

December 8th, 2020

El Paso City Council

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Re: City Council's unanimous vote opposing "Newman 6." Request to Amend El Paso City Ordinance 16090 Franchise Agreement.

Dear Councilor Svarzbein:

Newman 6 is an injustice on our community. We're glad you agree.

On October 12th, you [voted unanimously](#) as a member of the El Paso City Council to affirm its opposition to El Paso Electric Company's proposed "Newman 6" expansion to the Newman Generating Station in Northeast El Paso. The signatories of this letter--including community leaders, organizations, professionals, and businesses (see below)--would like to thank you for this vote. During the unprecedented health and economic crisis that our city is suffering, we applaud your commitment to opposing this \$163.8 million project that is unnecessary and would heavily burden El Paso ratepayers (\$18.6 million in additional rate revenues in Texas, and \$4.6 million in New Mexico).

Additionally, we briefly submit two other topics of public interest that highlight the injustice of this proposed Newman 6 project: (1) Health: this generator's increased emissions of air pollutants would significantly harm El Paso's air quality--leading to increased chances of respiratory illness.¹ This is especially relevant during El Paso's COVID health crisis because Particulate Matter (PM) air pollution, which this project would significantly increase, has been linked to higher incidences of death from COVID-19.² (2) Environment: In the world's 10th

¹ *Environmental Integrity Project (EIP) and Sierra Club. Comments and Contested Hearing Request on Application to Amend Permit Nos. 1467, PSDTX1090M1, N284, AND GHGPSDTX199.*

<https://drive.google.com/file/d/1uj2LkpZriLKCdaNeaCZeyFspzJg6N577/view?usp=sharing>

² *Fine particulate matter and COVID-19 mortality in the United States A national study on long-term exposure to air pollution and COVID-19 mortality in the United States. Harvard University.*

<https://projects.iq.harvard.edu/covid-pm/home>

sunniest city with only 5% renewable energy penetration, increasing our electric grid's usage of natural gas (fracked gas) is an injustice furthering the climate crisis. We believe these perspectives are necessary to keep in mind as this City Council engages with this project's proceeding.

In fact, this Council is hardly alone in concluding Newman 6 should be denied. On November 16, the New Mexico Public Regulation Commission's (NMPRC) Hearing Examiner issued a ["recommended decision"](#) to deny Newman 6's application. Many intervenors participated in this proceeding, including the city of Las Cruces, NM, also arguing EPE's Newman 6 project should be rejected.

Closer to home, the El Paso community has firmly demonstrated its opposition to Newman 6. A [wave of residents participated](#) in the Texas Commission of Environmental Quality (TCEQ)'s air permit application process. A total of 125 participants logged into TCEQ's virtual Public Meeting on November 17th. Of those, 28 provided oral comments--100% of the oral comments were in opposition. Plus, a total of 180 written opposition comments were submitted to the TCEQ electronically. Additionally, the community [organized an action](#) in late September to speak out against the plant. And, [nearly 3,000 have signed](#) on to an online petition calling for the El Paso City Council to reject the plant.

Building upon this Council's October 12th laudable unanimous vote to oppose Newman 6, we urge the Council to explore other paths to fight this project.

I. Amending El Paso City Ordinance 16090 to Condition Land Use Agreements upon Council approval of EPE's Renewable Generation Study

We request the El Paso City Council again amend City Ordinance 16090 (Franchise Agreement or ordinance). As the Council is aware, this ordinance grants the El Paso Electric Company (EPE) a franchise "to operate the electric utility for transmission and distribution of electrical energy" within the City.³ Pursuant to this ordinance, and its amendments, EPE proposes to build Newman 6.

In February 2020, the Council amended the ordinance to include a provision (Section 9.5a) designed to encourage agreements between El Paso and EPE related to rights-of-way and other land uses. This provision refers to Section 75.0022 of the Texas Civil Practice and Remedies Code, which states that an electric utility, "may enter into a written agreement with a political subdivision to allow public access to and use of the premises of the electric utility for recreation,

³ El Paso Proposed January 2020 Ordinance:
<https://www.elpasotexas.gov/~media/files/coep/ep%20electric/proposed%20january%202020%20ordinance.ashx?a=en>

exercise, relaxation, travel, or pleasure.”⁴ This provision empowers the Council to negotiate some land uses more pleasurable to El Paso residents than a fracked gas plant.

The ordinance separately requires EPE to perform a Renewable Generation Study, as defined in Texas Utilities Code § 39.904(d).

We urge the city to amend the ordinance so that all Section 75.0022 rights-of-way and related land use agreements become contingent upon the Council’s approval of EPE’s Renewable Generation Study. EPE should also submit their Renewable Generation Study for the Council’s approval or denial at a public hearing.

Unfortunately, the ordinance, as amended in February 2020, allows EPE to shield from the public information about the Renewable Generation Study. The Council therefore should repeal Section 3 of the ordinance (adding Section 9.5c to the Franchise Agreement) allowing EPE to self-designate as critical infrastructure and exempt itself from open records requests.⁵

Shielding the Renewable Generation Study from the public undermines trust and the study’s purpose. To help restore both, the Council should instead only negotiate any rights-of-way or other land uses after a public hearing and upon Council approval of the Renewable Generation Study. This way, the public can assess for themselves Newman 6’s contribution, if any, to renewable generation.

II. Exercising Section 3’s Police Power Provision

Secondly, we note that the Franchise Agreement’s Section 3 Police Power provision, grants the city broad authority to regulate EPE’s project:

“Work done in connection with the construction, repair, maintenance and operation of such facilities is subject to the continuing power of the City; and the Company shall comply with all present and future laws, ordinances and regulations...”

This provision allows a range of options, including conditioning rights-of-way, land uses, or other City approvals upon a satisfactory Renewable Generation Study. It empowers the Council to repeal the secrecy laden within the study and negotiate better terms for El Paso residents.

Our next steps

⁴El Paso, Texas Code of Ordinances, Charter, Article III, Section 3.9

⁵ Pursuant to Texas Government Code 418.181 and TGC Chapter 552.

The City currently finds itself in a window of opportunity where it can meaningfully act to reject Newman 6. Growing swells of opposition from both Texas and New Mexico may soon render this facility impractical and quash any purported “utility” it offers. The City Council has the power to stop Newman 6. We ask you to vote as Councilor to pass an ordinance amending the Franchise Agreement to require EPE provide transparency and accountability.

We appreciate your time, pleased to further discuss, and look forward to your response. Please direct responses to West Texas Field Associate with Earthworks, Miguel Escoto at mescoto@earthworksaction.org or any of the listed signatories.

Sincerely,

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Noteworthy documents:

- El Paso City Ordinance 017460 (2010 Amendment):
<https://www.elpasotexas.gov/~media/files/coep/ep%20electric/2010%20franchise%20agreement.ashx?la=en>; El Paso City Ordinance 018772 (2018 Amendment):
<https://www.elpasotexas.gov/~media/files/coep/ep%20electric/2018%20amendments%20to%20the%20franchise%20agreement.ashx?la=en>
- Proposed December 2019 Ordinance:
<https://www.elpasotexas.gov/~media/files/coep/ep%20electric/proposed%20december%202019%20ordinance.ashx?la=en>; Proposed January 2020 Ordinance
- Texas Civil Practice and Remedies, Title 4, Chapter 75, Section 75.0022(c)