

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and between El Paso Electric Company (“EPE”), Chaparral Community Coalition for Health and the Environment (“Chaparral Community Coalition”), and Sierra Club and institutionally and on behalf of any and all of their representatives individually (collectively “Protestants”). This Agreement is effective upon the latest date of the signatures below (the “Effective Date”).

EPE is proposing to modify the existing Newman Generating Station, located at 4900 Stan Roberts Sr. Avenue in El Paso, El Paso County, Texas, by constructing a new Mitsubishi 501G series natural gas 230-Megawatt simple cycle combustion turbine fired by pipeline quality natural gas, referred to as Newman Unit 6, along with ancillary equipment (“Project”), which are more completely described in EPE’s permit application (“Application”). To receive authorization for the Project, EPE filed air permit applications, including the Application, with the Texas Commission on Environmental Quality (“TCEQ”). Chaparral Community Coalition for Health and the Environment is an unincorporated neighborhood association based in Chaparral, New Mexico. Protestants have opposed the Application and TCEQ’s issuance of the air permits applied for by EPE and were granted party status in State Office of Administrative Hearings (“SOAH”) Docket No. 582-21-1740 (TCEQ Docket No. 2021-0314-AIR), which is pending at SOAH.

EPE and Protestants (collectively the “Parties” and individually a “Party”) wish to terminate all disputes and administrative challenges related to the authorization, construction, and operation of the Project and avoid further and future litigation regarding the construction and operation of Newman Unit 6, generally, and challenges to TCEQ approval of EPE’s air permit applications, including the Application.

With neither Party acknowledging fault, liability, or obligation, other than as described in this Agreement; and in consideration of the promises and covenants set forth in this Agreement; and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. INCORPORATION OF RECITALS

The above listed recitals and definitions are incorporated to this Agreement by reference.

2. OBLIGATIONS OF PROTESTANTS

2.1. TCEQ Administrative Process

Protestants will immediately file with SOAH a withdrawal of their request for a contested case hearing and objection to issuance of the permit. The Protestants will also join in a motion to remand the Application back to the TCEQ for consideration of the Application by the TCEQ Executive Director as unopposed. Protestants will not file a motion for rehearing or otherwise seek further administrative or judicial review of any TCEQ decision to approve the Application and to issue the draft permit prepared by the Executive Director in this matter (“Permit”).

2.2. Future Opposition

As of the Effective Date, Protestants will not challenge the construction or permitting of the Project in any administrative or judicial forum, including by seeking judicial review of TCEQ authorization of the Project or funding any third-party litigation involving any claims settled, released, and waived by this Agreement.

3. OBLIGATIONS OF EL PASO ELECTRIC

3.1. Future Fossil Fuel Generation

With the exception of Newman Unit 6, EPE agrees that it will never construct any new fossil fuel generation units at Newman Generating Station. This restriction shall not apply to the conversions of existing generation units to operate on hydrogen fuel.

3.2. Construction Moratorium

With the exception of Newman Unit 6, EPE agrees to a four-year moratorium on EPE's construction of any additional EPE-owned fossil fuel-fired units to meet EPE's Native System Demand. The four-year moratorium period begins on the date the Permit for the Project is issued.

3.2.1. During the moratorium period, EPE is not prohibited from soliciting and obtaining regulatory approval for additional EPE-owned fossil fuel-fired units.

3.2.2. The moratorium does not include construction of any customer-dedicated resource, i.e. a unit or units dedicated solely for the benefit of a single customer or group of customers that is not a system resource.

3.2.3. The moratorium does not include construction related to any existing units.

3.2.4. The moratorium does not include installation or use of any authorized temporary generation responsive to any emergency or reliability conditions.

3.3. Abandonment of Existing Units

No later than the start of commercial operations date of Newman Unit 6, EPE will file abandonment applications for Newman Unit 1 or Newman Unit 2 and Rio Grande Generation Station Unit 7 with the New Mexico Public Regulation Commission and will use its best efforts in good faith to obtain approval thereof.

3.4. Emission Reductions

Following issuance of the Draft Permit, EPE will immediately seek an alteration of the applicable permits to reduce the allowable tons per year of nitrogen oxides ("NOx") and carbon dioxide ("CO2") emissions from Newman Unit 6 by 40% from the proposed permit. Specifically, EPE will agree to the following allowable tons per year from Newman Unit 6:

3.4.1. 790,000 tons per year of CO2.

3.4.2. 72 tons per year of NOx.

3.4.3. If TCEQ declines to incorporate the limitations in Section 3.4.1 and 3.4.2 into the final permit for Newman Unit 6, EPE nevertheless commits to meeting those emission limitations at Newman Unit 6.

3.5. Purchase of VOC Emission Credits

If and when a regional volatile organic compound ("VOC") credit market arises following a final nonattainment designation for El Paso County by the U.S. Environmental Protection Agency ("EPA"), EPE will commit \$500,000 to buy VOC emission offset credits to offset 110% of actual VOC emissions from Newman Unit 6.

3.5.1. If the EPA does not designate El Paso County as an ozone nonattainment area by the end of 2022 or a regional credit market fails to develop by the end of 2023, the \$500,000 shall be redirected by July 31, 2024, to other emission reduction or energy efficiency projects that shall be jointly selected by the Chaparral Community Coalition and EPE. If the Chaparral Community Coalition and EPE are unable to agree on emission reduction or energy efficiency projects by July 31, 2024, the selection of projects shall be decided through the Dispute Resolution provision in Section 12 below. Sierra Club expressly will not have decision-making authority for how the funds will be spent but may have an advisory role.

3.6. Community Project Fund

Upon issuance of the Permit for Newman Unit 6, EPE will provide \$400,000 to a charitable fund (preferably a 501(c)(3) non-profit organization) to be designated and administered by Chaparral Community Coalition as part of a community benefits agreement. The Chaparral Community Coalition will have authority to determine how the funds are spent but shall include pollution reduction or mitigation measures. Sierra Club expressly will not have decision-making authority for how the funds will be spent but may have an advisory role.

3.7. Information pertaining to Newman Unit 6

EPE will create and support a webpage for Newman Unit 6 posting quarterly emission reports filed with regulatory agencies.

3.8. Protestants' Attorney's Fees

Upon issuance of the permit for Newman Unit 6, EPE will provide \$40,000 to Protestants for reasonable attorney and expert fees and costs.

4. MULTIPLE ORIGINALS

This Agreement may be executed in any number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement. The Parties agree that original signatures are not necessary for this Agreement.

5. AUTHORITY

Each of the undersigned representatives of EPE and Protestants represent that they have the actual and express authority to execute this Agreement for the above-named entities and persons, including representatives, and that by their signature they are binding that Party, its assigns, directors, officers, trustees, employees, representatives, and attorneys to the terms of this Agreement. EPE and Protestants further represent that they will fulfill all of the terms and conditions contained in this Agreement.

6. BINDING ON SUCCESSORS AND ASSIGNS

EPE and Protestants each acknowledge that this Agreement is binding on each of their successors and assigns.

7. FORCE MAJEURE

7.1. No Party shall be liable for any delay or failure of performance under this Agreement if such delay or failure results from a Force Majeure Event. For purposes of this Agreement, a "Force Majeure Event" shall mean an event that has been or will be caused by circumstances beyond the control of the Party that delays compliance with any obligation of this Agreement

or otherwise causes a violation of any obligation of this Agreement despite that Party's reasonable and prudent best efforts to fulfill such obligation. The requirement that the Party exercise "reasonable and prudent best efforts to fulfill such obligation" includes using reasonable and prudent best efforts to anticipate any potential Force Majeure Event and to address the effects of such event (i) as it is occurring and (ii) after it has occurred, such that the delay or violation and any adverse environmental effects of the delay or violation is minimized. "Force Majeure" does not include the party's financial inability to perform any obligation under this Agreement.

7.2. If any Party claims a Force Majeure Event, it shall give notice to the other Party within a reasonable time but, in any event, within 30 days after the date the Party-claimant knew or with due diligence should have known of the Event. If the Parties disagree regarding a claim of Force Majeure, the Parties shall attempt to resolve that dispute pursuant to Section 12 of this Agreement. In any such dispute, the Party seeking to invoke Force Majeure shall have the burdens of proof and persuasion to demonstrate that a Force Majeure Event occurred based on the standards set forth above.

7.3. Subject to the provisions of Sections 7.1 and 7.2 above, if a delay or violation is caused by a Force Majeure Event, such delay or violation shall not be considered a breach of this Agreement. The Parties by agreement or the Court by order may modify the obligations and extend the time periods under this Agreement to remedy breaches or delays caused by a Force Majeure Event.

8. NO ADMISSION OF LIABILITY

EPE and Protestants each acknowledge that this Agreement does not constitute an admission of liability by either Party or any recognition of the correctness of their respective positions.

9. NO PARTNERSHIP

This Agreement should not be construed as making EPE and Protestants partners or joint venturers.

10. ENTIRE AGREEMENT

This Agreement embodies and constitutes the entire understanding between EPE and Protestants with respect to the settlement contemplated in this Agreement. All prior contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement.

11. NOTICES

Any written notifications required under this Agreement shall be provided by (i) email or fax and (ii) certified mail, return receipt requested or nationally recognized overnight delivery service to the following:

For Sierra Club:
Joshua Smith
2101 Webster Street, Suite 1300
Oakland, CA 94612
Joshua.smith@sierraclub.org:

For Chaparral Community Coalition:
Ida Garcia
300-2 McCombs Road
Personal Mail Box 187

Chaparral, New Mexico 88081
ida88021@yahoo.com

For EPE:
General Counsel
El Paso Electric Company
P.O. Box 982
El Paso, TX 79960
(with copies to EPE Regulatory Affairs, Operations and Environmental Department)

Notices shall be effective upon receipt or refusal. Any Party may update its own notification address(es) and information by providing such information in writing to the other Party.

12. DISPUTE RESOLUTION

In the event that a dispute arises among the Parties related to the terms or enforcement of the provisions of this Agreement, each shall make a good faith effort to settle such dispute by negotiation. In the event the Parties are unable to settle the dispute by negotiation, both shall make a good faith effort to settle the dispute by mediation (with the assistance of a mutually agreed upon mediator) without resorting to litigation. This Agreement has been made under and shall be interpreted and enforced by Texas law, and any causes of action related to this Agreement shall be maintained in Texas courts.

13. MISCELLANEOUS

13.1. If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted rather than voided in order to achieve the intent of the Parties to the extent possible. In any event, the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remainder of this Agreement.

13.2. It is expressly understood and agreed that this Agreement is solely for the benefit of the Parties, and nothing in this Agreement is intended or shall be construed to provide any rights or defenses to any other parties. This Agreement expressly does not create any rights in any entity or individual that is not a party to this agreement

13.3. Headings in this Agreement are provided for convenience only and are not a substantive part of this Agreement.

13.4. This Agreement shall not be modified, altered, or discharged except by a written agreement signed by authorized representatives of the Parties.

13.5. Protestants shall not be liable to EPE for money damages in the event of a breach of their obligations under Section 2, above. If EPE believes Protestants have breached their obligations under Section 2, EPE will provide prompt notice of breach and a reasonable amount of time to cure any breach. The sole remedy for any breach shall be injunctive relief directing Protestants to fulfill the obligations in Section 2.


14. ACKNOWLEDGMENT

EPE and Protestants, by and on behalf of itself and its representatives, acknowledge that they have had adequate opportunity to retain and consult with legal counsel of their choosing to advise them with regard to this Agreement. The Parties expressly warrant and represent to each other that they have reviewed and fully discussed this Agreement with counsel and have satisfied themselves that they fully understand the terms, conditions, contents, and effects of this Agreement and make this Agreement knowingly, voluntarily, and without threat of duress after such consultation.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, EPE and Protestants have entered into this Agreement, and this Agreement is executed by EPE and Protestants as of the Effective Date.

EL PASO ELECTRIC COMPANY,
A Texas corporation

By: 
Title: SOV-Operations
Date: 3/16/21

Chaparral Community Coalition for Health and
the Environment, an unincorporated
neighborhood association

By: _____

Title: _____

Date: _____

SIERRA CLUB

By: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, EPE and Protestants have entered into this Agreement, and this Agreement is executed by EPE and Protestants as of the Effective Date.

EL PASO ELECTRIC COMPANY,
A Texas corporation

By: _____

Title: _____

Date: _____

Chaparral Community Coalition for Health and
the Environment, an unincorporated
neighborhood association

By: *Lola Garcia*

Title: Chairperson

Date: 08/14/21

SIERRA CLUB

By: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, EPE and Protestants have entered into this Agreement, and this Agreement is executed by EPE and Protestants as of the Effective Date.

EL PASO ELECTRIC COMPANY,
A Texas corporation

By: _____

Title: _____

Date: _____

Chaparral Community Coalition for Health and
the Environment, an unincorporated
neighborhood association

By: _____

Title: _____

Date: _____

SIERRA CLUB
By: _____

Joshua Smith
JOSHUA SMITH
Title: STAFF ATTORNEY

Date: 8/15/2021