



COMMISSIONERS  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

ORIGINAL



ARIZONA CORPORATION COMMISSION

DATE: January 30, 2006  
DOCKET NO: E-01933A-05-0650  
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

TUCSON ELECTRIC POWER COMPANY  
(AMEND DECISION NO. 62103)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

FEBRUARY 8, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

FEBRUARY 14 AND 15, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For more information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

RECEIVED

2006 JAN 30 1P 3:18

AZ CORP COMMISSION  
DOCUMENT CONTROL

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman  
4 WILLIAM A. MUNDELL  
5 MARC SPITZER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE MATTER OF THE FILING BY TUCSON  
ELECTRIC POWER COMPANY TO AMEND  
DECISION NO. 62103.

DOCKET NO. E-01933A-05-0650

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

DATE OF ORAL ARGUMENT:

October 24, 2005

PLACE OF ORAL ARGUMENT:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

IN ATTENDANCE:

William A. Mundell, Commissioner  
Marc Spitzer, Commissioner  
Kristin K. Mayes, Commissioner

APPEARANCES:

Mr. Raymond S. Heymond, Sr. Vice  
President, General Counsel, TEP and Mr.  
Michael Patten, Roshka, DeWulf &  
Patten PLC, on behalf of TEP;

Mr. C. Webb Crockett, FENNEMORE  
CRAIG, PC, on behalf of Arizonans for  
Electric Choice & Competition, Phelps  
Dodge Mining Company and Asarco;

Mr. Water Meek, Arizona Utility  
Investors Association;

Mr. Scott Wakefield, Residential Utility  
Consumer Office;

Mr. Timothy M. Hogan, Arizona Center  
for Law in the Public Interest;

Mr. Peter Q. Nyce, Jr., General Attorney,  
Regulatory Law Office, Office of the  
Judge Advocate General Department of  
the Army; and

Mr. Christopher Kempley, Chief  
Counsel, Legal Division, on behalf of the  
Utilities Division.

1 **BY THE COMMISSION:**

2 \* \* \* \* \*

3 Having considered the entire record herein and being fully advised in the premises, the  
4 Arizona Corporation Commission (“Commission”) finds, concludes, and orders that:

5 **FINDINGS OF FACT**

6 1. On September 12, 2005, Tucson Electric Power Company (“TEP” or “Company”)  
7 filed a Motion to Amend Decision No. 62103 (November 30, 1999), pursuant to A.R.S. § 40-252. At  
8 the same time, TEP filed the Direct Testimony of James Pignatelli.

9 2. In Decision No. 62103, the Commission modified and then approved a Settlement  
10 Agreement entered into by TEP, the Residential Utility Consumer Office (“RUCO”), the Arizona  
11 Community Action Association and Arizonans for Electric Choice and Competition (the “1999  
12 Settlement Agreement”). The 1999 Settlement Agreement provided for the: 1) commencement of  
13 competition in TEP’s service territory; 2) establishment of unbundled rates, with a rate decrease of  
14 one percent in 1999, another rate decrease of one percent in 2000, and a rate freeze thereafter until  
15 December 31, 2008; 3) resolution of stranded cost recovery; and 4) settlement of TEP’s Electric  
16 Competition litigation.

17 3. As described by the Company, TEP wants to amend Decision No. 62103 to provide  
18 for:

19 (a) The extension, beyond December 31, 2008, of the existing TEP rate freeze at  
20 TEP’s Base Rate;

21 (b) The retention of the current Competitive Transition Charge (“CTC”) amortization  
22 schedule;

23 (c) The agreement of TEP not to seek rate treatment for certain generation assets; and

24 (d) The implementation of a mechanism to protect TEP and its customers from energy  
25 market volatility, to be effective after December 31, 2008.

26 4. According to TEP, the benefits of its proposal are that through 2010 TEP’s base rates  
27 will remain below the rates set in 1994, the cost of certain generating assets will be excluded from  
28 TEP’s rate base, and that TEP will assume much of the risk of energy market volatility.

1           5.       The Commission granted intervention in this Docket to the Department of Defense  
2 (“DOD”) Local Union 1116, International Brotherhood of Electrical Workers AFL-CIO (“IBEW  
3 Local 1116”), the Arizona Utility Investors Association, Inc. (“AUIA”) and the Residential Utility  
4 Consumer Office (“RUCO”).

5           6.       On September 22, 2005, AECC filed a Motion to Suspend Proceedings.<sup>1</sup>

6           7.       On September 30, 2005, TEP filed a Response to AECC’s Motion to Suspend.

7           8.       On October 12, 2005 Arizonans for Electric Choice and Competition, Phelps Dodge  
8 Mining Company and Asarco, Inc. (collectively “AECC”), which was a party to the 1999 Settlement  
9 Agreement, RUCO, Southwest Energy Efficiency Project and Western Resource Advocates, Inc.  
10 (“SWEEP/WRA”), and Commission Utilities Division Staff (“Staff”) filed Responses to TEP’s  
11 Motion.

12          9.       TEP filed a Reply in Support of its Motion on October 21, 2005.

13          10.      Oral argument on TEP’s Motion was held on October 24, 2005, at the Commission’s  
14 offices in Phoenix, Arizona.

15          11.      TEP believes that when the rate freeze established in Decision No. 62103 terminates  
16 on December 31, 2008, TEP would charge market rates for its generation service. TEP states that its  
17 current base rate is 8.3 cents per kWh, but that under current market conditions, TEP ratepayers  
18 would face a 10 to 15 percent increase in base rates.

19          12.      TEP asserts that in seeking to reopen Decision No. 62103, it is seeking to delay the  
20 imposition of market based generation rates to avoid the expected rate increase as well as protracted  
21 litigation.

22          13.      TEP proposes to retain the current CTC amortization schedule. TEP claims that  
23 evidence presented in its June 1, 2004 General Rate Review established that the CTC is being  
24 recovered within the time frame originally contemplated, and that if as a consequence of this  
25 proceeding (or for any other cause), the amortization schedule for the CTC is lengthened, then TEP  
26 may be required to write-off the unrecovered balance of the CTC.

27 \_\_\_\_\_  
28 <sup>1</sup> Although already a party in this docket, as a signatory to the 1999 Settlement Agreement, AECC’s Motion to Suspend included an Application to Intervene. A separate order granting the request to intervene was not issued, however, AECC has fully participated in the proceedings in this matter, and has always been considered a party.

1           14.   TEP proposes to amend Decision 62103 to include the establishment and  
2 implementation of an incremental Energy Cost Adjustment Clause ("ECAC"). Under its proposal, a  
3 base amount of retail energy consumption would be served at the existing fixed retail rates and the  
4 rate on the remaining incremental amount of retail energy should be capped annually at a proxy set at  
5 forward power prices. For the incremental load, TEP states it will bank the difference in cost  
6 between the proxy and the existing fixed retail costs for generation on an annual basis and pass on the  
7 costs or make refunds to customers the following year based upon projected sales. TEP states that  
8 any fuel and purchased power costs incurred by the utility in excess of the proxy will be borne by  
9 TEP and not passed through to customers, and if fuel and purchased power costs are below the proxy  
10 amount, the savings would remain with TEP.

11           15.   AECC urged the Commission to suspend TEP's Motion to allow the parties to the  
12 1999 Settlement Agreement to participate in negotiations. AECC cites to section 13.2 of the 1999  
13 Settlement Agreement which states in relevant part that if it becomes necessary to modify the terms  
14 of the agreement, the parties agree "to address such matters in good faith and to cooperate in an effort  
15 to propose joint resolutions". AECC asserts that the proposals in TEP's Motion to Amend are clearly  
16 unilateral and TEP has violated the "good faith" requirements of Section 31.2. AECC believes that  
17 the initial step in amending Decision No. 62103 should be for the parties to the 1999 Settlement  
18 Agreement to seek joint proposals, and that if consensus can not be reached, then TEP should be free  
19 to offer its own solutions to the issues it raised. AECC believes that its proposal best serves the  
20 interests of judicial economy as it would narrow issues and stream-line the hearing process. AECC  
21 argues that if a procedural schedule is established prior to substantive discussions between settlement  
22 parties, AECC's rights under the 1999 Settlement Agreement would be prejudiced.

23           16.   RUCO disagrees with TEP that the amendments to the 1999 Settlement Agreement  
24 that TEP is seeking are necessary to achieve TEP's stated goal of providing customers with rate  
25 stability and predictability and protection from future volatile energy charges. RUCO states that even  
26 if the Commission desires to pursue any of the four aspects of TEP's proposal, there is no need to  
27 amend Decision No. 62103 to do so.

28           17.   RUCO asserts that the 1999 Settlement Agreement is silent as to what TEP's

1 generation rates will be after December 31, 2008. RUCO argues that while the Electric Competition  
2 Rules did require TEP to obtain power from the competitive market, this mandate was suspended by  
3 Decision No. 65154 (September 10, 2004), which modified portions of the Electric Competition  
4 Rules and Decision No. 62103 by requiring TEP to cancel any plans to divest its interests in its  
5 generation assets.<sup>2</sup> RUCO argues that despite a disagreement over what retail rates would be in effect  
6 if the Commission takes no further action, the Commission is free to adopt whatever rates are  
7 appropriate once the rate freeze of Decision No. 62103 expires.

8 18. RUCO notes that the Commission could determine that in 2009 rates could be  
9 decreased from current levels. RUCO states that even though no party to the recent rate review  
10 concluded that TEP was over-earning, it should not be taken to mean that the Company would  
11 necessarily be entitled to a rate increase in 2009. RUCO notes that \$81 million of fixed CTC  
12 revenues and \$25.8 million of stranded cost amortization were removed from consideration in the rate  
13 review. Thus, RUCO asserts, it is possible that the \$81 million in CTC revenue would not be  
14 necessary, and rates that were set to recover stranded costs should be decreased in 2009. RUCO  
15 warns the Commission to act cautiously before agreeing to maintain rates at their current levels past  
16 2008.

17 19. RUCO notes that pursuant to the 1999 Settlement Agreement, the fixed CTC would be  
18 amortized over the period 1999 to 2008, and that no party to the 1999 Settlement Agreement has  
19 suggested that the amortization schedule be modified. RUCO finds no need to modify Decision No.  
20 62103 to maintain the effect of its terms.

21 20. Similarly, RUCO asserts that no modification of Decision No. 62103 is needed for  
22 TEP to decline to seek recovery of newly acquired interests in any of its assets.

23 21. RUCO argues that no modification of Decision No. 62103 is required to implement  
24 TEP's request for an adjustor mechanism in 2009, as nothing in Decision No. 62013 fixes rates  
25 beyond December 31, 2008.<sup>3</sup> According to RUCO, an adjustor mechanism is inconsistent with

26 <sup>2</sup> Decision No. 65154, known as the Track A Order, granted TEP a waiver of A.A.C. R14-3-1615(A) and stayed A.A.C.  
27 R14-2-1606(B)'s requirement to procure 100 percent of power for Standard Offer Service from the competitive market.

28 <sup>3</sup>RUCO states it will provide its analysis of the merits of any such adjustor mechanism proposal at such time as the  
Commission might undertake a consideration of it.

1 TEP's first proposal to fix rates through 2010. RUCO states that if customer rates were truly fixed  
2 through 2010, nothing related to the costs the Company incurs to generate or acquire energy should  
3 result in a change to customer rates. RUCO states the proposed adjustor mechanism would allow  
4 certain amounts related to energy consumed prior to 2008 to be passed through to customers in  
5 addition to the rates currently in effect.

6 22. Finally, RUCO asserts that any action to adopt new rates beyond 2008 would require a  
7 finding of fair value of TEP's rate base.

8 23. SWEEP/WRA argues that TEP's request has the elements of a full rate case, and urges  
9 that if the Commission considers any or all of the issues TEP raises, that it also consider evidence  
10 related to demand side management and renewable energy issues. To the extent the Commission  
11 might determine that TEP's request is not an appropriate opportunity to address DSM and renewable  
12 issues, then SWEEP/WRA requests that the Commission schedule a separate proceeding to consider  
13 DSM and renewable energy issues related to TEP.

14 24. Staff argues that TEP's Motion to Amend should be dismissed because: 1) TEP failed  
15 to satisfy the filing requirements of A.A.C. R14-2-103; 2) the Motion is premature; and 3) the Motion  
16 fails to sufficiently support and describe the relief it seeks. Staff argued in the alternative, that if the  
17 Commission elects to consider TEP's Motion on the merits, the Motion should be dismissed because  
18 Decision No. 62103 does not entitle TEP to charge market-based rates; the Commission has already  
19 addressed this issue in Track A; and TEP's claim that it can charge market-based rates is inconsistent  
20 with the Arizona Court of Appeals' decision in *Phelps Dodge v. Arizona Elec. Power Coop*, 207  
21 Ariz. 95, 83 P.3<sup>rd</sup> 573 (App. 2004).

22 25. Staff views TEP's Motion as a request to establish new rates which would become  
23 effective January 1, 2009, to establish an adjustment mechanism which is usually done in a rate case,  
24 and to seek certain rate base determinations. Staff asserts that it needs the information required in  
25 A.A.C. R14-2-103 to allow it to evaluate the requested relief. Without the required information, Staff  
26 claims the case is not sufficient and should be dismissed.

27 26. Staff asserts further that even if it could be argued that TEP has satisfied the  
28 requirements of A.A.C. R14-2-103 by raising its request in the context of the rate review docket

1 (Docket No. E-01933A-04-0408), the information provided in that docket, based on a 2003 test year,  
2 is not an appropriate test year as support for rates that would not become effective until 2009. Staff  
3 does not believe that the information from an appropriate test period for rates to be effective in 2009  
4 is yet available. Staff recommends that TEP file a rate case using a June 30, 2007 test year to allow  
5 new rates to go into affect in January 2009.

6         27. In addition, Staff believes that TEP's Motion fails to sufficiently describe the basis for  
7 its claim and the details of its requested relief. For example, the Motion states that TEP is willing to  
8 exclude "certain generation assets" from its rate base in order to minimize the rates TEP's customers  
9 will pay once its rate freeze is expired, but Staff notes that TEP fails to identify the specific  
10 generation assets involved and fails to establish why such exclusion would lower rates. Staff states  
11 that it is impossible to evaluate TEP's proposal without knowing the specific assets at issue. Staff  
12 also argues that the proposed Energy Cost Adjustment Clause is not sufficiently described to allow  
13 evaluation. Staff believes that the lack of specificity in TEP's Motion and in its responses to data  
14 requests is an insufficient description of TEP's claim and warrants dismissal of the Motion. In Staff's  
15 view, the Motion appears to be more an invitation to negotiate rather than an application to seek  
16 specific relief.

17         28. Staff does not agree with TEP's assertion that when the rate freeze expires at the end  
18 of 2008, that TEP is authorized to charge market-based generation rates without further action by the  
19 Commission. Staff argues such premise is inconsistent with both the 1999 Settlement Agreement and  
20 the Commission's Track A Order. According to Staff, Decision No. 62103 freezes TEP's rates until  
21 the end of 2008, but there is nothing contained in the Decision to conclude that at the end of the  
22 freeze, rates that were cost-based should become market-based. Staff argues that the "market  
23 generation credit" or "MGC" is related to the recovery of stranded costs, not to rate setting.

24         29. Staff further argues that even if TEP could establish that Decision No. 62103  
25 authorized market-based rates, it is unreasonable to conclude that the Commission's "Track A" Order  
26 (Decision No. 65154) left that result undisturbed. In the Track A Order, the Commission prohibited  
27 TEP from transferring its generation assets to a subsidiary. Staff says that the Commission took that  
28 action to prevent ratepayers from being subjected to the volatility of the wholesale market. Staff

1 reasons that to prohibit TEP from transferring its generation assets, but allowing it to charge cost-  
2 based rates would cancel the protections of the first action.

3         30. Finally, Staff asserts that the concept of the validity of market-based rates has been  
4 questioned by the Arizona Court of Appeals in *Phelps Dodge*, 207 Ariz. at 104-05, 83 P.3d at 582-  
5 83, where the court stated that the Commission may not delegate its rate setting function to the  
6 market, but must ensure that utility rates are just and reasonable, even in circumstances where rates  
7 may be influenced by competition. Staff argues that in claiming market-based rates will  
8 automatically go into effect in 2009, TEP overlooks that *Phelps Dodge* requires the Commission to  
9 establish a range of rates with authorized maximum and minimum rates and requires the Commission  
10 to determine that the rates within the established range are just and reasonable.

11         31. TEP responds to opponents of its Motion that it is indisputable that the 1999  
12 Settlement Agreement was entered into to resolve issues regarding TEP's transition from traditional  
13 cost of service regulation to a competitive marketplace for generation service. According to TEP, in  
14 consideration for market-based generation rates in 2009, TEP agreed to significant burdens, including  
15 two rate decreases, a rate freeze, accelerated depreciation of assets, opening its service territory to  
16 competition and dismissing appeals of Commission decisions. TEP states that if the Commission  
17 will not permit TEP to charge market-based generation rates in 2009, it should indicate so now and  
18 proceed to increase existing rates to cover TEP's increased costs.

19         32. TEP contends that Staff's arguments overlook the purpose or intent of the 1999  
20 Settlement to transition to market-based rates; that since the 1999 Settlement Agreement, TEP's  
21 Standard Offer rates for generation service have been calculated by applying the MGC; and nothing  
22 in the 1999 Settlement Agreement can be read to state or even imply that the calculation of Standard  
23 Offer generation rates under the MGC will terminate and revert to cost of service after 2008.  
24 Similarly, TEP asserts, nothing in the Track A Decision or the *Phelps Dodge* decision precludes TEP  
25 from continuing to calculate its Standard Offer service generation rate under the existing MGC after  
26 2008. Therefore, TEP states, until further Commission action, TEP will continue to calculate its  
27 Standard Offer service generation rate by applying the MGC.

28         33. TEP states the floating CTC is a temporary mechanism approved in the 1999

1 Settlement Agreement that acts to assure customers do not pay more than \$.08/kWh for electric  
2 service during the transition period. According to TEP, if, for example the Standard Offer generation  
3 service rate, as calculated by the MGC, would cause the overall rate to be higher than \$.08/kWh, then  
4 the Floating CTC would be applied as a credit on the bill to bring the MGC rate down to the \$.08  
5 kWh rate. The CTC terminates on December 31, 2008. Thus, TEP states, after that date the rate  
6 TEP's customers will pay for Standard Offer service generation will be the MGC rate without an  
7 offset by the Floating CTC. Responding to arguments made by RUCO, TEP asserts that nothing in  
8 the 1999 Settlement Agreement terminates the MGC as the means to set the Standard Offer rate.

9       34. In response to arguments that the Commission does not have the information available  
10 to it now to make a fair value finding to support rates that would go into effect in 2009, TEP states  
11 that the extensive record compiled in the 2004 rate review is sufficient to support an order now. TEP  
12 claims there is a dispute now and it should be settled now.

13       35. In response to Staff's substantive arguments, TEP claims that they ignore the reality  
14 that 1) the 1999 Settlement Agreement changed the manner in which TEP calculated its Standard  
15 Offer generation rate from cost-of-service based to market-based; 2) TEP has been abiding by the  
16 terms of the 1999 Settlement Agreement by calculating its Standard Offer rate under the MGC  
17 formula with the floating CTC; and 3) nothing in the 1999 Settlement Agreement provides that  
18 market-based rates prescribed by the Agreement expire with the floating CTC. TEP argues that the  
19 1999 Settlement Agreement's silence as to post-2008 rates establishes that rates will continue to be  
20 calculated under the MGC. Further, TEP argues the Track A Order says nothing about transitioning  
21 back to cost-of-service rates and that the language of the Track A Order is clear that TEP is entitled to  
22 the benefits bargained for in the 1999 Settlement Agreement and notwithstanding the cancellation of  
23 divestiture, all parties were to work together to move towards competition in a timely and meaningful  
24 fashion. Decision No. 65154 at 23.

25       36. TEP also argues that Staff misreads the *Phelps Dodge* case. TEP argues the *Phelps*  
26 *Dodge* court found that a Commission rule that purported to declare all market-based rates for  
27 competitive services just and reasonable violated the Arizona Constitution's requirement that fair  
28 value must be considered, and that the Commission, not the market, must set rates. TEP argues that

1 by adopting the MGC in Decision No. 62103, the Commission satisfied the requirements of *Phelps*  
2 *Dodge*. The Commission clearly considered fair value by utilizing the then-recent fair value finding  
3 in Decision No. 59594 (March 29, 1996) and finding that “no additional financial analysis is legally  
4 necessary to justify unbundling of TEP’s current rate levels.” Decision No. 62103 at 5.  
5 Additionally, TEP notes that the Commission remained in control of rates, and limited the market  
6 forces by the implementation of the Floating CTC and having only a portion of the total bill --  
7 generation services--subject to market forces.

8 37. There is a fundamental disagreement between the parties to the 1999 Settlement  
9 Agreement about what is to happen to generation rates after the rate moratorium expires on  
10 December 31, 2008.

11 38. The 1999 Settlement Agreement and the Order that approves and modifies the 1999  
12 Settlement Agreement, are silent as to the intent of the parties and the Commission concerning  
13 Standard Offer rates after 2008. Determining the intent of the parties to the 1999 Settlement  
14 Agreement would require a hearing.

15 39. Circumstances surrounding the electric industry have changed greatly since the  
16 Commission issued Decision No. 62103. At the time the 1999 Settlement Agreement was entered  
17 into, it was anticipated that TEP would be required to divest itself of its generation assets, and would  
18 be required to obtain generation on the open market. Subsequently, because a reliable wholesale  
19 power market never developed in Arizona, the Commission issued the Track A Order which granted  
20 TEP a waiver from the requirements of R14-2-1615(A) to divest its generation assets and stayed the  
21 requirement to purchase 100 percent of power for Standard Offer service from the competitive  
22 market. In addition, the Arizona Court of Appeals in the *Phelps Dodge* case invalidated a number of  
23 the Electric Competition Rules.

24 40. TEP asserts that as long as the Commission opens a proceeding to consider its  
25 proposed modifications to Decision No. 62103, it does not have to resolve the underlying dispute.

26 41. Staff agrees that the Commission does not have to resolve the underlying dispute at  
27 this time because “nobody contends that anything is going to happen between now and January  
28 2009.” October 24, 2005 Tr. at 41.

1           42.     Decision No. 62103 does not preclude the Commission from continuing to regulate  
2 rates or from establishing just and reasonable rates that are different than those set in Decision No.  
3 62103 after December 31, 2008.

4           43.     TEP states that if the Commission determines that it will utilize traditional cost of  
5 service principals to set rates as of January 1, 2009, then TEP would not be receiving the benefit the  
6 bargain it agreed to in the 1999 Settlement Agreement. According to TEP, if the 1999 Settlement  
7 Agreement is no longer valid, then TEP may be entitled to increased rates prior to 2009. Tr. at 9, 10,  
8 25, 36.

9           44.     Even if we believe that it is in the public interest to amend Decision No. 62103, we  
10 concur with Staff that TEP's request is premature.<sup>4</sup> The Commission cannot evaluate TEP's  
11 requested modifications based on information that is available at this time. TEP's proposal would  
12 have the rate moratorium continue through the year 2010, however, in exchange, TEP is asking for an  
13 Energy Cost Adjustment Clause. The Commission cannot determine whether such a proposal is in  
14 the public interest and would yield just and reasonable rates based on the information that TEP filed  
15 as part of its rate review proceeding which utilized a 2003 Test Year. That information is too far  
16 removed from January 2009 to result in a meaningful analysis.

17           45.     In addition, even if TEP is correct in its belief that it would be entitled to charge  
18 market rates in 2009, it appears from its comments in this proceeding, and as evidenced by its filing  
19 its Motion to Amend, that it prefers a different result. TEP advocates that continuing current base  
20 rates and allowing the Company an ECAC that would protect it from volatile fuel prices is better for  
21 customers and the Company than continuing the current regime. It is unclear how waiting to evaluate  
22 TEP's proposal until we have a reasonable Test Year harms TEP, as TEP is not proposing any  
23 changes that would become effective before 2009.

24           46.     TEP recognizes that even if the Commission granted TEP's Motion to Amend  
25 Decision No. 62103, the Commission would not be committed to modifying that Decision as  
26 requested, or even at all. Tr. at 24.

27 \_\_\_\_\_  
28 <sup>4</sup> RUCO and DOD agree with Staff that the request is premature.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

IT IS THEREFORE ORDERED that Tucson Electric Power Company's Motion to Amend Decision No. 62103 is denied.

IT IS FURTHER ORDERED that Tucson Electric Power Company shall file a rate case application no later than September 30, 2007, using a Test Year no earlier than December 30, 2006, for rates that will become effective as of January 1, 2009.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR:

TUCSON ELECTRIC POWER COMPANY

2 DOCKET NO.:

E-01933A-05-0650

3  
4 Michael W. Patten  
5 ROSHKA DeWULF & PATTEN  
6 One Arizona Center  
7 400 East Van Buren Street, Suite 800  
8 Phoenix, Arizona 85004

David Berry  
Western Resource Advocates  
P.O. box 1064  
Scottsdale, AZ 85252-1064

9 Scott S. Wakefield, Chief Counsel  
10 Residential Utility Consumer Office  
11 1110 West Washington, Suite 220  
12 Phoenix, Arizona 85007

Eric Guidry  
Energy Program Staff Attorney  
Western Resource Advocates  
2260 Baseline Road, Suite 200  
Boulder, Colorado 80302

13 Walter W. Meek, President  
14 Arizona Utility Investors Association  
15 2100 N. Central Avenue, Suite 210  
16 Phoenix, AZ 85004

Jeff Schlegel  
SWEEP Arizona Representative  
1167 W. Samalayuca Dr.  
Tucson, AZ 85704-3224

17 Peter Q. Nyce, Jr.  
18 General Attorney, Regulatory Law Office  
19 Office of the Judge Advocate General  
20 Department of the Army  
21 901 North Stuart Street, Room 713  
22 Arlington, VA 22203-1644

Thomas L. Mumaw  
Karilee S. Ramaley  
Arizona Public Service Company  
400 North 5<sup>th</sup> Street, MS 8695  
Phoenix, Arizona 85004

23 Dan Neidlinger  
24 Neidlinger & Assoc.  
25 3020 N. 17<sup>th</sup> Drive  
26 Phoenix, Arizona 85015

Kimberly A. Grouse  
Snell & Wilmer LLP  
One Arizona Center  
Phoenix, Arizona 85004-2202  
Attorneys for APS

27 C. Webb Crockett  
28 FENNEMORE CRAIG, PC  
3003 North Central Avenue  
Suite 2600  
Phoenix, Arizona 85012-2913  
Attorneys for AECC, Phelps Dodge  
And ASARCO

Lawrence Robertson  
PO Box 1448  
Tubac, Arizona 85646  
Attorney for Sempra Energy Resources and  
Southwestern Power Group II

Nicholas J. Enoch  
Lubin & Enoch, PC  
349 North Fourth Avenue  
Phoenix, Arizona 85003  
Attorneys for IBEW Local 1116

Mr. Christopher Kempley, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Timothy M. Hogan  
Arizona Center for Law in the Public Interest  
202 E. McDowell Road, Suite 153  
Phoenix, AZ 85004

Mr. Ernest Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007