

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**APPLICATION OF EL PASO ELECTRIC )  
COMPANY FOR APPROVAL OF NEW )  
AND MODIFIED ENERGY EFFICIENCY )  
PROGRAMS FOR 2014, 2015 AND 2016 )  
EL PASO ELECTRIC COMPANY, )  
Applicant. )**  

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**Case No. 13-00176-UT**

**CORRECTED CERTIFICATION OF STIPULATION**

Frances I. Sundheim, Hearing Examiner in this case, hereby submits this Corrected Certification of Stipulation to the New Mexico Public Regulation Commission (“Commission” or “NMPRC”). The corrections appear at pages 12 and 13 regarding the tariffs applicable as a result of Stipulation. The changed paragraphs retain a margin notation to make clear where the changed language is located.

**I. STATEMENT OF THE CASE**

On May 17, 2013, El Paso Electric Company (“EPE”) filed its Application for proposed Energy Efficiency and Load Management Programs (“Programs”), and adjustments to the recovery factors contained in EPE’s Rate 17-Efficient Use of Energy Recovery Factor (“EUERF”) Rate Rider, pursuant to the New Mexico Efficient Use of Energy Act (“EUEA”), NMSA 1978, Sections 62-17-1 *et seq.* (2005) and the New Mexico Public Regulation Commission’s (“NMPRC” or “Commission”) Energy Efficiency Rule (“Rule”), 17.7.2 NMAC. In its Application, EPE sought approval of new and modified Programs and proposed tariff revisions together with all other approvals, authorization and actions that may be required for implementation of its Programs.

On June 6, the Commission issued its order designating the Hearing Examiner and suspending tariff rider.

On June 6, 2013, the Coalition for Clean Affordable Energy (“CCAIE”) CCAIE filed its Motion for Leave to Intervene.

On June 18, 2013, the Hearing Examiner issued her Order Setting Prehearing Conference.

On June 19, 2013, the Attorney General filed his Motion for intervention.

On July 3, 2013, the Hearing Examiner issued her Procedural Order.

On July 26, 2013, EPE filed proof of timely publication in accordance with the Procedural Order.

On July 30, 2013, pursuant to motion, the Hearing Examiner issued her Protective Order.

On September 5, EPE filed a Joint Unopposed Motion to Extend Procedural Schedule, which motion was granted on September 6, 2013.

On September 18, 2013, EPE, Commission Staff, and CCAIE filed their Stipulation, together with the testimonies in support of the Stipulation of Evan D. Evans, Susanne Stone, and William L Brooks, on behalf of EPE; John Reynolds and Bruno Carrara on behalf of Staff; and Maureen Quaid on behalf of CCAIE.

No party filed a statement of opposition to the Stipulation and no party filed response testimony.

On October 30, 2013, the Hearing Examiner conducted an evidentiary hearing to receive testimony and evidence in support of the uncontested Stipulation. The following appearances were entered at hearing: Randall W. Childress and Stacey J. Goodwin, on behalf of EPE; Cydney Beadles, on behalf of Commission Staff; and Charles Noble, on behalf of CCAIE. The Attorney General was excused from attending the hearing.

No written or oral comments were received.

At hearing, the Hearing Examiner admitted the following written testimonies and documents into evidence: EPE Exhibit (“Ex.”) 1, Direct Testimony of Evan Evans; EPE Ex. 2, Direct Testimony of Paul Royalty as adopted by Susanne Stone; EPE Ex. 3, Direct Testimony of William Brooks; EPE Ex. 4, Stipulation of EPE, Staff and CCAE; EPE Ex. 5, Testimony in Support of Stipulation of Evan Evans; EPE Ex. 6, Testimony in Support of Stipulation of Susanne Stone; EPE Ex. 7, Testimony in Support of Stipulation; CCAE Ex. 1, Testimony in Support of Stipulation of Maureen Quaid; Staff Ex. 1, Testimony in Support of Stipulation of John Reynolds; and Staff Ex. 2, Testimony in Support of Stipulation of Bruno Carrara.

## **II. DISCUSSION**

### ***Background of EPE’s Existing Programs and Initial Filing***

EPE has offered energy efficiency programs to its customers since late 2008. EPE’s first programs were approved by the Commission in NMPRC Case No. 07-00411-UT, and were modified and expanded in NMPRC Case Nos. 09-00390-UT and 11-00047-UT. EPE filed its initial Application in this docket pursuant to a Partial Stipulation that was adopted in part in NMPRC Case No. 11-00047-UT. EPE’s Programs are available to customers in EPE’s New Mexico residential, commercial, and industrial customer classes, with the exception of certain lighting classes and EPE’s Military Research and Development rate class. EPE Ex. 2 at 7. EPE’s current EUERF rate rider was approved in NMPRC Case No. 11-00047-UT, and is set at 3.4675 percent for all eligible customer rate classes. EPE Ex. 1 at 13 and EDE-5.

Along with changes to various Program budgets and rebates for its existing residential and commercial Programs, EPE’s initial Application sought approval for the continuation or modification of its existing energy efficiency programs, and the termination of a window replacement measure. EPE Ex. 2 at 7, 11-13, 19. EPE also sought to continue to make available

a large customer Self-Directed Program, although it currently does not have any large customers participating in that program. EPE Ex. 2 at 8. The Program budgets and incentives as originally filed by EPE proposed a total annual Program budget and incentive for 2014 of \$4,705,396, and that amount would translate into a monthly rate rider of approximately 2.643 percent of the average bill for each customer in the eligible rate classes. EPE Ex. 1 at 14 and EDE-6, EDE-7.

EPE provided testimony and exhibits in support of its assertions that the proposed Programs, with one exception, passed both the Total Resource Cost Test (“TRC”) and the Utility Cost Test (“UCT”). The TRC and UCT are different methods of determining the cost-effectiveness of the Programs. Under either method, if a Program has a result of 1.0 or greater, it is considered cost-effective for purposes of that test. EPE Ex. 3 at 8, 9.

#### ***Overview of Unopposed Stipulation Among EPE, Staff and CCAE***

The Stipulation is a comprehensive agreement among EPE, Commission Staff and the Coalition for Clean Affordable Energy that is intended to avoid litigation of the substantive issues in this case. EPE Ex. 4. The Stipulation addresses EPE’s proposed Programs, budgets, and funding requirements; proposed incentives; and proposed rate recovery for calendar years 2014, 2015 and 2016. The Stipulation consists of the following substantive sections: Preamble, Stipulated Programs and Budgets, Stipulated Annual Incentives; Stipulated Rate Recovery, Other Stipulated Provisions and Stipulation Effect, which are summarized in the Testimony in Support of Stipulation of Evan Evans. EPE Ex. 4; EPE Ex. 5 at 2-14.

The Preamble Section establishes the intent and goals of the signatories, and reflects the comprehensive nature of the settlement and the agreement of the signatories that the Stipulation is non-precedential and will not limit a signatory with regard to any positions they may take in other energy efficiency and load management program cases or rulemakings.

The Stipulated Programs and Budgets Section lists the Programs that EPE will offer and

the estimated budgets for calendar years 2014, 2015 and 2016 (Paragraph 1). EPE has calculated the cost-effectiveness of the stipulated Portfolio of Programs for each year, and the Portfolio meets both the Utility Cost Test and the Total Resource Cost Test (Paragraph 2). The Stipulation also provides that the Programs will continue in 2017 and thereafter, unless otherwise ordered by the Commission (Paragraph 3). This Section also requires that the Programs will be funded through budgets equal to the lesser of three percent of customers' bills (less gross receipt taxes and franchise and right-of-way access fees) or \$75,000 (Paragraph 3). The annual incentive that is established for calendar years 2014-2016 will not be automatically continued even if EPE's Programs are automatically extended, but EPE will have the right to seek approval of incentives for Programs offered in 2017 and thereafter (Paragraph 3). Paragraph 4 gives parties the ability to seek to modify or terminate a given Program for good cause. In addition, Paragraph 4 requires EPE to provide quarterly reports on Program expenditures and rate recovery, and requires EPE to provide rate class participation data in its Annual Reports.

The Stipulated Annual Incentives Section (paragraphs 5-7) establishes an annual incentive for calendar years 2014-2016 that is equal to seven percent of Program expenditures. This Section sets forth the estimated incentive amounts, based on the estimated annual Program budgets, provides that the both the estimated budgets and incentives will be trued up to actual expenditures each year. The true-up information will be filed in EPE's Annual Report each year.

The Stipulated Rate Recovery Section (paragraphs 8-12) continues the existing percentage of bill rate rider that has been previously approved by the Commission in EPE's earlier energy efficiency cases. The rate rider adjustment requirements are substantially the same as those previously approved by the Commission. This Section provides the necessary information to be included in EPE's annual reports, with additional data to be provided by EPE than has been required in the past. This Section also requires an annual true-up between

estimated Program budgets and actual expenditures and the estimated and actual incentives, to be detailed in the annual reports.

The Other Stipulated Provisions Section makes clear that the Signatories to the Stipulation have the right to propose or challenge future methodologies for performing cost-effectiveness tests, and reflects their agreement that an appropriate methodology for the utility cost test should be addressed in a rulemaking proceeding (Paragraph 13). EPE will be required to file its next energy efficiency program application case between January 1 and June 1, 2016, unless otherwise ordered by the Commission (Paragraph 14). In its next case, EPE will be required to address the relationship among program expenditures, customer participation, and system benefits in that filing.

The Stipulation Effect section sets forth the standard understanding of the effect of the stipulation on the signatories and other parties and the Commission and the consequences of approval or disapproval of the Stipulation by the Commission.

If approved by the Commission, the uncontested Stipulation filed by EPE, Staff and CCAE would govern EPE's Energy Efficiency Plan for 2014-2016. The modifications to EPE's current Programs proposed by EPE in its initial filing would be implemented, and the budgets for specified Programs would be increased such that the estimated total Program costs would be equal to the lesser of 3 percent of customers' estimated bills (excluding gross receipts taxes and franchise and right-of-way access fees) or \$75,000 per customer, which is consistent with a recent revision enacted to the EUEA. EPE's proposed incentives would correspondingly change to equal seven percent of the Program costs for calendar years 2014-2016. The estimated Program costs and incentives are subject to true-up on an annual basis. EPE's energy efficiency tariff will continue to be a monthly percentage-of-bill rate rider to be collected from those rate classes whose customers have an opportunity to participate in one or more of the Programs

offered by EPE. EPE will be required to true-up its rate rider revenues with its actual expenditures and incentives each year, and will provide detailed information on its Programs in each annual report.

***Testimony in Support of the Uncontested Stipulation***

EPE, Staff and CCAE all filed testimony supporting approval of the uncontested Stipulation. EPE Ex. 5, Ex. 6, and Ex. 7; Staff Ex. 1 and Ex. 2; CCAE Ex. 1. The Attorney General did not oppose the Stipulation and did not file testimony or participate in the hearing.

**Stipulated Programs and Budgets**

EPE’s Programs are generally unchanged from existing Programs, with the following exceptions. Under the Stipulation, EPE will eliminate the ENERGY STAR® Window measure in its Residential Program as recommended by ADM, the statewide M&V contractor, in its May 2012 M&V report, because it is not cost-effective. EPE has agreed to add LED lighting measures to its existing CFL rebate Program, and will streamline and reorganize its commercial Programs for ease and clarity by its commercial customers and vendors. The Commercial Comprehensive and the Small Business Energy Savings Program are being merged to become the Small Business Comprehensive Program, available to Commercial customers with peak demand up to and including 100 kW. This program also includes the addition of four measures: HVAC Tune-Up, Pool Pump Controls, Vending Miser Controls, and HVAC Controls. EPE Ex. 3 at 29.

A comparison of the existing 2013 Programs and the stipulated 2014 – 2016 Programs are shown in the following table:

<b>2013 Programs</b>	<b>2014-2016 Programs</b>
<b>Educational</b> LivingWise®	<b>Educational</b> LivingWise®
<b>Residential</b>	<b>Residential</b>

Home Efficiency High Efficiency Cooling CFL Appliance Recycling ENERGY STAR® New Homes	Home Efficiency High Efficiency Cooling CFL & LED Appliance Recycling ENERGY STAR® New Homes
<b>Low Income</b> NM Energy Saver	<b>Low Income</b> NM Energy Saver
<b>Commercial</b> School and Business Assistance Small Business Energy Savings Commercial Comprehensive	<b>Commercial</b> School and Business Assistance (>100kW) Small Business Comprehensive(≤100kW)

Pursuant to the Stipulation, EPE has revised the 2014-2016 Programs by increasing its proposed program budgets from \$4,249,366 to \$5,331,648 for 2014, from \$4,195,898 to \$5,535,546 for 2015, and from \$4,265,954 to \$5,751,436 for 2016. The increase in budgets allows EPE to fund its programs based on three percent of estimated customer bills for each calendar year, excluding gross receipts taxes and franchise and right-of-way access fees, or seventy-five thousand dollars (\$75,000) per customer per calendar year, whichever is less, for those customer classes with the opportunity to participate in EPE’s EE Programs. All customer classes with the exception of the military research and development, lighting, and cogeneration classes, have the ability to participate and benefit economically from EPE’s Programs. EPE Ex. 6 at 3. The specific budgets for each Program and year are set forth in the following Table 1 of the Stipulation:



Program Name	Program Budget		
	2014	2015	2016
School and Business Assistance Program	\$1,682,927	\$1,678,610	\$1,483,952
Small Business Comprehensive Program	\$1,183,344	\$1,208,094	\$1,273,939
Home Efficiency Program	\$137,000	\$155,000	\$172,000
High Efficiency Cooling Program	\$619,718	\$721,718	\$823,968
Appliance Recycling Program	\$109,375	\$109,375	\$114,375
CFL and LED Program	\$464,793	\$498,435	\$663,825
LivingWise Program	\$139,500	\$146,251	\$165,000
ENERGY STAR New Homes Program	\$260,000	\$287,500	\$315,000
NM Energy Saver Program	\$559,226	\$559,226	\$569,226
Marketing All Programs	\$110,765	\$110,337	\$110,151
Awareness Building & Trade Ally Campaign	\$65,000	\$61,000	\$60,000
<b>TOTAL Program Budget</b>	<b>\$5,331,648</b>	<b>\$5,535,546</b>	<b>\$5,751,436</b>

Working in conjunction with CCAE and Staff, EPE increased the budgets for those programs which could reasonably be expected to have increased participation levels as a result of increases in rebates and incentives. The increased budgets reflect increased participant rebates and incentives, opportunities for installer incentives. Also as a result of the Stipulation, EPE is adding an Awareness Building & Trade Ally Campaign (“Awareness Campaign”) in an effort to increase awareness of its New Mexico programs among trade allies and customers, which will result in more aggressive marketing and educational efforts by EPE. EPE Ex. 6 at 4, 8-9. The Programs for which budgets were increased under the Stipulation are: Home Efficiency Program, High Efficiency Cooling Program, Appliance Recycling Program, CFL/LED Program, School and Business Assistance Program, and Small Business Comprehensive Program. The Stipulation did not change the budgets as originally proposed by EPE for the LivingWise Program, the ENERGY STAR New Homes Program or the NM Energy Saver Program. EPE Ex. 6 at 4-8.

EPE provided testimony that the budgets for 2014 through 2016 are reasonable because they are based on the recent budget standards set forth in the 2013 EUEA amendments and direct resources toward those Programs that can reasonably be expected to have increased participation

levels as a result of increases in the amount of rebates and incentives that are offered, and that can be more effectively promoted with additional marketing efforts and the new Awareness Campaign. EPE Ex. 6 at 8-9; *see also* CCAE Ex. 1 at 4.

The Stipulation (Table 2 at Paragraph 2) demonstrates the anticipated cost-effectiveness of the stipulated Programs:

**ENERGY EFFICIENCY PORTFOLIO ESTIMATES**

<b>Year</b>	<b>Total Savings kWh</b>	<b>Total Savings kW</b>	<b>Program Costs</b>	<b>TRC*</b>	<b>UCT*</b>
<b>2014</b>	20,697,953	4,670	\$5,331,648	2.46	2.78
<b>2015</b>	19,325,520	4,514	\$5,535,546	2.46	2.78
<b>2016</b>	17,921,810	4,347	\$5,751,436	2.46	2.78

\* TRC and UCT calculated by EPE on portfolio's multi-year total costs and benefits

EPE provided supporting testimony demonstrating that the stipulated Programs are cost-effective and that EPE's stipulated Programs for 2014-2016 pass both the TRC and the UCT. EPE Ex. 7 at 9, WLB-Stip-1. For the Program Plan period, based on total savings and expenditures, EPE calculated the overall TRC for its portfolio of Programs to be 2.46; and the overall UCT for its portfolio of Programs to be 2.78. EPE Ex. 7 at WLB-Stip-1 (p. 6-7). The specific Program savings and expenditures, TRC and UCT calculations, and the underlying assumptions for each Program, are set forth in EPE Ex. 7 at WLB-Stip-1 (p. 15-84).

In addition to the data for each stipulated Program provided by EPE, Staff provided a detailed breakdown of TRC calculations, estimated and actual Program budget amounts, and estimated and actual Program participant numbers for 2012 and 2013 in comparison with the stipulated data. Staff Ex. 1 at JJR-3 and JJR-7. Staff provided an outline of the filing requirements for EPE's Application and Programs and testified that EPE has met the Commission's requirements. Staff Ex. 1 at 7-27 and JJR-5 and JJR-6. Staff recommends

approval of EPE's Plan for 2014 through 2016 set forth in its original filing, as thereafter modified by the Stipulation. Staff Ex. 1 at 27.

CCAIE also recommends approval of the stipulated Programs and budgets, stating that the intent and purpose of the Stipulation serve the public interest by promoting cost-effective energy efficiency programs that comply with the EUEA (regardless of the applicability of the 2013 amendments), and reaches a resolution of the issues in the case. CCAIE Ex. 1 at 4. CCAIE testified that it provided program-specific recommendations to help strengthen and diversify EPE's energy efficiency portfolio, increase cost-effective energy savings, and ensure that EPE's Plan as stipulated would achieve the three percent spending levels specified in the amendments to the EUEA. CCAIE Ex. 1 at 4.

#### **Stipulated Incentives**

Under the Stipulation, EPE will receive an annual incentive for its satisfactory performance in offering its Programs, based on an estimated seven percent of EPE's estimated total Program budgets:

<b>STIPULATED INCENTIVES</b>		
<b>2014</b>	<b>2015</b>	<b>2016</b>
\$373,215	\$387,488	\$402,601

The annual incentives are subject to true-up in order for the incentive to equal seven percent of EPE's actual Program expenditures for each calendar year, and will be collected through EPE's Rate 17-EUERF rate rider, as an adder to EPE's total Program costs. EPE Ex. 4 (Stipulation at Paragraphs 5-7).

The stipulated incentives are less than the incentives originally proposed by EPE. *See* EPE Ex. 1 at 7, 9. EPE's original proposal for incentives was based on the methodology proposed by Staff in a preceding PNM energy efficiency case, NMPRC Case No. 12-00317-UT, in which the Commission recently approved an incentive of approximately 7.6% for PNM in its

Final Order issued on November 6, 2013. EPE's initial proposal took into consideration utility-specific information such as EPE's weighted cost of capital, and program-specific savings and expenditures and EPE compared its proposal to other alternatives that had been proposed by various parties in the PNM proceeding. EPE Ex. 1 at 6-12 and EDE-1 through EDE-4. EPE initially proposed an estimated incentive of \$456,030 per year for 2014-2016. EPE Ex. 1 at 7, which was equal to an average of 10.76% of the estimated annual Plan budgets. EPE Ex. 1 at 9.

Staff testified that the stipulated incentives take into account the revised Program budgets and are less than those proposed by EPE in its initial filing. Staff Ex. 2 at 5, 6. Staff testified that the parties had different approaches to the determination of incentives and that the result of the Stipulation was to resolve a complicated and contentious issue in a reasonable manner; reach agreement on lower incentive amounts which provided a benefit to customers of approximately \$600,000 over the course of the Stipulation; adopt incentives that follow the EUEA and Supreme Court principles; and adopt incentives that take into consideration the EUEA recent amendments for Program funding. Staff Ex. 2 at 7-9.

CCAIE took no position on the stipulated incentives. EPE Ex. 4 at p. 1.

#### **Stipulated Rate Recovery and Tariff**

The tariff rate rider will be paid in addition to other current charges that the customer pays and will be collected through a line item charge on the customer's bill. EPE's current rate rider is set at 3.4675 percent. EPE initially proposed that Residential customers using 500 kilowatt-hours ("kWh") per month would pay an additional amount of approximately \$1.69 per month, while residential customers using 1,000 kWh per month would pay approximately \$3.31 more per month; EPE's and an average residential customer uses approximately 684 kWh per month, and for that average use, a customer would pay have paid approximately \$2.28 more per month. If funding were increased and EPE's originally proposed incentive had been adjusted

accordingly to 3.33 percent as contained in the Notice of this case, residential customers using 500 kilowatt-hours (“kWh”) per month would have paid an additional amount of approximately \$2.13 per month, while an average residential customer using approximately 684 kWh per month would have paid approximately \$2.87 more per month. EPE’s proposed factor is subject to the statutory dollar cap of \$75,000 per year for a customer, contained in the EUEA. If approved by the Commission, the rate rider would apply only to those EPE service customer classes that are eligible to participate in the energy efficiency programs.

If EPE’s 2014 Program Budgets are funded in accordance with the Stipulation in an amount equal to the lesser of 3 percent of customers’ bills or \$75,000 per customer, and EPE’s proposed incentives are correspondingly set at seven percent of Program costs, the resulting stipulated monthly charges represent approximately 3.213 percent of the average bill for each customer in the eligible customer classes, which is less than the tariff rider currently in effect and less than the rate rider contained in the Notice of this proceeding. EPE Ex. 4 (Stipulate Exhibit 1). Residential customers using 500 kilowatt-hours (“kWh”) per month would pay an additional amount of approximately \$2.13 per month, while residential customers using 1,000 kWh per month would pay approximately \$4.17 more per month; EPE’s average residential customer uses approximately 684 kWh per month, and for that average use, a customer would pay approximately \$2.87 more per month over its rates without the rate rider. The stipulated rate rider results in a reduction to current bills because the existing rate rider will be reduced from the current 3.4675 percent to the stipulated 3.213 percent of monthly charges.

Staff testified that the stipulated rate recovery and rate rider are reasonable, comply with statutory and regulatory requirements, and will result in a rate reduction. Staff Ex. 1 at 22-26. Staff reviewed the stipulated form of rate and anticipates the new rate rider will approximately 3.213 percent, to be adjusted for true-up. Staff proposes to review EPE’s compliance advice

notice filing that will incorporate the impact of EPE's current over-recovery balance. Staff Ex. 1 at 26-27. Staff recommends approval of the rate recovery methodology and tariff, subject to review of EPE's compliance advice notice filing that complies with the Commission's decision in this case. Staff Ex. 1 at 27-28. In addition to the compliance advice notice filing for EPE's revised Rate 17, Staff recommends that EPE file a compliance advice notice that provides the Commission with the updated information language on customers' bills approved by the Commission in prior cases.

CCAЕ took no position on the stipulated rate recovery and tariff rider. EPE Ex. 4 at p. 1.

### **III. HEARING EXAMINER'S RECOMMENDATIONS ON STIPULATION**

#### ***Standards for Approval of an Uncontested Stipulation***

The proponents of a stipulation have the burden of supporting the stipulation with sufficient evidence and legal argument to allow the Commission to approve it. 1.2.2.20(A)(3) NMAC. The Commission has a long-standing policy that favors settlement of disputes to avoid costly or protracted litigation. *See Re Pub. Serv. Co. of New Mexico*, 110 PUR4th 69, 84 (Public Utility Commission Case No. 2087, 1990). In reviewing stipulations, the Commission looks at whether the settlement is a product of serious bargaining among capable, knowledgeable parties; whether the settlement as a whole benefits customers and the public interest; and whether the settlement as a whole violate any important regulatory principles or practices. Ultimately, the Commission must determine whether a stipulation is fair, just and in the public interest.

#### ***Evidence in Support of Approval***

Application of the Commission's criteria for stipulations supports adoption and approval of the Stipulation. The Stipulation undoubtedly is the result of serious bargaining among capable, knowledgeable parties. CCAЕ represents a wide range of groups involved in the

promotion of energy efficiency and affordable energy resources, and supported the Stipulated. Staff is tasked with balancing the interests of customers, the utility and the public interest and also supported the Stipulation. The AG is also tasked with representing residential customers, and did not oppose the Stipulation.

Substantively, the Stipulation addresses the mandates of the EUEA (including its 2013 amendments) and the Commission's previously adopted rules. The stipulated Programs, budgets, incentives, and recovery methodology are consistent with both. In addition, the Stipulation requires EPE to provide additional reporting data in its annual reports that will aid the Commission and Staff in future assessments of EPE's Programs.

The Stipulation itself and the supporting testimony demonstrate that there was give and take among the parties, and that the outcome is a reasonable compromise given the parties differing considerations. The stipulated Program budgets take into consideration the recently enacted amendments to the EUEA with regard to funding and low-income program availability. The Stipulation also takes into consideration recent Supreme Court determinations, and the Commission's current decisions with regard to annual incentives. Finally, the Stipulation provides the parties with flexibility to advocate for alternative approaches as they believe may be appropriate in the Commission's pending rulemaking in NMPRC Case No. 13-00310-UT, while providing certainty and resolution for EPE, based on the facts and circumstances unique to this case. Because the Stipulation is unopposed, results in reasonable Programs, budget funding, annual incentives, and rate recovery that conform to the principles and requirements of the EUEA and the Commission's policies, the Stipulation should be approved.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Hearing Examiner recommends that the Commission **FIND** and **CONCLUDE** as follows:

1. The Statement of the Case, Discussion, and Recommendations contained in the Hearing Examiner's Certification of Stipulation are incorporated by reference herein as Findings of Fact and Conclusions of Law.
2. EPE is a public utility as defined in the Public Utility Act, NMSA 1978, § 62-1-1 *et seq.*
3. The Commission has jurisdiction over the parties and the subject matter of this case.
4. EPE seeks approval of its stipulated Programs, Program budgets, incentives, rate recovery and percentage-of-bill rate rider (Rate 17) for the period 2014 through 2016, pursuant to the EUEA.
5. Due and proper notice of EPE's Application has been provided.
6. The Uncontested Stipulation and supporting testimony and exhibits reasonably address the directives of the EUEA.
7. The Stipulation provides a reasonable resolution of the issues raised in this proceeding.
8. The stipulated annual incentive provides EPE with a reasonable opportunity to earn a profit in accordance with the requirements of the EUEA.
9. The Stipulation provides certainty and a more permanent resolution of the issues relating to Program funding and the regulatory treatment of incentives, while allowing EPE,



Staff, interested parties and the Commission the ability to address related issues in future proceedings.

10. The Stipulation should be approved and should go into effect upon issuance of a Final Order in this case, for EPE's energy efficiency programs offered during calendar years 2014, 2015 and 2016.

11. EPE should be authorized to implement the stipulated Programs, budgets and incentives, and to implement the stipulated rate recovery methodology in calendar years 2014, 2015 and 2016, subject to true up, and should be required to demonstrate the implementation through appropriate accounting in accordance with the provisions of the Stipulation.

12. EPE should comply with the reporting requirements set forth in the Stipulation in filings its annual reports for calendar years 2014, 2015 and 2016.

13. EPE should file a compliance advice notice with the necessary changes to its current Rate 17-EUERG to implement the stipulated rate recovery for 2014, within 10 days of the issuance of a Final Order approving the Stipulation in this case.

14. EPE should file a compliance advice notice that provides the billing forms EPE adopted in accordance with previous Commission orders that demonstrates customer bills include informational language regarding energy efficiency and load management program benefits, within 30 days of the issuance of a Final Order approving the Stipulation in this case.

#### **DECRETAL PARAGRAPHS**

A. The findings and conclusions and the decretal paragraphs contained in the Certification of Stipulation are adopted, approved and ordered by the Commission.

B. The Stipulation, including the stipulated Programs, budgets, incentives and rate recovery methodology for calendar years 2014 through 2016, is approved.

C. and shall incorporate the reporting requirements of the Stipulation in its annual reports.

D. EPE shall true-up its Rate 17-EUERF and any changes to EPE's Rate 17-EUERF that incorporate the expenditures and incentives in accordance with the Stipulation shall be filed in an Advice Notice in conformance with the EUEA and Commission rules.

E. Within 10 days of this Order, EPE shall file a compliance Advice Notice for its Rate 17-EUERF that shall become effective upon review of Staff for compliance with this Final Order.

F. Within 30 days of this Order, EPE shall file a compliance Advice Notice that includes EPE revised billing forms that reflect previously approved informational language for customers on EPE's billing forms.

G. This Order is effective immediately.

H. This Docket is closed.

**ISSUED** at Santa Fe, New Mexico this 10th day of December, 2013.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

  
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**FRANCES I. SUNDHEIM**  
**HEARING EXAMINER**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**APPLICATION OF EL PASO ELECTRIC  
COMPANY FOR APPROVAL OF NEW  
AND MODIFIED ENERGY EFFICIENCY  
PROGRAMS FOR 2014, 2015 AND 2016**  
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**EL PASO ELECTRIC COMPANY,**  
)  
**Applicant.**  
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Case No. 13-00176-UT

**STIPULATION**

El Paso Electric Company (“EPE”), the New Mexico Public Regulation Commission’s (“Commission” or “NMPRC”) Utility Division Staff (“Staff”), and the Coalition for Clean Affordable Energy (“CCAIE”) (collectively “the Signatories”), through their authorized representatives, in consideration of the mutual promises, obligations and benefits contained herein, stipulate and agree as follows. CCAIE supports this Stipulation, except that it takes no position on the provisions relating to incentives and disposition of over- or under-expenditures. The New Mexico Attorney General (“NMAG”) does not take a position at this time.

**PREAMBLE**

EPE seeks approval of its Energy Efficiency Plan (“EE Plan”) for continuing and modified Programs and measures for calendar years 2014, 2015 and 2016, together with proposed annual budgets and incentives. EPE further seeks to continue to recover its annual costs and incentives through EPE’s Rate 17-Efficient Use of Energy Rate Factor (“EUERF”) Rate Rider, and to true-up prior year expenditures and revenues and recover any under-collection or refund any over-collection of revenues associated with its 2013 Programs. The Signatories agree to the admission into the case record of EPE’s pre-filed direct testimonies and exhibits, together with the testimonies of EPE and parties filed in support of the Stipulation.

Through this Stipulation the Signatories intend to resolve all issues relating to EPE's portfolio of programs, program incentives, true-up of prior year expenditures and revenues, and rate rider adjustments in this proceeding. The terms of this Stipulation are without precedential effect and are not intended to bind or otherwise limit the Signatories with regard to positions they desire to assert in future energy efficiency rulemakings or application proceedings.

The Signatories agree that the intent and result of this Stipulation serve the public interest because it promotes cost-effective energy efficiency programs that comply with the Efficient Use of Energy Act ("EUEA" or "Act"), and reaches a resolution of the issues raised in this proceeding that otherwise would require additional litigation resources. Resolution on a stipulated basis of the matters set forth herein will conserve resources and avoid the uncertainties to all parties inherent in litigation. The agreements set forth in this Stipulation reflect good faith negotiations, with reasonable "give and take" on issues by all Signatories, and result in a bargained-for resolution of a significant portion of this case in a manner that fairly benefits the interests of the parties, ratepayers, and EPE.

### **STIPULATED PROGRAMS AND BUDGETS**

1. The Stipulated Programs are appropriate to help EPE in achieving the statutory goals for energy efficiency established in Section 62-17-5(G) of the EUEA. The Signatories agree that the stipulated Programs and their budgets contained in Table 1 below meet the requirements of the EUEA. The annual funding amounts contained in Table 1 are based on three percent of estimated customer bills for each calendar year, excluding gross receipts taxes and franchise and right-of-way access fees, or seventy-five thousand dollars (\$75,000) per customer per calendar year, whichever is less, for customer classes with the opportunity to participate. Any budgeted amounts for a Program that are above or below the amounts actually expended during the calendar

year shall not be added to or subtracted from the approved annual Program budget for the next calendar year.

**Table 1: Annual Programs and Budgets**

Program Name	Program Budget		
	2014	2015	2016
School and Business Assistance Program	\$1,682,927	\$1,678,610	\$1,483,952
Small Business Comprehensive Program	\$1,183,344	\$1,208,094	\$1,273,939
Home Efficiency Program	\$137,000	\$155,000	\$172,000
High Efficiency Cooling Program	\$619,718	\$721,718	\$823,968
Appliance Recycling Program	\$109,375	\$109,375	\$114,375
CFL and LED Program	\$464,793	\$498,435	\$663,825
LivingWise Program	\$139,500	\$146,251	\$165,000
ENERGY STAR New Homes Program	\$260,000	\$287,500	\$315,000
NM Energy Saver Program	\$559,226	\$559,226	\$569,226
Marketing All Programs	\$110,765	\$110,337	\$110,151
Awareness Building & Trade Ally Campaign	\$65,000	\$61,000	\$60,000
<b>TOTAL Program Budget</b>	<b>\$5,331,648</b>	<b>\$5,535,546</b>	<b>\$5,751,436</b>

2. As calculated by EPE, its Portfolio of Programs is anticipated to provide estimated savings on a program lifetime per kilowatt-hour (“kWh”) and annual per kilowatt (“kW”) basis as set forth in Table 2. The Signatories agree that based on EPE’s calculations of the Total Resource Cost Test (“TRC”) and the Utility Cost Test (“UCT”), the stipulated Portfolio of Programs meets the requirements of the Act and should be approved by the Commission.

**Table 2: Estimated Program Savings and Cost-Effectiveness**

**ENERGY EFFICIENCY PORTFOLIO ESTIMATES**

Year	Total Savings kWh	Total Savings kW	Program Costs	TRC*	UCT*
2014	20,697,953	4,670	\$5,331,648	2.46	2.78
2015	19,325,520	4,514	\$5,535,546	2.46	2.78
2016	17,921,810	4,347	\$5,751,436	2.46	2.78

\* TRC and UCT calculated by EPE on portfolio’s multi-year total costs and benefits

3. The Signatories intend for the EE Plan to be continuing and that EPE shall offer the Programs contained in the stipulated Portfolio until otherwise ordered by the Commission. The

stipulated Programs shall continue to be funded in accordance with the funding provisions in Paragraph 1 until further order of the Commission. The stipulated annual incentive set forth in Paragraph 6 shall not extend beyond 2016; provided, however, that nothing shall preclude EPE from seeking Commission approval of an annual incentive for 2017 and subsequent years in the event that EPE's 2014-2016 Portfolio of Programs is continued in 2017 and subsequent years in accordance with this Stipulation.

4. Notwithstanding the provisions of this Stipulation, nothing in this agreement shall restrict EPE or any interested party from requesting that the Commission modify or terminate a program for good cause. EPE shall provide the Commission and the Signatories with a quarterly report of actual participation by program, of actual spending by program and by budget category, and of actual Rate 17-EUERF recoveries by rate class across all affected rate classes. The report shall be provided by the last day of the month following each calendar quarter which is the subject of the report. The first calendar quarter to be reported shall be the first full calendar quarter following the Commission Final Order in this proceeding. In the Annual Report for Energy Efficiency Programs that includes the statewide independent evaluator's report, EPE shall provide a table that breaks down the distribution of participant incentives by rate class across all affected classes.

#### **STIPULATED ANNUAL INCENTIVES**

5. The Signatories agree that a methodology for calculating incentives should be developed through a rulemaking process conducted by the Commission. Because no uniform methodology for calculating incentives has been established by the Commission as of the date of this Stipulation, the Signatories agree that annual incentive levels for each year of the EE Plan should equal to seven percent of EPE's total annual Program expenditures.

6. EPE shall receive an annual incentive for its satisfactory performance in offering its Programs, based on the following estimated amounts that are equal to seven percent of EPE's estimated total Program budgets: \$373,215 for 2014; \$387,488 for 2015; and \$402,601 for 2016. The annual incentive shall be subject to true-up in order for the incentive to equal seven percent of EPE's actual Program expenditures for each calendar year, and shall be collected through EPE's Rate 17-EUERF rate rider, as an adder to EPE's total Program costs, as described in the Rate Recovery Section below.

7. The annual incentives are agreed to by the Signatories upon consideration of company specific, cost specific, and program performance factors. Establishing an incentive based upon a percentage of budget expenditures for the limited period of this Stipulation provides a cap on the potential incentive that can be earned, provides EPE with a calculable incentive, and preserves the ability of all of the Signatories to advocate for a different methodology or formula in any rulemaking proceeding that encompasses this issue. An incentive equaling seven percent is within the zone of reasonableness that provides EPE an opportunity to earn a profit on its energy efficiency and load management resource development that, with satisfactory program performance, may be financially more attractive to the utility than supply-side utility resources.

#### **STIPULATED RATE RECOVERY**

8. The stipulated rate rider is designed to recover the estimated Program budgets, the prior year's reconciliation balance, and the annual incentives set forth in Paragraph 6. The Signatories agree that if a final rule amending 17.7.2 NMAC is adopted by the Commission prior to December 31, 2015, any Signatory may petition the Commission to amend the terms of the Stipulation relating to Program budgets and recovery as set forth in Paragraphs 1 and 9, commencing with the next calendar year. The Signatories agree that the following stipulated rate

recovery shall be used for the recovery of program costs and incentives until otherwise ordered by the Commission.

9. EPE shall continue to collect its annual expenditures and incentives through EPE's Rate 17-EUERF rate rider on a uniform percentage of bill basis from all customers within customer classes that have an opportunity to participate in EPE's Programs. The rate rider shall be subject to true up on an annual basis based on actual Program expenditures and an annual incentive amount equaling 7 percent of those actual expenditures. Any budgeted amounts for a Program that are above or below the amounts actually expended during the calendar year shall not be added to or subtracted from the approved annual Program budget for the next calendar year. The stipulated rate rider based on the 2014 estimated Program budgets and incentive is attached as Exhibit 1 to this Stipulation.

10. The Signatories agree that an adjustment to EPE's current Rate 17-EUERF rate rider factor for affected customer classes is necessary and reasonable to recover the costs and charges arising from the stipulated Plan. Upon approval of the Stipulation by the Commission, EPE shall file a compliance filing Advice Notice containing its amended Rate 17-EUERF that conforms with the terms and conditions of the Stipulation, in substantially the same form as Stipulation Exhibit 1, attached hereto. The compliance filing Advice Notice shall be supported by an Affidavit from EPE that provides the underlying calculations for the percentage of bill rate rider factor.

11. In its Annual Reports to be filed for Program activities in calendar years 2014, 2015 and 2016, EPE shall true-up all estimated costs and energy and capacity savings with its verified actual costs and energy and capacity savings and provide a monthly reconciliation of the prior calendar year's program costs and Rate 17-EUERF collections; shall report any under or over-



collection of the stipulated costs and charges collected for the prior calendar year; and shall present any potential changes to the prior calendar year's rate rider that may be necessary to collect the stipulated Program budgets and incentives, as adjusted for any over- or under-collections, for the current calendar year. EPE shall not be required to file an Advice Notice to adjust Rate 17-EUERF as part of its Annual Report filing if the under- or over-collection balance does not exceed 15 percent of the current, annualized budget and the reconciliation process shows that leaving the rider unchanged is expected to substantially self-correct any over- or under-collection balance prior to the next anticipated adjustment of the rider; or if EPE has a proceeding pending before the Commission that includes proposed changes to EPE's Rate 17-EUERF or is required to file such a proceeding within three months after the filing date of EPE's Annual Report.

#### **OTHER STIPULATED PROVISIONS**

12. For purposes of this proceeding only, the Signatories agree to rely on EPE's calculations of the TRC and UCT. The Signatories reserve the right to challenge any assumptions, calculations or methodology employed by EPE relating to underlying costs and benefits as well as cost-effectiveness determinations that EPE may propose in future proceedings. The Signatories agree that any rulemaking proceeding to amend the Rule should address the appropriate method(s) for calculating the UCT as it may be applied in future energy efficiency program approval proceedings.

13. Unless otherwise ordered by the Commission, EPE shall file its next request for approval of a new Energy Efficiency and/or Load Management Plan after January 1, 2016, but no later than June 1, 2016 to commence at the beginning of the next calendar year, which the Signatories have assumed will be January 1, 2017. In its filing, EPE shall examine the relationship of cost recovery, participant incentives, and system benefits across rate classes.

## STIPULATION EFFECT

14. It is recognized and agreed by the Signatories that this Stipulation is made and filed solely in connection with the negotiation, compromise, settlement, and accommodation among the Signatories with respect to the Portfolio of Programs and related budget issues contained in EPE's filed application and direct testimonies for its EE Plan for 2014, 2015 and 2016 and resolves all such issues. It is also recognized and agreed by the signatories that this Stipulation shall have no precedential effect in any other proceeding.

15. This Stipulation shall not prejudice, bind, or affect any Signatory, or be viewed as an admission, except to the extent necessary to give effect to or to enforce the terms of the Stipulation or unless otherwise specifically stated herein. It is the resolution of a unique fact situation, except as otherwise stated herein, and its resolution is unique to the circumstances presented.

16. This Stipulation is subject to the approval of the Commission of the matters Stipulated. The Signatories agree that they will use their best efforts to obtain expeditious approval of this Stipulation by appropriate final order of the Commission in this proceeding. This Stipulation assumes the legality and enforceability of the rates, methodologies and agreements set forth in the Stipulation. Should any rate, methodology, or agreement set forth in this Stipulation be rejected, modified or be directly or indirectly rendered inoperable by either the Commission, a court, or by an act of the New Mexico Legislature, any Signatory who is a party to this case shall have the right to withdraw from the Stipulation and declare it void.

17. In the event that the Commission does not approve the Stipulation in its entirety without modification, the Stipulation shall be voidable by any Signatory. In order to void the Stipulation and the agreements made herein, a Signatory must file a formal statement to void the

Stipulation within 15 days of the rejection or modification of any or all portions of the Stipulation by the Commission.

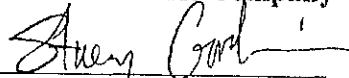
18. In the event this Stipulation is not approved by the Commission and thereafter implemented, nothing in the Stipulation or negotiations leading up to its execution shall be construed as an admission of a Signatory's position on any issue and shall not be used or offered into evidence in this or any other proceeding consistent with the provisions of Commission procedural rules.

### EXECUTION OF STIPULATION

19. The Signatories may agree to the terms of this Stipulation through the execution of a separate signature page.

DATED this 18<sup>th</sup> day of September, 2013.

**El Paso Electric Company**

  
Randall W. Childress, Esq.  
Stacey J. Goodwin, Esq.  
Law Offices of Randall W. Childress, P.C.  
300 Galisteo Street, Suite 205  
Santa Fe, NM 87501

**NMPRC Utility Division Staff**

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Santa Fe, NM 87501

**Coalition of Clean Affordable Energy**

\_\_\_\_\_  
Charles Noble, Esq.  
409 East Palace Ave., Unit 2  
Santa Fe, NM 87501

Stipulation within 15 days of the rejection or modification of any or all portions of the Stipulation by the Commission.

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DATED this \_\_\_\_ day of September, 2013.

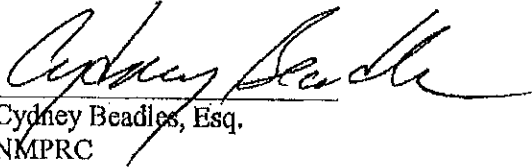
#### El Paso Electric Company

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NMPRC  
1120 Paseo de Peralta  
Santa Fe, NM 87501

Stipulation within 15 days of the rejection or modification of any or all portions of the Stipulation by the Commission.

18. In the event this Stipulation is not approved by the Commission and thereafter implemented, nothing in the Stipulation or negotiations leading up to its execution shall be construed as an admission of a Signatory's position on any issue and shall not be used or offered into evidence in this or any other proceeding consistent with the provisions of Commission procedural rules.

#### EXECUTION OF STIPULATION

19. The Signatories may agree to the terms of this Stipulation through the execution of a separate signature page.

DATED this 17<sup>th</sup> day of September, 2013.

**El Paso Electric Company**

\_\_\_\_\_  
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**APPLICABILITY:**

This rate is applicable to all customer classes as defined by the New Mexico Public Regulation Commission ("Commission") Rule 17.7.2, except for military research and development, lighting and cogeneration classes, as indicated below. X

This rate is a percentage of bill surcharge mechanism for the recovery of energy efficiency program costs and includes the provision of a Company incentive, as approved by the Commission. X

**TERRITORY:**

Areas served by the Company in Dona Ana, Sierra, Otero and Luna Counties.

**EUERF MONTHLY FACTOR:**

The monthly charge for the EUERF hereunder shall be comprised of the following rate charges:

<u>Rate No.</u>	<u>Description</u>	<u>Total EUERF per Pre-Tax Charges</u>	
1	Residential Service Rate	3.2130%	X
3	Small Commercial Service Rate	3.2130%	X
4	General Service Rate	3.2130%	X
5	Irrigation Service Rate	3.2130%	X
7	City and County Service Rate	3.2130%	X
8	Water, Sewage, Storm Sewage Pumping or Sewage Disposal Rate	3.2130%	X
9	Large Power Service Rate	3.2130%	X
10	Military Research & Development Rate	N/A	
11	Street Lighting Service Rate	N/A	
12	Private Area Lighting Rate	N/A	
19	Seasonal Agriculture Processing Service Rate	3.2130%	X

Advice Notice No. 229

Signature/Title \_\_\_\_\_  
David G. Carpenter  
Senior Vice President-Chief Financial Officer

NMPRC Case No. 13-00176-UT  
Stipulation Exhibit 1

21	Supplementary Power Service Cogeneration and Small Power Production Facilities	N/A	
22	Backup Power Service Cogeneration and Small Power Production Facilities	N/A	
23	Maintenance Power Service Cogeneration and Small Power Production Facilities	N/A	
24	Curtailable Power Service Cogeneration and Small Power Production Facilities	N/A	
25	Outdoor Recreational Lighting Service Rate	N/A	
26	State University Service Rate	3.2130%	X
28	Instantaneous Interruptible Service Rate for Large Power Service	3.2130%	X
29	Noticed Interruptible Service Rate for Large Power Service	3.2130%	X
30	Load Retention Rate	3.2130%	X

Advice Notice No. 229

Signature/Title \_\_\_\_\_

David G. Carpenter  
Senior Vice President-Chief Financial  
Officer

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL OF NEW AND MODIFIED ENERGY EFFICIENCY PROGRAMS FOR 2014, 2015 AND 2016 )  
EL PASO ELECTRIC COMPANY, )  
Applicant. )

Case No. 13-00176-UT

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that El Paso Electric Company's *Stipulation of EPE, Staff and CCAE* was emailed, mailed first class-postage prepaid or hand-delivered, on September 18, 2013 to each of the following:

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**DATED** this 18th day of September, 2013.

  
\_\_\_\_\_

Stacey J. Goodwin

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION )  
OF EL PASO ELECTRIC FOR APPROVAL )  
OF NEW AND MODIFIED ENERGY ) Case No. 13-00176-UT  
EFFICIENCY PROGRAMS AND ENERGY )  
EFFICIENCY PROGRAMS FOR 2014, 2015 )  
AND 2016. )

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Certification of Stipulation*, issued this 21st day of November, 2013, was sent by electronic mail or by regular mail to the individuals listed below.

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**Hand delivered to:**

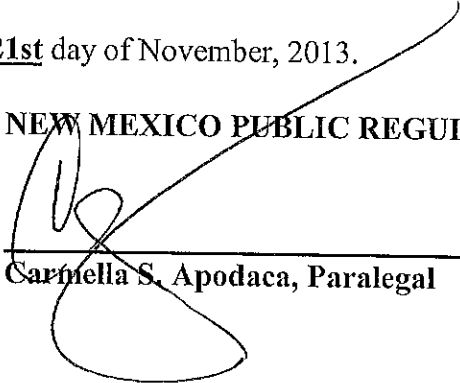
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**Hand delivered to:**

Lisa Adelman, Esq.  
PRC-Associate General Counsel  
1120 Paseo de Peralta  
Santa Fe, NM 87501

**DATED** this 21st day of November, 2013.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

  
\_\_\_\_\_  
Carmella S. Apodaca, Paralegal