167 FERC ¶ 61,037
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

El Paso Electric Company | Docket No. ES19-15-000

ORDER AUTHORIZING ISSUANCES OF SECURITIES

(Issued April 18, 2019)

1. On January 30, 2019,[1] as supplemented on February 26, 2019,[2] El Paso Electric Company (El Paso) filed an application pursuant to section 204 of the Federal Power Act (FPA)[3] seeking authorization to: (1) issue common stock in an amount up to $200 million; (2) issue short-term debt under a revolving credit facility in an amount not to exceed $400 million; (3) issue long-term debt in an amount not to exceed $225 million; and (4) remarket up to $100.6 million of pollution control bonds or issue replacement debt of equal value in the form of senior notes.[4] We will grant the authorizations, as discussed below.

I. **Background**

2. El Paso states that it is a vertically integrated electric utility whose primary business is serving native load in El Paso, Texas, Las Cruces, New Mexico, and surrounding areas. El Paso further states that it is a publicly traded company that is directly owned by its

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[1] El Paso Electric Company, Application, Docket No. ES19-15-000 (filed Jan. 30, 2019) (Application).

[2] El Paso Electric Company, Supplement, Docket No. ES19-15-000 (filed Feb. 26, 2019) (Supplement).

[3] 16 U.S.C. § 824c (2012).

[4] Application at 2. El Paso is currently authorized to, among other things, issue similar short- and long-term debt as well as to refinance certain pollution control bonds through November 14, 2019. *El Paso Elec. Co.*, 161 FERC ¶ 62,062 (2017).

shareholders. El Paso is regulated by the Public Utility Commission of Texas, the New Mexico Public Regulation Commission, and the Commission.[5]

II. Application

3. First, El Paso requests Commission approval to issue common stock, including the reissuance of treasury stock,[6] in an amount up to $200 million. El Paso states that issuance of common stock will be limited to the reissuance of treasury shares, but it would like to preserve the potential for the transaction to include the issuance of new common stock.[7] El Paso states that it may issue equity in one or more transactions. El Paso explains that the precise dates of these transactions are not known at the time of filing but may occur within the usual two-year window for authorized FPA section 204 applications. El Paso explains that the common stock transactions will be used to meet working capital needs, to fund capital expenditures, including infrastructure for the generation and transmission of electric power, and for other general corporate purposes.[8]

4. El Paso states that any holders of its common stock issued pursuant to the authority granted by the Commission would participate in dividends equally with the holders of outstanding shares of common stock and would have the same voting rights and liquidation rights.[9]

5. Second, El Paso requests authorization to continue to use its existing revolving credit facility, not to exceed $400 million at any one time, with the ability to amend and extend the revolving credit facility in the future. El Paso states that it currently uses an unsecured revolving credit facility that allows for all, or a portion of, the maximum borrowing limit to be made available to the Rio Grande Resources Trust for nuclear fuel

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[5] Application at 3.

[6] Treasury shares are shares of common stock that were issued in the past and subsequently repurchased by El Paso and are no longer outstanding. El Paso states that it anticipates reissuing treasury shares under the requested authorization. Also, El Paso states that it anticipates it may retire some of its treasury shares. El Paso claims retiring El Paso's treasury shares will not require any use of proceeds from the authorization sought in this application, and any such retirement would not create any liability for El Paso. *Id.* at n.9.

[7] *Id.* at 3.

[8] *Id.* at 8, 10-11.

[9] *Id.* at 9.

purchases. In addition, El Paso states that its borrowing under the revolving credit facility will be used to fund its working capital requirements and other short-term financing needs.[10]

6. El Paso states that the revolving credit facility's maximum interest rate will not exceed the one-week, one-month, three-month or six-month London Interbank Offered Rate (LIBOR) or its replacement rate as published in The Wall Street Journal at the time of issuance plus 175 basis points. El Paso states that borrowings may be in the form of loans or letters of credit and are expected to be short-term borrowings. In addition, El Paso states that the borrowings will occur at different times and in different amounts, depending upon El Paso's short-term financing needs.[11]

7. Third, El Paso seeks authorization to issue new long-term debt in a maximum amount of $225 million, with terms of 30 years or less. El Paso states the interest rate of the new long-term debt is not to exceed the 30-year U.S. Treasury rate as published in The Wall Street Journal at the time of issuance plus 350 basis points. El Paso further states that the issuance of long-term debt will be used to meet working capital needs, fund capital expenditures, and repay revolving credit facility balances.[12]

8. Lastly, El Paso requests authorization to remarket up to $100.6 million[13] of its Maricopa Pollution Control Bonds or to issue equivalent debt in the form of senior notes. El Paso states that the remarketed Maricopa Pollution Control Bonds or senior notes would have a maximum term of 30 years with an interest rate not to exceed 5.50 percent. El Paso states that the purpose of remarketing the Maricopa Pollution Control Bonds or issuing equivalent debt in the form of senior notes is to finance pollution control equipment and solid waste facilities, and/or other corporate purposes.[14]

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[10] *Id.* at 3, 10 & n.4.

[11] *Id.* at 4, 8. El Paso explains that efforts are underway to transition to a new benchmark rate and that the replacement rate for the LIBOR is referred to as a Secured Overnight Financing Rate. *Id.* at n.5.

[12] *Id.* at 8-9, 11.

[13] El Paso has two series of Pollution Control Bonds with option redemption—$63.5 million in Series A Maricopa Pollution Control Bonds and $37.1 million in Series B Maricopa Pollution Control Bonds. *Id.* at n.8.

[14] *Id.* at 5, 10-11.

9. In addition, El Paso agrees that any debt obligation that it incurs pursuant to the authorization requested in the Application will be subject to the restrictions specified in *Westar Energy, Inc.*[15]

10. El Paso also requests waiver of any requirement under section 34.2(a) of the Commission's regulations governing the use of competitive bidding or negotiated placement. El Paso states that the nature of the securities to be placed requires specific underwriters, agents, or purchasers who are knowledgeable about El Paso, qualified to be involved in such a transaction, and capable of maximizing El Paso's access to capital markets. In addition, El Paso claims that imposing the competitive bidding and negotiated placement requirements would not result in further cost advantages above those that will otherwise be achieved, and it may hinder El Paso's ability to move quickly and cost-effectively as favorable rates and terms are made available to it in the market. Finally, El Paso states that the securities will have interest rates that reflect market conditions.[16]

III. Supplement

11. El Paso explains that in its Application it calculated its interest coverage ratio to be 2.0. However, El Paso states that once additional accounts are reflected in the calculation, the interest coverage ratio drops slightly to 1.98. El Paso notes that it requests the highest levels of both debt and equity to provide itself with the flexibility to maintain a balanced capital structure, but consistent with its past filings, it will likely issue less debt and/or equity at lower rates than reflected in the Application. Nevertheless, El Paso provides alternative bases upon which the Commission may conclude that it may reasonably be expected to service its debt and interest expenses without impairing its ability to provide service as a public utility.[17]

12. First, El Paso explains that it has several tariffs under which it provides services and receives revenue, namely El Paso's retail services tariffs and Open Access Transmission Tariff. El Paso states that this combination of rate recovery mechanisms permits El Paso to recover its prudently incurred costs, including the cost of new debt issuances. Second, El Paso states that its credit ratings are investment grade; specifically, El Paso's corporate credit rating by Standard and Poor's Rating Services is BBB and by Moody's Investors Service is Baa1, which it states indicates a capacity to meet financial commitments and a low default risk. Third, El Paso claims that, by having access to a revolving credit facility, it is able to routinely have access to funds in performing service

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[15] *Westar Energy, Inc.*, 102 FERC ¶ 61,186 (2003) (*Westar*).

[16] Application at 14.

[17] Supplement at 1-2 & n.1.

as a public utility. Fourth, El Paso states that the Application includes contingent amounts in order to provide flexibility with respect to changes in market conditions, but El Paso notes it has not typically exercised the full amounts in its previous authorizations. Lastly, El Paso states that although its current interest coverage ratio of 1.98 is slightly below the Commission's 2.0 interest coverage ratio threshold, that interest coverage ratio is comparable to other recent authorizations under FPA section 204.[18]

IV. Notice of Filing

13. Notice of the Application was published in the *Federal Register*, 84 Fed. Reg. 2,219 (2019), with interventions and protests due on or before February 20, 2019. None was filed. Notice of the Supplement was published in the *Federal Register*, 84 Fed. Reg. 8,092 (2019), with interventions and protests due on or before March 19, 2019. None was filed.

V. Discussion

14. FPA section 204(a) provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.[19]

15. In reviewing an application under FPA section 204, the Commission uses an interest coverage ratio calculation to determine whether the issuances for which authorization are sought "will not impair [a public utility's] ability to perform" service as a public utility.[20] The Commission typically bases its finding that proposed issuances of securities will not impair an applicant's ability to perform service as a public utility in part upon the applicant's demonstration that it will have an interest coverage ratio that is 2.0 or higher.[21]

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[18] *Id.* at 2-3 (citing *S. Carolina Elec. & Gas Co.*, 165 FERC ¶ 61,032 (2018)).

[19] 16 U.S.C. § 824c(a).

[20] *See, e.g.*, *Old Dominion Elec. Coop.*, 145 FERC ¶ 61,132, at P 12 (2013); *Startrans IO, LLC*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*).

[21] *Startrans*, 122 FERC ¶ 61,253 at P 18 (stating that "this screen is a mid-way number in a range that has been used by lenders and borrowers and provides a buffer

In making this finding, the Commission reviews the financial statements submitted with an application filed under FPA section 204 and the applicant's calculation of the interest coverage ratio, which is the sum of income before interest and income taxes divided by total interest expense.[22] The interest coverage ratio is a screen test used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant's ability to perform public utility service.[23] The Commission has stated, however, that whether or not an applicant meets the 2.0 interest coverage ratio screen does not by itself determine whether the Commission will authorize or deny the application.[24] The Commission has approved FPA section 204 applications that have not met the 2.0 interest coverage ratio threshold.[25]

16. El Paso has filed, as Exhibits C, D, and E to the Application, actual and *pro forma* financial statements for the 12-month period ended September 30, 2018. As indicated by El Paso in its Supplement, once additional accounts are reflected in the interest coverage ratio calculation, El Paso has a *pro forma* interest coverage ratio below the Commission's 2.0 interest coverage ratio threshold. However, other factors persuade us that the proposed issuances by El Paso will not impair its ability to provide service. Specifically, El Paso has rate recovery mechanisms that allow it to recover its prudently incurred costs, including the cost of new debt issuances. In addition, El Paso's credit ratings are investment grade. El Paso also states that its Application includes a request for contingent amounts and that historically it has not issued the full amounts of securities authorized.

17. For these reasons, we find that El Paso's proposed issuances of securities will not impair its ability to perform service. Thus, we find, based on the facts set forth in the Application and Supplement, that Commission authorization is warranted, as the issuances: (1) are for a lawful object, within El Paso's corporate purposes, are necessary or appropriate for El Paso's providing service as a public utility, and will not impair

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against unforeseen, adverse financial events that might impair Startrans IO's ability to perform as a public utility").

[22] *Westar*, 102 FERC ¶ 61,186 at P 15, n.15.

[23] *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217, at P 16 (2009) (citing *Startrans*, 122 FERC ¶ 61,253 at P 18). The Commission has also described the interest coverage ratio as a measure of a utility's ability to meet future debt and interest payments. *Westar*, 102 FERC ¶ 61,186 at P 15.

[24] *See, e.g.*, *Startrans*, 122 FERC ¶ 61,253 at n.7.

[25] *See, e.g.*, *NorthWestern Corp.*, 151 FERC ¶ 61,120 (2015); *ITC Great Plains, LLC*, 147 FERC ¶ 61,005 (2014); *Miss. Power Co.*, 145 FERC ¶ 61,218 (2013).

El Paso's ability to perform such services; and (2) are reasonably necessary or appropriate for such purposes.

18. Accordingly, we authorize the following:

a. El Paso is authorized to issue common stock, including the reissuance of treasury stock, in an amount up to $200 million.

b. El Paso is authorized to continue borrowing under its existing revolving credit facility, with rights with respect to future amendment and extension of the existing facility, subject to a maximum borrowing level of $400 million outstanding at any one time.

c. The interest rate for borrowing under the revolving credit facility is not to exceed the one-week, one-month, three-month or six-month LIBOR or LIBOR-replacement rate as published in The Wall Street Journal at the time of issuance plus 175 basis points.

d. El Paso is authorized to issue new long-term debt in a maximum amount of $225 million, with terms of 30 years or less.

e. The interest rate for the long-term debt is not to exceed the 30-year U.S. Treasury rate as published in The Wall Street Journal at the time of issuance plus 350 basis points.

f. El Paso is authorized to remarket up to $100.6 million in Maricopa Pollution Control Bonds or to issue replacement debt of equal value in the form of senior notes.

g. The interest rate for the remarketing of the Maricopa Pollution Control Bonds, or the issuance of replacement debt, is not to exceed 5.50 percent.

19. We grant the requested authorization effective as of the date of this order, through April 18, 2021. Finally, we find good cause to grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements.

20. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.[26] First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the assets and also be divested or spun off. Third, if any of the proceeds

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[26] *Westar*, 102 FERC ¶ 61,186 at P 21.

from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility assets. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. We will condition our authorization on El Paso abiding by these restrictions.

<u>The Commission orders</u>:

(A) El Paso is hereby authorized to issue common stock, including the reissuance of treasury stock in an amount up to $200 million.

(B) El Paso is hereby authorized to continue borrowing under its existing revolving credit facility in an amount up to $400 million at the interest rates stated in the body of this order.

(C) El Paso is hereby authorized to issue new long-term debt in a maximum amount of $225 million at the interest rates stated in the body of this order.

(D) El Paso is hereby authorized to remarket up to $100.6 million in Maricopa Pollution Control Bonds or to issue replacement debt of equal value at the interest rates stated in the body of this order.

(E) These authorizations are granted to El Paso effective for two years from the date of this order.

(F) The authorizations granted in this order are subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar.*

(G) El Paso is granted waiver from compliance with the Commission's competitive bidding and negotiated placement requirements at 18 C.F.R. § 34.2(a) (2018).

(H) El Paso must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9, 131.43, and 131.50 (2018), no later than 30 days after the sale or placement of long-term debt securities or the entry into guarantees or assumption of liabilities.

(I) The authorizations granted in Ordering Paragraphs (A) through (D) above are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(J) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.