

EL PASO ELECTRIC CO /TX/
Form 8-K
November 19, 2008

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15 (d)

OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported):

November 13, 2008

El Paso Electric Company

(Exact name of registrant as specified in its charter)

Texas
(State or other jurisdiction
of incorporation)

0-296
(Commission File Number)

74-0607870
(I.R.S. Employer
Identification No.)

Stanton Tower, 100 North Stanton, El Paso, Texas
(Address of principal executive offices)

(915) 543-5711

79901
(Zip Code)

(Registrant's telephone number, including area code)

Edgar Filing: EL PASO ELECTRIC CO /TX/ - Form 8-K

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- .. Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 8.01 Other Events.

Transmission Dispute with Tucson Electric Power Company (TEP). As previously disclosed, in January 2006, El Paso Electric Company (the Company) filed a complaint with the Federal Energy Regulatory Commission (the Commission) to interpret the terms of a Power Exchange and Transmission Agreement (the Transmission Agreement) entered into with TEP in 1982. TEP filed a complaint with the Commission one day later raising virtually identical issues. TEP claimed that, under the Transmission Agreement, it was entitled to up to 400 MW of firm transmission rights on the Company s transmission system that would enable it to transmit power from a new generating station (the Luna Energy Facility (LEF) located near Deming, New Mexico) to Springerville or Greenlee in Arizona. The Company asserted that TEP s rights under the Transmission Agreement do not include transmission rights necessary to transmit such power as contemplated by TEP and that TEP must acquire any such rights in the open market from the Company at applicable tariff rates or from other transmission providers. On April 24, 2006, the Commission ruled in the Company s favor, finding that TEP does not have the transmission rights under the Transmission Agreement to transmit power from the LEF to Arizona. The ruling was based on written evidence presented and without an evidentiary hearing. TEP s request for a rehearing of the Commission s decision was granted in part and denied in part in an order issued October 4, 2006, and hearings on the disputed issues were held before an administrative law judge. In his initial decision dated September 6, 2007, the administrative law judge found that the Transmission Agreement allows TEP to transmit power from the LEF to Arizona but limits that transmission to 200 MW on any segment of the circuit and to non-firm service on the segment from Luna to Greenlee. The Company and TEP filed exceptions to the initial decision.

On November 13, 2008, the Commission issued an Order on Initial Decision finding that the transmission rights given to TEP in the Transmission Agreement are firm and are not restricted for transmission of power from Springerville as the receipt point to Greenlee as the delivery point. Therefore, pursuant to the order, TEP can use its transmission rights granted under the Transmission Agreement to transmit power from the LEF to either Springerville or Greenlee so long as it transmits no more than 200 MW over all segments at any one time. The Commission also ordered that the Company refund to TEP all sums with interest that TEP has paid it for transmission under the applicable transmission service agreements since February 2006 for service relating to the LEF. The Company estimates that based on transactions through September 30, 2008, its refund obligation will be up to \$9.7 million. The Company had established a reserve for rate refund of approximately \$7.2 million as of September 30, 2008, resulting in a charge to earnings of approximately \$2.5 million in the fourth quarter of 2008. The Company estimates that accrued interest on the refunded balance will be approximately \$0.9 million which will also be charged to earnings in the fourth quarter of 2008. In addition, if the order is not reversed, the Company will lose the opportunity to receive compensation from TEP for such transmission service in the future. The Company plans to file a request for rehearing of the Commission s decision, seeking reversal of the order on the merits and a return of any refunds made in the interim, as well as compensation for all service that the Company may provide to TEP from the LEF over the Company s transmission system on a going forward basis. If the Commission again finds against the Company on rehearing, the Company will have the right to seek judicial review of the order. The Company cannot predict the outcome of such potential future proceedings.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

El Paso Electric Company

Dated: November 19, 2008

By: /s/ GARY D. SANDERS
Name: Gary D. Sanders
Title: Senior Vice President and General Counsel