

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
EL PASO ELECTRIC COMPANY FOR A)
VARIANCE FROM THE FUEL AND)
PURCHASED POWER COST ADJUSTMENT)
CLAUSE METHODOLOGY)
_____)**

Case No. 21-00064-UT

PROCEDURAL ORDER

THIS MATTER comes before Carolyn R. Glick, Hearing Examiner for the New Mexico Public Regulation Commission, as a follow-up to the April 22, 2021 prehearing. The Hearing Examiner **FINDS AND CONCLUDES:**

1. On March 17, 2021, El Paso Electric Company (EPE) filed a Verified Motion for a Variance from its Approved FPPCAC Methodology (Motion for Variance). EPE’s Motion for Variance sought including certain Fuel and Purchased Power Cost Adjustment Clause (FPPCAC) costs in its balancing account for collection in equal parts over a 12-month period, beginning with April 2021 bills, to mitigate the effect on customers of monthly charges resulting from what EPE refers to as the “Cold Weather Event,” which EPE defines as occurring from February 13, 2021 to February 19, 2021. Motion for Variance, ¶ 5. The Motion for Variance states that EPE incurred \$6.8 million in “incremental New Mexico jurisdictional FPPCAC costs due to price spikes in the natural gas markets and natural gas supply disruptions resulting from the February Cold Weather Event.” The Motion for Variance states that the \$6.8 million in incremental costs is comprised of:

- a. \$300,000 for fuel oil used for the Montana Power Station;
- b. \$787,000 for natural imbalance costs; and
- c. \$5.7 million for Palo Verde Nuclear Generating Station (PVNGS) Unit 3 costs.

Id., ¶ 8.

2. As explained in the Recommended Decision recently issued in EPE's pending general rate case — Case No. 20-00104-UT — PVNGS Unit 3 was excluded from EPE's rate base. However, EPE was authorized to voluntarily use PVNGS Unit 3 power to serve New Mexico customers and to be compensated “at the market price for the lowest equivalent firm capacity and related energy available to EPE.” Since 2009, EPE has been compensated for its use of PVNGS Unit 3 power to serve New Mexico customers at a “proxy price” based on a Credit Suisse Purchased Power Agreement which is calculated based on natural gas market index prices. Case No. 20-00104-UT, Recommended Decision at 126-28 (4-7-21). The pricing in that contract uses a capacity price of \$9.25/kW-Mo times EPE's share of PVNGS Unit 3 and an energy price determined by multiplying the daily Permian natural gas index times a heat rate of 7600 Btu/kWh plus a \$3.50/MWh variable energy charge. Therefore, while the energy produced at PVNGS Unit 3 is nuclear energy, EPE has been compensated at a price that is based on natural gas prices, and because natural gas prices spiked during the Cold Weather Event, the compensation that EPE claims that it is entitled to for using PVNGS Unit 3 power to serve New Mexico customers during the Cold Weather Event is significantly higher than it would be had natural gas prices been at a “normal level.”

3. As Merrie Lee Soules pointed out at the prehearing, EPE's reference to its “cost” for PVNGS Unit 3 power is somewhat misleading because the \$5.7 million for incremental PVNGS Unit 3 power is not necessarily the cost to EPE of that power; rather, it is the compensation due to EPE for using that power to serve New Mexico customers under the Credit Suisse proxy price. Nevertheless, this Procedural Order refers to the \$5.7 million as a “cost” because it is a cost that EPE proposes to recover from New Mexico ratepayers.

4. The appropriate proxy price to use to compensate EPE for use of PVNGS Unit 3 power, and related issues, were addressed in Case No. 20-00104-UT. The Recommended Decision states:

To the extent that the City argues that the [Credit Suisse] proxy pricing for PVNGS Unit 3 approved in Case No. 09-00171-UT expired when the new rates approved in the 2015 *EPE Rate Case* took effect, that argument lacks merit. The Commission has never disapproved nor changed the proxy price approved in Case No. 09-00171-UT, and EPE has continued to apply that proxy price.

Id. at 128-29. In its Exceptions to the Recommended Decision, the City argues that this statement is dicta. The Commission has not issued a final order in Case No. 20-00104-UT, and the suspension period expires on June 28, 2021.

5. In its Response to Bench Request Order, filed on March 22, 2021, the City made several arguments. One argument is that the Credit Suisse proxy price expired when EPE's approved base rates in Case No. 15-00127-UT took effect. City's Response to Bench Request Order at 3. As stated above, this Hearing Examiner rejected this argument in her Recommended Decision issued in Case No. 20-00104-UT. If the Commission in its final order in Case No. 20-00104-UT adopts, either with or without discussion, the Hearing Examiner's finding that the Credit Suisse proxy price did not expire when EPE's approved base rates in Case No. 15-00127-UT took effect, the issue of whether the Credit Suisse proxy price was in effect during February 2021 is outside the scope of this case. If the Commission in its final order in Case No. 20-00104-UT does not adopt the Hearing Examiner's finding that the Credit Suisse proxy price did not expire when EPE's approved base rates in Case No. 15-00127-UT took effect, the issue of what, if any, proxy price applied in February 2021 may be raised in posthearing briefs in this case to the extent necessary. Counsel for the City, both in her Response to Bench Request at pages 3-4 and at the prehearing, acknowledged that the issue is a legal one. Therefore, it should not be addressed in prefiled testimonies or at the hearing.

6. EPE calculated the "incremental" \$5.7 million in PVNGS Unit 3 costs caused by the Cold Weather Event by taking the difference in the proxy price compensation it would be due under the Credit Suisse proxy price and the proxy price compensation using an adjusted average Permian Basin daily index price excluding the natural gas prices for February 11, 2021 through February 22, 2021. Motion for Variance, ¶ 8.

7. The following persons filed responses to EPE's Motion for Variance: the City of Las Cruces (the City); Allen Downs; Philip Simpson; Dona Ana County (the County); Merrie Lee Soules; and Commission Staff.

8. The last day that the Commission could issue a dispositive order to allow collection of the incremental costs to begin in April 2021 per EPE's proposal was March 31, 2021. EPE's Response to March 19, 2021 Bench Request (3-22-21). On March 24, 2021, the Commission issued an order scheduling a hearing on March 31, 2021 to consider EPE's Motion for Variance. On March 26, 2021, the Commission issued a Procedural Order relating to the March 31, 2021 hearing. The Procedural Order, among other things, ordered the parties to file a joint report with recommendations on a procedure for the hearing.

9. On March 30, 2021, the parties filed a Joint Report. In the Joint Report, the parties proposed, among other things, that:

- “The parties agree the Commission should issue an order temporarily suspending EPE's recovery of the \$6.8 million of February costs that EPE has associated with the Cold Weather Event until the Commission resolves this matter. To that end, the Parties agree the Commission should order EPE's FPPCAC, effective for April 2021 billings, to include EPE's February 2021 fuel and purchased power costs (excluding the incremental \$6.8 million as identified by EPE) and the February revenues. This results in an FPPCAC factor of \$0.0242/kWh FPPCAC factor. . . .”
- “The case should be assigned to a Hearing Examiner to conduct a hearing on EPE's proposed FPPCAC factor report for February 2021, including its request to recover costs associated with the Cold Weather Event and the period of recovery for the approved costs not otherwise recovered through the FPPCAC pursuant to the FPPCAC methodology identified in Paragraphs 10(a) and 10(b) above, or any required refunds. The Parties agree that the hearing shall address all February FPCAC costs.”

Joint Report of the Parties at 3-4.

10. On March 31, 2021, the Commission issued its Order Setting Temporary FPPCAC Adjustment and Appointing Hearing Examiner for Further Proceedings. In this Order, the Commission said that (a) it agreed with the Parties that further proceedings are needed to develop and consider the issues; (b) a hearing examiner should be appointed; (c) the March 31, 2021 hearing should be vacated; and (d) the Commission should order the temporary adjustment recommended by the Parties. Decretal Paragraph A of the Order states:

EPE is hereby ORDERED to modify the application of its FPPCAC for April 2021 billing to exclude the “incremental costs” for February 2021 claimed by EPE in the Motion.

Order at 3, ¶ A.

11. On April 1, 2021, the Commission issued an Order appointing the undersigned as Hearing Examiner to preside over this matter.

12. Discussion at the prehearing included whether testimony and discovery should cover the entire month of February 2021 or be limited to the days of the Cold Weather Event as defined by EPE — February 13, 2021 to February 19, 2021 — or be limited to the dates for natural gas prices excluded by EPE in calculating the adjusted average Permian Basin daily index price — February 11, 2021 through February 22, 2021. The Hearing Examiner ruled at the prehearing that testimony and discovery should be limited to the dates of the Cold Weather Event as defined by EPE. However, after further review of Exhibits B and C to EPE’s Motion for Variance and Attachment A to the Joint Report, the Hearing Examiner vacates that ruling. She is unsure whether FPPCAC costs and revenues for the entire month of February 2021 are relevant to this proceeding and will not limit testimony and discovery to less than the month of February 2021.

13. The procedural schedule developed at the April 22, 2021 prehearing, set forth below, should be adopted, except that the Hearing Examiner revises the intervention deadline and adds additional deadlines not discussed at the prehearing.

IT IS THEREFORE ORDERED:

A. A public hearing shall be held beginning on July 21, 2021, commencing at 9:00 a.m. MDT, and shall continue as necessary through July 22, 2021. The hearing shall be held via the Zoom videoconference platform unless the Hearing Examiner orders otherwise.

B. On or before April 30, 2021, EPE shall cause the Notice attached to this Procedural Order to be published once in the *Las Cruces Sun News*.

C. On or before April 30, 2021, EPE shall post this Procedural Order and attached Notice on its webpage at <https://www.epelectric.com/company/public-notices>.

D. EPE shall notify its New Mexico customers of this case by including the following paragraph, not in bold, in its bills, beginning May 3, 2021 and to be completed by May 31, 2021:

Notice to EPE customers: EPE is seeking to recover from its New Mexico customers, \$6.8 million in what EPE describes as “incremental” costs resulting from the February 2021 Cold Weather Event. EPE asserts that these costs result from price spikes in the natural gas markets and natural gas supply disruptions resulting from the February Cold Weather Event. EPE seeks to recover these costs over 12 months, at \$566,760 per month. The New Mexico Public Regulation Commission must approve EPE’s request, and the NMPRC has opened Case No. 21-00064-UT to consider EPE’s request. For more information on EPE’s request and how to participate in Case No. 21-00064-UT, read the NMPRC’s Procedural Order at <https://www.epelectric.com/company/public-notices>.

E. On or before May 14, 2021, EPE shall file Direct Testimony supporting its Motion for Variance. Among any other matters that EPE wishes to address in its Direct Testimony it shall:

1. Demonstrate that its use of PVNGS Unit 3 power to serve New Mexico customers at a cost of \$5.7 million was the lowest cost power available to EPE to serve New Mexico customers. EPE shall include the cost for firm energy available to be purchased from the Palo Verde Hub, if any, for the days comprising the cost of \$5.7 million for the PVNGS Unit 3 power.

2. Explain what it means that EPE exceeded its interstate pipeline’s draft imbalance tolerance at its Newman Power Station delivery point on Gas Day 15.

3. What date was “Gas Day 15?”
4. Explain how the imbalance penalty is calculated and who assesses it.
5. Per the City’s request on page 5 of its Response to Bench Request Order, filed on March 22, 2021, separate out the imbalance penalties from their embeddedness in gas costs.
6. Identify any alternatives EPE had to exceeding its interstate pipeline’s draft imbalance tolerance at its Newman Power Station delivery point on Gas Day 15 and compare the cost of any such alternatives to the \$787,000 imbalance penalty.
7. Provide an update on EPE’s dispute of the imbalance penalty.
8. Provide detail supporting EPE’s estimate that its decision to switch to fuel oil at the Montana Power Station avoided \$19 million incremental total company natural gas charges. State the \$19 million estimated avoided charges on a New Mexico jurisdictional basis.
9. Explain why EPE did not switch to fuel oil at its other natural gas generation plants.
10. Confirm, deny or correct information in part of the attachment to the Commission’s March 23, 2021 Notice of Filing, filed in this case, which is a statement from Michael Goggin to the El Paso City Council. More specifically, respond to Mr. Goggin’s statements starting with the paragraph on page 2 that begins “EPE’s gas generation dropped off dramatically . . .” and ending on page 3 before the paragraph beginning, “In contrast, diversifying EPE’s generation portfolio”
11. If the Commission were to grant EPE’s request to recover \$6.8 million in incremental costs from the Cold Weather Event over 12 months, state, for an average-use customer in each of EPE’s customer classes and under EPE’s current rates, (a) the dollar amount on such a customer’s monthly bill to recover the incremental costs; and (b) the percentage increase in such a customer’s monthly bill due to addition of the amount to recover the incremental costs.

12. As the Hearing Examiner stated at the prehearing, she encourages EPE to provide in its Direct Testimony and exhibits to its Direct Testimony, information requested by the County, the City and Ms. Soules. The Hearing Examiner expresses no opinion on whether the requested information is relevant, but she believes that providing the requested information could streamline this case and lessen discovery requests and disputes.

F. The persons who filed responses to EPE's Motion for Variance are automatically deemed parties to this case and need not file motions to intervene. These persons are the City; the County; Allen Downs; Philip Simpson; and Merrie Lee Soules. Any other person desiring to intervene to become a party (intervenor) must file a motion for leave to intervene in conformity with Rules of Procedure 1.2.2.23(A) and 1.2.2.23(B) NMAC on or before June 11, 2021.

G. Staff shall, and any Intervenor may, file Direct Testimony on or before June 18, 2021.

H. Any Rebuttal Testimony shall be filed on or before July 13, 2021.

I. To be considered, a stipulation must be filed on or before July 2, 2021.

J. Motions in limine, motions to strike and any other prehearing motions regarding EPE's prefiled direct testimonies shall be filed on or before May 21, 2021. Responses to any such motions shall be filed on or before May 26, 2021.

K. Motions in limine, motions to strike and any other prehearing motions regarding Staff/Intervenor prefiled direct testimonies shall be filed on or before June 25, 2021. Responses to any such motions shall be filed on or before June 30, 2021.

L. Motions in limine, motions to strike and any other prehearing motions regarding rebuttal testimonies shall be filed on or before July 15, 2021. Responses to any such motions shall be filed on or before July 19, 2021.

M. Any other prehearing motions shall be filed on or before July 2, 2021. Responses to any such motions shall be filed on or before July 9, 2021.

N. On or before July 15, 2021, EPE, after conferring with all parties and Staff, shall email the Hearing Examiner and the email service list, with a proposed order of examination of witnesses and proposed orders of cross examination of (1) EPE's witnesses; and (2) Intervenor and Staff witnesses.

O. On or before July 16, 2021, each party and Staff shall email the Hearing Examiner and the email service list, with its requested allocation of time to cross examine each witness. The Hearing Examiner then intends to allocate time periods for each party and Staff to cross examine each witness. The Hearing Examiner "may at [her] discretion limit the time for providing direct testimony or cross-examination at any public hearing if necessary to promote the proper and orderly management of such public hearing." 1.2.2.32(G)(3) NMAC.

P. EPE may electronically serve its discovery responses through Sharefile.

Q. Dropbox shall be used as the online sharing platform to upload and download exhibits before the hearing. The Hearing Examiner shall email the Dropbox invitation to the email service list in one or more batches, 24 hours apart, because of the Dropbox limit on the number of invitations that can be sent at one time.

R. On or before July 19, 2021, each party and Staff shall:

1. upload to the party's or Staff's Dropbox subfolder each exhibit in .pdf format that the party or Staff may seek to move into evidence at the hearing, including documents that have not been prefiled but may be moved into evidence during cross examination. The exhibits shall be marked numerically and identified in the party's or Staff's Dropbox subfolder by reference to the party's or Staff's name, the exhibit number and a brief description of the exhibit (*e.g.*, EPE Exh. 1, Direct Testimony of _____). Exhibits with color pages shall be posted in a .pdf format that retains the coloring. Any document not uploaded to Dropbox as an exhibit on or before July 19, 2021 shall not be admitted into evidence; and

2. upload to the party or Staff's Dropbox subfolder a numeric list of the exhibits that the party may move into evidence at the hearing. **If the document on the list is not prefiled testimony, then the list shall identify the witness whom the party**

intends to question about the document in order to expedite the witness' ability to promptly reference and access the document when cross examined. If this requirement is not followed, the Hearing Examiner shall not allow cross examination on the document.

S. If a party or Staff encounters problems uploading or downloading exhibits to and from Dropbox, the party or Staff may contact the Hearing Examiner for assistance at Carolyn.glick@state.nm.us or 505-257-8808.

T. If a party or Staff has “corrections,” as defined below, to prefiled testimony, those corrections shall be made on the copy uploaded to Dropbox on or before July 19, 2021. The corrections shall be handwritten on the originally filed document. The witness sponsoring such prefiled testimony shall identify each correction orally at the hearing before his or her testimony is moved into evidence. Corrections shall not be made to correct typographical errors, such as spelling errors, or to correct the misuse of words, such as using “than” instead of “then,” or to add a missing word, or to delete an unwanted word. Any attempt to make such corrections shall be denied. Corrections shall be limited to correcting, for example, an inadvertent transposing of numbers.

U. Friendly cross examination is prohibited. Friendly cross examination is cross examination of a witness by a party who does not disagree with the witness's position on an issue.

V. Interested persons should contact the Commission at 505-690-4191 for confirmation of the hearing date, time and place since hearings are occasionally rescheduled.

W. The Commission's Rules of Procedure, 1.2.2 NMAC, shall apply except as modified by order of the Hearing Examiner or Commission. The Rules of Procedure are available online at <http://164.64.110.134/nmac/home>.

X. Interested persons may examine EPE's Application and all other documents filed in this case online at <http://nmprc.state.nm.us> under “Case Lookup EdoCKET.” Interested persons may contact Ana Kippenbrock at ana.kippenbrock@state.nm.us or 505-690-4191 for assistance in accessing EdoCKET.

Y. Interested persons who are not affiliated with a party may make written or oral comments without becoming intervenors. Oral comments will be entertained only at the 9:00

a.m. start of the hearing on July 21, 2021 and will be limited to three minutes per commenter. Persons wishing to make an oral comment must register in advance, not later than noon on July 20, 2021, by emailing Ana Kippenbrock at ana.kippenbrock@state.nm.us. Written comments may be submitted before the Commission takes final action by sending the comment electronically to prc.records@state.nm.us. Pursuant to 1.2.2.23(F) NMAC, comments shall not be considered evidence.

Z. The filing of documents in this case shall be accomplished by emailing the documents to PRC.Records@state.nm.us. Documents shall be emailed in pdf form and signed electronically. **When this Procedural Order states a deadline, the deadline is 5:00 p.m. MDT for emailing a document to PRC.Records@state.nm.us and for emailing a document to the email service list, including the Hearing Examiner. If this deadline is not complied with, the Hearing Examiner may, in her discretion, not consider the document.**

AA. Documents filed in this case shall also be served on all email addresses listed on the most recent certificate of service issued by the Hearing Examiner and shall be served via email on the Hearing Examiner at Carolyn.glick@state.nm.us.

BB. The Certificate of Service for this case is attached to this Order. Pursuant to 1.2.2.10(C)(4) NMAC, the attached service list shall be used until further notice for service of all pleadings, orders, notices, testimony and other documents to the individuals and their respective addresses as specified thereon.

CC. It is unnecessary for a party or Staff to move into evidence, or request that administrative notice be taken of, state commission, state and federal court decisions and administrative agency decisions.¹

¹ While 1.2.2.35(D) NMAC contemplates taking administrative notice of state commission, state court and federal court decisions, it is actually unnecessary to do so. Such decisions are more appropriately the subject of “judicial notice of law.” Judicial notice of law is “the commonsense doctrine that the rules of evidence governing admissibility and proof of documents generally do not make sense to apply to statutes or judicial opinions—which are technically documents—because they are presented to the court as law, not to the jury as evidence.” *City of Aztec v. Gurule*, 2010-NMSC-006, ¶ 12, 147 N.M. 693, 228 P.3d 477 (internal citation omitted). Courts take judicial notice of law every time they cite a statute or judicial decision, although they do not do so explicitly. *Id.* As a practical matter, legal citations are made without “invoking the machinery of judicial notice because there is usually no doubt about what the law actually says.” *Getty Petroleum Marketing, Inc. v. Capital Terminal Co.*, 391 F.3d 312, 324 (1st Cir. 2004) (Lipez, J., concurring). If material is readily available, the proponent need not formally request judicial

DD. Any person whose testimony has been filed shall attend the hearing and submit to examination under oath.

EE. All prefiled testimonies of a witness shall be moved into evidence when the witness is first presented.

FF. The oral testimony elicited by a party or Staff presenting a witness shall (except for redirect examination) consist of authentication and verification of each prefiled testimony and identifications of any permitted corrections to that testimony. The party or Staff shall not elicit oral summaries of prefiled testimony or other oral testimony.

GG. Any person with a disability requiring special assistance to participate in this proceeding should contact the hearing examiner at Carolyn.glick@state.nm.us at least 24 hours before the hearing begins.

Issued at Santa Fe, New Mexico on April 26, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Carolyn R. Glick

Carolyn R. Glick
Hearing Examiner

notice of law; “the submission of a readily retrievable citation, or of copies of the relevant documents, ought to suffice.” *Id.* at 333. *Cf. Chapman v. Chase Manhattan Mortgage Corp.*, No. 04-CV-0859-CVE-FHM, 2007 WL 4268774, at *2 n.7 (N.D. Okla. Nov. 30, 2007) (federal courts are bound to apply precedent without formally taking judicial notice of law); *Lucero v. R.K. Wong*, No. C 10-1339 SI (pr), 2011 WL 5834963, at *5 (N.D. Cal. Nov. 21, 2011) (“It is unnecessary to request that the court judicially notice published cases from California and federal courts as legal precedent; the court routinely considers such legal authorities in doing its legal analysis without a party requesting that they be judicially noticed. To the extent petitioner wants the existence of published or unpublished cases judicially noticed as adjudicative facts, doing so is of very limited value because the court can take notice that such decisions exist, but the court does not take judicial notice that those decisions are correct.”); *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (taking judicial notice of another court’s opinion, not for truth of facts in that opinion, but for its existence)

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
EL PASO ELECTRIC COMPANY FOR A)	
VARIANCE FROM THE FUEL AND PURCHASED)	
POWER COST ADJUSTMENT CLAUSE)	
METHODOLOGY)	
)	
EL PASO ELECTRIC COMPANY,)	Case No. 21-00064-UT
Applicant.)	
)	

NOTICE TO EPE CUSTOMERS

NOTICE is hereby given of the following matters pertaining to the above captioned case pending before the New Mexico Public Regulation Commission ("Commission" or "NMPRC"):

1. On March 17, 2021, El Paso Electric Company ("EPE" or "Company") filed its request for approval of its Application for a Variance from the Fuel and Purchased Power Cost Adjustment Clause ("FPPCAC") Methodology, pursuant to New Mexico Public Regulation Commission ("NMPRC" or "Commission") Rule 17.9.550 Fuel and Purchased Power Cost Adjustment Clause for Electric Utilities of the New Mexico Administrative Code ("NMAC") ("Rule 550"), seeking a Commission order authorizing a variance from its approved methodology for recovery of costs through its Fuel and Purchased Power Cost Adjustment Clause ("FPPCAC"). See 17.9.550.8 NMAC.

2. EPE requested that the Commission approve EPE's February 2021 Rule 550 Report, without suspension, and grant a variance from the approved FPPCAC methodology that authorizes the inclusion of \$6.8 million in EPE's FPPCAC balancing account, and the

recovery of a \$566,760 per month amortization for twelve months beginning with April 2021 bills as reflected in the February 2021 Rule 550 Report.

3. On March 31, 2021, the Commission issued an Order setting a temporary FPPCAC adjustment and appointing a hearing examiner for further proceedings. EPE was ordered to modify the application of its FPPCAC for April 2021 billing to exclude the “incremental costs” for the February 2021 cold weather event claimed by EPE in its Motion.

4. The Commission has issued Orders finding jurisdiction over this proceeding and setting the case for an adjudicatory proceeding on the issue of recovery of the incremental costs associated with the February 2021 cold weather event.

5. A prehearing was held on April 22, 2021. The Commission has set the schedule for hearing of this case as follows:

A. A public hearing shall be held beginning on July 21, 2021, commencing at 9:00 a.m. MDT, and shall continue as necessary through July 22, 2021. The hearing shall be held via the Zoom videoconference platform unless the Hearing Examiner orders otherwise.

B. The persons who filed responses to EPE’s Motion for Variance are automatically deemed parties to this case and need not file motions to intervene. These persons are the City of Las Cruces; Dona Ana County; Allen Downs; Philip Simpson; and Merrie Lee Soules. Any other person desiring to intervene to become a party (intervenor) must file a motion for leave to intervene in conformity with Rules of Procedure 1.2.2.23(A) and 1.2.2.23(B) NMAC on or before June 11, 2021.

C. EPE shall file direct testimony on or before May 14, 2021.

D. The Commission Staff shall, and Intervenors may, file direct testimony on or before June 18, 2021.

E. If the parties are able to agree to a stipulation, that stipulation must be filed on or before July 2, 2021 to be considered.

F. Rebuttal testimony may be filed on or before July 13, 2021.

6. This matter has been designated as Case No. 21-00064-UT and all inquiries and correspondence should refer to that number.

7. The Commission's Rules of Practice and Procedure, 1.2.2 NMAC, apply to this case except as modified by Order. The Rules of Procedure are available online at <http://164.64.110.134/nmac/home>.

8. Interested persons may examine the Application, Procedural Order, and the prefiled testimonies, exhibits, pleadings and other documents filed in the case online at <http://nmprc.state.nm.us> under "Case Lookup EdoCKET." Interested persons may contact Ana Kippenbrock at ana.kippenbrock@state.nm.us or 505-690-4191 for assistance in accessing EdoCKET.

9. Interested persons who are not affiliated with a party may make written or oral comments without becoming intervenors. Oral comments will be entertained only at the 9:00 a.m. start of the hearing on July 21, 2021 and will be limited to three minutes per commenter. Persons wishing to make an oral comment must register in advance, not later than noon on July 20, 2021, by emailing Ana Kippenbrock at ana.kippenbrock@state.nm.us. Written comments may be submitted before the Commission takes final action by sending the comment electronically to prc.records@state.nm.us. Pursuant to 1.2.2.23(F) NMAC, comments shall not be considered evidence.

10. Pleadings, testimony and other documents shall also be served on all parties of record and Staff in the way or ways specified in the most recent Certificate of Service issued in this case by the Hearing Examiner. Copies of all filings shall also be emailed on the date of filing and service to the Hearing Examiner at Carolyn.glick@state.nm.us. All documents emailed to the Hearing Examiner shall also include versions created in Microsoft Word or other native formats if available.

11. Any person whose testimony has been filed shall attend the hearing and submit to examination under oath.

12. Interested persons should contact the Commission at 505-690-4191 for confirmation of the hearing dates, times and places, since hearings are occasionally rescheduled.

13. Any person with a disability requiring special assistance to participate in this proceeding should contact the hearing examiner at Carolyn.glick@state.nm.us at least 24 hours before the hearing begins.

ISSUED at Santa Fe, New Mexico on April 26, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s Carolyn R. Glick

Carolyn R. Glick, Hearing Examiner

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CLAUSE METHODOLOGY)
_____)

Case No. 21-00064-UT

CERTIFICATE OF SERVICE

I certify that on this date I served upon the parties listed below, via email only, a true and correct copy of the Procedural Order.

Nancy Burns	nancy.burns@epelectric.com ;	Fred Kennon	fredk@donaanacounty.org ;
Jeffrey Wechsler	jwechsler@montand.com ;	Allen Downs	biz@lifeisgood2.com ;
Linda Pleasant	linda.pleasant@epelectric.com ;	Merrilee Soules	mlsoules@hotmail.com ;
Patricia Griego	patricia.griego@epelectric.com ;	John Reynolds	john.reynolds@state.nm.us ;
Kari Olson	kolson@montand.com ;	Bradford Borman	Bradford.borman@state.nm.us ;
Teresa Pacheco	tpacheco@montand.com ;	Elizabeth Jeffreys	Elizabeth.jeffreys@state.nm.us
Anastasia Stevens	astevens.law@gmail.com ;	Gabriella Dasheno	gabriella.dasheno@state.nm.us ;
Jennifer Vega-Brown	jvega-brown@las-cruces.org ;	Elizabeth Ramirez	Elizabeth.Ramirez@state.nm.us ;
Delilah Walsh	dwalsh@las-cruces.org ;	Peggy Martinez-Rael	Peggy.Martinez-Rael@state.nm.us ;
Edwin Reyes, Jr.	edwin.reyes.jr@comcast.net ;	Russell Fisk	Russell.fisk@state.nm.us ;
Jose Provencio	joprovincio@las-cruces.org ;	Ana Kippenbrock	ana.kippenbrock@state.nm.us ;
Lisa LaRocque	llarocque@las-cruces.org ;	Carolyn Glick,	Carolyn.Glick@state.nm.us ;
Philip Simpson	philipbsimpson@comcast.net	Hearing Examiner	
Nann Winter	nwinter@stelznerlaw.com ;		
Keith Herrmann	kherrmann@stelznerlaw.com ;		
Nelson Goodin	nelsong@donaanacounty.org ;		

Issued at Santa Fe, New Mexico on April 26, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Carolyn R. Glick
Carolyn R. Glick, Hearing Examiner