

OPEN MEETING AGENDA ITEM

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Via Overnight Mail

May 14, 2007

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Arizona Corporation Commission
Attn: Docket Filing Window
1200 Washington Street
Phoenix, AZ 85007

Re: Docket No. E-01345A-05-0816, E-01345A-0826 and E-01345A-05-0827

Dear Sir or Madam:

Please find enclosed the original and thirteen (13) copies of the Exceptions of the Kroger Co. in the above-referenced matter.

All parties of record have been served. Please place this document of file.

Very Truly Yours,

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Attachments

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by regular U.S. mail (unless otherwise noted), this 14th of May, 2007 to the following:

	Gary Yaquinto	Arizona Utiltiy Investors Association Phoenix, Arizona 85004	1/12/2007
	Tammie Woody	10825 W. Laurie Ln. Peoria, Arizona 85345	8/23/2006
	Joseph Knauer	Jewish Community of Sedona Sedona, Arizona 86339	8/23/2006
	David Kennedy	818 E Osborn Rd Suite 103 Phoenix, Arizona 85014-0000	8/23/2006
	Andrew Bettwy	5241 Spring Mountain Rd. Las Vegas, Nevada 98150	8/17/2006
	Jay Moyes	1850 N. Central Ave. - 1100 Phoenix, Arizona 85004	8/17/2006
	Kenneth Saline	160 N. Pasadena - 101 Mesa, Arizona 85201	8/17/2006
	Sean Seitz	3008 N. Civic Center Plaza Scottsdale, Arizona 85251	8/17/2006
	Greg Patterson	916 W. Adams - 3 Phoenix, Arizona 85007	8/17/2006
	Amanda Ormond	7650 S. McClintock, Ste. 103-282 Tempe , Arizona 85284	8/17/2006
	George Bien-Willner	3641 N. 39th Ave. Phoenix, Arizona 85034	7/26/2006
	Lawrence Robertson, Jr.	Munger Chadwick PO Box 1448 Tubac, Arizona 85646	3/15/2006
	Lieutenant Colonel Karen White	139 Barnes Dr. Tyndall AFB, Florida 32403	2/15/2006
	Robert Geake	PO Box 29006 Phoenix, Arizona 85038-9006	2/6/2006
	Donna Bronski	3939 Drinkwater N. Blvd. Scottsdale, Arizona 85251	1/26/2006
	Tracy Spoon	12630 N. 103rd Ave. -144 Sun City, Arizona 85351	1/3/2006
	Michelle Livengood	One South Church St. Ste. 200 Tucson, Arizona 85702	1/3/2006
	Douglas Fant	3655 W. Anthem Way -A-109 PMB 411 Anthem, Arizona 85086	1/3/2006
	Bill Murphy	5401 N. 25 St. Phoenix, Arizona 85016	1/3/2006
	Jim Nelson	12621 N. 17 Place Phoenix, Arizona 85022	1/3/2006

	Dan Austin	6509 W. Frye Rd. Ste. 4 Chandler, Arizona 85226	1/3/2006
	Scott Wakefield	1110 W. Washington St. - 220 Phoenix, Arizona 85007	1/3/2006
	Michael Patten	One Arizona Center, 400 E. Van Buren St. - 800 Phoenix, Arizona 85004-3906	1/3/2006
	Timothy Hogan	202 E. McDowell Rd. - 153 Phoenix, Arizona 85004	12/14/2005
	C. Webb Crockett	3003 N. Central Ave. - 2600 Phoenix, Arizona 85012-2913	11/22/2005
	Thomas Mumaw	PO Box 53999 Phoenix, Arizona 85072-3999	11/22/2005
	Ernest Johnson	1200 W. Washington Phoenix, Arizona 85007-2927	11/4/2005
	Chris Kempley	1200 W. Washington Phoenix, Arizona 85007-2927	11/4/2005
	Lyn Farmer	1200 W. Washington Phoenix, Arizona 85007-2927	11/4/2005
	Deborah Scott	One Arizona Center 400 E. Van Buren St Phoenix, Arizona 85004-0000	11/4/2005



Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.

BEFORE THE ARIZONA CORPORATION COMMISSION

In the Matter of the Application of Arizona Public Service Company for A Hearing to Determine the Fair Value of the Utility Property of the Company for Ratemaking Purposes, to Fix a Just and Reasonable Rate of Return Thereon, To Approve Rate Schedules Designed to Develop Such Return and to Amend Decision No. 67744 : Docket No. E-01345A-05-0816

In The Matter Of The Inquiry Into The Frequency Of Unplanned Outages During 2005 At Palo Verde Nuclear Generating Station, The Causes Of The Outages, The Procurement Of Replacement Power And The Impact Of The Outages On Arizona Public Service Company's Customers. : Docket no. E-01345A-05-0826

In The Matter Of The Audit Of The Fuel And Purchased Power Practices And Costs Of The Arizona Public Service Company : Docket No. E-01345A-05-0827

EXCEPTIONS OF THE KROGER CO.

On April 27, 2007, Administrative Law Judge Lyn Farmer submitted her recommendation in the form of an Opinion and Order (referenced herein as the "Recommendation") in the above-captioned matter. The Kroger Co. ("Kroger") respectfully files the below Exceptions to the ALJ's Recommendation on the issues of cost allocation and the rate design of the E-32 customers class.

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1. Cost Allocation.

The fact that there are significant interclass subsidies in rates is not disputed by any of the cost of service studies/methodologies proposed in this proceeding. However, there is no attempt in the Recommendation to remedy this problem by reducing interclass subsidies.¹ The parties that have recommended a subsidy reduction have made compelling arguments evidencing the inequity of interclass subsidies from the perspective of proper rate making theory and simple fairness. Some movement toward cost of service must be made in such a major rate case. Kroger's recommendation of a 25 percent subsidy reduction is a reasonable and gradual approach toward a more equitable allocation of rates. Kroger would also support the adoption of AECC rate allocation proposal which achieves the same goal of moving the respective customer classes a step toward cost of service while recognizing the concept of gradualism.

2. Rate Design Of The E-32 Schedule.

The ALJ expressed concern with the recommendations of several intervenors that rates should be designed in order to make a move toward reducing intraclass subsidies between high and low load factor customers within a given rate schedule. The ALJ believes that movement toward costs of service in rate design is appropriate but because such movement was made in a recent rate case more movement toward cost of service is premature. The ALJ states:

"It is clear from the results of all cost-of-service studies that there are subsidies in APS' current rate structure. This means that some classes of customers are providing a subsidy to others and that some customers in a class subsidize others in the same class. Several parties have recommended that the Commission begin to close that gap, and move rates closer to the class' cost-of-service now. We agree that some movement should be made in that direction, but given the fact that current rates have been in effect

¹ Recommendation of Administrative Law Judge Lyn Farmer pp. 68-73.

for only two years and they were designed to move rates closer to cost-of-service we do not want to modify the current rate structure dramatically. Accordingly, given the level of revenues that we authorize herein, we will generally adopt the Company's rate design as modified by Staff and with the AECC proposal for transmission rate design as agreed to by APS, and the voltage discounts as proposed by the FEA." (ALJ Recommendation pp. 75-76) (emphasis added)

At least with respect to the E-32 class, the ALJ's position misses the mark because the Company's proposed rate design does not preserve the movement toward the reduction of intraclass subsidies made in the prior proceeding as the ALJ contends, but rather the Company's proposal reverses the previous movement toward cost of service by allocating a larger portion of the proposed increase to high load factor customers than to lower load factor customers.² Kroger's recommendation merely seeks to maintain the status quo for the high-load factor E-32 customers that are subsidizing lower-load factor E-32 customers by increasing allocating an equal percentage increase to all delivery and generation charges for all E-32 customers.³

As explained in the testimony of Kroger witness Stephen Baron⁴ and in Kroger's Initial Brief,⁵ the Company proposed rate design would result in an increase to some E-32 customers significantly above the average increase proposed for the rate. APS is proposing much larger increases to high-load factor customers taking service on rate E-32, than for lower load factor customers. In addition to the fact that all E-32 customers are paying millions of dollars in subsidies to the Residential class at both present and proposed rates, high load factor E-32 customers have the additional burden of also subsidizing lower load factor customers within their own rate class. Although the ALJ contends that the intraclass subsidy paid by high load factor customers to lower load factor customers will not change from current rates, the ALJ's recommendation would actually increase the intraclass subsidies paid by high load factor E-32 customers.

² Direct Testimony of Stephen Baron p. 21.

³ Id. p. 26.

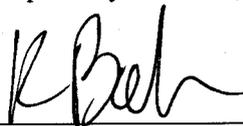
⁴ Id. pp. 20-21.

⁵ Initial Brief of Kroger pp. 10-11.

High load factor customers, who use a greater percentage of the energy use in off-peak periods, are being unreasonably penalized by the APS and ALJ proposals in this case. The Commission should encourage the type of efficient energy usage that high-load factor customers practice, not punish customers for using energy efficiently.

As stated above and in its Initial Brief, Kroger's recommendation only asks for E-32 intraclass subsidies to not increase. This could be achieved by allocating the same percentage increase to all delivery and all generation charges paid by E-32 customers.

Respectfully submitted,



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