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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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IN THE MATTER OF THE FORMAL
COMPLAINT OF SULPHUR SPRINGS VALLEY
ELECTRIC COOPERATIVE, INC. AGAINST
ARIZONA ELECTRIC POWER COOPERATIVE,
INC.

DOCKET NO. E-01575A-08-0358
E-01773A-08-0358

PROCEDURAL ORDER

BY THE COMMISSION:

On July 15, 2008, Sulphur Springs Valley Electric Cooperative, Inc. ("SSVEC") filed with the Arizona Corporation Commission ("Commission") a formal complaint against the Arizona Electric Power Cooperative, Inc. ("AEPKO"). SSVEC is a partial requirements member ("PRM") of AEPKO.¹ SSVEC alleges that AEPKO is not correctly allocating costs to partial requirements members pursuant the fuel and purchased power adjustment clause that was implemented in AEPKO's last rate case.

On July 24, 2008, AEPKO filed a Motion to Extend Answer/Response Time to August 15, 2008. SSVEC did not object.

By Procedural Order dated July 28, 2008, the deadline for AEPKO to file an Answer/Response to the Complaint was extended until August 15, 2008.

On August 1, 2008, Mohave Electric Cooperative, Inc. ("Mohave"), a PRM of AEPKO, filed an Application to Intervene.

On August 15, 2008, AEPKO filed its Answer to the Complaint. AEPKO denied that it was applying the PRM adjustor incorrectly, and alleged that the claims raised, and relief sought, in the Complaint are prohibited as a collateral attack on the last rate case and by the provisions of A.R.S. §40-248.

¹ SSVEC had been an all requirements member until January 1, 2008, when it converted to a PRM.

1 On August 19, 2008, SSVEC filed a Request for Procedural Conference for the purpose of
2 discussing a schedule and other procedural matters.

3 By Procedural Order dated August 21, 2008, a Procedural Conference was scheduled for
4 September 4, 2008, and Mohave was granted intervention.

5 On August 28, 2008, Trico Electric Cooperative, Inc. ("Trico"), a Class A and all-
6 requirements member ("ARM") of AEPCO, filed an Application for Leave to Intervene.

7 A telephonic Procedural Conference convened as scheduled on September 4, 2008, with
8 SSVEC, AEPCO, the Commission's Utilities Division ("Staff"), Mohave and Trico appearing
9 through counsel. No party objected to Trico's intervention and Trico was granted intervenor status
10 by the Administrative Law Judge. SSVEC requested an opportunity to conduct discovery for 90 to
11 100 days and that a hearing be scheduled in January, 2009. AEPCO stated that it was in the process
12 of preparing a Motion to Dismiss or Motion for Summary Judgment by September 30, 2008, and
13 argued that depending on the disposition of the Motion, the matter might be resolved without an
14 evidentiary hearing. AEPCO asserted that the data requests it has received to date are burdensome
15 and could ultimately be irrelevant depending on the outcome of its potentially dispositive motion.
16 Consequently, AEPCO argued for the suspension of discovery pending resolution of its Motion.
17 SSVEC objected to suspending discovery.

18 By Procedural Order dated September 9, 2008, it was determined that AEPCO's motion to
19 suspend discovery was premature, as at that point in the proceeding, the Commission could not
20 determine that any proffered discovery would be irrelevant. The September 8, 2008, Procedural
21 Order set a schedule for AEPCO to file its Motion for Summary Judgment, and for responses thereto.
22 It also established the schedule for a hearing in this matter.

23 On October 1, 2008, AEPCO filed a Motion for Summary Judgment and Statement of Facts
24 ("Motion"). AEPCO also filed a request for oral argument on its Motion.

25 On October 9, 2008, Trico filed a Joinder in the Motion.

26 On October 30, 2008, SSVEC filed a Response to the Motion ("Response") and a
27 Controverting Statement of Facts in Support of its Response ("CSOF").

28 On October 30, 2008, Mohave filed comments in support of SSVEC's Response.

1 On November 14, 2008, AEPCO filed a Reply in Support of its Motion, and Trico filed its
2 Reply.

3 By Procedural Order dated October 7, 2008, oral argument was scheduled for November 20,
4 2008. SSVEC, Mohave, AEPCO and Trico appeared through counsel before an authorized
5 Administrative Law Judge at the appointed time.² At the conclusion of oral argument the
6 Administrative Law Judge took the matter under advisement pending the issuance of an order. In the
7 interest of efficiency and economy, the parties agreed to suspend the procedural schedule, including
8 discovery and the hearing date, pending resolution of the Motion.

9 Background

10 AEPCO is a nonprofit member-owned cooperative that provides power generation service to
11 six Class A member distribution cooperatives. Prior to 2001, AEPCO provided both generation and
12 transmission service to its members, but in Decision No. 63868 (July 25, 2001) the Commission
13 approved a reorganization of AEPCO into three related entities: generation (AEPCO), transmission
14 (Southwest Transmission Cooperative, Inc.) and wholesale marketing and support services (Sierra
15 Southwest Cooperative). AEPCO's Class A members are Anza Electric Cooperative Inc. ("Anza"),
16 Duncan Valley Electric Cooperative, Inc. ("DVEC"). Graham County Electric Cooperative, Inc.
17 ("GCEC"), SSVEC, Trico and Mohave. AEPCO's members are either ARMs or PRMs.

18 An ARM has a contract with AEPCO that requires AEPCO to plan for and furnish all of the
19 ARM's present and future electric power requirements. A PRM has a contract with AEPCO to
20 furnish only a portion of the PRM's electric power requirements. The PRM is obligated to plan for
21 and secure the balance of its power needs from other sources. AEPCO has two PRMs: Mohave and
22 SSVEC.

23 In Decision No. 68071 (August 17, 2005) (the "Rate Case Decision"), the Commission
24 approved new rates for AEPCO. As part of the Rate Case Decision, the Commission authorized
25 AEPCO to establish a Fuel and Purchased Power Cost Adjustor ("FPPCA") to allow the semi-annual
26 adjustments of rates in April and October to recover from, or return to its members, changes in fuel
27

28 ² Staff did not file a response to the Motion, nor did it participate in the November 20, 2008 oral arguments.

1 and purchased power expenses as compared to AEPCO's 2003 test year cost levels. Decision No.
2 68071 established a separate power cost adjustor base rate for the ARMs and PRMs (\$0.01687 per
3 kWh for ARMs and \$0.01603 per kWh for PRMs). At that time, Mohave was AEPCO's only PRM,
4 although the Commission was aware that SSVEC was in the process of converting to a PRM.³ The
5 Rate Case Decision adopted Staff's recommendations concerning the FPPCA. No party during the
6 last rate case objected to Staff's recommendations. Mohave was a party to the rate case proceeding,
7 but did not file testimony, although it did file a Closing Brief that raised issues with respect to the
8 PRMs, with its comments directed primarily at the effect of Staff's recommendations on AEPCO's
9 debt/equity ratio, rather than on the FPPCA. In the Rate Case Decision the Commission was
10 concerned that the FPPCA might not keep up with the rate of future fuel and purchased power cost
11 increases, and allowed AEPCO to request the Commission to review the efficacy of the FPPCA when
12 AEPCO submits any semi-annual FPPCA report.⁴

13 On February 29, 2008, AEPCO filed a request for review of its FPPCA efficacy and
14 implementation of alternate rates ("Efficacy Filing"). In the Efficacy Filing, AEPCO sought a review
15 of its FPPCA efficacy and the implementation of alternate adjustor rates (\$0.014760 per kWh for
16 ARMs, and \$0.013050 per kWh for PRMs). Because of a persistent under-collection of its fuel and
17 purchased power expenses, AEPCO was requesting to calculate new ARM and PRM adjustor rates
18 that would achieve a more rapid amortization of the bank balance. To accomplish this, AEPCO
19 proposed to alter the bank account calculation of the adjustor rate by dividing the over-collected or
20 under-collected bank balance dollars by the most recent six months of kWh energy sales, instead of
21 12 months kWh energy sales. The power cost component calculation methodology would not
22 change.⁵

23 SSVEC filed a Response to AEPCO's Efficacy Filing. At that time, SSVEC requested that
24 the Commission order AEPCO, as part of its next semi-annual FPPCA filing, to revise and true-up its
25 methodology to "fairly allocate" the fuel and purchased power costs of the PRM and ARM members
26 consistent with actual fuel and purchased power expenses attributable to the members, with the result

27 ³ Decision No. 68071 Finding of Fact No. 49.

28 ⁴ Decision No. 68071 at Finding of Fact No. 36.

⁵ Decision No. 70354 at Finding of Fact No. 19.

1 of eliminating cross-subsidies that SSVEC believed resulted from AEPCO's current allocation
2 methodology.

3 In Decision No. 70354 (May 16, 2008) (the "Efficacy Decision"), the Commission authorized
4 AEPCO to change its adjustor to the alternative adjustors, calculated using the accelerated bank
5 balance amortization method, of \$0.014760 per kWh for its ARMs and \$0.013050 per kWh for its
6 PRMs, effective June 1, 2008. AEPCO was ordered to continue to calculate its new adjustor rates
7 each six months using its accelerated bank balance amortization method until further order of the
8 Commission. The Efficacy Decision contained a discussion of SSVEC's request for true-up that
9 would contain: "1) a fully detailed methodology that fairly and appropriately allocates fuel and
10 purchased power costs between the individual members of the PRM classes and individual members
11 of the ARM classes consistent with actual fuel and purchased power expenses attributable to the
12 respective members and classes, and 2) true-up calculations adjusting the fuel bank account as if the
13 above methodology had been in effect on April 1, 2008 (the date that AEPCO started charging
14 SSVEC for fuel and purchased power as a PRM pursuant to Decision No. 70105.)"⁶ In the Efficacy
15 Filing, Staff expressed the belief that AEPCO's application needed to be dealt with in a timely
16 fashion and that the scope of the investigation that may be needed to research and resolve the issue
17 brought forward by SSVEC and Mohave could take many months.⁷ Staff also believed that SSVEC's
18 and Mohave's concerns expressed in the Efficacy Filing deserve a full and comprehensive review by
19 all parties that have an interest in AEPCO's FPPCA, and that the issues raised by SSVEC and
20 Mohave would more appropriately be addressed in a rate case in which all interested parties could
21 participate.⁸ In adopting AEPCO's proposed alterations to the FPPCA, Decision No. 70354
22 discussed but does not expressly adopt Staff's beliefs, but neither does it adopt SSVEC's and
23 Mohave's proposed alterations to the FPPCA.

24 The Nature of the Dispute

25 When the Commission established AEPCO's FPPCA, it set separate base cost of power rates
26

27 ⁶ Decision No. 70354 at Finding of Fact No. 40.

⁷ Decision No. 70354 at Finding of Fact No. 43.

28 ⁸ Decision No. 7-354 at Finding of Fact No. 44.

1 for the ARM and PRM classes.⁹ The different base rates reflect that there are certain purchased
2 demand costs and wheeling costs that are applicable to ARMs, but not to the PRMs (at that time only
3 Mohave, but now including SSVEC). Mohave elected not to participate in the Panda Gila River
4 purchased power agreement (“Panda Contract”), and so, the capacity charges and associated
5 wheeling expenses for that contract were excluded from the calculation of Mohave’s base cost of
6 power.¹⁰

7 SSVEC asserts that by not adopting a “different and separate” FPPCA base rate for the
8 ARMs and PRMs, the Commission determined that the PRMs would not pay purchased capacity and
9 associated wheeling expenses for power purchase contracts in which they neither participate, nor
10 receive a benefit.¹¹ Thus, according to SSVEC, AEPCO has allocated costs between the two classes
11 by excluding the wheeling and capacity costs of the Panda Contract and “similarly situated power
12 purchase contracts.”¹² SSVEC states the “similarly situated” contracts include the Griffith Energy
13 Project (“Griffith”) Contract and Southpoint Energy Center LLP (“Southpoint”) Contract from which
14 the PRMs have no allocated capacity, and thus are not participating.

15 AEPCO replaced the summer peaking Panda Contract with contracts with Griffith,
16 Southpoint, and Powerex Corp. (“Powerex Contract”).¹³ SSVEC argues that, as with the Griffith and
17 Southpoint contracts, the PRMs neither participate in, nor derive benefit from, the Powerex contract.
18 SSVEC argues the fixed and known costs associated with the Powerex contract are akin to the
19 capacity charge for purposes of differentiating between the PRM and ARM adjustor rates, and should
20 be excluded from the calculation of the PRMs’ FPPCA. SSVEC acknowledges that the Powerex
21 contract does not have specific capacity charges like the Panda, Southpoint and Griffith contracts.
22 However, SSVEC believes the contract itself is a capacity contract, and that the proper allocation of
23 the costs associated with the Powerex contract hinges on a factual determination.

24 SSVEC states that the methodology of allocating purchase power contract costs to PRMs
25 contemplates that the fixed charges such as wheeling and capacity charges of contracts in which the

26 ⁹ AEPCO Statement of Facts (“SOFs”) at ¶ 13.

27 ¹⁰ SSVEC’s CSOF at ¶ 2.

27 ¹¹ SSVEC Response at p 5.

27 ¹² SSVEC Response at p 5, emphasis in original.

28 ¹³ SSVEC Response at p 5, CSOF at ¶ 5; AEPCO Reply at p 4.

1 PRMs do not participate are to be excluded. SSVEC asserts that unlike the Panda Contract, the
2 Powerex Contract is a non-dispatchable “take or pay” contract which means that all of the costs of the
3 contract are fixed charges which should be excluded from the PRM PFFAC under the rate case
4 methodology.¹⁴ SSVEC asserts that whether the Powerex Contract should be included or excluded
5 from the PRM adjustor is an issue of material fact.

6 AEPCO argues that SSVEC is mistaken in a claim that the Rate Case Decision established
7 separate rate classes for ARMS and PRMs for purchased power and fuel costs.¹⁵ AEPCO asserts that
8 its Motion established that the Rate Case Decision did not require AEPCO generally to allocate fuel
9 and purchased power costs to each member class, and did not establish separate rate classes for
10 ARMs and PRMs. Rather, AEPCO claims, the rate case required all fuel and purchased costs, except
11 for the single narrow exclusion of the capacity and wheeling charges for the summer peaking Panda
12 Contract, be assigned to, and recovered from, all members through the FPPCA. AEPCO agrees the
13 PRMs are not participating in the Powerex Contract, but states the Powerex Contract has an energy
14 charge, but no capacity charge, and thus, according to the terms of the Rate Case Decision the
15 Powerex Contract energy charges are assigned to all members.¹⁶ AEPCO asserts that SSVEC’s
16 beliefs that the Powerex Contract energy charges “are more akin to a capacity charge” do not create a
17 genuine issue of material fact that would prevent granting AEPCO’s Motion.

18 AEPCO argues that SSVEC does not raise any question of material fact that AEPCO is
19 charging an excessive or discriminatory charge because according to AEPCO, SSVEC concedes that
20 AEPCO is handling the costs associated with the Powerex Contract exactly as the Rate Case Decision
21 requires as: 1) SSVEC agrees that the energy charges of summer peaking agreements, like Powerex,
22 in which the PRMs do not participate, are properly allocated to the PRMs¹⁷; 2) SSVEC agrees that
23 the Griffith, Southpoint and Powerex Contracts replaced the Panda Contract and that AEPCO is
24 correctly handling costs associated with the Griffith and Southpoint agreements; 3) SSVEC agrees
25 that the Powerex Contract does not have a capacity charge; and 4) SSVEC agrees that the Powerex

26
27 ¹⁴ Transcript at 31-32.

¹⁵ AEPCO Reply at p 1.

¹⁶ AEPCO Reply at p 3.

¹⁷ AEPCO Reply at p 4.

1 Contract energy charges are being assigned to both the ARMs and PRMs as required by the Rate
2 Case Decision.

3 AEPCO argues that the “fatal” flow of SSVEC’s argument that the Powerex Contract’s
4 energy charges are more akin to a capacity charge is that such treatment is directly contrary to what
5 the Rate Case Decision specified for energy charge assignment. AEPCO asserts the issue is not what
6 SSVEC thinks the energy charges are like, but what the Rate Case Decision requires. AEPCO states
7 that both SSVEC and Mohave could have discussed alternate contract types, or different ways of
8 treating costs, in the rate case, but did not.

9 AEPCO asserts that SSVECs attempt to turn the Powerex Contract into something it is not, is
10 a direct collateral attack on Decision No. 68071, and as such prohibited by A.R.S § 40-252. AEPCO
11 also argues SSVEC’s complaint violates the principles of res judicata and estoppel, as the issue of
12 how to treat the charges of the summer peaking contracts was discussed and specifically addressed in
13 the Rate Case Decision.

14 SSVEC acknowledges that the only rate excluded for the PRMs is the capacity and wheeling
15 charges, however if AEPCO is misapplying the rates by including capacity and fixed costs, then it is
16 an issue that is properly before the Commission. SSVEC disagrees that the Commission has to re-
17 open the Rate Case Decision in order to modify the FPPCA. SSVEC argues the Commission can
18 modify the rate if there is a misapplication of the rate, as part of the efficacy filing procedure.

19 Resolution

20 Summary judgment is appropriate where there are no genuine questions of material fact and
21 the moving party is entitled to judgment as a matter of law. A.A.C. R14-3-101(A); Rule 56, Ariz. R.
22 Civ. P. A motion for summary judgment may only be granted “if the facts produced in support of
23 the claim or defense have so little probative value, given the quantum of evidence required, that
24 reasonable people could not agree with the conclusion advanced by the proponent of the claim or
25 defense.” *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). “In applying the
26 standard of review, “[t]he evidence of the non-movant is to be believed, and all justifiable inferences
27 are to be drawn in his favor.” Decision No. 68592 at ¶ 51 (*Chantel v. Mohave Electric Coop*,
28 Docket No. E-01750A-04-0929, quoting *Orme*, 166 Ariz. at 3-09-10, 802 P.3d at 1008-09.).

1 This is a complaint proceeding, and in the underlying matter SSVEC has the burden to show
2 that AEPCO is violating the Rate Case Decision by applying the approved FPPCA improperly.
3 Under the relevant standard of review, in evaluating the Motion, the Commission must assume that
4 the facts SSVEC has alleged are true. If a reasonable person could agree with SSVEC that the
5 Powerex Contract energy charges should not be assigned to the PRMs because the charges under that
6 contract are capacity charges that should be excluded pursuant to the FPPCA methodology approved
7 in the Rate Case Decision, then the Commission should not grant AEPCO's Motion for Summary
8 Judgment.

9 There is no dispute that Decision No. 68071 provides that energy charges from summer
10 peaking contracts are to be assigned to both ARMs and PRMs; that the Powerex Contract does not
11 explicitly name a capacity charge; that AEPCO is allocating the energy costs of the Powerex Contract
12 to SSVEC and Mohave. AEPCO acknowledges that the PRMs do not have an allocated capacity
13 percentage in the Southpoint, Griffith or Powerex Contracts, and thus, does not participate in them.¹⁸
14 SSVEC argues that because the Powerex contract is a take or pay contract, its costs are akin to the
15 capacity charge of the Panda Contract. The Panda Contract was dispatchable, and AEPCO only paid
16 for the energy it needed.¹⁹

17 The Rate Case Decision discusses the FPPCA in Findings of Fact Nos. 34-37. Relevant to the
18 dispute the Commission found as follows in Findings of Fact Nos. 36 and 37 (emphasis added):

19 36. AEPCO's fuel and purchased power expenses amounted to almost one-half
20 of AEPCO's total expenses for the adjusted 2003 test year. AEPCO asserted that
21 the volatility was a primary reason AEPCO suffered a margin loss in the Test
22 Year. We recognize that the FPPCA is intended to allow timely recovery of
23 increases in fuel and purchased power costs, or to allow the refund of any
24 decreases, without the time and expense of a full rate proceeding. We also note
25 that no party objected to Staff's recommendations for the FPPCA. However, we
26 are concerned with the possibility that AEPCO's recovery of fuel and purchased
27 power costs under Staff's proposed FPPCA may nonetheless be outpaced by the
28 rate of future fuel and purchased power cost increases. Therefore, we will
approve the FPPCA on the terms agreed to by the parties, but in so doing, we will
attach an additional condition allowing AEPCO to request the Commission to
review the efficacy of the FPPCA when AEPCO submits any semi-annual FPPCA
report as required elsewhere in this Decision.

¹⁸ AEPCO Response to SSVEC Date Request 2.8, attached to SSVEC Response as Exhibit E.

¹⁹ Transcript at 31; *see also* affidavit of David Brien at ¶¶ 6-15.

1 37. Staff agrees with AEPSCO that a separate base cost of power be established
 2 for full-requirements and partial-requirements customers. Staff recommends that
 3 the base cost of power for full-requirements customers should be set at \$0.01687
 4 per kWh and that the base cost of power for partial-requirements customers
 5 should be set at \$0.01603 per kWh. AEPSCO agreed with Staff's recommended
 6 rates.

7 The Decision itself does not specify what fuel costs will be included in the FPPCA, but adopts
 8 a base cost of power for the PRMs and ARMs that excludes the capacity and wheeling charges
 9 associated with the Panda Contract. The Decision adopts the agreement of the parties concerning the
 10 FPPCA. We must look at the testimony in the rate case proceeding to determine the agreement of the
 11 parties. The exclusion of the Panda Contract capacity charges was based on the testimony of Mr.
 12 Pierson, for AECPO:

13 Mr. Pierson testified:

14 There are certain purchased demand costs and wheeling costs that are
 15 applicable to our all-requirements members, but are not applicable to our
 16 partial-requirements member Mohave. These costs represent purchased
 17 capacity charges and associated wheeling expenses for the Panda Gila
 18 River purchased power agreement that Mohave elected not to participate
 19 in. These costs have been excluded from the calculation of Mohave's
 20 fixed charge and operations and maintenance rate and should be excluded
 21 as well from Mohave's base cost of power.²⁰

22 Mr. Pierson filed his rebuttal testimony after Staff filed its direct testimony wherein Staff set
 23 forth recommendations to the proposed FPPCA. Mr. Pierson did not testify that all capacity charges
 24 in contracts in which the PRMs do not participate should be excluded, but that the capacity charges
 25 and associated wheeling charges for the Panda Contract should be excluded because Mohave (the
 26 only PRM at the time) did not participate in that contract. For its part, Staff appears to have been
 27 concerned that the FPPCA contain both energy and demand charges. In her Direct Testimony in the
 28 rate case, Ms. Keene testified as follows:

 Demand charges for purchased power should be included so that the
 method of cost recovery does not influence decision making when
 negotiating contracts. Some contracts in the marketplace are structured
 with only a per kWh energy charge that would include capacity costs.
 Other contracts are structured so that capacity costs are recovered through
 a per kW demand charge. AECPO should negotiate these contracts so that

²⁰ Rebuttal testimony of Gary Pierson on behalf of AEPSCO filed March 16, 2005 (attached to SSVEC COSF as Exhibit 1).

1 they obtain the best deal for ratepayers. If only energy charges went into
2 the adjustor, the method of cost recovery could influence the resulting
3 structure of the contracts.²¹

4 Ms Keene's testimony demonstrates that the parties were aware that the form of the contracts can
5 have an impact on the adjustor. It also suggests that any agreement to exclude demand or capacity
6 charges was narrow. It is arguable, however, and not unreasonable, that in agreeing to exclude the
7 capacity and wheeling charges associated with the Panda Contract, the parties, and Commission,
8 were concerned about not allocating to PRMs the costs of power contracts from which the PRMs did
9 not receive benefit.

10 SSVEC, as the party with the burden of proof in the underlying matter, has demonstrated by
11 its response to the Motion, that there is an issue concerning the intent of the Commission when it
12 adopted separate FPPCAs base rates for the PRMs and ARMS, as well as an issue concerning
13 whether the PRMs receive a benefit from the Powerex Contract. SSVEC should have an opportunity
14 to prove its claim in a hearing.

15 SSVEC is not disputing the structure of the FPPCA that was approved in the Rate Case
16 Decision, but rather, how AEPCO has applied the FPPCA that was approved. SSVEC's claim is not
17 barred by res judicata nor the provisions of A.R.S. § 40-252. SSVEC became a PRM in 2008, and
18 pursued its claim in a timely fashion. SSVEC's claim is not barred by estoppel.

19 IT IS THEREFORE ORDERED that that AEPCO's Motion for Summary Judgment is
20 denied.

21 IT IS FURTHER ORDERED that a **Procedural Conference** for the purpose of
22 establishing a procedural schedule and hearing date in this matter shall commence on **January 27,**
23 **2009, at 10:00 a.m.,** or as soon thereafter as is practical, at the Commission's offices, Room 222, 400
24 W. Congress Street, Tucson, Arizona.²²

25 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
26 Communications) continues to apply to this proceeding as the matter is now set for public hearing.

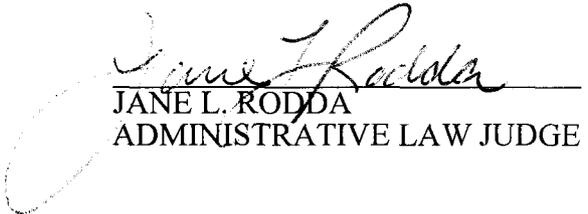
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28 ²¹ Direct Testimony of Barbara Keene filed February 23, 2005, at 3, attached as Exhibit A to AEPCO's SOF.

²² If a party wishes to participate telephonically, please contact the Hearing Division at (602) 542-4250.

1 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the
2 Rules of the Arizona Supreme Court and A.R.S. §40-243 with respect to practice of law and
3 admission *pro hac vice*.

4 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
5 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

6 DATED this 9th day of January, 2009.


JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

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8
9
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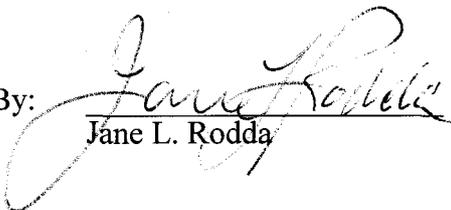
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