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ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

28

Jeff Hatch-Miller

Chairman

William A. Mundell

Commissioner

Marc Spitzer

Commissioner

Mike Gleason

Commissioner

Kristin Mayes

Commissioner

2005 MAY 20 P 12: 32

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Arizona Corporation Commission

DOCKETED

MAY 20 2005

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IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING ELECTRIC
RESTRUCTURING ISSUES

DOCKET NO.
E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR A
VARIANCE OF CERTAIN REQUIRE-
MENTS OF A.A.C. R4-2-1606

DOCKET NO.
E-0345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE
ARIZONA INDEPENDENT SCHEDULING
ADMINISTRATOR

DOCKET NO.
E-00000A-01-0630

IN THE MATTER OF TUCSON ELECTRIC
POWER COMPANY'S APPLICATION FOR
A VARIANCE OF CERTAIN ELECTRIC
COMPETITION RULES COMPLIANCE
DATES

DOCKET NO.
E-01933A-02-0069

**AUIA'S RESPONSE TO TUCSON ELECTRIC POWER
COMPANY'S MOTION FOR DECLARATORY ORDER AND
REQUEST FOR PROCEDURAL CONFERENCE**

The Arizona Utility Investors Association (AUIA) hereby files its response to the motion of Tucson Electric Power Company (TEP) for a declaratory order and a procedural conference in the above-captioned matter.

INTRODUCTION

Other parties to this proceeding have adequately documented the series of events that have led to this juncture. In summary, they include the 199 Settlement Agreement approved in Decision No. 62103, the Commission's subsequent Track A order (Decision No. 65154) and the final order in *Phelps Dodge v. Arizona Corporation*

Commission, 207 Ariz. 95, 83 P.2d 573 (App.2004). AUIA does not need to discuss these events in detail.

In AUIA's view, the crux of the matter underlying TEP's motion is the interpretation of the Settlement Agreement and what it portends for rates after the expiration of the rate freeze at the end of 2008. By themselves, the differing views offered by the parties provide justification for a procedural conference and perhaps a clarifying order. AUIA will provide one more view.

DISCUSSION

1. The Settlement Agreement Leads to Market-Based Rates.

While we are not offering a specific legal opinion, this is how AUIA interprets the Settlement Agreement: TEP must cancel the fixed component of the Competitive Transition Charge (CTC) when it has recovered a total of \$450 million, a milestone which will probably be reached in mid-2008. TEP also must terminate the floating CTC at the end of 2008.

Other than that, TEP is not required to do anything on Dec. 31, 2008 or in anticipation of it. The company is not required to bring a rate case, nor does the Agreement put an end to the Market Generation Credit (MGC) formula for determining generation rates. The only assumption in the Agreement is that generation will be deregulated after 2008.

In other words, absent some intervening action by the Commission, TEP's generation rates after 2008 would be based on the amended form of the MGC, the Palo Verde Index.

2. The Time for Corrective Action is Now.

Although we are more than three years from the event, AUIA has fielded a number of questions from financial analysts who are seeking clarification of TEP's rate authority at the end of 2008. Our candid answer has to be that the Settlement Agreement points toward market-based rates, but that such an assumption entails significant regulatory risk.

That is not good enough. The investment community deserves to know sooner rather than later whether the Commission intends to change course. The issue will simply become more turbulent as we near the end of 2008.

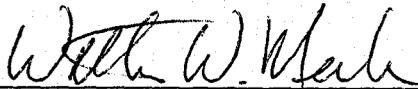
If market conditions at that time mirror today's, and if there has been no intervening action, the Commission may feel compelled to take some extraordinary step, such as an order to show cause, to head off a *fait accompli*. This could produce

a messy situation, since it is hard to fathom how the Commission could make rate determinations in 2008 without an examination of fair value.

If the Commission is motivated to chart a course other than the one prescribed by the Settlement Agreement, now is the time to consider it, in the context of the TEP rate filing, which contains enough data on fair value to support a forward-looking rate decision.

AUIA respectfully requests the Commission to grant TEP's motion for a declaratory order and a procedural conference.

RESPECTFULLY SUBMITTED this 20th day of May, 2005, by



Walter W. Meek, President

CERTIFICATE OF SERVICE

An original and 20 copies of the foregoing Response were hand-delivered this 20th day of May, 2005, to:

Docket Control
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1200 W. Washington
Phoenix, AZ 85007

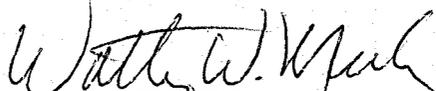
Copies of the foregoing Response were delivered this 20th day of May, 2005, to:

Chairman Jeff Hatch-Miller
Commissioner William A. Mundell
Commissioner Marc Spitzer
Commissioner Mike Gleason
Commissioner Kristin K. Mayes
Jane Rodda, Esq., Hearing Division
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Arizona Corporation Commission

Copies of the foregoing Response were mailed this 20th day of May, 2005, to:

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