



0000102291

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

Arizona Corporation Commission

DOCKETED

SEP - 3 2009

DOCKETED BY ne

IN THE MATTER OF THE APPLICATION OF 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.

DOCKET NO. E-01933A-07-0402

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

DOCKET NO. E-01933A-05-0650

DECISION NO. 71256

ORDER

Open Meeting
August 25 and 26, 2009
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. In Decision No. 70628 (December 1, 2008), the Commission approved a Settlement Agreement ("2008 Settlement Agreement") entered into by Tucson Electric Power Company ("TEP" or the "Company"), the Commission's Utilities Division ("Staff") and various other parties, to resolve a TEP rate case.

2. The 2008 Settlement Agreement provides at paragraph 14.9 as follows:

The Signatories recognize that certain waivers were provided to TEP under the 1999 Settlement Agreement. As these waivers were previously evaluated in the context of the then-contemplated transition to

1 competition, they may not continue to be in the public interest. The
2 Signatories agree that TEP shall file an application with the Commission
3 addressing all of these waivers within ninety (90) days of the issuance of a
4 Commission order approving this Agreement. In that proceeding, the
5 Commission shall evaluate whether these waivers remain appropriate.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. On March 2, 2009, TEP filed an Application for Extension of Waivers.

4. On May 20, 2009, Staff filed its Staff Report recommending approval of some of the requested waiver extensions and against others.

5. TEP did not file a Response or Objection to the Staff Report.

6. TEP provides electric utility service to approximately 400,000 customers in Pima and Cochise Counties in Arizona.

7. Unisource Energy Corporation ("UniSource") is the parent company of TEP. TEP has three subsidiaries, Escavada Company ("Escavada"), San Carlos Resources, Inc. ("San Carlos"), and Tucsonel, Inc. ("Tucsonel"). Escavada is in the business of owning non-utility real estate in Arizona related to UniSource's business. San Carlos acquires, constructs, holds and maintains electric power production facilities. Tucsonel holds an undivided ownership interest in Springerville Generation Station. For the year ended 2008, TEP reported revenues of \$1.1 billion, while Escavada reported revenues of \$94,000. Neither San Carlos nor Tucsonel reported revenues for the year.

8. In Decision No. 56844 (March 14, 1990), the Commission adopted rules to oversee the affiliated interests of public service corporations, A.A.C. R14-2-801 through 806, (referred to as the "Public Utility Holding Company and Affiliated Interest Rules," "Holding Company Rules", "Affiliated Interest Rules" or the "Rules").¹

9. On April 26, 1990, in Decision No. 56890, the Commission granted a stay of Decision No. 56844 because the Commission anticipated litigation over the Rules. In Decision No. 58063 (November 3, 1992), the Commission lifted the stay for A.A.C. R14-2-801, -802, -805 and -806. The

¹ The Affiliated Interest Rules were inspired by the circumstances of TEP and Arizona Public Service ("APS"). In the late 1980's and early 1990's TEP suffered a great degradation in its financial health after the spin-off of a generator, imprudent fuel contracts and losses from its investment subsidiaries. TEP was forced into an involuntary bankruptcy under Chapter 11, but ultimately reached an agreement with creditors and shareholders and instituted a restructuring plan which resulted in a capital structure of over 100 percent debt. About the same time, Pinnacle West Capital Corporation ("Pinnacle West"), parent of APS, suffered from real estate losses and losses from its investment in Merabank, a failed thrift company. Pinnacle West used the common stock of APS to secure some of its debt in order to extricate itself from its financial problems.

1 Commission partially lifted the stay for A.A.C. R14-2-803, with the effect of limiting the requirement
2 to file a notice of intent for certain transactions only to amounts in excess of “exempt amounts.” For
3 example, according to the Staff Report, TEP with total utility assets of \$1.5 billion in its last rate
4 case, has the ability to increase or decrease its financial interest in an affiliate by \$25 million per year
5 without Commission approval.

6 10. During the mid- and late- 1990’s, the Commission and Arizona’s electric utilities took
7 steps toward instituting retail electric competition. In these efforts, TEP planned to divest its
8 generation assets. Some of the Holding Company Rules would have limited TEP’s flexibility in this
9 undertaking, and as a result, the Commission issued a series of orders over several years that partially
10 approved or denied TEP’s applications for waivers of the Holding Company Rules.

11 11. In Decision No. 62103 (November 30, 1999), the Commission approved the 1999
12 Settlement Agreement, which resolved issues relating to TEP’s rate case and the transition to electric
13 competition. The 1999 Settlement Agreement modified some of TEP’s previous waivers of the
14 Holding Company Rules and “waived” compliance with some previous Commission Decisions.
15 Many of the waivers in the 1999 Settlement Agreement were related to the Commission’s Retail
16 Electric Competition Rules and were contingent upon TEP’s divestiture of its generation assets—an
17 event that did not occur. Others became effective upon the Commission’s approval of the 1999
18 Settlement Agreement.

19 12. In Decision No. 66028 (July 3, 2003) the Commission approved UniSource’s
20 acquisition of Citizens Utilities’ gas and electric operations, which resulted in UniSource becoming
21 the parent of UNS Gas, Inc. and UNS Electric, Inc, which provide gas and electric utility service,
22 respectively, in Mohave and Santa Cruz Counties.

23 13. TEP’s current application is in response to the 2008 Settlement Agreement’s
24 requirement to address only the waivers granted through the 1999 Settlement Agreement. TEP
25 requests that the Commission approve continuation of most of the waivers addressed in the 1999
26 Settlement Agreement, but that the partial waivers of A.A.C. R14-2-803 and R14-2-804.A not be
27 continued. The Company argues that if the waivers are not extended, the resultant reporting
28 requirements would be burdensome and unnecessary. Moreover, TEP argues that the waivers have

1 been in effect for over ten years with no ill effects.

2 14. As discussed in more detail below, TEP requests the continuation of the following
3 waivers contained in the 1999 Settlement Agreement:

4 (a) Section 12.1(3): New Director Affiliate Transaction Report required by Decision No.
5 57586 (October 11, 1991);

6 (b) Section 12.1(f): Investment Subsidiary Liquidation Report and Purchase Agreement
7 Summary required in Decision No. 58316 (June 9, 1993);

8 (c) Section 12.1(n): Cost Containment Report required by Decision No. 59594 (March 29,
9 1996);

10 (d) Portions of Section 12.1(c): Conditions 2, 13 and 17 in full, and Conditions 12, 26 and 27
11 in part, of Decision No. 60480 (November 25, 1997); and

12 (e) Section 12.1(b): Portions of the Public Utility Holding Companies and Affiliated Interest
13 Rules.

14 Decision No. 57586 – New Director Affiliate Transactions Report

15 15. Decision No. 57586 was issued in the midst of TEP's financial crisis. It resolved the
16 pending rate case by approving the 1991 Settlement Agreement, but also added language which
17 addressed the Commission's concerns about consulting contracts and contracts for goods and services
18 between TEP and current and former members of the TEP Board of Directors and their family
19 members, and between TEP and current and former officers and managers of TEP. This Decision
20 required TEP to submit a report at the appointment of each new member to the TEP Board of
21 Directors which would disclose the new member's current and prior associations with TEP, its
22 affiliates and subsidiaries for the past ten years.

23 16. The 1999 Settlement Agreement granted a waiver of this requirement, and TEP
24 requests that the waiver be continued.

25 17. TEP states that since this requirement was implemented, the Affiliated Interest Rules
26 have gone into effect, the Commission approved a holding company for TEP, and TEP's parent
27 company, UniSource, a publically traded company, is subject to numerous federal laws and
28 regulations, including Sarbanes-Oxley. TEP argues the reporting requirement is unnecessary and

1 burdensome.

2 18. Staff states that it is not aware of any improprieties or alleged improprieties regarding
3 TEP's or UniSource's Board of Directors contracts with the UniSource subsidiaries. Staff is not
4 aware of any similar requirement imposed on other Arizona utilities. Staff notes that TEP has had at
5 least two rate cases since this requirement was put in place. Staff recommends that the waiver of this
6 requirement be continued.

7 19. Since the imposition of this New Director Transaction Report in Decision No. 57586,
8 there have been no allegations or improprieties concerning TEP's or UniSource's Board of Directors
9 contracts with affiliates. With the implementation of the Affiliated Interest Rules and the creation of
10 UniSource, a publicly traded company, there are other safeguards to prevent the abuses that led to the
11 imposition of the reporting requirement. TEP's request and Staff's recommendation to continue the
12 waiver of this reporting requirement is reasonable and should be granted.

13 Decision No. 58316 - Liquidation Reports

14 20. Decision No. 58316 required reporting on the liquidation of TEP's former investment
15 in two subsidiaries –Tucson Resources, Inc. and Sierrita Resources, Inc.

16 21. TEP states that because these entities have been liquidated, TEP should not be
17 required to file anything further on those liquidations.

18 22. The 1999 Settlement Agreement waived the reporting requirements because the
19 liquidations had been accomplished and the reporting requirement was irrelevant.

20 23. Staff agrees with TEP's request to extend the waiver.

21 24. We concur. The need for the liquidation report is no longer relevant and the waiver
22 should continue.

23 Decision No. 59594 – Cost Containment Reports

24 25. Decision No. 59594 approved the 1995 Settlement Agreement in a TEP rate case. The
25 1995 Settlement Agreement contained a moratorium on rate increases until 2000. The focus of the
26 1995 rate case was cost containment, and the Decision required TEP to “provide Staff with an annual
27 report providing a description and quantification of the effects of TEP's ongoing cost containment
28 efforts” and to file such report no later than April 15th of each year.

1 26. TEP states that there have been many intervening events since Decision No. 59594
2 was issued. The most recent was TEP's 2008 Settlement Agreement which contained a four-year
3 moratorium on rate increases. TEP argues that the Commission has had opportunity to examine
4 TEP's operational expenses, and that the record shows that TEP has been successful containing costs
5 and increasing its equity. TEP asserts as well, that the current moratorium gives ample incentive for
6 it to keep expenses as low as possible. TEP notes that the 2008 Settlement Agreement did not include
7 a cost containment reporting requirement. TEP states that re-instituting the Cost Containment Report
8 from 1996 is unnecessary and burdensome, and thus, the waiver of this reporting obligation should be
9 extended.

10 27. Staff states that the cost containment reporting requirement is contained within a
11 section of the 1995 Settlement Agreement entitled "Moratorium Period," and that this section also
12 discusses the possibility of rate case settlements and mergers during the moratorium period. Staff
13 states that it could be deduced that the cost containment reports may have only been required during
14 the moratorium period to keep the Commission informed of TEP's efforts to contain costs between
15 rate cases.

16 28. Staff believes that because a full TEP rate case has been conducted since the initial
17 requirement, and the Commission has had the opportunity to determine which of TEP's costs were
18 unreasonable, the waiver of the 1995 requirement to file cost containment reports granted in the 1999
19 Settlement Agreement should be continued.

20 29. However, we believe that the fact that TEP is in a stay out period for new rates may
21 argue in favor of continuation of the yearly Cost Containment Reports, as they offer Staff, the
22 Commission and the public a window onto the Company's cost containment efforts during a time
23 when the Company's expenditures would otherwise remain out of view. Moreover, TEP will be able
24 to file for another rate case in two years, and it will be important for the Company to keep its costs in
25 line during the years leading up to its next rate case, in order to mitigate the need for higher rates.
26 We believe shining a light on the Company's cost containment efforts will be an additional
27 inducement for the Company's management to keep a proper rein on unnecessary expenditures, and
28 so we will not extend this waiver.

1 Decision No. 60480 – Holding Company Order Conditions

2 30. Decision No. 60480 approved TEP's application to form a public holding company—
3 namely UniSource. The Decision imposed 28 conditions on TEP, UniSource and its sister
4 companies. These conditions included filing requirements (in addition to those required by the
5 Holding Company Rules), and capital structure limitations and addressed cost allocation procedures,
6 marketing standards, and other issues. Of the 28 conditions imposed by Decision No. 60480,
7 Condition Nos. 2, 12, 13, 17, 26 and 27 were waived, or partially waived, by Section 12.1(c) of the
8 1999 Settlement Agreement.

9 31. TEP states that the waivers may need to be modified slightly to reflect the acquisition
10 of the Citizens Utilities' gas and electric operations by UniSource and the creation of UNS Gas, Inc.
11 and UNS Electric, Inc. which occurred after the approval of the waivers granted in the 1999
12 Settlement Agreement.

13 Condition 2 – allocation of costs

14 32. Condition 2, waived in full by the 1999 Settlement Agreement, addressed potential
15 subsidies among and between TEP, its subsidiaries and affiliates. This condition requires TEP to
16 charge the higher of fully allocated cost or market price whenever it sells services or goods to
17 affiliates and required affiliates to charge TEP the lower of fully allocated cost or market price.

18 33. TEP asserts that the waiver of Condition 2 should be continued because (1) it could
19 disadvantage UNS Gas, Inc. and UNS Electric, Inc.; (2) the Commission always maintains the ability
20 to order a prudence review; (3) the condition could apply to renewable projects; and (4) the waiver
21 has been in effect for over ten years with no ill effects.

22 34. Staff states that how utilities charge affiliates for services provided to affiliates is an
23 important ratemaking issue. Staff believes there are some economic advantages to sharing services
24 among sister utilities, and if allocation procedures are too complicated or expensive for a utility to
25 accomplish, it may be motivated to not share services even where economies of scale can be
26 accomplished. Staff states that it thoroughly examines allocations of costs and expenses among the
27 UniSource utilities during their rate cases. Staff agrees that placing Condition 2 back into effect
28 would cost TEP considerable time and money and might result in the utilities' loss of mutually

1 beneficial economies of scale. Staff recommends the continued waiver of the condition.

2 35. Cost allocations among and between UniSource and its subsidiaries are thoroughly
3 examined during the utilities' rate cases. With this safeguard against potentially detrimental
4 subsidies, we agree that the waiver of Condition 2 remains in the public interest. Re-imposing this
5 requirement might disadvantage ratepayers of the various utilities.

6 Condition 12 – quarterly financial reports

7 36. Condition 12 of Decision No. 60480 required the filing of quarterly consolidated and
8 quarterly individual financial statements for TEP and each “sister” company. The 1999 Settlement
9 Agreement waived the filings for sister companies but maintained annual filings by UniSource and
10 quarterly filings by TEP. SEC filings continued to be made with the Commission.

11 37. TEP requests that the partial waiver remain in effect.

12 38. Staff states that it is unaware of any similar requirement imposed on a utility, other
13 than TEP, to file quarterly financial statements of affiliates and is unaware of any current
14 circumstances under which this information would be useful. Staff states that it has not experienced
15 any inconvenience or impediment to the receipt of appropriate information from TEP during the time
16 this waiver has been in effect. Staff recommends the waiver be continued.

17 39. The Commission has access to the financial reports it requires to monitor the financial
18 condition of TEP and its affiliates without the requirement of Condition 12. We find the request and
19 Staff's recommendations to be reasonable and that the continued partial waiver of Condition 12 is
20 warranted and in the public interest.

21 Condition 13 - personnel reports

22 40. Condition 13 required TEP to file an annual report which identified any full-time, non-
23 clerical personnel who were moved from TEP to UniSource or any of its subsidiaries during the year.
24 The 1999 Settlement Agreement gave a complete waiver of this condition.

25 41. TEP asserts that requiring a report of this type is unnecessary and burdensome and that
26 the waiver has been in effect for ten years with no ill effect.

27 42. Staff agrees with TEP that the condition would be burdensome and recommends the
28 waiver of the condition be continued.

1 43. We agree that the condition is unnecessary and burdensome and that the waiver should
2 be continued.

3 Condition 17 – limits on affiliate capitalization

4 44. Condition 17 required the total of the debt and equity of TEP's sister companies to not
5 exceed 30 percent of TEP's capitalization unless approved by the Commission. The 1999 Settlement
6 Agreement waived this condition in full.

7 45. Subsequent to the initial adoption of this condition, UniSource acquired UNS Gas, Inc.
8 and UNS Electric, Inc. TEP states that the condition could adversely affect timely capitalization of
9 the sister companies. Additionally, TEP asserts that the waiver has been in effect for ten years
10 without adverse effect.

11 46. Staff states that if the condition were re-imposed, depending on the relative growth
12 rates of the UNS companies and TEP, it might complicate financing of the UNS companies or even
13 impact their ability to raise capital in a timely manner. Staff recommends the waiver of the condition
14 be continued.

15 47. We agree with TEP and Staff. The conditions that led to the imposition of this
16 condition have been ameliorated, and if re-imposed, this condition would add an unnecessary
17 restriction that could be detrimental to the UNS companies and their ratepayers.

18 Condition 26 – cost tracking

19 48. Condition 26 set accounting and tracking requirements for the cost of the time spent
20 by TEP employees on mergers, acquisitions and business development. If the activities were
21 substantially for the benefit of TEP, the costs would be recorded above the line and if not, below the
22 line.

23 49. TEP asserts that the specific filing required by the condition is unnecessary and
24 burdensome, and the waiver has been in place for ten years, including through the recent rate case,
25 with no ill effect.

26 50. Staff states that this condition allows TEP and UniSource to determine which costs are
27 incurred for the utility and its customers and which costs are incurred for the holding company and
28 the investors. Staff states that if the Commission were to disagree during a rate case, those

1 accounting entries would be unwound. Also, Staff states that during merger proceedings Staff
2 reviews these costs. Staff asserts that continuing to waive this condition would avoid duplication
3 and Staff recommends that the waiver of this condition continue.

4 51. These costs are reviewed and any disputes adjudicated during rate cases or other
5 merger proceedings. The continued waiver would allow all parties to be relieved of the burden of
6 unnecessary reports. Thus, we concur with the parties that the waiver of Condition 26 should
7 continue.

8 Condition 27 – marketing practices

9 52. Condition 27 of TEP's Holding Company Order addressed the Commission's
10 concerns about potentially unfair marketing practices by new entities formed during divestiture and
11 diversification by TEP or UniSource, and their use of TEP's name or logo in advertisements. It
12 required the filing of licensing agreements, operating and service agreements, business plans,
13 description of promotional campaigns, joint marketing work products, registered logos and
14 trademarks and a description of all products and services offered by TEP and each sister company.
15 The 1999 Settlement Agreement waived the filing of the information.

16 53. TEP states that although the filing requirement was waived, the Commission can
17 request such information at any time. TEP asserts the requirement is unnecessary and burdensome,
18 and in light of fiscal constraints at this time, does not appear to be the most efficient use of
19 Commission or Company resources. Moreover, TEP states the waiver has been in effect for ten years
20 with no ill effects.

21 54. Staff believes the majority of the documents and information required by this
22 condition would be filed under A.A.C. R14-2-805. To avoid duplication, Staff recommends the
23 waiver continue to be waived.

24 55. We concur with the parties. The Commission has access to the information addressed
25 by the condition either in connection with the requirements of A.A.C. R14-2-805, during a rate case,
26 or by request. We find the waiver of Condition 27 can continue without harm to the public interest.

27 Holding Company Rules

28 56. The 1999 Settlement Agreement also resulted in some partial waivers from the

1 Holding Company Rules.

2 R14-2-803 – Organization of Public Utility Holding Companies

3 57. This Rules requires a utility to file a Notice of Intent when it intends to organize or
4 reorganize a public utility holding company and sets forth the information to be included in the
5 Notice of Intent. The 1999 Settlement Agreement waived the Rule to the extent that TEP would only
6 be required to file the Notice of Intent when TEP was changing its position in the holding company.

7 58. TEP is not requesting the extension of the partial waver of R14-2-803.

8 59. By not requesting the partial waiver to continue, the Rule will once again apply to any
9 reorganization of the holding company, not just reorganizations involving TEP.

10 60. Staff agrees with TEP that the entire Rule should apply.

11 61. We concur. Since this waiver was granted UniSource has acquired UNS Gas, Inc. and
12 UNS Electric, Inc., and it is appropriate that the Rule apply to changes in the holding company, and
13 not only TEP.

14 R14-2-804.A – Commission Review of Transactions

15 62. Rule R14-2-804.A addresses transaction between a utility and its affiliates and
16 confirms Commission access to TEP's affiliates' books and records. The 1999 Settlement Agreement
17 limited that access to investigations performed during a rate case.

18 63. TEP is not requesting the continuation of the waiver and agrees that this Rule should
19 not be waived.

20 64. Staff agrees the limitation should be discontinued.

21 65. We concur. There is no continuing justification to limit the reach of A.A.C. R14-2-
22 804.A to rate cases.

23 R14-2-805.A – Annual Filing Requirement of Diversification Activities and Plans

24 66. Rule R14-2-805 requires extensive annual filing requirements from both the utility and
25 the holding company. Specifically, Rule 805.A provides:

26 On or before April 15th of each calendar year, all public utilities meeting
27 the requirements of R14-2-802 and public utility holding companies will
provide the Commission with a description of diversification plans for the
current calendar year that have been approved by the Broads of Directors.

28 The subparts of Rule 805.A dictate what information should be provided as part of the annual reports.

1 67. The 1999 Settlement Agreement waived the requirement that the holding company
2 (i.e. UniSource) make the annual filing, but still required annual filings by “only TEP (the UDC),
3 unless the diversification plans or efforts of affiliates are likely to adversely affect the UDC’s
4 financial integrity.” The 1999 Settlement Agreement limited Rule 805.A.2 to a broad description of
5 the nature of the business of each affiliate, and limited Rule 805.A.6 to disclosure of allocations
6 applicable to the UDC, and reserved the Commission’s ability to require disclosure of the bases of
7 other allocations to rate cases. The 1999 Settlement Agreement limited Rules R14-2-805A.9, .10,
8 and .11 to the production of the required documentation to rate cases.

9 68. TEP requests the continued waiver for R14-2-805.A, R14-2-805.A.2, R14-2-805.A.6,
10 and R14-2-805A.9, 10, and 11. TEP asserts the partial waiver relieved TEP of burdensome
11 accounting and filing requirements and remains appropriate. TEP states further that the modification
12 to Rule 805 has been in place for ten years without ill effects.

13 69. Staff recommends that the wavier related to R14-2-805.A should not be extended.
14 Staff believes that significant diversification efforts by UniSource could place the utilities at risk.
15 Staff asserts that the Holding Company Rules were created to protect the utilities and their ratepayers
16 from the imprudent actions of their holding company parents. Staff notes that the waiver was
17 received during a time when competition in the electric utility industry was expected and utilities or
18 their holding companies may have needed more flexibility to form or disband without Commission
19 approval. Staff argues that those factors no longer apply. Staff states further that it if the
20 Commission adopts the recommendation to waive Condition 27 as well as this portion of Rule 805, it
21 would defeat one of the purposes of the Holding Company Rules, which is the reporting of
22 transactions and providing contracts between the utility and its affiliates to verify that the affiliates
23 are not treating the utility unfairly.

24 R14-2-805.A.2

25 70. Rule R14-2-805.A.2 requires utilities to provide a “brief description of the business
26 activities conducted by the utility’s affiliates with whom transactions occurred during the prior year
27 including any new activities not previously reported.” The waiver contained in the 1999 Settlement
28 Agreement allows TEP to provide only a “broad description of the nature of the business of each

1 affiliate.”

2 71. Staff states that after its review of TEP’s 2008 annual holding company filing, it
3 believes TEP’s descriptions of the business activities are so broad that the reader cannot develop an
4 understanding of the activities of the affiliates. According to Staff, one affiliate is described as
5 engaging in the “the business of maintaining miscellaneous assets and property.” Staff believes that if
6 the filings are to be useful in determining the risks of affiliate activities, then the waiver of R14-2-
7 805.A.2 should not be extended.

8 R14-2-805.A.6

9 72. R14-2-805.A.6 addresses the allocation processes by which costs are assigned
10 between the holding company and the affiliates and requires a thorough discussion of the allocations
11 of plant, revenues and expenses from the holding company to the affiliates. The waiver makes this
12 Rule applicable only to TEP.

13 73. Staff believes that the allocations from the holding company to the affiliates, including
14 TEP, can be the source of unfair cost sharing. Staff states that one of the purposes of the Rules was
15 to protect the utilities from paying more than their share of common costs. Thus, Staff recommends
16 the Commission not continue the waiver of this Rule.

17 R14-2-8-5.A.9, .10 and .11

18 74. Rules R14-2-805.A.9, .10 and .11 require the annual filing of contracts for goods or
19 services between the utility and its affiliates.² The waiver limits the production of those documents to
20 rate cases. Staff agrees that the waiver is appropriate and should be continued. Staff states these
21 documents are useful during rate cases where they would be reviewed for reasonableness and
22 prudence. Staff states further that re-filing the same contract year after year would not be useful.

23 75. We concur with Staff’s recommendations concerning R14-2-805.A and its subsections.
24 TEP did not object to Staff’s recommendations. Staff’s recommendations strike a balance between
25 eliciting information that will be useful to monitoring the risk of the holding company structure and

26 _____
27 ² Rule 805.A.9 requires providing “contracts or agreements to receive, or provide management, engineering, accounting,
28 legal, financial or other similar services between a public utility and an affiliate.” 805.A.10 requires providing “contracts
or agreements to purchase or sell goods or real property between a public utility and an affiliate.” 805.A.11 requires
providing “contracts or agreements to lease goods or real property between a public utility and an affiliate.”

1 relieving TEP from burdensome filing requirements that do not materially or effectively advance the
2 goals of Commission oversight.

3 **CONCLUSIONS OF LAW**

4 1. TEP is a public service corporation within the meaning of Article XV of the Arizona
5 Constitution and A.R.S. §§ 40-222, 250, 251, and 252.

6 2. UniSource is a Public Utility Holding Company pursuant to A.A.C. R14-2-801 et seq.

7 3. The Commission has jurisdiction over TEP and the subject matter of the application.

8 4. Staff's recommendations as set forth herein are reasonable and in the public interest
9 and should be adopted.

10 **ORDER**

11 IT IS THEREFORE ORDERED that the waiver of the New Director Affiliate Transactions
12 Report granted in Decision No. 62103 and the 1999 Settlement Agreement shall continue until further
13 Order of the Commission.

14 IT IS FURTHER ORDERED that the wavier granted in Decision No. 62103 and the 1999
15 Settlement Agreement of the Liquidation Report shall continue until further Order of the
16 Commission.

17 IT IS FURTHER ORDERED that the wavier granted in Decision No. 62103 and the 1999
18 Settlement Agreement of the Cost Containment Reports required by Decision No. 59594 shall be
19 eliminated and Tucson Electric Power Company shall resume filing the Cost Containment Reports
20 required by Decision No. 59594 until further Order of the Commission.

21 IT IS FURTHER ORDERED that the wavier of Condition 2 to Decision No. 60480, shall
22 continue until further Order of the Commission.

23 IT IS FURTHER ORDERED that the partial wavier of Condition 12 to Decision No. 60480,
24 shall continue until further Order of the Commission.

25 IT IS FURTHER ORDERED that the wavier of Condition 13 to Decision No. 60480, shall
26 continue until further Order of the Commission.

27 IT IS FURTHER ORDERED that the wavier of Condition 17 to Decision No. 60480, shall
28 continue until further Order of the Commission.

1 IT IS FURTHER ORDERED that the wavier of Condition 26 to Decision No. 60480, shall
2 continue until further Order of the Commission.

3 IT IS FURTHER ORDERED that the wavier of Condition 27 to Decision No. 60480, shall
4 continue until further Order of the Commission.

5 IT IS FURTHER ORDERED that the wavier of A.A.C. R14-2-803 and R14-2-804.A granted
6 in Decision No. 62103 and the 1999 Settlement Agreement is eliminated and these Rules shall apply
7 to UniSource Energy Corporation, Tucson Electric Power and their affiliates in their entirety.

8 IT IS FURTHER ORDERED that the wavier of A.A.C. R14-2-805.A, 805.A.2, and 805.A.6
9 granted in Decision No. 62103 and the 1999 Settlement Agreement shall not be continued, and these
10 Rules shall apply to UniSource Energy Corporation, Tucson Electric Power and their affiliates in
11 their entirety.

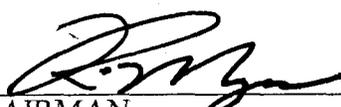
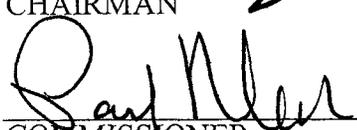
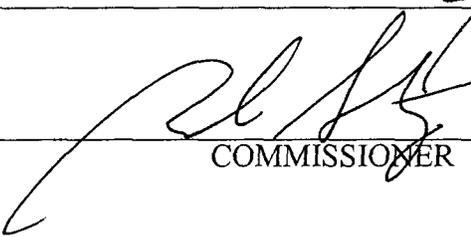
12 ...
13 ...
14 ...
15 ...
16 ...
17 ...
18 ...
19 ...
20 ...
21 ...
22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that the wavers of A.A.C. R14-2-805.A.9, .10 and .11 granted
2 in Decision No. 62103 and the 1999 Settlement Agreement shall continue until further Order of the
3 Commission.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7
8
9
10
11

 CHAIRMAN	 COMMISSIONER
 COMMISSIONER	 COMMISSIONER
	 COMMISSIONER

12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 2nd day of Sept, 2009.

17
18
19
20
21
22
23
24
25
26
27
28



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

TUCSON ELECTRIC POWER COMPANY

2 DOCKET NOS:

E-01933A-07-0402 and E-01933A-05-0650

3
4 Michael W. Patten
ROSHKA DEWULF & PATTEN
400 East Van Buren Street, Suite 800
5 Phoenix, AZ 85004

C. Webb Crockett
FENNEMORE CRAIG, PC
3003 North Central Avenue
Suite 2600
Phoenix, AZ 85012-2913
Attorneys for AECC and Phelps Dodge

6 Raymond S. Heyman
UNISOURCE ENERGY CORPORATION
7 One South Church Avenue, Suite 1820
8 Tucson, AZ 85701

Nicholas J. Enoch
LUBIN & ENOCH, PC
349 North Fourth Avenue
Phoenix, AZ 85003
Attorneys for IBEW Local 1116

9 Michelle Livengood
TUCSON ELECTRIC POWER COMPANY
One South Church Avenue, Suite 200
10 Tucson, AZ 85701

Timothy M. Hogan
ARIZONA CENTER FOR LAW IN THE
PUBLIC INTEREST
202 E. McDowell Road, Suite 153
Phoenix, AZ 5004
Attorneys for SWEEP and WRA

11 Daniel Pozefsky
RUCO
12 1110 West Washington, Suite 220
13 Phoenix, AZ 85007

David Berry
WESTERN RESOURCE ADVOCATES
P.O. Box 1064
Scottsdale, AZ 85252-1064

14 Michael Grant
Gallagher & Kennedy, PA
2575 East Camelback Road
15 Phoenix, AZ 85016-9225
16 Attorneys for AUIA

Eric Guidry
Energy Program Staff Attorney
WESTERN RESOURCE ADVOCATES
2260 Baseline Road, Suite 200
Boulder, CO 80302

17 Gary Yaquinto
AUIA
2100 N. Central Avenue, Suite 210
18 Phoenix, AZ 85004

Jeff Schlegel
SWEEP
1167 W. Samalayuca Dr.
Tucson, AZ 85704-3224

19 Peter Q. Nyce, Jr.
General Attorney, Regulatory Law Office
20 Office of the Judge Advocate General
DEPARTMENT OF THE ARMY
21 901 North Stuart Street, Room 713
22 Arlington, VA 22203-1644

Thomas L. Mumaw
ARIZONA PUBLIC SERVICE CO.
PO Box 53999
Mail Station: 8695
Phoenix, AZ 85072-3999

23 Dan Neidlinger
NEIDLINGER & ASSOC.
3020 N. 17th Drive
24 Phoenix, AZ 85015

Barbara A. Klemstine
Brian Brumfield
ARIZONA PUBLIC SERVICE CO.
PO Box 53999
Mail Station 9708
Phoenix, AZ 85072-3999

25 Daniel D. Haws
OSJA, ATTN: ATZS-JAD
26 USA Intelligence Center and
Ft. Huachuca
27 Ft. Huachuca, AZ 85613-6000

28

1 Michael L. Kurtz
Kurt J. Boehm
Boehm, Kurtz & Lowry
2 36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
3 Attorneys for The Kroger Co.
4 William P. Sullivan
Curtis, Goodwin, Sullivan,
5 Udall & Schwab, PLC
501 East Thomas Road
6 Phoenix, AZ 85012
Local Counsel for the Kroger Co.
7
8 Deborah R. Scott
Robert J. Metli
SNELL & WILMER LLP
9 One Arizona Center
400 East Van Buren
10 Phoenix, AZ 85004-2202
Attorneys for APS
11
12 Lawrence Robertson
P.O. Box 1448
Tubac, AZ 85646
13 Attorney for Mesquite Power LLC, Bowie
Power Station, LLC, Sempra Energy
14 Solutions
15
16 Greg Patterson
916 West Adams, Suite 3
Phoenix, AZ 85007
17
18
19
20
21
22
23
24
25
26
27
28

S. David Childers
LOW & CHILDERS, PC
2999 North 44th Street, Suite 250
Phoenix, AZ 85018
Attorneys for the Alliance

Law Offices of Christopher Hitchcock
P.O. Box AT
Bisbee, AZ 85603-0115
Attorney for SVEC

Billy L. Burtnett
3351 N. Riverbend Circle East
Tucson, AZ 85750-2509

John E. O'Hare
3865 North Tucson Blvd
Tucson, AZ 85716-1041

Cynthia Zwick
1940 E. Luke Avenue
Phoenix, AZ 85016

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Steve Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007