

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
15 MAR 04
BY [Signature] DEPUTY

IN RE EL PASO ELECTRIC
COMPANY SECURITIES
LITIGATION

EP-03-CA-0004-DB

This Document Relates To:
All Actions

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FINAL ORDER

On this day, the Court held a hearing to determine: (1) whether the terms and conditions of the Stipulation of Settlement (the "Stipulation") filed in the above-captioned cause on June 2, 2005, is fair, reasonable and adequate for the settlement of all claims asserted by the Settlement Class against the Defendants in the Complaint, El Paso Electric Company ("EPE"), Terry D. Bassham, James Haines, Jr., and Gary R. Hedrick, in the above-caption cause (the "Action"), including the release of the Defendants and the other Released Persons, and should be approved; (2) whether judgment should be entered dismissing the Action on the merits and with prejudice in favor of the Defendants and as against all persons or entities who are members of the Settlement Class herein who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the Settlement Class; and (4) whether and in what amount to award Lead Plaintiff's Counsel fees and reimbursement of expenses. The Court, having considered all matters submitted to it at the hearing and otherwise, and it appearing that a notice of the hearing substantially in the form approved by the Court was mailed to all persons or entities reasonably identifiable, who purchased or otherwise acquired the common stock of EPE during the period from February 14, 2000 through and including October 21, 2002 (the "Class Period"), and who have been damaged thereby, except those persons or entities excluded from the definition of the Settlement Class, as shown by the records of EPE's transfer agent, at the respective addresses set

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forth in such records, and including those additional members of the Settlement Class identified by nominee owners to the Claims Administrator as set forth in the Affidavit of a representative of The Garden City Group, and that a summary notice of the hearing substantially in the form approved by the Court was published in the national edition of *The Wall Street Journal*, pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested; and all capitalized terms used herein, unless otherwise defined herein, having the meanings as set forth and defined in the Stipulation:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Court, for purposes of this Final Judgment and Order of Dismissal (the "Final Judgment"), adopts all defined terms as set forth in the Stipulation.
2. The Court has jurisdiction over the subject matter of the Class Action, the Lead Plaintiff, the other Members of the Settlement Class, and the Defendants.
3. The Court finds that the distribution of the Notice, Proof of Claim and Release, and publication of the Summary Notice of Proposed Settlement as provided for in the Order Preliminarily Approving Settlement and Approving the Form and Manner of Notice constituted the best notice practicable under the circumstances to appraise all Persons within the definition of the Settlement Class of the pendency of the Class Action and their rights in it, the terms of the proposed Settlement of the Class Action, and afforded Settlement Class Members with an opportunity to present their objections, if any, to the Settlement Stipulation. The Court finds that the provision of notice to Settlement Class Members fully met the requirements of Rule 23 of the Federal Rules of Civil Procedure, federal law, due process, the United States Constitution, and any other applicable law.

4. The Court finds that all Persons within the definition of the Settlement Class have been adequately provided with an opportunity to remove themselves from the Settlement Class by executing and returning a “request for exclusion” in conformance with the terms of the Stipulation.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court has certified a Settlement Class of all persons who purchased or otherwise acquired EPE common stock during the period from February 14, 2000 through October 21, 2002, inclusive, excluding Defendants, members of the immediate family of any Individual Defendant, any entity in which any Defendant has a controlling interest, and the legal representatives, heirs, successors or assigns of any such excluded party. Also excluded are those persons who timely and validly requested exclusion from the Settlement Class, identified in Exhibit 1 hereto.

6. With respect to the Settlement Class, this Court finds and concludes that: (a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members in the Class Action is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of the Lead Plaintiff are typical of the claims of the Settlement Class; (d) the Lead Plaintiff and its counsel have, at all times, fairly and adequately represented and protected the interests of the Settlement Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the members of the Settlement Class in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by members of the Settlement Class, (iii) the desirability or undesirability of continuing the litigation of these

claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of the Class Action.

7. The Court approves the Settlement of the above-captioned action, as set forth in the Stipulation, each of the releases, and other terms, as fair, reasonable, and adequate. The Settling Parties are directed to perform in accordance with the terms set forth in the Stipulation.

8. Upon the Effective Date, the Lead Plaintiff, the Settlement Class Members, and Lead Plaintiff's Counsel and the successors and assigns of any of them shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged the Released Persons from the Released Claims. "Released Persons" means each and all of the Defendants and their respective past or present directors, officers, employees, partners, principals, agents, underwriters, insurers, co-insurers, reinsurers, controlling shareholders, any entity in which the Defendant and/or any member(s) of any Defendant's immediate family has or have a controlling interest, attorneys, accountants, auditors, banks, investment banks or investment bankers, analysts, advisors, personal or legal representatives, insurers, reinsurers, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, associates, related or affiliated entities, any members of their immediate families, or any trust of which any Defendant is the trustee or settlor or which is for the benefit of any Defendant and/or member(s) of his family. "Released Claims" shall collectively mean any and all claims, debts, demands, rights or causes of action or liabilities (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability), whether based on federal, state, local, statutory or common law or any other law, rule or regulation (including, but not limited to, claims for negligence, gross negligence, indemnification, breach of duty of care and/or breach of duty of loyalty, fraud,

misrepresentation, breach of fiduciary duty, negligent misrepresentation, unfair competition, insider trading, professional negligence, mismanagement, corporate waste, or breach of contract), whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known claims and Unknown Claims, (i) that have been asserted in this Class Action by the Settlement Class Members or any of them against any of the Released Persons, or (ii) that could have been asserted in the Class Action or any other forum by the Settlement Class Members or any of them against any of the Released Persons which arise out of, are based upon, or relate in any way to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Class Action and are based upon or relate in any way to the purchase of EPE common stock during the Settlement Class Period.

9. “Unknown Claims” means any Released Claims which the Lead Plaintiff or any Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons, and any Released Defendants’ Claims that any Defendant does not know or suspect to exist in his or its favor, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this settlement. With respect to any and all Released Claims and Released Defendants’ Claims, the Parties stipulate and agree that, upon the Effective Date, the Lead Plaintiff and the Defendants expressly waive and relinquish, and the Settlement Class Members and Released Persons shall be deemed to have, and by operation of the Judgment shall have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of § 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Lead Plaintiff and Defendants expressly waive and the Settlement Class Members and the Released Persons shall be deemed to, and upon the Effective Date and by operation of the Judgment shall, have waived any and all provisions, rights and benefits conferred by any law of the United States or of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Lead Plaintiff and the Settlement Class Members may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, but each of them hereby stipulate and agree that the Lead Plaintiff does settle and release, and each Settlement Class Member shall be deemed to, upon the Effective Date and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Similarly, the Defendants and the Released Persons may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Defendants' Claims, but each of them hereby stipulates and agrees that the Defendants do settle and release, and each Released Person shall be deemed to, upon the Effective Date and by operation of the Judgment shall have, fully,

finally, and forever settled and released any and all Released Defendants' Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Parties acknowledge that the foregoing waiver was bargained for and a key element of the Settlement of which this release is a part.

10. Except as to any individual claim of those Persons who have validly and timely requested exclusion from the Settlement Class, identified in Exhibit 1 hereto, the Class Action and all claims contained therein, as well as all of the Released Claims are dismissed with prejudice as to the Lead Plaintiff and the other Members of the Settlement Class, and as against the Released Persons. The Settling Parties are to bear their own costs, except as otherwise provided in the Stipulation. By operation of the Judgment and under the terms of the Stipulation and the releases therein, it is intended to preclude, and shall preclude, the Lead Plaintiff and all other Settlement Class Members from filing or pursuing any Released Claims against the Released Persons under federal law or the law of any state.

11. Upon the Effective Date, the Lead Plaintiff and its counsel, on its own behalf and on behalf of all other Settlement Class Members, by operation of this Judgment shall fully, finally, and forever release, relinquish and discharge all Released Claims against each and all of the Released Persons, whether or not such Settlement Class Member executes and delivers the Proof of Claim and Release.

12. Upon the Effective Date, each of the Defendants and their respective counsel and the successors and assigns of any of them shall, and by operation of this Judgment shall, fully, finally, and forever release, relinquish and discharge the Released Defendants' Claims.

"Released Defendants' Claims" means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Class Action or any forum by the Defendants or any of them or the successors and assigns of any of them against any of the Lead Plaintiff, Settlement Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Class Action (except for claims to enforce the Settlement).

13. Upon the Effective Date, the Lead Plaintiff, the Settlement Class Members, and Lead Plaintiff's Counsel shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged the Released Persons from the Released Claims and from claims which arise out of or relate in any way to the defense or settlement of the Class Action (except for claims to enforce the Settlement).

14. Only those Settlement Class Members filing valid and timely Proofs of Claim and Release shall be entitled to participate in the Settlement and receive a distribution from the Settlement Fund. The Proof of Claim and Release to be executed by the Settlement Class Members shall further release all Released Claims against the Released Persons. All Settlement Class Members shall, as of the Effective Date, be bound by the releases set forth herein whether or not they submit a valid and timely Proof of Claim and Release.

15. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the

Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants, the Released Persons, or Lead Plaintiff's Counsel; (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants or the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; or (iii) shall be offered in evidence by any Settling Party for any purpose except as provided in this ¶ 13. Released Persons may file the Stipulation and/or the Judgment from this Class Action in any other action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction of any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settling Parties, their respective counsel or any other Member of the Settlement Class may file the Stipulation in any proceeding brought to enforce any of its terms or provisions.

16. The Plan of Allocation, filed September 8, 2005, is approved as fair and reasonable, and Plaintiffs' Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

17. The Court finds and concludes, pursuant to Section 27(c)(1) of the Securities Act of 1933 and Section 21D(c)(1) of the Securities Exchange Act of 1934, as amended by the PSLRA, 15 U.S.C. §§ 77z-1(c)(1), 78u-4(c)(1), that the Lead Plaintiff, Lead Plaintiff's Counsel, Defendants and Defendants' Counsel have complied with each requirement of Federal Rule of Civil Procedure 11(b) as to any complaint, responsive pleading, or dispositive motion.

18. In the event that the Settlement fails to become effective in accordance with its terms, or if this Final Order and Judgment is reversed, vacated, or materially modified on appeal

(and, in the event of material modification, if any party elects to terminate the Settlement), this Final Order and Judgment (except this Paragraph) shall be null and void, the Settlement (except Paragraph 9.6 of the Stipulation) shall be deemed terminated, and the parties shall return to their pre-settlement positions as provided for in the Settlement, except that (1) any modifications, reversal, or vacation of the award of attorneys' fees and expenses to Lead Plaintiff's Counsel on appeal or in any further motions in this Court shall in no way disturb or affect any other part of this Final Judgment, including, but not limited to Paragraphs 8, 9, and 10, which parts shall be considered separate from the award of attorneys' fees and (2) any further proceedings, whether in this Court or on appeal, related to the Plan of Allocation shall in no way disturb or affect any other part of this Final Judgment, including, but not limited to Paragraphs 8, 9, and 10, which parts shall be considered separate from the Plan of Allocation.

19. Lead Plaintiff's Counsel are hereby awarded 30% of the Gross Settlement Fund in fees, which the Court finds to be fair and reasonable, and \$250,392.41 in reimbursement of expenses, which expenses shall be paid to Lead Plaintiff's Counsel from the Settlement Fund with interest from the date such Settlement Fund was funded to the date of payment at the same net rate that the Settlement Fund earns. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion of Lead Plaintiff's Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution of the Action.

20. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Gross Settlement Fund, the Court has considered and found that:

- (a) the settlement has created a fund of \$10 million in cash that is already on deposit, plus interest thereon, and that numerous Settlement Class

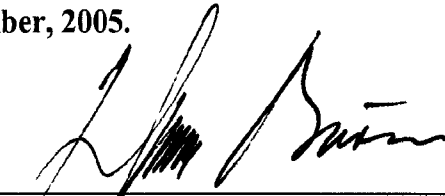
Members who submit acceptable Proofs of Claim will benefit from the Settlement created by Plaintiffs' Counsel;

- (b) Over 18,400 copies of the Notice were disseminated to putative Class Members indicating that Plaintiffs' Counsel were moving for attorneys' fees in an amount not greater than thirty percent (30%) of the Gross Settlement Fund and for reimbursement of expenses up to a maximum amount of \$400,000 and no objections were filed against the terms of the proposed Settlement or the ceiling on the fees and expenses requested by Plaintiffs' Counsel contained in the Notice;
- (c) This Action involved numerous difficult issues related to liability and damages which Lead Plaintiff's Counsel overcame to obtain a substantial recovery for the Settlement Class;
- (d) Lead Plaintiff's Counsel are two of the most experienced securities class action law firms in this country and conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy for the Settlement Class;
- (e) The action involves complex factual and legal issues and was actively prosecuted over two years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;
- (f) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiff and the Settlement Class may have recovered less or nothing from Defendants;
- (g) Plaintiffs' Counsel have devoted over 5,200 hours, with a lodestar value of \$1,787,264.50, to achieve the Settlement;
- (h) Lead Plaintiff's Counsel pursued this Action on a contingent basis;
- (i) Lead Plaintiff's Counsel have requested 30% of the Gross Settlement Fund in attorneys' fees, which is consistent with awards in similarly complex cases in this jurisdiction; and
- (j) This Settlement was negotiated at arms-length and no evidence of fraud or collusion has been presented.

21. Without affecting the finality of this Judgment in any way, the Court reserves exclusive and continuing jurisdiction over the Class Action, the Lead Plaintiff, the Settlement

Class and the Released Persons for the purposes of: (1) supervising the implementation, enforcement, construction, and interpretation of the Stipulation, the Plan of Allocation, and this Judgment; (2) hearing and determining any application by Lead Plaintiff's Counsel for an award of attorneys' fees, costs, and expenses; and (3) supervising the distribution of the Settlement Fund.

SIGNED this 15th day of September, 2005.



**THE HONORABLE DAVID BRIONES
UNITED STATES DISTRICT JUDGE**

EXHIBIT 1

List of Persons and Entities Excluded from the Class in In re El Paso Electric Company Securities Litigation¹

<u>Shareholder</u>	<u>Class Period Trades</u>	<u>Number of Shares</u>	<u>Purchase/Sale</u>
Edward W. Hughes 108 Roberts Lane #100 Alexandria, VA 22314	8/15/2002	1000	Purchase
Stewart King 241 Riverbend Road Jacksonville, NC 28540	8/16/2002 9/3/2002 10/7/2002	250.000 165.000 250.000	Purchase Purchase Sale

¹ The information on this chart is derived from the requests for exclusion sent by Messrs. Hughes and King to the Claims Administrator. Neither the parties, their counsel, the Claims Administrator, nor the Court has verified this information.