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BEFORE THE ARIZONA CORPORATION COMMISSION

39E

COMMISSIONERS

2006 AUG 23 A 11: 59

JEFF HATCH-MILLER - CHAIRMAN
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

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

NOTICE OF ERRATA

On August 18, 2006, the Direct Testimony and Exhibits of James S. Pignatelli was filed in the above-captioned docket. Due to an error in production, page 59 – the last page – was omitted from the testimony. Attached is a copy of Section VIII in its entirety, which includes page 59.

RESPECTFULLY SUBMITTED this ^{23rd} day of August 2006.

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1 Original and 13 copies of the foregoing
filed this 23rd day of August 2006 with:

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5 Copy of the foregoing hand-delivered/mailed
this 23rd day of August 2006 to:

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VIII.
CONCLUSION

1 **Q. Mr. Pignatelli, do you have any concluding remarks.**

2 A. The 1999 Settlement Agreement is a contract. The Commission is a party to the contract.
3 The Commission and the other parties do not have the right to unilaterally alter the contract
4 simply because market conditions did not turn out as they predicted. These parties pushed
5 TEP to deregulate its generation service and transition to market-based rates to facilitate
6 generation competition under the Electric Competition Rules. TEP did that. TEP has
7 performed under the 1999 Settlement Agreement and now has the right to expect that the
8 other parties will perform and not attempt to unilaterally change the contract by ordering
9 TEP back to cost-of-service. Such action would be a breach of the 1999 Settlement
10 Agreement that will force TEP to protect its rights under the contract.

11
12 TEP has incurred real costs in transitioning to market-based generation rates under the 1999
13 Settlement Agreement. TEP has operated under a rate freeze since 2000. In the 2004 Rate
14 Review, TEP presented evidence that it is under-earning by \$111 million dollars per year
15 using a 2003 test year. Staff's own calculations showed that TEP was under-earning by \$67
16 million dollars. If TEP had been on cost-of-service, it could have filed a rate case to
17 address the revenue deficiency and increase rates. But instead, TEP abided by the 1999
18 Settlement Agreement, knowing that in 2009 it would charge market rates.

19
20 If the Commission and the other parties to the 1999 Settlement Agreement now want to
21 unwind the Agreement and change course once again, then TEP must be compensated for
22 performing under the Agreement and abiding by the original bargain. TEP has presented
23 two proposals to amend the 1999 Settlement Agreement. These proposals seek to strike a
24 balance between the financial interests of TEP, its shareholders and its customers.

25
26 Absent a willingness on the part of the Commission and the other parties to the 1999
27 Settlement Agreement to agree to a realistic and fair amendment of the Agreement, TEP

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stands by its fundamental position – the 1999 Settlement Agreement transitioned TEP to market-based rates and the transition will be complete when the Floating CTC and rate freeze expire at the end of 2008. At that point, TEP is entitled to and will charge market-based rates using the MGC methodology of the 1999 Settlement Agreement as approved in Decision No. 62103 and Decision No. 65751, as fair and reasonable.