

“Load Saver 2009”



Program Manual

**An Electric Load Management Standard Offer Program for
distribution level commercial, governmental, non-profit, and
educational customers of El Paso Electric.**

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TABLE OF CONTENTS

<i>"LOAD SAVER 2009"</i> LOAD MANAGEMENT PROGRAM.....	3
BACKGROUND AND OVERVIEW OF THE LOAD MANAGEMENT STANDARD OFFER PROGRAM	5
STEP ONE: THE APPLICATION PROCESS	11
STEP TWO: THE CONTRACTING PROCESS	14
STEP THREE: THE PERFORMANCE PERIOD.....	15
STEP FOUR: MONITORING & VERIFICATION.....	16
STEP FIVE: INCENTIVE BUDGET AND PAYMENTS.....	19
COMPLAINT PROCEDURES.....	21
APPENDICES	22
APPENDIX A: APPLICATION PACKAGE	23
APPENDIX B: STANDARD OFFER AGREEMENT	27
ATTACHMENT 1: CONTRACT COVER SHEET.....	28
ATTACHMENT 2: COMPENSATION SCHEDULE.....	30
ATTACHMENT 3: SCOPE OF WORK	35
ATTACHMENT 4: GENERAL TERMS AND CONDITIONS FOR SERVICES.....	36
ATTACHMENT 5: IRS W-9.....	48

***“LOAD SAVER 2009”*LOAD MANAGEMENT PROGRAM**

Summary: The El Paso Electric *“Load Saver”* Load Management Standard Offer Program was developed in 2009 in response to changes in Public Utility Commission of Texas (PUCT) Substantive Rule 25.181 which authorizes participating customers or third-party sponsors (Project Sponsors) to provide on-call curtailment of electric consumption during peak demand periods in return for incentive payments. Incentives are based on verified demand savings that occur at El Paso Electric distribution or eligible institutional customers’ sites as a result of calls for curtailment.

El Paso Electric will begin accepting applications for the upcoming Peak Period program on August 3, 2009. **El Paso Electric commercial customers who are existing participants in El Paso Electric’s interruptible tariff(s), have contracted tariffs or taking service at 69KV or above are not eligible for participation in this program.**

PARTICIPATION: Participation is a **Five-Step Process** described in detail in this Program Manual and found in <http://www.epelectricefficiency.com/>, which can be downloaded via the left menu bar on the Load Management page by clicking on Downloads/Tools. The five steps are (1) Application, (2) Contracting, (3) Performance (4) Monitoring and Verification, and (5) Payment of Incentives to the Project Sponsor.

REQUIREMENTS: The Load Management Program is an agreement between the Project Sponsor and El Paso Electric.

The Program:

- Requires the participating entities to curtail agreed-upon loads for up to 5 hours, nine times per year, plus a test curtailment of one to five hours each year to verify load availability (a maximum of 50 hours per year). The contract can be renewed each year by submitting an updated application package, and issuance of a letter agreement. The agreement may be terminated by either party at any time without penalty.
- Is designed to reduce energy use during peak demand periods, defined as 1-7 p.m., weekdays, June through September, excluding Federal holidays.
- Is a performance-based program that offers market-based incentive payments to the Project Sponsor for curtailing electric load on notice.

ELIGIBLE PARTICIPANTS:

- Are required to have an aggregate normal peak demand of 300 kW or greater, with each participating site having at least 100 kW normal peak demand and capable of curtailing at least 100 kW.
- Must be equipped with an Interval Data Recorder (IDR) meter.
- Must be a non-residential customer of El Paso Electric taking service at the distribution level and/or be a non-profit customer or government entity, including educational institutions.

CUSTOMER COMMITMENTS: Participating customers agree to a one-year commitment, but there are no penalties if customers opt out of the program at an earlier time. By its participation, the commercial/institutional customer commits to a maximum of 10 curtailments each year as follows:

- One (1) Scheduled Curtailment of one to five-hour's duration during each year of participation, plus a maximum of nine (9) Unscheduled Curtailments of up to five hours each during each year of participation.
- The availability peak period is limited to June through September, 1-7 p.m. weekdays, excluding Federal holidays, each year of the program.

FINANCIAL BENEFITS TO PARTICIPATING CUSTOMERS:

El Paso Electric will pay a participating customer (or the third-party Project Sponsor, if different) \$60 per kW of verified curtailed load each year of participation. For example, a Project Sponsor which contracts for 1,000 kW and consistently curtails 1,000 kW or more when asked would earn up to \$60,000 each year* (see note below).

FOR MORE INFORMATION: To access the Application package and sample contract, please go to the following web site for the complete Program Manual:

<http://www.epelectricefficiency.com/>. For answers to specific questions about your facility, contact John Armstrong at 915-543-5809, or by e-mail at jarmstro@epelectric.com.

***NOTE: PAYMENTS ARE SUBJECT TO EL PASO ELECTRIC VERIFICATION. INFORMATION CONTAINED IN THIS PROGRAM DESCRIPTION IS SUBJECT TO CHANGES IN THE RULES OF THE PUBLIC UTILITY COMMISSION OF TEXAS (PUCT).**

BACKGROUND AND OVERVIEW OF THE LOAD MANAGEMENT STANDARD OFFER PROGRAM

El Paso Electric is the utility authorized to serve the El Paso area (El Paso County and portions of Hudspeth and Culberson Counties). In March 2008, the Public Utility Commission of Texas (PUCT) issued rules authorizing transmission and distribution utilities in Texas to implement and manage a demand control program known as the Load Management Standard Offer Program (SOP) (PUCT Substantive Rule 25.181, docket No. 33487), and to pay its participating eligible customers for agreeing to curtail pre-determined electrical loads when needed to help preserve electric grid integrity. Project Sponsors may be any El Paso Electric commercial, governmental, educational, and not-for-profit customer (or a group of eligible customers represented by a third party) of qualifying load size. Project Sponsors undergo a five-step process in order to receive incentive payments. Each of these is covered in detail in this Program Manual. Participation in the SOP involves five basic steps:

- **Step One: Application (Appendix A).** Project Sponsor submits the program application. El Paso Electric will review the proposed project for feasibility and to tentatively reserve incentive funding.
- **Step Two: Contracting (Appendix B).** The qualifying Project Sponsor enters into a Standard Offer Contract with El Paso Electric.
- **Step Three: Performance Period.** The Project Sponsor performs annual scheduled and unscheduled curtailments when notified by El Paso Electric.
- **Step Four: Monitoring and Verification.** El Paso Electric verifies demand savings from scheduled and unscheduled curtailments (the “Verification Process”).
- **Step Five: Incentive Payments.** El Paso Electric pays the Project Sponsor for scheduled curtailments (the “Scheduled Curtailment Payment”) and unscheduled curtailments (the “Performance Period Payment”).

Project Sponsors must commit curtailable load to the program for one summer period. Longer-term participation may be possible; however, there are no penalties, beyond loss of participation, for Project Sponsors who opt out of the program earlier. Curtailments may occur during the summer peak demand period of each year, defined for this Program as weekdays, June 1 through September 30, of each program year, between the hours of 1:00 and 7:00 p.m., excluding Federal holidays.

In the event a Project Sponsor fails materially to produce the demand savings as proposed in its Application, El Paso Electric reserves the right to decline to make any further incentive payments and to terminate the Agreement.

Participants are required to curtail pre-determined and contracted electric loads for an annual maximum of up to 50 hours, determined as follows:

- one scheduled test curtailment of up to five hours duration, plus
- the possibility of nine unscheduled curtailments each year, each not to exceed five hours in duration.
 - Unscheduled curtailment(s) may be called with one hour's notice and may have a duration of a minimum of one hour to a maximum of five hours.
 - Unscheduled curtailments are normally called in response El Paso Electric's local grid conditions and need.
 - Incentive payments differ for scheduled and unscheduled curtailments but will total up to \$60 per kW curtailed for each year of participation in the program. This means that a customer meeting program requirements and providing 1 megawatt (1,000 kilowatts) of curtailable power when called upon, will earn up to \$60,000 per year, depending on actual delivery during curtailment periods (see Step Four).

El Paso Electric will begin accepting applications for summer 2009 participation by fax transmission or email only, beginning at 10:00 a.m. (MST), August 3, 2009. Any submission received before that time will be refused and is invalid. By email: jarmstro@epelectric.com; By fax: 915-521-4705 (Attn: John Armstrong).

Background

This standard offer program (SOP) was developed to comply with state energy efficiency goals. The Texas Legislature passed Senate Bill 7 (SB 7) in 1999, which restructured the state's electric utility industry. SB 7 was amended in 2007 by HB 3693. State regulations require each investor-owned transmission and distribution utility to meet a goal of 20% by December 31, 2009, and annually thereafter through savings achieved by energy efficiency programs. By PUCT rule approved March 26, 2008, Load Management is listed as an approved energy efficiency program to help meet this goal.

Program Objectives

The main goal of the Load Management SOP is to reduce summer peak demand in the El Paso Electric service territory in a cost-effective manner and to reach the demand savings goals established by the legislature and PUCT regulations. In addition, there are secondary program goals that are reflected in the SOP rules and procedures:

1. Create a simple and streamlined program process to stimulate strong program participation from energy efficiency service providers and eligible customers.

2. Minimize the burden of measurement and verification requirements for the SOP by implementation of a simple verification process by El Paso Electric.
3. Encourage private sector delivery of energy demand savings during peak demand time on El Paso Electric's system.

Project Sponsor and Site Eligibility

Eligible Project Sponsors include:

- National or local energy service companies (ESCOs) or other aggregation groups.
- Retail electricity providers (REPs).
- Individual customers that identify curtailable load in their own facilities.

To ensure that the SOP incentive budget is allocated to projects that are likely to meet with success, all Project Sponsors will be required to demonstrate a commitment to fulfilling SOP objectives and competency in completing their proposed project. Project Sponsors may be required to submit information concerning their loads, operating characteristics, and experience as part of the application process. The forms and a complete description of the application requirements are found under Step One and Appendix A of this Manual.

Project and Site Eligibility

A project site is defined in the SOP as one or more metered locations having a minimum aggregated regular monthly demand of at least 300 kW, with estimated curtailable load (estimated kW demand savings) during the summer peak demand period of at least 100 kW per meter. A single project site may include multiple buildings served by a single IDR meter, or Project Sponsors may include more than one project site in their applications provided each project site meets the following requirements:

1. Be a distribution level customer of El Paso Electric and/or a non-profit, governmental or educational institution served by El Paso Electric.
2. Provide total estimated demand savings of at least 100 kW during the summer peak demand period at each project site. For purposes of the program, the summer peak demand period is defined as the hours between 1 p.m. and 7 p.m. Mountain Standard Time, on Monday through Friday during the months of June through September, excluding Federal holidays.
3. Be served by an IDR that is monitored by El Paso Electric. If all buildings and meters are tied to one IDR, then they may be combined into a single project site. If the participating customer has multiple meters that are not tied together, then El Paso Electric can aggregate them to the benefit of the customer.

Curtailable Load Eligibility

The SOP does not specify limits to the types of eligible curtailable load. This gives Project Sponsors flexibility in determining the level and method of curtailing loads. Curtailable loads must meet the following requirements:

1. Curtailable load must produce demand savings (reduction of electrical consumption) as the result of verified savings following a dispatched (noticed) curtailment.
2. Curtailment must begin within one hour of notice, and last for the duration of the curtailment, not to exceed five hours for the scheduled curtailment and five hours for each unscheduled curtailment, at any time during the summer peak demand period (weekdays, 1-7 p.m., June through September, excluding Federal holidays).
3. Project Sponsors must commit to making the curtailable load available for each year of participation.
4. Project Sponsors are solely responsible for assuring that contracts with retail electric providers permit participation.

The following curtailable load is excluded from consideration for this SOP:

1. Curtailable load that results in negative environmental or health effects or that results in building vacancies or the re-location of existing operations to a location outside of the area served by El Paso Electric.
2. Curtailable load that receives an incentive through any other energy efficiency program offered by El Paso Electric.
3. Project incentives will be paid only for demand savings directly related to end-use equipment curtailed under the project.

Eligible curtailable load to be considered is load listed on the project application that will be available for curtailment. This may be entire building(s) and/or individual end-use equipment that consumes electric energy during the summer peak demand period. El Paso Electric will consider any and all curtailable load that consumes electrical energy for participation in the SOP. It is the Project Sponsor's responsibility to identify the project and project sites, but El Paso Electric will provide advice concerning specific options and load curtailment opportunities upon request, at no direct charge.

Standard Offer Program Review and Approval

All SOPs are based on the general precept of a first-come, first-served basis, provided, however, that this does not limit the right or ability of El Paso Electric to move an application up or down the priority list based on the quality, amount, or type of curtailable load, and other factors such as the perceived likelihood of success or other such reasonable factors as may be applied. Applications will be accepted for the SOP until all funds have been committed, but no later than September 1, 2009. Projects on the waiting list which are not accepted in that program year, will not be carried over into the next program year, and must be resubmitted by the Project Sponsor.

Project Sponsors from the prior year are required to submit a new application each year, but the process should be simplified for returning participants.

Schedule and Program Timeline

TBD Program announcement meeting

August 3, 2009 * First date for applications for 2009 program year

August 3-September 1, 2009 Standard Offer Program Contract Offers Execution

Sept. 1-Sept. 30, 2009 Standing Ready for Curtailment (Participation Period)

*** NOTE: Applications will be received by email or fax only, and will be accepted beginning at 10:00 a.m., August 3, 2009: By email: jarmstro@epelectric.com, by fax: 915-521-4705 (Attn: John Armstrong)**

STEP ONE: THE APPLICATION PROCESS

A Project Sponsor's first formal step in participating in the SOP is the submission of an application to El Paso Electric. Applications are to be submitted using the forms provided in Appendix A (an Application) as soon as possible after the El Paso Electric bid period opens in order to increase the chances of being awarded a contract offer. Applications are reviewed on a first-come, first-served basis, subject to ranking based on factors including but not limited to: the amount and type of load to be curtailed, El Paso Electric's perceived likelihood that the proposer will be able to consistently curtail, and environmental issues (if any) involved in the curtailment proposals.

Questions concerning application procedures may be submitted to John Armstrong at 915-543-5809, or by email at jarmstro@epelectric.com

By submitting the Application and its required attachments and supplemental information, the Project Sponsor is requesting that El Paso Electric review the Application and, if the Application is approved, to reserve funding for the Project Sponsor based on the proposed level of demand savings in the Application, pending execution of a contract (see Appendix B). The Application material is available on the El Paso Electric website at <http://www.epelectricefficiency.com>.

The Application is an interactive format and includes several sections and attachments that must be completed by the Project Sponsor. If an Application is approved, El Paso Electric will forward the Project Sponsor a standard agreement offer for the project. Participants from the prior year will be required to submit an updated Application form. Upon approval, the renewal will be by letter agreement.

Required Project Sponsor Information

The Application (see Application tab on the website) includes questions which all Project Sponsors are required to complete. Project Sponsors must provide information about the scope of their proposed project(s). The type of information requested includes the following:

1. **Customer Information** - Information about the customers associated with all loads that the Project Sponsor proposes to include as curtailable load. If a Project Sponsor's proposed project involves multiple customers, the Project Sponsor should submit separate information for each customer. The following information shall be submitted:
 - Customer name.
 - Customer address.
 - Project Site address.
 - Customer business description.

- Site contact name(s), phone number, fax number and e-mail address that will allow El Paso Electric to contact customer during summer peak demand periods, if necessary.

2. **EL PASO ELECTRIC Premise Number ID**– This number can be obtained by calling **John Armstrong at 915-543-5809** or by email at jarmstro@epelectric.com. The Premise Number ID is a 10 digit number, for example:

Premise Number ID: 1234567890.

3. **Site Profile(s)** - A profile must be completed for each customer site and shall include estimated demand savings for the site, building type(s), operating schedules, and any additional site information that Project Sponsor believes is appropriate.

4. **Management Plan** - This information includes the design, implementation, operation, and management of the project.

5. **Curtable Load** - A description of curtable load and processes for curtailment at each customer site must be provided. The description must include estimated kW reductions for each site during a curtailment period and the estimated incentive amount resulting from such curtailment.

6. **Project Sponsor Contact Telephone Numbers** – Primary and secondary telephone numbers are to be provided where El Paso Electric can contact Project Sponsor to provide advance notification of a scheduled or unscheduled load curtailment. A representative of the Project Sponsor must be available at this number at all times during peak summer demand hours to accept and act on these calls. Should Project Sponsor need to change the contact telephone number(s) during the term of the project, it must provide a new contact telephone number to El Paso Electric at least two business days prior to the date the new number will take effect.

7. **Project Sponsor Contact Name(s) and Information** - and the Application must identify and provide certain information related to one or more representative(s) of the Project Sponsor who are responsible for implementation of the project. Phone number(s), pager number(s), mobile phone number(s), fax number(s), and email address(es) should be provided if available to allow El Paso Electric to communicate with Project Sponsor concerning the SOP.

8. **Customer Agreement** - Customers participating through a Project Sponsor and customers acting as their own Project Sponsor must sign a Standard Offer Agreement in the form of Appendix B (an Agreement). The executable Agreement will be prepared by El Paso Electric for qualifying and selected applicant agencies. A read-only copy of the Agreement is included in this Manual as Appendix B. Proposers are encouraged to conduct an early review of this Agreement.

9. **Supporting Documentation** - Project Sponsors may submit additional supporting documentation that they determine to be relevant for any project, and El Paso Electric reserves the right to request additional information during the course of its review of the Application.

As part of the Application review, El Paso Electric will review the feasibility of the proposed curtailable load and the accuracy of the demand savings estimates. El Paso Electric may request clarification of, or additional information about, any item in the Application. Project Sponsors must respond to such requests within the time period specified by El Paso Electric. If the clarification or additional information is not forthcoming in a timely manner, El Paso Electric may choose to discontinue its evaluation of the Application. Application packages must include all Application materials and supporting documents and the signed Standard Offer Agreement and certifications.

Information and Application Contacts

MATERIAL REQUESTS	BEST SOURCE	ADDRESS AND CONTACT
Program Questions, on-line Program Manual	Website	http://www.epelectricefficiency.com/ or direct to: jarmstro@epelectric.com
Hard Copy of Application and required supporting documents, including Standard Offer Agreement	Same Website as above, or by mail	EL PASO ELECTRIC – Load Management SOP Attn: John Armstrong El Paso Electric P.O. Box 982 El Paso, TX 79960 jarmstro@epelectric.com
Customer Agreements	Mail	Will be provided to qualified Applicants by the Program Manager upon completion of the Application review.
Application	Fax	915-521-4705

Confidentiality

The SOP is subject to oversight by the PUCT, which may request a copy of any program materials that El Paso Electric receives. Sensitive company and project information submitted by the Project Sponsor to El Paso Electric such as load information, process descriptions, management information, and financial statements will be treated confidentially by El Paso Electric staff and consultants.

Submission of False Information

El Paso Electric reserves the right to discontinue its evaluation of all submittals and terminate all Agreements of a Project Sponsor if it is determined that any submission or part of the submission contains false, misleading, or materially incorrect information

STEP TWO: THE CONTRACTING PROCESS

Once an Application has been reviewed and approved by El Paso Electric, the qualifying Project Sponsor Applicants will receive an Agreement similar to that attached as Appendix B to this Program Manual. Because this is a SOP authorized by the PUCT, the terms of the SOP Agreement are uniform and effectively non-negotiable, except where it can be demonstrated to the satisfaction of El Paso Electric that unique circumstances merit and require revision. In order to incorporate each Project Sponsor's project information, the approved Application will be incorporated by reference as an attachment to the Agreement. Once the Agreement is signed by both the Project Sponsor and El Paso Electric, the Project Sponsor's primary obligation will be to:

1. Respond effectively to calls for scheduled and unscheduled curtailments of the contracted curtailable loads when notified by El Paso Electric.
2. Monitor loads during scheduled and unscheduled curtailments, and maintain the loads at the desired minimum throughout the duration of the event(s).

The primary obligations of El Paso Electric will be to:

1. Perform the monitoring and verification activities for each Project Sponsor site in order to verify and measure the demand savings for each curtailment.
2. Calculate and issue the Scheduled Curtailment Payment by about October 15 of each year, based on verified demand savings relating to the annual scheduled curtailment, for as long as the Agreement is in effect.
3. Calculate and issue the Performance Period Payment in November of each year based on verified demand savings relating to the unscheduled curtailment(s) occurring between June 1 and September 30 each year

STEP THREE: THE PERFORMANCE PERIOD

To achieve the goal of increased reliability of El Paso Electric's system during peak demand periods, El Paso Electric has set the maximum number of annual curtailments at ten, including one annual test curtailment of one to five-hour's duration, and a maximum of nine annual unscheduled curtailments of one to five -hour's duration each. In other words, a Project Sponsor will not be requested to curtail curtailable load more than ten times during a program year totaling a maximum of up to 50 hours.

Scheduled Curtailments

The 2009 SOP requires one scheduled curtailment of up to five hours at the beginning of the peak demand season in each year of participation. Scheduled curtailments are for testing program participation as requested by El Paso Electric's dispatch center during the peak demand season.

Unscheduled Curtailments

The SOP requires program participants to participate in up to nine unscheduled curtailments each year. An unscheduled curtailment may occur if El Paso Electric issues an alert by its systems operation center. Thereafter, El Paso Electric will notify Project Sponsors of an unscheduled curtailment with one-hour advance notice of the start-time for the curtailment. The duration of an unscheduled curtailment will be a minimum of one hour and a maximum of five hours. Starting times may occur between 1:00 p.m. and 6:00 p.m. Mountain Standard Time. Ending times will occur between 2:00 p.m. and 7:00 p.m. Mountain Standard Time.

After completion of all unscheduled curtailment(s) of curtailable load and approval of all data, El Paso Electric will pay the Project Sponsor the Performance Period Payment in November.

STEP FOUR: MONITORING & VERIFICATION

El Paso Electric will perform the verification process after any curtailment (scheduled or unscheduled) occurs. Demand savings and incentive payment amounts will be based on actual, verified curtailable load curtailments.

Steps of the Verification Process¹

Following the billing period(s) during which a curtailment has occurred, the IDR data will be accessed by the Load Management program manager (or designee) to verify actual kW demand savings. The file will be provided by the El Paso Electric Load Research Department in a text or MS Excel format showing the month, day, time, demand (kW) and consumption (kWh) for each of the 30-minute demand intervals for the following days: the day of the curtailment, and the four previous business days. IDR data will be entered into El Paso Electric's online Load Saver database for the calculation of appropriate incentives.

1. El Paso Electric will review the file for the appropriate project using the customer Premise Number ID.
2. El Paso Electric will establish the baseline (the Baseline) for each curtailment by using a combination of data from the day of curtailment and the four prior weekdays as follows:
 - a. On the day of curtailment, the average kW demand during the one-hour period that begins two hours before the start of the curtailment will be computed.
 - b. On the four previous weekdays, the daily averages of the kW demand recorded throughout the same time period as the curtailment will be computed.
 - c. The average of these five daily average demand values shall establish the baseline for each customer for each curtailment.

EXAMPLE: Assume a curtailment occurs on Friday, July 17, 2009, from 4:00 to 5:00 p.m. The first step in calculating the baseline is to average the two 30-minute kW readings between 2:00 p.m. and 3:00 p.m. that day. Then, the average kW demand during the same time period as the curtailment period (in this case, 4:00 to 5:00 p.m.) will be computed for each of the previous four weekdays (Monday, July 13 through Thursday, July 16). These five periods (2-3 p.m. the day of curtailment and 4-5 p.m. on the other four days) are averaged together to establish the Baseline curtailment period kW demand. The average kW demand throughout the curtailment period is subtracted from the Baseline to determine the demand savings for that curtailment event.

3. The average kW demand throughout the curtailment period is subtracted from the Baseline to determine the demand savings (the Demand Savings) for that curtailment event.

¹ National standards for Load Management M&V programs are currently under development and are expected to be proposed for national adoption in the future, potentially altering the methodology presented here.

4. Demand Savings used to calculate the Performance Period Payment will be based on the results of the unscheduled curtailment(s). If more than one unscheduled curtailment occurs, the Performance Period Payment will be derived from the average verified Demand Savings of all of the unscheduled curtailments during the summer peak demand period.
5. El Paso Electric fully expects and intends to call at least one unscheduled curtailment each year. However, in the event no unscheduled curtailments occur, the Demand Savings used to calculate the Performance Period Payment will be the verified Demand Savings from the yearly scheduled curtailment. Thus, in this case each participant will receive two payments, each one calculated from the verified Demand Savings from the Scheduled Curtailment.

The following representative IDR excerpt demonstrates how the data may appear in the M&V calculation (one-hour duration is used as an example only).

Date	Time (Period Ending)	"kW- hf" (Avg kW over half hour)	
7/17/2009	14:30	1408.5	Average: 1,414 kW For Daily baseline
7/17/2009	15:00	1419.5	
7/17/2009	15:30	1407.5	Not used in calculation
7/17/2009	16:00	1405.8	
7/17/2009	16:30	1158.8	Curtailment kW: 1,133
7/17/2009	17:00	1107.4	

The curtailment kW average is the average from 4:00 – 5:00 p.m., 1,133 kW, while the Baseline is an average of five periods to assure a reasonable baseline level. The “two-hour prior” average is used in this computation for the day of curtailment. On the four prior business days, the same period as the July 17 Curtailment Period (4 to 5 p.m.) is used in the Baseline average. This is done so that weather and schedule-sensitive loads are captured as accurately as possible.

The average kW demand for each of the five days is then averaged to set the Baseline, as shown below. The curtailment kW (the average of the demand throughout the curtailment period) is subtracted from the Baseline kW to determine Demand Savings. When completed, these calculations form the basis for the incentive payments discussed below in Step Five.

Day	Baseline Period kW	–	Curtailment High Hour kW	=	Verified Demand Savings
July 17 (curtailment)	1,414 (2-3 pm)		1,133 (4-5 pm)		
July 16	1,513 (4-5 pm)				
July 15	1,495 (4-5 pm)				
July 14	1,567 (4-5 pm)				
July 13	1,533 (4-5 pm)				
CALCULATION:	1,504 (baseline avg.)	-	1,133 (curtailment)	=	371 kW Demand Savings

STEP FIVE: INCENTIVE BUDGET AND PAYMENTS

El Paso Electric will pay Project Sponsors in two installments each year the Agreement is in effect: (1) the Scheduled Curtailment Payment and (2) the Performance Period Payment. In the event a Project Sponsor fails materially to produce the demand savings as proposed in its Application, El Paso Electric reserves the right to decline to make any further incentive payments and to terminate the Agreement.

El Paso Electric's payment of incentive payment(s) to Project Sponsor is expressly and specifically conditioned upon El Paso Electric receiving all required notices, submittals and materials from Project Sponsor within the applicable period specified in the Agreement. Failure by Project Sponsor to deliver any required notice, submittal, or material within the applicable period specified in the Agreement shall be deemed a material breach of the Agreement.

Available Budget

The Load Management Program is projected and planned to be a multi-year program, dependent on future changes in PUCT regulations and rulings. The goal for 2009 is 3,500 kW, and the goal may be increased in subsequent years. A Project Sponsor must provide at least 100 kW of estimated Demand Savings to be eligible. The incentive budget for 2009 is \$210,000 (3,500kW at \$60/kW).

Incentive Payment Prices

The SOP rules provide standard incentive prices per kW for Demand Savings each year of participation. The total incentive cap includes the Performance Period Payment and the Scheduled Curtailment Payment. El Paso Electric will not be obligated to pay a Project Sponsor for verified Demand Savings that exceed the amount of estimated Demand Savings proposed in the Project Sponsor's Application, although at El Paso Electric's sole discretion and provided SOP funds are available, El Paso Electric may revise a Project Sponsor's estimate of proposed Demand Savings upward and may pay a Project Sponsor accordingly. The incentive rates applicable to kW savings are set forth in the following table, subject to final PUCT rules.

Demand Incentive Rate (\$/kW)

Program Year	Calendar Year	Scheduled Incentive Rate	Performance Incentive Rate	Demand Savings Cap
Year 1	2009	\$25	\$35	3,500 kW
Subsequent if continued	2010	\$25	\$35	TBD

Incentive Payment Limitations

To ensure that incentives are available to multiple energy service providers, any individual Project Sponsor or its affiliates will be limited to 40% of the SOP incentive budget in a given budget year, unless there are insufficient Project Sponsor applications to fill El Paso Electric's annual Demand Savings goal. Project Sponsors will be required to verify their affiliate status through an affidavit attached to the Agreement.

Payment Schedule (Scheduled Curtailment)

All verification process activities for a scheduled curtailment must be completed before the Project Sponsor will receive the Scheduled Curtailment Payment. After successful participation in the Scheduled Curtailment, verification of the IDR data and demand savings, El Paso Electric shall pay the Project Sponsor the then current incentive amount per kW for the Scheduled Curtailment Payment. El Paso Electric will typically make the Scheduled Curtailment Payment within thirty-five (35) days after the Demand Savings are calculated. The Scheduled Curtailment Payment will be based upon the verified Demand Savings from the Scheduled Curtailment using the following equation:

Scheduled Curtailment Payment (\$)	=	Scheduled Curtailment Payment Incentive Rate	x	Scheduled Verified Demand kW Savings
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Payment Schedule (Unscheduled Performance Curtailments)

El Paso Electric will typically make the Performance Period Payment in November, at the conclusion of the Performance Period and after El Paso Electric's approval of the IDR data for the Agreement year. The amount of the Performance Period Payment shall be calculated based upon the average verified Demand Savings over all Unscheduled Curtailments using the following formula:

Performance Period Payment (\$)	=	Performance Period Payment Incentive Rate	x	Unscheduled Verified Demand kW Savings
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In the event no Unscheduled Curtailments are performed, the Performance Period Payment will be calculated using verified kW savings of the Scheduled Curtailment for that Agreement year. Project Sponsors should be aware, however, that El Paso Electric expects and intends to call at least one unscheduled curtailment each year.

COMPLAINT PROCEDURES

Filing a Complaint with the PUC

Although informal complaints may be made by telephone, it is best to submit them in writing. No special form is needed, but statements should be complete and clear so that the PUC staff has all the facts.

The complaint should include the following information:

- Your name, address, and telephone number
- Company's name, address, and telephone number
- Account number, if any
- An explanation of the facts and the specific resolution you are seeking
- Any documentation to support your complaint, such as a copy of the bill

Contact the PUC

If you have a complaint or inquiry, here's how to contact the PUC:

Questions

Call: 1-888-782-8477 or in Austin 512-936-7120 (TTY 1-800-735-2988)

E-mail: customer@puc.state.tx.us

Complaints

Call: 1-888-782-8477 or in Austin 512-936-7120 (TTY 1-800-735-2988)

Fax: 1-512-936-7003

File a Complaint Online:*

<https://www.puc.state.tx.us/webapp/public/apps/complaint/ComplaintForm.aspx?type=e>

** Online forms require Internet Explorer version 5.X or greater.*

Write:

PUC - Customer Protection
P.O. Box 13326
Austin, TX 78711-3326

APPENDICES

Appendix A: APPLICATION PACKAGE (see Step One)

Attachment A – Proposal Format and Instructions

Appendix B: STANDARD OFFER AGREEMENT (see Step Two) Contract Cover Sheet

Attachment 1: Cover sheet and contract

Attachment 2: Compensation Schedule

Attachment 3: Scope of Work

Attachment 4: General Conditions

Attachment 5: IRS W-9 Taxpayer ID

APPENDIX A: APPLICATION PACKAGE

(Refer to Step One, Program Manual)

Project Sponsor (Customer or Third-Party Application)

To apply for project sponsor status in the 2009 summer Load Management Program, prospective sponsors must complete the following application packet and return, completed and signed, to the following address.

El Paso Electric - Energy Saver 2009
Attn: John Armstrong
P.O. Box 982
El Paso, TX 79960

Questions may be directed by e-mail to the program manager:
jarmstro@epelectric.com

PROJECT SPONSOR ATTESTATIONS:

The project sponsor, by submission of this application for participation in the El Paso Electric Load Management Program, Load Saver 2009, affirms the following:

1. Customer hereby acknowledges the following (check appropriate box and complete the remainder of the form below):

☐ CUSTOMER is acting as its own Project Sponsor and desires to participate in the El Paso Electric Load Management Standard Offer Program. **OR:** ☐ I have entered into an Agreement with _____ (the Project Sponsor) for curtailment of Curtailable Load at the Project Site(s) identified below (the Project). The Project Sponsor is implementing the Project pursuant to the El Paso Electric Services Company (El Paso Electric) Emergency Load Management Standard Offer Program, Load Saver 2009.
2. Customer acknowledges that any review or acceptance by El Paso Electric of the project is solely for the information of El Paso Electric and that, in performing any such review or in accepting the project, El Paso Electric makes no representations or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the project.
3. Customer acknowledges that the Project Sponsor, whether the Customer or a third-party, is an independent contractor with respect to El Paso Electric and the Standard Offer

Program, and that the Project Sponsor is not authorized to make representation or incur obligations on behalf of El Paso Electric. Customer acknowledges that El Paso Electric is not a party to this Customer Agreement or any other agreement (if any) between the Project Sponsor and the Customer and that the Project Sponsor is solely responsible for performance hereunder.

4. Customer agrees that El Paso Electric is an intended third-party beneficiary of this Customer Agreement and, as such, may rely on representations made therein by the Customer and enforce Customer's obligations thereunder to the extent same are applicable to El Paso Electric.
5. Customer acknowledges that El Paso Electric makes no warranty or representation regarding the qualifications of the Project Sponsor and that the Customer is solely responsible for the selection of the Project Sponsor.
6. Customer understands that it may file a complaint with the Public Utility Commission of Texas concerning the Project Sponsor, but that El Paso Electric will play no role in resolving any disputes that arise between the Customer and the Project Sponsor.
7. Customer agrees to provide El Paso Electric with access to and /or copies of Customer's utility bills, Project documentation, and any other information related to the Project that may be necessary for estimation and/or verification of demand savings associated with the Project.
8. **Customer agrees to release El Paso Electric, its officers, directors, agents and employees and each of El Paso Electric's affiliates and each of their respective officers, directors, agents and employees (collectively referred to as "El Paso Electric") from any and all claims, losses, expenses, attorney's fees, damages, demand, judgments, caused of action, suits and liability in tort, agreement, or any other basis and of every kind and character whatsoever (collectively referred to as "claims"), regardless of any strict liability or negligence of El Paso Electric, Whether active or passive, excepting only such claims, demands, losses, damages, costs, expenses, liability or violation of law or regulation as may be caused by the gross negligence or willful misconduct of El Paso Electric.**

IN WITNESS WHEREOF: Customer causes this Agreement to be executed by its duly authorized representative.

Signature: _____

Printed Name: _____

Company Name: _____

Title: _____

Date: _____

El Paso Electric
Load Management Program, Load Saver 2009
Load Management Application Form
(complete one per Project Sponsor/Project Site)

PROJECT SPONSOR/ CUSTOMER INFORMATION	Company Name	
	Customer Contact Name	
	E-mail address	
	Business phone	
	Cell phone	
	Fax number	
	Mailing Address	
	Street Address	
	E-mail address	
	Federal Tax ID Number	
	Premise Number ID (primary site)	
BUSINESS OR AGENCY DESCRIPTION		

IF SPECIAL DIRECTIONS (OR ADMITTANCE INSTRUCTIONS) ARE NECESSARY TO YOUR OFFICE, PLEASE PROVIDE DETAILS IN THE SPACE BELOW:

Load Management Program, Load Saver 2009
Load Management Application Form
(complete one per Project Sponsor/Project Site)

Instructions: copy this form as needed, and submit a separate sheet for each site participating in the load management project.

PARTICIPATING SITE DISPATCH AND CONTACT INFORMATION	Project Sponsor Name	
	Primary Contact Name	
	Business phone	
	Cell phone	
	Fax number	
	Email address	
	Pager number	
	Site Premise Number	
	Physical address	
	Site description	
SECONDARY (BACKUP DISPATCH) CONTACT INFORMATION	Contact Name	
	Business number	
	Cell number	
	Fax number	
	E-mail address	
THIRD (BACKUP DISPATCH) CONTACT INFORMATION	Contact Name	
	Business number	
	Cell number	
	Fax number	
	E-mail address	
SITE PROFILE (THIS SITE ONLY)	Site name	
	Average Site Peak kW	
	Proposed kW to curtail:	
	Site Description	
DESCRIPTION OF LOAD TO BE CURTAILED AT <u>THIS SITE</u>		
DESCRIPTION OF CURTAILMENTS	Who will manage it?	
	How will it be initiated and maintained?	

APPENDIX B: STANDARD OFFER AGREEMENT

(Refer to Step Two, Program Manual)

- Attachment 1: Contract Cover Sheet
- Attachment 2: Compensation Schedule
- Attachment 3: Scope of Work
- Attachment 4: General Conditions
- Attachment 5: IRS W-9 Taxpayer ID

Note to Proposers: This Standard Offer Agreement is generally consistent with El Paso Electric and Public Utility Commission of Texas (PUCT) standards for the State of Texas energy efficiency Standard Offer Programs. Successful Project Sponsors will be required to execute all documents in order to participate in the El Paso Electric Load Management Program. Because this is a Standard Offer Program similar to that offered by other utilities, the Terms and Conditions are essentially non-negotiable unless it is demonstrated to El Paso Electric's satisfaction that the conditions are unique and thus require and deserve special conditions. To facilitate the process of selecting and qualifying candidates, it is recommended that your company initiate a legal review of these documents when you are considering your submission.

ATTACHMENT 1: CONTRACT COVER SHEET

El Paso Electric
P.O. Box 982
El Paso, Texas 79960

Agreement Date: TBD
Current Date: TBD

Contract Number XXXXXXXXXX

CONTRACT

To:

Project Sponsor's Name
Project Sponsor's Address
City, State Zip

Direct All Correspondence To:

Contact: XXXX XXXXXX
Telephone: 915 XXX-XXXX
Fax: 915-XXX-XXXX
Vendor Phone: TBD
Vendor Number (HQ): TBD

Ship To: This is a Centralized Contract and
"Ship To" will be determined at
Purchase Order Release

Invoice To: XXXXXXXX
City, St, Zip

Valid From: TBD
Valid End: TBD

Freight Terms: TBD
Payment Terms: TBD
Target Value: TBD

This Contract is entered into by and between El Paso Electric and Project Sponsor, to provide miscellaneous goods and services connected with the Load Saver Load Management Program, all in accordance with the following:

Attachment 1: Compensation Schedule
Attachment 2: Scope of Work
Attachment 3: Terms and Conditions of Services

Notice to Project Sponsor

The Target Value listed above represents an estimated, not-to-exceed amount. El Paso Electric does not represent, warrant, or guarantee that this value, or any other value, will be reached under this Contract. Project Sponsor shall only be paid for those goods and services actually rendered and accepted in accordance with the above noted attachments.

Nothing herein shall limit or otherwise restrict El Paso Electric from procuring like or similar services from other vendors, without notice to or approval of Project Sponsor.

Other Instructions:

- The Contract number must be shown on all invoices, shipping papers, packages, and correspondence pertaining to order.
- Invoice must separate materials from labor/services and must include make, model, and serial number of all installed equipment.

Authorized Signature.– Supplier _____

Authorized Signature – Buyer _____

THIS ORDER IS PLACED SUBJECT TO CONDITIONS ATTACHED.

SAMPLE

ATTACHMENT 2: COMPENSATION SCHEDULE

Project Sponsors will be paid based on the procedures outlined in Step Four (Monitoring and Verification) and Step Five (Incentive Payments) of the Program Manual, as set forth below.

El Paso Electric will perform the Verification Process after any month during which a curtailment (scheduled or unscheduled) occurs. Demand savings and incentive payment amounts will be based on actual, verified Curtailable Load curtailments.

Steps of the Verification Process²

Following the billing period(s) during which a curtailment has occurred, the IDR data will be accessed by the Load Management program manager (or designee) to verify actual kW demand savings. The file will be provided by the El Paso Electric Load Research Department in a text or MS Excel format showing the month, day, time, demand (kW) and consumption (kWh) for each of the 30-minute demand intervals for the following days: the day of the curtailment, and the four previous business days. IDR data will be entered into El Paso Electric's online Load Saver database for the calculation of appropriate incentives.

1. El Paso Electric will review the file for the appropriate project using the customer Premise Number ID.
2. El Paso Electric will establish the baseline (the Baseline) for each curtailment by using a combination of data from the day of curtailment and the four prior weekdays as follows:
 - a. On the day of curtailment, the average kW demand during the one-hour period that begins two hours before the start of the curtailment will be computed.
 - b. On the four previous weekdays, the daily averages of the kW demand recorded throughout the same time period as the curtailment will be computed.
 - c. The average of these five daily average demand values shall establish the baseline for each customer for each curtailment.

EXAMPLE: Assume a curtailment occurs on Friday, July 17, 2009, from 4:00 to 5:00 p.m. The first step in calculating the baseline is to average the two 30-minute kW readings between 2:00 p.m. and 3:00 p.m. that day. Then, the average kW demand during the same time period as the curtailment period (in this case, 4:00 to 5:00 p.m.) will be computed for each of the previous four weekdays (Monday, July 13 through Thursday, July 16). These five periods (2-3 p.m. the day of curtailment and 4-5 p.m. on the other four days) are averaged together to establish the Baseline curtailment period kW demand. The average kW demand throughout the curtailment period is subtracted from the Baseline to determine the demand savings for that curtailment event.

² National standards for Load Management M&V programs are currently under development and are expected to be proposed for national adoption in the future, potentially altering the methodology presented here.

3. The average kW demand throughout the curtailment period is subtracted from the Baseline to determine the demand savings (the Demand Savings) for that curtailment event.
4. Demand Savings used to calculate the Performance Period Payment will be based on the results of the unscheduled curtailment(s). If more than one unscheduled curtailment occurs, the Performance Period Payment will be derived from the average verified Demand Savings of all of the unscheduled curtailments during the summer peak demand period.
5. El Paso Electric fully expects and intends to call at least one unscheduled curtailment each year. However, in the event no unscheduled curtailments occur, the Demand Savings used to calculate the Performance Period Payment will be the verified Demand Savings from the yearly scheduled curtailment. Thus, in this case each participant will receive two payments, each one calculated from the verified Demand Savings from the Scheduled Curtailment.

The following representative IDR excerpt demonstrates how the data may appear in the M&V calculation (one-hour duration is used as an example only).

Date	Time (Period Ending)	"kW- hf" (Avg kW over half hour)	
7/17/2009	14:30	1408.5	Average: 1,414 kW For Daily baseline
7/17/2009	15:00	1419.5	
7/17/2009	15:30	1407.5	Not used in calculation
7/17/2009	16:00	1405.8	
7/17/2009	16:30	1158.8	Curtailment kW: 1,133
7/17/2009	17:00	1107.4	

The curtailment kW average is the average from 4:00 – 5:00 p.m., 1,133 kW, while the Baseline is an average of five periods to assure a reasonable baseline level. The “two-hour prior” average is used in this computation for the day of curtailment. On the four prior business days, the same period as the July 17 Curtailment Period (4 to 5 p.m.) is used in the Baseline average. This is done so that weather and schedule-sensitive loads are captured as accurately as possible.

The average kW demand for each of the five days is then averaged to set the Baseline, as shown below. The curtailment kW (the average of the demand throughout the curtailment period) is subtracted from the Baseline kW to determine Demand Savings. When completed, these calculations form the basis for the incentive payments discussed below in Step Five.

Day	Baseline Period kW	–	Curtailment High Hour kW	=	Verified Demand Savings
July 17 (curtailment)	1,414 (2-3 pm)		1,133 (4-5 pm)		
July 16	1,513 (4-5 pm)				
July 15	1,495 (4-5 pm)				
July 14	1,567 (4-5 pm)				
July 13	1,533 (4-5 pm)				
CALCULATION:	1,504 (baseline avg.)	-	1,133 (curtailment)	=	371 kW Demand Savings

PAYMENT PROCEDURES:

El Paso Electric will pay Project Sponsors in two installments each year the Agreement is in effect: (1) the Scheduled Curtailment Payment and (2) the Performance Period Payment. In the event a Project Sponsor fails materially to produce the demand savings as proposed in its Application, El Paso Electric reserves the right to decline to make any further incentive payments and to terminate the Agreement.

El Paso Electric's payment of incentive payment(s) to Project Sponsor is expressly and specifically conditioned upon El Paso Electric receiving all required notices, submittals and materials from Project Sponsor within the applicable period specified in the Agreement. Failure by Project Sponsor to deliver any required notice, submittal, or material within the applicable period specified in the Agreement shall be deemed a material breach of the Agreement.

Available Budget

The Load Management Program is projected and planned to be a multi-year program, dependent on future changes in PUCT regulations and rulings. The goal for 2009 is 3,500 kW, and the goal may be increased in subsequent years. A Project Sponsor must provide at least 100 kW of estimated Demand Savings to be eligible. The incentive budget for 2009 is \$210,000 (3,500kW at \$60/kW).

Incentive Payment Prices

The SOP rules provide standard incentive prices per kW for Demand Savings each year of participation. The total incentive cap includes the Performance Period Payment and the Scheduled Curtailment Payment. El Paso Electric will not be obligated to pay a Project Sponsor for verified Demand Savings that exceed the amount of estimated Demand Savings proposed in the Project Sponsor's Application, although at El Paso Electric's sole discretion and provided SOP funds are available, El Paso Electric may revise a Project Sponsor's estimate of proposed Demand Savings upward and may pay a Project Sponsor accordingly. The incentive rates applicable to kW savings are set forth in the following table, subject to final PUCT rules.

Demand Incentive Rate (\$/kW)

Program Year	Calendar Year	Scheduled Incentive Rate	Performance Incentive Rate	Demand Savings Cap
Year 1	2009	\$25	\$35	3,500 kW
Subsequent if continued	2010	\$25	\$35	TBD

Incentive Payment Limitations

To ensure that incentives are available to multiple energy service providers, any individual Project Sponsor or its affiliates will be limited to 40% of the SOP incentive budget in a given budget year, unless there are insufficient Project Sponsor applications to fill El Paso Electric's annual Demand Savings goal. Project Sponsors will be required to verify their affiliate status through an affidavit attached to the Agreement.

Payment Schedule (Scheduled Curtailment)

All verification process activities for a scheduled curtailment must be completed before the Project Sponsor will receive the Scheduled Curtailment Payment. After successful participation in the Scheduled Curtailment, verification of the IDR data and demand savings, El Paso Electric shall pay the Project Sponsor the then current incentive amount per kW for the Scheduled Curtailment Payment. El Paso Electric will typically make the Scheduled Curtailment Payment within thirty-five (35) days after the Demand Savings are calculated. The Scheduled Curtailment Payment will be based upon the verified Demand Savings from the Scheduled Curtailment using the following equation:

$\text{Scheduled Curtailment Payment (\$)} = \frac{\text{Scheduled Curtailment Payment Incentive Rate}}{\text{Demand kW Savings}} \times \text{Scheduled Verified Demand kW Savings}$

Payment Schedule (Unscheduled Performance Curtailments)

El Paso Electric will typically make the Performance Period Payment in November, at the conclusion of the Performance Period and after El Paso Electric's approval of the IDR data for the Agreement year. The amount of the Performance Period Payment shall be calculated based upon the average verified Demand Savings over all Unscheduled Curtailments using the following formula:

$\text{Performance Period Payment (\$)} = \frac{\text{Performance Period Payment Incentive Rate}}{\text{Verified Demand kW Savings}} \times \text{Unscheduled Verified Demand kW Savings}$

In the event no Unscheduled Curtailments are performed, the Performance Period Payment will be calculated using verified kW savings of the Scheduled Curtailment for that Agreement year. Project Sponsors should be aware, however, that El Paso Electric expects and intends to call at least one unscheduled curtailment each year.

LIMITATIONS TO THE COMPENSATION SCHEDULE

1. Notwithstanding anything to the contrary, El Paso Electric may, in its sole discretion, revise the calculation of the Scheduled Curtailment Payment and/or the Performance Period Payment to allow payment to Project Sponsor for an amount of peak demand reduction that exceeds the amount of Estimated Demand Savings and is less than or equal to the amount of Demand Savings.
2. The sum of the Scheduled Curtailment Payment and Performance Period Payment in a Project year payable to any individual Project Sponsor may not exceed 40% of the Incentive Budget for that Project year.
3. El Paso Electric's payment of Incentive Payment(s) to Project Sponsor is expressly and specifically conditioned upon El Paso Electric receiving all required notices, submittals and materials from Project Sponsor within the applicable period specified in this Agreement. Failure by Project Sponsor to deliver any required notice, submittal, or material within the applicable period specified in this Agreement shall be deemed a material breach of this Agreement.

ATTACHMENT 3: SCOPE OF WORK

The Project Sponsor's Application, certifications, and the Program Manual are incorporated by reference and is hereby made a part of the Standard Offer Agreement.

ATTACHMENT 4: GENERAL TERMS AND CONDITIONS FOR SERVICES

1.0 DEFINITIONS

The following definitions shall apply to the Contract, all Contract Documents and amendments thereto and to related correspondence. A word or expression defined in this Contract containing capital letter(s) shall be identified, in any section of this Contract where the whole text is printed in block capitals, or by such word or expression being underlined and/or printed in a more prominent typeface.

1.1 "Acceptance" shall mean the official written notification of acceptance of the Work to Project Sponsor from the authorized representative of El Paso Electric following satisfactory completion of the Work in accordance with the Contract.

1.2 "Affiliate" shall mean (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of an energy efficiency service provider; (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by an energy efficiency service provider; (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by: (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of an energy efficiency service provider; or (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; or (E) a person who is an officer or director of an energy efficiency service provider or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; (F) a person who actually exercises substantial influence or control over the policies and actions of an energy efficiency service provider; (G) a person over which the energy efficiency service provider exercises the control described in subparagraph (F) of this paragraph; (H) a person who exercises common control over an energy efficiency service provider, where "exercising common control over an energy efficiency service provider" means having the power, either directly or indirectly, to direct or cause the direction of the management or policies of an energy efficiency service provider, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or (I) a person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of an energy efficiency service provider even though neither person may qualify as an affiliate individually.

1.3 "Baseline Demand Usage" shall mean the amount of demand in the period(s) determined by El Paso Electric to be the baseline for comparison to Curtailment Demand Usage to calculate Demand Savings. Baseline Demand Usage shall be calculated by averaging the one-hour period on the day of Curtailment which began two hours prior to the start of a Curtailment,

with the same period as the Curtailment for each of the four previous business days (weekdays, excluding federal holidays).

1.4 "El Paso Electric" shall mean El Paso Electric Company, a Texas Corporation, or any of its representatives, successors, or assigns.

1.5 "Commercial Customer" shall mean a non-residential customer taking service at a metered point of delivery at a distribution voltage under an electric utility's tariff during the prior calendar year and a non-profit customer or government entity, including an educational institution. For purposes of this section, each metered point of delivery shall be considered a separate customer.

1.6 "Competitive Energy Efficiency Services" shall mean energy efficiency services that are defined as competitive under §25.341 of this title (relating to Definitions).

1.7 "Contract" or "Agreement" shall mean, collectively, the entire agreement between El Paso Electric and Project Sponsor, the terms and conditions incorporated herein and other documents, if any, which are by reference made a part of the Contract and providing for signature of a duly authorized representative of each party thereto.

1.8 "Contract Administrator" shall mean El Paso Electric's duly authorized agent who shall initiate and administer all contract activities related to the contractual terms and conditions.

1.9 "Contract Documents" or "Agreement Documents" shall mean 1) Project Sponsor's approved application ("Application") and Application Agreement, attached hereto as Attachment A and incorporated by reference herein, 2) the SOP Manual ("SOP Manual"), which is incorporated by reference herein, and 3) this Contract together with any and all other exhibits, addenda, or amendments referenced in the Agreement Documents or made a part thereof in accordance with this Agreement.

1.10 "Contract Supplement" shall mean the written instrument describing additions, changes or deletions to Project Sponsor's scope of work as defined by the Contract Documents, or in the time of performance of the Contract (or any other change desired by El Paso Electric) authorized and executed by duly authorized representatives of the parties hereto with the same formality as this Contract.

1.11 "Curtable Load" shall mean the equipment, material, or systems at a Project Site that is identified in the application as load that will be interrupted at the request of El Paso Electric pursuant to the SOP.

1.12 "Curtailment" shall mean shutting down the operation of Curtable Load at the request of El Paso Electric pursuant to the SOP.

1.13 "Curtailment Demand Usage" shall mean the average demand that occurs during the period of a Curtailment.

1.14 "Customer Agreement" shall mean the agreement between Customer and the Project Sponsor that specifies the rights and obligations of each party with respect to the installation of the measures and other related and/or unrelated matters at the Project Site.

1.15 "Demand" shall mean the rate at which electric energy is used at a given instant or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

1.16 "Demand Savings" shall mean a quantifiable reduction in demand.

1.17 “Eligible Customers” shall mean commercial customers. In addition, to the extent that they meet the criteria for participation in load management standard offer programs developed for industrial customers and implemented prior to May 1, 2007, industrial customers are eligible customers solely for the purpose of participating in such programs.

1.18 “Energy Efficiency” shall mean improvements in the use of electricity that are achieved through facility or equipment improvements, devices, or processes that produce reductions in demand or energy consumption with the same or higher level of end-use service and that do not materially degrade existing levels of comfort, convenience, and productivity.

1.19 “Energy Efficiency Measures” shall mean equipment, materials, and practices at a customer’s site that result in a reduction in electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kilowatts (kW), or both. These measures may include thermal energy storage and removal of an inefficient appliance so long as the customer need satisfied by the appliance is still met.

1.20 “Energy Efficiency Program” shall mean the aggregate of the energy efficiency activities carried out by an electric utility under this section or a set of energy efficiency projects carried out by an electric utility under the same name and operating rules.

1.21 “Energy Efficiency Project” shall mean an energy efficiency measure or combination of measures undertaken in accordance with a standard offer or market transformation program.

1.22 “Energy Efficiency Service Provider” shall mean a person who installs energy efficiency measures or performs other energy efficiency services under this section. An energy efficiency service provider may be a retail electric provider or commercial customer.

1.23 “Energy Savings” shall mean a quantifiable reduction in a customer’s consumption of energy.

1.24 “Estimated Demand Savings” shall mean: 1) the amount of Demand that Project Sponsor proposes in the Application to save in a one-hour period during Summer Peak Demand Hours through Curtailments that are implemented pursuant to the SOP and that El Paso Electric approves after review of the Application and receipt of all Customer Agreements, or 2) the amount of approved Unscheduled Curtailment Demand Savings from the Scheduled Curtailment that occurs in the first year of the Project, whichever is less.

1.25 “Governmental Authority” shall mean any federal, state, local or municipal governmental body or agency or subdivision thereof, including, but not limited to, any legislative or judicial body, having appropriate jurisdiction to exercise authority or control over El Paso Electric, its parent corporation, or any part or all of the Work to be performed under this Contract.

1.26 “Growth in Demand” shall mean the annual increase in demand in the Texas portion of an electric utility’s service area at time of peak demand, as measured in accordance with this section.

1.27 “IDR” shall mean Interval Data Recorder.

1.28 “Incentive Budget” shall mean the amount of money budgeted by El Paso Electric for the SOP in each year of the Project.

1.29 "Incentive Payment" shall mean payment made by a utility to an energy efficiency service provider under an energy-efficiency program.

1.30 "Inspection" shall mean examination of a project to verify that an energy efficiency measure has been installed, is capable of performing its intended function, and is producing an energy saving or demand reduction.

1.31 "Load Control" shall mean activities that place the operation of electricity-consuming equipment under the control or dispatch of an energy efficiency service provider, an independent system operator or other transmission organization or that are controlled by the customer, with the objective of producing energy or demand savings.

1.32 "Load Management" shall mean load control activities that result in a reduction in peak demand on an electric utility system or a shifting of energy usage from a peak to an off-peak period or from high-price periods to lower price periods.

1.33 "Measurement and Verification" shall mean activities intended to determine the actual energy and demand savings resulting from energy efficiency projects as described in this section.

1.34 "Off-peak Period" shall mean the period during which the demand on an electric utility system is not at or near its maximum. For the purpose of this section, the off-peak period includes all hours that are not in the peak period.

1.35 "Peak Demand" shall mean electrical demand at the times of highest annual demand on the utility's system.

1.36 "Peak Demand Reduction" shall mean reduction in demand on the utility system during the utility system's peak period.

1.37 "Peak Period," for purposes of the load management program, shall mean the hours from one p.m. to seven p.m., during the months of June, July, August, and September, excluding weekends and Federal holidays.

1.38 "Performance Period" shall mean the period from June 1 through September 30 of each year of the Project.

1.39 "Performance Period Payment" shall mean the payment made by El Paso Electric to Project Sponsor for Unscheduled Curtailment Demand Savings, as calculated pursuant to the Compensation Schedule.

1.40 "Project Sponsor" shall mean the party who is the provider of the energy efficiency services being purchased under this Contract and who is entering into this Contract with El Paso Electric.

1.41 "Project Sponsor's Representative" shall mean the person designated by the Project Sponsor to represent the Project Sponsor during the term of the Contract.

1.42 "Program Manager" shall mean El Paso Electric's designee who shall manage and coordinate the work activities furnished under this Contract.

1.43 "Notice" shall mean any formal written correspondence providing notice of action, purpose, intent or the like given under the provisions of this Contract.

1.44 "Peak Demand Savings" shall mean the Peak Demand Reduction as calculated pursuant to the Compensation Schedule.

1.45 "Personnel" shall mean Project Sponsor's employees or subcontractor employees performing Work under this Contract.

1.46 "Project Site" shall mean the location of a Customer's Curtailable Load, as identified in the Application. For the purposes of this Agreement, multiple facilities representing Curtailable Load may be combined into one Project Site as long as they are connected to a single IDR meter. The total Curtailable Load at a Project Site must have a recorded history pattern of 100 kW or more demand usage and when interrupted in operation must result in a measurable and verifiable reduction in peak demand.

1.47 "Project Sponsor Contact Telephone Number" shall be the telephone number identified in the Application as the telephone number that El Paso Electric will call to notify Project Sponsor of a required Curtailment.

1.48 "PUCT" shall mean the Public Utility Commission of Texas.

1.49 "Scheduled Curtailment" shall mean a Curtailment that is pre-scheduled by El Paso Electric to occur at the beginning of the Performance Period in every year of the Project.

1.50 "Scheduled Curtailment Demand Savings" shall mean the difference between the Baseline Demand Usage for a Scheduled Curtailment and the Curtailment Demand Usage for the same Scheduled Curtailment.

1.51 "Scheduled Curtailment Payment" shall mean the payment made by El Paso Electric to Project Sponsor of the Project for Scheduled Curtailment Demand Savings, as calculated pursuant to the Compensation Schedule.

1.52 "Specifications" shall mean collectively, all technical descriptions and data referenced in the Contract, and such amendments, revisions, deductions or additions as may be made and all written agreements made or to be made, pertaining to the processes, workmanship, products and quantities and qualities of the materials to be furnished under this Contract.

1.53 "Standard Offer Contract" shall mean a contract between an energy efficiency service provider and a participating utility specifying standard payments based upon the amount of energy and peak demand savings achieved through the installation of energy efficiency measures at electric customer sites, the measurement and verification protocols, and other terms and conditions, consistent with this section.

1.54 "Standard Offer Program" or "SOP" shall mean a program under which a utility administers standard offer contracts between the utility and energy efficiency service providers.

1.55 "Subcontractor" shall mean any person, firm, partnership, association, joint venture, company, corporation or other entity, regardless of tier, engaged by Project Sponsor to provide any part of the Work under this Contract.

1.56 "Unscheduled Curtailment" shall mean a Curtailment that is requested by El Paso Electric in response to a notification by El Paso Electric's Systems Operations Department.

1.57 "Unscheduled Curtailment Payment" shall mean the payment made by EPE to Project Sponsor of the Project for Unscheduled Curtailment Demand Savings, as calculated pursuant to the Compensation Schedule.

1.58 "Work" shall mean any and all labor, evaluations, reports and services, including all equipment, material, duties and obligations that are the responsibility of Project Sponsor under this Contract.

2.0 CONTRACT DOCUMENTS

2.1 The Contract Documents consist of the Contract Signature Page, the Compensation Schedule, the Scope of Work, these Terms and Conditions for Services, the SOP Manual, and all other exhibits, addenda, drawings, Specifications, Applications and any Contract Supplements issued subsequently.

2.2 The Contract Documents are intended to be complementary and what is set forth in any one document is as binding as if set forth in each document. In the event there are any conflicting provisions or requirements in the Contract Documents, the provisions and requirements thereof shall take the following order priority:

1. Contract Supplements
2. Compensation Schedule
3. Scope of Work
4. SOP Manual
5. Terms and Conditions for Services
6. Application
7. Contract Signature Page

El Paso Electric assumes no responsibility for bidding errors or omissions caused by failure of Project Sponsor or any of its Subcontractors to inspect and familiarize themselves with the complete set of Contract Documents.

3.0 EFFECT OF HEADINGS

Article headings appearing in this Contract are for convenience and reference only and shall in no way be construed to define, limit or interpret the text hereof.

4.0 APPLICABLE STATE LAW

The rights, obligations and remedies of the parties to this Contract shall be interpreted and governed in all respects by the laws of the State of Texas. Should any provision of this Contract or part thereof, or the application of any provision or part thereof, be judicially determined to be illegal or invalid or otherwise unenforceable, the validity of the remaining provisions or parts thereof and other applications of such provisions or parts thereof shall not be impaired.

5.0 NOTICES AND CORRESPONDENCE

5.1 All Notices or correspondence arising from or pertaining to the legal requirements, terms & conditions or the performance required by this Contract shall be in writing and either delivered in person or sent by registered or certified mail to the appropriate individual at the following addresses:

(a) To El Paso Electric:

El Paso Electric
Attn: John Armstrong
P O. Box 982
El Paso, TX 79960

(b) To Project Sponsor: Address stated on the Contract Signature Page.

5.2 All Notices or correspondence to El Paso Electric arising from or pertaining to project administration shall be in writing and either delivered in person or sent by registered or certified mail to the appropriate individual at the following address:

El Paso Electric - Energy Saver 2009
Attn: John Armstrong
P.O. Box 982
El Paso, TX 79960

5.3 Either of the parties may, at any time, change its mail or delivery address by giving the other party ten (10) days prior written Notice.

5.4 The effective date of any written Notice delivered or mailed pursuant to this Contract shall be the date of receipt by the El Paso Electric or Project Sponsor, as applicable, if delivered, or the postmark date if mailed.

6.0 AUTHORIZATION TO COMMENCE WORK

Project Sponsor shall not commence Work until receipt of a signed Contract.

7.0 EQUAL EMPLOYMENT OPPORTUNITY

Project Sponsor represents that it is in compliance with all applicable laws, regulations and orders with respect to equal employment opportunity and either has heretofore provided or will provide to El Paso Electric the certifications and representations regarding equal employment opportunity that El Paso Electric may require under such laws, regulations and orders.

8.0 NON-WAIVER OF RIGHTS

Failure of El Paso Electric to insist upon strict performance of any of the provisions hereof, or its failure or delay in exercising any rights or remedies provided herein or by law, or El Paso Electric's Acceptance of, or use of or payment for the Work, or any part or combination thereof, or any approval of Work by El Paso Electric, or any purported oral modification or rescission of this Contract, or any part hereof, by any employee or other authorized representative of El Paso Electric shall not release Project Sponsor of any of its obligations under this Contract and shall

not be deemed as a waiver of any of El Paso Electric's rights to insist upon strict performance hereof or of any of El Paso Electric's rights or remedies under this Contract or by law, and shall not operate as a waiver of any of the provisions hereof.

9.0 REPRESENTATIONS AND WARRANTIES

9.1 By executing this Agreement, Project Sponsor warrants and represents that it is aware of, is in compliance with, and will continue to comply for the term of this Agreement with, all of the Agreement Documents and all applicable laws and regulations related to the SOP.

9.2 Project Sponsor warrants and represents that the Project meets all federal, state, and local regulatory requirements, including:

The Project will result in consistent and predictable peak demand savings over a ten-year period;

The Application disclosed all potential adverse environmental or health effects associated with the Project, if any;

The Project will not result in negative environmental or health effects and will not result in building vacancies or the re-location of existing operations to a location outside of the area served by El Paso Electric; and

The Project would not have been implemented in the absence of the SOP.

9.3 Project Sponsor acknowledges that it received a copy of the SOP Manual prior to submission of its Application. Project Sponsor warrants and represents that its participation in the SOP has at all times been in compliance with, and will continue to comply for the term of this Agreement with, the procedures and conditions set forth in the SOP Manual and that any failure to comply therewith may be treated as a breach of this Agreement notwithstanding the fact that such failure occurred prior to the execution of this Agreement. Project Sponsor also acknowledges that it meets or exceeds all of the qualifications required to participate in the SOP as described in the SOP Manual and that failure to meet the qualifications therein may be treated as a breach of this Agreement. Procedures or conditions set forth in the SOP Manual may only be waived or modified by written agreement of the parties. Any such Agreement shall be attached hereto and incorporated herein for all purposes.

9.4 Project Sponsor warrants and represents it and its Affiliates may be limited to 40% of the Incentive Budget for any year of the Project and that the Affidavit of Affiliate Status attached hereto as Appendix A – Attachment B are incorporated by reference herein is true and correct.

9.5 Project Sponsor warrants and represents that any relevant Agreement(s) or agreement(s) between a Customer and the Customer's retail electric provider concerning electric service to Curtailable Load do not prohibit or inhibit Curtailments.

9.6 Project Sponsor agrees on and after the Effective Date to use all reasonable efforts to implement the Project without undue delay and otherwise in accordance with the terms of the Agreement Documents.

9.7 The Project will be implemented during calendar year 2009 and beyond if this Agreement is extended by mutual covenant.

9.8 One Scheduled Curtailment shall be required to be implemented by Project Sponsor at each Project Site at the beginning of the Performance Period in each calendar year of the Project. A maximum of nine Unscheduled Curtailments shall be required to be implemented by Project Sponsor at each Project Site during Summer Peak Demand Hours of each calendar year of the Project.

All Curtailments shall be implemented at the time and for the duration specified by El Paso Electric.

El Paso Electric must notify Project Sponsor at least one hour prior to the required start-time of any Curtailment by calling the Project Sponsor Contact Telephone Number. A representative of Project Sponsor must be available to personally answer calls made to the Project Sponsor Contact Telephone Number during all Summer Peak Demand Hours.

Project Sponsor may change the Project Sponsor Contact Telephone Number by providing notice to the Program Manager of the new Project Sponsor Contact Telephone Number a minimum of two business days prior to the date that the new Project Sponsor Contact Telephone Number is to become effective. In order for notice of a new Project Sponsor Contact Telephone Number to be valid, Project Sponsor must verify that the El Paso Electric Program Manager has actually received such notice by the above-mentioned deadline.

Project Sponsor represents that the project schedule, (as noted in the Project Authorization Form) and applicable compensation is based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of El Paso Electric. El Paso Electric assumes no responsibility for any understanding or representation made or alleged to have been made by any of its representatives, unless such understandings or representations are expressly and fully stated in this written Contract.

10.0 SAFETY AND HEALTH

10.1 Project Sponsor shall be solely responsible for the safety and health of Project Sponsor's Personnel, its Subcontractors' Personnel, and other persons required in the execution of the Work.

10.2 Project Sponsor shall take all precautions for the safety and health of, and shall provide all protection necessary to prevent damage, injury or loss to all Personnel engaged in the Work and any other persons who may be affected thereby;

11.0 STANDARDS, CODES, LAWS AND REGULATIONS

11.1 Project Sponsor shall comply with all applicable laws, rules, regulations, codes and standards of all federal, state, local and municipal Governmental Authority having jurisdiction over the Work covered by this Contract.

11.2 **PROJECT SPONSOR** SHALL, AT ITS OWN EXPENSE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS EL PASO ELECTRIC, ITS PARENT CORPORATION, SUBSIDIARIES AND AFFILIATES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL LIABILITY, LOSS OR DAMAGES ASSESSED AGAINST OR INCURRED BY EL PASO ELECTRIC, ITS PARENT CORPORATION, SUBSIDIARIES AND AFFILIATES, OFFICERS, DIRECTORS, AGENTS

AND EMPLOYEES OR ANY OF THEM (INCLUDING ATTORNEY'S'S FEES AND OTHER COURT COSTS INCURRED BY ANY PARTY INDEMNIFIED HEREUNDER) OR OTHERWISE SUFFERED BY ANY PARTY INDEMNIFIED HEREUNDER AS A RESULT OF NONCOMPLIANCE BY **PROJECT SPONSOR** WITH THIS ARTICLE 11.0.

11.3 Project Sponsor shall secure and pay for all permits, governmental fees and licenses necessary for proper execution and completion of the Work, unless otherwise specified in the Contract Documents.

12.0 INDEPENDENT CONTRACTOR AND SUBCONTRACTOR

12.1 Project Sponsor agrees to perform the Work as an independent contractor and not as a subcontractor, agent or employee of El Paso Electric.

12.2 El Paso Electric shall not be responsible for any acts and omissions of its Personnel and its Subcontractors and Subcontractor's suppliers and their employees and shall be specifically responsible for sufficient and competent supervision and inspection to assure compliance in every respect with Contract requirements.

12.3 There shall be no contractual relationship between El Paso Electric and any of Project Sponsor's subcontractors or suppliers, arising out of or by virtue of this Contract.

El Paso Electric shall not be responsible for the payment of any sums to any Subcontractor or supplier.

12.4 Project Sponsor shall include in all agreements with Vendors and Subcontractors liability limitation, suspension, termination and attorneys' fees terms at least as favorable to El Paso Electric as those set forth herein. SHOULD **PROJECT SPONSOR** FAIL TO OBTAIN SUCH LIABILITY LIMITATION, TERMINATION, SUSPENSION AND ATTORNEYS' FEES RIGHTS IN VENDOR AND SUBCONTRACTOR AGREEMENTS, **PROJECT SPONSOR** SHALL INDEMNIFY AND HOLD EL PASO ELECTRIC HARMLESS TO THE EXTENT THAT ANY SUBCONTRACTORS OR VENDORS ASSERT CLAIMS OR CAUSES OF ACTION FOR DAMAGES IN EXCESS OF AMOUNTS PERMITTED PURSUANT TO TERMINATION (WITH OR WITHOUT CAUSE) AND/OR SUSPENSION INCLUDING ATTORNEY'S FEES.

13.0 ASSIGNMENT AND SUBCONTRACTING

13.1 Neither this Contract nor the duties to be performed hereunder nor monies to become due hereunder shall be subcontracted, assigned, delegated or otherwise disposed of by Project Sponsor without prior written consent of El Paso Electric.

13.2 Any permitted assignment of this Contract, or any delegation of any duties hereunder shall not relieve Project Sponsor of any of its obligations hereunder.

13.3 If this Contract should be permitted by El Paso Electric to be assigned by Project Sponsor, it shall be binding upon and shall inure to the benefit of the permitted assignee.

14.0 FORCE MAJEURE

14.1 Performance of this Contract by each party shall be pursued with due diligence in all requirements hereof; however, neither party shall be liable for any loss or damage for delay or

for nonperformance due to causes not reasonably within its control, including but not limited to, acts of civil or military authority, acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, fires, or floods. In the event of any delay resulting from such causes, the time for performance of each of the parties hereto (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delays. No further modification to other terms and conditions of this Contract shall occur.

14.2 In the event of any delay or nonperformance caused by the above causes, the party affected shall promptly notify the other in writing of the nature, cause, date of commencement and the anticipated extent of such delay, and shall indicate whether it is anticipated that any completion dates will be affected thereby

15.0 INSPECTION, TESTING AND ACCEPTANCE

15.1 All Work commenced pursuant to this Contract shall be subject to Inspection and verification by the El Paso Electric. El Paso Electric shall be responsible for all costs associated with such Inspection and verification.

15.2 Inspection by the El Paso Electric of any Work does not relieve Project Sponsor from any responsibility regarding defects or other failures to meet the Contract requirements.

16.0 INDEMNITY

PROJECT SPONSOR AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD EL PASO ELECTRIC, ITS CORPORATE AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUITS OR OTHER LITIGATION (INCLUDING ALL COSTS THEREOF AND ATTORNEY'S FEES) OF EVERY KIND AND CHARACTER ARISING IN FAVOR OF PROJECT SPONSOR OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY PROJECT SPONSOR OR ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER) ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE WORK PERFORMED OR TO BE PERFORMED BY PROJECT SPONSOR HEREUNDER OR OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE PRESENCE OF PROJECT SPONSOR, ITS PERSONNEL, AGENTS, SUPPLIERS AND SUBCONTRACTORS (AND THEIR RESPECTIVE PERSONNEL) ON THE PREMISES, WHERE AND TO THE EXTENT SUCH INJURY, DEATH OR DAMAGE IS CAUSED BY THE SOLE, JOINT, CONCURRENT, CONTRIBUTING OR COMPARATIVE NEGLIGENCE OR FAULT OF PROJECT SPONSOR, ITS CORPORATE AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS.

17.0 TERMINATION FOR CAUSE OR CONVENIENCE

17.1 Either party shall have the right to terminate this Contract in whole or in part at any time by written Notice to the other party. Any such written Notice shall specify the extent to

which performance of the Work is terminated, and the date upon which such termination becomes effective.

17.2 In the event of termination by El Paso Electric as provided herein, El Paso Electric shall compensate Project Sponsor for any and all Work approved in writing. El Paso Electric shall not be required to compensate Project Sponsor for expenses connected with preparation of an Initial or Final Application, or any other cost not directly approved by in writing.

17.3 In the event of termination, those provisions of this Contract that by their nature continue beyond the Termination of this Contract shall remain in full force and effect after such termination.

17.4 The rights and remedies of El Paso Electric provided in this Article 17.0 are not exclusive and are in addition to any other rights and remedies provided under this Contract, or at law, or in equity.

18.0 COMPLETE AGREEMENT

This Contract is intended as the exclusive statement of the agreement between the parties. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Contract, and recourse shall not be had to alleged prior dealings, usage of trade, course of dealing, or course of performance to vary or contradict the express terms of this Contract. This Contract shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed by duly authorized representatives.

ATTACHMENT 5: IRS W-9

Note - Completion of IRS W-9 is required to create a vendor number for each Project Sponsor. These forms need only be completed once, or not at all, if a Project Sponsor has an existing vendor number.

**Request for Taxpayer
Identification Number and Certification**

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2

Name (as shown on your income tax return)	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
OR
Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such businesses. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,