



BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

AZ CORP COMMISSION
DOCUMENT CONTROL

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

DOCKET NO. E-01933A-05-0650

**STAFF REQUEST FOR
PROCEDURAL ORDER**

On September 12, 2005, Tucson Electric Power Company ("TEP" or "Company") filed a Motion to Amend Decision No. 62103, pursuant to A.R.S. § 40-252, along with the Direct Testimony of James Pignatelli. As described by the Company, TEP wants to amend Decision No. 62103 to provide for:

- (a) The extension, beyond December 31, 2008, of the existing TEP rate freeze at TEP's Base Rate;
- (b) The retention of the current Competitive Transition Charge ("CTC") amortization schedule;
- (c) The agreement of TEP not to seek rate treatment for certain generation assets; and
- (d) The implementation of a mechanism to protect TEP and its customers from energy market volatility, to be effective after December 31, 2008.

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

TEP believes that when the rate freeze established in Decision No. 62103 terminates on December 31, 2008, TEP would charge market rates for its generation service. TEP states that its

1 current base rate is 8.3 cents per kWh, but that under current market conditions, TEP ratepayers
2 would face a 10 to 15 percent increase in base rates.

3 Other Parties to the proceeding disagreed as to whether amendments to the 1999 Settlement
4 Agreement are necessary to achieve TEP's stated goals of providing customers with rate stability and
5 predictability and protection from future volatile energy charges. AECC, for example, suggested
6 suspending these proceedings to permit the Parties to the 1999 Settlement Agreement to participate in
7 negotiations. Staff believed the TEP Motion should be dismissed because: 1) TEP failed to satisfy
8 the requirements of A.A.C. R14-2-103; 2) the Motion is premature; and 3) the Motion fails to
9 sufficiently support and describe the relief it seeks. In particular, Staff disagrees with TEP's assertion
10 that when the rate freeze expires at the end of 2008, that TEP is authorized to charge market-based
11 generation rates without further order by the Commission.

12 The Commission subsequently issued a decision in the above-captioned matter. The
13 Commission's Findings of Fact included findings (in relevant part) that:

14 1. The meaning of Decision No. 62103 and the 1999 Settlement Agreement, and their
15 effect on rates after 2008, is currently in dispute;

16 2. In its exceptions, TEP argues that Decision No. 62103 and the 1999 Settlement
17 Agreement give it the right to charge market-based rates for generation under the MGC after 2008.
18 TEP argues that it, and its customers, deserve certainty;

19 3. Resolving this dispute as soon as possible is in the public interest; and

20 4. A hearing should be held under A.R.S. § 40-252 to consider amending Decision No.
21 62103 and the 1999 Settlement Agreement. The hearing, at a minimum, shall address the following
22 issues: the viability of the 1999 Settlement in light of the Track A, Track B and the *Phelps Dodge*
23 decisions. The findings directed that the hearing should include "discussion and presentation of
24 evidence regarding the individual parties' opinions of whether TEP will be able to charge market-
25 based rates or cost-of-service rates after 2008." In addition, the hearings are directed to include the
26 proposals outlined in TEP's original application, Demand Side Management, Renewable Energy
27 Standards and Time of Use tariffs.

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1 In light of the Commission's Decision, Staff submits this Request for Procedural Order. Our
2 intent is to identify a procedure that will allow an "expeditious but complete review of these matter."

3 In its Exceptions to the Recommended Opinion and Order, as well as in its arguments before
4 the Commission at Open Meeting, TEP stressed the importance of reaching a determination on the
5 issue of whether it is authorized to "charge market-based rates" for its generation commencing in
6 2009. TEP's primary objection to other Parties' suggestions that all of its requests would best be
7 addressed in a rate case involved its stated view that to require consideration in a rate case would
8 amount to prejudging the issue of whether it could lawfully charge market-based generation rates in
9 2009. Staff does not necessarily agree with this view, because the Commission could certainly
10 require TEP to file a rate case in the alternative, i.e., under both cost-of-service and market-based
11 assumptions.

12 Nonetheless, an efficient way to address this matter is by examining first the issues
13 surrounding TEP's assertions that it is entitled under the 1999 Settlement Agreement to charge its
14 customers market-based generation rates commencing in 2009. Staff has not to date seen any
15 specific description by TEP of how it anticipates rate determinations that would allow this to occur
16 might be made. To date, TEP's assertion regarding its anticipated rate structure in 2009 is the
17 simplistic statement that it believes that it would involve market-based generation rates.

18 Therefore, Staff believes that the initial filing in this matter should be a complete explanation
19 by TEP of its proposal including an identification of all of the rate elements that it believes would
20 apply to each of its standard offer customers, effective January 1, 2009. TEP's proposal should
21 include projected rate impacts on standard offer customers' total bills from having market-based
22 generation rates compared with cost of service generation rates. If TEP made such a filing, including
23 an explanation of how its proposals could be effective and lawful under the Track A, Track B, and
24 *Phelps Dodge* decisions, other Parties would be in a posture to understand to what they should be
25 responding. For example, does TEP anticipate market-based rates being adopted for generation that
26 continues to be owned by the utility or an affiliate? If so, how does that comply with the referenced
27 decisions? If not, when should we expect that TEP will be submitting an application to divest its
28 generation assets?

1 Staff would anticipate that TEP might be in a position to provide a complete application
2 within approximately 60 – 90 days from the date of a Procedural Order. We would anticipate that
3 Parties would be given a similar period of time to develop a response to TEP's application. TEP
4 could then file a rebuttal case in another 20 or so days, with surrebuttal filed about two weeks
5 thereafter. A hearing could be held, followed by briefs. Staff would believe that the most efficient
6 manner of addressing these issues in their entirety would involve presenting the issue of rate setting
7 for generation to the Commission for decision based upon a Recommended Opinion and Order
8 developed from this process.

9 Whatever the resolution of this issue might be, Staff believes that the subsequent proceedings
10 could be accomplished in time to place the Commission in a position to have resolved all rate-related
11 issues before the rate moratorium expires on January 1, 2009. With respect to the other issues raised
12 by TEP in its original application, Staff believes that these issues are best resolved after the
13 resolution of how rate setting for generation is accomplished. For example, if TEP is to be on cost-
14 of-service rates, the ECAC process does not seem to be a meaningful one. Similarly, if TEP is
15 authorized to divest its generation assets and charge standard offer customers generation rates that are
16 based on market conditions, some kind of adjustor mechanism would be necessary to allow the costs
17 to be recovered without under or over charging customers. If the result is that TEP is required to
18 keep its ownership of existing generation assets, but acquire any new generation necessary to serve
19 its customers from the competitive market, consistent with Track A and Track B, some adjustor
20 mechanism may be appropriate. Additionally, a prescribed set of standards for the acquisitions
21 would seem to be required, again consistent with the Track A and Track B decisions.

22 With respect to Demand Side Management, Renewable Energy Standards and Time of Use
23 tariffs, those issues are best addressed in sequence following resolution of how to set rates for
24 generation. Conducting the proceeding in this sequence will allow the primary issue raised by TEP to
25 be decided first and promptly, while preventing issues related to Demand Side Management,
26 Renewable Energy Standards and Time of Use tariffs from being decided in an inappropriate context.

27 Staff requests that the Presiding Administrative Law Judge issue a Procedural order
28 establishing procedures and dates for this proceeding that are consistent with the Commission's

1 decision and believes that we have outlined the most efficient process for addressing the identified
2 issues.

3 RESPECTFULLY SUBMITTED this 18TH day of April, 2006.
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