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2009 MAR -2 P 4: 20

AZ CORP COMMISSION
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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) **APPLICATION FOR**
RATE OF RETURN ON THE FAIR VALUE OF) **EXTENSION OF WAIVERS**
ITS OPERATIONS THROUGHOUT THE STATE)
OF ARIZONA.)

Tucson Electric Power Company (“TEP” or the “Company”), through undersigned counsel, hereby submits its Application requesting the extension of certain waivers that were provided to TEP under the Amended Settlement Agreement approved by Decision No. 62103 (November 30, 1999) (the “1999 Settlement Agreement”). TEP submits this Application pursuant Decision No. 70628 (December 1, 2008).

I. OVERVIEW.

The 1999 Settlement Agreement provided certain waivers for TEP of the Affiliated Interest Rules, the Integrated Resource Planning Rules, certain conditions of the TEP Holding Company Order (Decision No. 60480 (November 25, 1997)) and other Commission decisions. Many of the waivers were related to the Commission’s Retail Electric Competition Rules (“Rules”) and were contingent upon TEP’s divestiture of its generation assets – an event that did not occur. However, several of the waivers became effective upon Commission approval of the 1999 Settlement Agreement in Decision No. 62103 and have been in effect since 1999. The Tucson Electric Power

1 Company Rate Settlement Agreement, approved by Decision No. 70628 ("2008 Rate Settlement
2 Agreement"), provides that TEP should file this Application with the Commission to determine
3 which waivers should be extended.

4 Accordingly, as set forth below in more detail, TEP requests the continuation of the
5 following waivers set forth in the 1999 Settlement Agreement:

- 6 1. Section 12.1(e): Decision No. 57586 – New Director Affiliate
7 Transaction Report.
- 8 2. Section 12.1(f): Decision No. 58316 – Investment Subsidiary
9 Liquidation Report and Purchase Agreement Summary.
- 10 3. Section 12.1(n): Decision No. 59594 – Cost Containment Report.
- 11 4. Portions of Section 12.1(c): Decision No. 60480 – Conditions 2,
12 13 and 17 in full and Conditions 12, 26 and 27 in part.
- 13 5. Section 12.1(b): Portions of the Public Utility Holding Companies
14 and Affiliated Interest Rules, A.A.C. R14-2-801, *et seq.*

15 Finally, with the resolution of these requested waiver extensions, all issues and dockets
16 associated with the 1999 Settlement Agreement will have been resolved. TEP has effectively
17 withdrawn its originally proposed market and hybrid rate methodologies and is basing its rates
18 upon a cost-of-service methodology, as set forth in Decision No. 70628.

19 **II. REQUEST FOR CONTINUATION OF CERTAIN WAIVERS.**

20 **A. Decision No. 57586 (October 11, 1991) – New Director Affiliate Transaction 21 Report.**

22 Decision No. 57586 is the decision issued in TEP's 1990 rate case following the filing of
23 bankruptcy petitions against TEP. Under this Decision, TEP was required to file a report for each
24 new TEP Board member detailing transactions and relationships the Board member had with TEP
25 for a ten-year period. Since Decision No. 57586 was issued, the Commission's Public Utility
26 Holding Companies and Affiliated Interest rules have gone into effect. The Commission approved
27 a holding company for TEP, and TEP's parent company, UniSource Energy Corporation
("UniSource Energy"), is a publicly traded company subject to numerous federal laws and
regulations, including Sarbanes-Oxley. Because this reporting requirement is unnecessary and
burdensome, TEP requests that this waiver be extended.

1 Section 12.1(c) granted full or partial waivers to several of those conditions. TEP requests
2 that the following waivers set forth in Section 12.1(c) of the 1999 Settlement Agreement be
3 continued:

4 (i) "Conditions 2, 13 and 17 are waived."

5 (ii) "Condition 12 is waived for sister companies. However, TEP will
6 continue to file quarterly financial statements, while UniSource Energy will
7 continue to file annual financial statements with the Commission. Securities and
8 Exchange Commission ("SEC") filings will also continue to be made with the
9 Commission."

10 (iii) "Condition 26 will remain in effect but is limited to TEP employees."

11 (iv) "Condition 27 is waived for the annual filing requirement. This
12 waiver does not preclude the Commission from requiring the filing of
13 information that would have been filed annually for purposes the Commission
14 deems necessary, including, but not limited to, rate setting."

15 These waivers may need to be modified slightly to reflect the acquisition of the Citizens Utilities
16 gas and electric operations by UniSource Energy and the creation of UNS Gas, Inc. and UNS
17 Electric, Inc. That acquisition was approved in Decision No. 66028 (July 3, 2003), which occurred
18 after the approval of the waivers set forth in the 1999 Settlement Agreement.

19 **1. Condition 2.**

20 Condition 2 of the TEP Holding Company Order provides:

21
22 2) The Holding Company, TEP and sister companies will strive to charge the
23 lower of fully allocated cost or market price whenever goods, products or service
24 are sold/provided by the Holding Company or sister companies to TEP and the
25 higher of fully allocated cost or market price whenever TEP sells/provides non-tariffed
26 goods, products or services to the Holding company or sister companies. The
27 Holding Company, TEP and sister companies recognize that determining a market
price for all goods, products and services being transferred in and among the
Holding Company, TEP and sister companies could be a complex or difficult task
for some items. Nonetheless, the holding Company, TEP and sister companies
agree to attempt to determine a market price for any good, product or service
being provided by TEP to the Holding Company or sister companies as well as for
any good, product or service provided by Holding Company or sister companies to
TEP whenever the annual, fully allocated cost for given good, product or service

1 being transferred exceeds \$500,000 annually. Furthermore, TEP will retain such
2 market research information (regardless of whether it is every utilized) until such
3 time as the Utilities Division Staff or its representative have reviewed such
4 information.

5 This condition was waived in full and TEP requests that the waiver continue for a number of
6 reasons: (i) since the Holding Company Order was issued, TEP has two new sister companies,
7 UNS Gas, Inc. and UNS Electric, Inc.; this Condition could disadvantage those companies; (ii) the
8 Commission always maintains the ability to order a prudence review; and (iii) the Condition could
9 apply to renewable projects. Moreover, the waiver of this Condition has been in place for ten years
10 with no ill effects. Accordingly, TEP requests that this waiver be extended.

11 **2. Condition 12.**

12 Condition 12 of the TEP Holding Company Order provides:

13 12) The Commission will be furnished with the Holding Company's quarterly
14 and annual financial statements, which will consolidate the financial statements of
15 the Holding Company, TEP and all sister companies, and any other SEC filings,
16 and individual quarterly and annual financial statements for TEP and each sister
17 company, individually.

18 This condition was waived for sister companies, but TEP continued to file quarterly financial
19 statements, while UniSource Energy continued to file annual financial statements with the
20 Commission. Moreover, SEC filings continued to be made with the Commission. TEP requests
21 that this partial waiver remain in effect.

22 **3. Condition 13.**

23 Condition 13 of the TEP Holding Company Order provides:

24 13) The Commission will be furnished annually, a report identifying any non-
25 clerical TEP personnel moved to the holding Company or its subsidiaries on a
26 full-time basis.

27 This condition was waived in full. Requiring a report of this type is unnecessary and burdensome.
Moreover, the waiver of this Condition has been in place for ten years with no ill effects.
Accordingly, TEP requests that this waiver be extended.

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4. Condition 17.

Condition 17 of the TEP Holding Company Order provides:

17) The capitalization of the sister companies (debt and equity) may not exceed 30 percent of TEP's capitalization unless otherwise approved by the Commission.

This condition was waived in full. Subsequent to the initial adoption of this condition, UNS Gas and UNS Electric were acquired by TEP's parent company, UniSource Energy, and the condition could adversely affect timely capitalization of those companies. Moreover, with respect to non-utility sister companies, the waiver of this Condition has been in place for ten years with no ill effects. Accordingly, TEP requests that this waiver be extended.

5. Condition 26.

Condition 26 of the TEP Holding Company Order provides:

26. All time TEP and Holding Company employees spend on mergers, acquisitions ("M&A") and new business development will be tracked for below-the-line recording and/or assignment to a newly acquired or newly developed business. However, if the new business development of M&A activity is primarily and substantially for the benefit of TEP, then it be permitted to record the item above-the-line, subject to disallowance in a future base rate proceeding.

The previous waiver limited this condition to TEP employees. The specific filing required in this Condition is unnecessary and burdensome. Moreover, the waiver of this Condition has been in place for ten years, including through the recent rate case, with no ill effects. Accordingly, TEP requests that this partial waiver be extended.

6. Condition 27.

Condition 27 of the TEP Holding Company Order provides:

27) The Holding Company, TEP and/or sister companies will provide the following documents to the Utilities Division Staff on an annual basis:

- All royalty agreements, licensing agreement or other agreements entered into between TEP/parent company and any affiliate for the purpose of compensating for the use of intangible assets, including trademarks, trade names, software systems, etc.
- All operating and service agreements entered into between TEP, the Holding Company and any sister company.

- All new, revised and updated strategic business plans for the Holding Company, TEP and each sister company.
- Description of any and all joint marketing/promotional campaigns between TEP, the Holding Company and any sister company.
- Examples of all joint marketing work products (i.e., newspaper ads, magazine ads, TV and radio ad transcripts, etc.).
- Narrative description of all joint or common services shared between TEP, the Holding Company and all sister companies.
- All logos, trademarks and trade names registered by the Holding Company, TEP and sister companies.
- Narrative description of all products and services offered by TEP and each sister company.

The annual filing requirement in this condition was waived, although the Commission could request such information at any time. This filing requirement is unnecessary and burdensome at this time and, in light of fiscal constraints, does not appear to be the most efficient use of Commission, or Company, resources. Moreover, the waiver of this Condition has been in place for ten years with no ill effects. Accordingly, TEP requests that this waiver be extended.

E. Public Utility Holding Companies and Affiliated Interest Rules (A.A.C. R14-2-801, *et seq.*)

Section 12.1(b) of the 1999 Settlement Agreement granted some partial waivers of the Affiliated Interest Rules. The waivers slightly modified the requirements of certain sections of the Rules, but did not wholly exempt TEP from any provision of the Rules. In particular, the Settlement Agreement provided that:

- R14-2-803 is limited to organizations or reorganization of UniSource Energy when the organization or reorganization changes the position of TEP (the UDC) in the holding company organization structure.
- R14-2-804.A, the agreement by affiliates to allow Commission access to their books and records, is limited to investigations which are performed during the course of a rate case.
- R14-2-805.A is limited to require annual filings by only TEP (the UDC), unless the diversification plans or efforts of affiliates are likely to adversely affect the UDC's financial integrity.

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- R14-2-805.A.2 is limited to a broad description of the nature of the business of each affiliate.
- R14-2-805.A.6 is limited to disclosure of allocations applicable to the UDC. The Commission’s jurisdiction to require disclosure of the bases of other allocations should be reserved for rate cases.
- R14-2-805.A.9, 10 and 11 is limited to production of such documents in rate cases and no annual filings are necessary.

TEP is not requesting the extension of the partial waivers for R14-2-803 and R14-2-804.A. However, the partial waiver relating to slight modifications to R14-2-805, as set forth above, relieved TEP of burdensome accounting and filing requirements and is still appropriate. The modification of Rule 805 has been in place for ten years, including through the recent rate case, with no ill effects. Accordingly, TEP requests that waivers for R14-2-805.A., R14-2-805A.2., R14-2-805A.6., and R14-2-805A.9, 10, and 11, as set forth above, be extended.

III. RELIEF REQUESTED.

TEP requests that the Commission continue certain of the waivers granted in the 1999 Settlement Agreement as set forth in this Application.

RESPECTFULLY SUBMITTED this 2nd day of March 2009.

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Original and 15 copies of the foregoing
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