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BEFORE THE ARIZONA CORPORATION COMMISSION

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GARY PIERCE

IN THE MATTER OF THE FILING BY TUCSON) DOCKET NO. E-01933A-05-0650
ELECTRIC POWER COMPANY TO AMEND)
DECISION NO. 62103.)

IN THE MATTER OF THE APPLICATION OF) DOCKET NO. E-01933A-07-0402
TUCSON ELECTRIC POWER COMPANY FOR)
THE ESTABLISHMENT OF JUST AND)
REASONABLE RATES AND CHARGES)
DESIGNED TO REALIZE A REASONABLE)
RATE OF RETURN ON THE FAIR VALUE OF)
ITS OPERATIONS THROUGHOUT THE STATE)
OF ARIZONA.)

NOTICE OF FILING REBUTTAL TESTIMONY

Tucson Electric Power Company, through undersigned counsel, hereby files the Rebuttal
Testimony of James S. Pignatelli in the above-captioned docket.

RESPECTFULLY SUBMITTED this 7th day of July 2008.

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BEFORE THE ARIZONA CORPORATION COMMISSION

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RATE OF RETURN ON THE FAIR VALUE OF)
ITS OPERATIONS THROUGHOUT THE STATE)
OF ARIZONA.)

DOCKET NO. E-01933A-07-0402

Rebuttal Testimony in Support of the Settlement Agreement

James S. Pignatelli

On Behalf of

Tucson Electric Power Company

July 7, 2008

TABLE OF CONTENTS

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

I. Introduction and Summary 1

II. The Impact of the PPFAC Rate on Customers’ Bills in 2009 2

III. Rebuttal to RUCO’s Responsive Direct Settlement Testimony 4

 A. RUCO’s Challenge to Base Rate Increase..... 6

 B. RUCO’s Challenge to PPFAC11

 C. RUCO’s Position on Fixed CTC True-up Revenues and Effective Date13

 D. RUCO’s Position on Open Access14

IV. Comments on SWEEP Testimony14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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Executive Summary of the Rebuttal Testimony of James S. Pignatelli in Support of the Settlement Agreement

Mr. Pignatelli is the Chairman of the Board, President and Chief Executive Officer of Tucson Electric Power Company ("TEP" or the "Company").

Mr. Pignatelli's Rebuttal Testimony in support of the proposed Settlement Agreement addresses the following matters: (1) TEP's estimate of the impact on average retail rates, (2) the errors and mischaracterizations in RUCO's testimony that undermine its basis for opposing the Settlement Agreement and (3) the testimony filed by SWEEP and a restatement of the Company's commitment to demand-side management programs.

Mr. Pignatelli testifies that TEP currently estimates that the Purchased Power and Fuel Adjustment Clause ("PPFAC") surcharge that would go into effect on April 1, 2009 could result in a 3-4% increase to TEP customers' bills. This would be in addition to the base rate increase of approximately 6%. Accordingly, effective April 2009, TEP estimates that the average customer bill for all customer classes could increase 9-10% over the current average bill attributable to the combination of the base rate increase and PPFAC rate. However, Mr. Pignatelli also testifies that, given the proposed rate design and the inverted block rates, the electric bill of a residential customer with average use could increase less than 9-10%. In fact, given the rate design, over 50% of residential customers could see a significantly lower overall increase. He also reiterates here that, under the Settlement Agreement, qualified low income customers would not receive any base rate increase or be subject to the PPFAC rate.

Mr. Pignatelli testifies that RUCO's testimony should be rejected because (1) it attempts to criticize selected provisions of the Settlement Agreement without acknowledging that terms and conditions of the Settlement Agreement were negotiated as a whole, integrated agreement (2) RUCO has not performed any analysis regarding TEP's financial condition, TEP's ability to ensure service reliability or the consequences to residential consumers if the Commission does not approve the Settlement Agreement, or new rates by January 1, 2009 (3) it fails to acknowledge the many customer benefits included in the Settlement Agreement, (4) RUCO's claim of a 21.5% rate increase is simply not true, (5) it ignores that each adjustment to a party's original filing is justified and documented in testimony, (6) it erroneously labels the fixed CTC as a "temporary surcharge" when it was a carve out of TEP's then existing rates and (7) it lacks an understanding of the Company's procurement costs and the need for the proposed PPFAC.

Finally, Mr. Pignatelli notes that SWEEP does not oppose the Settlement Agreement, and he testifies that TEP continues to actively support demand side management programs.

1 **I. INTRODUCTION AND SUMMARY.**

2

3 **Q: Please state your name and occupation.**

4 A: My name is James S. Pignatelli. I am the Chairman, President and Chief Executive Officer
5 of Tucson Electric Power Company ("TEP" or the "Company"). I hold the same positions
6 at UniSource Energy Corporation, the parent of TEP.

7

8 **Q: Mr. Pignatelli, have you reviewed the testimony filed by the Arizona Residential**
9 **Utility Consumer Office ("RUCO") and Southwest Efficient Energy Project**
10 **("SWEEP") in this proceeding?**

11 A: Yes, I have. It is important to note that RUCO is the only party in this proceeding that
12 apparently opposes the Settlement Agreement. SWEEP is neutral towards the Settlement
13 Agreement. However, thirteen (13) parties are signatories ("Signatories") to the
14 Settlement Agreement, including Commission Staff.

15

16 **Q: Mr. Pignatelli, please summarize your rebuttal testimony.**

17 A: In the first part of my rebuttal testimony I present TEP's estimate of the impact on average
18 retail rates billed to the customers in 2009 attributable to the Purchased Power And Fuel
19 Adjustor Clause ("PPFAC") under the terms of the Settlement Agreement. In summary,
20 while I presume that the base rate increase of approximately 6% will be effective upon
21 Commission approval of the Settlement Agreement, the PPFAC surcharge would not begin
22 to be applied to customers' bills until April 2009. TEP currently estimates that the PPFAC
23 surcharge that would go into effect on April 1, 2009 could result in a 3-4% increase to TEP
24 customers' bills. This would be in addition to the base rate increase of 6%. Accordingly,
25 effective April 2009, TEP estimates that the average bill for all customer classes could
26 increase 9-10% over the current average bill attributable to the combination of the base rate
27 increase and PPFAC rate. I point out however, that given the proposed rate design and the

1 inverted block rates, the electric bill of a residential customer with average use (900
2 kWh/month) will increase less than the average percentage increase. In fact, given the
3 rate design, over 50% of residential customers will see a significantly lower overall
4 increase. It is also important to reiterate here that, under the Settlement Agreement,
5 qualified low income customers would not receive any base rate increase or be subject to
6 the PPFAC rate.

7
8 Second, I rebut the testimony filed by RUCO related to the Settlement Agreement. I
9 discuss the errors and mischaracterizations in RUCO's testimony that undermine its basis
10 for opposing the Settlement Agreement. RUCO's professed "apples-to-apples" analysis is
11 fatally flawed because it is based on a false assumption and consequently, the conclusion
12 that the rate increase will be 21.15% is a gross overstatement.

13
14 Finally, I comment on the testimony filed by SWEEP and restate the Company's
15 commitment to demand-side management programs.

16
17 My rebuttal testimony fully supports the conclusion that the Settlement Agreement is fair,
18 just, reasonable and in the public interest. The record in this case clearly establishes that
19 the Settlement Agreement should be approved by the Commission.

20
21 **II. THE IMPACT OF THE PPFAC RATE ON CUSTOMERS' BILLS IN 2009.**

22
23 **Q: Mr. Pignatelli, please explain TEP's estimate of the PPFAC rate in 2009.**

24 **A:** TEP's base rates include a component attributable to historical purchase power and fuel
25 costs. In the Settlement Agreement, base rates are calculated using a test year ending
26 December 31, 2006. The average base cost of purchase power and fuel reflected in base
27 rates is \$0.028896 per kWh, which reflects the adjusted 2006 test year costs.

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If, on an ongoing basis, actual purchased power and fuel costs are higher or lower than the amount embedded in base rates, the PPFAC provides the mechanism whereby the actual cost difference is passed through to the customer in the form of a charge or credit. The PPFAC rate is not a base rate increase. It is not a fixed amount and does not include a return component. The PPFAC rate can fluctuate and be a customer "credit" if costs are below the base rate of 0.028896 per kWh.

The PPFAC mechanism proposed in the Settlement Agreement will be effective January 1, 2009. The initial PPFAC rate will initially be set at zero. However, the PPFAC rate will be adjusted effective April 1, 2009 and will not appear on customers' bills until April of 2009.

At this time, TEP estimates that its purchased power and fuel costs in 2009 will be in the range of \$0.036 to \$0.037 per kWh. When this amount is adjusted in accordance with the PPFAC plan of administration for proceeds from (i) wholesale sales; and (ii) 50% of S02 sales, the resulting amount will be approximately \$0.032 per kWh to \$0.033 per kWh. As a result, TEP currently estimates that the PPFAC rate that would go into effect on April 1, 2009 would be approximately \$0.003 to \$0.004 per kWh. This would result in an additional 3% to 4% charge to TEP's customers. This PPFAC rate estimate could change based on the October 1 filing pursuant to the PPFAC plan of administration. In that filing, TEP will provide up-to-date supporting documentation on for the calculation of the Forward and True-up components of the PPFAC rate that will go into effect the following April 1.

Accordingly, as a result of the Settlement Agreement, effective April 2009, the average bill for all customers classes could increase another 3%-4% for a total increase of 9%-10%

1 over existing rates, attributable to the base rate increase and PPFAC rate. However,
2 pursuant to the inclining block rate structure proposed in the Settlement Agreement, the
3 electric bill of a residential customer with average use (900 kWh/month) will increase less
4 than the average percentage increase. Also, under the Settlement Agreement low income
5 customers will not receive any base rate increase or be subject to the PPFAC surcharge.
6

7 **III. REBUTTAL TO RUCO's RESPONSIVE DIRECT SETTLEMENT TESTIMONY.**
8

9 **Q: Mr. Pignatelli, have you reviewed the "Responsive Direct Settlement Testimony of**
10 **William A. Rigsby" filed on behalf of RUCO in this proceeding on July 2, 2008 (the**
11 **"Rigsby testimony")?**

12 **A:** Yes, I have.
13

14 **Q: What is your overall reaction to the Rigsby testimony?**

15 **A:** RUCO has never supported a settlement of any of the issues in this proceeding. So, the
16 Rigsby testimony must be read with that bias as its foundation.
17

18 The Rigsby testimony is the only attempt by a party in this proceeding to oppose the
19 Settlement Agreement. When you consider the diverse interests of the Signatories to the
20 Settlement Agreement, their commitment to their respective constituencies and the
21 balanced manner in which complex and contentious issues were resolved, Mr. Rigsby's
22 opposition to the Settlement Agreement seems to be merely the strident perpetuation of
23 RUCO's litigation position rather than a balanced weighing of concessions on all sides.
24 Indeed, RUCO focuses only on concessions made in TEP's favor and ignores all the other
25 concessions by TEP and the numerous benefits provided by the Settlement Agreement.
26
27

1 For example, does anyone really believe that all of the Signatories conspired to present “a
2 false impression of the reasonableness of the Agreement” as the Rigsby testimony
3 accuses? See Rigsby Direct Testimony at page 6. RUCO was present during the
4 settlement discussions, and not once did they ever levy such an accusation. Therefore, I do
5 not think that even RUCO believes that allegation.

6
7 Also, the Rigsby testimony attempts to slant the economic analysis of the Settlement
8 Agreement by indicating that Commission Staff moved off its original rate increase
9 recommendation by \$100 million without acknowledging that TEP reduced its rate
10 increase by \$140 million under its cost-of-service methodology and several hundred
11 million dollars under its market methodology.

12
13 Aside from its inherent bias, I believe the Rigsby testimony should be rejected because it
14 attempts to criticize selected provisions of the Settlement Agreement without
15 acknowledging that terms and conditions of the Settlement Agreement were negotiated as a
16 whole, integrated package and is a remarkable balance of benefits for the competing
17 interests of customers, employees and investors. The Settlement Agreement is an
18 integrated and economically sound resolution of the issues in this case. And, even in its
19 challenge to selected provisions, RUCO’s position is based on errors and
20 mischaracterizations and presents a flawed analysis of the Settlement Agreement that
21 evidences a lack of familiarity and understanding of the terms thereof.

22
23 While RUCO is critical of the Settlement Agreement, notably absent is any analysis of the
24 consequences to residential consumers if the Commission does not approve the Settlement
25 Agreement or new rates by January 1, 2009. Nowhere in RUCO’s testimony is there a
26 discussion or study of its position and how it affects TEP’s financial health, including its
27 cash flow. Also notably absent is any analysis by RUCO regarding the effect its position

1 would have on service reliability. Further the Rigsby testimony fails to acknowledge the
2 many customer benefits that are included in the Settlement Agreement including benefits
3 that RUCO did not propose in this proceeding, such as the rate freeze for low income
4 residential customers and the rate moratorium. These and all other customer benefits
5 provided in the Settlement Agreement are the product of the Signatories negotiations and
6 agreement.

7
8 **A. RUCO's Challenge to Base Rate Increase.**

9
10 **Q: Mr. Pignatelli, please provide examples of the errors and mischaracterizations in the**
11 **Rigsby testimony.**

12 **A:** First, RUCO claims that the Settlement Agreement will produce a rate increase of 21.15%.
13 This is absurd. As I have pointed out, the base rate increase will be 6%. And, beginning
14 April 2009, the PPFAC surcharge could add another 3%-4% to the customers' bill. I think
15 that it is irresponsible for RUCO to publish that TEP's customers will experience a 21.15%
16 rate increase as a result of the Settlement Agreement when that is simply not true. While
17 RUCO claims that is has conducted an "apples-to-apples" comparison of rates, RUCO has
18 actually engaged in a bit of "addition by subtraction" in order to reach an inflated number.

19
20 **Q: Please explain what you mean.**

21 **A:** For the first time, RUCO now makes the novel claim that the fixed CTC was a "temporary
22 surcharge" that must be subtracted from TEP's base rates and that the rate increase must be
23 calculated on this artificially lower rate. The truth is that the fixed CTC was not a
24 temporary surcharge that was added onto TEP's existing rates in 1999, rather it was a
25 carve-out of TEP's **then-existing rates**. Therefore, our customers rates were not increased
26 by the fixed CTC in 1999. The Rigsby testimony erroneously states:

1 The \$47.1 million purported increase of 6% presents a false
2 impression because it is based on the false premise that the fixed
3 CTC is a permanent part of rates rather than a temporary surcharge
4 that was fully recovered earlier this year. The true increase, based
5 on TEP's adjusted current base rates without the fixed CTC equals
6 19.8%. (Rigsby testimony at 7, lines 3-7)

7
8 RUCO's argument is quickly dismissed by the simple facts. The fixed CTC was not a
9 "temporary surcharge." TEP did not raise its rates to recover its stranded costs. TEP did
10 not add a surcharge to recover its stranded costs. In fact, pursuant to the 1999 Settlement
11 Agreement, TEP's rates were twice decreased while the fixed CTC was being recovered.
12 There is simply no basis for reducing TEP's existing rates. RUCO has even admitted
13 during discovery in this case that TEP's existing rates are those last determined by the
14 Commission to be just and reasonable. (RUCO Response to TEP Data Request TEP 4-
15 12.).

16
17 The fixed CTC was part of the 1999 Settlement Agreement that was intended to guide TEP
18 into electric competition and market based rates in 2009. In preparation for 2009, TEP
19 agreed to recover \$450 million in stranded costs over a 10 year period. In order to avoid a
20 one-time write-off of \$450 million in 2000, and pursuant to the advice of the Company's
21 accountants, TEP ascribed a portion of its **then existing rates** to the fixed CTC. When the
22 \$450 million of stranded costs were fully recovered, TEP's rates remained the same and
23 only the accounting for the rate components changed. TEP's customers' bills were not
24 impacted by the accounting impact of the fixed CTC.

25
26 Under the Settlement Agreement, TEP's customers' bills will be increased over what they
27 are currently charged, based on a stipulated test-year revenue requirement, and not on the

1 fictional amount that RUCO has attempted to introduce. RUCO's attempt to overstate the
2 rate increase by imputing a lower existing customer rate is simply unfounded. As stated
3 in the Settlement Agreement, base rates will increase approximately 6%. TEP customers
4 will see only an average 6% increase in their bills – the first increase they have seen since
5 the mid-1990s.

6
7 **Q: Mr. Pignatelli, please discuss other errors in the Rigsby testimony.**

8 **A:** Let me briefly address the three rate-related issues that the Rigsby testimony refers to as
9 “concessions” and then criticizes as being unsupported by the record. I will first point out
10 that contrary to the erroneous assertion that there is no basis for the acceptance of the
11 Company's position on these issues, the justification for each of the adjustments is found
12 and documented in testimony that was filed in connection with the TEP rate case
13 application. I will refer to that testimony for background purposes.

14
15 First, Mr. Rigsby refers to the \$99 million adjustment that was made to rate base by
16 Commission Staff to reflect the impact of FAS 143. As TEP witness Ms. Karen Kissinger
17 indicated in her April 1, 2008 Rebuttal Testimony (pages 14-18), the adoption of FAS 143
18 in January of 2003 had different financial statement implications for TEP than it would
19 have for a company allowed to follow FAS 71 for its generation assets. Because the
20 Company was precluded from establishing a regulatory liability for amounts formerly
21 included in the reserve for accumulated depreciation for cost of removal of generation
22 assets, the amount was recognized in income in 2003.

23
24 Such amount is not refundable to customers and will not be “double collected” on a going
25 forward basis as it was already included, as a benefit to customers, in the determination of
26 the \$450 million stranded cost in 1999. No cost of removal amounts have been accrued as
27 a part of generation depreciation expense since 2002 as a result of FAS 143. Only

1 companies eligible to follow FAS 71 may accrue cost of removal as an element of
2 depreciation expense.

3
4 In questioning the related \$21.6 million adjustment to increase depreciation expense for
5 cost of removal on an on-going basis, the Rigsby testimony asserts that no party discussed
6 prior to the settlement negotiations a need to begin accruing such an amount of additional
7 depreciation expense for cost of removal. In fact, Commission Staff witness Mr. Ralph
8 Smith proposed an adjustment (adjustment C-15) and Ms. Kissinger countered with a
9 different proposed rate for cost of removal in her Rebuttal Testimony (pages 53-54). The
10 Settlement Agreement provides a reconciliation of the parties' positions.

11
12 Second, the Rigsby testimony questions the \$41.6 million adjustment to Commission
13 Staff's rate base calculation related to accumulated depreciation. Again, as supported by
14 Ms. Kissinger's Rebuttal Testimony (pages 18-23), in addition to no longer accruing cost
15 of removal as an element of depreciation expense, the Company made other changes to
16 depreciation rates. The Company added new generation assets which had no depreciation
17 rates previously authorized by the Commission. The Company also extended the lives of
18 some of its generation assets, based on new information regarding the economic useful
19 lives of these assets. The changes made were the same changes the Company would have
20 made under cost-based regulation. Such depreciation rates were and are just and
21 reasonable. The Company did not seek Commission authorization of such changes
22 because the generation assets had been effectively deregulated and such authorization
23 was irrelevant because TEP's generation rates were to be competitive and market-based,
24 not cost-based. The linkage of costs and revenues was no longer applicable to generation
25 under the 1999 Settlement Agreement.

1 Third, the Rigsby testimony also questions the treatment of Springerville Unit 1 in Rates.
2 In addition to Ms. Kissinger's Rebuttal Testimony (pages 23-29), Commission Staff
3 witness Ralph Smith included as an exhibit to his direct testimony in support of the
4 Settlement Agreement a copy of a deposition transcript that supports the adoption of the
5 proposed treatment of Springerville Unit 1. Springerville Unit 1 generation costs have
6 been recovered in rates through a market-based capacity rate since 1989. Because the
7 initial market-based rate was below cost, the Company recorded losses of \$185 million in
8 the 1990s, reducing the financial statement cost of this asset. Now that market rates are
9 higher, RUCO wants to recover the costs of Springerville Unit 1 based on this lower
10 financial statement value that resulted from the earlier disallowances. This logic is
11 circular at best. The cash costs of operation of Springerville Unit 1 are higher than
12 reflected in the Company's financial records and significantly higher than acknowledged
13 by RUCO. Moreover, under the cost-of-service approach agreed to in the Settlement
14 Agreement, it is appropriate to include any leasehold improvements made by TEP at
15 Springerville Unit 1 in rate base.

16
17 **Q: Did Mr. Rigsby address all of the "concessions" made by the parties in connection**
18 **with the Settlement Agreement?**

19 **A:** No. In particular, he did not address any of the disputed issues that the Company
20 conceded, including the fact that TEP is giving up any claims it has under the 1999
21 Settlement Agreement. I want to remind the Commission that a complete comparison of
22 the rate adjustments and related issues that were discussed in the negotiations were filed
23 as Exhibit 2 to the Settlement Agreement. The negotiations were open and transparent to
24 all parties, Signatories and non-Signatories alike. The result of the negotiations is a
25 Settlement Agreement that is fair, just and reasonable and in the public interest.
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B. RUCO's Challenge to PPFAC.

Q: Mr. Pignatelli, do you have any other comments on the Rigsby testimony.

A: Yes, I disagree with RUCO's characterization of TEP's PPFAC. On the one hand, RUCO argues that the PPFAC proposed in the Settlement Agreement should not be adopted. In fact, a PPFAC has been supported by other parties since the beginning and the need for a PPFAC has been addressed in the direct testimony of TEP witness Mr. David Hutchens in support of the Settlement Agreement, as well as his previous direct and rebuttal testimony and in the testimony of Staff witness Ralph Smith.

In challenging the proposed form of PPFAC (which reflects Staff's proposal in this docket), RUCO argues that a 90/10 penalty should be imposed on the PPFAC. There is nothing in the record of this proceeding that supports the imposition of such a penalty on the Company. To the contrary, the Commission Staff has found that the Company's purchased power and fuel procurement practices are prudent. Further, the Direct Testimony of Commission Staff witness Ralph Smith, filed on February 29, 2008, explained in detail (at pages 138-143) why a 90/10 sharing was not appropriate for the TEP PPFAC.

Q. Do you agree with a 90/10 sharing mechanism?

A. No. First RUCO only explains one direction of APS' sharing mechanism. The direction they do mention, where the Company bears 10% of fuel and purchased power costs in excess of the base rate cost, is blatant confiscation of prudently incurred costs. This is not consistent with standard cost-of-service ratemaking principles. Utilities do not mark up or earn a return on costs associated with a PPFAC and can only at best break even and recover its prudently incurred costs.

1 **Q. What is the other result a 90/10 sharing mechanism can have that RUCO fails to**
2 **mention?**

3 A. In the event that fuel and purchased power costs are less than the base rate cost, the
4 Company keeps 10% of the amount below base rates. This results in customers paying
5 amounts higher than the costs incurred to serve them. Again, this is not consistent with
6 standard cost-of-service principles.

7
8 **Q. Does the 90/10 sharing provide an incentive to use prudent procurement practices?**

9 A. No. The Company already has an incentive to use prudent procurement practices. Its
10 procurement policies and practices will not be affected in any way by a 90/10 sharing. As
11 previously described, it simply results in either confiscation from the Company's
12 shareholders or unnecessarily higher costs to our customers.

13
14 **Q. What "safeguards" are included in TEP's proposed PPFAC that provide an incentive**
15 **to use prudent procurement practices?**

16 A. The PPFAC Plan of Administration provides for very detailed monthly filings of fuel,
17 purchased power and generation data. It also allows the Commission to audit the
18 Company's procurement practices at any time and disallow recovery of costs deemed
19 imprudent. And finally, there is a provision that requires the Commission to approve the
20 PPFAC rate each year before it goes into effect. These provisions, on top of the
21 Company's normal standard of providing safe, reliable and fairly priced service to its
22 customers provides all the incentive to use prudent procurement practices.

23
24 **Q. Mr. Pignatelli, would the addition of a 90/10 penalty be seen as a material**
25 **modification of the terms of the settlement agreement?**

26 A. Yes. You must remember that the fuel component in base rates is a 2006 test-year fuel
27 cost. A penalty equal to 10% of fuel price increases would have a significant impact on

1 the Company's ability to continue to support the rate moratorium in the Settlement
2 Agreement. Such a provision could significantly deprive the Company of a reasonable
3 opportunity to earn a reasonable return and reduce the appropriate cash flows that would
4 allow the Company to stay out for such an extended period of time.

5 **C. RUCO's Position on Fixed CTC True-up Revenues and Effective Date.**

6
7 **Q: Mr. Pignatelli, do you agree with RUCO's criticism of the Settlement Agreement's**
8 **provisions that the CTC true-up revenues and the effective date of the base rate**
9 **increase issues be presented by the parties to the Commission for consideration?**

10 **A:** No, I do not. Both of these issues are matters on which the parties wanted to present
11 additional information to the Commission for a determination. In keeping with the spirit
12 of the negotiations, the Signatories agreed that they would present their differing views
13 on these matters for consideration. Further, in light of the many complex issues resolved
14 by the Settlement Agreement, it is completely appropriate for the Commission to resolve
15 these final two issues, based upon the record established at the hearing.

16
17 Again, TEP's position regarding the Fixed CTC True-up Revenues is that it should retain
18 those Revenues. I will not repeat the Company's position as set forth in my direct
19 testimony in support of the Settlement Agreement, but I do not believe any party,
20 including RUCO presented any compelling argument to credit some or all of those
21 Revenues to customers.

22
23 Moreover, it continues to be TEP's position that all provisions of the Settlement
24 Agreement, including the new base rates, should go into effect as soon as the
25 Commission votes to approve the settlement agreement, which I hope is well before the
26 end of 2008. In particular, as noted by SWEEP, this settlement provides many benefits to

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1 consumers, including new time of use tariffs and demand side management programs that
2 should be enacted sooner rather than later.

3
4 **D. RUCO's Position on Open Access.**

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6 **Q. Mr. Pignatelli, do you agree with RUCO's criticism of the Settlement Agreement's**
7 **provisions that the Open Access issue be presented by the parties to the Commission**
8 **for consideration?**

9 A. No. I believe it would be improper for the Commission to decide such a matter of
10 statewide policy affecting numerous other interested parties in a rate case docket. The
11 Settlement Agreement's provision regarding Open Access is consistent with maintaining
12 an appropriate status quo to allow the Commission to address the issue in a generic
13 docket after getting input from all interested parties. In reserving that decision to the
14 Commission, I am at a loss as to how the Settlement Agreement is "deficient", as RUCO
15 asserts, regarding this issue.

16
17 **IV. COMMENTS ON SWEEP TESTIMONY.**

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19 **Q: Mr. Pignatelli, please comment on the testimony filed by Mr. Jeffrey Schlegel on**
20 **behalf of SWEEP.**

21 A: SWEEP does not oppose the Settlement Agreement. It is important to note that SWEEP
22 agrees with the demand side management proposals in the Settlement Agreement. It
23 appears that SWEEP's hesitation is based simply on timing. Although supportive of the
24 schedule to implement the programs and appreciative of Commission Staff's efforts in this
25 area, SWEEP would like to see those programs implemented on a more aggressive
26 schedule.

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TEP continues to actively support demand side management programs. As Mr. Schlegel indicated in his testimony, the Commission is in the process of reviewing and approving the programs that we presented in our "DSM Portfolio" docket. Our position remains that the Commission should implement a funding mechanism simultaneous with the effective date of each program. We also believe that for programs approved in 2008, an accounting order allowing TEP to defer collection of the costs until such time as the Commission issues its order in this case implementing the DSM adjustor would be appropriate.

Q: Does this conclude your rebuttal testimony?

A: Yes, it does.