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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
GARY PIERCE

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

DOCKET NO. E-01933A-05-0650

NOTICE OF FILING

Staff of the Arizona Corporation Commission hereby provides notice of filing the Surrebuttal Testimonies of Michael J. Ileo and Barbara Keene in the above-referenced matter.

RESPECTFULLY SUBMITTED this 8th day of February, 2007.

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SURREBUTTAL

TESTIMONY

OF

BARBARA KEENE

MICHAEL J. ILEO

DOCKET NO. E-01933A-05-0650

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

FEBRUARY 8, 2007

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
WILLIAM A. MUNDELL
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner
GARY PIERCE
Commissioner

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

DOCKET NO. E-01933A-05-0650

SURREBUTTAL

TESTIMONY

OF

BARBARA KEENE

PUBLIC UTILITIES ANALYST MANAGER

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

FEBRUARY 8, 2007

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**EXECUTIVE SUMMARY
TUCSON ELECTRIC POWER COMPANY
DOCKET NO. E-01933A-05-0650**

This testimony responds to the rebuttal testimony of Tucson Electric Power ("TEP") witness Mr. James S. Pignatelli concerning demand-side management and time-of use. Staff continues to support its recommendations contained in its direct testimony. Staff strongly recommends that any cost recovery should be addressed in the context of a rate case.

1 **INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Barbara Keene. My business address is 1200 West Washington Street,
4 Phoenix, Arizona 85007.

5
6 **Q. Have you previously filed testimony in this docket?**

7 A. Yes. I filed direct testimony addressing demand-side management ("DSM"), DSM cost
8 recovery, time-of-use ("TOU"), direct load control ("DLC"), and renewable energy
9 standard issues for Tucson Electric Power Company ("TEP").

10
11 **Q. As part of your employment responsibilities, were you assigned to review TEP's**
12 **rebuttal testimony?**

13 A. Yes. I reviewed the rebuttal testimony of Mr. James S. Pignatelli concerning DSM and
14 TOU.

15
16 **DEMAND-SIDE MANAGEMENT AND TIME-OF-USE**

17 **Q. Does Staff still support the recommendations contained in your direct testimony?**

18 A. Yes.

19
20 **Q. Please respond to Mr. Pignatelli's rebuttal testimony, on page 31, where he states**
21 **that TEP would provide additional information about DSM and TOU as requested**
22 **by Staff so long as TEP is properly compensated.**

23 A. On page 31, lines 16-18, of his rebuttal testimony, Mr. Pignatelli states that providing the
24 detailed information would require significant time from either TEP employees or
25 consultants at a cost. On lines 19-20, he states that nearly all of the information requested
26 has already been provided or is otherwise available to Staff.

1 If the information is already available, then the additional cost of providing the
2 information to Staff should be minimal. Nonetheless, TEP could seek recovery of
3 prudently spent costs through its next rate case filing. It would be inappropriate for TEP
4 to suggest that it should receive cost recovery before the rate case.

5
6 **Q. Mr. Pignatelli states on page 31, lines 26-27, that TEP will provide the information**
7 **requested on the programs it has proposed. Would that be sufficient?**

8 A. No. Staff has recommended that TEP file for Commission approval a comprehensive
9 DSM portfolio plan along with any new DSM programs they wish to pursue. The filing
10 should include information on proposed programs as well as any existing DSM programs
11 TEP would like to retain. So far, TEP has only discussed a Direct Load Control program
12 and mandatory time-of-use rates as new DSM programs. TEP has not discussed any new
13 energy efficiency programs. As stated on page 4, lines 9-15, of my direct testimony, TEP
14 should evaluate a full range of possible DSM programs and select the most cost-effective
15 programs to pursue. A full range of possible DSM programs would include programs
16 targeted for all customer classes, including a variety of types of programs, measures, and
17 delivery strategies to fill out a comprehensive portfolio plan for energy-efficiency savings
18 at TEP.

19
20 **Q. On page 72 of his rebuttal testimony, Mr. Pignatelli suggests that DSM energy**
21 **efficiency programs would not provide demand savings unless reductions in peak**
22 **annual hourly load are "guaranteed." Please comment.**

23 A. It appears that Mr. Pignatelli believes that demand savings can only accrue from
24 dispatchable ("guaranteed") measures, such as direct load control. Most DSM programs,
25 in fact, are not dispatchable by the utility. Nevertheless, one objective of energy
26 efficiency DSM programs is to reduce energy use, both during peak and off-peak periods,

1 without affecting the quality of service. Such programs are expected to deliver both
2 energy savings and peak load reductions, and indeed such savings do result from
3 successful DSM programs. Cost-effective energy efficiency programs can create
4 significant demand savings, in addition to energy savings. TEP's own proposed TOU
5 rates are not dispatchable ("guaranteed") by the utility, but TEP is proposing this as a
6 DSM program with expectations of reducing or shifting peak loads.

7

8 **Q. Do you agree that nearly all of the TOU-related information requested has already**
9 **been provided or is otherwise available to Commission Staff as stated in the Rebuttal**
10 **testimony of TEP Witness, Mr. James S. Pignatelli at page 31, lines 19-20?**

11 **A.** No. As previously stated in my direct testimony, a complete and detailed proposal has not
12 been filed by TEP. Important details have not yet been provided to Staff including
13 proposed rate designs, TOU implementation issues such as customer notice and customer
14 education, and a complete cost-benefit analysis. Staff cannot complete its analysis or
15 provide the Commission with recommendations about TEP's proposal until these program
16 elements are provided to Staff. In response to Staff discovery, TEP has only provided two
17 of the seven rate designs for which it is requesting approval. Frankly, Staff is concerned
18 that TEP would request approval of its proposal prior to the development of the rates to be
19 charged to TEP's ratepayers and prior to the completion of a thorough evaluation of the
20 impact of those rates on TEP's ratepayers.

21

1 **Q. Mr. Pignatelli indicates that a mandatory TOU policy should be adopted to provide**
2 **more accurate price signals to customers based on TEP's cost to serve. Does Staff**
3 **agree that cost should be the only rationale in the consideration of a TOU program**
4 **that is mandatory in nature?**

5 A. No. Cost is not the sole criterion in a sound rate design. Rates should be developed in a
6 manner that takes into account many factors including cost. Principles such as gradualism
7 and customer acceptability should be considered in conjunction with cost. An analysis of
8 the impact of TEP's proposal is not possible without proposed rates and supporting cost
9 studies. As discussed in my direct testimony at page 16, lines 12-19, Staff is concerned
10 about preventing customers from choosing standard rate options and the rate impact on
11 customer groups that may not be able to respond to price signals and shift usage to off-
12 peak periods.

13
14 **Q. Is Staff still opposed to mandatory TOU?**

15 A. Yes. Staff continues to oppose TOU rates being mandatory for customers at this time.
16 Staff continues to believe that the issue could be discussed on a generic basis in the
17 workshops to be held on time-based metering and communications ("smart metering") in
18 Docket No. E-00000A-06-0038. One of the issues that is expected to be discussed in the
19 workshops will be whether enrollment in time-based rate programs should be mandatory
20 or voluntary.

21
22 **Q. At page 34, lines 18-21, Mr. Pignatelli's rebuttal testimony indicates that TEP has**
23 **provided a significant amount of information about TEP's Direct Load Control**
24 **program. Do you have any comment?**

25 A. Although TEP did provide some useful information to Staff about the program, according
26 to TEP's response to Staff discovery, several program elements are still under

1 development. As discussed in my direct testimony at page 18, lines 15-19, issues such as
2 developing customer contracts, terms regarding the ability of a customer to override a
3 company-initiated load control period, air conditioning cycling strategy, and other features
4 of the program are still under development. Many details are still under development by
5 TEP, and Staff cannot complete an analysis until TEP provides a program with well-
6 defined program elements.

7
8 **SUMMARY OF STAFF RECOMMENDATIONS**

9 **Q. Does Staff still support the recommendations contained in your direct testimony?**

10 A. Yes. Staff strongly recommends that any cost recovery should be addressed in the context
11 of a rate case.

12
13 **Q. Does this conclude your surrebuttal testimony?**

14 A. Yes, it does.

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SURREBUTTAL

TESTIMONY

OF

MICHAEL J. ILEO, PH.D.

ON BEHALF OF

ARIZONA CORPORATION COMMISSION STAFF

FEBRUARY 8, 2007

1 **Q. Please state your name, business position, and address.**

2 A. My name is Michael J. Ileo. I am the President and Chief Economist of Technical
3 Associates, Inc., an economic and financial consulting firm with business offices at 1051
4 East Cary Street, Suite 601, Richmond, Virginia 23219.

5
6 **Q. Are you the same Michael J. Ileo who previously submitted prepared testimony in
7 this proceeding?**

8 A. Yes. On behalf of the Commission Staff, I filed Direct Testimony and Exhibits in this
9 case dated January 8, 2007.

10

11 **Q. What is the purpose of your surrebuttal testimony?**

12 A. The purpose of my surrebuttal testimony is to comment on and respond to the January 29,
13 2007 rebuttal testimony of Mr. Pignatelli filed on behalf of TEP, especially with respect to
14 the views expressed therein regarding my earlier direct testimony.

15

16 My surrebuttal remarks will be brief, as my direct testimony adequately explains the bases
17 of the findings and recommendations that I have reached in this proceeding. Moreover, a
18 number of new damage figures appear in Mr. Pignatelli's rebuttal testimony, for which
19 additional information and time would be needed to perform requisite studies.

20

21 **Q. Are there particular aspects of Mr. Pignatelli's rebuttal testimony that you will
22 address?**

23 A. Yes. As I read Mr. Pignatelli's rebuttal testimony, he takes issue with the positions stated
24 in my direct testimony within three topical areas: (1) the experimental nature of Arizona's
25 attempt to bring-about competition in the delivery of retail electric service; (2) the
26 implications of the 2004 Rate Review of TEP in evaluating what it claims have been

1 foregone economic opportunities; and, (3) the character of the MGC mechanism in
2 measuring competitively established wholesale power prices.

3
4 Before turning to these matters, an underlying theme of Mr. Pignatelli's rebuttal testimony
5 requires comment. In particular, he suggests (e.g., see Page 15) that I would take a
6 different stance in this case if MGC rates were lower than traditional cost of service rates.
7 Mr. Pignatelli is mistaken, as my views stem principally from the fact that the competitive
8 forces needed to protect the public interest in the purchase of electricity have not
9 developed in TEP's service territory.

10
11 **Q. How do you respond to Mr. Pignatelli's claim that Arizona's attempt to bring-about**
12 **electric competition has not been an experiment?**

13 A. Any economic, public, or regulatory policy whose outcome cannot be predicted is
14 necessarily an experiment in my view. Prohibition, for example, was an experiment in
15 public policy that proved unworkable. Similarly, and at least considered retrospectively,
16 the break-up of AT&T was of an experimental nature since it largely has been now put
17 back together. Characterizations of these policies as experiments, as well as Arizona's
18 efforts to promote electric competition, in no way detracts from the historical realities of
19 these policies. Further contrary to Mr. Pignatelli's suggestions, I view the termination of
20 the Fixed CTC in or at the end of 2008 as a sunset provision of the experiment in Arizona.

21
22 While issue could be taken with other aspects of Mr. Pignatelli's claims, he totally
23 neglects the history of electric utility regulation in debating the "experiment" question.
24 The structure of the electric utility industry prior to the 1990s, both in Arizona and
25 elsewhere, stemmed from the long-held view over many decades that regulated monopoly
26 was the most cost-effective form of market organization, due to economies of scale, scope,

1 and other natural monopoly characteristics. A rethinking of this traditional premise gave
2 rise to alternative forms of regulation, as well as other new policies specifically aimed at
3 interjecting competitive market forces into sectors of the industry where they had been
4 historically absent. If these efforts had proven successful, the phrase "experiment" still
5 would be applicable given the historical background noted.

6
7 **Q. Do you take exception to Mr. Pignatelli's views regarding the 2004 rate review?**

8 A. Yes, in two notable respects. First, and least significant, is his claim on Page 21 as to how
9 my 2004 Rate Review calculations proceeded; i.e., that I started with Staff's figures rather
10 than those of TEP. As clearly shown on Page 15 of my direct testimony. I began my
11 consideration of the 2004 Rate Review with the calculations of Ms. Kissinger, TEP's
12 Controller.

13
14 Second, Mr. Pignatelli's discussions ignore a fundamental and obvious point in my direct
15 testimony regarding the 2004 Rate Review; i.e., that both Ms. Kissinger and Mr. Dorf
16 treated actual revenues and expenses related to the Fixed CTC as if they did not exist.
17 While such exclusion treatments of non-recurring amounts are permissible in a traditional
18 regulatory context, they surely are not applicable in considering the damages that TEP
19 may or may not have sustained as a result of the experiment. As with any claim of
20 economic loss, one must necessarily compare actual circumstances with the conditions
21 that would have prevailed absent the alleged cause of the economic loss. A failure to take
22 into account actual Fixed CTC revenues and expenses is clearly inconsistent with this
23 standard.

24
25 By the same token, Mr. Pignatelli misses the point on Pages 26 and 27 of his rebuttal in
26 addressing the hypothetical example of elasticity in my direct testimony. Put otherwise, in

1 any claim that the experiment caused TEP to sustain economic damages, it bears a parallel
2 burden to demonstrate how its sales, revenues, expenses, and other aspects of its
3 operations would or would not have been different in the absence of the experiment. Mr.
4 Pignatelli's comments on elasticity, for instance, pose the prospect that TEP's annual
5 revenues under the experiment may have been greater than would have been the case
6 otherwise.

7
8 More specifically, he asserts that when measured in real terms, the current electricity
9 prices of TEP are 25 percent lower than in 1996. In turn, because TEP has most assuredly
10 confronted some degree of long-term price elasticity, its present kWh sales exceed the
11 levels that would have been realized had TEP's real electricity prices remained constant;
12 i.e., its nominal prices kept pace with inflation. Resulting revenues under this pricing
13 outcome, therefore, could have been lower than what TEP actually realized under the
14 experiment. An exploration of these and related matters is essential in any economic
15 damage investigation.

16
17 **Q. Are you aware, Dr. Ileo, of the modification made by Mr. Pignatelli to TEP's damage**
18 **claim?**

19 **A.** Yes. As noted on Page 24 of his rebuttal testimony, Mr. Pignatelli reports that TEP has
20 lowered its foregone revenues estimate due to the experiment from \$844 million to \$805
21 million. He further reports other foregone revenue estimates based on the so-called
22 revenue deficiencies of Staff and RUCO in the 2004 Rate Review. While available time
23 has not permitted discovery and analyses of TEP's new calculations, they all appear to rest
24 on the same Fixed CTC exclusion treatment. And, if so, they all suffer from the same
25 infirmity.

1 I also have not had an opportunity to examine the calculations underlying the new lost
2 profits analysis of TEP as reported by Mr. Pignatelli. But at the same time, Mr.
3 Pignatelli's abbreviated description of these calculations raises significant issues as to
4 accuracy and appropriateness. This is true in the first instance because his discussion
5 indicates that the lost profits analyses of TEP begins with the same data and procedures,
6 including the improper removal of Fixed CTC revenues and expenses. As shown at Page
7 18 of my direct testimony, TEP sustained no lost profits for its 2003 test year under Staff's
8 findings in the 2004 Rate Review once actual Fixed CTC revenues and expenses are
9 recognized.

10
11 TEP's lost profits analysis is further based on a 10-year extension of the alleged damage
12 period (i.e., now through 2018) to account for what Mr. Pignatelli asserts at Page 26 is the
13 future differential between cost-of-service and MGC rates. In addition to matters
14 regarding how TEP selected this new damage period, as well as the Fixed CTC revenue
15 and expense issue, no new data are offered by Mr. Pignatelli. Presumably, therefore,
16 TEP's lost profits analysis also rests on the same dated information for its 2003 test year
17 from the 2004 Rate Review. As I emphasized in my direct testimony, neither TEP's new
18 lost profits analysis nor many of its numerous other claims and proposals in this case can
19 be properly aired without a consideration of current information.

20
21 **Q. Do you still take the position that the creation of a regulatory asset or liability**
22 **attributable to the experiment would constitute retroactive ratemaking?**

23 **A.** Yes, contrary to Mr. Pignatelli's rebuttal assertions at Page 25, the creation of a regulatory
24 asset or liability involves retroactive ratemaking in the instant case. This is not to suggest
25 that retroactive ratemaking would be improper given the special circumstances of the
26 experiment, but rather that the attendant creation of a regulatory asset or liability could not

1 be made analogous to deferred cost recovery as the former was not contemplated in the
2 past. As additionally reflected here, Mr. Pignatelli is also mistaken in implying that my
3 position on retroactive ratemaking differs depending on whether a regulatory asset or
4 liability is considered.

5
6 **Q. Is it possible to resolve the regulatory asset or liability creation issue in this**
7 **proceeding?**

8 A. No, at least not in any meaningful conceptual or substantive manner. The dimensions or
9 parameters of the issue must be first circumscribed, which is not possible given the
10 information available in this case. As with many other matters underlying TEP's claims
11 and proposals, detail information relevant to the history of the experiment including,
12 importantly, the current operating status of TEP, is essential in addressing the numerous
13 matters before the Commission in a meaningful manner. For reasons enumerated in my
14 direct testimony, a general rate case is the proper forum for such an expansive inquiry and
15 consideration.

16
17 **Q. What is the controversy raised by Mr. Pignatelli regarding the MGC?**

18 A. Mr. Pignatelli takes issue at Page 27 of his rebuttal with my characterization of the MGC
19 as a "peaker-based" mechanism. He asserts in this regard that the MGC reflects the full
20 range of available generating resources including coal and nuclear. Noteworthy is the fact
21 that no claim appears in Mr. Pignatelli's remarks as to how power production from these
22 base-load generating units is priced under the MGC.

23
24 As the comparison in my direct testimony between movements in MGC and natural gas
25 prices should have made clear, my characterization of the former as a "peaker-based"
26 mechanism relates to pricing matters. Put alternatively, while the MGC may take account

1 of all available generating sources, attendant power supplies are priced in a short-term
2 manner tied to the prices of natural gas – not a composite of power production fuel prices
3 representative of how the collection of generating resources are actually deployed on an
4 “around-the-clock” basis.

5
6 Of further note in this regard, I do not mean by my characterization of the MGC that it
7 fails to measure electric power prices established on a competitive basis. The nature of
8 this competition, however, is short-term as contrasted with long-term. At the same time, I
9 acknowledge a point made by Mr. Pignatelli; i.e., this short-term basis appears to have
10 been an acceptable provision of the experiment given what was perceived and expected at
11 its outset.

12
13 **Q. Have you completed your surrebuttal testimony?**

14 **A. Yes.**