

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF EL PASO ELECTRIC)	
COMPANY'S APPLICATION FOR)	
APPROVAL OF A LONG TERM PURCHASE)	Case No. 12-00386-UT
POWER AGREEMENT WITH MACHO)	
SPRINGS SOLAR, LLC)	
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PROCEDURAL ORDER

THIS MATTER comes before the Hearing Examiner in this proceeding pursuant to the Application ("Application") filed with the Commission on November 21, 2012 by the El Paso Electric Company ("EPE") regarding EPE's request for approval of a Long-Term Purchased Power Agreement ("LTPPA") with Macho Springs Solar, LLC. Being fully informed of the premises, the Hearing Examiner **FINDS** and **CONCLUDES**:

1. On November 21, 2012, El Paso Electric Company, Inc, ("EPE" or the "Company") filed an Application requesting prior approval of a Long-Term Purchased Power Agreement ("LTPPA") with Macho Springs Solar, LLC ("Macho Springs") pursuant to the New Mexico Public Regulation Commission's ("NMPRC" or "Commission") Rule 17.9.5551 NMAC, Prior Approval of Purchased Power Agreements ("Rule 551" or "Rule"). Subject to the approval of the Commission, EPE has entered into a twenty-year LTPPA with Macho Springs to purchase energy from a 50 megawatt ("MW") solar facility to be constructed by Macho Springs in EPE's New Mexico service territory. The new facility is anticipated to be in service by May 2014. EPE also seeks approval of the recovery of costs associated with the LTPPA through EPE's Fuel and Purchased Power Cost Adjustment Clause ("FPPCAC") in accordance with Rule 551 and Rule 17.9.550 NMAC, Fuel and Purchased Power Cost Adjustment Clauses for Electric Utilities.

2. On January 8, 2013, the Commission issued an Order designating the undersigned as Hearing Examiner to preside over this case.

3. Pursuant to an order of the Hearing Examiner issued on January 9, 2013, a prehearing conference was held in this matter on January 16, 2013. Participating in the conference were representatives of EPE, the Attorney General of New Mexico, Element Power ("Element") and the Staff of the Commission's Utility Division ("Staff").

4. At the prehearing conference, the parties discussed EPE's proposed form of public notice for the proceeding and the concerns of the Attorney General and Staff that the notice should include a description of the price of the LTPPA and its cost impact on ratepayers. EPE and Element agreed that Element's attorney would check with her client about its willingness to waive its request for confidentiality with regard to the prices in the LTPPA. Based upon the results of Element's discussion and comments from the parties and the Hearing Examiner, EPE filed a revised proposed notice on January 22, 2013.

5. At the prehearing conference, the parties discussed the need for supplemental testimony by EPE. Staff requested supplemental testimony regarding (1) EPE's allocation of RECs, REC costs and LTPPA costs between New Mexico and Texas, (2) EPE's proposed rate treatment of the LTPPA RECs, including the flow-through of REC costs and revenues from REC sales through the fuel clause or otherwise, and (3) how EPE may, in the future, propose to use the LTPPA RECs for EPE's Renewable Portfolio Standard compliance. The Hearing Examiner requested supplemental testimony on (1) how EPE intends to use the LTPPA as a peaking resource, (2) how the LTPPA and the operation of the two Montana generating units proposed in Case No. 12-00137-UT will be coordinated to provide the "optimal low cost option" stated on page 17, lines 19 and 20 of the Direct Testimony of Ricardo Acosta. Upon further review of Mr. Acosta's pre-filed testimony, the Hearing Examiner further requests EPE to provide the economic analysis referenced on page 16, line 21 of the Direct Testimony of Ricardo Acosta and supplemental testimony on why the LTPPA was not analyzed over the 20-year life of the LTPPA (See page 15, lines 21-22 of the Direct Testimony of Ricardo Acosta. Further, in reference to the

Final Report of the Independent Evaluator attached as Exhibit WJO-3 to the Direct Testimony of Wayne J. Oliver in Case No. 12-00137-UT, EPE's supplemental testimony should explain why the non-dispatchable LTPPA was chosen when the RFP sought peaking resources that are "dispatchable by EPE, . . . able to cycle on and off on an hourly/daily basis and . . . able to provide power to the grid" (Exhibit WJO-3, p. 4) and why a purchased power agreement was chosen given Conclusion 9 that "it appears that a utility-owned resource is the lowest cost resource" (Exhibit WJO-3, p. 30). The parties agreed that the supplemental testimony should be filed by February 1, 2013.

6. At the prehearing conference, the parties discussed the concerns of the Attorney General and Staff regarding EPE's request for confidential treatment of the LTPPA. Counsel for EPE stated that its request was made on behalf of the developer pursuant to the confidentiality provisions of the LTPPA. Counsel for Element stated that she would review the breadth of the developer's request for confidentiality and would file a further position on the issue by February 1, 2013, with a supporting affidavit (and brief, as necessary) describing in detail the basis for its claim of confidentiality. The Attorney General, Staff and any other parties agreed to file responses by February 8, 2013.

7. The parties also agreed on a schedule at the prehearing conference, and the Hearing Examiner finds that the schedule and other procedural details set out below should be adopted for this proceeding.

8. The Commission has jurisdiction over the parties and the subject matter of this case.

IT IS THEREFORE ORDERED:

A. EPE shall cause, at its sole expense, a copy of the Notice of Proceeding and Hearing appended to this Order to be published once in a newspaper or newspapers of general circulation sufficient to accomplish distribution to all areas where EPE provides service in New

Mexico on or before January 28, 2013. EPE shall also, at its sole expense, post a copy of the Notice of Proceeding and Hearing on its website at www.epelectric.com/about-el-paso-electric/news on or before January 28, 2013. EPE shall promptly file affidavits reflecting such publication and posting with the Commission. Any protest to EPE's Application shall be filed on or before March 28, 2013, stating the grounds for protest.

B. Any person who desires to become a party to this case shall file a Motion for Leave to Intervene with the Commission in conformity with 1.2.2.23(A) and (B) NMAC on or before February 28, 2013.

C. On or before February 1, 2013, EPE shall file supplemental testimony on the following issues:

- (1) EPE's allocation of RECs, REC costs and LTPPA costs between New Mexico and Texas.
- (2) EPE's proposed rate treatment of the LTPPA RECs, including the flow-through of REC costs and revenues from REC sales through the fuel clause or otherwise.
- (3) How EPE may, in the future, propose to use the LTPPA RECs for EPE's Renewable Portfolio Standard compliance.
- (4) How EPE intends to use the LTPPA as a peaking resource.
- (5) How the LTPPA and the operation of the two Montana generating units proposed in Case No. 12-00137-UT will be coordinated to provide the "optimal low cost option" stated on page 17, lines 19 and 20 of the Direct Testimony of Ricardo Acosta.
- (6) The economic analysis referenced on page 16, line 21 of the Direct Testimony of Ricardo Acosta.
- (7) Why the LTPPA was not analyzed over the 20-year life of the LTPPA (See page 15, lines 21-22 of the Direct Testimony of Ricardo Acosta.
- (8) In reference to the Final Report of the Independent Evaluator attached as Exhibit WJO-3 to the Direct Testimony of Wayne J. Oliver in Case No. 12-00137-UT, EPE's supplemental testimony should explain why the non-dispatchable LTPPA was chosen when the RFP sought peaking resources that are "dispatchable by EPE, . . . able to cycle on and off on an hourly/daily basis and . . . able to provide power to the grid" (Exhibit WJO-3, p. 4) and why a purchased power agreement was chosen given Conclusion 9 that "it appears that a utility-owned resource is the lowest cost resource" (Exhibit WJO-3, p. 30).

D. EPE and/or the LTFPA Supplier shall file a position statement, with affidavit, on February 1, 2013, addressing its assertions regarding whether all, or specific portions of contract terms, should be designated confidential and protected pursuant to the terms of the Protective Order in this case. The Commission's Utility Division Staff shall file a Response on February 8, 2013.

E. On or before February 28, 2013, Staff shall, and any Intervenors may, file direct testimony.

F. On or before March 7, 2013, parties shall file any desired rebuttal testimony.

G. On March 14, 2013, a public hearing on the merits of EPE's Application will be held beginning at 9:30 a.m., and continuing thereafter as necessary, at the offices of the Commission, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico, to hear and receive testimony, exhibits, arguments, and any other appropriate matters pertaining to the Application. Such hearing may be vacated if deemed not required under NMSA 1978, Section 62-9-1 (2005), in which case the Commission will take public comment and dispose of the Application at an Open Meeting.

H. The service list for this proceeding has been revised as reflected in the Certificate of Service for this Procedural Order, pending a further evaluation and revision which will take place after the deadline for intervention has passed.

I. The procedural dates and requirements provided herein are subject to further Order of the Commission or Hearing Examiner. Interested persons should contact the Commission for confirmation of the hearing date, time and place, since hearings are occasionally rescheduled.

J. The Commission's Rules of Procedure, 1.2.2.1 NMAC, et seq., shall apply to this case except as modified by order of the Commission or Hearing Examiner. A copy of the Rules may be obtained from the offices of the Commission or at <http://www.nmcpr.state.nm.us/nmac/>.

K. Discovery matters and any discovery disputes shall be governed by the Commission's discovery rules. 1.2.2.25 NMAC. The parties are advised to raise any questions or concerns regarding discovery with the Hearing Examiner in a timely manner so that they may be considered well in advance of the hearing.

L. A Commission order is not required for agreements between or among any of the participants regarding discovery matters. All other participants shall be notified of such agreements.

M. No motion regarding any discovery dispute shall be considered unless accompanied by a statement that the participants have made a good faith effort to resolve the dispute and were unable to do so.

N. Anyone filing pleadings, documents or testimony in this case shall serve a copy on all parties of record, Staff and the Hearing Examiner as indicated in the Commission's service list for the case. All such filings shall also be sent to the Hearing Examiner via email in PDF and WORD formats, at ashley.schannauer@state.nm.us. All filings shall be e-mailed on the date they are filed with the Commission.

O. Any person whose testimony has been pre-filed shall attend the hearing and submit to examination under oath. Unless otherwise ordered or approved by the Commission or Hearing Examiner, the questioning of a party sponsoring a witness shall be limited on direct examination to the authentication and verification of the witness' pre-filed written testimony and later to appropriate redirect examination.

P. Any interested person may examine EPE's Application, together with supporting pre-filed direct testimony and any exhibits and related papers, at the offices of EPE or the Commission at the following addresses:

El Paso Electric Company
201 N. Water Street
Las Cruces, NM 88001-1219
(505) 526-5551

New Mexico Public Regulation Commission
PERA Building -- 1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Telephone: 1-888-427-5772

Q. Any interested person may appear at the time and place of hearing and make a written or oral comment pursuant to 1.2.2.23(F) NMAC without becoming an Intervenor. Interested persons may also send written comments, which shall reference NMPRC Case No. 12-00386-UT, to the Commission at the address set out above. All such comments will not be considered as evidence in this proceeding.

R. All documents mailed to the Commission and its personnel shall be mailed to: New Mexico Public Regulation Commission, P.E.R.A. Building, P.O. Box 1269, Santa Fe, New Mexico, 87504-1269. The following physical address of the Commission shall be used only for special or hand deliveries: 1120 Paseo de Peralta, Santa Fe, NM 87501.

S. Any person with a disability requiring special assistance in order to participate in this proceeding should contact the Commission at least 24 hours prior to the commencement of the hearing.

ISSUED at Santa Fe, New Mexico, this **January 22, 2013**.

NEW MEXICO PUBLIC REGULATION COMMISSION



Ashley C. Schannauer
Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF EL PASO ELECTRIC)	
COMPANY'S APPLICATION FOR)	
APPROVAL OF A LONG TERM PURCHASE)	Case No. 12-00386-UT
POWER AGREEMENT WITH MACHO)	
SPRINGS SOLAR, LLC)	
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NOTICE OF PROCEEDING AND HEARING

NOTICE is hereby given by the New Mexico Public Regulation Commission ("Commission") of the following:

1. On November 21, 2012, El Paso Electric Company, Inc, ("EPE" or the "Company") filed an Application requesting prior approval of a Long-Term Purchased Power Agreement ("LTPPA") with Macho Springs Solar, LLC ("Macho Springs") pursuant to the New Mexico Public Regulation Commission's ("NMPRC" or "Commission") Rule 17.9.5551 NMAC, Prior Approval of Purchased Power Agreements ("Rule 551" or "Rule"). Subject to the approval of the Commission, EPE has entered into a twenty-year LTPPA with Macho Springs to purchase energy from a 50 megawatt ("MW") solar facility to be constructed by Macho Springs in EPE's New Mexico service territory. The new facility is anticipated to be in service by May 2014.

2. EPE also seeks approval of the recovery of costs associated with the LTPPA through EPE's Fuel and Purchased Power Cost Adjustment Clause ("FPPCAC") in accordance with Rule 551 and Rule 17.9.550 NMAC, Fuel and Purchased Power Cost Adjustment Clauses for Electric Utilities. EPE states that the price of the purchased energy will be \$57.90 per MWh. Cost under the contract allocated to New Mexico customers in the first year of operation of the facility is estimated to be \$1,950,919. EPE anticipates that, because the purchase of power under the Macho Springs PPA will allow EPE to replace existing power purchases, the net impact to New Mexico customers will be less than the cost of the PPA allocated to New Mexico. EPE has estimated that the bill impact for a residential customer in New Mexico using 685 kWh per

month would be approximately \$0.22 per month, or an increase of approximately 0.2% compared to the current average monthly bill of \$89 per month, depending on system operations and market prices at the time.

3. EPE is certified and authorized to conduct the business of providing public utility service within the State of New Mexico, and is a public utility subject to the jurisdiction of the Commission under the Public Utility Act.

4. The Commission has assigned Case No. 12-00386-UT to this proceeding, and all questions or written comments concerning EPE's Application should refer to this case number.

5. The following schedule shall apply to the relief requested in the Application:

(a) On or before February 28, 2013, any person who desires to become a party to this case must file a motion for leave to intervene, pursuant to 1.2.2.23.A and 1.2.2.23.B NMAC.

(b) On or before February 1, 2013, EPE shall file supplemental testimony as directed in the Procedural Order for this case.

(c) EPE and/or the LTPPA Supplier shall file a position statement, with affidavit, on February 1, 2013, addressing its assertions regarding whether all, or specific portions of contract terms, should be designated confidential and protected pursuant to the terms of the Protective Order in this case. The Commission's Utility Division Staff shall file a Response on February 8, 2013.

(d) On or before February 28, 2013, Staff shall, and any Intervenors may, file direct testimony regarding EPE's Application.

(e) On or before March 7, 2013, parties shall file any desired rebuttal testimony.

(f) On March 14, 2013, a public hearing on the merits of EPE's Application will be held beginning at 9:30 a.m., and continuing thereafter as necessary, at the offices of the Commission, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico, to hear and receive testimony, exhibits, arguments, and any other appropriate matters pertaining to the Application. Such hearing may be vacated if deemed not required under NMSA 1978, Section 62-9-1 (2005), in which case the Commission will take public comment and dispose of the Application at an Open Meeting.

6. Further information regarding this case may be obtained by contacting EPE or the Commission at the addresses and telephone numbers provided below. All inquiries or written comments concerning this matter should refer to Case No. 12-00386-UT.

7. EPE's Application, together with supporting pre-filed direct testimony and any exhibits and related papers, may be examined by any interested person at the offices of EPE or the Commission at the following addresses:

El Paso Electric Company
201 N. Water Street
Las Cruces, NM 88001-1219
(505) 526-5551

New Mexico Public Regulation Commission
PERA Building -- 1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Telephone: 1-888-427-5772

8. Pursuant to Rule 551, the Commission may approve EPE's Application for a CCN without a formal hearing if no protest is filed within sixty days of the date that notice has been given that EPE has filed its Application. Therefore, the formal hearing scheduled for this matter may be vacated upon further order of the Commission or Hearing Examiner. Any protest to EPE's Application shall be filed on or before March 28, 2013, stating the grounds for protest.

9. Any interested person may appear at the time and place of hearing and make written or oral comment pursuant to 1.2.2.23.F NMAC without becoming an Intervenor. Interested persons may also send written comments, which shall reference Case No. 12-00386-UT, to the Commission at the address set out above. All such comments will not be considered as evidence in this case.

10. The procedural dates and requirements provided herein are as provided in the Procedural Order issued in this case, and are subject to further order of the Commission or Hearing Examiner.

11. Any interested person should contact the Commission for confirmation of the hearing date, time and place since hearings are occasionally rescheduled.

12. Anyone filing pleadings, documents or testimony in this case shall serve a copy on all parties of record, Staff and the Hearing Examiner as indicated in the Commission's service list for the case. All such filings shall also be sent to the Hearing Examiner via email in PDF and WORD formats, at ashley.schannauer@state.nm.us. All filings shall be e-mailed on the date they are filed with the Commission.

13. Any person whose testimony has been pre-filed will attend the hearing and submit to examination under oath. All documents mailed to the Commission and its personnel shall be mailed to: P.O. Box 1269, Santa Fe, New Mexico, 87504. The physical address of the Commission shall be used only for special or hand deliveries.

14. The Commission's Administrative Procedures (1.2.2 NMAC) will apply to this case except as modified by Order of the Commission or Hearing Examiner.

15. Any person with a disability requiring special assistance in order to participate in this case should contact the Commission at least 24 hours prior to the commencement of the hearing.

ISSUED at Santa Fe, New Mexico, this **January 22, 2013**.

NEW MEXICO PUBLIC REGULATION COMMISSION



Ashley C. Schannauer
Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF EL PASO ELECTRIC)
COMPANY'S APPLICATION FOR APPROVAL)
OF A LONG TERM PURCHASED POWER) No. 12-00386-UT
AGREEMENT WITH MACHO SPRINGS)
SOLAR, LLC)
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Procedural Order*, issued January 22, 2013, was e-mailed to the following and mailed to the following:

Email Addresses:

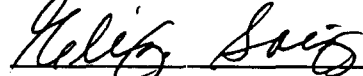
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And mailed to:

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Santa Fe, NM 87501	

DATED this 22nd day of January, 2013.

NEW MEXICO PUBLIC REGULATION COMMISSION



Elizabeth Sáiz, Law Clerk