodies to limit or prohibit the operation or licensing of any domestic nuclear unit and to promulgate new regulations that could require significant capital expenditures and/or increase operating costs.

### **We May Not Be Able to Recover All of Our Fuel Expenses from Customers On a Timely Basis Or at All**

In general, by law, we are entitled to recover our reasonable and necessary fuel and purchased power expenses from our customers in Texas and New Mexico. NMPRC Case No. 13-00380-UT provides for energy delivered to New Mexico customers from the deregulated Palo Verde Unit 3 to be recovered through fuel and purchased power costs based upon a previous purchased power contract. Fuel and purchased power expenses in Texas and New Mexico are subject to reconciliation by the PUCT and NMPRC. Prior to the completion of a reconciliation, we record fuel and purchased power costs such that fuel revenues equal recoverable fuel and purchased power expense including the re-priced energy costs for Palo Verde Unit 3 in New Mexico. In the event that recovery of fuel and purchased power expenses is denied in any reconciliation proceeding, the amounts recorded for

fuel and purchased power expenses could differ from the amounts we are allowed to collect from our customers, and we would incur a loss to the extent of the disallowance.

In New Mexico, the Fuel and Purchased Power Cost Adjustment Clause ("FPPCAC") allows us to reflect current fuel and purchased power expenses in the FPPCAC and to adjust for under-recoveries and over-recoveries with a two-month lag. In Texas, fuel costs are recovered through a fixed fuel factor. In Texas, we can seek to revise our fixed fuel factor based upon our approved formula at least four months after our last revision except in the month of December. If we materially under-recover fuel costs, we may seek a surcharge to recover those costs at any time the balance exceeds a threshold material amount and is expected to continue to be materially under-recovered. During periods of significant increases in natural gas prices, we realize a lag in the ability to reflect increases in fuel costs in our fuel recovery mechanisms in Texas. As a result, cash flow is impacted due to the lag in payment of fuel costs and collection of fuel costs from customers. To the extent the fuel and purchased power recovery processes in Texas and New Mexico do not provide for the timely recovery of such costs, we could experience a material negative impact on our cash flow.

### **Adverse Changes in Our Credit Ratings Could Negatively Affect Our Access to the Capital Markets and our Cost of Borrowed Funds**

Access to the capital markets is important to our ability to operate our business and complete our capital projects. Credit rating agencies evaluate our credit ratings on a periodic basis and when certain events occur. These ratings are premised on financial ratios and performance, our regulatory environment and rate mechanisms, resource risks and power supply costs, and other factors. A ratings downgrade could increase fees on the RCF thereby increasing the cost of funding day-to-day working capital requirements, and could also result in higher interest rates on future long-term debt. In addition, any ratings downgrade or placement of our credit ratings on negative watch could have an adverse impact on the price of our common stock. If access to capital were to become significantly constrained or costs of capital increased significantly due to lowered credit ratings, prevailing industry conditions, regulatory constraints, the volatility of the capital markets or other factors, our financial condition and results of operations could be adversely affected.

### **Weather Conditions Affect the Demand for Electricity or Could Result in Unplanned Outages**

Our service territory is in west Texas and southern New Mexico and is particularly susceptible to dry and hot temperatures in the summer months. These seasonal weather patterns result in temperatures that can lead to daytime highs exceeding 100 degrees Fahrenheit for extended periods during the summer when we typically experience peak kWh sales at higher summer rates. Milder temperatures during this period will occur occasionally and result in less kWh sales which will adversely affect our results of operations. From time to time, we experience extreme weather conditions, including high winds (usually in the spring months but can occur during other months), that may result in unplanned outages. Under such conditions, we may incur additional costs to repair and, or, to replace equipment. Depending upon the length and extent of the damage, we may also incur additional purchase power costs. Fallen power lines and poles can cause severe damage to customer property and subject us to claims, all of which could have a material adverse effect on our results of operations and cash flows.

### **Equipment Failures and Other External Factors Can Adversely Affect Our Results**

The generation and transmission of electricity require the use of expensive and complex equipment. While we have a maintenance program in place, generating plants are subject to unplanned outages because of equipment failure and severe weather conditions. The advanced age of several of our gas-fired generating units in or near El Paso increases the vulnerability of these units. In the event of unplanned outages, we must acquire power from other sources at unpredictable costs in order to supply our customers and comply with our contractual agreements. This additional purchased power cost would be subject to review and approval of the PUCT and the NMPRC in reconciliation proceedings. As noted above, in the event that recovery for fuel and purchased power expenses could differ from the amounts we are allowed to collect from our customers, we would incur a loss to the extent of the disallowance. Unplanned outages could also prevent us from selling excess power at wholesale. In addition, actions of other utilities may adversely affect our ability to use transmission lines to deliver or import power, thus subjecting us to unexpected expenses or to the cost and uncertainty of public policy initiatives. We may also incur additional capital and operating costs in connection with the physical security and cyber security of transmission lines and generation facilities. Damage to certain transmission and generation facilities due to vandalism or other deliberate acts, or damage due to severe weather could lead to outages or other adverse effects. We are particularly vulnerable to this because a significant portion of our available energy (at Palo Verde) is located hundreds of miles from El Paso and Las Cruces and must be delivered to our customers over long distance transmission lines. In addition, Palo Verde's availability is an important factor in realizing off-system sales margins. These factors, as well as interest rates, economic conditions, fuel prices and price volatility could have a material adverse effect on our earnings, cash flow and financial position. While we believe that we maintain adequate insurance coverage for such incidents, there is no assurance that all costs in excess of deductible amounts will be reimbursed or that we can maintain such coverage limits in the

future at competitive market rates. In the event future insurance costs and/or deductible amounts increase, our financial condition, operating results and cash flows could be materially adversely affected.

### **Competition and Deregulation Could Result in a Loss of Customers and Increased Costs**

As a result of changes in federal law, our wholesale and large retail customers have access to, in varying degrees, alternative sources of power, including co-generation of electric power. Deregulation legislation is in effect in Texas requiring us to separate our transmission and distribution functions, which would remain regulated, from our power generation and energy services businesses, which would operate in a competitive market, in the future. In 2004, the PUCT approved a rule delaying retail competition in our Texas service territory. This rule was codified in the Texas Public Utility Regulatory Act ("PURA") in June 2011. The PURA identifies various milestones that we must reach before retail competition can begin. The first milestone calls for the development, approval by the FERC, and commencement of independent operation of a regional transmission organization in the area that includes our service territory. This and other milestones are not likely to be achieved for a number of years, if at all. There is substantial uncertainty about both the regulatory framework and market conditions that would exist if and when retail competition is implemented in our Texas service territory, and we may incur substantial preparatory, restructuring and other costs that may not ultimately be recoverable. There can be no assurance that deregulation would not adversely affect our future operations, cash flow and financial condition.

### **Future Costs of Compliance with Environmental Laws and Regulations Could Adversely Affect Our Operations and Financial Results**

We are subject to extensive federal, state and local environmental laws and regulations relating to discharges into the air, air quality, discharges of effluents into water, water quality, the use of water, the handling, disposal and clean-up of hazardous and non-hazardous substances and wastes, natural resources, and health and safety. Compliance with these legal requirements, which change frequently and often become more restrictive, could require us to commit significant capital and operating resources toward permitting, emission fees, environmental monitoring, installation and operation of pollution control equipment and purchases of air emission allowances and/or offsets. These laws and regulations could also result in limitations in operating hours and/or changes in construction schedules for future generating units.

Cost of compliance with environmental laws and regulations or fines or penalties resulting from non-compliance, if not recovered in our rates, could adversely affect our operations and financial results, especially if emission and/or discharge limits are tightened, more extensive permitting requirements are imposed, additional substances become regulated and the number and types of assets we operate increase. We cannot estimate our compliance costs or any possible fines or penalties with certainty, or the degree to which such costs might be recovered in our rates, due to our inability to predict the requirements and timing of implementation of environmental laws or regulations. For example, the EPA has issued in the recent past various proposed regulations regarding air emissions, such as the revision of the primary and secondary ground-level ozone NAAQS. If these regulations become finalized and survive legal challenges, the cost to us to comply could adversely affect our operations and our financial results.

### **Climate Change and Related Legislation and Regulatory Initiatives Could Affect Demand for Electricity or Availability of Resources, and Could Result in Increased Compliance Costs**

We emit GHG (including carbon dioxide) through the operation of our power plants. Federal legislation has been introduced in both houses of Congress to regulate GHG emissions and numerous states have adopted programs to stabilize or reduce GHG emissions. Additionally, the EPA is proceeding with regulation of GHG under the CAA.

In October 2015, the EPA published a rule establishing guidelines for states to regulate carbon dioxide emissions from existing power plants, known as the Clean Power Plan ("CPP"). Legal challenges to the CPP are ongoing. On August 31, 2018, the EPA published a proposal to replace the CPP called the Affordable Clean Energy ("ACE") rule. The ACE rule has not yet been finalized. The potential impact of these GHG rules (if and when finalized) on us is unknown at this time, but they could result in significant costs, limitations on operating hours, and/or changes in construction schedules for future generating units.

It is not possible to predict how any pending, proposed or future GHG legislation by Congress, the states or multi-state regions or any GHG regulations adopted by the EPA or state environmental agencies will impact our business. However, any legislation or regulation of GHG emissions or any future related litigation could result in increased compliance costs or additional operating restrictions or increased or reduced demand for our services, could require us to purchase rights to emit GHG, and could have a material adverse effect on our business, financial condition, reputation or results of operations.

## **Adverse Regulatory Decisions or Changes in Applicable Regulations or Laws Could Have a Material Adverse Effect on Our Business or Result in Significant Additional Costs**

Our business is subject to extensive federal, state and local laws and regulations regarding safety and performance, siting and construction of facilities, customer service and the rates we can charge our customers, among other things. FERC regulates our wholesale operations, provision of transmission services and compliance with federally mandated reliability standards. FERC has issued a number of rules pertaining to preventing undue discrimination in transmission services and electric reliability standards. Under the Energy Policy Act of 2005, FERC can impose penalties (up to \$1,238,271 per violation, per day) for failure to comply with statutes, rules and orders within FERC's jurisdiction, including mandatory electric reliability standards. Additional regulatory authorities have jurisdiction over some of our operations and construction projects, including the EPA, the DOE, the PUCT, the NMPRC and various local municipalities (including the cities of El Paso and Las Cruces).

We must periodically apply for licenses and permits from these various authorities and abide by their respective orders. Should we be unsuccessful in obtaining necessary licenses or permits or should these regulatory authorities initiate any investigations or enforcement actions or impose penalties or disallowances on us, our business could be adversely affected. Existing regulations may be revised or reinterpreted and new laws and regulations may be adopted or become applicable to us or our facilities in a manner that may have a detrimental effect on our business or result in significant additional costs because of our obligation to comply with those requirements.

In addition, our service territory borders with Mexico and as such businesses in our service territory rely heavily on commerce with businesses in Mexico. Changes in regulations or enforcement restricting such commerce activities could reduce our customer growth rate and materially adversely affect our results of operations, financial condition and cash flows.

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 ("TCJA") was signed into law, enacting significant changes to the Internal Revenue Code of 1986 (as amended, the "IRC"). Key provisions impacting the Company include a reduction in the federal corporate income tax rate from 35% to 21% effective January 1, 2018, the discontinuation of bonus depreciation for regulated public utilities for assets acquired and placed into service after December 31, 2017, elimination of corporate alternative minimum tax provisions, limitations on the utilization of net operating losses ("NOL") arising after December 31, 2017 to 80% of taxable income with no carryback but with an indefinite carryforward, and additional limitations on the deductibility of executive compensation. We continue to evaluate the impact of the TCJA as regulations related to the TCJA are finalized to determine whether any of these changes could have a material adverse effect on our results of operations, financial condition, and cash flows.

## **Security Breaches, Criminal Activity, Terrorist Attacks and Other Disruptions to Our Infrastructure Could Interfere With Our Operations, Could Expose Us or Our Customers or Employees to a Risk of Loss, and Could Expose Us to Liability, Regulatory Penalties, Reputational Damage and Other Harm to Our Business**

We rely upon our infrastructure to manage or support a variety of business processes and activities, including the generation, transmission and distribution of electricity, supply chain functions, and the invoicing and collection of payments from our customers. We also use information technology systems for internal accounting purposes and to comply with financial reporting, legal and tax requirements. Our information technology networks and infrastructure may be vulnerable to damage, disruptions or shutdowns due to attacks by hackers, breaches due to employee error or malfeasance, system failures, computer viruses, natural disasters, a physical attack on our facilities, or other catastrophic events. The occurrence of any of these events could impact the reliability of our generation, transmission and distribution systems and energy marketing and trading functions; could expose us or our customers or employees to a risk of loss or misuse of confidential information; and could result in legal claims or proceedings, liability or regulatory penalties against us, damage our reputation or otherwise harm our business. In addition, we may be required to incur significant costs to prevent or respond to damage caused by these disruptions or security breaches in the future.

Additionally, we cannot predict the impact that any future information technology or terrorist attack may have on the energy industry in general. The effects of such attacks against us or others in the energy industry could increase the cost of regulatory compliance, increase the cost of insurance coverage or result in a decline in the U.S. economy which could negatively affect our results of operations and financial condition. Ongoing and future governmental efforts to regulate cybersecurity in the energy industry could lead to increased regulatory compliance costs.

As domestic and global cyber threats are on-going and increasing in sophistication, magnitude and frequency, our critical energy infrastructure may be targets of terrorist activities or otherwise could disrupt our business operations. Any such disruptions could result in significant costs to repair damaged facilities and implement increased security measures, which could have a material adverse effect on our results of operations, financial condition and/or cash flows.

## **We May Incur Additional Capital and Operating Costs in Connection with the Physical Security and Cyber Security of New Technologies**

We operate in a highly regulated industry that requires the continued operation and development of sophisticated information technology systems and network infrastructure. The introduction of new technology and the emergence of new industry standards and technological hurdles can create unanticipated difficulties, including failures or inadequacy of equipment or software, difficulties in integrating the various components of the equipment, changes in technology, cybersecurity issues and factors outside our control, which could negatively affect our results of operations and financial condition. As we continue to develop new technology to keep up with the demands of the industry and the needs of our customers, we may be required to expend significant capital and other resources to protect against security breaches or to alleviate problems caused by security breaches.

### **Failure to Maintain the Security of Personally Identifiable Information Could Adversely Affect Us**

In connection with our business we and our vendors, suppliers and contractors collect and retain personally identifiable information (e.g., information of our customers, shareholders, suppliers and employees), and there is an expectation that we and such third parties will adequately protect that information. The U.S. regulatory environment surrounding information security and privacy is increasingly demanding. A significant theft, loss or fraudulent use of the personally identifiable information we maintain or failure by our vendors, suppliers and contractors to use or maintain such information in accordance with contractual provisions could adversely impact our reputation and could result in significant costs, fines, litigation and loss of reputation.

### **The Effects of Technological Advancement, Energy Conservation Measures and Distributed Generation Could Adversely Affect Our Operations and Financial Results**

New technologies may emerge that could be superior to, or may not be compatible with, some of our existing technologies, and may require us to make significant expenditures to remain competitive. Our future success will depend, in part, on our ability to anticipate and adapt to technological changes in a cost-effective manner and to offer, on a timely basis, services that meet customer demands and evolving industry standards.

Additionally, the electric utility industry is undergoing other technological advances such as the expanded cost effective utilization of energy efficiency measures, energy storage, and distributed generation including solar rooftop projects. Customers' increased use of energy efficiency measures, energy storage, and distributed generation could result in lower demand. Reduced demand due to energy efficiency measures, energy storage, and the use of distributed generation, to the extent not substantially offset through ratemaking mechanisms, could have a material adverse impact on our financial condition, results of operations and cash flows.

### **Inflation Could Adversely Affect Our Financial Results**

For the past several years, inflation has been relatively low and, therefore has had little impact on our results of operations and financial condition. However, should we experience increases in costs due to inflationary impacts, any delays in requesting and receiving compensatory increases in our base rates could have a material adverse impact on our financial condition, results of operations and cash flows.

### **Our Line of Business Is Concentrated Solely to the Electric Industry and to One Region**

We are a fully vertically integrated electric utility company whose only business is the generation, transmission and distribution of electricity to customers in an area of approximately 10,000 square miles in west Texas and southern New Mexico. Approximately 87% of revenues are directly related to the retail sales of electric power to approximately 425,000 residential, commercial and public authority customers. As such, risks uniquely associated with the utility industry such as changes in utility legislation and regulations, weather patterns in the region and economic conditions will have a greater effect on our overall operating results than otherwise if our operations were more diversified into other lines of business and in a broader geographical area.

### **The Operation of Transmission Lines on Public and Private Properties, including Indian Lands, Could Result in Uncertainty Related to Continued Easements and Rights-of-way and Significantly Impact Our Business**

Portions of our transmission lines are located on public and private properties, including Indian lands, pursuant to easements or other rights-of-way that are effective for specified periods. We are unable to predict the final outcome of pending or future approvals by applicable property owners and governing bodies with respect to renewals of these easements and rights-of-way.

## **Failure to Successfully Operate Our Facilities or Perform Certain Corporate Functions May Adversely Affect Our Operations and Financial Condition**

Our performance depends on the successful operation of our facilities. Operating these facilities involves many risks, including:

- operator error or failure of equipment or processes, including failure to follow appropriate safety protocols;
- the handling of hazardous equipment or materials that could result in serious personal injury, loss of life and environmental and property damage;
- operating limitations that may be imposed by environmental or other regulatory requirements;
- labor disputes;
- information technology or financial system failures, including those due to the implementation and integration of new technology, that impair our information technology infrastructure, reporting systems or disrupt normal business operations;
- information technology failure that affects our ability to access customer information or causes us to lose confidential or proprietary data that materially and adversely affects our reputation or exposes us to legal claims; and
- catastrophic events such as fires, earthquakes, explosions, leaks, floods, droughts, natural disasters, terrorism, pandemic health events or other similar occurrences, which may require participation in mutual assistance efforts by us or other utilities to assist in power restoration efforts.

Such events may result in a decrease or elimination of revenue from our facilities, an increase in the cost of operating our facilities or delays in cash collections, any of which could have a material adverse effect on our results of operations, financial condition and/or cash flows.

## **Our Success Depends on the Availability of the Services of a Qualified Workforce and Our Ability to Attract and Retain Qualified Personnel and Senior Management**

Our workforce is aging and many employees have retired in the last few years or are or will become eligible to retire within the next few years. Although we have undertaken efforts to recruit and train new field service personnel, we may be faced with a shortage of experienced and qualified personnel. Our costs, including costs to replace employees, benefit (including healthcare) costs, retirement costs, productivity costs and safety costs, may rise. Failure to hire and adequately train replacement employees, including the transfer of significant internal historical knowledge and expertise to the new employees, or the future availability and cost of contract labor may adversely affect the ability to manage and operate our business. If we are unable to successfully attract and retain an appropriately qualified workforce, our results of operations could be negatively affected.

A substantial number of our employees are covered by a collective bargaining agreement that is scheduled to expire in September 2019. Labor disruptions could occur depending on the outcome of negotiations to renew the terms of this agreement with the union or if a tentative new agreement is not ratified by its members. In addition, some of our non-represented employees could join this union in the future. Labor disruptions, strikes or significant negotiated wage and benefit increases, whether due to union activities, employee turnover or otherwise, could have a material adverse effect on our business, results of operations and/or cash flows.

We depend on our senior management and other key personnel. Our success depends on our ability to attract and retain key personnel. The inability to recruit and retain or effectively transition key personnel or the unexpected loss of key personnel may adversely affect our operations. In addition, because of the reliance on our management team, our future success depends in part on our ability to identify and develop talent to succeed senior management. Any such occurrences could negatively impact our financial condition and results of operations.

## **Our Ability to Accurately Report Our Financial Results or Prevent Fraud May Be Adversely Affected if We Fail to Maintain an Effective System of Internal Controls**

Effective internal controls are necessary for us to provide reliable financial reports, effectively prevent fraud and operate successfully as a public company. If our efforts to maintain an effective system of internal controls are not successful, we are unable to maintain adequate controls over our financial reporting and processes in the future or we are unable to comply with our obligations under Section 404 of the Sarbanes-Oxley Act of 2002, our operating results could be harmed, or we may fail to meet

our reporting obligations. Ineffective internal controls could also cause investors to lose confidence in our reported financial information, which would likely have a negative effect on the trading price of our common stock and other securities.

### **Insufficient Insurance Coverage and Increased Insurance Costs Could Adversely Affect Our Operations and Financial Results**

We currently have general liability and property insurance in place to cover certain of our facilities in amounts that we consider appropriate. Such policies are subject to certain limits and deductibles and do not include business interruption coverage. Insurance coverage may not be available in the future at current costs or on commercially reasonable terms, and the insurance proceeds received for any loss of, or any damage to, any of our facilities may not be sufficient to restore the loss or damage without negative impact on our results of operations, financial condition and cash flows.

### **We Are Subject to Costs and Other Effects of Legal and Regulatory Proceedings, Disputes and Claims**

From time to time in the normal course of business, we are subject to various lawsuits, audits, regulatory proceedings, disputes, and claims that could result in adverse judgments or settlements, fines, penalties, injunctions, or other adverse consequences. These matters are subject to a number of uncertainties, and management is often unable to predict the outcome of such matters; resulting liabilities could exceed amounts currently reserved or insured against with respect to such matter. The legal costs and final resolution of matters in which we are involved could have a reputational impact and/or a short- or long-term negative effect on our results of operations, financial condition and/or cash flows. Similarly, the terms of resolution could require us to change our operational practices and procedures, which could also have a material adverse effect on our results of operations, financial condition and/or cash flows.

### **Provisions in Our Corporate Documents, Franchise Agreements and State Law Could Delay or Prevent a Change in Control of the Company, Even if That Change Would Be Beneficial to Our Shareholders**

Our Articles of Incorporation and Bylaws contain provisions that may make acquiring control of the Company difficult and could preclude our shareholders from receiving a change of control premium, including:

- provisions relating to the classification, nomination and removal of our directors;
- provisions regulating the ability of our shareholders to bring matters for action at annual meetings of our shareholders;
- provisions limiting the ability to call special meetings of the shareholders to the Chairman of the Board, our President and Chief Executive Officer, our Secretary, the majority of the Board of Directors or the holders of at least 25% of the outstanding shares of our capital stock entitled to vote at such meeting;
- provisions restricting our ability to engage in a wide range of “Business Combination” transactions with an “Interested Shareholder” (generally, any person who owns 15% or more of our outstanding voting power) or any affiliate or associate of an Interested Shareholder, unless specific conditions are met; and
- the authorization given to our Board of Directors or any duly designated committee to issue and set the terms of preferred stock.

Our El Paso franchise agreement states that any assignment of the franchise agreement, including a deemed assignment as a result of a change in control of the Company, requires the consent of the City of El Paso. In addition, approval of the NMPRC, PUCT and FERC would likely be required in any transaction involving a change of control.

In addition, Texas law prohibits us from engaging in a business combination with any shareholder for three years from the date that person became an affiliated shareholder by beneficially owning 20% or more of our outstanding common stock, in the absence of certain board of director or shareholder approvals.

**Item 1B. Unresolved Staff Comments**

None.

**Item 2. Properties**

The principal properties of the Company are described in Item 1, "Business," and such descriptions are incorporated herein by reference. Transmission and distribution lines are located either on company-owned land, private rights-of-way, easements or on streets or highways by public consent.

The Company owns an executive and administrative office building and various operations centers in El Paso County, Texas, and Doña Ana County, New Mexico. The Company leases land in El Paso, Texas, adjacent to Newman under a lease that expires in June 2033, subject to a renewal option of 25 years. The Company has several other leases for office and parking facilities that expire within the next five years.

**Item 3. Legal Proceedings**

The Company is involved in various legal, environmental, tax and regulatory proceedings before various courts, regulatory commissions and governmental agencies regarding matters arising in the ordinary course of business. In many of these matters, the Company has excess casualty liability insurance that covers the various claims, actions and complaints. The Company regularly analyzes current information and, as necessary, makes provisions in its financial statements for probable liabilities for the eventual disposition of these matters. While the outcome of these matters cannot be predicted with certainty, based upon a review of the matters and applicable insurance coverage, the Company believes that none of these matters will have a material adverse effect on the financial position, results of operations or cash flows of the Company.

See Part I, Item 1, "Business – Environmental Matters" and Part II, Item 8, "Financial Statements and Supplementary Data, Note D, Note M and Note L of Notes to Financial Statements" for further discussion of the effects of government legislation and regulation on the Company as well as certain pending legal proceedings.

**Item 4. Mine Safety Disclosures**

Not Applicable.

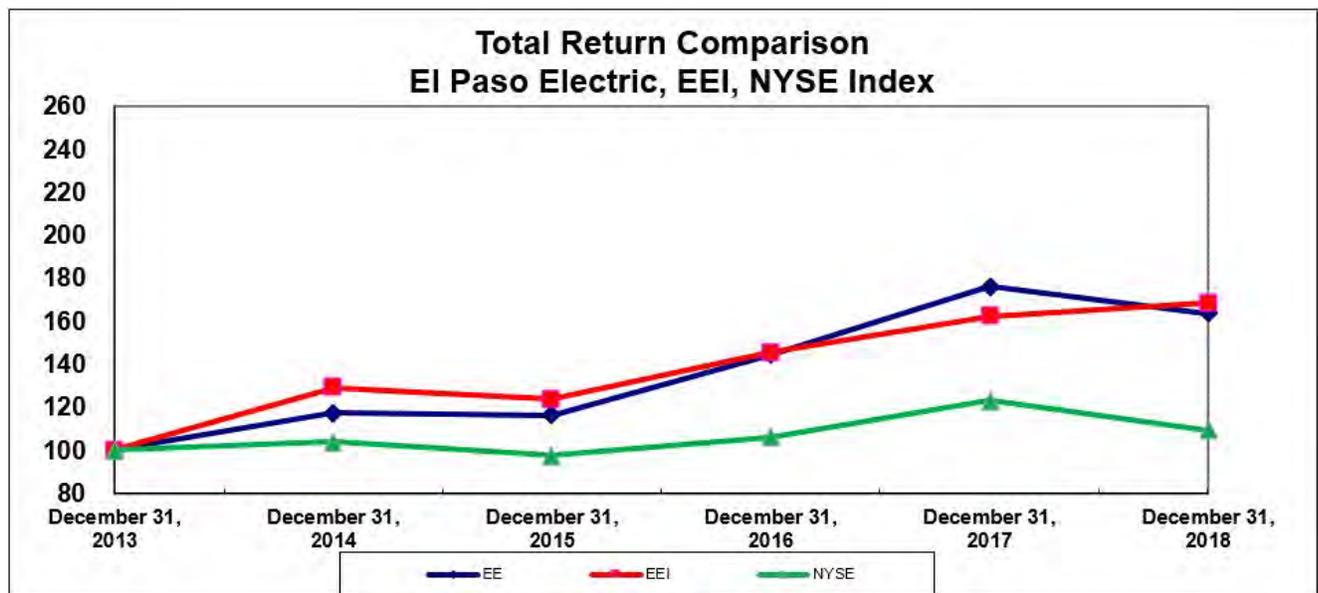
**PART II**

**Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.**

The Company’s common stock trades on the New York Stock Exchange ("NYSE") under the symbol "EE."

**Performance Graph**

The following graph compares the performance of the Company’s common stock to the performance of Edison Electric Institute’s ("EEI") index of investor-owned electric utilities and the NYSE Composite, setting the value of each at December 31, 2013 to a base of 100. The table sets forth the relative yearly percentage change in the Company’s cumulative total shareholder return, assuming reinvestment of dividends, as compared to EEI and the NYSE Composite, as reflected in the graph.



	As of December 31,					
	2013	2014	2015	2016	2017	2018
EE	100	118	117	144	176	164
EEI Index	100	129	124	145	163	168
NYSE Composite	100	104	98	106	123	109

As of January 31, 2019, there were 2,176 holders of record of the Company's common stock. The Company has been paying quarterly cash dividends on its common stock since June 30, 2011, and paid a total of \$57.5 million in cash dividends during the twelve months ended December 31, 2018. On January 31, 2019, the Board of Directors declared a quarterly cash dividend of \$0.36 per share payable on March 29, 2019, to shareholders of record as of the close of business on March 15, 2019. Typically, the Board of Directors reviews the Company's dividend policy annually in the second quarter of each year. Declaration and payment of dividends is subject to compliance with certain financial tests under Texas law. Since 1999, the Company has also returned cash to shareholders through a stock repurchase program pursuant to which the Company has bought approximately 25.4 million shares at an aggregate cost of \$423.6 million, including commissions. Under the Company's program, purchases can be made at open market prices or in private transactions. On March 21, 2011, the Board of Directors authorized a repurchase of up to 2.5 million shares of the Company's outstanding common stock ("2011 Plan"). No shares of common stock were repurchased during the twelve months ended December 31, 2018, under the 2011 Plan. The table below provides the amount of the fourth quarter issuer purchases of equity securities.

Period	Total Number of Shares Purchased (a)	Average Price Paid per Share (Including Commissions)	Total Number of Shares Purchased as Part of a Publicly Announced Program	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs
October 1 to October 31, 2018	—	\$ —	—	393,816
November 1 to November 30, 2018	—	—	—	393,816
December 1 to December 31, 2018	12,205	50.13	—	393,816

(a) Represents shares of common stock delivered to us as payment of withholding taxes due upon the vesting of restricted stock held by our employees, not considered part of the 2011 Plan.

On January 30, 2019, the Company submitted an application with both the NMPRC and the FERC seeking approval to issue shares of common stock, including the reissuance of treasury shares, in an amount up to \$200.0 million in one or more transactions. In order to align the number of shares of common stock held as treasury stock by the Company with various regulatory applications, filings and orders, on January 31, 2019, the Board of Directors of the Company approved the cancellation of 1.4 million shares of Common Stock held as treasury shares by the Company effective upon the later of approval by the FERC of the accounting treatment of the cancellation and March 31, 2019.

For Equity Compensation Plan Information see Part III, Item 12, "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters."

**Item 6. Selected Financial Data**

As of and for the following periods (in thousands except for share and per share data):

	Years Ended December 31,				
	2018 (a)	2017	2016	2015	2014
Operating revenue .....	\$ 903,603	\$ 916,797	\$ 886,936	\$ 849,869	\$ 917,525
Operating income (b) .....	\$ 172,229	\$ 190,059	\$ 187,911	\$ 146,191	\$ 151,163
Net income .....	\$ 84,315	\$ 98,261	\$ 96,768	\$ 81,918	\$ 91,428
Basic earnings per share:					
Net income .....	\$ 2.07	\$ 2.42	\$ 2.39	\$ 2.03	\$ 2.27
Weighted average number of shares outstanding .....	40,521,364	40,414,556	40,350,688	40,274,986	40,190,991
Diluted earnings per share:					
Net income .....	\$ 2.07	\$ 2.42	\$ 2.39	\$ 2.03	\$ 2.27
Weighted average number of shares and dilutive					
potential shares outstanding .....	40,642,640	40,535,191	40,408,033	40,308,562	40,211,717
Dividends declared per share of common stock.....	\$ 1.415	\$ 1.315	\$ 1.225	\$ 1.165	\$ 1.105
Cash additions to utility property, plant and equipment (c).....	\$ 240,021	\$ 199,896	\$ 229,722	\$ 281,458	\$ 277,078
Total assets .....	\$ 3,628,502	\$ 3,484,363	\$ 3,376,278	\$ 3,200,607	\$ 3,033,400
Long-term debt, net of current portion.....	\$ 1,285,980	\$ 1,195,988	\$ 1,195,513	\$ 1,122,660	\$ 1,122,235
Common stock equity.....	\$ 1,164,103	\$ 1,142,165	\$ 1,074,396	\$ 1,016,538	\$ 984,254

- (a) Effective January 1, 2018, the Company implemented Accounting Standards Update ("ASU") 2016-01, Financial Instruments - Overall: Recognition and Measurement of Financial Assets and Liabilities. As required by the new standard, changes in the fair values of the Company's equity investments are recognized in earnings, whereas prior to 2018, such changes were recognized in accumulated other comprehensive income ("AOCI").
- (b) The Company implemented ASU 2017-07, Compensation - Retirement Benefits (Topic 715), in the first quarter of 2018, and as required by the standard, reclassified certain amounts in the financial statements for 2017 and 2016.
- (c) The Company implemented ASU 2016-15, Statement of Cash Flows (Topic 230) in the first quarter of 2018, and as required by the standard, reclassified certain amounts in the financial statements for 2017 and 2016.

## **Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations**

As you read this Management's Discussion and Analysis of Financial Condition and Results of Operations, please refer to our Financial Statements and the accompanying notes, which contain our operating results.

### **Summary of Critical Accounting Policies and Estimates**

Our financial statements have been prepared in conformity with U.S. Generally Accepted Accounting Principles ("GAAP"). Part II, Item 8, Financial Statements and Supplementary Data, Note A of Notes to Financial Statements contains a summary of our significant accounting policies, many of which require the use of estimates and assumptions. We believe that of our significant accounting policies, the following are noteworthy because they are based on estimates and assumptions that require complex, subjective assumptions by management, which can materially impact reported results. The Company evaluates its estimates on an on-going basis, including those related to depreciation, unbilled revenue, income taxes, fuel costs, pension and other post-retirement obligations and asset retirement obligations ("ARO"). Changes in these estimates or assumptions, or actual results that are different, could materially impact our financial condition and results of operation.

#### *Regulatory Accounting*

We apply accounting standards that recognize the economic effects of rate regulation in our Texas, New Mexico and FERC jurisdictions. As a result, we record certain costs or obligations as either assets or liabilities on our balance sheet and amortize them in subsequent periods as they are reflected in regulated rates. The deferral of costs as regulatory assets is appropriate only when the future recovery of such costs is probable. In assessing probability, we consider such factors as specific regulatory orders, regulatory precedent and the current regulatory environment. As of December 31, 2018, we had recorded regulatory assets currently subject to recovery in future rates of approximately \$81.8 million and regulatory liabilities of approximately \$313.3 million as discussed in greater detail in Part II, Item 8, Financial Statements and Supplementary Data, Notes E and K of Notes to Financial Statements. Regulatory tax assets of approximately \$20.2 million related to the regulatory treatment of the equity portion of Allowance for Funds Used During Construction ("AFUDC") and approximately \$19.3 million related to excess deferred state income taxes are included in regulatory assets. Regulatory tax liabilities of approximately \$299.4 million, primarily related to the reduction of the corporate tax rate from 35% to 21%, are included in regulatory liabilities and will be refunded to customers.

In the event we determine that we can no longer apply the Financial Accounting Standards Board's ("FASB") guidance for regulated operations to all or a portion of our operations or to the individual regulatory assets recorded, based on regulatory action, we could be required to record a charge against income in the amount of the unamortized balance of the related regulatory assets. Such an action could materially reduce our total assets, specifically our total deferred charges and other assets, and shareholders' equity.

#### *Collection of Fuel Expense*

In general, by law and regulation, our actual fuel and purchased power expenses are recovered from our customers. In times of rising fuel prices, we experience a lag in recovery of higher fuel costs. These costs are subject to reconciliation by the PUCT on a periodic basis every one to three years. The NMPRC, in its discretion, may order that a prudence review be conducted to assure that fuel and purchased power costs recovered from customers are prudently incurred. Prior to the completion of a reconciliation proceeding or audit by the PUCT or the NMPRC, we record fuel transactions such that fuel revenues, including fuel costs recovered through the FPPCAC in New Mexico, equal fuel expense. In the event that a disallowance of fuel cost recovery occurs during a reconciliation proceeding or an audit, the amounts recorded for fuel and purchased power expenses could differ from the amounts we are allowed to collect from our customers, and we could incur a loss to the extent of the disallowance.

On September 27, 2016, the Company filed an application with the PUCT, designated as PUCT Docket No. 46308, to reconcile \$436.6 million of Texas fuel and purchased power expenses incurred during the period of April 1, 2013 through March 31, 2016. On June 29, 2017, the PUCT approved a settlement in this proceeding. The settlement provides for the reconciliation of fuel and purchased power costs incurred from April 1, 2013 through March 31, 2016. As of December 31, 2018, Texas jurisdictional fuel and purchased power costs subject to prudence review are costs from April 1, 2016 through December 31, 2018 that total approximately \$353.4 million. The Company's request to reconcile its fuel and purchased power costs for the period January 1, 2013 through December 31, 2014 was approved in the NMPRC Final Order. New Mexico jurisdictional costs subject to prudence review are costs from January 1, 2015 through December 31, 2018 that total approximately \$206.8 million.

The Company recovers fuel and purchased power costs from the Rio Grande Electric Cooperative ("RGEC") pursuant to an ongoing contract with a two-year notice to terminate provision. The contract includes a fuel adjustment clause designed to recover all eligible fuel and purchased power costs allocable to the RGEC and is updated on an annual basis. This update is reviewed and

approved by the RGEC annually in February following the prior calendar year. As of December 31, 2018, the RGEC fuel costs subject to prudence review were approximately \$1.1 million.

#### *Decommissioning Costs and Estimated Asset Retirement Obligation*

Pursuant to the ANPP Participation Agreement, the rules and regulations of the NRC and federal law, we must fund our share of the estimated costs to decommission Palo Verde Units 1, 2, 3 and associated common areas. The determination of the estimated liability is based on site-specific estimates, which are updated every three years and involve numerous judgments and assumptions, including estimates of future decommissioning costs at current price levels, escalation rates and discount rates. The Palo Verde ARO is approximately \$98.8 million and represents approximately 98% of our total ARO balance of \$101.1 million as of December 31, 2018. A 10% increase in the estimates of future Palo Verde decommissioning costs at current price levels would have increased the ARO liability by approximately \$10.9 million at December 31, 2018. See Part II, Item 8, Financial Statements and Supplementary Data, Note F of Notes to Financial Statements for further discussion.

We are required to fund estimated nuclear decommissioning costs over the life of the generating facilities through the use of external trust funds pursuant to rules of the NRC, PUCT and the ANPP Participation Agreement. Historically, in Texas and New Mexico, we have been permitted to collect the funding requirements for our NDT as part of our rates, except for a portion of Palo Verde Unit 3, which is deregulated in the New Mexico jurisdiction. While we periodically attempt to seek to recover the costs of decommissioning obligations through our rates, we are not able to conclude, given the currently available evidence, that it is probable these costs will continue to be collected over the period until decommissioning begins in 2044. We are ultimately responsible for these costs, and our future actions combined with future decisions from regulators will determine how successful we are in this effort.

The funding amounts are based on assumptions about future investment returns and future decommissioning cost escalations. If the rates of return earned by the trusts fail to meet expectations or if estimated costs to decommission the nuclear plant increase beyond our expectations, we would be required to increase our funding to the NDT.

The NDT consists of equity securities and fixed income instruments and are carried at fair value. We face interest rate risk on the fixed income instruments, which consist primarily of municipal, federal and corporate bonds and which were valued at \$134.2 million as of December 31, 2018. A hypothetical 10% increase in interest rates would have reduced the fair values of these funds by \$1.7 million at December 31, 2018. The NDT also includes marketable equity securities of approximately \$135.9 million at December 31, 2018. A hypothetical 10% decrease in equity prices would have reduced the fair values of these funds by \$13.6 million at December 31, 2018. Declines in market prices could require that additional amounts be contributed to our NDT to maintain minimum funding requirements.

We do not anticipate expending monies held in the NDT before 2044 or a later period when decommissioning of Palo Verde begins.

#### *Future Pension and Other Post-retirement Obligations*

We maintain a qualified noncontributory defined benefit pension plan, which covers substantially all of our employees, and two non-funded nonqualified supplement plans that provide benefits in excess of amounts permitted under the provisions of the tax law for certain participants in the qualified plan. We also sponsor a plan that provides other post-retirement benefits, such as health and life insurance benefits to retired employees. Our net obligations under these various benefit plans at December 31, 2018 totaled \$114.0 million and are recorded as liabilities on our balance sheet. The net periodic benefit costs for these plans totaled \$2.2 million for the twelve months ended December 31, 2018.

Our pension and other post-retirement benefit liabilities and the related net periodic benefit costs are calculated on the basis of a number of actuarial assumptions regarding discount rates, expected return on plan assets, rate of compensation increase, life expectancy of retirees and health care cost inflation. For 2018, the discount rates used to measure our year end liabilities are based on a segmented spot rate yield curve that matches projected future payments with the appropriate interest rate applicable to the timing of the projected future benefit payments. As of December 31, 2018, the corresponding weighted-average discount rates range from 4.11% to 4.45% depending upon the benefit plan.

Our overall expected long-term rate of return on assets for the pension trust fund is 7.5% as of January 1, 2019, which is both a pre-tax and after-tax rate as pension funds are generally not subject to income tax. Our overall expected long-term rate of return on assets for the other post-retirement benefits trust, on an after-tax basis, is 6.00% as of January 1, 2019. Both expected long-term rates of return are based on the after-tax weighted average of the expected returns on investments. The expected returns on investments in the pension trust and the other post-retirement benefits trust are based upon the target asset allocations for the two trusts.

Our accrued post-retirement benefit liability and the service and interest components of the related net periodic benefit costs are calculated using an actuarial assumption regarding health care cost inflation. For measurement purposes, a 6.0%, 7.0%, 4.5% and 8.5% annual rate of increase in the per capita cost of covered health care benefits was assumed for 2019 for pre-65 medical, pre-65 drug, post-65 medical and post-65 drug, respectively. The health care cost trend rates are assumed to decline steadily to an ultimate rate of 4.5% by 2025 for pre-65 medical and by 2026 for pre-65 and post-65 drug. Post-65 medical trend is assumed to be 4.5% for all years into the future. Assumed health care cost trend rates have a significant effect on the amounts reported for the health care plan.

The estimated rate of compensation increase used in our retirement plans is 4.5% and is based on recent trends for all non-union employees and the amounts we are contractually obligated for union employees.

The following table reflects the sensitivities that a change in certain actuarial assumptions would have had on the December 31, 2018 reported pension liability and our 2018 reported pension expense (in thousands):

Actuarial Assumption	Increase (Decrease)	
	Impact on Pension Liability	Impact on Pension Expense
Discount rate:		
Increase 1%	\$ (42,264)	\$ (4,024)
Decrease 1%	52,315	4,951
Expected long-term rate of return on plan assets:		
Increase 1%	N/A	(2,811)
Decrease 1%	N/A	2,811
Compensation rate:		
Increase 1%	8,256	1,773
Decrease 1%	(7,429)	(1,555)

The following chart reflects the sensitivities that a change in certain actuarial assumptions would have had on the December 31, 2018 other post-retirement benefit obligation and our 2018 reported other post-retirement benefit expense (in thousands):

Actuarial Assumption	Increase (Decrease)		
	Impact on Other Post-retirement Benefit Obligation	Impact on Other Post-retirement Benefit Expense	Impact on Other Post-retirement Service and Interest Cost
Discount rate:			
Increase 1%	\$ (8,132)	\$ (1,171)	\$ (384)
Decrease 1%	10,426	1,539	516
Healthcare cost trend rate:			
Increase 1%	9,886	2,065	1,200
Decrease 1%	(7,769)	(1,568)	(890)
Expected long-term rate of return on plan assets:			
Increase 1%	N/A	(398)	N/A
Decrease 1%	N/A	398	N/A

## Tax Accruals

We use the asset and liability method of accounting for income taxes. Under this method, we recognize deferred tax assets and liabilities for the future tax consequences attributable to temporary differences between the financial statement carrying amounts and the tax basis of existing assets and liabilities. The application of income tax law and regulations is complex and we make judgments regarding income tax exposures. Changes in these judgments, due to changes in law, regulation, interpretation or audit adjustments can materially affect amounts we recognize in our financial statements. On December 22, 2017, the TCJA was enacted. Substantially all of the provisions of the TCJA are effective for taxable years beginning after December 31, 2017. The TCJA includes significant changes to the IRC, including amendments which significantly change the taxation of business entities and includes specific provisions related to regulated public utilities. See Part II, Item 8, Financial Statements and Supplementary Data, Note K of Notes to Financial Statements for further discussion.

When appropriate, we record a valuation allowance against deferred tax assets to reflect that these tax assets may not be realized. In assessing the likelihood of the realization of deferred tax assets, management considers the estimated amount and character of future taxable income. Significant changes in these judgments and estimates could have a material impact on the results of operations and financial position of the Company. There were no valuation allowances for deferred tax assets as of December 31, 2018.

We recognize tax benefits that are more likely than not to be sustained upon examination by tax authorities. The amount recognized is measured as the largest amount of benefit that is greater than 50% likely to be realized upon settlement. The unrecognized tax benefits that do not meet the recognition and measurement standards were \$3.2 million as of December 31, 2018.

## Overview

The following is an overview of our results of operations for the years ended December 31, 2018, 2017 and 2016. Net income and basic earnings per share for the years ended December 31, 2018, 2017 and 2016 are shown below:

	Years Ended December 31,		
	2018	2017	2016
Net income (in thousands) .....	\$ 84,315	\$ 98,261	\$ 96,768
Basic earnings per share.....	2.07	2.42	2.39

The following table and accompanying explanations show the primary factors affecting the after-tax change in income between the calendar years ended December 31, 2018 and 2017, 2017 and 2016, and 2016 and 2015 (in thousands):

	<u>2018</u>	<u>2017</u>	<u>2016</u>
Prior year December 31 net income .....	\$ 98,261	\$ 96,768	\$ 81,918
Change in (net of tax):			
(Decreased) increased investment and interest income, NDT .....	(18,419) (a)	2,508 (b)	(2,709) (b)
(Increased) decreased depreciation and amortization .....	(4,377) (c)	(4,242) (d)	3,580 (e)
Palo Verde performance rewards, net.....	(3,954) (f)	3,253 (f)	—
Increased operations and maintenance expenses at fossil-fuel generating plants .....	(2,518) (g)	(482)	(330)
Increased interest on long-term debt (net of capitalized interest) and other .....	(1,718) (h)	(1,632) (i)	(3,694) (j)
(Decreased) increased retail non-fuel base revenues .....	(520) (k)	8,651 (l)	28,802 (m)
Increased taxes other than income taxes .....	(108)	(3,465) (n)	(1,168) (o)
Effective tax rate, other .....	16,643 (p)	3,379 (q)	(5,343) (r)
Decreased (increased) Palo Verde operations and maintenance expenses .....	2,299 (s)	(1,592) (t)	471
Increased (decreased) allowance for funds used during construction .....	931	(5,303) (u)	(4,887) (v)
Other.....	(2,205)	418	128
Current year December 31 net income.....	<u>\$ 84,315</u>	<u>\$ 98,261</u>	<u>\$ 96,768</u>

Footnotes reflect pre-tax amounts

- (a) Investment and interest income, NDT decreased in 2018, primarily due to net realized and unrealized losses on securities held in the NDT. Beginning on January 1, 2018, the Company adopted ASU 2016-01, Financial Instruments, and began recording unrealized gains and losses on equity securities held in the NDT directly in earnings. Refer to "Impact of New Accounting Standards and Use of Non-GAAP Financial Measures" for further details.
- (b) Investment and interest income, NDT increased in 2017 and decreased in 2016, primarily due to changes in realized gains on securities sold from the NDT. Sales of such securities are primarily the result of the Company's efforts to re-balance and further diversify the NDT investments.
- (c) Depreciation and amortization increased primarily due to increases in plant.
- (d) Depreciation and amortization increased primarily due to increases in plant, including MPS Units 3 and 4, which were placed in service in 2016. These increases were partially offset by the sale of the Company's interest in Four Corners in July 2016.
- (e) Depreciation and amortization decreased primarily due to (i) a reduction of approximately \$10.9 million resulting from changes in depreciation rates approved in the PUCT Final Order in Docket No. 44941 ("2016 PUCT Final Order") and the NMPRC Final Order and (ii) the sale of the Company's interest in Four Corners in 2016. These decreases were partially offset by an increase in plant, primarily due to MPS Units 1 and 2 and the Eastside Operations Center ("EOC") each being placed in service in March 2015, and MPS Units 3 and 4 being placed in service in May 2016 and September 2016, respectively.
- (f) Palo Verde performance rewards, associated with the 2013 to 2015 performance periods, net of disallowed fuel and purchased power costs related to the resolution for the Texas fuel reconciliation proceeding designated as PUCT Docket No. 46308 for the period from April 2013 through March 2016, were recorded in June 2017, with no comparable amounts in 2018 or 2016.
- (g) O&M expenses at our fossil-fuel generating plants increased primarily due to outage costs at Rio Grande Unit 8 in 2018.
- (h) Interest on long-term debt (net of capitalized interest) and other increased, primarily due to the \$125.0 million aggregate principal amount of 4.22% Senior Notes issued in June 2018 and due in August 2028, partially offset by the redemption of \$33.3 million of 2012 Series A 1.875% Pollution Control Bonds ("PCBs") in 2017.
- (i) Interest on long-term debt (net of capitalized interest) and other increased, primarily due to the \$150.0 million principal amount of senior notes issued in March 2016 and an increase in short term borrowings for working capital purposes in 2017.
- (j) Interest on long-term debt (net of capitalized interest) and other increased, primarily due to the \$150.0 million principal amount of senior notes issued in March 2016.
- (k) Retail non-fuel base revenues decreased primarily due to refunds of approximately \$28.2 million for the reduction in the federal corporate income tax rate due to the TCJA, partially offset by a \$7.7 million base rate increase compared to 2017

base rate increase related to the 2017 PUCT Final Order. Excluding the impact of rate changes, retail non-fuel base revenues in 2018, increased by \$19.8 million primarily due to an increase in kWh sales that resulted from favorable weather and an increase in the average number of customers served.

- (l) Retail non-fuel base revenues increased primarily due to the non-fuel base rate increase approved in the 2017 PUCT Final Order. 2017 included approximately \$8.8 million of retail non-fuel base revenues for the period from July 18, 2017 through December 31, 2017, which was recognized when the 2017 PUCT Final Order was approved in December 2017. Excluding the \$8.8 million 2017 PUCT Final Order impact, retail non-fuel base revenues increased \$4.5 million, or 0.7%, in 2017 compared to 2016.
- (m) Retail non-fuel base revenues increased primarily due to the recognition of \$40.9 million related to the 2016 PUCT Final Order.
- (n) Taxes other than income taxes increased primarily due to increased property valuations in Texas as a result of MPS Units 3 and 4 being placed in service in 2016 and increased revenue related taxes in Texas.
- (o) Taxes other than income taxes increased primarily due to increased property tax rates and valuations in Texas as a result of MPS Units 1 and 2 and the EOC being placed in service during the first quarter of 2015 and increased billed revenues for Texas revenue related taxes. These increases were partially offset by decreased property taxes in Arizona due to lower property values.
- (p) The effective tax rate, other decreased primarily due to the TCJA that reduced the federal corporate income tax rate from 35% to 21%, excluding the tax impact of other items in the table above partially offset by a reduction in state tax reserves in 2017 due to the favorable settlement of Texas state income tax audits.
- (q) The effective tax rate, other decreased primarily due to favorable settlements of state income tax audits in Texas and Arizona.
- (r) The effective tax rate, other increased primarily due to the change to normalize state income taxes in accordance with the 2016 PUCT Final Order and the NMPRC Final Order.
- (s) Palo Verde O&M expenses decreased primarily due to lower incentives and administrative and general ("A&G") benefits in 2018 compared to 2017.
- (t) Palo Verde O&M expenses increased primarily due to higher A&G expenses.
- (u) AFUDC decreased due to lower balances of construction work in progress ("CWIP"), primarily due to MPS Units 3 and 4 being placed in service in May and September 2016, respectively, and a reduction in the AFUDC rate effective January 2017.
- (v) AFUDC decreased due to lower balances of CWIP, primarily due to the MPS units and the EOC being placed in service in 2015 and 2016, and a reduction in the AFUDC rate effective January 2016 as a result of the 2016 PUCT Final Order.

## Impact of New Accounting Standard and Use of Non-GAAP Financial Measures

Upon adoption of ASU 2016-01, Financial Instruments - Recognition and Measurement of Financial Assets and Financial Liabilities, the Company recorded, as of January 1, 2018, a cumulative effect adjustment to retained earnings of \$41.0 million, net of tax, for the unrealized gains (losses) related to equity securities held in the NDT. As required by ASU 2016-01, changes in the fair value of equity securities are now recognized in the Company's Statements of Operations. The adoption of the new standard added the potential for significant volatility to the Company's reported results of operations as changes in the fair value of equity securities may occur. Furthermore, the equity investments included in the NDT are significant and are expected to increase significantly during the remaining life (estimated to be 27 to 30 years) of Palo Verde. Accordingly, the Company has provided the following non-GAAP financial measures, which reconcile GAAP net income to non-GAAP adjusted net income and GAAP basic earnings per share to non-GAAP adjusted basic earnings per share, to exclude the impact of changes in fair value of equity securities and realized gains (losses) from the sale of both equity and fixed income securities.

	Twelve Months Ended		
	December 31,		
	2018	2017	2016
	(In thousands except for per share data)		
Net income (GAAP)	\$ 84,315	\$ 98,261	\$ 96,768
Adjusting items before income tax effects			
Unrealized losses, net	18,601	—	—
Realized gains, net	(5,634)	(10,626)	(7,640)
Total adjustments before income tax effects	12,967	(10,626)	(7,640)
Income taxes on above adjustments	(2,593)	2,125	1,528
Adjusting items, net of income taxes	10,374	(8,501)	(6,112)
Adjusted net income (non-GAAP)	\$ 94,689	\$ 89,760	\$ 90,656
Basic earnings per share (GAAP)	\$ 2.07	\$ 2.42	\$ 2.39
Adjusted basic earnings per share (non-GAAP)	\$ 2.33	\$ 2.21	\$ 2.24

Adjusted net income and adjusted basic earnings per share are not measures of financial performance under GAAP and should not be considered as an alternative to net income and earnings per share, respectively. Furthermore, the Company's presentation of any non-GAAP financial measure may not be comparable to similarly titled measures used by other companies. The Company believes adjusted net income and adjusted basic earnings per share are useful financial measures for investors and analysts in understanding the Company's core operating performance because each measure removes the effects of variances reported in the Company's results of operations that are not indicative of fundamental changes in the earnings capacity of the Company.

## Historical Results of Operations

The following discussion includes detailed descriptions of factors affecting individual line items in the results of operations. The amounts presented below are presented on a pre-tax basis.

### Operating revenues

We realize revenue from the sale of electricity to retail customers at regulated rates and the sale of energy in the wholesale power market generally at market-based prices. Sales for resale to our sole full requirement customer (which are FERC-regulated cost-based wholesale sales within our service territory), accounted for less than 1% of revenues in each of 2018, 2017 and 2016.

Revenues from the sale of electricity include fuel costs that are recovered from our customers through fuel adjustment mechanisms. Prior to 2017, a significant portion of fuel costs have been recovered through base rates in New Mexico. Effective July 1, 2016, with the implementation of the NMPRC Final Order, fuel costs are no longer recovered through base rates. Beginning July 1, 2016, all fuel costs are recovered through a fuel adjustment mechanism. We record deferred fuel revenues for the difference between actual fuel costs and recoverable fuel revenues until such amounts are collected from or refunded to customers. "Non-fuel base revenues" refers to our revenues from the sale of electricity excluding such fuel costs.

Retail non-fuel base revenue percentages by customer class are presented below:

	Years Ended December 31,		
	2018	2017	2016
Residential .....	48%	46%	46%
Commercial and industrial, small .....	31	32	32
Commercial and industrial, large .....	6	6	6
Sales to public authorities .....	15	16	16
<b>Total retail non-fuel base revenues .....</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

No retail customer accounted for more than 3% of our non-fuel base revenues during such periods. As shown in the table above, residential and small commercial customers represent approximately 79% of our non-fuel base revenues. While this customer base is more stable, it is also more sensitive to changes in weather conditions. The current rate structures in Texas and New Mexico reflect higher base rates during the peak summer season of May through October and lower base rates during November through April for our residential and small commercial and industrial customers. As a result, our business is seasonal, with higher kWh sales and revenues during the summer cooling season. The following table sets forth the percentage of our retail non-fuel base revenues derived during each quarter for the periods presented:

	Years Ended December 31,		
	2018	2017	2016
January 1 to March 31 .....	18%	18%	17%
April 1 to June 30 .....	28	27	25
July 1 to September 30 .....	34	34	38
October 1 to December 31 .....	20	21	20
<b>Total .....</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Weather significantly impacts our residential, small commercial and industrial customers, and to a lesser extent, our sales to public authorities. Heating and cooling degree days can be used to evaluate the effect of weather on energy use. For each degree the average outdoor temperature varies from a standard of 65 degrees Fahrenheit, a degree day is recorded. The table below shows heating and cooling degree days compared to a 10-year average for 2018, 2017 and 2016.

	2018	2017	2016	10-year Average
Cooling degree days .....	3,174	2,917	2,811	2,863
Heating degree days .....	1,937	1,522	1,851	2,056

Customer growth is a key driver of the growth of retail sales. The average number of retail customers grew 1.6% and 1.7% in 2018 and 2017, respectively. See the tables presented on pages 35 and 36 which provide detail on the average number of retail customers and the related revenues and kWh sales.

*Retail non-fuel base revenues.* For the twelve months ended December 31, 2018, retail non-fuel base revenues decreased primarily due to the refunds in 2018 of approximately \$28.2 million to customers for the reduction in the federal corporate income tax rate due to the TCJA, partially offset by a \$7.7 million base rate increase related to the 2017 PUCT Final Order. Excluding the impact of rate changes related to the 2017 PUCT Final Order, retail non-fuel base revenues increased by \$19.8 million, or 3.2%, compared to the twelve months ended December 31, 2017. This increase was primarily due to (i) increased revenues from residential customers of \$17.1 million caused by a 5.9% increase in kWh sales that resulted from favorable weather and a 1.7% increase in the average number of residential customers served, and (ii) increased revenues from small commercial and industrial customers of \$2.9 million that resulted from favorable weather and a 0.9% increase in the average number of small commercial and industrial customers served. Cooling degree days increased 8.8% in the twelve months ended December 31, 2018, when compared to the twelve months ended December 31, 2017, and were 10.9% above the 10-year average. Heating degree days increased 27.3% in the twelve months ended December 31, 2018, when compared to the twelve months ended December 31, 2017, and were 5.8% below the 10-year average.

For the twelve months ended December 31, 2017, retail non-fuel base revenues increased primarily due to the recognition of \$8.8 million approved in the 2017 PUCT Final Order. Excluding the \$8.8 million 2017 PUCT Final Order impact, for the twelve months ended December 31, 2017, retail non-fuel base revenues increased \$4.5 million, or 0.7%, compared to the twelve months ended December 31, 2016. This increase was primarily due to increased revenues from residential customers of \$2.5 million driven by a 1.6% increase in the average number of residential customers served and increased revenues from small commercial and industrial customers of \$2.1 million driven by a 2.4% increase in the average number of small commercial and industrial customers served. The Company experienced an overall 1.7% increase in the average number of customers served, partially offset by milder weather when compared to the twelve months ended December 31, 2016. Heating degree days decreased 17.8% in the twelve months ended December 31, 2017, when compared to the twelve months ended December 31, 2016. During our peak summer cooling season, cooling degree days in 2017 were comparable to the same period in 2016.

*Fuel revenues.* Fuel revenues consist of (i) revenues collected from customers under fuel recovery mechanisms approved by the state commissions and the FERC, (ii) deferred fuel revenues which, are comprised of the difference between fuel costs and fuel revenues collected from customers, and (iii) prior to July 1, 2016, fuel costs recovered in base rates in New Mexico. In New Mexico, effective July 1, 2016, with the implementation of the NMPRC Final Order, fuel and purchased power costs are no longer recovered through base rates, as they were historically, but are recovered through the FPPCAC. Fuel and purchased power costs are reconciled to actual costs on a monthly basis and recovered or refunded to customers the second succeeding month. Additionally, effective January 1, 2018, pursuant to the final order in NMPRC Case No. 17-00090-UT, the RPS costs for New Mexico are recovered through a separate RPS Cost Rider and not through the FPPCAC. The RPS Cost Rider is updated in an annual NMPRC filing, including a true-up of the prior calendar year's RPS costs and RPS Cost Rider revenue. In Texas, fuel costs are recovered through a fixed fuel factor. We can seek to revise our Texas fixed fuel factor based upon an approved formula at least four months after our last revision, except in the month of December. In addition, if we materially over-recover fuel costs, we must seek to refund the over-recovery, and if we materially under-recover fuel costs, we may seek a surcharge to recover those costs. Fuel over- and under-recoveries are defined as material when they exceed 4% of the previous twelve months' fuel costs.

In March 2018 and March 2017, \$1.1 million and \$1.4 million, respectively, were credited to customers through the applicable fuel adjustment clauses as the result of a reimbursement from the DOE related to spent nuclear fuel storage.

We over-recovered fuel costs by \$4.8 million in the twelve months ended December 31, 2018. We over-recovered fuel costs by \$17.1 million and under-recovered fuel costs by \$14.9 million in the twelve months ended December 31, 2017 and 2016, respectively. At December 31, 2018, we had a net fuel over-recovery balance of \$11.0 million, including over-recoveries of \$8.9 million in Texas, \$2.0 million in New Mexico and \$0.1 million in FERC jurisdictions. On October 13, 2017, we filed a request to decrease our Texas fixed fuel factor by approximately 19% to reflect decreased fuel expenses primarily related to a decrease in the price of natural gas used to generate power. The decrease in our Texas fixed fuel factor became effective beginning with the November 2017 billing month. On April 13, 2018, we filed a request with the PUCT to decrease the Texas fixed fuel factor by approximately 29% to reflect decreased fuel expenses primarily related to a decrease in the price of natural gas used to generate power. On April 25, 2018, our proposed fuel factors were approved on an interim basis effective for the first billing cycle of the May 2018 billing month. The revised factor was approved and the docket closed on May 22, 2018. On October 15, 2018, we filed a request with the PUCT to decrease our Texas fixed fuel factor by approximately 6.99% to reflect decreased fuel expenses primarily related to a decrease in the price of natural gas used to generate power. On October 25, 2018, our fixed fuel factor was approved on an interim basis effective for the first billing cycle of the November 2018 billing month. The revised factor was approved by the PUCT and the docket closed on November 19, 2018. The Texas fixed fuel factor will continue thereafter until changed by the PUCT.

*Off-system sales.* Off-system sales are sales into wholesale markets outside our service territory. Off-system sales are primarily made in off-peak periods when we have competitive generation capacity available after meeting our regulated service obligations. We have shared 100% of margins on non-arbitrage sales (as defined by the settlement in PUCT Docket No. 41852) and 50% of margins on arbitrage sales with our Texas customers since April 1, 2014. We are currently sharing 90% of off-system sales margins with our New Mexico customers (as reaffirmed in NMPRC Case No. 09-00171-UT), and 25% of our off-system sales margins with our sales for resale - full requirement customer under the terms of their contract.

Typically, we realize a significant portion of our off-system sales margins in the first and fourth quarter of each calendar year when our native load is lower than at other times of the year, allowing for the sale in the wholesale market of relatively larger amounts of off-system energy generated from lower cost generating resources. A decrease in natural gas market prices coupled with an increase in wholesale power market prices allowed us to engage in additional off-system sales in the third quarter of 2018 and in the third quarter of 2017. Palo Verde's availability is an important factor in realizing these off-system sales margins.

The table below shows megawatt-hours ("MWhs"), sales revenue, fuel cost, total margins and retained margins made on off-system sales for the twelve months ended December 31, 2018, 2017 and 2016 (in thousands, except for MWhs).

	Years Ended December 31,		
	2018	2017	2016
MWh sales .....	2,687,961	2,042,884	1,927,508
Sales revenue .....	\$ 86,418	\$ 58,986	\$ 45,702
Fuel cost.....	\$ 54,299	\$ 46,258	\$ 38,933
Total margins .....	\$ 32,119	\$ 12,728	\$ 6,769
Retained margins .....	\$ 2,129	\$ 1,673	\$ 1,137

Off-system sales revenue increased \$27.4 million, or 46.5%, and the related retained margins increased \$0.5 million, or 27.3%, for the twelve months ended December 31, 2018, when compared to the twelve months ended December 31, 2017, as a result of a 31.6% increase in MWh sales due to additional available power, and higher average market prices for power. Off-system sales revenue increased \$13.3 million, or 29.1%, and the related retained margins increased \$0.5 million, or 47.1%, for the twelve months ended December 31, 2017, when compared to the twelve months ended December 31, 2016, as a result of higher average market prices for power and a 6.0% increase in MWh sales due to additional available power.

Comparisons of kWh sales and operating revenues are shown below:

Years Ended December 31:	2018	2017	Increase (Decrease)	
			Amount	Percent
<b>kWh sales (in thousands):</b>				
Retail:				
Residential.....	2,988,695	2,823,260	165,435	5.9%
Commercial and industrial, small.....	2,431,920	2,410,710	21,210	0.9
Commercial and industrial, large.....	1,050,834	1,045,319	5,515	0.5
Sales to public authorities.....	1,563,227	1,564,670	(1,443)	(0.1)
Total retail sales.....	8,034,676	7,843,959	190,717	2.4
Wholesale:				
Sales for resale - full requirement customer.....	58,991	62,887	(3,896)	(6.2)
Off-system sales.....	2,687,961	2,042,884	645,077	31.6
Total wholesale sales.....	2,746,952	2,105,771	641,181	30.4
Total kWh sales.....	10,781,628	9,949,730	831,898	8.4
<b>Operating revenues (in thousands):</b>				
Non-fuel base revenues:				
Retail:				
Residential.....	\$ 297,597	\$ 287,884	\$ 9,713	3.4%
Commercial and industrial, small.....	194,341	198,799	(4,458)	(2.2)
Commercial and industrial, large.....	34,920	38,403	(3,483)	(9.1)
Sales to public authorities.....	95,460	97,890	(2,430)	(2.5)
Total retail non-fuel base revenues (1) (2).....	622,318	622,976	(658)	(0.1)
Wholesale:				
Sales for resale - full requirement customer.....	2,780	2,730	50	1.8
Total non-fuel base revenues.....	625,098	625,706	(608)	(0.1)
Fuel revenues:				
Recovered from customers during the period.....	156,493	218,380	(61,887)	(28.3)
Over collection of fuel (3).....	(4,736)	(17,133)	12,397	72.4
Total fuel revenues (4) (5).....	151,757	201,247	(49,490)	(24.6)
Off-system sales (6).....	86,418	58,986	27,432	46.5
Wheeling revenues (7).....	19,026	18,114	912	5.0
Energy efficiency cost recovery (8).....	8,888	—	8,888	—
Miscellaneous (7).....	8,188	8,229	(41)	(0.5)
Total revenues from customers.....	899,375	912,282	(12,907)	(1.4)
Other (7) (9).....	4,228	4,515	(287)	(6.4)
Total operating revenues.....	\$ 903,603	\$ 916,797	\$ (13,194)	(1.4)
<b>Average number of retail customers (10):</b>				
Residential.....	374,138	368,044	6,094	1.7%
Commercial and industrial, small.....	42,349	41,978	371	0.9
Commercial and industrial, large.....	48	48	—	—
Sales to public authorities.....	5,746	5,532	214	3.9
Total.....	422,281	415,602	6,679	1.6

- (1) 2018 includes \$7.7 million of additional revenues compared to 2017 resulting from the 2017 PUCT Final Order, which increased base rates effective July 18, 2017.
- (2) 2018 includes a \$28.2 million base rate decrease related to the reduction in the federal statutory income tax rate enacted under the TCJA.
- (3) Includes the portion of DOE refunds related to spent fuel storage of \$1.1 million and \$1.4 million in 2018 and 2017, respectively, that were credited to customers through the applicable fuel adjustment clauses.
- (4) 2017 includes \$5.0 million related to the Palo Verde performance rewards, net.
- (5) Includes deregulated Palo Verde Unit 3 revenues for the New Mexico jurisdiction of \$8.1 million and \$9.8 million in 2018 and 2017, respectively.
- (6) Includes retained margins of \$2.1 million and \$1.7 million in 2018 and 2017, respectively.
- (7) Represents revenues with no related kWh sales.
- (8) The Company implemented ASU 2014-09, Revenue from Contracts with Customers, in the first quarter of 2018, and following the adoption of the standard, revenues related to reimbursed costs of energy efficiency programs approved by the Company's regulators are reported in operating revenues from customers. Related expenses are reported in O&M expenses.
- (9) Includes energy efficiency bonuses of \$1.3 million and \$1.5 million in 2018 and 2017, respectively.
- (10) The number of retail customers presented is based on the number of service locations.

Years Ended December 31:	2017	2016	Increase (Decrease)	
			Amount	Percent
<b>kWh sales (in thousands):</b>				
Retail:				
Residential.....	2,823,260	2,805,789	17,471	0.6%
Commercial and industrial, small .....	2,410,710	2,403,447	7,263	0.3
Commercial and industrial, large .....	1,045,319	1,030,745	14,574	1.4
Sales to public authorities .....	1,564,670	1,572,510	(7,840)	(0.5)
Total retail sales.....	7,843,959	7,812,491	31,468	0.4
Wholesale:				
Sales for resale - full requirement customer .....	62,887	62,086	801	1.3
Off-system sales.....	2,042,884	1,927,508	115,376	6.0
Total wholesale sales.....	2,105,771	1,989,594	116,177	5.8
Total kWh sales .....	9,949,730	9,802,085	147,645	1.5
<b>Operating revenues (in thousands):</b>				
Non-fuel base revenues:				
Retail:				
Residential .....	\$ 287,884	\$ 278,774	\$ 9,110	3.3%
Commercial and industrial, small.....	198,799	194,942	3,857	2.0
Commercial and industrial, large .....	38,403	39,070	(667)	(1.7)
Sales to public authorities.....	97,890	96,881	1,009	1.0
Total retail non-fuel base revenues (1).....	622,976	609,667	13,309	2.2
Wholesale:				
Sales for resale - full requirement customer.....	2,730	2,407	323	13.4
Total non-fuel base revenues.....	625,706	612,074	13,632	2.2
Fuel revenues:				
Recovered from customers during the period.....	218,380	148,397	69,983	47.2
Under (over) collection of fuel (2).....	(17,133)	14,893	(32,026)	—
New Mexico fuel in base rates (3) .....	—	33,279	(33,279)	—
Total fuel revenues (4) (5).....	201,247	196,569	4,678	2.4
Off-system sales (6) .....	58,986	45,702	13,284	29.1
Wheeling revenues (7) .....	18,114	21,966	(3,852)	(17.5)
Miscellaneous (7).....	8,229	7,034	1,195	17.0
Total revenues from customers.....	912,282	883,345	28,937	3.3
Other (7) (8) .....	4,515	3,591	924	25.7
Total operating revenues .....	\$ 916,797	\$ 886,936	\$ 29,861	3.4
<b>Average number of retail customers (9):</b>				
Residential.....	368,044	362,138	5,906	1.6%
Commercial and industrial, small .....	41,978	41,014	964	2.4
Commercial and industrial, large .....	48	49	(1)	(2.0)
Sales to public authorities .....	5,532	5,303	229	4.3
Total.....	415,602	408,504	7,098	1.7

- (1) 2017 includes \$8.8 million of relate back revenues in Texas from July 18, 2017 through December 31, 2017, which was recorded in the fourth quarter of 2017 related to the 2017 PUCT Final Order.
- (2) Includes the portion of DOE refunds related to spent fuel storage of \$1.4 million and \$1.6 million in 2017 and 2016, respectively, that were credited to customers through the applicable fuel adjustment clauses.
- (3) Historically, fuel and purchased power costs in the New Mexico jurisdiction were recorded through base rates and a FPPCAC that accounts for the changes in the costs of fuel relative to the amount included in base rates. Effective July 1, 2016, with the implementation of the NMPRC Final Order, these costs are no longer recovered through base rates but are recovered through the FPPCAC.
- (4) 2017 includes \$5.0 million related to the Palo Verde performance rewards, net.
- (5) Includes deregulated Palo Verde Unit 3 revenues for the New Mexico jurisdiction of \$9.8 million and \$8.7 million in 2017 and 2016, respectively.
- (6) Includes retained margins of \$1.7 million and \$1.1 million in 2017 and 2016, respectively.
- (7) Represents revenues with no related kWh sales.
- (8) Includes an energy efficiency bonuses of \$1.5 million and \$0.5 million in 2017 and 2016, respectively.
- (9) The number of retail customers presented is based on the number of service locations.

## Fuel and purchased power expense

Our sources of energy include electricity generated from our nuclear and natural gas generating plants and purchased power. Palo Verde represents approximately 30% of our net dependable generating capacity and approximately 49% of our Company-generated energy for the twelve months ended December 31, 2018. Fluctuations in the price of natural gas, which is also the primary factor influencing the price of purchased power, have had a significant impact on our cost of energy.

Fuel and purchased power expense decreased \$15.6 million, or 6.4%, for the twelve months ended December 31, 2018 compared to the twelve months ended December 31, 2017, primarily due to (i) decreased natural gas costs of \$12.6 million primarily due to a 30.4% decrease in the average cost of MWhs generated, partially offset by a 30.9% increase in the MWhs generated with natural gas, and (ii) decreased nuclear fuel costs of \$3.1 million primarily due to a reduction in the price of uranium and a 3.8% decrease in the MWhs generated with nuclear fuel.

Fuel and purchased power expense increased \$11.3 million, or 4.8%, for the twelve months ended December 31, 2017 compared to the twelve months ended December 31, 2016, primarily due to increased natural gas costs of \$18.4 million due to an 8.2% increase in the MWhs generated with natural gas and a 6.2% increase in the average cost of MWhs generated. This increase in fuel and purchased power expense was partially offset by decreased coal costs of \$5.6 million as a result of the sale of our interest in Four Corners, a coal-fired generation station, in July 2016.

The table below details the sources and costs of energy for 2018, 2017 and 2016.

Fuel Type	2018			2017		
	Cost	MWh	Cost per MWh	Cost	MWh	Cost per MWh
	(in thousands)			(in thousands)		
Natural Gas.....	\$ 129,583	5,029,863	\$ 25.76	\$ 142,227	3,841,550	\$ 37.02
Coal .....	661 (a)	—	—	575 (a)	—	—
Nuclear .....	39,118 (b)	4,913,858	8.20	42,267 (b)	5,109,325	8.58
Total.....	169,362	9,943,721	17.15	185,069	8,950,875	20.85
Purchase Power:						
Photovoltaic .....	22,228	275,569	80.66	23,784	292,157	81.41
Other.....	37,519	1,079,740	34.75	35,898	1,248,684	28.75
Total purchased power..	59,747	1,355,309	44.08	59,682	1,540,841	38.73
Total energy.....	\$ 229,109	11,299,030	20.38	\$ 244,751	10,491,716	23.48

Fuel Type	2016		
	Cost	MWh	Cost per MWh
	(in thousands)		
Natural Gas.....	\$ 123,806	3,550,904	\$ 34.87
Coal .....	6,154 (a)	175,258	35.11
Nuclear .....	43,778 (b)	5,093,844	8.94
Total.....	173,738	8,820,006	19.90
Purchase Power:			
Photovoltaic .....	23,413	289,800	80.79
Other.....	36,314	1,262,451	28.76
Total purchased power..	59,727	1,552,251	38.48
Total energy.....	\$ 233,465	10,372,257	22.68

(a) The sale of our interest in Four Corners, a coal-fired generation station, closed on July 6, 2016. The cost includes the amortization of deferred coal mine reclamation obligations.

(b) Costs include a DOE refund related to spent fuel storage of \$1.2 million, \$1.6 million and \$1.8 million recorded in 2018, 2017 and 2016, respectively. Cost per MWh excludes these refunds.

### *Operations and maintenance expense*

O&M expense increased \$14.6 million, or 4.6%, in 2018 compared to 2017, primarily due to increases of (i) \$8.9 million related to energy efficiency program costs previously offset by the related revenues prior to the adoption of ASU 2014-09, (ii) \$3.3 million in outage costs at Rio Grande Unit 8, (iii) \$2.4 million in transmission and distribution expense primarily due to increases in payroll costs and Palo Verde transmission expenses due to storm repairs, and (iv) \$1.9 million in Four Corners operating expenses due to an adjustment in estimated pension and benefit costs and post-closing purchase price adjustments recorded in 2017. These increases were partially offset by a \$2.9 million decrease in Palo Verde O&M expense primarily due to lower incentives and A&G benefits in 2018.

O&M expense increased \$4.6 million, or 1.4%, in 2017 compared to 2016, primarily due to increases of (i) \$7.1 million in maintenance outages at Newman Units 1, 3 and 4, (ii) \$3.9 million in maintenance costs at Newman and MPS, (iii) \$2.4 million in Palo Verde O&M expenses primarily due to higher A&G expenses, and (iv) \$3.0 million in various other operating costs. These increases were partially offset by a decrease of \$12.1 million in O&M costs in 2017 as a result of the sale of our interest in Four Corners in July 2016.

### *Depreciation and amortization expense*

Depreciation and amortization expense increased \$5.5 million, or 6.1%, in 2018 compared to 2017, primarily due to increases in plant, including distribution, general, Palo Verde and intangible plant.

Depreciation and amortization expense increased \$6.5 million, or 7.7%, in 2017 compared to 2016, primarily due to increases in plant, including MPS Units 3 and 4, which were placed in service in May 2016 and September 2016, respectively. These increases were partially offset by the sale of the Company's interest in Four Corners in July 2016.

### *Taxes other than income taxes*

Taxes other than income taxes increased \$0.1 million, or 0.2%, in 2018 compared to 2017, primarily due to increased property tax rates and valuations, partially offset by decreased revenue related taxes in Texas.

Taxes other than income taxes increased \$5.3 million, or 8.1%, in 2017 compared to 2016, primarily due to increased property tax rates and valuations in Texas as a result of MPS Units 3 and 4 being placed in service in 2016 and increased billed revenues in Texas.

### Other income (deductions)

Other income (deductions) decreased \$19.7 million, or 46.5%, in 2018 compared to 2017, primarily due to a \$23.6 million increase in net realized and unrealized losses on securities held in the NDT. During the fourth quarter of 2018, the U.S. equity markets experienced the greatest overall fourth quarter declines since 2008. This decrease was partially offset by a \$2.4 million increase in the expected return on benefit plan assets. Beginning on January 1, 2018, the Company adopted ASU 2016-01, Financial Instruments, and began recording unrealized gains and losses on equity securities held in the NDT directly in earnings. Further details are shown below (in thousands):

	Years Ended December 31,		
	2018	2017	2016
Allowance for equity funds used during construction...	\$ 3,453	\$ 3,025	\$ 7,023
Investment and interest income, net:			
NDT unrealized losses, net .....	(18,601)	—	—
NDT realized gains, net .....	5,634	10,626	7,640
NDT dividends and interest income .....	7,227	6,698	6,498
Expected returns on benefit plans (ASU 2017-07)...	23,511	21,096	20,714
Other .....	606	433	(55)
	18,377	38,853	34,797
Miscellaneous non-operating income .....	12,823	12,051	11,073
Miscellaneous non-operating deductions .....	(11,980)	(11,580)	(11,038)
Total other income (deductions) .....	\$ 22,673	\$ 42,349	\$ 41,855

Other income (deductions) increased \$0.5 million, or 1.2%, in 2017 compared to 2016, primarily due to a \$3.0 million increase in net realized gains on securities held in the NDT. This increase was partially offset by a \$4.0 million decrease in AEFUDC resulting from lower average balances of CWIP and a reduction in the Allowance for Equity Funds Used During Construction ("AEFUDC") rate.

### Interest charges (credits)

Interest charges (credits) increased by \$1.1 million, or 1.3%, in 2018 compared to 2017, primarily due to interest expense on the \$125.0 million aggregate principal amount of 4.22% Senior Notes issued in June 2018 and due in August 2028, partially offset by (i) a net decrease in the interest cost component of net periodic benefit cost of the Company's employee benefit plans, (ii) increased allowance for borrowed funds used during construction ("ABFUDC") as a result of an increase in the ABFUDC rate and higher average balances of CWIP, and (iii) the redemption of \$33.3 million of 2012 Series A 1.875% PCBs in 2017.

Interest charges (credits) increased by \$4.1 million, or 5.1%, in 2017 compared to 2016, primarily due to decreased ABFUDC as a result of lower average balances of CWIP and a reduction in the ABFUDC rate and interest expense on the \$150.0 million aggregate principal amount of 5.00% Senior Notes due 2044 issued in March 2016.

### Income tax expense

Income tax expense decreased by \$24.6 million, or 48.3%, in 2018 compared to 2017, primarily due to a decrease in the federal corporate income tax rate from 35% to 21% and a 25.8% reduction in pre-tax income, partially offset by a reduction in state tax reserves in 2017 due to the favorable settlement of Texas state income tax audits.

Income tax expense decreased by \$2.9 million, or 5.4%, in 2017 compared to 2016, primarily due to favorable settlements of state income tax audits in Texas and Arizona.

### New accounting standards adopted and to be adopted in the future

See Part II, Item 8, Financial Statements and Supplementary Data, Note B of Notes to Financial Statements for discussion on new accounting standards adopted and to be adopted in the future.

## *Inflation*

For the last several years, inflation has been relatively low and, therefore, has had little impact on our results of operations and financial condition.

## **Liquidity and Capital Resources**

At December 31, 2018, our capital structure, including common stock, long-term debt, current maturities of long-term debt, and short-term borrowings under our RCF, consisted of 44.8% common stock equity and 55.2% debt. As of December 31, 2018, we had a balance of \$12.9 million in cash and cash equivalents. Based on current projections, we believe that we will have adequate liquidity through our current cash balances, cash from operations, available borrowings under the RCF, and debt or equity issuances in the capital markets to meet all of our anticipated cash requirements over the next twelve months.

Our principal liquidity requirements in the near-term are expected to consist of capital expenditures to expand and support electric service obligations, expenditures for nuclear fuel inventory, interest payments on our indebtedness, cash dividend payments, operating expenses including fuel costs, maintenance costs and taxes.

*Capital Requirements.* During the twelve months ended December 31, 2018, our capital requirements primarily consisted of expenditures for the construction and purchase of electric utility plant, payment of common stock dividends and purchases of nuclear fuel. Projected utility construction expenditures are to add new generation, expand and update our transmission and distribution systems, make capital improvements and replacements at Palo Verde and other generating facilities, and make investments in other property and equipment. Estimated cash construction expenditures for all capital projects for 2019 are expected to be approximately \$249 million. See Part I, Item 1, "Business - Construction Program." Cash capital expenditures for new electric plant were \$240.0 million in the twelve months ended December 31, 2018, compared to \$199.9 million in the twelve months ended December 31, 2017. Capital requirements for purchases of nuclear fuel were \$38.4 million for the twelve months ended December 31, 2018, as compared to \$38.5 million for the twelve months ended December 31, 2017.

On December 28, 2018, we paid a quarterly cash dividend of \$0.36 per share, or \$14.6 million, to shareholders of record as of the close of business on December 14, 2018. We paid a total of \$57.5 million in cash dividends during the twelve months ended December 31, 2018. On January 31, 2019, our Board of Directors declared a quarterly cash dividend of \$0.36 per share payable on March 29, 2019, to shareholders of record as of the close of business on March 15, 2019. Typically, the Board of Directors reviews our dividend policy annually in the second quarter of each year. In addition, while we do not currently anticipate repurchasing shares of our common stock in 2019, we may repurchase shares of our common stock in the future. Under our repurchase program, purchases can be made at open market prices or in private transactions, and repurchased shares are available for issuance under employee benefit and stock incentive plans, or may be retired. No shares of common stock were repurchased during the twelve months ended December 31, 2018. As of December 31, 2018, a total of 393,816 shares remain eligible for repurchase under the repurchase program.

We expect to continue to maintain a prudent level of liquidity and monitor market conditions for debt and equity securities. Our liquidity needs can fluctuate quickly based on fuel prices and other factors and we are continuing to make investments in new electric plant and other assets in order to reliably serve our customers.

Our cash requirements for federal and state income taxes vary from year to year based on taxable income, which is influenced by the timing of revenues and expenses recognized for income tax purposes. The following summary describes the major impacts of the TCJA on our liquidity.

The TCJA discontinued bonus depreciation for regulated utilities, which reduced tax deductions previously available to us for 2018 and 2019. The decrease in tax deductions results in the utilization of our net operating loss carryforwards ("NOL carryforwards") and other carryforwards approximately one year earlier than previously anticipated and is expected to result in higher income tax payments beginning in 2020, after the full utilization of NOL and other carryforwards. However, due to the lower federal corporate income tax rate enacted by the TCJA, our future federal corporate income tax payments will be made at the reduced rate of 21% beginning in 2018. Due to NOL and other carryforwards, minimal tax payments are expected for 2019, which are mostly related to state income taxes.

The effect of the TCJA on our rates is beneficial to our customers. Following the enactment of the TCJA and the reduction of the federal corporate income tax rate, revenues collected from our customers in 2018 were reduced by \$28.2 million, which negatively impacted our cash flows and a comparable amount is expected during 2019.

We continually evaluate our funding requirements related to our retirement plans, other post-retirement benefit plans and decommissioning trust funds. We contributed \$9.2 million and \$9.8 million to our retirement plans during the twelve months ended

December 31, 2018, and 2017, respectively. We contributed \$0.5 million to our other post-retirement benefit plans during both the twelve months ended December 31, 2018, and 2017. We contributed \$2.1 million and \$3.8 million to the NDT in 2018 and 2017, respectively. We are in compliance with the funding requirements of the federal government for our benefit plans. In addition, with respect to our nuclear plant decommissioning trust, we are in compliance with the funding requirements of the federal law and the ANPP Participation Agreement. We will continue to review our funding for these plans in order to meet our future obligations.

*Capital Resources.* Cash provided by operations, \$285.4 million for the twelve months ended December 31, 2018, and \$288.6 million for the twelve months ended December 31, 2017, is a significant source for funding capital requirements. A component of cash flows from operations is the change in net over-collection and under-collection of fuel revenues. Cash from operations has been impacted by the timing of the recovery of fuel costs through fuel recovery mechanisms in Texas and New Mexico, and our sales for resale full requirement customer. We recover actual fuel costs from customers through fuel adjustment mechanisms in Texas and New Mexico, and from our sales for resale full requirement customer. We record deferred fuel revenues for the under-recovery or over-recovery of fuel costs until they can be recovered from or refunded to customers. In Texas, fuel costs are recovered through a fixed fuel factor. We can seek to revise our fixed fuel factor at least four months after our last revision except in the month of December based upon our approved formula which allows us to adjust fuel rates to reflect changes in costs of natural gas. We are required to request to refund fuel costs in any month when the over-recovery balance exceeds a threshold material amount and we expect fuel costs to continue to be materially over-recovered. We are permitted to seek to surcharge fuel under-recoveries in any month the balance exceeds a threshold material amount that we expect fuel cost recovery to continue to be materially under-recovered. Fuel over and under-recoveries are considered material when they exceed 4% of the previous twelve months' fuel costs. On October 15, 2018, we filed a request with the PUCT to decrease our Texas fixed fuel factor by approximately 6.99% to reflect decreased fuel expenses primarily related to a decrease in the price of natural gas used to generate power. On October 25, 2018, our fixed fuel factor was approved on an interim basis effective for the first billing cycle of the November 2018 billing month. The revised factor was approved by the PUCT and the docket closed on November 19, 2018. The Texas fixed fuel factor will continue thereafter until changed by the PUCT. During the twelve months ended December 31, 2018, we had over-recoveries of fuel costs of \$4.8 million compared to over-recoveries of fuel costs of \$17.1 million during the twelve months ended December 31, 2017. At December 31, 2018, we had a net fuel over-recovery balance of \$11.0 million, including over-recoveries of \$8.9 million in Texas, \$2.0 million in New Mexico, and \$0.1 million in FERC jurisdictions.

We maintain the RCF for working capital and general corporate purposes and financing nuclear fuel through the RGRT. The RGRT, the trust through which we finance our portion of nuclear fuel for Palo Verde, is consolidated in our financial statements. The total amount borrowed for nuclear fuel by the RGRT, excluding debt issuance costs, was \$136.2 million at December 31, 2018, of which \$26.2 million had been borrowed under the RCF, and \$110.0 million was borrowed through the issuance of senior notes. At December 31, 2017, the total amounts borrowed for nuclear fuel by the RGRT, excluding debt issuance costs, were \$133.5 million, of which \$88.5 million had been borrowed under the RCF and \$45.0 million was borrowed through the issuance of senior notes. Interest costs on borrowings to finance nuclear fuel are accumulated by the RGRT and charged to us as fuel is consumed and recovered through fuel recovery charges. The outstanding balance under the RCF for working capital and general corporate purposes was \$23.0 million at December 31, 2018, and \$85.0 million at December 31, 2017. Total aggregate borrowings under the RCF as of December 31, 2018, were \$49.2 million with an additional \$300.7 million available to borrow.

We received approval from the NMPRC on October 7, 2015, to guarantee the issuance of up to \$65.0 million of long-term debt by the RGRT to finance future purchases of nuclear fuel and to refinance existing nuclear fuel debt obligations. We received additional approval from the NMPRC on October 4, 2017, to amend and extend the RCF, issue up to \$350.0 million in long-term debt and to redeem and refinance the \$63.5 million 2009 Series A 7.25% PCBs and the \$37.1 million 2009 Series B 7.25% PCBs, which are subject to optional redemption in 2019. The NMPRC approval to issue up to \$350.0 million in long-term debt supersedes its prior approval. We received approval from the FERC on October 31, 2017, to issue up to \$350.0 million in long-term debt, to guarantee the issuance of up to \$65.0 million of long-term debt by the RGRT, and to continue to utilize our existing RCF with the ability to amend and extend the RCF at a future date, and to redeem, refinance and/or replace the 2009 Series A and Series B PCBs with debt of equal face value. The authorization approved by the FERC is effective from November 15, 2017 through November 14, 2019, and supersedes its prior approvals.

Under these authorizations, on June 28, 2018, we issued \$125 million in aggregate principal amount of 4.22% Senior Notes due August 15, 2028, and guaranteed the issuance by the RGRT of \$65 million in aggregate principal amount of 4.07% Senior Guaranteed Notes due August 15, 2025. The net proceeds from the sale of these senior notes were used to repay outstanding short-term borrowings under the RCF, which included borrowings made for working capital, general corporate purposes and the purchase of nuclear fuel. Also, under these authorizations, on September 13, 2018, we and RGRT entered into a third amended and restated credit agreement where we have available a \$350.0 million RCF with a term ending on September 13, 2023. We may increase the RCF by up to \$50.0 million (to a total of \$400.0 million) during the term of the RCF, upon the satisfaction of certain conditions more fully set forth in the agreement, including obtaining commitments from lenders or third party financial institutions. In addition, we may extend the maturity date of the RCF up to two times, in each case for an additional one-year period, upon the satisfaction of certain conditions. Additionally, we are preparing for potential transactions related to the 2009 Series A and Series B PCBs. On

February 1, 2019, we purchased in lieu of redemption all of the 2009 Series A PCBs utilizing funds borrowed under the RCF. We are currently holding the bonds and may remarket them or replace them with debt instruments of equivalent value at a future date depending on our financing needs and market conditions, and in accordance with FERC action expected in March 2019 in response to our most recent FERC application (see below).

On January 30, 2019, we submitted applications with both the NMPRC and the FERC seeking approval to issue shares of common stock, including the reissuance of treasury shares, in an amount up to \$200.0 million in one or more transactions. Included in the FERC application, we also requested various debt-related authorizations: approval to utilize the existing RCF for short-term borrowing not to exceed \$400.0 million at any one time; to issue up to \$225.0 million in new long-term debt; and to remarket the \$63.5 million Series A PCBs and the \$37.1 million Series B PCBs in the form of replacement bonds or senior notes of equivalent value, not to exceed \$100.6 million. If approved, the FERC authorization would supersede its prior approvals.

*Contractual Obligations.* Our contractual obligations as of December 31, 2018 are as follows (in thousands):

	Payments due by period				
	Total	2019	2020 and 2021	2022 and 2023	2024 and Beyond
<b>Long-term debt (including interest):</b>					
Senior notes (1)	\$ 2,202,925	\$ 60,475	\$ 120,950	\$ 266,000	\$ 1,755,500
Pollution control bonds (2)	224,865	104,322	5,331	5,331	109,881
RGRT senior notes (3)	133,055	4,914	52,559	5,291	70,291
<b>Financing obligations (including interest):</b>					
Revolving credit facility (4)	50,918	50,918	—	—	—
<b>Purchase obligations:</b>					
Power contracts	23,874	23,874	—	—	—
<b>Fuel contracts:</b>					
Gas (5)	366,292	42,203	68,590	70,254	185,245
Nuclear fuel (6)	84,580	21,177	24,175	17,503	21,725
Retirement plans and other post-retirement benefits (7)	9,904	9,904	—	—	—
Nuclear Decommissioning Trust Funds (8)	57,569	2,132	4,264	4,264	46,909
Operating leases (9)	8,991	923	1,520	1,070	5,478
<b>Total</b>	<b>\$ 3,162,973</b>	<b>\$ 320,842</b>	<b>\$ 277,389</b>	<b>\$ 369,713</b>	<b>\$ 2,195,029</b>

- (1) We have five outstanding issuances of senior notes. In May 2005, we issued \$400.0 million aggregate principal amount of 6% Senior Notes due May 15, 2035. In June 2008, we issued \$150.0 million aggregate principal amount of 7.5% Senior Notes due March 15, 2038. In December 2012, we issued \$150.0 million aggregate principal amount of 3.3% Senior Notes due December 15, 2022. In December 2014, we issued \$150.0 million aggregate principal amount of 5.0% Senior Notes due December 1, 2044. In March 2016, we issued an additional \$150.0 million aggregate principal amount of 5.0% Senior Notes due December 1, 2044, for a total principal amount outstanding of 5.0% Senior Notes due December 1, 2044 of \$300.0 million. In June 2018, we issued in a private placement offering \$125.0 million aggregate principal amount of 4.22% Senior Notes due August 15, 2028.
- (2) We have three series of PCBs outstanding, two of which mature in 2040, and one of which matures in 2042. The 7.25% 2009 Series A and the 7.25% 2009 Series B PCBs with an aggregate principal amount, together, of \$100.6 million have optional redemptions beginning in February 2019 and April 2019, respectively, at which time we expect to redeem, refinance or replace these bonds. On February 1, 2019, we purchased in lieu of redemption all of the 7.25% 2009 Series A with a principal amount of \$63.5 million utilizing funds borrowed under the RCF. We are currently holding the bonds and may remarket them or replace them with debt instruments of equivalent value at a future date depending on our financing needs and market conditions.
- (3) In 2010, we and RGRT entered into a note purchase agreement pursuant to which the RGRT issued and sold \$45.0 million aggregate principal amount of 5.04% RGRT Senior Notes, Series C, due August 15, 2020. In June 2018, we and RGRT entered into a note purchase agreement pursuant to which the RGRT issued and sold \$65.0 million aggregate principal amount of 4.07% Senior Guaranteed Notes due August 15, 2025.
- (4) This reflects obligations outstanding under the \$350.0 million RCF. At December 31, 2018, \$23.0 million was borrowed for working capital and general corporate purposes and \$26.2 million was borrowed by RGRT for nuclear fuel. This balance includes interest based on actual interest rates at the end of 2018 and assumes this amount will be outstanding for the entire year of 2019.
- (5) Amount is based on the minimum volumes per the contract and market and/or contract price at the end of 2018. Gas obligation includes a gas storage contract and a gas transportation contract.
- (6) Some of the nuclear fuel contracts are based on a fixed price, adjusted for a market index. The index used here is the index at the end of 2018.
- (7) This obligation is based on our expected contributions and includes our minimum contractual funding requirements for the non-qualified retirement income plan and the other post-retirement benefits for 2019. We have no minimum cash contractual funding requirement related to our retirement income plan or other post-retirement benefits for 2019. However, we are subject to minimum funding requirements of the Employee Retirement Income Security Act of 1974. We also may decide to fund at higher levels and expect to contribute \$9.9 million to our retirement plans in 2019. Minimum

funding requirements for 2020 and beyond are not included due to the uncertainty of the applicable interest rates and the related return on assets.

- (8) This obligation is based on the decommissioning funding allowed in PUCT Docket No. 46831, effective July 18, 2017. We have no minimum funding obligation in the New Mexico jurisdiction effective July 1, 2016 with NMPRC Case No. 15-00127-UT. It is possible that our funding requirements could change based on the amounts allowed in future rate filings.
- (9) We lease land in El Paso, Texas, adjacent to Newman under a lease that expires in June 2033, subject to a renewal option of 25 years. We also have several other leases for office, parking facilities and equipment that expire within the next five years.

#### **Off-Balance Sheet Arrangements**

We have no off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

## **Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

The following discussion regarding our market-risk sensitive instruments contains forward-looking information involving risks and uncertainties. The statements regarding potential gains and losses are only estimates of what could occur in the future. Actual future results may differ materially from those estimates presented due to the characteristics of the risks and uncertainties involved.

We are exposed to market risk due to changes in interest rates, equity prices and commodity prices. Substantially all financial instruments and positions we hold are for purposes other than trading and are described below.

### **Interest Rate Risk**

Our long-term debt obligations are all fixed-rate obligations, except for the RCF, which is based on floating rates.

To the extent the RCF is utilized for nuclear fuel purchases, interest rate risk, if any, related to the RCF is substantially mitigated through the operation of the PUCT and the NMPRC rules, which establish energy cost recovery clauses. Under these rules, actual energy costs, including interest expense on nuclear fuel financing, are recovered from our customers.

The NDT consists of equity securities and fixed income instruments and are carried at fair value. We face interest rate risk on the fixed income instruments, which consist primarily of municipal, federal and corporate bonds and which were valued at \$134.2 million and \$130.2 million as of December 31, 2018 and 2017, respectively. A hypothetical 10% increase in interest rates would reduce the fair values of the fixed income instruments by \$1.7 million and \$1.6 million at December 31, 2018 and 2017, respectively.

### **Equity Price Risk**

The NDT includes marketable equity securities of approximately \$135.9 million and \$149.8 million at December 31, 2018 and 2017, respectively. A hypothetical 10% decrease in equity prices would have reduced the fair values of the equity securities by \$13.6 million and \$15.0 million based on their fair values at December 31, 2018 and 2017, respectively. Declines in market prices could require that additional amounts be contributed to the NDT to maintain minimum funding requirements. We do not expect to expend monies held in the NDT before 2044 or a later period when decommissioning of Palo Verde begins.

### **Commodity Price Risk**

We utilize contracts of various durations for the purchase of natural gas and uranium concentrates to effectively manage our available fuel portfolio. These agreements contain variable pricing provisions and are settled by physical delivery. The fuel contracts with variable pricing provisions, as well as substantially all of our purchased power requirements, are exposed to fluctuations in prices due to unpredictable factors, including weather and various other worldwide events, which impact supply and demand. However, our exposure to fuel and purchased power price risk is substantially mitigated through the operation of the PUCT and NMPRC rules and our fuel clauses, as discussed previously.

In the normal course of business, we enter into contracts of various durations for the forward sales and purchases of electricity to effectively manage our available generating capacity and supply needs. Such contracts include forward contracts for the sale of generating capacity and energy during periods when our available power resources are expected to exceed the requirements of our retail native load and sales for resale. We also enter into forward contracts for the purchase of wholesale capacity and energy during periods when the market price of electricity is below our expected incremental power production costs or to supplement our generating capacity when demand is anticipated to exceed such capacity. As of January 31, 2019, we had entered into forward sales and purchase contracts for energy as discussed in Part I, Item 1, "Business – Energy Sources – Purchased Power." These agreements are generally fixed-priced contracts that qualify for the "normal purchases and normal sales" exception provided in the FASB guidance for accounting for derivative instruments and hedging activities and are not recorded at their fair value in our financial statements. Because of the operation of the PUCT and the NMPRC rules and our fuel clauses, these contracts do not expose us to significant commodity price risk.

## **Management Report on Internal Control Over Financial Reporting**

The Company's management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rule 13a-15(f) or 15d-15(f) promulgated under the Securities Exchange Act of 1934 as a process designed by, or under the supervision of, the Company's principal executive and principal financial officers and affected by the Company's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and the receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

The Company's management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2018. In making this assessment, the Company's management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission's 2013 Internal Control - Integrated Framework. Based on its assessment, management believes that, as of December 31, 2018, the Company's internal control over financial reporting is effective based on those criteria.

The Company's independent registered public accounting firm, KPMG LLP, has issued an audit report on the Company's internal control over financial reporting. This report appears on page 48 of the Annual Report on Form 10-K.

**Item 8. Financial Statements and Supplementary Data**

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## Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors  
El Paso Electric Company:

### *Opinions on the Financial Statements and Internal Control over Financial Reporting*

We have audited the accompanying balance sheets of El Paso Electric Company (the "Company") as of December 31, 2018 and 2017, and the related statements of operations, comprehensive operations, changes in common stock equity, and cash flows for each of the years in the three-year period ended December 31, 2018, and the related notes (collectively, the "financial statements"). We also have audited the Company's internal control over financial reporting as of December 31, 2018, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2018 and 2017, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2018, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2018, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

### *Basis for Opinions*

The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's financial statements and an opinion on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the financial statements included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

### *Definition and Limitations of Internal Control over Financial Reporting*

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ KPMG LLP

We have served as the Company's auditor since 1983.

Houston, Texas

February 28, 2019

**EL PASO ELECTRIC COMPANY**  
**BALANCE SHEETS**

ASSETS (In thousands)	December 31,	
	2018	2017
<b>Utility plant:</b>		
Electric plant in service .....	\$ 4,181,409	\$ 3,982,095
Less accumulated depreciation and amortization .....	(1,391,266)	(1,320,175)
Net plant in service.....	2,790,143	2,661,920
Construction work in progress.....	169,327	146,059
Nuclear fuel; includes fuel in process of \$62,833 and \$59,689, respectively .....	198,280	194,933
Less accumulated amortization .....	(72,703)	(74,475)
Net nuclear fuel .....	125,577	120,458
Net utility plant .....	3,085,047	2,928,437
<b>Current assets:</b>		
Cash and cash equivalents .....	12,900	6,990
Accounts receivable, principally trade, net of allowance for doubtful accounts of \$2,070 and \$2,300, respectively .....	77,855	88,585
Inventories, at cost.....	55,432	50,910
Regulatory assets .....	6,972	—
Prepayments and other .....	20,375	10,307
Total current assets .....	173,534	156,792
<b>Deferred charges and other assets:</b>		
Decommissioning trust funds .....	276,905	286,866
Regulatory assets .....	74,848	96,036
Other .....	18,168	16,232
Total deferred charges and other assets .....	369,921	399,134
<b>Total assets</b> .....	\$ 3,628,502	\$ 3,484,363

See accompanying notes to financial statements.

**EL PASO ELECTRIC COMPANY**  
**BALANCE SHEETS (Continued)**

CAPITALIZATION AND LIABILITIES (In thousands except for share data)	December 31,	
	2018	2017
<b>Capitalization:</b>		
Common stock, stated value \$1 per share, 100,000,000 shares authorized, 65,707,156 and 65,694,829 shares issued, and 121,532 and 133,859 restricted shares, respectively .....	\$ 65,829	\$ 65,829
Capital in excess of stated value .....	328,480	326,117
Retained earnings .....	1,227,471	1,159,667
Accumulated other comprehensive income (loss), net of tax .....	(38,784)	11,058
	<u>1,582,996</u>	<u>1,562,671</u>
Treasury stock, 25,147,567 and 25,244,350 shares, respectively, at cost .....	(418,893)	(420,506)
Common stock equity .....	1,164,103	1,142,165
Long-term debt, net of current portion .....	1,285,980	1,195,988
Total capitalization .....	<u>2,450,083</u>	<u>2,338,153</u>
<b>Current liabilities:</b>		
Current maturities of long-term debt .....	99,239	—
Short-term borrowings under the revolving credit facility .....	49,207	173,533
Accounts payable, principally trade .....	58,150	59,270
Taxes accrued .....	37,139	35,660
Interest accrued .....	16,478	12,470
Regulatory liabilities .....	14,686	6,225
Other .....	38,356	29,067
Total current liabilities .....	<u>313,255</u>	<u>316,225</u>
<b>Deferred credits and other liabilities:</b>		
Accumulated deferred income taxes .....	325,133	305,023
Accrued pension liability .....	87,259	83,838
Accrued post-retirement benefit liability .....	24,575	26,417
Asset retirement obligation .....	101,108	93,029
Regulatory liabilities .....	298,570	296,685
Other .....	28,519	24,993
Total deferred credits and other liabilities .....	<u>865,164</u>	<u>829,985</u>
<b>Commitments and contingencies</b>		
<b>Total capitalization and liabilities .....</b>	<u><u>\$ 3,628,502</u></u>	<u><u>\$ 3,484,363</u></u>

See accompanying notes to financial statements.

**EL PASO ELECTRIC COMPANY**  
**STATEMENTS OF OPERATIONS**  
(In thousands except for share data)

	Years Ended December 31,		
	2018	2017	2016
<b>Operating revenues</b> .....	\$ 903,603	\$ 916,797	\$ 886,936
<b>Operating expenses:</b>			
Fuel and purchased power .....	229,109	244,751	233,465
Operations and maintenance .....	334,883	320,281	315,710
Depreciation and amortization .....	96,382	90,843	84,317
Taxes other than income taxes .....	71,000	70,863	65,533
	<u>731,374</u>	<u>726,738</u>	<u>699,025</u>
<b>Operating income</b> .....	172,229	190,059	187,911
<b>Other income (deductions):</b>			
Allowance for equity funds used during construction .....	3,453	3,025	7,023
Investment and interest income, net.....	18,377	38,853	34,797
Miscellaneous non-operating income .....	12,823	12,051	11,073
Miscellaneous non-operating deductions.....	(11,980)	(11,580)	(11,038)
	<u>22,673</u>	<u>42,349</u>	<u>41,855</u>
<b>Interest charges (credits):</b>			
Interest on long-term debt and revolving credit facility .....	75,424	72,970	71,544
Other interest.....	17,890	18,170	17,509
Capitalized interest.....	(5,483)	(5,022)	(4,990)
Allowance for borrowed funds used during construction.....	(3,612)	(2,975)	(4,983)
	<u>84,219</u>	<u>83,143</u>	<u>79,080</u>
<b>Income before income taxes</b> .....	110,683	149,265	150,686
<b>Income tax expense</b> .....	26,368	51,004	53,918
<b>Net income</b> .....	<u>\$ 84,315</u>	<u>\$ 98,261</u>	<u>\$ 96,768</u>
<b>Basic earnings per share</b> .....	<u>\$ 2.07</u>	<u>\$ 2.42</u>	<u>\$ 2.39</u>
<b>Diluted earnings per share</b> .....	<u>\$ 2.07</u>	<u>\$ 2.42</u>	<u>\$ 2.39</u>
<b>Dividends declared per share of common stock</b> .....	<u>\$ 1.415</u>	<u>\$ 1.315</u>	<u>\$ 1.225</u>
<b>Weighted average number of shares outstanding</b> .....	<u>40,521,364</u>	<u>40,414,556</u>	<u>40,350,688</u>
<b>Weighted average number of shares and dilutive potential shares outstanding</b> .....	<u>40,642,640</u>	<u>40,535,191</u>	<u>40,408,033</u>

See accompanying notes to financial statements.

**EL PASO ELECTRIC COMPANY**  
**STATEMENTS OF COMPREHENSIVE OPERATIONS**  
(In thousands)

	Years Ended December 31,		
	2018	2017	2016
<b>Net income</b> .....	\$ 84,315	\$ 98,261	\$ 96,768
<b>Other comprehensive income (loss):</b>			
Unrecognized pension and post-retirement benefit costs:			
Net gain (loss) arising during period .....	(5,898)	12,634	(20,053)
Prior service benefit.....	—	—	32,697
Reclassification adjustments included in net income for amortization of:			
Prior service benefit .....	(9,657)	(9,657)	(7,407)
Net loss.....	6,387	6,776	4,965
Net unrealized gains/losses on marketable securities:			
Net holding gains (losses) arising during period .....	(4,072)	25,275	8,444
Reclassification adjustments for net (gains) losses included in net income.....	1,445	(10,626)	(7,640)
Net losses on cash flow hedges:			
Reclassification adjustment for interest expense included in net income ..	568	532	498
Total other comprehensive income (loss) before income taxes.....	(11,227)	24,934	11,504
Income tax benefit (expense) related to items of other comprehensive income (loss):			
Unrecognized pension and post-retirement benefit costs .....	2,035	(3,615)	(4,261)
Net unrealized (gains) losses on marketable securities .....	523	(2,922)	(106)
Losses on cash flow hedges.....	(145)	(223)	(339)
Total income tax benefit (expense).....	2,413	(6,760)	(4,706)
<b>Other comprehensive income (loss), net of tax</b> .....	(8,814)	18,174	6,798
<b>Comprehensive income</b> .....	<u>\$ 75,501</u>	<u>\$ 116,435</u>	<u>\$ 103,566</u>

See accompanying notes to financial statements.

**EL PASO ELECTRIC COMPANY**  
**STATEMENTS OF CHANGES IN COMMON STOCK EQUITY**  
(In thousands except for share data)

	Common Stock			Capital in Excess of Stated Value	Retained Earnings	Accumulated Other Comprehensive Income (Loss), Net of Tax	Treasury Stock		Common Stock Equity
	Shares	Amount	Amount				Shares	Amount	
<b>Balances at December 31, 2015</b> .....	65,828,653	\$ 65,829	\$ 320,073	\$ 1,067,396	\$ (13,914)	25,384,834	\$ (422,846)	\$ 1,016,538	
Restricted common stock grants and deferred compensation .....			3,017			(74,181)	1,235	4,252	
Stock awards withheld for taxes .....	(5,723)	(6)	(261)					(267)	
Forfeited restricted common stock .....	(298)					197	(3)	(3)	
Deferred taxes on stock incentive plan .....			(364)					(364)	
Compensation paid in shares .....			178			(5,936)	99	277	
Net income .....				96,768				96,768	
Other comprehensive income (loss) .....					6,798			6,798	
Dividends declared .....				(49,603)				(49,603)	
<b>Balances at December 31, 2016</b> .....	65,822,632	65,823	322,643	1,114,561	(7,116)	25,304,914	(421,515)	1,074,396	
Restricted common stock grants and deferred compensation .....			2,989			(70,273)	1,171	4,160	
Performance share awards vested .....	11,314	11	921			8,360	(139)	932	
Stock awards withheld for taxes .....	(5,258)	(5)	(568)			4,961	(83)	(83)	
Forfeited restricted common stock .....								(83)	
Compensation paid in shares .....			132			(3,612)	60	192	
Cumulative effect adjustment for stock compensation ..				182				182	
Net income .....				98,261				98,261	
Other comprehensive income (loss) .....					18,174			18,174	
Dividends declared .....				(53,337)				(53,337)	
<b>Balances at December 31, 2017</b> .....	65,828,688	65,829	326,117	1,159,667	11,058	25,244,350	(420,506)	1,142,165	
Restricted common stock grants and deferred compensation .....			3,010			(62,348)	1,039	4,049	
Performance share awards vested .....			360			(68,379)	1,139	1,499	
Stock awards withheld for taxes .....			(1,133)			32,594	(543)	(1,676)	
Forfeited restricted common stock .....						4,727	(78)	(78)	
Compensation paid in shares .....			126			(3,377)	56	182	
Cumulative effect adjustment for financial instruments				41,028		(41,028)		—	
Net income .....				84,315				84,315	
Other comprehensive income (loss) .....					(8,814)			(8,814)	
Dividends declared .....				(57,539)				(57,539)	
<b>Balances at December 31, 2018</b> .....	65,828,688	\$ 65,829	\$ 328,480	\$ 1,227,471	\$ (38,784)	25,147,567	\$ (418,893)	\$ 1,164,103	

See accompanying notes to financial statements.

**EL PASO ELECTRIC COMPANY**  
**STATEMENTS OF CASH FLOWS**  
(In thousands)

	Years Ended December 31,		
	2018	2017	2016
<b>Cash Flows From Operating Activities:</b>			
Net income .....	\$ 84,315	\$ 98,261	\$ 96,768
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization of electric plant in service .....	96,382	90,843	84,317
Amortization of nuclear fuel .....	38,176	42,476	43,748
Deferred income taxes, net .....	29,118	49,394	50,510
Allowance for equity funds used during construction .....	(3,453)	(3,025)	(7,023)
Other amortization and accretion .....	20,830	18,954	17,295
Gain on sale of property, plant and equipment .....	—	—	(545)
Net losses (gains) on decommissioning trust funds .....	12,967	(10,626)	(7,640)
Other operating activities .....	(38)	(692)	1,279
Change in:			
Accounts receivable .....	5,712	(138)	(17,511)
Inventories .....	(4,117)	(3,073)	265
Prepayments and other .....	(4,419)	(692)	(1,184)
Accounts payable .....	(2,233)	1,407	(2,140)
Taxes accrued .....	(5,487)	1,840	1,945
Interest accrued .....	4,008	(817)	638
Net over-collection (under-collection) of fuel revenues .....	4,822	17,093	(14,891)
Other current liabilities .....	9,289	(100)	1,384
Deferred charges and credits .....	(475)	(12,544)	(16,065)
<b>Net cash provided by operating activities .....</b>	<b>285,397</b>	<b>288,561</b>	<b>231,150</b>
<b>Cash Flows From Investing Activities:</b>			
Cash additions to utility property, plant and equipment .....	(240,021)	(199,896)	(229,722)
Cash additions to nuclear fuel .....	(38,354)	(38,481)	(42,383)
Insurance proceeds received for equipment .....	5,351	9,591	4,361
Capitalized interest and AFUDC:			
Utility property, plant and equipment .....	(7,065)	(6,000)	(12,006)
Nuclear fuel and other .....	(5,483)	(5,022)	(4,990)
Allowance for equity funds used during construction .....	3,453	3,025	7,023
Decommissioning trust funds:			
Purchases, including funding of \$2.1 million, \$3.8 million and \$4.5 million, respectively .....	(86,366)	(102,920)	(99,497)
Sales and maturities .....	80,732	97,037	91,268
Proceeds from sale of property, plant and equipment .....	287	281	4,841
Other investing activities .....	4,186	(1,559)	5,373
<b>Net cash used for investing activities .....</b>	<b>(283,280)</b>	<b>(243,944)</b>	<b>(275,732)</b>
<b>Cash Flows From Financing Activities:</b>			
Dividends paid .....	(57,539)	(53,337)	(49,603)
Borrowings under the revolving credit facility:			
Proceeds .....	567,894	638,458	355,607
Payments .....	(692,220)	(546,499)	(415,771)
Proceeds from issuance of senior notes .....	125,000	—	157,052
Proceeds from issuance of RGRT senior notes .....	65,000	—	—
Payments on maturing RGRT senior notes .....	—	(50,000)	—
Payments on maturing pollution control bonds .....	—	(33,300)	—
Other financing activities .....	(4,342)	(1,369)	(2,432)
<b>Net cash provided by (used for) financing activities .....</b>	<b>3,793</b>	<b>(46,047)</b>	<b>44,853</b>
<b>Net increase (decrease) in cash and cash equivalents .....</b>	<b>5,910</b>	<b>(1,430)</b>	<b>271</b>
<b>Cash and cash equivalents at beginning of period .....</b>	<b>6,990</b>	<b>8,420</b>	<b>8,149</b>
<b>Cash and cash equivalents at end of period .....</b>	<b>\$ 12,900</b>	<b>\$ 6,990</b>	<b>\$ 8,420</b>

See accompanying notes to financial statements.

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**EL PASO ELECTRIC COMPANY**  
**NOTES TO FINANCIAL STATEMENTS**

**A. Summary of Significant Accounting Policies**

*General.* El Paso Electric Company (the "Company") is a public utility engaged in the generation, transmission and distribution of electricity in an area of approximately 10,000 square miles in west Texas and southern New Mexico. The Company also serves a full requirements wholesale customer in Texas.

*Basis of Presentation.* The Company maintains its accounts in accordance with the Uniform System of Accounts prescribed by the Federal Energy Regulatory Commission ("FERC").

*Use of Estimates.* The preparation of financial statements in conformity with United States ("U.S.") Generally Accepted Accounting Principles ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The Company evaluates its estimates on an on-going basis, including those related to depreciation, unbilled revenue, income taxes, fuel costs, pension and other post-retirement obligations and asset retirement obligations ("ARO"). Actual results could differ from those estimates.

*Application of the Financial Accounting Standards Board ("FASB") Guidance for Regulated Operations.* Regulated electric utilities typically prepare their financial statements in accordance with the FASB guidance for regulated operations. The FASB guidance for regulated operations requires the Company to include an allowance for equity and borrowed funds used during construction ("AEFUDC" and "ABFUDC") as a cost of construction of electric plant in service. AEFUDC is recognized as income, and ABFUDC is shown as capitalized interest charges in the Company's statements of operations. The FASB guidance for regulated operations also requires the Company to show certain costs as either assets or liabilities on a utility's balance sheet if the regulator provides assurance that these costs will be charged to and collected from the utility's customers (or has already permitted such cost recovery) or will be credited or refunded to the utility's customers. The resulting regulatory assets or liabilities are amortized in subsequent periods based upon the respective amortization periods reflected in a utility's regulated rates. See Part II, Item 8, Financial Statements and Supplementary Data, Note E of Notes to Financial Statements for further discussion. The Company applies the FASB guidance for regulated operations for all three of the jurisdictions in which it operates.

*Comprehensive Income.* Certain gains and losses that are not recognized currently in the statements of operations are reported as other comprehensive income in accordance with the FASB guidance for reporting comprehensive income.

*Utility Plant.* Utility plant is generally reported at cost. The cost of renewals and betterments are capitalized, and the costs of repairs and minor replacements are charged to the appropriate operating expense accounts. Depreciation is provided on a straight-line basis over the estimated remaining lives of the assets (ranging in average from 5 to 48 years). The average composite depreciation rate utilized in 2018, 2017 and 2016 was 2.28%, 2.27% and 2.28%, respectively. When property subject to composite depreciation is retired or otherwise disposed of in the normal course of business, its cost together with the cost of removal, less salvage is charged to accumulated depreciation. For other property dispositions, the applicable cost and accumulated depreciation is removed from the balance sheet accounts and a gain or loss is recognized, if applicable.

The cost of nuclear fuel is amortized to fuel expense on a units-of-production basis. The Company is also amortizing its share of costs associated with on-site spent fuel storage casks at Palo Verde Generating Station ("Palo Verde") over the burn period of the fuel that will necessitate the use of the storage casks. See Part II, Item 8, Financial Statements and Supplementary Data, Note F of Notes to Financial Statements for further discussion.

*Impairment of Long-Lived Assets.* Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated undiscounted future cash flows, an impairment charge is recognized for the amount by which the carrying amount of the asset exceeds the fair value of the asset.

*Allowance for Funds Used During Construction ("AFUDC") and Capitalized Interest.* The Company capitalizes interest (ABFUDC) and common equity (AEFUDC) costs to construction work in progress ("CWIP") and capitalizes interest to nuclear fuel in process in accordance with the FERC Uniform System of Accounts as provided for in the FASB guidance. AFUDC is a non-cash component of income and is calculated monthly and charged to all new eligible construction and capital improvement projects. AFUDC is compounded on a semi-annual basis. The average AFUDC rates used in 2018, 2017 and 2016 were 5.95%, 5.38% and 6.43%, respectively.

**EL PASO ELECTRIC COMPANY**  
**NOTES TO FINANCIAL STATEMENTS**

*Asset Retirement Obligation.* The FASB guidance sets forth accounting requirements for the recognition and measurement of liabilities associated with the retirement of tangible long-lived assets. An ARO associated with long-lived assets included within the scope of the FASB guidance is that for which a legal obligation exists under enacted laws, statutes, written or oral contracts, including obligations arising under the doctrine of promissory estoppel and legal obligations to perform an asset retirement activity even if the timing and/or settlement are conditioned on a future event that may or may not be within the control of an entity. See Part II, Item 8, Financial Statements and Supplementary Data, Note G of Notes to Financial Statements for further discussion. Under the FASB guidance, these liabilities are recognized as incurred if a reasonable estimate of fair value can be established and are capitalized as part of the cost of the related tangible long-lived assets. The Company records the increase in the ARO due to the passage of time as an operating expense (accretion expense).

*Cash and Cash Equivalents.* Temporary cash investments with an original maturity of three months or less are considered cash equivalents. The Company's cash and cash equivalents do not include amounts held in trust by the Company's Palo Verde nuclear decommissioning trust funds ("NDT") or the pension and other post-retirement benefit trust funds.

*Investments.* The Company's marketable securities, included in the NDT on the balance sheet, are reported at fair value and consist of cash, equity securities and debt securities held in the NDT. Investments in equity securities are measured at fair market value. Changes in fair value for equity securities are recognized in the statement of operations. Debt securities are classified as "available-for-sale" securities and, as such, unrealized gains and losses are included in accumulated other comprehensive loss as a separate component of common stock equity. However, if declines in the fair value of debt securities below original cost basis are determined to be other than temporary, the declines are reported as losses in the statements of operations and a new cost basis is established for the affected securities at fair value. Gains and losses are determined using the cost of the security based on the specific identification basis. See Part II, Item 8, Financial Statements and Supplementary Data, Note P of Notes to Financial Statements for further discussion.

*Derivative Accounting.* Accounting for derivative instruments and hedging activities requires the recognition of derivatives as either assets or liabilities in the balance sheet with measurement of those instruments at fair value. Any changes in the fair value of these instruments are recorded in earnings or other comprehensive income. See Part II, Item 8, Financial Statements and Supplementary Data, Note P of Notes to Financial Statements for further discussion.

*Inventories.* Inventories, primarily parts, materials, supplies, fuel oil and natural gas are stated at average cost, which is not to exceed recoverable cost.

*Operating Revenues.* The Company accrues revenues for services rendered, including unbilled electric service revenues. Fuel and purchase power expenses are stated at actual cost incurred. The Company recognizes revenue associated with contracts with customers when performance obligations under the terms of the contract with the customer are satisfied. Revenue is measured as the amount of consideration the Company receives in exchange for transferring goods or providing services to the customer. Taxes collected concurrently with revenue producing activities are excluded from revenue. Unbilled revenues are recorded for estimated amounts of energy delivered in the period following the customer's last billing cycle to the end of the reporting period. Unbilled revenues are estimated based on monthly generation volumes and by applying an average revenue/kilowatt-hour ("kWh") to the number of estimated kWhs delivered but not billed. Accounts receivable included accrued unbilled revenues of \$21.6 million and \$22.2 million as of December 31, 2018 and 2017, respectively. The Company presents revenues net of sales taxes in its statements of operations.

The Company's Texas retail customers are billed under base rates and a fixed fuel factor approved by the Public Utility Commission of Texas ("PUCT"). The Company's New Mexico retail customers are billed under base rates and a fuel adjustment clause that is adjusted monthly, as approved by the New Mexico Public Regulation Commission ("NMPRC"). The Company's FERC sales for resale customers are billed under formula base rates and fuel factors and a fuel adjustment clause that is adjusted monthly. The Company's recovery of fuel and purchased power expenses is subject to periodic reconciliations of actual fuel and purchased power expenses incurred to actual fuel revenues collected. The difference between fuel and purchased power expenses incurred and fuel revenues charged to customers is reflected as over/under-collection of fuel revenues, which is included in regulatory liabilities/assets - current in the balance sheets. See Part II, Item 8, Financial Statements and Supplementary Data, Note D of Notes to Financial Statements for further discussion.

*Allowance for Doubtful Accounts.* The allowance for doubtful accounts represents the Company's estimate of existing accounts receivable that will ultimately be uncollectible. The allowance is calculated by applying estimated write-off factors to various classes of outstanding receivables. The write-off factors used to estimate uncollectible accounts are based upon consideration of both historical collections experience and management's best estimate of future collections success given the existing collections

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environment. Additions, deductions and balances for allowance for doubtful accounts for 2018, 2017 and 2016 are as follows (in thousands):

	2018	2017	2016
Balance at beginning of year .....	\$ 2,300	\$ 2,156	\$ 2,046
Additions:			
Charged to costs and expense.....	2,855	3,141	2,427
Recovery of previous write-offs.....	1,215	1,122	1,395
Uncollectible receivables written off.....	4,300	4,119	3,712
Balance at end of year .....	<u>\$ 2,070</u>	<u>\$ 2,300</u>	<u>\$ 2,156</u>

*Income Taxes.* The Company accounts for federal and state income taxes under the asset and liability method of accounting for income taxes. Deferred income taxes are recognized for the estimated future tax consequences of "temporary differences" by applying enacted statutory tax rates for each taxable jurisdiction applicable to future years to differences between the financial statement carrying amounts and the tax basis of existing assets and liabilities. Certain temporary differences are accorded flow-through treatment by the Company's regulators and impact the Company's effective tax rate. The FASB guidance requires that rate-regulated companies record deferred income taxes for temporary differences accorded flow-through treatment at the direction of the regulatory commission. The resulting deferred tax assets and liabilities are recorded at the expected cash flow to be reflected in future rates. Because the Company's regulators have consistently permitted the recovery of tax effects previously flowed-through earnings, the Company has recorded regulatory liabilities and assets offsetting such deferred tax assets and liabilities. The effect on deferred tax assets and liabilities of a change in tax rate is recognized in income in the period that includes the enactment date, unless those deferred taxes will be collected from or returned to customers in which case they are recorded as a regulatory asset or liability. See Part II, Item 8, Financial Statements and Supplementary Data, Note K of Notes to Financial Statements for further discussion. The Company recognizes tax assets and liabilities for uncertain tax positions in accordance with the recognition and measurement criteria of the FASB guidance for uncertainty in income taxes. See Part II, Item 8, Financial Statements and Supplementary Data, Note K of Notes to Financial Statements.

On December 22, 2017, the federal legislation commonly referred to as the Tax Cuts and Jobs Act of 2017 ("TCJA") was enacted. Substantially all of the provisions of the TCJA are effective for taxable years beginning after December 31, 2017. The TCJA includes significant changes to the Internal Revenue Code of 1986 (as amended, the "IRC"), including amendments that significantly changed the taxation of business entities and includes specific provisions related to regulated public utilities. The more significant changes that impact the Company included in the TCJA are a reduction in the corporate federal income tax rate from 35% to 21%, elimination of the corporate alternative minimum tax provisions, additional limitations on deductions of executive compensation, and limiting the utilization of net operating losses ("NOL") arising after December 31, 2017 to 80% of taxable income with no carryback but with an indefinite carryforward. The specific provisions related to regulated public utilities in the TCJA generally provide for the continued deductibility of interest expense, the elimination of bonus depreciation for property acquired and placed into service after December 31, 2017 and the continuance of rate normalization requirements for accelerated depreciation benefits and changes to deferred tax balances as a result of the change in the corporate federal income tax rate.

The tax effects of changes in tax laws must be recognized in the period in which the law is enacted. GAAP also requires deferred tax assets and liabilities to be measured at the enacted tax rate expected to apply when temporary differences are to be realized or settled. Thus, at the date of enactment of the TCJA, the Company's deferred taxes were re-measured based upon the new corporate federal income tax rate. The decrease in deferred taxes was recorded as a regulatory liability as it will be subject to refund to customers and is recorded at the expected cash flow to be reflected in future rates. See Part II, Item 8, Financial Statements and Supplementary Data, Note K of Notes to Financial Statements for further discussion.

*Earnings per Share.* The Company's restricted stock awards are participating securities and earnings per share must be calculated using the two-class method in both the basic and diluted earnings per share calculations. For the basic earnings per share calculation, net income is allocated to the weighted average number of restricted stock awards and to the weighted average number of shares outstanding. The net income allocated to the weighted average number of shares outstanding is then divided by the weighted average number of shares outstanding to derive the basic earnings per share. For the diluted earnings per share, net income is allocated to the weighted average number of restricted stock awards and to the weighted average number of shares and dilutive potential shares outstanding. The Company's dilutive potential shares outstanding amount is calculated using the treasury stock method for the unvested performance shares. Net income allocated to the weighted average number of shares and dilutive potential shares is then divided by the weighted average number of shares and dilutive potential shares outstanding to derive the

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diluted earnings per share. See Part II, Item 8, Financial Statements and Supplementary Data, Note H of Notes to Financial Statements for further discussion.

*Stock-Based Compensation.* The Company has a stock-based long-term incentive plan. The Company is required under the FASB guidance to measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award. Such costs are recognized over the period during which an employee is required to provide service in exchange for the award (requisite service period), which typically is the vesting period. Compensation cost is not recognized for anticipated forfeitures prior to vesting of equity instruments. See Part II, Item 8, Financial Statements and Supplementary Data, Note H of Notes to Financial Statements for further discussion.

*Pension and Post-retirement Benefit Accounting.* See Part II, Item 8, Financial Statements and Supplementary Data, Note N of Notes to Financial Statements for a discussion of the Company's accounting policies for its employee benefits.

*Reclassification.* Certain amounts in the financial statements for 2017 and 2016 have been reclassified to conform to the 2018 presentation. The Company implemented Accounting Standards Update ("ASU") 2017-07, Compensation - Retirement Benefits, and ASU 2016-15, Statement of Cash Flows, in the first quarter of 2018, retrospectively to all periods presented in the Company's financial statements. See Part II, Item 8, Financial Statements and Supplementary Data, Note B of Notes to Financial Statements for further discussion on the new accounting standards.

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**B. New Accounting Standards**

**New Accounting Standards Adopted**

In March 2016, the FASB issued ASU 2016-09, Compensation - Stock Compensation (Topic 718) Improvements to Employee Share-Based Payment Accounting, to simplify the accounting for share-based payment transactions, including the income tax consequences, classification of awards either as equity or liabilities, and classification on the statements of cash flows. The Company adopted the new standard effective January 1, 2017. The adoption of the new standard did not have a material impact on the Company's financial condition, results of operations or cash flows. The cumulative effect of the adoption of the new standard was to increase net operating loss carryforward ("NOL carryforward") deferred tax assets and retained earnings by \$0.2 million on January 1, 2017.

In May 2014, the FASB issued ASU 2014-09, Revenue from Contracts with Customers (Topic 606), to provide a framework that replaced the prior revenue recognition guidance, and FASB has since modified the standard with several ASUs. The standard provides that an entity should recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. On January 1, 2018, the Company adopted the new accounting standard using the modified retrospective method. There was no cumulative effect adjustment at the initial application of the new standard. In addition, comparative information has not been restated and continues to be reported under the accounting standards in effect for those periods. The Company expects the ongoing impact of the new standard to be immaterial to net income. Following the adoption of the standard, revenues of \$8.9 million related to reimbursed costs of energy efficiency programs approved by the Company's regulators are reported in operating revenues from customers prospectively, as opposed to being offset with associated costs within operations and maintenance ("O&M") expenses. Related expenses of an equal amount are reported in O&M expenses. See Part II, Item 8, Financial Statements and Supplementary Data, Note C of Notes to Financial Statements for further discussion on revenues.

In January 2016, the FASB issued ASU 2016-01, Financial Instruments - Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities, to enhance the reporting model for financial instruments by addressing certain aspects of recognition, measurement, presentation and disclosure. The Company adopted the new standard effective January 1, 2018. The adoption of ASU 2016-01 eliminates the requirements to classify investments in equity securities with readily determinable fair values into trading or available for sale and requires entities to measure equity investments at fair value and recognize any changes in fair value in the Statements of Operations. ASU 2016-01 requires a modified retrospective approach and therefore comparative information has not been restated and continues to be reported under the accounting standards in effect for those periods. Upon adoption of the new standard, the Company recorded a cumulative effect adjustment, net of income taxes to increase retained earnings by \$41.0 million with a corresponding decrease to accumulated other comprehensive income ("AOCI"). In addition, the Company recorded net losses of \$18.6 million related to equity securities still held at December 31, 2018. In March 2018, the FASB issued ASU 2018-04, Investments - Debt Securities (Topic 320) and Regulated Operations (Topic 980), which provides clarification to ASU 2016-01.

In August 2016, the FASB issued ASU 2016-15, Statement of Cash Flows (Topic 230) Classification of Certain Cash Receipts and Cash Payments, to reduce diversity in practice in how certain cash receipts and cash payments are classified in the statement of cash flows. The Company adopted the new standard effective January 1, 2018. ASU 2016-15 was applied using a retrospective transition method to each period presented. Accordingly, the Company presented in the Statement of Cash Flows insurance proceeds received for equipment of \$5.4 million, \$9.6 million and \$4.4 million, respectively, for the twelve months ended December 31, 2018, 2017 and 2016 as cash inflows from investing activities.

In March 2017, the FASB issued ASU 2017-07, Compensation - Retirement Benefits (Topic 715) Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost. ASU 2017-07 amends Accounting Standards Codification ("ASC") 715, Compensation - Retirement Benefits, to require companies to present the service cost component of net benefit cost in the income statement line items where compensation cost is reported. Companies will present all other components of net benefit cost separately from the line item(s) that includes the service cost and outside of any subtotal of operating income. In addition, only the service cost component will be eligible for capitalization in assets. The Company adopted the new standard effective January 1, 2018. The amendments in ASU 2017-07 were applied retrospectively for the income statement presentation of the service cost component and the other components of net benefit costs. The Company elected to apply the practical expedient and used the amounts disclosed in the pension and other postretirement benefit plan note for the 2017 and 2016 comparative periods as the estimation basis for applying the retrospective presentation requirements. See Part II, Item 8, Financial Statements and Supplementary Data, Note N of Notes to Financial Statements for further discussion on employee benefits.

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In March 2018, the FASB issued ASU 2018-05, Income Taxes (Topic 740) Amendments to U.S. Securities and Exchange Commission ("SEC") Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 118 ("SAB 118"), to add various SEC paragraphs for clarification due to the TCJA. The Company adopted ASU 2018-05 upon issuance and implemented SAB 118 in December of 2017 in conjunction with the enactment of the TCJA.

In August 2018, the FASB issued ASU 2018-15, Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract (Topic 350). ASU 2018-15 aligns the requirements for capitalizing implementation costs for a cloud computing arrangement with the requirements for capitalizing implementation costs for an internal use software license. Implementation costs for a cloud computing arrangement will be capitalized or expensed based on the nature of the costs and the project's stage in which they are incurred by applying the existing guidance for internal use software implementation costs. Capitalized costs for a cloud computing arrangement will be presented on the same line of the balance sheet as any related prepaid amounts for the arrangement, while amortization of those costs will be presented on the same line of the income statement as the related hosting fees. Early adoption is permitted, and entities may apply the guidance either prospectively to eligible costs incurred on or after the effective date or retrospectively. The Company early-adopted this guidance in the third quarter of 2018, on a prospective basis, and the adoption did not have a material impact on the Company's financial condition, results of operations or cash flows.

**New Accounting Standards to be Adopted in the Future**

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842), to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and requiring qualitative and quantitative disclosures on leasing agreements. ASU 2016-02 maintains a distinction between finance leases and operating leases similar to the distinction under previous lease guidance for capital leases and operating leases. The impact of leases reported in the Company's operating results and statement of cash flows is expected to be similar to previous GAAP. ASU 2016-02 requires the recognition in the statement of financial position, by the lessee, of a liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease term. How operating leases are recorded in regard to the Company's balance sheet represents a significant change from previous GAAP guidance. The lessee is permitted to make an accounting policy election to not recognize lease assets and lease liabilities for short-term leases. Adoption of the new lease accounting standard will require the Company to apply the new standard to the earliest period using a modified retrospective approach. As part of an effort to minimize adoption impact from the new standard, the FASB issued ASU 2018-01 and 2018-11. ASU 2018-01 provides an optional practical expedient to not evaluate existing or expired land easements under Topic 842, if those land easements were not previously accounted for as leases under ASC Topic 840, while ASU 2018-11 allows entities to adopt the standard with a cumulative effect adjustment as of the beginning of the adoption year, while maintaining prior year comparative financial information and disclosures as reported. As part of its application of ASU 2016-02, the Company has completed its analysis of its lease population and is finalizing the implementation of a new lease accounting system, as well as the evaluation of the impact on business processes, systems and controls to support recognition and disclosure under the new guidance. The Company anticipates it will elect the following practical expedients: the package of practical expedients outlined in ASU 2016-02, the land easement practical expedient outlined in ASU 2018-01, and the optional transition expedient outlined in ASU 2018-11. The Company also anticipates making the accounting policy election to not apply balance sheet recognition to short term leases. The Company will adopt this guidance effective January 1, 2019 and the adoption will only affect the balance sheet by recording lease obligations and corresponding right of use assets in an amount that ranges between \$5.0 million and \$8.0 million.

In June 2016, the FASB issued ASU 2016-13, Financial Instruments - Credit Losses (Topic 326). ASU 2016-13 changes how companies measure and recognize credit impairment for many financial assets. The new expected credit loss model will require companies to immediately recognize an estimate of credit losses expected to occur over the remaining life of the financial assets that are in the scope of the standard. The ASU also makes targeted amendments to the current impairment model for available-for-sale debt securities. ASU 2016-13 will be required for reporting periods beginning after December 15, 2019. ASU 2016-13 will be applied in a modified retrospective approach through a cumulative-effect adjustment to retained earnings as of the beginning of the first reporting period in which the guidance is implemented. The Company is currently assessing the future impact of ASU 2016-13.

In February 2018, the FASB issued ASU 2018-02, Income Statement - Reporting Comprehensive Income (Topic 220), as a result of concerns raised due to the TCJA. More specifically, because the remeasurement of deferred taxes due to the change in the federal corporate income tax rate is required to be included in income from continuing operations, the tax effects of items within AOCI (referred to as stranded tax effects) do not reflect the appropriate tax rate. ASU 2018-02 generally allows companies to reclassify stranded taxes from AOCI to retained earnings. The amount of the adjustment would be the difference between the historical federal corporate income tax rate of 35% and the newly enacted 21% federal corporate income tax rate. The provisions

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of ASU 2018-02 are effective for fiscal years and interim periods within that reporting period beginning after December 15, 2018. Early adoption is permitted, including adoption in any interim periods for reporting periods for which financial statements have not been issued. The Company is currently evaluating the impact of ASU 2018-02 and its impact on regulated utilities. At December 31, 2018, stranded taxes in AOCI are approximately \$7.2 million. The Company currently does not believe the adoption of this ASU will have a material impact on its financial condition, results of operations, or cash flows.

**C. Revenues**

On January 1, 2018, the Company adopted ASU 2014-09, Revenue from Contracts with Customers (Topic 606), for all of its contracts using the modified retrospective method. There was no cumulative effect adjustment at the initial application of the new standard. In addition, comparative information has not been restated and continues to be reported under the accounting standards in effect for those periods. The Company expects the ongoing impact of the new standard to be immaterial to net income and no significant changes in the Company's business processes and internal controls were necessary upon adoption of the new standard.

The following table disaggregates revenue from contracts with customers, for the twelve months ended December 31, 2018 (in thousands):

	<b>December 31, 2018</b>
	<b>Twelve Months Ended</b>
Retail.....	\$ 789,676
Wholesale .....	90,673
Wheeling (transmission).....	19,026
Total revenues from contracts with customers.....	899,375
Other .....	4,228
Total operating revenues .....	\$ 903,603

The Company recognizes revenue when performance obligations under the terms of the contract with the customer are satisfied. Revenue is measured as the amount of consideration the Company receives in exchange for transferring goods or providing services to the customer. Taxes collected concurrently with revenue producing activities are excluded from revenue. The Company has elected the optional invoice practical expedient for Wholesale and Wheeling revenues, as the invoice amount will correspond directly to the value provided by the Company's performance to date.

*Retail.* Retail contracts represent the Company's primary revenue source. The Company has determined that retail electric service to residential, commercial and industrial, and public authority customers represents an implied daily contract with the customer. The contract is comprised of an obligation to supply and distribute electricity and related capacity. Revenue is recognized, over time, equal to the product of the applicable tariff rates, as approved by the PUCT and the NMPRC, and the volume of the electricity delivered to the customer, or through the passage of time based upon providing the service of standing ready. Unbilled revenues are recognized at month end based on estimated monthly generation volumes and by applying an average revenue per kWh to the number of estimated kWhs delivered but not billed to customers, and recorded as a receivable for the period following the last billing cycle to the end of the reporting period. Retail customers receive a bill monthly, with payment due sixteen days after issuance.

*Wholesale.* Wholesale contracts primarily include forward power sales into markets outside the Company's service territory when the Company has competitive generation capacity available, after meeting its regulated service obligations. Pricing is either fixed or based on an index rate with consideration potentially including variable components. Uncertainties regarding the variable consideration will be resolved when the transaction price is known at the point of delivering the energy. The obligation to deliver the electricity is satisfied over time as the customer receives and consumes the electricity. Wholesale customers are invoiced monthly on the 10<sup>th</sup> day of each month, with payment due by the 20<sup>th</sup> day of the month. In the case of the sale of renewable energy certificates, the transaction price is allocated to the performance obligation to deliver the confirmed quantity of the certificates based on the stand alone selling price of each certificate. Revenue is recognized as control of the certificates is transferred to the customer. The customer is invoiced upon the completed transfer of the certificates, with payment due within ten business days. Wholesale also includes an annual agreement between the Company and one of its wholesale customers, Rio Grande Electric

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Cooperative ("RGEC"), which involves the provision of full requirements electric service from the Company to RGEC. The rates for this service are recalculated annually and require FERC approval.

*Wheeling (transmission).* Wheeling involves the Company providing point-to-point transmission service, which includes the receipt of capacity and energy at designated point(s) and the transfer of such capacity and energy to designated point(s) of delivery on either a firm or non-firm basis for periods of one year or less. The performance obligation to provide capacity and transmit energy is satisfied over time as the Company performs. Transmission customers are invoiced on a monthly basis, with payment due within twenty days of receipt of the invoice.

*Other.* Other includes alternative revenue program revenue relating to the Company's potential bonus awards from the PUCT and the NMPRC mandated energy efficiency programs. Both the PUCT and the NMPRC allow for the potential to earn an incentive bonus if the Company achieves its approved energy efficiency goals under the applicable programs. The Company recognizes revenue related to the energy efficiency program incentives at the point in time that the amount is objectively determinable generally based upon an approved order from the regulator, is probable of recovery, and if it is expected to be collected within 24 months. Other revenue also includes (i) late payment fees, (ii) leasing income, and (iii) the Company's allocated share, based on ownership, of sales of surplus effluent water from Palo Verde.

*Accounts receivable.* Accounts receivable is principally comprised of revenue from contracts with customers. The Company recognizes expense for accounts that are deemed uncollectible in operating expense. The Company recognized \$2.9 million of uncollectible expense for the twelve months ended December 31, 2018.

## **D. Regulation**

### **General**

The rates and services of the Company are regulated by incorporated municipalities in Texas, the PUCT, the NMPRC and the FERC. Municipal orders, ordinances and other agreements regarding rates and services adopted by Texas municipalities are subject to review and approval by the PUCT. The FERC has jurisdiction over the Company's wholesale (sales for resale - full requirement customer) transactions, transmission service and compliance with federally-mandated reliability standards. The decisions of the PUCT, the NMPRC and the FERC are subject to judicial review.

### **Texas Regulatory Matters**

*2015 Texas Retail Rate Case Filing.* On August 10, 2015, the Company filed with the City of El Paso, other municipalities incorporated in its Texas service territory and the PUCT in the 2015 Texas Retail Rate Case, a request for an annual increase in non-fuel base revenues ("2015 Texas Retail Rate Case"). On July 21, 2016, the parties to PUCT Docket No. 44941 filed the Joint Motion to Implement Uncontested Amended and Restated Stipulation and Agreement which was unopposed by the parties. On August 25, 2016, the PUCT issued the PUCT Final Order in Docket No. 44941 ("2016 PUCT Final Order"). Interim rates associated with the annual non-fuel base rate increase became effective on April 1, 2016. The additional surcharges associated with the incremental Four Corners Generating Station ("Four Corners") costs, rate case expenses and the relate back of rates to consumption on and after January 12, 2016, through March 31, 2016, were implemented on October 1, 2016.

For financial reporting purposes, the Company deferred any recognition of the Company's request in its 2015 Texas Retail Rate Case until it received the 2016 PUCT Final Order on August 25, 2016. Accordingly, it reported in the third quarter of 2016 the cumulative effect of the 2016 PUCT Final Order, which related back to January 12, 2016.

*2017 Texas Retail Rate Case Filing.* On February 13, 2017, the Company filed with the City of El Paso, other municipalities incorporated in the Company's Texas service territory and the PUCT in the 2017 Texas Retail Rate Case, a request for an increase in non-fuel base revenues. On November 2, 2017, the Company filed the Joint Motion to Implement Uncontested Stipulation and Agreement with the Administrative Law Judges for the 2017 Texas Retail Rate Case.

On December 18, 2017, the PUCT issued the PUCT Final Order in Docket No. 46831 ("2017 PUCT Final Order"), which provides, among other things, for the following: (i) an annual non-fuel base rate increase of \$14.5 million; (ii) a return on equity of 9.65%; (iii) all new plant in service as filed in the Company's rate filing package was prudent and used and useful and therefore is included in rate base; (iv) recovery of the costs of decommissioning Four Corners in the amount of \$5.5 million over a seven

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year period beginning August 1, 2017; (v) the Company to recover reasonable rate case expenses of approximately \$3.4 million through a separate surcharge over a three year period; and (vi) a requirement that the Company file a refund tariff if the federal statutory income tax rate, as it relates to the Company, is decreased before the Company files its next rate case. The 2017 PUCT Final Order also established baseline revenue requirements for recovery of future transmission and distribution investment costs (for which the Company could seek recovery after January 1, 2019) and includes a minimum monthly bill of \$30.00 for new residential customers with distributed generation, such as private rooftop solar. Additionally, the 2017 PUCT Final Order allowed for the annual recovery of \$2.1 million of nuclear decommissioning funding and establishes annual depreciation expense that is approximately \$1.9 million lower than the annual amount requested by the Company in its initial filing. Finally, the 2017 PUCT Final Order allowed for the Company to recover revenues associated with the relate back of rates to consumption on and after July 18, 2017, through a separate surcharge, which expired on January 9, 2019, with a reconciliation of any over- or under-charge to be addressed in a separate proceeding.

New base rates, including additional surcharges associated with rate case expenses and the relate back of rates to consumption on and after July 18, 2017, through December 31, 2017, were implemented in January 2018.

For financial reporting purposes, the Company deferred any recognition of the Company's request in its 2017 Texas Retail Rate Case until it received the 2017 PUCT Final Order on December 18, 2017. Accordingly, it reported in the fourth quarter of 2017 the cumulative effect of the 2017 PUCT Final Order, which related back to July 18, 2017.

The 2017 PUCT Final Order required the Company to file a refund tariff if the federal statutory income tax rate, as it relates to the Company, was decreased before the Company files its next general rate case. Following the enactment of the TCJA on December 22, 2017, and in compliance with the 2017 PUCT Final Order, on March 1, 2018, the Company filed with the PUCT and each of its municipalities a proposed refund tariff designed to reduce base charges for Texas customers equivalent to the expected annual decrease of \$22.7 million in federal income tax expense resulting from the TCJA changes, and an additional refund of \$4.3 million for the amortization of a regulatory liability related to the reduced tax expense for the months of January through March of 2018. This filing was assigned PUCT Docket No. 48124. On March 27, 2018, the PUCT approved the Company's proposed refund tariff on an interim basis, subject to refund or surcharge, for customer billing effective April 1, 2018. Each of the Company's municipalities also implemented the Company's proposed tax credits on an interim basis effective April 1, 2018. The refund is reflected in rates over a period of one year beginning April 1, 2018, and will be updated annually until new base rates are implemented pursuant to the Company's next Texas rate case filing. The PUCT issued an order on December 10, 2018, approving the proposed refund tariff.

*Texas Energy Efficiency Cost Recovery Factor.* On May 1, 2017, the Company filed its annual application with the PUCT, which was assigned PUCT Docket No. 47125, to establish its energy efficiency cost recovery factor for 2018. In addition to projected energy efficiency costs for 2018 and a reconciliation of collections to prior year actual costs, the Company requested approval of an incentive bonus for the 2016 energy efficiency program results in accordance with PUCT rules. Interim rates were approved effective January 1, 2018. The Company, the PUCT Staff and the City of El Paso reached an agreement that includes an incentive bonus of \$0.8 million. The agreement was filed on January 25, 2018, and was approved by the PUCT on February 15, 2018.

On May 1, 2018, the Company filed its annual application with the PUCT, which was assigned PUCT Docket No. 48332, to establish its energy efficiency cost recovery factor for 2019. In addition to projected energy efficiency costs for 2019 and a reconciliation of collections to actual costs for the prior year, the Company requested approval of a \$1.0 million incentive bonus for the 2017 energy efficiency program results in accordance with PUCT rules. Instead of convening an actual hearing on the merits of this case, the parties agreed to enter into the record the pre-filed testimony of the parties and certain other exhibits and then file briefs on the contested issues. The Administrative Law Judge issued a proposed final decision on November 15, 2018, including the Company's fully requested incentive bonus. On January 17, 2019, the PUCT issued an order approving a modified bonus amount of \$0.9 million.

*Fuel and Purchased Power Costs.* The Company's actual fuel costs, including purchased power energy costs, are recovered from customers through a fixed fuel factor. The PUCT has adopted a fuel cost recovery rule ("Texas Fuel Rule") that allows the Company to seek periodic adjustments to its fixed fuel factor. The Company can seek to revise its fixed fuel factor based upon the approved formula at least four months after its last revision except in the month of December. The Texas Fuel Rule requires the Company to request to refund fuel costs in any month when the over-recovery balance exceeds a threshold material amount and it expects fuel costs to continue to be materially over-recovered. The Texas Fuel Rule also permits the Company to seek to surcharge fuel under-recoveries in any month the balance exceeds a threshold material amount and it expects fuel cost recovery to continue

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to be materially under-recovered. Fuel over- and under-recoveries are considered material when they exceed 4% of the previous twelve months' fuel costs. All such fuel revenue and expense activities are subject to periodic final review by the PUCT in periodic fuel reconciliation proceedings.

On November 30, 2016, the Company filed a request with the PUCT, which was assigned PUCT Docket No. 46610, to increase its fixed fuel factor by approximately 28.8% to reflect increased fuel expenses primarily related to an increase in the price of natural gas used to generate power. The increase in the fixed fuel factor was effective on an interim basis January 1, 2017, and approved by the PUCT on January 10, 2017.

On October 13, 2017, the Company filed a request with the PUCT, which was assigned PUCT Docket No. 47692, to decrease the Texas fixed fuel factor by approximately 19% to reflect decreased fuel expenses primarily related to a decrease in the price of natural gas used to generate power. The decrease in the Texas fixed fuel factor became effective beginning with the November 2017 billing month.

On April 13, 2018, the Company filed a request with the PUCT, which was assigned PUCT Docket No. 48264, to decrease the Texas fixed fuel factor by approximately 29% to reflect decreased fuel expenses primarily related to a decrease in the price of natural gas used to generate power. On April 25, 2018, the Company's proposed fuel factors were approved on an interim basis effective for the first billing cycle of the May 2018 billing month. The revised factor was approved by the PUCT and the docket closed on May 22, 2018.

On October 15, 2018, the Company filed a request with the PUCT, which was assigned PUCT Docket No. 48781, to decrease the Texas fixed fuel factor by approximately 6.99% to reflect decreased fuel expenses primarily related to a decrease in the price of natural gas used to generate power. On October 25, 2018, the Company's fixed fuel factor was approved on an interim basis effective for the first billing cycle of the November 2018 billing month. The revised factor was approved by the PUCT and the docket closed on November 19, 2018. The Texas fixed fuel factor will continue thereafter until changed by the PUCT. As of December 31, 2018, the Company had a net fuel over-recovery balance of approximately \$8.9 million in Texas.

*Fuel Reconciliation Proceeding.* On September 27, 2016, the Company filed an application with the PUCT, designated as PUCT Docket No. 46308, to reconcile \$436.6 million of Texas fuel and purchased power expenses incurred during the period of April 1, 2013, through March 31, 2016. On June 29, 2017, the PUCT approved a settlement in this proceeding. The settlement provides for the reconciliation of fuel and purchased power costs incurred from April 1, 2013, through March 31, 2016. The financial results for the twelve months ended December 31, 2017, includes a \$5.0 million, pre-tax increase to income reflecting the settlement of the Texas fuel reconciliation proceeding. This amount represents Palo Verde performance rewards associated with the 2013 to 2015 performance periods net of disallowed fuel and purchased power costs as approved in the settlement. Additionally, the settlement modifies and tightens the Palo Verde performance rewards measurement bands beginning with the 2018 performance period. The April 1, 2016, through December 31, 2018, Texas jurisdictional fuel and purchased power costs subject to prudence review total approximately \$353.4 million.

*Community Solar.* On June 8, 2015, the Company filed a petition with the PUCT to initiate a community solar program that includes the construction and ownership of a three-megawatt ("MW") solar photovoltaic system located at Montana Power Station ("MPS"). Participation is on a voluntary basis, and customers contract for a set capacity (kW) amount and receive all energy produced. This case was assigned PUCT Docket No. 44800. The Company filed a settlement agreement among all parties on July 1, 2016, approving the program, and the PUCT approved the settlement agreement and program on September 1, 2016. On April 19, 2017, the Company announced that the entire three-MW program was fully subscribed by approximately 1,500 Texas customers. The Community Solar facility began commercial operation on May 31, 2017.

On March 20, 2018, the Company filed a petition with the PUCT and each of its Texas municipalities to expand its community solar program in Texas to include two-MW of solar powered generation from the ten-MW solar photovoltaic facility located at Newman Power Station ("Newman") and to reduce rates under the community solar tariff. The case before the PUCT was assigned PUCT Docket No. 48181 and a hearing was held on December 4, 2018. The Company cannot predict the outcome of the case at this time.

*Transmission Cost Recovery Factor.* On January 25, 2019, the Company filed an application with the PUCT to establish its Transmission Cost Recovery Factor ("TCRF"), which was assigned PUCT Docket No. 49148 ("2019 TCRF rate filing"). The 2019 TCRF rate filing is designed to recover a requested \$8.2 million of Texas jurisdictional transmission revenue requirement that is not currently being recovered in the Company's Texas base rates for transmission-related investments placed in service from October 1, 2016, through September 30, 2018, net of retirements. The Company cannot predict the outcome of this filing at this time.

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*Four Corners Generating Station.* On February 17, 2015, the Company and Arizona Public Service Company ("APS") entered into an asset purchase agreement ("Purchase and Sale Agreement") providing for the sale of the Company's interest in Four Corners to APS. The sale of the Company's interest in Four Corners closed on July 6, 2016. See Part II, Item 8, Financial Statements and Supplementary Data, Note F of Notes to Financial Statements for further discussion on the sale of Four Corners.

On June 10, 2015, the Company filed an application in Texas requesting reasonableness and public interest findings and certain rate and accounting findings related to the Purchase and Sale Agreement. This case was assigned PUCT Docket No. 44805. Subsequent to the filing of the application, the case was subject to numerous procedural matters, including a March 23, 2016, order in which the PUCT determined not to dismiss the reasonableness and public interest issues in this docket but to consider the requested rate and accounting findings, including coal mine reclamation costs, in a rate case proceeding. On September 1, 2016, a motion by parties in the proceeding to suspend the procedural schedule in order to pursue settlement was approved. On March 3, 2017, the Company filed a Joint Motion to Implement Stipulation and Agreement ("Stipulation and Agreement"), and PUCT Staff filed its recommendation that the Company's disposition of its interest in Four Corners was reasonable and consistent with the public interest. Additionally, the signatories of the Stipulation and Agreement agreed to support the recovery of the Company's Four Corners decommissioning costs in the 2017 Texas Retail Rate Case. A final order approving the Stipulation and Agreement was adopted by the PUCT on March 30, 2017. The approval to recover Four Corners decommissioning costs was included in the 2017 PUCT Final Order.

*Other Required Approvals.* The Company has obtained other required approvals for tariffs and other approvals required by the Texas Public Utility Regulatory Act ("PURA") and the PUCT.

### **New Mexico Regulatory Matters**

*2015 New Mexico Rate Case Filing.* On May 11, 2015, the Company filed a request with the NMPRC, in Case No. 15-00127-UT, for an annual increase in non-fuel base rates. On June 8, 2016, the NMPRC issued its final order in Case No. 15-00127-UT ("NMPRC Final Order"), which approved an annual increase in non-fuel base rates of approximately \$0.6 million, an increase of approximately \$0.5 million in other service fees and a decrease in the Company's allowed return on equity to 9.48%. The NMPRC Final Order concluded that all of the Company's then-new plant in service was reasonable and necessary and therefore would be recoverable in rates. The Company's rates were approved by the NMPRC effective July 1, 2016, and implemented at such time.

*Future New Mexico Rate Case Filing.* On April 12, 2017, the NMPRC issued an order in Case No. 15-00109-UT requiring the Company to make a rate filing in New Mexico no later than July 31, 2019, using an appropriate historical test year period.

*New Mexico Order Commencing Review of the Effects of the TCJA on Regulated New Mexico Utilities.* On January 24, 2018, the NMPRC initiated a proceeding in Case No. 18-00016-UT on the impact of the TCJA on New Mexico regulated utilities. On February 23, 2018, the Company responded to a NMPRC Staff inquiry regarding the proceeding. On April 4, 2018, the NMPRC issued an order requiring the Company to file a proposed interim rate rider to adjust the Company's New Mexico base revenues in amounts equivalent to the Company's reduced income tax expense for New Mexico customers resulting from the TCJA, to be implemented on or before May 1, 2018. The NMPRC order further requires that the Company record and track a regulatory liability for the excess accumulated deferred income taxes created by the change in the federal corporate income tax rate, consistent with the effective date of the TCJA, and subject to amortization determined by the NMPRC in the Company's next general rate case. The Company recorded such a regulatory liability during the quarter ended December 31, 2017. On April 16, 2018, after consultation with the New Mexico Attorney General pursuant to the NMPRC order, the Company filed an interim rate rider with the NMPRC with a proposed effective date of May 1, 2018. The annualized credits expected to be refunded to New Mexico customers approximate \$4.9 million. The Company implemented the interim rate rider in customer bills beginning May 1, 2018 pursuant to the NMPRC order.

On September 5, 2018, the NMPRC issued an order in Case No. 17-00255-UT involving Southwestern Public Service Company's ("SPS's") request to change rates in which the NMPRC directed SPS to refund the difference in corporate tax rate from January 1, 2018, through the effective date of new rates. SPS appealed the NMPRC order to the New Mexico Supreme Court in *Southwestern Public Service Co. v. NMPRC, No. S-1-SC-37248 ("SPS Appeal No. 1")*, challenging the refund as prohibited retroactive ratemaking among other reasons. The New Mexico Supreme Court issued a partial and interim stay of the rates on September 26, 2018. On September 12, 2018, the NMPRC in Case No. 18-00016-UT issued an Order Regarding the Disposition of Tax Savings Under the Federal Tax Cuts and Jobs Act of 2017, which put public utilities on notice that all revenue collected through general rates for the purpose of payment of federal income taxes is and will continue to be subject to possible refund upon a subsequent determination to be made in the appropriate pending or future NMPRC adjudicatory hearing. On October 11, 2018, SPS filed a Notice of Appeal of that NMPRC order to the New Mexico Supreme Court in *Southwestern Public Service Co. v.*

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*NMPRC, No. S-1-SC-37308 ("SPS Appeal No. 2").* Opening briefs in *SPS Appeal No. 1* were filed January 14, 2019. In the event the NMPRC order in Case No. 17-00255-UT is upheld by the New Mexico Supreme Court, the Company would likely be required to record and refund approximately \$1.2 million to its New Mexico customers, which represents tax benefits received by the Company for the period January 1, 2018, through April 30, 2018. On February 15, 2019, the NMPRC and SPS filed a joint motion for remand and stipulated dismissal of SPS appeals of NMPRC orders with the New Mexico Supreme Court, which among other things, reflects agreements between the NMPRC and SPS, which in part provide, that the NMPRC will replace the order in Case No. 17-00255-UT with a new order that eliminates the retroactive TCJA refund and that SPS will dismiss Appeals No. 1 and No. 2. The Company is monitoring the SPS cases and cannot determine the outcome of the cases at this time.

*Fuel and Purchased Power Costs.* Historically, fuel and purchased power costs were recovered through base rates and a Fuel and Purchased Power Cost Adjustment Clause ("FPPCAC") that accounts for changes in the costs of fuel relative to the amount included in base rates. Effective July 1, 2016, with the implementation of the NMPRC Final Order, fuel and purchased power costs are no longer recovered through base rates but are recovered through the FPPCAC. The Company's request to reconcile its fuel and purchased power costs for the period January 1, 2013, through December 31, 2014, also was approved in the NMPRC Final Order. New Mexico jurisdictional costs subject to prudence review are costs from January 1, 2015, through December 31, 2018, that total approximately \$206.8 million. At December 31, 2018, the Company had a net fuel over-recovery balance of approximately \$0.4 million related to the FPPCAC in New Mexico. As required, the Company filed a request to continue use of its FPPCAC with the NMPRC on January 5, 2018, which was assigned Case No. 18-00006-UT. The NMPRC issued a final order in the case on February 13, 2019, which authorized the Company to continue use of its FPPCAC without change and approved the Company's reconciliation of its fuel and purchased power costs for the period January 1, 2015, through December 31, 2016. The final order is subject to rehearing and appeal for thirty days after the February 13, 2019 date of issuance. The Company cannot predict the outcome of this case at this time.

Effective January 1, 2018, pursuant to the final order in NMPRC Case No. 17-00090-UT, the Renewable Portfolio Standard ("RPS") costs for New Mexico are recovered through a separate RPS Cost Rider and not through the FPPCAC. At December 31, 2018, the Company had a net fuel over-recovery balance related to the RPS Cost Rider of approximately \$1.6 million. The RPS Cost Rider is updated in an annual NMPRC filing, including a reconciliation of the prior calendar year's RPS costs and RPS Cost Rider revenue.

*5-MW Holloman Air Force Base ("HAFB") Facility Certificate of Convenience and Necessity ("CCN").* On October 7, 2015, in Case No. 15-00185-UT, the NMPRC issued a final order approving a CCN for a five-MW solar power generation facility located on HAFB in the Company's service territory in New Mexico. The Company and HAFB negotiated a retail contract, which includes a power sales agreement for the facility, to replace the existing load retention agreement that was approved by NMPRC final order issued October 5, 2016, in Case No. 16-00224-UT. The solar generation facility began commercial operation on October 18, 2018.

*New Mexico Efficient Use of Energy Recovery Factor.* On July 1, 2016, the Company filed its annual application with the NMPRC requesting approval of its 2017 Energy Efficiency and Load Management Plan and to establish the Efficient Use of Energy recovery factor ("EUERF") for 2017. In addition to projected energy efficiency costs for 2017, the Company requested approval of a \$0.4 million incentive for 2017 energy efficiency programs in accordance with NMPRC rules. This application was assigned Case No. 16-00185-UT. On February 22, 2017, the NMPRC issued a final order approving the Company's 2017 Energy Efficiency and Load Management Plan. The Company's EUERF was approved and effective in customer bills beginning on March 1, 2017. NMPRC rules authorize continuation of the energy efficiency programs and incentive approved in Case No. 16-00185-UT through 2018. The Company recorded approved incentives in operating revenues of \$0.3 million and \$0.7 million in 2018 and 2017, respectively, related to its 2015 through 2017 Energy Efficiency and Load Management Plans.

On July 2, 2018, the Company filed its required application with the NMPRC for approval of its 2019-2021 Energy Efficiency and Load Management Plan and EUERF. The application includes a request for a base incentive of 7.1% of program expenditures, or approximately \$0.4 million annually for 2019-2021. The application was assigned Case No. 18-00116-UT and hearings were held on November 7, 2018, and November 8, 2018. The Hearing Examiner issued a Recommended Decision on January 30, 2019, and a final order from the NMPRC is pending. The Company cannot predict the outcome of this case at this time.

*Community Solar.* On April 24, 2018, the Company filed an application with the NMPRC to initiate a community solar program in New Mexico to include construction and ownership of a two-MW solar photovoltaic system located in Doña Ana County near the City of Las Cruces. Customer participation would have been on a voluntary basis, and customers would have contracted for a set capacity (kW) amount and would have received all energy produced by their subscribed capacity. The application was assigned Case No. 18-00099-UT and was dismissed without prejudice on October 31, 2018. The NMPRC set aside its October 31, 2018, order dismissing the application without prejudice, and on December 19, 2018, the NMPRC issued an Order Requiring

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El Paso Electric Company to Conduct Request for Proposals and to Amend Application; Order Extending Statutory Period and Appointing Hearing Examiner that would have required the Company to amend its initially-filed application on or before February 15, 2019. However, on January 10, 2019, the NMPRC (with three new Commissioners) reconsidered its prior order and dismissed the Community Solar application without prejudice. The case is now closed.

*Integrated Resource Plan.* On September 17, 2018, the Company filed its Integrated Resource Plan with the NMPRC for the period 2018-2037 ("2018 IRP") in Case No. 18-00293-UT as required by regulation and the Joint Stipulation in NMPRC Case No. 15-00241-UT, which was the Company's prior integrated resource plan filing. The triennial filing requires a public advisory process as part of the development of the plan to identify a cost-effective portfolio of resources. The filed plan is subject to written public comments filed with the NMPRC to which the Company responded on October 29, 2018. NMPRC Staff filed a written report on November 16, 2018, recommending that the NMPRC return the 2018 IRP to the Company with instructions for re-filing to correct 12 deficiencies identified by the NMPRC Staff report. On December 5, 2018, the NMPRC issued an Order Partially Accepting Integrated Resource Plan; Order Requiring Refiling for Deficiencies. Pursuant to that order, on January 3, 2019, the Company filed an amended 2018 IRP. On January 10, 2019, in light of a pending motion for reconsideration, the NMPRC ordered its Staff to provide additional information and respond to issues raised regarding the filed 2018 IRP. The Company cannot predict the outcome of the NMPRC's review of the plan or the outcome of this case at this time.

*Issuance of Long-Term Debt, Securities Financing, and Guarantee of Debt.* On October 7, 2015, the Company received approval in NMPRC Case No. 15-00280-UT to guarantee the issuance of up to \$65.0 million of long-term debt by the Rio Grande Resources Trust II ("RGRT") to finance future purchases of nuclear fuel and to refinance existing nuclear fuel debt obligations, which remains effective. Under this authorization, on June 28, 2018, the RGRT issued \$65.0 million in aggregate principal amount of 4.07% Senior Guaranteed Notes due August 15, 2025. On October 4, 2017, the Company received additional approval in NMPRC Case No. 17-00217-UT to amend and extend the Company's Revolving Credit Facility ("RCF"), issue up to \$350.0 million in long-term debt and to redeem and refinance the \$63.5 million 2009 Series A 7.25% Pollution Control Bonds ("PCBs") and the \$37.1 million 2009 Series B 7.25% PCBs, which have optional redemptions beginning in 2019. The NMPRC approval to issue \$350.0 million in long-term debt supersedes its prior approval. Under this authorization, on June 28, 2018, the Company issued \$125.0 million in aggregate principal amount of the Company's 4.22% Senior Notes due August 15, 2028. Additionally, on September 13, 2018, the Company and the Bank of New York Mellon Trust Company, N.A., as trustee of the RGRT, entered into a \$350.0 million third amended and restated credit agreement. See Part II, Item 8, Financial Statements and Supplementary Data, Note J of Notes to Financial Statements for further discussion on long-term debt and financing obligations.

On January 30, 2019, the Company submitted an application with the NMPRC seeking approval to issue shares of common stock, including the reissuance of treasury shares, in an amount up to \$200.0 million in one or more transactions. The application was assigned Case No. 19-00033-UT, and a hearing is scheduled for March 15, 2019. Additionally, the Company is preparing for potential transactions related to the 2009 Series A and Series B PCBs. On February 1, 2019, the Company purchased in lieu of redemption all the \$63.5 million 2009 Series A 7.25% PCBs. The bonds were purchased utilizing funds borrowed under the RCF. The Company is currently holding the bonds and may remarket them or replace them with debt instruments of equivalent value at a future date depending on the Company's financing needs and market conditions.

*Other Required Approvals.* The Company has obtained other required approvals for tariffs and other approvals as required by the New Mexico Public Utility Act and the NMPRC.

### **Federal Regulatory Matters**

*Inquiry Regarding the Effect of the TCJA on Commission-Jurisdictional Rates and Order to Show Cause.* On March 15, 2018, the FERC issued two show cause orders under Section 206 of the Federal Power Act and Rule 209(a) of the FERC's Rules of Practice and Procedure, directing 48 individual public utilities with stated transmission rates or transmission formula rates with a fixed line item of 35% for the federal income tax component to, within 60 days of the date of the orders, either (1) propose revisions to their transmission rates under their open access transmission tariffs or transmission owner tariffs on file with the FERC, or (2) show cause why they should not be required to do so ("Show Cause Proceeding"). The Company was included in the list of public utilities impacted by the FERC orders. On May 14, 2018, the Company submitted its response, as required by the FERC order, which demonstrated that the reduced annual income tax does not cause the Company's total transmission revenues to become excessive and therefore no rate reduction was justified. Instead, the Company stated in its response that it will prepare for a future filing in which it will seek approval for revised Open Access Transmission Tariff ("OATT") rates that would include the recovery of an increased total transmission revenue requirement from OATT customers based on current circumstances and appropriate forward-looking adjustments. On November 15, 2018, FERC issued an order finding that the Company had demonstrated that no

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rate reduction was justified and terminating the Show Cause Proceeding. The Company expects to file its request for approval to revise OATT rates in the third quarter of 2019.

*Notice of Proposed Rulemaking on Public Utility Transmission Changes to Address Accumulated Deferred Income Taxes.* On November 15, 2018, the FERC issued a Notice of Proposed Rulemaking ("NOPR") that proposes to direct public utilities with transmission OATT rates, a transmission owner tariff or a rate schedule to determine the amount of excess or deficient accumulated deferred income taxes caused by the TCJA's reduction to the federal corporate income tax rate and return or recover this amount to or from customers. The NOPR has been assigned FERC Docket No. RM19-5-000. The Company is currently evaluating the impact of this proposed rulemaking.

*Issuance of Long-Term Debt, Securities Financing, and Guarantee of Debt.* On October 31, 2017, the FERC issued an order in Docket No. ES17-54-000 approving the Company's filing to (i) amend and extend the RCF; (ii) issue up to \$350.0 million in long-term debt; (iii) guarantee the issuance of up to \$65.0 million of long-term debt by the RGRT; and (iv) redeem, refinance and/or replace the \$63.5 million 2009 Series A 7.25% PCBs and the \$37.1 million 2009 Series B 7.25% PCBs, which have optional redemptions beginning in 2019. The order also approved the Company's request to continue to utilize the existing RCF with the ability to amend and extend at a future date. The authorization is effective from November 15, 2017, through November 14, 2019, and supersedes prior FERC approvals. Under this authorization, on June 28, 2018, the Company issued \$125.0 million in aggregate principal amount of the Company's 4.22% Senior Notes due August 15, 2028, and the RGRT issued \$65.0 million in aggregate principal amount of its 4.07% Senior Guaranteed Notes due August 15, 2025. Also, on September 13, 2018, the Company and the Bank of New York Mellon Trust Company, N.A., as trustee of the RGRT, entered into a \$350.0 million third amended and restated credit agreement. Additionally, the Company is preparing for potential transactions related to the 2009 Series A and Series B PCBs. On February 1, 2019, the Company purchased in lieu of redemption all the \$63.5 million 2009 Series A 7.25% PCBs. The bonds were purchased utilizing funds borrowed under the RCF. The Company is currently holding the bonds and may remarket them or replace them with debt instruments of equivalent value at a future date depending on the Company's financing needs and market conditions and in accordance with FERC action expected in March 2019 in response to the Company's most recent FERC application (see below). See Part II, Item 8, Financial Statements and Supplementary Data, Note J of Notes to Financial Statements for further discussion on long-term debt and financing obligations.

On January 30, 2019, the Company submitted an application with the FERC seeking approval to issue shares of common stock, including the reissuance of treasury shares, in an amount up to \$200.0 million in one or more transactions. Included in the FERC application, the Company also requested various debt-related authorizations: approval to utilize the existing RCF for short-term borrowing not to exceed \$400.0 million at any one time; to issue up to \$225.0 million in new long-term debt; and to remarket the \$63.5 million 2009 Series A 7.25% PCBs and the \$37.1 million 2009 Series B 7.25% PCBs in the form of replacement bonds or senior notes of equivalent value, not to exceed \$100.6 million. If approved, the FERC authorization would supersede its prior approvals.

*Other Required Approvals.* The Company has obtained required approvals for rates, tariffs and other approvals as required by the Federal Power Act and the FERC.

*U.S. Department of Energy ("DOE").* The DOE regulates the Company's exports of power to Mexico pursuant to a DOE grant of export authorization. In addition, the Company is the holder of two presidential permits issued by the DOE under which the Company constructed and operates border facilities crossing the U.S./Mexico border.

The DOE is authorized to assess operators of nuclear generating facilities a share of the costs of decommissioning the DOE's uranium enrichment facilities and for the ultimate costs of disposal of spent nuclear fuel. See Part II, Item 8, Financial Statements and Supplementary Data, Note F of Notes to Financial Statements for further discussion of spent fuel storage and disposal costs.

**Sales for Resale and Network Transmission Service to Rio Grande Electric Cooperative**

The Company provides firm capacity and associated energy to the RGEC pursuant to an ongoing contract with a two-year notice to terminate provision. The Company also provides network integrated transmission service to the RGEC pursuant to the Company's OATT. The contract includes a formula-based rate that is updated annually to recover non-fuel generation costs and a fuel adjustment clause designed to recover all eligible fuel and purchased power costs allocable to the RGEC. The Company's service to RGEC is regulated by FERC.

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**E. Regulatory Assets and Liabilities**

The Company's operations are regulated by the PUCT, the NMPRC and the FERC. Regulatory assets represent probable future recovery of previously incurred costs, which will be collected from customers through the ratemaking process. Regulatory liabilities represent probable future reductions in revenues associated with amounts that are to be credited to customers through the ratemaking process. Regulatory assets and liabilities reflected in the Company's balance sheet are presented below (in thousands):

	Amortization Period Ends	December 31, 2018	December 31, 2017
<b>Regulatory assets</b>			
Regulatory tax assets.....	(a)	\$ 39,519	\$ 40,512
Loss on reacquired debt (b).....	May 2035	14,074	14,926
Final coal reclamation.....	(c)	4,065	4,726
Four Corners decommissioning.....	(d)	5,813	6,604
Nuclear fuel postload daily financing charge.....	(e)	3,717	3,536
Unrecovered issuance costs due to reissuance of PCBs (b).....	August 2042	728	761
Texas 2015 rate case costs (f).....	January 2021	747	1,144
Texas 2017 rate case costs.....	January 2021	2,634	3,642
Texas relate back surcharge (g).....	January 2019	—	8,591
New Mexico renewable energy credits and related costs (h)....	June 2022	4,709	5,823
New Mexico Palo Verde deferred depreciation.....	(i)	4,111	4,263
Other regulatory assets.....	various	1,703	1,508
<b>Total regulatory assets</b>		<b>81,820</b>	<b>96,036</b>
<b>Current portion</b> (amount due within one year)		<b>6,972</b>	<b>—</b>
<b>Regulatory assets, non-current</b>		<b>\$ 74,848</b>	<b>\$ 96,036</b>
<b>Regulatory liabilities</b>			
Regulatory tax liabilities.....	(j)	\$ 291,557	\$ 289,013
Accumulated deferred investment tax credit.....	(k)	7,872	4,816
Texas energy efficiency.....	(l)	—	895
New Mexico energy efficiency.....	(l)	1,694	1,394
Fuel revenue over-recovery.....	(m)	11,047	6,225
Other regulatory liabilities.....	various	1,086	567
<b>Total regulatory liabilities</b>		<b>313,256</b>	<b>302,910</b>
<b>Current portion</b> (amount due within one year)		<b>14,686</b>	<b>6,225</b>
<b>Regulatory liabilities, non-current</b>		<b>\$ 298,570</b>	<b>\$ 296,685</b>

- (a) This item relates to (i) the regulatory treatment of the equity portion of AFUDC which is recovered in rate base by an offset with the related accumulated deferred income tax liability, and (ii) excess deferred state income taxes which are recovered through amortization to tax expense in cost of service. The amortization period for the excess deferred state income taxes is 15 years as established in the 2016 PUCT Final Order and the NMPRC Final Order.
- (b) This item is recovered as a component of the weighted cost of debt and amortized over the life of the related debt issuance.
- (c) This item relates to coal reclamation costs associated with Four Corners. The Texas portion was approved for recovery in PUCT Docket No. 46308 and will be recovered over seven years through June 2023. The New Mexico amortization period will be established in the next general rate case.
- (d) This item relates to the decommissioning of Four Corners. The Texas portion was approved for recovery in PUCT Docket No. 46308 and will be recovered over seven years through July 2024. The New Mexico amortization period will be established in the next general rate case.
- (e) This item is recovered through fuel recovery mechanisms established by tariffs.
- (f) The 2017 PUCT Final Order approved a new recovery period for these costs, beginning January 10, 2018.
- (g) This item relates to the recovery of revenues through two separate surcharges; one for the 2015 Texas Retail Rate Case relate back revenues beginning October 1, 2016, and ending September 30, 2017, and a second surcharge for the 2017 Texas Retail

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Rate Case relate back revenues beginning January 10, 2018, and ending January 9, 2019. Amounts over-recovered through these surcharges will be addressed in the next Texas fuel reconciliation. See Part II, Item 8, Financial Statements and Supplementary Data, Note D of Notes to Financial Statements for further discussion.

- (h) This item relates to renewable energy credits and procurement plan costs, of which a component has been approved for recovery in the NMPRC Final Order. The remaining balance will be requested for recovery in the next general rate case.
- (i) The amortization period for this item is based upon the U.S. Nuclear Regulatory Commission ("NRC") license life for each unit at Palo Verde.
- (j) This item primarily relates to the reduction in the federal corporate income tax rate from 35% to 21% as enacted by the TCJA. The amortization period for the recovery on this item will be addressed in the next base rate filings in all jurisdictions. See Part II, Item 8, Financial Statements and Supplementary Data, Note K of Notes to Financial Statements for further discussion.
- (k) The amortization period is based upon the life of the associated assets.
- (l) This item is recovered or credited through a recovery factor that is set annually.
- (m) This item represents the net over-recovery of fuel and purchased power expense which is refunded to customers through fuel rates.

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**F. Utility Plant, Palo Verde and Other Jointly-Owned Utility Plant**

The table below presents the balance of each major class of depreciable assets at December 31, 2018 (in thousands):

	<b>Gross Plant</b>	<b>Accumulated Depreciation</b>	<b>Net Plant</b>
Nuclear production .....	\$ 1,024,771	\$ (358,606)	\$ 666,165
Steam and other .....	1,007,526	(237,018)	770,508
Total production .....	2,032,297	(595,624)	1,436,673
Transmission .....	557,255	(270,888)	286,367
Distribution.....	1,257,509	(389,502)	868,007
General .....	232,278	(73,997)	158,281
Intangible.....	102,070	(61,255)	40,815
Total.....	<u>\$ 4,181,409</u>	<u>\$ (1,391,266)</u>	<u>\$ 2,790,143</u>

The Company owns a 15.8% interest in each of the three nuclear generating units and common facilities ("Common Facilities") at Palo Verde, in Wintersburg, Arizona. The Palo Verde Participants include the Company and six other utilities: APS, Southern California Edison Company, Public Service Company of New Mexico, Southern California Public Power Authority, Salt River Project Agricultural Improvement and Power District and the Los Angeles Department of Water and Power.

A summary of the Company's investment in jointly-owned utility plant, excluding fuel inventories, at December 31, 2018 and 2017 is as follows (in thousands):

	<b>December 31, 2018</b>		<b>December 31, 2017</b>	
	<b>Palo Verde</b>	<b>Other (a)</b>	<b>Palo Verde</b>	<b>Other (a)</b>
Electric plant in service .....	\$ 1,024,771	\$ 94,155	\$ 994,075	\$ 97,603
Accumulated depreciation .....	(358,606)	(75,096)	(338,699)	(72,822)
Construction work in progress.....	44,719	1,511	40,946	1,014
Total.....	<u>\$ 710,884</u>	<u>\$ 20,570</u>	<u>\$ 696,322</u>	<u>\$ 25,795</u>

(a) Includes three jointly-owned transmission lines.

Amortization of intangible plant (software) is provided on a straight-line basis over the estimated useful life of the asset (ranging from 3 to 15 years). The table below presents the actual and estimated amortization expense for intangible plant for the previous three years and for the next five years (in thousands):

2016 .....	\$ 5,302
2017 .....	6,409
2018 .....	7,297
2019 (estimated) .....	7,263
2020 (estimated) .....	6,867
2021 (estimated) .....	5,934
2022 (estimated) .....	5,047
2023 (estimated) .....	4,070

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**Palo Verde**

The operation of Palo Verde and the relationship among the Palo Verde Participants is governed by the Arizona Nuclear Power Project Participation Agreement dated August 23, 1973, as amended ("ANPP Participation Agreement"). APS serves as operating agent for Palo Verde, and under the ANPP Participation Agreement, the Company has limited ability to influence operations and costs at Palo Verde. Pursuant to the ANPP Participation Agreement, the Palo Verde Participants share costs and generating entitlements in the same proportion as their percentage interests in the generating units, and each participant is required to fund its share of fuel, O&M expense, and capital costs. The Company's share of direct expenses in Palo Verde and other jointly-owned utility plants is reflected in fuel expense, O&M expense, miscellaneous other deductions, and taxes other than income taxes in the Company's statements of operations. The ANPP Participation Agreement provides that if a participant fails to meet its payment obligations, each non-defaulting participant shall pay its proportionate share of the payments owed by the defaulting participant. Because it is impracticable to predict defaulting participants, the Company cannot estimate the maximum potential amount of future payment, if any, which could be required under this provision.

*Nuclear Regulatory Commission.* The NRC regulates the operation of all commercial nuclear power reactors in the U.S., including Palo Verde. The NRC periodically conducts inspections of nuclear facilities and monitors performance indicators to enable the agency to arrive at objective conclusions about a licensee's safety performance.

*Palo Verde Operating Licenses.* Operation of each of the three Palo Verde Units requires an operating license from the NRC. The NRC issued full power operating licenses for Unit 1 in June 1985, Unit 2 in April 1986 and Unit 3 in November 1987 and issued renewed operating licenses for each of the three units in April 2011, which extended the licenses for Units 1, 2 and 3 to June 2045, April 2046 and November 2047, respectively.

*Decommissioning.* Pursuant to the ANPP Participation Agreement and federal law, the Company funds its share of the estimated costs to decommission Palo Verde Units 1, 2 and 3, including the Common Facilities, through the term of their respective operating licenses and is required to maintain a minimum accumulation and funding level in its decommissioning account at the end of each annual reporting period during the life of the plant. The Company has established the NDT with an independent trustee, which enables the Company to record a current deduction for federal income tax purposes for most of the amounts funded. At December 31, 2018, the NDT had a balance of \$276.9 million, which is above its minimum funding level. The Company monitors the status of the NDT and adjusts contributions accordingly.

Decommissioning costs are estimated every three years based upon engineering cost studies performed by outside engineers retained by APS. In April 2017, the Palo Verde Participants approved the 2016 Palo Verde decommissioning study ("2016 Study"). The 2016 Study estimated that the Company must fund approximately \$432.8 million (stated in 2016 dollars) to cover its share of decommissioning costs which was an increase in decommissioning costs of \$52.1 million (stated in 2016 dollars) from the 2013 Palo Verde decommissioning study ("2013 Study"). The effect of this change increased the ARO by \$3.5 million, which was recorded during the second quarter of 2017, and increased annual expenses starting in April 2017. Although the 2016 Study was based on the latest available information, there can be no assurance that decommissioning cost estimates will not increase in the future or that regulatory requirements will not change. In addition, until a new low-level radioactive waste repository opens and operates for a number of years, estimates of the cost to dispose of low-level radioactive waste are subject to uncertainty. As provided in the ANPP Participation Agreement, the participants are required to conduct a new decommissioning study every three years. While the Company attempts to seek amounts in rates to meet its decommissioning obligations, it is not able to conclude given the evidence available to it now that it is probable these costs will continue to be collected over the period until decommissioning begins in 2044. The Company is ultimately responsible for these costs and its future actions combined with future decisions from regulators will determine how successful the Company is in this effort.

*Spent Fuel and Waste Disposal.* Pursuant to the Nuclear Waste Policy Act of 1982, as amended in 1987, the DOE is legally obligated to accept and dispose of all spent nuclear fuel and other high-level radioactive waste generated by all domestic power reactors by 1998. The DOE's obligations are reflected in a contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste with each nuclear power plant. The DOE failed to begin accepting spent nuclear fuel by 1998. On December 19, 2012, APS, acting on behalf of itself and the Palo Verde Participants, filed a second breach of contract lawsuit against the DOE. This lawsuit sought to recover damages incurred due to the DOE's failure to accept Palo Verde's spent nuclear fuel for the period beginning January 1, 2007 through June 30, 2011. Pursuant to the terms of the August 18, 2014 settlement agreement, and as amended with the DOE, APS files annual claims for the period July 1 of the then-previous year to June 30 of the then-current year on behalf of itself and those utilities that share in power and energy entitlements, and bear certain allocated costs, with respect to Palo Verde based upon the ANPP Participation Agreement dated August 23, 1973. The settlement agreement, as amended, provides APS with a method for submitting claims and receiving recovery for costs incurred through December 31, 2016, which has been

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extended to December 31, 2019. The Company's share of costs recovered in 2018, 2017, and 2016, respectively are presented below (in thousands):

<u>Costs Recovery Period</u>	<u>Amount Refunded</u>	<u>Amount Credited to Customers through Fuel Adjustment Clauses</u>	<u>Period Credited to Customers</u>
July 2016 - June 2017	\$ 1,413	\$ 1,121	March 2018
July 2015 - June 2016	1,779	1,432	March 2017
July 2014 - June 2015	1,884	1,581	March 2016

On October 31, 2018, APS filed a \$10.2 million claim for the period July 1, 2017 through June 30, 2018. The Company's share of this claim is approximately \$1.6 million. This claim is pending DOE review. The majority of the reimbursement received by the Company is expected to be credited to customers through the applicable fuel adjustment clauses.

*DOE's Construction Authorization Application for Yucca Mountain.* The DOE had planned to meet its disposal obligations by designing, licensing, constructing and operating a permanent geologic repository in Yucca Mountain, Nevada. In March 2010, the DOE filed a motion to dismiss with prejudice its Yucca Mountain construction authorization application that was pending before the NRC. Several interested parties have intervened in the NRC proceeding. The Company cannot predict when spent fuel shipments to the DOE will commence.

Palo Verde has sufficient capacity at its on-site independent spent fuel storage installation ("ISFSI") to store all of the nuclear fuel that will be irradiated during the initial operating license period, which ends in December 2027. Additionally, Palo Verde has sufficient capacity at its on-site ISFSI to store a portion of the fuel that will be irradiated during the period of extended operation, which ends in November 2047. If uncertainties regarding the U.S. government's obligation to accept and store spent fuel are not favorably resolved, APS will evaluate alternative storage solutions that may obviate the need to expand the ISFSI to accommodate all of the fuel that will be irradiated during the period of extended operation.

*Liability and Insurance Matters.* The Palo Verde Participants have insurance for public liability resulting from nuclear energy hazards to the full limit of liability under federal law, which is currently at \$14.1 billion. This potential liability is covered by primary liability insurance provided by commercial insurance carriers in the amount of \$450.0 million, and the balance is covered by an industry-wide retrospective assessment program. If a loss at a nuclear power plant covered by the programs exceeds the accumulated funds in the primary level of protection, the Company could be assessed retrospective premium adjustments on a per incident basis. Under federal law, the maximum assessment per reactor under the program for each nuclear incident is approximately \$137.6 million, subject to an annual limit of \$20.5 million. Based upon the Company's 15.8% interest in the three Palo Verde units, the Company's maximum potential assessment per incident for all three units is approximately \$62.1 million, with an annual payment limitation of approximately \$9.7 million.

The Palo Verde Participants maintain \$2.8 billion of "all risk" nuclear property insurance. The insurance provides coverage for property damage and decontamination at Palo Verde. For covered incidents involving property damage not accompanied by a release of radioactive material, the policy's coverage limit is \$2.3 billion. The Company has also secured insurance against portions of any increased cost of generation or purchased power and business interruption resulting from a sudden and unforeseen outage of any of the three units. The insurance coverage discussed in this and the previous paragraph is subject to certain policy conditions and exclusions. A mutual insurance company whose members are utilities with nuclear facilities issues these policies. If losses at any nuclear facility covered by this mutual insurance company were to exceed the accumulated funds for these insurance programs, the Company could be assessed retrospective premium adjustments of up to \$13.5 million for the current policy period.

*Palo Verde O&M Expense.* Included in other O&M expenses are expenses associated with Palo Verde as follows (in thousands):

<b>Years Ended December 31,</b>					
<b>2018</b>		<b>2017</b>		<b>2016</b>	
\$	96,454	\$	99,364	\$	96,914

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**Four Corners**

On July 6, 2016, the Company sold its interests in Four Corners for \$32.0 million to 4C Acquisition, LLC, an affiliate of APS ("APS's affiliate"), and Pinnacle West Capital Corporation ("Pinnacle West"), the parent company of APS and APS's affiliate. No significant gain or loss was recorded for this sale. APS's affiliate assumed responsibility for all Four Corners capital expenditures made after July 6, 2016, which assumption is guaranteed by Pinnacle West. In addition, APS's affiliate will indemnify the Company against certain liabilities and costs related to the future operation of Four Corners, which indemnification is guaranteed by Pinnacle West. See Part II, Item 8, Financial Statements and Supplementary Data, Note D for further discussion of regulatory filings associated with Four Corners.

**G. Accounting for Asset Retirement Obligation**

The Company records its ARO in accordance with the FASB guidance. This guidance affects the accounting for the decommissioning of Palo Verde and the method used to report the decommissioning obligation. The Company also complies with the FASB guidance for conditional ARO, which primarily affects the accounting for the disposal obligations of the Company's fuel oil storage tanks, water wells, evaporative ponds and asbestos found at the Company's gas-fired generating plants. The Company's ARO are subject to various assumptions and determinations such as: (i) whether a legal obligation exists to remove assets; (ii) estimation of the fair value of the costs of removal; (iii) when final removal will occur; (iv) future changes in decommissioning cost escalation rates; and (v) the credit-adjusted interest rates to be utilized in discounting future liabilities. Changes that may arise over time with regard to these assumptions and determinations will change amounts recorded in the future as an expense for ARO. The Company records the increase in the ARO due to the passage of time as an operating expense (accretion expense). If the Company incurs or assumes any liability in retiring any asset at the end of its useful life without a legal obligation to do so, it will record such retirement costs as incurred.

The ARO liability for Palo Verde is based upon the estimated cost of decommissioning the plant from the 2016 Study. See Part II, Item 8, Financial Statements and Supplementary Data, Note F of Notes to Financial Statements. The ARO liability is calculated by adjusting the estimated decommissioning costs for spent fuel storage and a profit margin and market-risk premium factor. The resulting costs are escalated over the remaining life of the plant and finally discounted using a credit-risk adjusted discount rate. As Palo Verde approaches the end of its estimated useful life, the difference between the ARO liability and future current cost estimates will narrow over time due to the accretion of the ARO liability. Because the DOE is obligated to assume responsibility for the permanent disposal of spent fuel, such costs have not been included in the ARO calculation. The Company maintains six external trust funds with an independent trustee that are legally restricted to settling its ARO at Palo Verde. The fair value of the funds at December 31, 2018 is \$276.9 million.

The FASB guidance requires the Company to revise its previously recorded ARO for any changes in estimated cash flows including changes in estimated probabilities related to timing of settlements. Any changes that result in an upward revision to estimated cash flows shall be treated as a new liability. Any downward revisions to the estimated cash flows result in a reduction to the previously recorded ARO. The 2013 Study resulted in a downward revision of \$1.9 million. In the second quarter of 2017, the Company implemented the results of the 2016 Study and revised its ARO related to Palo Verde to increase its estimated cash flows from the 2013 Study to the 2016 Study. See Part II, Item 8, Financial Statements and Supplementary Data, Note F of Notes to Financial Statements. The assumptions used to calculate the increases to the Palo Verde ARO liability are as follows:

	Escalation Rate	Credit-Risk Adjusted Discount Rate
Original ARO liability .....	3.60%	9.50%
Incremental ARO liability (2010) .....	3.60%	6.20%
Incremental ARO liability (2016) .....	3.25%	4.34%

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An analysis of the activity of the Company's total ARO liability from January 1, 2016 through December 31, 2018, including the effects of each year's estimate revisions, is presented below (in thousands). In 2017, the estimate revision reflects increases in the estimated cash flows related to Palo Verde's decommissioning due to implementing the 2016 Study. In 2016, the settled liabilities reflect the sale of the Company's interest in Four Corners including the related ARO.

	2018	2017	2016
ARO liability at beginning of year.....	\$ 93,029	\$ 81,800	\$ 81,621
Liabilities incurred.....	—	138	—
Liabilities settled.....	(272)	(19)	(6,993)
Revisions to estimate .....	—	3,461	—
Accretion expense.....	8,351	7,649	7,172
ARO liability at end of year.....	<u>\$ 101,108</u>	<u>\$ 93,029</u>	<u>\$ 81,800</u>

The Company has transmission and distribution lines which are operated under various land rights agreements. Upon the expiration of any non-perpetual land rights agreement, the Company may have a legal obligation to remove the lines; however, the Company has assessed the likelihood of this occurring as remote. The majority of these agreements are perpetual or include renewal options that the Company routinely exercises. The amount of cost of removal collected in rates for non-legal liabilities has not been material.

## H. Common Stock

### Overview

The Company's common stock has a stated value of \$1 per share, with no cumulative voting rights or preemptive rights. Holders of the common stock have the right to elect the Company's directors and to vote on other matters.

### Long-Term Incentive Plan

On May 29, 2014, the Company's shareholders approved an amended and restated stock-based long-term incentive plan ("Amended and Restated 2007 LTIP") and authorized the issuance of up to 1.7 million shares of the Company's common stock for the benefit of directors and employees. Under the Amended and Restated 2007 LTIP, shares of the Company's common stock may be issued through the award or grant of non-statutory stock options, incentive stock options, stock appreciation rights, restricted stock, bonus stock, performance stock, cash-based awards and other stock-based awards. The Company may issue new shares, purchase shares on the open market, or issue shares from shares of the Company's common stock the Company has repurchased to meet the share requirements of the Amended and Restated 2007 LTIP. Beginning in 2015, shares of the Company's common stock issued for employee benefit and stock incentive plans have been issued from the shares repurchased and held in treasury stock. As discussed in Part II, Item 8, Financial Statements and Supplementary Data, Note A of Notes to Financial Statements, the Company accounts for its stock-based long-term incentive plan under the FASB guidance for stock-based compensation.

*Restricted Stock with Service Condition and Other Stock-Based Awards.* The Company has awarded restricted stock and other stock-based awards under its long-term incentive plan. Restrictions from resale on restricted stock awards generally lapse and awards vest over periods of one to three years, subject to continuous service requirements. The market value of the unvested restricted stock at the date of grant is amortized to expense over the restriction period net of anticipated forfeitures. Other stock-based awards, granted to directors in lieu of cash for retainers and meeting fees, are fully vested and are expensed at fair value on the date of grant and are not included in the tables below.

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The expense, deferred tax benefit, and current tax benefit recognized related to restricted stock and other stock-based awards in 2018, 2017 and 2016 is presented below (in thousands):

	2018	2017	2016
Expense (a).....	\$ 3,198	\$ 2,997	\$ 2,594
Deferred tax benefit .....	671	1,049	908
Current tax benefit recognized.....	117	318	183

(a) Any capitalized costs related to these expenses is less than \$0.3 million for all years.

The aggregate intrinsic value and fair value at grant date of restricted stock and other stock-based awards which vested in 2018, 2017 and 2016 is presented below (in thousands):

	2018	2017	2016
Aggregated intrinsic value.....	\$ 3,771	\$ 3,711	\$ 2,515
Fair value at grant date .....	3,212	2,803	1,993

The unvested restricted stock transactions for 2018 are presented below:

	Total Shares	Weighted Average Grant Date Fair Value	Unrecognized Compensation Expense (a) (In thousands)	Aggregate Intrinsic Value (In thousands)
Restricted shares outstanding at December 31, 2017 (b)...	106,235	\$ 45.76		
Stock awards .....	62,348	54.49		
Vested.....	(69,948)	45.93		
Forfeitures.....	(4,727)	42.29		
Restricted shares outstanding at December 31, 2018 (b)...	<u>93,908</u>	51.60	\$ 2,009	\$ 4,708

(a) The unrecognized compensation expense is expected to be recognized over the weighted average remaining contractual term of the outstanding restricted stock of approximately one year.

(b) Excludes the stock-based retention grant to the President and Chief Executive Officer ("CEO") of 27,624 shares. See "Restricted Stock with a Market Condition (Performance Shares)" section below for further details.

The weighted average fair value per share at grant date for restricted stock and other stock-based awards granted during 2018, 2017 and 2016 were:

	2018	2017	2016
Weighted average fair value per share .....	\$ 54.49	\$ 49.78	\$ 40.95

The holder of a restricted stock award has rights as a shareholder of the Company, including the right to vote and receive cash dividends on restricted stock.

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*Restricted Stock with a Market Condition (Performance Shares).* The Company has granted performance share awards to certain officers under the Company's Amended and Restated 2007 LTIP, which provides for issuance of Company stock based on the achievement of certain performance criteria over a three-year period. The payout varies between 0% to 200% of performance share awards.

Detail of performance shares vested follows:

Date Vested	Payout Ratio	Performance Shares Awarded	Compensation Costs Expensed	Period Compensation Costs Expensed	Aggregated Intrinsic Value
			(In thousands)		(In thousands)
January 30, 2019	71%	39,923	\$ 2,143	2016-2018	2,046
January 31, 2018	175%	68,379	1,499	2015-2017	3,569
January 25, 2017	32%	11,314	932	2014-2016	512
January 27, 2016	0%	0	851	2013-2015	—

In 2019, 2020 and 2021, subject to meeting certain performance criteria and continuous service requirements, additional performance shares could vest. In accordance with the FASB guidance related to stock-based compensation, the Company recognizes the related compensation expense by ratably amortizing the grant date fair value of awards over the requisite service period and the compensation expense is only adjusted for forfeitures. As of December 31, 2018, the maximum number of shares that can be issued under the plan are 223,885 shares.

The fair value at the date of each separate grant of performance shares was based upon a Monte Carlo simulation. The Monte Carlo simulation reflected the structure of the performance plan which calculates the share payout on performance of the Company relative to a defined peer group over a three-year performance period based upon total return to shareholders. The fair value was determined as the average payout of one million simulation paths discounted to the grant date using a risk-free interest rate based upon the constant maturity treasury rate yield curve at the grant date. The expected volatility of total return to shareholders is calculated in accordance with the performance shares' term structure and includes the volatilities of all members of the defined peer group.

The outstanding performance share awards at the 100% performance level is summarized below:

	Number Outstanding	Weighted Average Grant Date Fair Value	Unrecognized Compensation Expense (b)	Aggregate Intrinsic Value
			(In thousands)	(In thousands)
Performance shares outstanding at December 31, 2017 (a)..	172,591	\$ 38.21		
Performance share awards .....	45,977	48.99		
Performance shares vested .....	(39,077)	38.36		
Performance shares forfeited.....	(3,646)	42.47		
Performance shares outstanding at December 31, 2018 (a)..	<u>175,845</u>	40.90	\$ 1,961	\$ 8,815

(a) On December 15, 2015, the Company issued a stock based retention grant to the President and CEO of 27,624 shares in accordance with the Amended and Restated 2007 LTIP that is eligible for vesting based on the achievement of certain performance conditions and a five year service period, as stated in the President and CEO's employment agreement. The performance condition was met as of November 2016 as determined by the Compensation Committee and has been included in the beginning and ending balance in the table above.

(b) The unrecognized compensation expense is expected to be recognized over the weighted average remaining contractual term of the awards of approximately one year, except for the President and CEO retention grant, which is approximately two years.

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A summary of information related to performance shares for 2018, 2017 and 2016 is presented below:

	2018	2017	2016
Weighted average per share grant date fair value per share of performance shares awarded .....	\$ 48.99	\$ 42.62	\$ 38.11
Fair value of performance shares vested (in thousands) .....	1,499	298	—
Intrinsic value of performance shares vested (in thousands) (a) .....	2,040	512	—
Compensation expense (in thousands) (b) (c) .....	2,271	2,012	1,655
Deferred tax benefit related to compensation expense (in thousands) (b) ..	477	704	579

(a) Based on a 100%, 32% and 0% performance level, respectively.

(b) Includes adjustments for estimated forfeitures.

(c) Includes President and CEO retention grant.

### Repurchase Program

No shares of the Company's common stock were repurchased during the twelve months ended December 31, 2018. Detail regarding the Company's stock repurchase program are presented below:

	Since 1999 (a)	Authorized Shares
Shares repurchased (b) (c).....	25,406,184	
Cost, including commission (in thousands) .....	\$ 423,647	
Total remaining shares available for repurchase at December 31, 2018.....		393,816

(a) Represents repurchased shares and cost since inception of the stock repurchase program in 1999.

(b) Shares repurchased does not include 86,735 treasury shares related to employee compensation arrangements that were not part of the Company's repurchase program.

(c) Beginning in 2015, shares of the Company's common stock issued for employee benefit and stock incentive plans have been issued from the shares repurchased and held in treasury stock. The Company has issued 345,352 treasury shares since 2015 including 96,783 shares during 2018.

The Company may in the future make purchases of shares of its common stock pursuant to its authorized program in open market transactions at prevailing prices and may engage in private transactions where appropriate. The repurchased shares will be available for issuance under employee benefit and stock incentive plans or the repurchased shares may be retired.

### Dividend Policy

On December 28, 2018, the Company paid \$14.6 million in quarterly cash dividends to shareholders. The Company paid a total of \$57.5 million, \$53.3 million and \$49.6 million in cash dividends during the twelve months ended December 31, 2018, 2017 and 2016, respectively. On January 31, 2019, the Board of Directors declared a quarterly cash dividend of \$0.36 per share payable on March 29, 2019 to shareholders of record as of the close of business on March 15, 2019.

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**Basic and Diluted Earnings Per Share**

The FASB guidance requires the Company to include share-based compensation awards that qualify as participating securities in both basic and diluted earnings per share to the extent they are dilutive. A share-based compensation award is considered a participating security if it receives non-forfeitable dividends or may participate in undistributed earnings with common stock. The Company awards unvested restricted stock, which qualifies as a participating security. The basic and diluted earnings per share are presented below:

	Years Ended December 31,		
	2018	2017	2016
<b>Weighted average number of common shares outstanding:</b>			
Basic number of common shares outstanding .....	40,521,364	40,414,556	40,350,688
Dilutive effect of unvested performance awards .....	121,276	120,635	57,345
Diluted number of common shares outstanding .....	<u>40,642,640</u>	<u>40,535,191</u>	<u>40,408,033</u>
<b>Basic net income per common share:</b>			
Net income .....	\$ 84,315	\$ 98,261	\$ 96,768
Income allocated to participating restricted stock .....	(297)	(368)	(321)
Net income available to common shareholders .....	<u>\$ 84,018</u>	<u>\$ 97,893</u>	<u>\$ 96,447</u>
<b>Diluted net income per common share:</b>			
Net income .....	\$ 84,315	\$ 98,261	\$ 96,768
Income reallocated to participating restricted stock .....	(296)	(368)	(321)
Net income available to common shareholders .....	<u>\$ 84,019</u>	<u>\$ 97,893</u>	<u>\$ 96,447</u>
<b>Basic net income per common share:</b>			
Distributed earnings .....	\$ 1.415	\$ 1.315	\$ 1.225
Undistributed earnings .....	0.655	1.105	1.165
Basic net income per common share .....	<u>\$ 2.070</u>	<u>\$ 2.420</u>	<u>\$ 2.390</u>
<b>Diluted net income per common share:</b>			
Distributed earnings .....	\$ 1.415	\$ 1.315	\$ 1.225
Undistributed earnings .....	0.655	1.105	1.165
Diluted net income per common share .....	<u>\$ 2.070</u>	<u>\$ 2.420</u>	<u>\$ 2.390</u>

The amount of restricted stock awards and performance shares at 100% performance level excluded from the calculation of the diluted number of common shares outstanding because their effect was antidilutive is presented below:

	Year Ended December 31,		
	2018	2017	2016
Restricted stock awards .....	62,836	67,739	53,703
Performance shares (a) .....	22,815	—	47,246

- (a) Certain performance shares were excluded from the computation of diluted earnings per share as no payouts would have been required based upon performance at the end of each corresponding period.

**Authorization to Issue and Retire Shares**

On January 30, 2019, the Company submitted an application with both the NMPRC and the FERC seeking approval to issue shares of common stock, including the reissuance of treasury shares, in an amount up to \$200.0 million in one or more transactions. In order to align the number of shares of common stock held as treasury stock by the Company with various regulatory applications, filings and orders, on January 31, 2019, the Board of Directors of the Company approved the cancellation of 1.4 million shares of Common Stock held as treasury shares by the Company effective upon the later of approval by the FERC of the accounting treatment of the cancellation and March 31, 2019.

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**I. Accumulated Other Comprehensive Income (Loss)**

Upon adoption of ASU 2016-01, Financial Instruments-Overall, the Company recorded, on January 1, 2018, a cumulative effect adjustment, net of income taxes, to increase retained earnings by \$41.0 million with an offset to AOCI. Changes in Accumulated Other Comprehensive Income (Loss) (net of tax) by component are presented below (in thousands):

	Unrecognized Pension and Post- retirement Benefit Costs	Net Unrealized Gains (Losses) on Marketable Securities	Net Losses on Cash Flow Hedges	Accumulated Other Comprehensive Income (Loss)
Balance at December 31, 2015.....	\$ (29,869)	\$ 27,765	\$ (11,810)	\$ (13,914)
Other comprehensive income before reclassifications.....	7,363	6,904	—	14,267
Amounts reclassified from accumulated other comprehensive income (loss).....	(1,422)	(6,206)	159	(7,469)
Balance at December 31, 2016.....	(23,928)	28,463	(11,651)	(7,116)
Other comprehensive income before reclassifications.....	7,951	20,251	—	28,202
Amounts reclassified from accumulated other comprehensive income (loss).....	(1,813)	(8,524)	309	(10,028)
Balance at December 31, 2017.....	(17,790)	40,190	(11,342)	11,058
Cumulative effect adjustment .....	—	(41,028)	—	(41,028)
Other comprehensive loss before reclassifications.....	(4,589)	(3,240)	—	(7,829)
Amounts reclassified from accumulated other comprehensive income (loss).....	(2,544)	1,136	423	(985)
Balance at December 31, 2018.....	\$ (24,923)	\$ (2,942)	\$ (10,919)	\$ (38,784)

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Amounts reclassified from Accumulated Other Comprehensive Income (Loss) for the twelve months ended December 31, 2018, 2017 and 2016 are as follows (in thousands):

<u>Details about Accumulated Other Comprehensive Income (Loss) Components</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>Affected Line Item in the Statements of Operations</u>
Amortization of pension and post-retirement benefit costs:				
Prior service benefit .....	\$ 9,657	\$ 9,657	\$ 7,407	Miscellaneous non-operating income
Net loss .....	<u>(6,387)</u>	<u>(6,776)</u>	<u>(4,965)</u>	Miscellaneous non-operating deductions
	3,270	2,881	2,442	Income (loss) before income taxes
Income tax effect .....	<u>(726)</u>	<u>(1,068)</u>	<u>(1,020)</u>	Income tax (benefit) expense
	<u>2,544</u>	<u>1,813</u>	<u>1,422</u>	Net income (loss)
Marketable securities:				
Net realized gain (loss) on sale of securities .....	<u>(1,445)</u>	<u>10,626</u>	<u>7,640</u>	Investment and interest income, net
	(1,445)	10,626	7,640	Income (loss) before income taxes
Income tax effect .....	<u>309</u>	<u>(2,102)</u>	<u>(1,434)</u>	Income tax (benefit) expense
	<u>(1,136)</u>	<u>8,524</u>	<u>6,206</u>	Net income (loss)
Loss on cash flow hedge:				
Amortization of loss .....	<u>(568)</u>	<u>(532)</u>	<u>(498)</u>	Interest on long-term debt and revolving credit facility
	(568)	(532)	(498)	Income (loss) before income taxes
Income tax effect .....	<u>145</u>	<u>223</u>	<u>339</u>	Income tax (benefit) expense
	<u>(423)</u>	<u>(309)</u>	<u>(159)</u>	Net income (loss)
Total reclassifications .....	<u>\$ 985</u>	<u>\$ 10,028</u>	<u>\$ 7,469</u>	

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**J. Long-Term Debt and Financing Obligations**

Outstanding long-term debt and financing obligations, net of issuance costs, are as follows:

	December 31,	
	2018	2017
(In thousands)		
<b>Long-Term Debt:</b>		
Pollution Control Bonds (1):		
7.25% 2009 Series A refunding bonds, due 2040 (7.46% effective interest rate).....	\$ 62,695	\$ 62,657
7.25% 2009 Series B refunding bonds, due 2040 (7.49% effective interest rate).....	36,544	36,518
4.50% 2012 Series A refunding bonds, due 2042 (4.63% effective interest rate).....	58,530	58,501
Total Pollution Control Bonds.....	157,769	157,676
Senior Notes (2):		
Senior Notes-Public:		
3.30% Senior Notes, net of discount, due 2022 (3.43% effective interest rate).....	149,269	149,101
6.00% Senior Notes, net of discount, due 2035 (6.58% effective interest rate).....	394,231	394,040
7.50% Senior Notes, net of discount, due 2038 (7.67% effective interest rate).....	147,441	147,384
5.00% Senior Notes, net of discount, due 2044 (4.93% effective interest rate).....	302,845	302,901
	993,786	993,426
Senior Notes-Private Placement:		
4.22% Senior Notes, net of discount, due 2028 (4.30% effective interest rate).....	124,157	—
Total Senior Notes .....	1,117,943	993,426
RGRT Senior Notes (3):		
5.04% Senior Notes, Series C, due 2020 (5.16% effective interest rate).....	44,928	44,886
4.07% Senior Guaranteed Notes, due 2025 (4.18% effective interest rate).....	64,579	—
Total RGRT Senior Notes .....	109,507	44,886
Total long-term debt .....	1,385,219	1,195,988
<b>Financing Obligations:</b>		
Revolving Credit Facility (4).....	49,207	173,533
Total long-term debt and financing obligations.....	1,434,426	1,369,521
<b>Current Portion</b> (amount due within one year):		
Current maturities of long term debt (1) .....	(99,239)	—
Short-term borrowings under the revolving credit facility.....	(49,207)	(173,533)
	\$ 1,285,980	\$ 1,195,988

(1) Pollution Control Bonds

The Company has three series of tax exempt unsecured PCBs in aggregate principal amount of \$159.8 million. The 7.25% 2009 Series A and the 7.25% 2009 Series B PCBs with an aggregate principal amount, together, of \$100.6 million have optional redemptions beginning in February 2019 and April 2019, respectively, at which time the Company expects to repay, remarket or replace these bonds. The principal and related unamortized issuance cost on these PCBs were reclassified to current maturities of long-term debt as of December 31, 2018. On February 1, 2019, the Company purchased in lieu of redemption all of the 7.25% 2009 Series A with a principal amount of \$63.5 million utilizing funds borrowed under the RCF. The Company is currently holding the bonds and may remarket them or replace them with debt instruments of equivalent value at a future date depending on financing needs and market conditions.

(2) Senior Notes

The Senior Notes are unsecured obligations of the Company. They were issued pursuant to bond covenants that provide limitations on the Company's ability to enter into certain transactions. The 6.00% Senior Notes have an aggregate principal amount of \$400.0 million and were issued in May 2005. The proceeds, net of a \$2.3 million discount, were used to fund the

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retirement of the Company's first mortgage bonds. The Company amortizes the loss associated with a cash flow hedge recorded in accumulated other comprehensive income to earnings as interest expense over the life of the 6.00% Senior Notes. See Part II, Item 8, Financial Statements and Supplementary Data, Note P of Notes to Financial Statements. This amortization is included in the effective interest rate of the 6.00% Senior Notes.

The 7.50% Senior Notes have an aggregate principal amount of \$150.0 million and were issued in June 2008. The proceeds, net of a \$1.3 million discount, were used to repay outstanding short-term borrowings of \$44.0 million, fund capital expenditures and for other general corporate purposes.

The 3.30% Senior Notes have an aggregate principal amount of \$150.0 million were issued in December 2012. The proceeds, net of a \$0.3 million discount, were used to repay outstanding short-term borrowings, fund construction expenditures and for working capital and general corporate purposes.

In December 2014, the Company issued 5.00% Senior Notes with an aggregate principal amount of \$150.0 million. The proceeds, net of a \$0.5 million discount, were used to fund construction expenditures and for working capital and general corporate purposes. In March 2016, the Company issued additional 5.00% Senior Notes with an aggregate principal amount of \$150.0 million. The proceeds from this issuance, after deducting the underwriters' commission, were \$158.1 million. These proceeds included accrued interest of \$2.4 million and a \$7.1 million premium before expenses. The net proceeds from the sale of these senior notes were used to repay outstanding short-term borrowings under the RCF. After the March 2016 issuance, the Company's 5.00% Senior Notes due 2044 had a total principal amount outstanding of \$300.0 million.

On June 28, 2018, the Company entered into a note purchase agreement with several institutional purchasers under which the Company issued and sold \$125 million aggregate principal amount of 4.22% Senior Notes due August 15, 2028. The net proceeds from the issuance of these senior notes were used to repay outstanding short-term borrowings under the RCF for working capital and general corporate purposes. The Company will pay interest on the notes semi-annually on February 15 and August 15 of each year until maturity, beginning on February 15, 2019. The Company may redeem the notes, in whole or in part, at any time at a redemption price equal to 100% of the principal amount to be redeemed together with the interest on such principal amount accrued to the date of redemption, plus a make-whole amount based on the prevailing market interest rates. The note purchase agreement requires compliance with certain covenants, including a total debt to capitalization ratio. The Company was in compliance with these requirements throughout 2018. The issuance and sale of these senior notes was made in reliance on a private placement exemption from the registration provisions of the Securities Act of 1933, as amended ("Securities Act").

(3) RGRT Senior Notes

In 2010, the Company and RGRT, a Texas grantor trust through which the Company finances its portion of fuel for Palo Verde, entered into a note purchase agreement with various institutional purchasers. Under the terms of the agreement, RGRT issued and sold to the purchasers \$110 million aggregate principal amount of Senior Notes ("RGRT Notes"). In August 2015 and 2017, \$15.0 million and \$50.0 million of the RGRT Notes, respectively, matured and were paid with borrowings from the RCF. The Company guarantees the payment of principal and interest on the RGRT Notes. In the Company's financial statements, the assets and liabilities of RGRT are reported as assets and liabilities of the Company. In August 2020, the remaining \$45.0 million of these RGRT Notes mature.

The sale of the RGRT Notes was made by RGRT in reliance on a private placement exemption from registration under the Securities Act. The proceeds of \$109.4 million, net of issuance costs, from the sale of the RGRT Notes was used by RGRT to repay amounts borrowed under the RCF and enabled future nuclear fuel financing requirements of RGRT to be met with a combination of the RGRT Notes and amounts borrowed from the RCF.

On June 28, 2018, the RGRT and the Company entered into a note purchase agreement with several institutional purchasers under which the RGRT issued and sold \$65 million aggregate principal amount of 4.07% Senior Guaranteed Notes due August 15, 2025 ("RGRT Senior Notes"). The net proceeds from the RGRT Senior Notes were used to repay outstanding short-term borrowings under the RCF to finance nuclear fuel purchases. The Company guaranteed the payment of principal and interest on the RGRT Senior Notes. RGRT's assets, liabilities and operations are consolidated in the Company's financial statements and the RGRT Senior Notes are included as long-term debt on the balance sheet. The issuance and sale of the RGRT Senior Notes was made in reliance on a private placement exemption from the registration provisions of the Securities Act.

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RGRT pays interest on the senior notes above on February 15 and August 15 of each year until maturity, beginning on February 15, 2019. RGRT may redeem the senior notes, in whole or in part, at any time at a redemption price equal to 100% of the principal amount to be redeemed together with the interest on such principal amount accrued to the date of redemption, plus a make-whole amount based on the prevailing market interest rates. The note purchase agreement requires compliance with certain covenants, including a total debt to capitalization ratio. The Company and RGRT were in compliance with these requirements throughout 2018.

(4) Revolving Credit Facility

On January 14, 2014, the Company and RGRT entered into a second amended and restated credit agreement related to the RCF with JP Morgan Chase Bank, N.A., as administrative agent and issuing bank, and Union Bank, N.A., as syndication agent, and various lending banks party thereto. As of December 31, 2016, the Company had available \$300 million and the ability to increase the RCF by up to \$100 million with a term ending January 2019. On January 9, 2017, the Company exercised its option to extend the maturity of the RCF by one year to January 14, 2020 and to increase the size of the facility by \$50 million to \$350 million.

On September 13, 2018, the Company and The Bank of New York Mellon Trust Company, N.A., as trustee of the RGRT, entered into a third amended and restated credit agreement ("RCF Agreement") with MUFG Union Bank, N.A., as administrative agent and as syndication agent, various issuing banks and lending banks party thereto. Under the terms of the RCF Agreement, the Company has available a \$350 million RCF with a \$50 million subfacility for the issuance of letters of credit, and the Company extended the term of the Company's existing \$350 million revolving credit agreement from January 14, 2020 to September 13, 2023 ("Maturity Date"). The Company may increase the RCF by up to \$50 million (to a total of \$400 million) during the term of the RCF Agreement, upon the satisfaction of certain conditions more fully set forth in the RCF Agreement, including obtaining commitments from lenders or third party financial institutions. In addition, the Company may extend the Maturity Date up to two times, in each case for an additional one-year period, upon the satisfaction of certain conditions more fully set forth in the RCF Agreement, including requisite lender approval.

The RCF Agreement provides that amounts borrowed by the Company may be used for, among other things, working capital and general corporate purposes. Any amounts borrowed by the RGRT may be used, among other things, to finance the acquisition and cost to process nuclear fuel. Amounts borrowed by the RGRT are guaranteed by the Company and the balance borrowed under the RCF Agreement is recorded as short-term borrowings on the balance sheet. The RCF Agreement is unsecured. The RCF Agreement requires compliance with certain covenants, including a total debt to capitalization ratio. The Company is in compliance with these requirements throughout 2018. In August 2017, \$50.0 million aggregate principal amount of Series B 4.47% Senior Notes of the RGRT matured and was paid with borrowings from the RCF. On February 1, 2019, the Company purchased in lieu of redemption all of the 7.25% 2009 Series A PCBs with a principal amount of \$63.5 million utilizing funds borrowed under the RCF. The Company is currently holding the bonds and may remarket them or replace them with debt instruments of equivalent value at a future date depending on the Company's financing needs and market conditions. As of December 31, 2018, the total amount borrowed by the RGRT was \$26.2 million for nuclear fuel under the RCF. As of December 31, 2018, \$23.0 million of borrowings were outstanding under this facility for working capital and general corporate purposes. The weighted average interest rate on the RCF was 3.8% as of December 31, 2018.

As of December 31, 2018, the principal amount of scheduled maturities for the next five years of long-term debt are as follows (in thousands):

2019 (1) .....	\$ 100,600
2020 .....	45,000
2021 .....	—
2022 .....	150,000
2023 .....	—

- (1) The 7.25% 2009 Series A and the 7.25% 2009 Series B PCBs with an aggregate principal amount, together, of \$100.6 million have optional redemptions beginning in February 2019 and April 2019, respectively, at which time the Company expects to repay, remarket or replace these bonds.

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**K. Income Taxes**

On December 22, 2017, the TCJA was enacted. The TCJA includes significant changes to the IRC, including amendments that significantly changed the taxation of business entities and includes specific provisions related to regulated public utilities. The more significant changes that impact the Company included in the TCJA are reductions in the corporate federal income tax rate from 35% to 21%, elimination of the corporate alternative minimum tax provision, additional limitations on deductions of executive compensation, and limitations on the utilization of NOLs arising after December 31, 2017, to 80% of taxable income with no carryback but with an indefinite carryforward. The specific provisions related to regulated public utilities in the TCJA generally provide for the continued deductibility of interest expense, the elimination of bonus depreciation for property acquired and placed into service after December 31, 2017, and the continuance of rate normalization requirements for accelerated depreciation benefits and changes to deferred tax balances as a result of the change in the corporate federal income tax rate. Although the Company recorded provisional estimates of the impact of the TCJA, as of the date of enactment, no significant subsequent adjustments to the provisional estimates were recorded during the one-year measurement period as permitted by the SEC in SAB 118. The results for the twelve months ended December 31, 2018 and 2017 contain the impact of the TCJA.

Reductions in accumulated deferred federal income taxes ("ADFIT") due to the reduction in the corporate income tax rate to 21% under the provisions of the TCJA will result in amounts previously collected from utility customers for these deferred taxes to be refundable to such customers, generally through reductions in future rates. The TCJA includes provisions that stipulate how these excess deferred taxes are to be returned to customers for certain accelerated tax depreciation benefits. Potential refunds of other excess deferred taxes will be determined by the Company's regulators. The December 31, 2017 balance sheet reflects the impact of the TCJA which reduced ADFIT by \$298.9 million, reduced regulatory assets by \$23.6 million and increased regulatory liabilities by \$275.3 million. The changes in deferred taxes were recorded at the amount of the reduced future cash flow expected to be included in rates, as required in ASC 740. These adjustments had no impact on the Company's cash flows for the year ended December 31, 2017.

In February 2018, the FASB issued ASU 2018-02, which addresses concerns that the tax reduction due to the change in the corporate tax rate from 35% to 21% would be "stranded" in AOCI. ASU 2018-02 allows companies to reclassify stranded taxes from AOCI to retained earnings. The Company is currently evaluating the impact of ASU 2018-02 and its impact on regulated utilities. See Part II, Item 8, Financial Statements and Supplementary Data, Note B of Notes to Financial Statements for further discussion on new accounting standards.

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and liabilities at December 31, 2018 and 2017 are presented below (in thousands):

	December 31,	
	2018	2017
<b>Deferred tax assets:</b>		
Benefit of tax loss carryforwards .....	\$ 12,521	\$ 24,035
Alternative minimum tax credit carryforward.....	8,855	16,620
Pensions and benefits .....	31,874	32,606
Asset retirement obligation.....	21,305	19,530
Regulatory liabilities related to income taxes .....	63,378	63,794
Deferred fuel.....	2,483	1,405
Other .....	2,673	—
Total gross deferred tax assets.....	143,089	157,990
<b>Deferred tax liabilities:</b>		
Plant, principally due to depreciation and basis differences .....	(437,465)	(426,077)
Decommissioning .....	(30,757)	(34,520)
Other .....	—	(2,416)
Total gross deferred tax liabilities .....	(468,222)	(463,013)
Net accumulated deferred income taxes .....	\$ (325,133)	\$ (305,023)

Based on the average annual earnings before taxes for the prior three years, and excluding the effects of unusual or infrequent items, the Company believes that the deferred tax assets will be fully realized.

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The Company recognized income tax expense for 2018, 2017 and 2016 as follows (in thousands):

	Years Ended December 31,		
	2018	2017	2016
<b>Income tax expense (benefit):</b>			
<b>Federal:</b>			
Current .....	\$ (4,638)	\$ 2,507	\$ 2,642
Deferred .....	24,121	46,089	47,909
Total federal income tax.....	<u>19,483</u>	<u>48,596</u>	<u>50,551</u>
<b>State:</b>			
Current .....	1,888	(897)	766
Deferred .....	1,941	1,816	3,285
Total state income tax.....	<u>3,829</u>	<u>919</u>	<u>4,051</u>
Generation (amortization) of accumulated investment tax credits .....	3,056	1,489	(684)
Total income tax expense.....	<u>\$ 26,368</u>	<u>\$ 51,004</u>	<u>\$ 53,918</u>

As of December 31, 2018, the Company had \$8.9 million of alternative minimum tax ("AMT") credit carryforwards. Based on the TCJA provisions, the Company may claim a refund of 50% of the remaining AMT credits in 2019 and 2020. Any AMT credits remaining after 2020 will be refunded in 2021. As of December 31, 2018, the Company had \$11.9 million of federal and \$0.8 million of state tax loss carryforwards. Under the TCJA, NOLs arising in tax years ending after 2017 cannot be carried back but can be carried forward indefinitely. The use of NOLs generated after 2017 to offset taxable income is limited to 80% of taxable income. Federal NOLs generated prior to 2018 are able to offset 100% of future taxable income to the extent available but have lives of only 20 years.

Income tax provisions differ from amounts computed by applying the statutory federal income tax rate of 21% in 2018 and 35% in 2017 and 2016 to book income before federal income tax as follows (in thousands):

	Years Ended December 31,		
	2018	2017	2016
Federal income tax expense computed on income at statutory rate.....	\$ 23,243	\$ 52,243	\$ 52,740
Difference due to:			
State taxes, net of federal benefit.....	3,059	597	2,633
AEFUDC .....	(182)	450	(475)
Permanent tax differences.....	(682)	(2,562)	(2,369)
Other .....	930	276	1,389
Total income tax expense.....	<u>\$ 26,368</u>	<u>\$ 51,004</u>	<u>\$ 53,918</u>
Effective income tax rate .....	<u>23.8%</u>	<u>34.2%</u>	<u>35.8%</u>

The Company files income tax returns in the U.S. federal jurisdiction and in the states of Texas, New Mexico and Arizona. The Company is no longer subject to tax examination by the taxing authorities in the federal, Arizona and New Mexico jurisdictions for years prior to 2014. In August 2017, the Company reached an agreement with the Texas Comptroller of Public Accounts and settled audits in Texas for tax years 2007 through 2011.

In the third quarter of 2016, the Company changed its accounting for state income taxes from the flow-through method to the normalization method in accordance with the 2016 PUCT Final Order and the NMPRC Final Order. Under the flow-through method, the Company previously recorded deferred state income taxes and regulatory liabilities and assets offsetting such deferred state income taxes at the expected cash flow to be reflected in future rates. Upon implementation of normalization, the Company began amortizing the net regulatory asset for deferred state income taxes to deferred income tax expense over a 15-year period as allowed by the regulators. In the third quarter of 2016, the Company began recording deferred state income tax expense as required by normalization, retroactive to January 2016 as provided in the final orders. The impact of the change was additional income tax expense of \$2.3 million, \$1.9 million and \$5.1 million for the years ended December 31, 2018, 2017 and 2016, respectively.

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The FASB guidance prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The Company recorded a decrease of \$1.2 million (net of an increase of \$0.5 million), and a decrease of \$0.4 million (net of an increase of \$0.3 million), in 2017 and 2016, respectively, related to transmission and distribution costs and other amounts deducted in current and prior year Texas franchise tax returns. The Company recorded an unrecognized tax position of \$0.5 million in 2018, \$0.1 million in 2017 and a decrease of \$0.3 million in 2016 related to tax credits taken and apportionment factors used in prior year Arizona income tax returns, which have been settled through audit. A reconciliation of the December 31, 2018, 2017 and 2016 amounts of unrecognized tax benefits are as follows (in thousands):

	2018	2017	2016
Balance at January 1 .....	\$ 4,200	\$ 5,300	\$ 6,000
Additions for tax positions related to the current year.....	—	200	400
Reductions for tax positions related to the current year .....	(200)	—	—
Additions for tax positions of prior years .....	700	400	100
Reductions for tax positions of prior years .....	—	(1,700)	(1,200)
Balance at December 31 .....	<u>\$ 4,700</u>	<u>\$ 4,200</u>	<u>\$ 5,300</u>

If recognized, \$1.6 million of the unrecognized tax position at December 31, 2018, would reduce the effective tax rate. The Company recognized income tax expense for the increase in unrecognized tax positions of \$0.5 million for the year ended December 31, 2018.

The Company recognizes in tax expense interest and penalties related to tax benefits that have not been recognized. For the years ended December 31, 2018 and 2016, the Company recognized tax expense interest of \$0.6 million and \$0.1 million, respectively. For the year ended December 31, 2017 the Company recognized a tax benefit of \$0.2 million. The Company had approximately \$1.2 million and \$0.7 million accrued for the payment of interest and penalties at December 31, 2018 and 2017, respectively.

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**L. Commitments, Contingencies and Uncertainties**

**Power Purchase and Sale Contracts**

To supplement its own generation and operating reserve requirements and to meet its RPS requirements, the Company engages in power purchase arrangements that may vary in duration and amount based on an evaluation of the Company's resource needs, the economics of the transactions and specific RPS requirements. The Company has entered into the following significant agreements with various counterparties for the purchase and sale of electricity:

Type of Contract	Counterparty	Quantity	Term	Commercial Operation Date
Power Purchase and Sale Agreement .	Freeport	25 MW	December 2008 through December 2021	N/A
Power Purchase and Sale Agreement .	Freeport	100 MW	June 2006 through December 2021	N/A
Power Purchase Agreement.....	Hatch Solar Energy Center I, LLC	5 MW	July 2011 through July 2036	July 2011
Power Purchase Agreement.....	Solar Roadrunner, LLC	20 MW	August 2011 through August 2031	August 2011
Power Purchase Agreement.....	SunE EPE1, LLC	10 MW	June 2012 through June 2037	June 2012
Power Purchase Agreement.....	SunE EPE2, LLC	12 MW	May 2012 through May 2037	May 2012
Power Purchase Agreement.....	Macho Springs Solar, LLC	50 MW	May 2014 through May 2034	May 2014
Power Purchase Agreement.....	Newman Solar LLC	10 MW	December 2014 through December 2044	December 2014

The Company has a firm 100 MW Power Purchase and Sale Agreement ("Power Purchase and Sale Agreement") with Freeport-McMoran Copper & Gold Energy Services LLC ("Freeport") that provides for Freeport to deliver energy to the Company from the Luna Energy Facility (a natural gas-fired combined cycle generation facility located in Luna County, New Mexico) and for the Company to deliver a like amount of energy at Greenlee, Arizona. The Company may purchase the quantities noted in the table above at a specified price at times when energy is not exchanged under the Power Purchase and Sale Agreement. The agreement was approved by the FERC and will continue through an initial term ending December 31, 2021, with subsequent rollovers until terminated. Upon mutual agreement, the Power Purchase and Sale Agreement allows the parties to increase the amount of energy that is purchased and sold under the agreement. The parties have agreed to increase the amount up to 125 MW through December 2021.

The Company has entered into several power purchase agreements to help meet its RPS requirements. Namely, the Company has a 25-year purchase power agreement with Hatch Solar Energy Center I, LLC to purchase all of the output from a solar photovoltaic plant located in southern New Mexico, which began commercial operation in July 2011. In June 2015, the Company entered into a consent agreement with Hatch Solar Energy Center I, LLC to provide for additional or replacement photovoltaic modules. The Company also entered into a 20-year contract with Solar Roadrunner, LLC, a subsidiary of Global Infrastructure Partners, (formerly known as NRG Solar Roadrunner LLC) to purchase all of the output of a solar photovoltaic plant built in southern New Mexico, which began commercial operation in August 2011. In addition, the Company has 25-year purchase power agreements to purchase all of the output of two additional solar photovoltaic plants located in southern New Mexico, SunE EPE1, LLC and SunE EPE2, LLC, which began commercial operation in June 2012 and May 2012, respectively. In September 2017, Longroad Solar Portfolio Holdings, LLC purchased SunE EPE1, LLC, and in October 2017, Silicon Ranch Corporation purchased SunE EPE2, LLC with the Company's consent per the terms of both power purchase agreements.

Furthermore, the Company has a 20-year power purchase agreement with Macho Springs Solar, LLC to purchase the entire generation output delivered from the 50 MW Macho Springs solar photovoltaic plant located in Luna County, New Mexico, which began commercial operation in May 2014. Finally, the Company has a 30-year power purchase agreement with Newman Solar LLC to purchase the total output of approximately 10 MW from a solar photovoltaic plant on land subleased from the Company in proximity to Newman. This solar photovoltaic plant began commercial operation in December 2014.

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**Environmental Matters**

*General.* The Company is subject to extensive laws, regulations and permit requirements with respect to air and greenhouse gas ("GHG") emissions, water discharges, soil and water quality, waste management and disposal, natural resources and other environmental matters by federal, state, regional, tribal and local authorities. Failure to comply with such laws, regulations and requirements can result in actions by authorities or other third parties that might seek to impose on the Company administrative, civil and/or criminal penalties or other sanctions. In addition, releases of pollutants or contaminants into the environment can result in costly cleanup liabilities. These laws, regulations and requirements are subject to change through modification or reinterpretation, or the introduction of new laws and regulations and, as a result, the Company may face additional capital and operating costs to comply.

*National Ambient Air Quality Standards ("NAAQS").* Under the U.S. Clean Air Act ("CAA"), the U.S. Environmental Protection Agency ("EPA") sets NAAQS for six criteria pollutants considered harmful to public health and the environment, including particulate matter, nitrogen oxide, carbon monoxide, ozone and sulfur dioxide. On October 1, 2015, the EPA released a final rule tightening the primary and secondary NAAQS for ground-level ozone from its 2008 standard levels of 75 parts per billion ("ppb") to 70 ppb. The EPA published the Final Rule on June 4, 2018, designating El Paso County, Texas, as "attainment/unclassifiable" under the 2015 ozone NAAQS and designating a section of southern Doña Ana County, New Mexico, as "nonattainment." In August 2018, several petitions for review of the Final Rule were filed in the U.S. Court of Appeals for the D.C. Circuit. One of these petitions, filed by the City of Sunland Park, New Mexico, specifically challenges the "attainment/unclassifiable" designation of El Paso County, Texas. The Company and other intervenors filed and were granted motions to intervene in the challenges to EPA's 2015 ozone NAAQS designations. A briefing schedule extending through July 2019 has been established for the case.

States, including New Mexico, that contain any areas designated as nonattainment are required to complete development of implementation plans in the 2020-2021 timeframe. Most nonattainment areas are expected to have until 2020 or 2023 to meet the primary (health) standard, with the exact attainment date varying based on the ozone level in the area. The Company continues to evaluate what impact these final and proposed NAAQS could have on its operations. If the Company is required to install additional equipment to control emissions at its facilities, the NAAQS, individually or in the aggregate, could have a material impact on its operations and financial results.

*Climate Change.* The federal government has considered, proposed and/or finalized legislation or regulations limiting GHG emissions, including carbon dioxide. In particular, the U.S. Congress has considered legislation to restrict or regulate GHG emissions. In October 2015, the EPA published a rule establishing guidelines for states to regulate carbon dioxide emissions from existing power plants, known as the Clean Power Plan ("CPP"). Legal challenges to the CPP are ongoing. On August 31, 2018, the EPA published a proposal to replace the CPP called the Affordable Clean Energy ("ACE") rule. The ACE rule has not yet been finalized. At this time the Company cannot determine the impact that the CPP, the ACE rule, and related proposals and legal challenges may have on our financial position, results of operations or cash flows.

*Environmental Litigation and Investigations.* Since July 2011, the U.S. Department of Justice, on behalf of the EPA, and APS have been engaged in substantive settlement negotiations in an effort to resolve certain pending matters. The allegations being addressed through settlement negotiations are that APS failed to obtain the necessary permits and install the controls necessary under the CAA to reduce sulfur dioxide, nitrogen oxides, and particulate matter, and that APS failed to obtain an operating permit under Title V of the CAA that reflects applicable requirements imposed by law. On June 24, 2015, the parties filed with the U.S. District Court for the District of New Mexico a settlement agreement ("CAA Settlement Agreement") resolving this matter. On August 17, 2015, the U.S. District Court entered the CAA Settlement Agreement. The agreement imposes a total civil penalty payable by the co-owners of Four Corners collectively in the amount of \$1.5 million, and it requires the co-owners to pay \$6.7 million for environmental mitigation projects. At December 31, 2018, the Company has accrued its remaining unpaid share of approximately \$0.2 million related to this matter.

**Lease Agreements**

The Company leases land in El Paso, Texas, adjacent to Newman under a lease that expires in June 2033 with a renewal option of 25 years. The Company also has several other leases for office, parking facilities and equipment that expire within the next 5 years. The Company has transmission and distribution lines that are operated under various land rights agreements, including easements, leases, permits and franchises. The majority of these agreements include renewal options that the Company routinely exercises. These agreements generally do not impose any restrictions relating to issuance of additional debt, payment of dividends or entering into other lease arrangements.

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The Company's total annual rental expense related to operating leases was \$1.7 million, \$2.4 million, and \$1.7 million for 2018, 2017 and 2016, respectively. As of December 31, 2018, the Company's minimum future rental payments for the next five years are as follows (in thousands):

2019.....	\$	923
2020.....		820
2021.....		700
2022.....		544
2023.....		526

**Union Matters**

The Company has approximately 1,100 employees, about 37% of whom are covered by a collective bargaining agreement. The International Brotherhood of Electrical Workers Local 960 ("Local 960") represents the Company's employees working primarily in power generation, transmission and distribution, communications, material services, fleet services, facilities services, customer services and meter reading, and field services. The Company entered into a collective bargaining agreement effective September 3, 2016, with Local 960 for a three-year term ending September 3, 2019. The agreement provides for pay increases of 3% on September 3, 2016, September 3, 2017 and September 3, 2018, respectively. The Company presently anticipates negotiating a new three-year collective bargaining agreement to supersede the current collective bargaining agreement after the initial three-year term of the current collective bargaining agreement ends on September 3, 2019. The Company cannot predict the outcome of such negotiations and its impact on the Company's operating results and cash flows.

**M. Litigation**

The Company is involved in various legal, environmental, tax and regulatory proceedings before various courts, regulatory commissions and governmental agencies regarding matters arising in the ordinary course of business. In many of these matters, the Company has excess casualty liability insurance that covers the various claims, actions and complaints. The Company regularly analyzes current information and, as necessary, makes provisions in its financial statements for probable liabilities for the eventual disposition of these matters. While the outcome of these matters cannot be predicted with certainty, based upon a review of the matters and applicable insurance coverage, the Company believes that none of these matters will have a material adverse effect on the financial position, results of operations or cash flows of the Company. The Company expenses legal costs, including expenses related to loss contingencies, as they are incurred.

See Part II, Item 8, Financial Statements and Supplementary Data, Note D and Note L of Notes to Financial Statements for further discussion of the effects of government legislation and regulation on the Company as well as certain pending legal proceedings.

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**N. Employee Benefits**

The Company adopted ASU 2017-07, Compensation-Retirement Benefits, effective January 1, 2018. Upon adoption of the new standard, the service cost is included in "Operations and maintenance" in the Company's Statements of Operations. The expected return on plan assets is included in "Investment and interest income, net". The amortization of prior service benefit and amortization of gains are included in "Miscellaneous non-operating income". The amortization of prior service cost and amortization of losses are included in "Miscellaneous non-operating deductions". The interest cost component of net periodic benefit cost is included in "Other interest".

The provisions in ASU 2017-07 were applied retrospectively for the income statement presentation of the service cost component and the other components of net benefit costs. The Company elected to apply the practical expedient and used the amounts previously disclosed in 2017 and 2016 as the estimation basis for applying the retrospective presentation requirements.

The Company reclassified \$8.2 million to "Operations and maintenance" in the Company's Statement of Operations for the twelve months ended December 31, 2017 by increasing (i) "Investment and interest income, net" by \$21.1 million, (ii) "Miscellaneous non-operating income" by \$11.3 million, (iii) "Miscellaneous non-operating deductions" by \$8.4 million, and (iv) "Other interest" by \$15.8 million. As a result of the reclassifications, "Operations and maintenance" increased to \$10.8 million in service cost from the \$2.6 million in net periodic benefit cost previously reported.

The Company reclassified \$7.0 million to "Operations and maintenance" in the Company's Statement of Operations for the twelve months ended December 31, 2016 by increasing (i) "Investment and interest income, net" by \$20.7 million, (ii) "Miscellaneous non-operating income" by \$9.8 million, (iii) "Miscellaneous non-operating deductions" by \$7.3 million, and (iv) "Other interest" by \$16.2 million. As a result of the reclassifications, "Operations and maintenance" increased to \$10.8 million in service cost from the \$3.8 million in net periodic benefit cost previously reported.

**Retirement Plans**

The Company's Retirement Income Plan ("Retirement Plan") is a qualified noncontributory defined benefit plan. Upon retirement or death of a vested plan participant, assets of the Retirement Plan are used to pay benefit obligations under the Retirement Plan. Contributions from the Company are based on various factors, such as the minimum funding amounts required by the U.S. Internal Revenue Service, state and federal regulatory requirements, amounts requested from customers in the Company's Texas and New Mexico jurisdictions, and the annual net periodic benefit cost of the Retirement Plan, as actuarially calculated. The assets of the Retirement Plan are primarily invested in common collective trusts which hold equity securities, debt securities and cash equivalents and are managed by a professional investment manager appointed by the Company.

The Company has two non-qualified retirement plans that are non-funded defined benefit plans. The Company's Supplemental Retirement Plan covers certain former employees and directors of the Company. The Excess Benefit Plan was adopted in 2004 and covers certain active and former employees of the Company. The net periodic benefit cost for the non-qualified retirement plans are based on substantially the same actuarial methods and economic assumptions as those used for the Retirement Plan.

The Retirement Plan was amended effective April 1, 2014 to offer a cash balance pension benefit as an alternative to its existing final average pay pension benefit for employees hired prior to January 1, 2014. Employees hired after January 1, 2014 are automatically enrolled in the cash balance pension benefit.

Prior to December 31, 2013, employees who completed one year of service with the Company and worked at least a minimum number of hours each year were covered by the final average pay formula of the plan. For participants that continue to be covered by the final average pay formula, retirement benefits are based on the employee's final average pay and years of service. The cash balance pension benefit covers employees beginning on their employment commencement date or re-employment commencement date. Retirement benefits under the cash balance pension benefit are based on the employee's cash balance account, consisting of pay credits and interest credits.

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The obligations and funded status of the plans are presented below (in thousands):

	December 31,			
	2018		2017	
	Retirement Income Plan	Non-Qualified Retirement Plans	Retirement Income Plan	Non-Qualified Retirement Plans
<b>Change in projected benefit obligation:</b>				
Benefit obligation at end of prior year.....	\$ 361,989	\$ 28,392	\$ 337,768	\$ 27,462
Service cost (a) .....	9,086	480	8,156	362
Interest cost .....	12,013	865	12,196	863
Actuarial (gain) loss .....	(29,911)	(1,087)	20,829	2,217
Benefits paid .....	(17,681)	(1,931)	(16,960)	(2,512)
Benefit obligation at end of year .....	<u>335,496</u>	<u>26,719</u>	<u>361,989</u>	<u>28,392</u>
<b>Change in plan assets:</b>				
Fair value of plan assets at end of prior year .....	304,389	—	269,766	—
Actual return (loss) on plan assets .....	(19,683)	—	44,283	—
Employer contribution .....	7,300	1,931	7,300	2,512
Benefits paid .....	(17,681)	(1,931)	(16,960)	(2,512)
Assumed expenses .....	(1,522)	—	—	—
Fair value of plan assets at end of year .....	<u>272,803</u>	<u>—</u>	<u>304,389</u>	<u>—</u>
Funded status at end of year .....	<u>\$ (62,693)</u>	<u>\$ (26,719)</u>	<u>\$ (57,600)</u>	<u>\$ (28,392)</u>

(a) Service cost for the Retirement Plan for 2018 excludes assumed expenses of \$1,522 thousand for administrative and investment expenses paid from plan assets during the year.

Amounts recognized in the Company's balance sheets consist of the following (in thousands):

	December 31,			
	2018		2017	
	Retirement Income Plan	Non-Qualified Retirement Plans	Retirement Income Plan	Non-Qualified Retirement Plans
Current liabilities .....	\$ —	\$ (2,153)	\$ —	\$ (2,154)
Noncurrent liabilities .....	(62,693)	(24,566)	(57,600)	(26,238)
Total .....	<u>\$ (62,693)</u>	<u>\$ (26,719)</u>	<u>\$ (57,600)</u>	<u>\$ (28,392)</u>

The accumulated benefit obligation in excess of plan assets is as follows (in thousands):

	December 31,			
	2018		2017	
	Retirement Income Plan	Non-Qualified Retirement Plans	Retirement Income Plan	Non-Qualified Retirement Plans
Projected benefit obligation .....	\$ (335,496)	\$ (26,719)	\$ (361,989)	\$ (28,392)
Accumulated benefit obligation .....	(308,582)	(24,251)	(329,279)	(25,370)
Fair value of plan assets .....	272,803	—	304,389	—

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Pre-tax amounts recognized in accumulated other comprehensive income consist of the following (in thousands):

	Years Ended December 31,			
	2018		2017	
	Retirement Income Plan	Non-Qualified Retirement Plans	Retirement Income Plan	Non-Qualified Retirement Plans
Net loss .....	\$ 112,532	\$ 9,300	\$ 109,215	\$ 11,408
Prior service benefit.....	(16,942)	(107)	(20,410)	(146)
Total.....	<u>\$ 95,590</u>	<u>\$ 9,193</u>	<u>\$ 88,805</u>	<u>\$ 11,262</u>

The following are the weighted-average actuarial assumptions used to determine the benefit obligations:

	December 31,					
	2018			2017		
	Retirement Income Plan	Non-Qualified		Retirement Income Plan	Non-Qualified	
		Supplemental Retirement Plan	Excess Benefit Plan		Supplemental Retirement Plan	Excess Benefit Plan
Discount rate .....	4.42%	4.11%	4.45%	3.77%	3.40%	3.81%
Rate of compensation increase....	4.5%	N/A	4.5%	4.5%	N/A	4.5%

The Company reassesses various actuarial assumptions at least on an annual basis. The discount rate is reviewed and updated at each measurement date. The discount rate used to measure the fiscal year end obligation is based on a segmented spot rate yield curve that matches projected future payments with the appropriate interest rate applicable to the timing of the projected future benefit payments. A 1% increase in the discount rate would decrease the December 31, 2018 retirement plans' projected benefit obligation by 11.7%. A 1% decrease in the discount rate would increase the December 31, 2018 retirement plans' projected benefit obligation by 14.4%.

The components of net periodic benefit cost are presented below (in thousands):

	Years Ended December 31,					
	2018		2017		2016	
	Retirement Income Plan	Non-Qualified Retirement Plans	Retirement Income Plan	Non-Qualified Retirement Plans	Retirement Income Plan	Non-Qualified Retirement Plans
Service cost (a) .....	\$ 10,608	\$ 480	\$ 8,156	\$ 362	\$ 7,705	\$ 296
Interest cost .....	12,013	865	12,196	863	12,161	878
Expected return on plan assets ...	(21,076)	—	(19,189)	—	(18,879)	—
Amortization of:						
Net loss.....	7,531	1,022	7,572	882	6,554	785
Prior service benefit .....	(3,467)	(39)	(3,467)	(39)	(3,467)	(39)
Net periodic benefit cost .....	<u>\$ 5,609</u>	<u>\$ 2,328</u>	<u>\$ 5,268</u>	<u>\$ 2,068</u>	<u>\$ 4,074</u>	<u>\$ 1,920</u>

(a) Service cost for the Retirement Plan for 2018 includes assumed expenses of \$1,522 thousand for administrative and investment expenses paid from plan assets during the year.

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**NOTES TO FINANCIAL STATEMENTS**

The changes in benefit obligations recognized in other comprehensive income are presented below (in thousands):

	Years Ended December 31,					
	2018		2017		2016	
	Retirement Income Plan	Non-Qualified Retirement Plans	Retirement Income Plan	Non-Qualified Retirement Plans	Retirement Income Plan	Non-Qualified Retirement Plans
Net (gain) loss .....	\$ 10,848	\$ (1,087)	\$ (4,265)	\$ 2,217	\$ 8,644	\$ 1,266
Amortization of:						
Net loss.....	(7,531)	(1,022)	(7,572)	(882)	(6,554)	(785)
Prior service benefit .....	3,467	39	3,467	39	3,467	39
Total recognized in other comprehensive income.....	<u>\$ 6,784</u>	<u>\$ (2,070)</u>	<u>\$ (8,370)</u>	<u>\$ 1,374</u>	<u>\$ 5,557</u>	<u>\$ 520</u>

The total amount recognized in net periodic benefit costs and other comprehensive income are presented below (in thousands):

	Years Ended December 31,					
	2018		2017		2016	
	Retirement Income Plan	Non-Qualified Retirement Plans	Retirement Income Plan	Non-Qualified Retirement Plans	Retirement Income Plan	Non-Qualified Retirement Plans
Total recognized in net periodic benefit cost and other comprehensive income.....	<u>\$ 12,393</u>	<u>\$ 258</u>	<u>\$ (3,102)</u>	<u>\$ 3,442</u>	<u>\$ 9,631</u>	<u>\$ 2,440</u>

The following are amounts in accumulated other comprehensive income that are expected to be recognized as components of net periodic benefit cost during 2019 (in thousands):

	Retirement Income Plan	Non-Qualified Retirement Plans
Net loss .....	\$ 4,905	\$ 763
Prior service benefit.....	(3,467)	(39)

The following are the weighted-average actuarial assumptions used to determine the net periodic benefit cost for the twelve months ended December 31:

	2018			2017			2016		
	Retirement Income Plan	Non-Qualified		Retirement Income Plan	Non-Qualified		Retirement Income Plan	Non-Qualified	
		Supplemental Retirement Plan	Excess Benefit Plan		Supplemental Retirement Plan	Excess Benefit Plan		Supplemental Retirement Plan	Excess Benefit Plan
Discount rate									
Benefit obligation .....	3.77%	3.40%	3.81%	4.30%	3.76%	4.35%	4.57%	3.99%	4.63%
Service cost....	3.86%	N/A	3.89%	4.51%	N/A	4.52%	4.83%	N/A	4.87%
Interest cost....	3.40%	2.84%	3.48%	3.70%	2.94%	3.78%	3.86%	3.04%	3.90%
Expected long-term return on plan assets.....	7.5%	N/A	N/A	7.0%	N/A	N/A	7.0%	N/A	N/A
Rate of compensation increase .....	4.5%	N/A	4.5%	4.5%	N/A	4.5%	4.5%	N/A	4.5%

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The Company's overall expected long-term rate of return on assets is 7.5% as of January 1, 2019, which is both a pre-tax and after-tax rate as pension funds are generally not subject to income tax. The expected long-term rate of return is based on the weighted average of the expected returns on investments based upon the target asset allocation of the pension fund. The Company's target allocations for the plan's assets are presented below:

	<b>December 31, 2018</b>
Equity securities .....	49.0%
Fixed income .....	41.2%
Alternative investments .....	9.8%
Total .....	100.0%

The Retirement Plan invests the majority of its plan assets in common collective trusts which includes a diversified portfolio of domestic and international equity securities and fixed income securities. Alternative investments of the Retirement Plan are comprised of a real estate limited partnership, equity securities of real estate companies, primarily in real estate investment trusts and equity securities of listed companies involved in infrastructure activities. The expected rate of returns for the funds are assessed annually and are based on long-term relationships among major asset classes and the level of incremental returns that can be earned by the successful implementation of different active investment management strategies. Equity, real estate equity and infrastructure equity returns are based on estimates of long-term inflation rate, real rate of return, 10-year Treasury bond premium over cash, an expected equity risk premium, as well as other economic factors. Fixed income returns are based on maturity, long-term inflation, real rate of return and credit spreads. These assumptions also capture the expected correlation of returns between these asset classes over the long term.

The FASB guidance on disclosure for pension plans requires disclosure of fair value measurements of plan assets. To increase consistency and comparability in fair value measurements, the FASB guidance on fair value measurements established a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three levels as follows:

- Level 1 – Observable inputs that reflect quoted market prices for identical assets and liabilities in active markets. Prices of securities held in the mutual funds and underlying portfolios of the Retirement Plan are primarily obtained from independent pricing services. These prices are based on observable market data. The Common Collective Trusts are valued using the Net Asset Value ("NAV") provided by the administrator of the fund. The NAV price is quoted on a restrictive market although the underlying investments are traded on active markets. The NAV used for determining the fair value of the investments in the Common Collective Trusts have readily determinable fair values. Accordingly, such fund values are categorized as Level 1.
- Level 2 – Inputs other than quoted market prices included in Level 1 that are observable for the asset or liability either directly or indirectly. The fair value of these investments is based on evaluated prices that reflect observable market information, such as actual trade information of similar securities, adjusted for observable differences.
- Level 3 – Unobservable inputs using data that is not corroborated by market data.

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The fair value of the Company's Retirement Plan assets at December 31, 2018 and 2017, and the level within the three levels of the fair value hierarchy defined by the FASB guidance on fair value measurements are presented in the table below (in thousands):

<u>Description of Securities</u>	Fair Value as of December 31, 2018	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and Cash Equivalents .....	\$ 1,911	\$ 1,911	\$ —	\$ —
Common Collective Trusts (a)				
Equity funds .....	140,214	140,214	—	—
Fixed income funds .....	110,333	110,333	—	—
Real asset funds .....	16,990	16,990	—	—
Total Common Collective Trusts .....	267,537	267,537	—	—
Limited Partnership Interest in Real Estate (b) .....	3,355			
Total Plan Investments .....	<u>\$ 272,803</u>	<u>\$ 269,448</u>	<u>\$ —</u>	<u>\$ —</u>
<u>Description of Securities</u>	Fair Value as of December 31, 2017	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and Cash Equivalents .....	\$ 1,582	\$ 1,582	\$ —	\$ —
Common Collective Trusts (a)				
Equity funds .....	158,684	158,684	—	—
Fixed income funds .....	124,491	124,491	—	—
Real asset funds .....	15,779	15,779	—	—
Total Common Collective Trusts .....	298,954	298,954	—	—
Limited Partnership Interest in Real Estate (b) .....	3,853			
Total Plan Investments .....	<u>\$ 304,389</u>	<u>\$ 300,536</u>	<u>\$ —</u>	<u>\$ —</u>

- (a) The Common Collective Trusts are invested in equity and fixed income securities, or a combination thereof. The investment objective of each fund is to produce returns in excess of, or commensurate with, its predefined index.
- (b) This investment is a commercial real estate partnership that purchases land, develops limited infrastructure and sells it for commercial development. The Company was restricted from selling its partnership interest during the life of the partnership, which spanned 7 years. Return on investment is realized as land is sold. The fair value of the limited partnership interest in real estate is based on the NAV of the partnership which reflects the appraised value of the land. The partnership term expired on June 30, 2016. Upon expiration, dissolution of the partnership commenced and, as a result, the general partner of the partnership is attempting to sell the remaining inventory as soon as possible at the highest pricing possible.

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The table below reflects the changes in the fair value of investments in the real estate limited partnership during the period (in thousands):

	<b>Fair Value of Investments in Real Estate</b>
Balances at December 31, 2016 .....	\$ 6,991
Sale of land .....	(2,687)
Unrealized loss in fair value .....	(451)
Balances at December 31, 2017 .....	3,853
Sale of land .....	(48)
Unrealized loss in fair value .....	(450)
Balances at December 31, 2018 .....	<u>\$ 3,355</u>

There were no transfers in or out of Level 1 and Level 2 fair value measurements categories due to changes in observable inputs during the twelve-month periods ending December 31, 2018 and 2017. There were no purchases, issuances, and settlements related to the assets in the Level 3 fair value measurement category during the twelve-month periods ending December 31, 2018 and 2017.

The Company and the fiduciaries responsible for the Retirement Plan adhere to the traditional capital market pricing theory which maintains that over the long term, the risk of owning equities should be rewarded with a greater return than available from fixed income investments. The Company and the fiduciaries responsible for the Retirement Plan seek to minimize the risk of owning equity securities by investing in funds that pursue risk minimization strategies and by diversifying its investments to limit its risks during falling markets. The investment manager has full discretionary authority to direct the investment of plan assets held in trust within the guidelines prescribed by the Company and the fiduciaries responsible for the Retirement Plan through the plan's investment policy statement including the ability to hold cash equivalents. The investment guidelines of the investment policy statement are in accordance with the Employee Retirement Income Security Act of 1974 ("ERISA") and U.S. Department of Labor ("DOL") regulations.

The following benefit payments, which reflect expected future service, as appropriate, are expected to be paid (in thousands):

	<b>Retirement Income Plan</b>	<b>Non-Qualified Retirement Plans</b>
2019 .....	\$ 17,745	\$ 2,154
2020 .....	18,278	2,094
2021 .....	18,775	2,042
2022 .....	19,276	1,988
2023 .....	20,545	1,956
2024-2028 .....	108,371	8,811

**401(k) Defined Contribution Plans**

The Company sponsors 401(k) defined contribution plans covering substantially all employees. The Company provides a 50 percent matching contribution up to 6 percent of the employee's compensation for employees who are enrolled in the final average pay pension benefit of the Retirement Plan and a 100 percent matching contribution up to 6 percent of the employee's compensation for employees who are enrolled in the cash balance pension benefit of the Retirement Plan, subject to certain other limits and exclusions. Annual matching contributions made to the savings plans for the years 2018, 2017 and 2016 were \$4.6 million, \$4.4 million, and \$4.1 million, respectively.

**Other Post-retirement Benefits**

The Company provides certain other post-retirement benefits, including health care benefits for retired employees and their eligible dependents and life insurance benefits for retired employees only ("OPEB Plan"). Substantially all of the Company's employees may become eligible for those benefits if they retire while working for the Company. Contributions from the Company are based on various factors such as the OPEB Plan's funded status, tax deductibility of contributions to the OPEB Plan, state and federal regulatory requirements, amounts requested from customers in the Company's Texas and

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New Mexico jurisdictions and the annual net periodic benefit cost of the OPEB Plan, as actuarially calculated. The assets of the OPEB Plan are primarily invested in institutional funds which hold equity securities, debt securities and cash equivalents and are managed by a professional investment manager appointed by the Company.

The following table contains a reconciliation of the change in the benefit obligation, the fair value of plan assets and the funded status of the OPEB Plan (in thousands):

	December 31,	
	2018	2017
<b>Change in benefit obligation:</b>		
Benefit obligation at end of prior year .....	\$ 67,290	\$ 73,515
Service cost (a) .....	2,591	2,236
Interest cost.....	2,252	2,723
Actuarial gain .....	(9,295)	(8,319)
Benefits paid from plan assets .....	(3,003)	(4,087)
Benefits paid from corporate assets.....	(141)	—
Retiree contributions .....	1,168	1,222
Benefit obligation at end of year .....	<u>60,862</u>	<u>67,290</u>
<b>Change in plan assets:</b>		
Fair value of plan assets at end of prior year.....	40,873	39,115
Actual return (loss) on plan assets.....	(2,997)	4,173
Employer contribution.....	450	450
Benefits paid from plan assets.....	(3,003)	(4,087)
Retiree contributions .....	1,168	1,222
Assumed expenses.....	(204)	—
Fair value of plan assets at end of year .....	<u>36,287</u>	<u>40,873</u>
Funded status at end of year .....	<u>\$ (24,575)</u>	<u>\$ (26,417)</u>

(a) Service cost for 2018 excludes assumed expenses of \$204 thousand for administrative and investment expenses paid from plan assets during the year.

Amounts recognized in the Company's balance sheets consist of the following (in thousands):

	December 31,	
	2018	2017
Current liabilities .....	\$ —	\$ —
Noncurrent liabilities .....	(24,575)	(26,417)
Total.....	<u>\$ (24,575)</u>	<u>\$ (26,417)</u>

Pre-tax amounts recognized in accumulated other comprehensive income consist of the following (in thousands):

	December 31,	
	2018	2017
Net gain .....	\$ (36,890)	\$ (35,194)
Prior service benefit.....	(28,706)	(34,857)
Total.....	<u>\$ (65,596)</u>	<u>\$ (70,051)</u>

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The following are the weighted-average actuarial assumptions used to determine the accrued benefit obligations:

	December 31,	
	2018	2017
Discount rate at end of year .....	4.43%	3.79%
Health care cost trend rates:		
Initial .....		
Pre-65 medical .....	6.00%	6.25%
Post-65 medical .....	4.50%	4.50%
Pre-65 drug .....	7.00%	7.25%
Post-65 drug .....	8.50%	10.00%
Ultimate .....	4.50%	4.50%
Year ultimate reached (a).....	2026	2026

(a) Pre-65 medical reaches the ultimate trend rate in 2025. Additionally, the Post-65 medical trend is assumed to be 4.50% for all years into the future.

The Company reassesses various actuarial assumptions at least on an annual basis. The discount rate is reviewed and updated at each measurement date. The discount rate used to measure the fiscal year end obligation is based on a segmented spot rate yield curve that matches projected future payments with the appropriate interest rate applicable to the timing of the projected future benefit payments. A 1% increase in the discount rate would decrease the December 31, 2018 accumulated post-retirement benefit obligation by 13.4%. A 1% decrease in the discount rate would increase the December 31, 2018 accumulated post-retirement benefit obligation by 17.1%.

Net periodic benefit cost is made up of the components listed below (in thousands):

	Years Ended December 31,		
	2018	2017	2016
Service cost (a) .....	\$ 2,795	\$ 2,236	\$ 2,769
Interest cost .....	2,252	2,723	3,167
Expected return on plan assets .....	(2,435)	(1,907)	(1,835)
Amortization of:			
Prior service benefit .....	(6,151)	(6,151)	(3,901)
Net gain .....	(2,166)	(1,678)	(2,374)
Net periodic benefit cost .....	<u>\$ (5,705)</u>	<u>\$ (4,777)</u>	<u>\$ (2,174)</u>

(a) Service cost for 2018 includes assumed expenses of \$204 thousand for administrative and investment expenses paid from plan assets during the year.

The changes in benefit obligations recognized in other comprehensive income are presented below (in thousands):

	Years Ended December 31,		
	2018	2017	2016
Net (gain) loss .....	\$ (3,863)	\$ (10,586)	\$ 10,143
Prior service benefit (a) .....	—	—	(32,697)
Amortization of:			
Prior service benefit .....	6,151	6,151	3,901
Net gain .....	2,166	1,678	2,374
Total recognized in other comprehensive income .....	<u>\$ 4,454</u>	<u>\$ (2,757)</u>	<u>\$ (16,279)</u>

(a) During October 2016, the Company approved and communicated a plan amendment that resulted in a remeasurement of the Company's OPEB Plan. Effective January 1, 2017, retirees and dependents that are less than 65 years of age are

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offered a choice between a \$1,000 and \$2,250 deductible plan. Additionally, retirees and dependents that are 65 years of age or greater were covered by a fully insured Medicare advantage plan.

The total amount recognized in net periodic benefit cost and other comprehensive income are presented below (in thousands):

	Years Ended December 31,		
	2018	2017	2016
Total recognized in net periodic benefit cost and other comprehensive income ..	\$ (1,251)	\$ (7,534)	\$ (18,453)

The amount in accumulated other comprehensive income that is expected to be recognized as a component of net periodic benefit cost during 2019 is a prior service benefit of \$5.2 million and a net gain of \$2.3 million.

The following are the weighted-average actuarial assumptions used to determine the net periodic benefit cost for the twelve months ended December 31:

	2018	2017	2016 (a)	
			January 1 - September 30	October 1 - December 31
Discount rate:				
Benefit obligation.....	3.79%	4.37%	4.59%	3.75%
Service cost .....	3.87%	4.59%	4.91%	4.03%
Interest cost .....	3.38%	3.76%	3.86%	3.15%
Expected long-term return on plan assets .....	6.12%	4.875%	4.875%	4.875%
Health care cost trend rates:				
Initial .....				
Pre-65 medical .....	6.25%	6.5%	7.0%	7.0%
Post-65 medical.....	4.5%	4.5%	7.0%	7.0%
Pre-65 drug.....	7.25%	7.5%	7.0%	7.0%
Post-65 drug .....	10.0%	10.5%	7.0%	7.0%
Ultimate .....	4.5%	4.5%	4.5%	4.5%
Year ultimate reached (b).....	2026	2026	2026	2026

(a) The actuarial assumptions are evaluated by the Company at each measurement date. The OPEB Plan was remeasured at October 1, 2016 due to a plan amendment.

(b) Pre-65 medical reaches the ultimate trend rate in 2025. Additionally, the Post-65 medical trend is assumed to be 4.50% for all years into the future.

Assumed health care cost trend rates have a significant effect on the amounts reported for the health care plan. The effect of a 1% change in these assumed health care cost trend rates would increase or decrease the December 31, 2018 benefit obligation by \$9.9 million or \$7.8 million, respectively. In addition, a 1% change in said rate would increase or decrease the aggregate 2018 service and interest cost components of the net periodic benefit cost by \$1.2 million or \$0.9 million, respectively.

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NOTES TO FINANCIAL STATEMENTS**

The Company's overall expected long-term rate of return on assets is 7.85%, as of January 1, 2019, on a pre-tax basis. The expected long-term rate of return on assets on an after-tax basis is 6.00% as of January 1, 2019. The trust's tax rate was assumed to be 35.0% at January 1, 2017 and 23.6% at January 1, 2019. The expected long-term rate of return is based on the after-tax weighted average of the expected returns on investments based upon the target asset allocation. The Company's target allocations for the plan's assets are presented below:

	<b>December 31, 2018</b>
Equity securities .....	49.3%
Fixed income .....	34.3%
Alternative investments .....	16.4%
Total.....	100.0%

The OPEB Plan invests the majority of its plan assets in institutional funds which includes a diversified portfolio of domestic and international equity securities and fixed income securities. Alternative investments of the OPEB Plan are comprised of a real estate limited partnership and equity securities of real estate companies, primarily in real estate investment trusts. The alternative investments also include equity securities of a dynamic, diversified portfolio designed to capture market opportunities. The underlying allocations to various asset classes in this portfolio will shift over time, but the overall strategic allocation is as follows: 75% global equity, 15% marketable real assets and 10% global fixed income. The expected rates of return for the funds are assessed annually and are based on long-term relationships among major asset classes and the level of incremental returns that can be earned by the successful implementation of different active investment management strategies. Equity returns are based on estimates of long-term inflation rate, real rate of return, 10-year Treasury bond premium over cash, an expected equity risk premium, as well as other economic factors. Fixed income returns are based on maturity, long-term inflation, real rate of return and credit spreads. These assumptions also capture the expected correlation of returns between these asset classes over the long term.

The FASB guidance on disclosure for other post-retirement benefit plans requires disclosure of fair value measurements of plan assets. To increase consistency and comparability in fair value measurements, the FASB guidance on fair value measurements established a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three levels as follows:

- Level 1 – Observable inputs that reflect quoted market prices for identical assets and liabilities in active markets. Prices of securities held in the mutual funds and underlying portfolios of the Other Post-retirement Benefits Plan are primarily obtained from independent pricing services. These prices are based on observable market data. The institutional funds are valued using the NAV provided by the administrator of the fund. The NAV price is quoted on a restrictive market although the underlying investments are traded on active markets. The NAV used for determining the fair value of the investments in the institutional funds have readily determinable fair values. Accordingly, such fund values are categorized as Level 1.
- Level 2 – Inputs other than quoted market prices included in Level 1 that are observable for the asset or liability either directly or indirectly. The fair value of these investments is based on evaluated prices that reflect observable market information, such as actual trade information of similar securities, adjusted for observable differences.
- Level 3 – Unobservable inputs using data that is not corroborated by market data.

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**NOTES TO FINANCIAL STATEMENTS**

The fair value of the Company's OPEB Plan assets at December 31, 2018 and 2017 and the level within the three levels of the fair value hierarchy defined by the FASB guidance on fair value measurements are presented in the table below (in thousands):

<u>Description of Securities</u>	Fair Value as of December 31, 2018	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and Cash Equivalents .....	\$ 1,353	\$ 1,353	\$ —	\$ —
Institutional Funds (a)				
Equity funds.....	17,887	17,887	—	—
Fixed income funds .....	11,437	11,437	—	—
Multi asset funds.....	3,576	3,576	—	—
Real asset funds .....	1,405	1,405	—	—
Total Institutional Funds .....	34,305	34,305	—	—
Limited Partnership Interest in Real Estate (b).....	629			
Total Plan Investments.....	\$ 36,287	\$ 35,658	\$ —	\$ —

<u>Description of Securities</u>	Fair Value as of December 31, 2017	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and Cash Equivalents .....	\$ 809	\$ 809	\$ —	\$ —
Institutional Funds (a)				
Equity funds.....	19,862	19,862	—	—
Fixed income funds .....	13,686	13,686	—	—
Multi asset funds.....	4,137	4,137	—	—
Real asset funds .....	1,657	1,657	—	—
Total Institutional Funds .....	39,342	39,342	—	—
Limited Partnership Interest in Real Estate (b).....	722			
Total Plan Investments.....	\$ 40,873	\$ 40,151	\$ —	\$ —

- (a) The institutional funds are invested in equity or fixed income securities, or a combination thereof. The investment objective of each fund is to produce returns in excess of, or commensurate with, its predefined index.
- (b) This investment is a commercial real estate partnership that purchases land, develops limited infrastructure and sells it for commercial development. The OPEB Plan trust was restricted from selling its partnership interest during the life of the partnership, which spanned 7 years. Return of investment is realized as land is sold. The fair value of the limited partnership interest in real estate is based on the NAV of the partnership which reflects the appraised value of the land. The partnership term expired on June 30, 2016. Upon expiration, dissolution of the partnership commenced and, as a result, the general partner of the partnership is attempting to sell the remaining inventory as soon as possible at the highest pricing possible.

**EL PASO ELECTRIC COMPANY**  
**NOTES TO FINANCIAL STATEMENTS**

The table below reflects the changes in the fair value of the investments in real estate during the period (in thousands):

	<b>Fair Value of Investments in Real Estate</b>
Balance at December 31, 2016.....	\$ 1,311
Sale of land .....	(504)
Unrealized loss in fair value .....	(85)
Balance at December 31, 2017.....	722
Sale of land .....	(9)
Unrealized loss in fair value .....	(84)
Balance at December 31, 2018.....	\$ 629

There were no transfers in or out of Level 1 and Level 2 fair value measurements categories due to changes in observable inputs during the twelve month periods ending December 31, 2018 and 2017. There were no purchases, issuances and settlements related to the assets in the Level 3 fair value measurement category during the twelve month periods ending December 31, 2018 and 2017.

The Company and the fiduciaries responsible for the OPEB Plan adhere to the traditional capital market pricing theory, which maintains that over the long term, the risk of owning equities should be rewarded with a greater return than available from fixed income investments. The Company and the fiduciaries responsible for the OPEB Plan seek to minimize the risk of owning equity securities by investing in funds that pursue risk minimization strategies and by diversifying its investments to limit its risks during falling markets. The investment manager has full discretionary authority to direct the investment of plan assets held in trust within the guidelines prescribed by the Company the fiduciaries responsible for the OPEB Plan through the plan's investment policy statement including the ability to hold cash equivalents. The investment guidelines of the investment policy statement are in accordance with the ERISA and DOL regulations.

The following benefit payments, which reflect expected future service, as appropriate, are expected to be paid (in thousands):

2019 .....	\$ 2,145
2020 .....	2,542
2021 .....	2,719
2022 .....	2,869
2023 .....	2,999
2024-2028 .....	16,803

**Annual Short-Term Incentive Plan**

The Annual Short-Term Incentive Plan ("Incentive Plan") provides for the payment of cash awards to eligible Company employees, including each of its named executive officers. Payment of awards is based on the achievement of performance measures reviewed and approved by the Company's Board of Directors' Compensation Committee. Generally, these performance measures are based on meeting certain financial, operational and individual performance criteria. The financial performance goals are based on specified levels of earnings and certain O&M expenses. The operational performance goals are based on reliability and customer satisfaction. If a minimum level of earnings is not attained, no amounts will be paid under the Incentive Plan, unless the Compensation Committee determines otherwise. In 2018, the Company reached the required levels of earnings, certain O&M expenses, reliability and customer satisfaction goals for an incentive payment of \$11.0 million. In 2017 and 2016, the Company achieved required levels of similar goals for incentive payments of \$9.7 million and \$12.5 million, respectively.

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NOTES TO FINANCIAL STATEMENTS**

**O. Franchises and Significant Customers**

**Franchises**

The Company operates under franchise agreements with several cities in its service territory, including one with El Paso, Texas, the largest city it serves. The franchise agreement allows the Company to utilize public rights-of-way necessary to serve its customers within El Paso. Pursuant to the El Paso franchise agreement, the Company pays to the City of El Paso, on a quarterly basis, a fee equal to 5.00% of gross revenues the Company receives for the generation, transmission and distribution of electrical energy and other services within the city. The 2005 El Paso franchise agreement set the franchise fee at 3.25% of gross revenues, but that amount has since been adjusted by two amendments. The 2010 amendment added an incremental fee equal to 0.75% of gross revenues to be placed in a restricted fund to be used by the city solely for economic development and renewable energy purposes. The 2018 amendment, approved on March 20, 2018, and applicable to bills issued on or after October 1, 2018, increased the dedicated incremental fee by 1.00% of gross revenues and extended the term of the franchise agreement by 30 years. Any assignment of the franchise agreement, including a deemed assignment as a result of a change in control of the Company, requires the consent of the City of El Paso. The El Paso franchise agreement is set to expire on July 31, 2060.

The Company does not have a written franchise agreement with Las Cruces, New Mexico, the second largest city in its service territory. The Company utilizes public rights-of-way necessary to service its customers within Las Cruces under an implied franchise pursuant to state law by satisfying all obligations under the franchise agreement that expired on April 30, 2009. The Company pays the City of Las Cruces a franchise fee of 2.00% of gross revenues the Company receives from services within the City of Las Cruces.

The Company also maintains franchise agreements with other municipalities, and applicable counties, within its service territories.

**Military Installations**

The Company serves HAFB, White Sands Missile Range ("White Sands") and Fort Bliss. These military installations represent approximately 2.6% of the Company's annual retail revenues. In July 2014, the Company signed an agreement with Fort Bliss under which Fort Bliss takes retail electric service from the Company under the applicable Texas tariffs. The Company serves White Sands under the applicable New Mexico tariffs. In August 2016, the Company signed a contract with HAFB under which the Company provides retail electric service and limited wheeling services to HAFB under the applicable New Mexico tariffs. As stated in the contract, HAFB will purchase the full output of a Company-owned 5 MW solar facility upon its completed construction, which occurred on October 18, 2018. HAFB's other power requirements are provided under the applicable New Mexico tariffs with limited wheeling services under the contract.

**EL PASO ELECTRIC COMPANY**  
**NOTES TO FINANCIAL STATEMENTS**

**P. Financial Instruments and Investments**

The FASB guidance requires the Company to disclose estimated fair values for its financial instruments. The Company has determined that cash and temporary investments, investment in debt securities, accounts receivable, decommissioning trust funds, long-term debt, short-term borrowings under the RCF, accounts payable and customer deposits meet the definition of financial instruments. The carrying amounts of cash and temporary investments, accounts receivable, accounts payable and customer deposits approximate fair value because of the short maturity of these items. Investments in debt securities and decommissioning trust funds are carried at estimated fair value.

*Long-Term Debt and Short-Term Borrowings Under the RCF.* The fair values of the Company's long-term debt and short-term borrowings under the RCF are based on estimated market prices for similar issues and are presented below (in thousands):

	December 31,			
	2018		2017	
	Carrying Amount	Estimated Fair Value	Carrying Amount	Estimated Fair Value
Pollution Control Bonds .....	\$ 157,769	\$ 161,917	\$ 157,676	\$ 169,186
Senior Notes (1).....	1,117,943	1,244,310	993,426	1,211,922
RGRT Senior Notes (1) (2).....	109,507	111,440	44,886	47,070
RCF (2).....	49,207	49,207	173,533	173,533
Total.....	<u>\$ 1,434,426</u>	<u>\$ 1,566,874</u>	<u>\$ 1,369,521</u>	<u>\$ 1,601,711</u>

- (1) On June 28, 2018, the Company issued \$125 million in aggregate principal amount of 4.22% Senior Notes due August 15, 2028 and guaranteed the issuance by the RGRT of \$65 million in aggregate principal amount of 4.07% Senior Guaranteed Notes due August 15, 2025. See Part II, Item 8, Financial Statements and Supplementary Data, Note J of Notes to Financial Statements.
- (2) Nuclear fuel financing, as of December 31, 2018 and December 31, 2017, is funded through \$110 million and \$45 million RGRT Senior Notes and \$26.2 million and \$88.5 million, respectively under the RCF. As of December 31, 2018, \$23 million was outstanding under the RCF for working capital or general corporate purposes. As of December 31, 2017, \$85.0 million was outstanding under the RCF for working capital or general corporate purposes. The interest rate on the Company's borrowings under the RCF is reset throughout the period reflecting current market rates. Consequently, the carrying value approximates fair value.

*Treasury Rate Locks.* The Company entered into treasury rate lock agreements in 2005 to hedge against potential movements in the treasury reference interest rate pending the issuance of the 6% Senior Notes. The treasury rate lock agreements met the criteria for hedge accounting and were designated as a cash flow hedge. In accordance with cash flow hedge accounting, the Company recorded the loss associated with the fair value of the cash flow hedge, net of tax, as a component of accumulated other comprehensive loss and amortizes the accumulated comprehensive loss to earnings as interest expense over the life of the 6% Senior Notes. In 2019, approximately \$0.6 million of this accumulated other comprehensive loss item will be reclassified to interest expense.

*Contracts and Derivative Accounting.* The Company uses commodity contracts to manage its exposure to price and availability risks for fuel purchases and power sales and purchases and these contracts generally have the characteristics of derivatives. The Company does not trade or use these instruments with the objective of earning financial gains on the commodity price fluctuations. The Company has determined that all such contracts outstanding at December 31, 2018, except for certain natural gas commodity contracts with optionality features, that had the characteristics of derivatives met the "normal purchases and normal sales" exception provided in the FASB guidance for accounting for derivative instruments and hedging activities, and, as such, were not required to be accounted for as derivatives.

**EL PASO ELECTRIC COMPANY**  
**NOTES TO FINANCIAL STATEMENTS**

*Marketable Securities.* The Company's marketable securities, included in the NDT in the balance sheets, are reported at fair value, which was \$276.9 million and \$286.9 million at December 31, 2018 and 2017, respectively. The investments in the NDT are classified as available for sale debt securities, equity securities and cash and cash equivalents. These investments are recorded at their estimated fair value in accordance with FASB guidance for certain investments in debt and equity securities. On January 1, 2018, the Company adopted ASU 2016-01, Financial Instruments-Overall, which eliminates the requirements to classify investments in equity securities with readily determinable fair values as trading or available for sale and requires entities to recognize changes in fair value for these securities in net income as reported in the Statements of Operations. ASU 2016-01 requires a modified-retrospective approach and therefore, comparative information has not been restated and continues to be reported under the accounting standards in effect for those periods.

The reported fair values include gross unrealized losses on securities classified as available for sale whose impairment the Company has deemed to be temporary. The tables below present the gross unrealized losses and the fair value of these securities, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position (in thousands):

Description of Securities (1):	December 31, 2018					
	Less than 12 Months		12 Months or Longer		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
Federal Agency Mortgage Backed Securities .....	\$ 6,187	\$ (36)	\$ 14,567	\$ (510)	\$ 20,754	\$ (546)
U.S. Government Bonds .....	4,005	(9)	36,615	(1,663)	40,620	(1,672)
Municipal Debt Obligations .....	3,100	(74)	9,037	(723)	12,137	(797)
Corporate Debt Obligations .....	22,259	(763)	11,231	(731)	33,490	(1,494)
<b>Total</b> .....	<b>\$ 35,551</b>	<b>\$ (882)</b>	<b>\$ 71,450</b>	<b>\$ (3,627)</b>	<b>\$ 107,001</b>	<b>\$ (4,509)</b>

(1) Includes approximately 156 securities.

Description of Securities (2):	December 31, 2017					
	Less than 12 Months		12 Months or Longer		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
Federal Agency Mortgage Backed Securities .....	\$ 4,700	\$ (46)	\$ 10,099	\$ (165)	\$ 14,799	\$ (211)
U.S. Government Bonds .....	28,866	(416)	18,186	(969)	47,052	(1,385)
Municipal Debt Obligations .....	4,290	(73)	9,736	(742)	14,026	(815)
Corporate Debt Obligations .....	10,685	(107)	4,475	(331)	15,160	(438)
Total Debt Securities .....	48,541	(642)	42,496	(2,207)	91,037	(2,849)
Domestic Equity Securities .....	962	(210)	—	—	962	(210)
<b>Total</b> .....	<b>\$ 49,503</b>	<b>\$ (852)</b>	<b>\$ 42,496</b>	<b>\$ (2,207)</b>	<b>\$ 91,999</b>	<b>\$ (3,059)</b>

(2) Includes approximately 146 securities.

The Company monitors the length of time specific securities trade below their cost basis along with the amount and percentage of the unrealized loss in determining if a decline in fair value below recorded cost of debt securities classified as available for sale is considered to be other than temporary. The Company recognizes impairment losses on certain of its available for sale debt securities deemed to be other than temporary. In accordance with the FASB guidance, these impairment losses are recognized in net income, and a lower cost basis is established for these securities. In addition, the Company will research the future prospects of individual securities as necessary. The Company does not anticipate expending monies held in trust before 2044 or a later period when decommissioning of Palo Verde begins.

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For the twelve months ended December 31, 2018, 2017 and 2016, the Company recognized other than temporary impairment losses on its available-for-sale securities as follows (in thousands):

	2018	2017	2016
Unrealized holding losses included in pre-tax income .....	\$ —	\$ —	\$ (352)

Investments categorized as available for sale securities also include gross unrealized gains which have not been recognized in the Company's net income. The table below presents the unrecognized gross unrealized gains and the fair value of these securities, aggregated by investment category (in thousands):

	December 31, 2018		December 31, 2017	
	Fair Value	Unrealized Gains	Fair Value	Unrealized Gains
<b>Description of Securities:</b>				
Federal Agency Mortgage Backed Securities.....	\$ 9,959	\$ 176	\$ 5,933	\$ 203
U.S. Government Bonds.....	6,987	149	11,129	256
Municipal Debt Obligations .....	1,952	120	2,558	109
Corporate Debt Obligations.....	8,283	222	19,514	1,067
Total Debt Securities .....	27,181	667	39,134	1,635
Domestic Equity Securities .....	—	—	120,065	45,587
International Equity Securities .....	—	—	28,804	5,908
Cash and Cash Equivalents .....	—	—	6,864	—
<b>Total</b> .....	<b>\$ 27,181</b>	<b>\$ 667</b>	<b>\$ 194,867</b>	<b>\$ 53,130</b>

The Company's marketable securities include investments in mortgage backed securities, municipal, corporate and federal debt obligations. The contractual year for maturity for these available-for-sale securities as of December 31, 2018 is as follows (in thousands):

	Total	2019	2020 through 2023	2024 through 2028	2029 and Beyond
Federal Agency Mortgage Backed Securities .....	\$ 30,713	\$ —	\$ 19	\$ 547	\$ 30,147
U.S. Government Bonds.....	47,607	8,302	20,377	15,008	3,920
Municipal Debt Obligations .....	14,089	657	5,916	5,245	2,271
Corporate Debt Obligations .....	41,773	3,101	20,032	6,618	12,022
<b>Total Available for Sale Debt Securities</b> .....	<b>\$ 134,182</b>	<b>\$ 12,060</b>	<b>\$ 46,344</b>	<b>\$ 27,418</b>	<b>\$ 48,360</b>

The Company's available for sale securities in the NDT are sold from time to time and the Company uses the specific identification basis to determine the amount to reclassify from AOCI into net income. The proceeds from the sale of these securities during the twelve months ended December 31, 2018, 2017, and 2016 and the related effects on pre-tax income are as follows (in thousands):

	2018	2017	2016
Proceeds from sales or maturities of available-for-sale securities .....	\$ 25,955	\$ 97,037	\$ 91,268
Gross realized gains included in pre-tax income .....	\$ 17	\$ 11,773	\$ 9,212
Gross realized losses included in pre-tax income .....	(1,462)	(1,147)	(1,220)
Gross unrealized losses included in pre-tax income .....	—	—	(352)
Net gains (losses) included in pre-tax income .....	<b>\$ (1,445)</b>	<b>\$ 10,626</b>	<b>\$ 7,640</b>

**EL PASO ELECTRIC COMPANY**  
**NOTES TO FINANCIAL STATEMENTS**

Upon the adoption of ASU 2016-01, Financial Instruments-Overall, on January 1, 2018, the Company records, on a modified-retrospective basis, changes in fair market value for equity securities held in the NDT in the Statements of Operations. The unrealized gains and losses recognized during the twelve months ended December 31, 2018 and related effects on pre-tax income are as follows (in thousands):

	<b>December 31, 2018</b>
Net gains and (losses) recognized on equity securities.....	\$ (11,522)
Less: Net gains and (losses) recognized on equity securities sold.....	7,079
Unrealized gains and (losses) recognized on equity securities still held at reporting date....	<b>\$ (18,601)</b>

*Fair Value Measurements.* The FASB guidance requires the Company to provide expanded quantitative disclosures for financial assets and liabilities recorded on the balance sheet at fair value. Financial assets carried at fair value include the Company's decommissioning trust investments and investments in debt securities which are included in deferred charges and other assets on the Balance Sheets. The Company has no liabilities that are measured at fair value on a recurring basis. The FASB guidance establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three levels as follows:

- Level 1 – Observable inputs that reflect quoted market prices for identical assets and liabilities in active markets. Financial assets utilizing Level 1 inputs include the NDT investments in active exchange-traded equity securities, mutual funds and U.S. Treasury securities that are in a highly liquid and active market. The Institutional Funds are valued using the NAV provided by the administrator of the fund. The NAV price is quoted on a restrictive market although the underlying investments are traded on active markets. The NAV used for determining the fair value of the Institutional Funds-International Equity investments have readily determinable fair values. Accordingly, such fund values are categorized as Level 1.
- Level 2 – Inputs other than quoted market prices included in Level 1 that are observable for the asset or liability either directly or indirectly. Financial assets utilizing Level 2 inputs include the NDT investments in fixed income securities. The fair value of these financial instruments is based on evaluated prices that reflect observable market information, such as actual trade information of similar securities, adjusted for observable differences.
- Level 3 – Unobservable inputs using data that is not corroborated by market data and primarily based on internal Company analysis using models and various other analysis. Financial assets utilizing Level 3 inputs are the Company's investment in debt securities.

The securities in the NDT are valued using prices and other relevant information generated by market transactions involving identical or comparable securities. The FASB guidance identifies this valuation technique as the "market approach" with observable inputs. The Company analyzes available-for-sale securities to determine if losses are other than temporary.

**EL PASO ELECTRIC COMPANY**  
**NOTES TO FINANCIAL STATEMENTS**

The fair value of the NDT and investments in debt securities at December 31, 2018 and 2017, and the level within the three levels of the fair value hierarchy defined by the FASB guidance are presented in the table below (in thousands):

Description of Securities	Fair Value as of December 31, 2018	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Trading Securities:</b>				
Investments in Debt Securities .....	\$ 1,656	\$ —	\$ —	\$ 1,656
<b>Equity Securities:</b>				
Domestic .....	\$ 111,325	\$ 111,325	\$ —	\$ —
International .....	24,540	24,540	—	—
Total Equity Securities .....	135,865	135,865	—	—
<b>Available for Sale Debt Securities:</b>				
Federal Agency Mortgage Backed Securities .....	30,713	—	30,713	—
U.S. Government Bonds .....	47,607	47,607	—	—
Municipal Debt Obligations .....	14,089	—	14,089	—
Corporate Debt Obligations .....	41,773	—	41,773	—
Total Available for Sale Debt Securities .....	134,182	47,607	86,575	—
<b>Cash and Cash Equivalents</b> .....	6,858	6,858	—	—
<b>Total</b> .....	\$ 276,905	\$ 190,330	\$ 86,575	\$ —

Description of Securities	Fair Value as of December 31, 2017	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Trading Securities:</b>				
Investments in Debt Securities .....	\$ 1,735	\$ —	\$ —	\$ 1,735
<b>Available for sale:</b>				
Federal Agency Mortgage Backed Securities .....	\$ 20,732	\$ —	\$ 20,732	\$ —
U.S. Government Bonds .....	58,181	58,181	—	—
Municipal Debt Obligations .....	16,584	—	16,584	—
Corporate Debt Obligations .....	34,674	—	34,674	—
Subtotal, Debt Securities .....	130,171	58,181	71,990	—
Domestic .....	121,027	121,027	—	—
International .....	28,804	28,804	—	—
Subtotal, Equity Securities .....	149,831	149,831	—	—
<b>Cash and Cash Equivalents</b> .....	6,864	6,864	—	—
<b>Total</b> .....	\$ 286,866	\$ 214,876	\$ 71,990	\$ —

Below is a reconciliation of the beginning and ending balance of the fair value of the investment in debt securities classified as trading securities (in thousands):

	2018	2017
Balance at January 1 .....	\$ 1,735	\$ 1,421
Net unrealized gains (losses) in fair value recognized in income (a) .....	(79)	314
Balance at December 31 .....	\$ 1,656	\$ 1,735

(a) These amounts are reflected in the Company's statements of operations as investment and interest income.

**EL PASO ELECTRIC COMPANY**  
**NOTES TO FINANCIAL STATEMENTS**

There were no transfers in or out of Level 1 and Level 2 fair value measurements categories due to changes in observable inputs during the twelve-month periods ending December 31, 2018 and 2017. There were no purchases, sales, issuances and settlements related to the assets in the Level 3 fair value measurement category during the twelve-month periods ending December 31, 2018 and 2017.

**Q. Supplemental Statements of Cash Flows Disclosures**

	Years Ended December 31,		
	2018	2017	2016
	(In thousands)		
<b>Cash paid for:</b>			
Interest on long-term debt and borrowing under the revolving credit facility .....	\$ 70,016	\$ 70,523	\$ 69,990
Income tax paid, net.....	3,546	2,055	2,328
<b>Non-cash investing and financing activities:</b>			
Sale of interest in Four Corners Generating Station (a) .....	—	—	27,720
Changes in accrued plant additions .....	1,075	(5,090)	4,789
Grants of restricted shares of common stock.....	1,039	1,171	1,235
Issuance of performance shares .....	1,499	932	—

(a) The Company sold its interest in Four Corners in July 2016. The sales proceeds were reduced by the settlement of other obligations between the Company and APS and its affiliate, 4C Acquisition, LLC. See Part II, Item 8, Financial Statements and Supplementary Data, Note F of Notes to Financial Statements.

**EL PASO ELECTRIC COMPANY**  
**NOTES TO FINANCIAL STATEMENTS**

**R. Selected Quarterly Financial Data (Unaudited)**

The following table summarizes the Company's unaudited results of operations on a quarterly basis. The quarterly earnings per share amounts for a year will not add to the earnings per share for that year due to the weighting of shares used in calculating per share data.

	2018 Quarters (1)				2017 Quarters			
	4th	3rd	2nd	1st	4th (4)	3rd	2nd	1st
	(In thousands except for share data)							
Operating revenues (2) .....	\$190,823	\$300,271	\$236,796	\$175,713	\$196,149	\$297,470	\$251,843	\$171,335
Operating income (3).....	15,113	99,933	53,139	4,044	18,250	103,688	63,916	4,205
Net income (loss).....	(15,285)	73,271	33,295	(6,966)	6,500	59,684	36,066	(3,989)
Basic earnings per share:								
Net income (loss) .....	(0.38)	1.80	0.82	(0.17)	0.16	1.47	0.89	(0.10)
Diluted earnings per share:								
Net income (loss) .....	(0.38)	1.79	0.82	(0.17)	0.16	1.47	0.89	(0.10)
Dividends declared per share of common stock.....	0.360	0.360	0.360	0.335	0.335	0.335	0.335	0.310

- (1) Effective January 1, 2018, the Company implemented ASU 2016-01, Financial Instruments - Overall: Recognition and Measurement of Financial Assets and Liabilities. As required by the new standard, changes in the fair values of the Company's equity investments are recognized in earnings, whereas prior to 2018, such changes were recognized in accumulated other comprehensive income.
- (2) Operating revenues are seasonal in nature, with the peak sales periods generally occurring during the summer months. Comparisons among quarters of a year may not represent overall trends and changes in operations.
- (3) The Company implemented ASU 2017-07, Compensation - Retirement Benefits, in the first quarter of 2018, and as required by the standard, reclassified certain amounts in the financial statements for 2017. See Part II, Item 8, Financial Statements and Supplementary Data, Notes B and N of Notes to Financial Statements.
- (4) For financial reporting purposes, the Company deferred any recognition of the Company's request in its 2017 Texas Retail Rate Case until it received the 2017 PUCT Final Order on December 18, 2017. Accordingly, it reported in the fourth quarter of 2017 the cumulative effect of the 2017 PUCT Final Order, which related back to July 18, 2017. See Part II, Item 8, Financial Statements and Supplementary Data, Note D of Notes to Financial Statements.

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

**Item 9A. Controls and Procedures**

*Evaluation of disclosure controls and procedures.* Under the supervision and with the participation of our management, including our chief executive officer and our chief financial officer, we conducted an evaluation pursuant to Rule 13a-15(b) under the Exchange Act of our disclosure controls and procedures as defined in Rule 13a-15(e) under the Exchange Act. Based on that evaluation, our chief executive officer and our chief financial officer concluded that, as of December 31, 2018, our disclosure controls and procedures are effective.

*Management's Annual Report on Internal Control Over Financial Reporting.* Management's Annual Report on Internal Control over Financial Reporting is included herein under the caption "Management Report on Internal Control Over Financial Reporting" on page 46 of this Annual Report on Form 10-K.

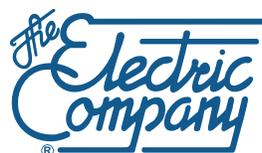
*Changes in internal control over financial reporting.* There were no changes in our internal control over financial reporting in connection with the evaluation required by paragraph (d) of the Exchange Act Rules 13a-15 or 15d-15, that occurred during the quarter ended December 31, 2018, that materially affected, or that were reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information**

None.

**PART III and PART IV**

The information set forth in Part III and Part IV of this Annual Report on Form 10-K has been omitted from this Annual Report to Shareholders.



El Paso Electric

[epelectric.com](http://epelectric.com)



**EXHIBIT H**  
**POLE ATTACHMENT CONTRACTS**

EPE has pole attachment contracts with the following entities in Texas.

AT&T  
Windstream  
Time Warner  
AT&T Mobility  
Contrerra  
Crown Castle  
Extenet  
Fiberlight  
Level 3  
MCI Metro  
McAllen Data Centers  
Mobilitie LLC  
Verizon  
Zayo

EPE has provided City staff temporary access to an electronic data room that contains the documents for staff's review because the documents contain highly sensitive, competitive, commercial information.

**EXHIBIT J**  
**ADDITIONAL INFORMATION REQUESTED BY CITY**

Attachment 1 – Question II.I, EPE Monthly Construction Report for August 2019 (*Provided with original Franchise Assignment Application filed on September 20, 2019.*)

Attachment 2 – Question II.L, Certificates of Insurance (*Provided with original Franchise Assignment Application filed on September 20, 2019.*)

Attachment 3 – Question III.D.1, Gross Receipts and Operating Expense Projections (*Provided with original Franchise Assignment Application filed on September 20, 2019.*)

Attachment 4 – Question V.C.3, Officer and Director Information (*Provided with original Franchise Assignment Application filed on September 20, 2019.*)

Attachment 5 – Question II.J, Texas Certificate of Convenience and Necessity

Attachment 6 – Question V.F, 10% or Greater Owner Information

**ATTACHMENT 5**  
**TEXAS CERTIFICATE OF CONVENIENCE AND NECESSITY**

# Public Utility Commission of Texas

By These Presents Be It Known To All That

## El Paso Electric Company

having duly applied for certification to provide electric utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

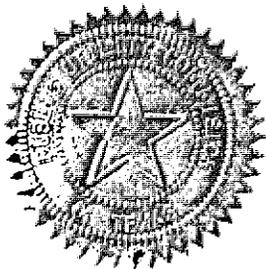
### Certificate of Convenience and Necessity

numbered 30050, to provide electric utility service to that service area or those service areas designated by final Order or Orders duly entered by this Commission, which Order or Orders are on file at the Commission offices in Austin, Texas, and are matters of official record available for public inspection;

and be it known further that these

presents do evidence the authority and the duty of this Grantee to provide such utility service in accordance with the laws of this State and the Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 3rd day of April, 1978.



*Roy J. Henderson*

Roy J. Henderson  
COMMISSION SECRETARY



**ATTACHMENT 6  
10% OR GREATER OWNER INFORMATION**

**BLACKROCK OFFICERS AND BOARD OF DIRECTORS**

<b>Name</b>	<b>Title</b>	<b>Address</b>	<b>Phone</b>
Larry Fink	Chairman and Chief Executive Officer	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Rob Kapito	President	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Geraldine Buckingham	Head of Asia Pacific	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Edwin N. Conway	Global Head of BlackRock Alternative Investors	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Frank Cooper, III	Chief Marketing Officer	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Robert W. Fairbairn	Vice Chairman	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Rob L. Goldstein	Chief Operating Officer & Global Head of BlackRock Solutions	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Ben Golub	Chief Risk Officer	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Philipp Hildebrand	Vice Chairman	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
J. Richard Kushel	Head of Multi-Asset Strategies and Global Fixed Income	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Rachel Lord	Head of Europe, Middle East and Africa	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Mark McCombe	Chief Client Officer	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Christopher Meade	Chief Legal Officer	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300

Manish Mehta	Global Head of Human Resources	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Barbara G. Novick	Vice Chairman	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Salim Ramji	Global Head of iShares and Index Investments	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Gary Shedlin	Chief Financial Officer	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Derek Stein	Global Head of Technology & Operations	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Mark K. Wiedman	Head of International and of Corporate Strategy	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Bader M. Alsaad	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Mathis Cabiallavetta	Board member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Pamela Daley	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
William S. Demchak	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Jessica Einhorn	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
William E. Ford	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Fabrizio Freda	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Murry S. Gerber	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Margaret L. Johnson	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Robert S. Kapito	Board Member	55 East 52 <sup>nd</sup> Street,	212-810-5300

		New York, NY 10055	
Cheryl Mills	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Gordon M. Nixon	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Charles H. Robbins	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Ivan G. Seidenberg	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Marco Antonio Slim Domit	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Susan L. Wagner	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300
Mark Wilson	Board Member	55 East 52 <sup>nd</sup> Street, New York, NY 10055	212-810-5300

**VANGUARD OFFICERS AND BOARD OF DIRECTORS**

<b>Name</b>	<b>Title</b>	<b>Address</b>	<b>Phone</b>
Mortimer Joseph Buckley	Chairman / President / CEO	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Michael Thomas Rollings	Chief Financial Officer	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Natalie Bej	Chief Compliance Officer	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Brent Beardsley	Chief Strategy Officer	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Joseph P. Brennan	Chief Risk Officer	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Gregory Davis	Chief Investment Officer	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
John T. Marcante	Chief Information Officer / Managing Director	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Daniel Shrimski	CFO: US Retail Investor Group	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
James Maurice Norris	Managing Director	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Heidi Stam	Managing Director: Legal Department / General Counsel	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
John James	Managing Director: Human Resources	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Martha G. King	Managing Director / Head: Vanguard Institutional	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Christopher Davis McIsaac	Managing Director: Planning & Development	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Karin A. Risi	Managing Director: Retail Investor Group	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Michael Lovett	Head: U.S. Investment Adviser Distribution	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Simone Rosti	Head: Italy / Senior Sales Executive	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Markus Weis	Deputy Head: Germany & Austria	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Joseph F. Loughrey	Board Member	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Emerson U. Fullwood	Board Member	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000

Scott Charles Malpass	Board Member	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Peter F. Volanakis	Board Member	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Mark Loughridge	Board Member	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Joann Heffernan Heisen	Board Member	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Professor Andre Perold	Board Member	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Axel Lomholt	Board Member	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Dr. Amy Gutmann	Board Member	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000
Don Andrus	Board Member	100 Vanguard Blvd. Malvern, PA 19355	610-669-1000