

BEFORE THE ARIZONA CORPORATION COMMISSION

1

IN THE MATTER OF THE APPLICATION) DOCKET NO.
 OF TUCSON ELECTRIC POWER COMPANY) E-01933A-02-0345
 FOR APPROVAL OF NEW PARTIAL)
 REQUIREMENTS SERVICE TARIFFS,)
 MODIFICATION OF EXISTING PARTIAL)
 REQUIREMENTS SERVICE TARIFF 101,)
 AND ELIMINATION OF QUALIFYING)
 FACILITY TARIFFS.)

IN THE MATTER OF THE APPLICATION) DOCKET NO.
 OF TUCSON ELECTRIC POWER COMPANY) E-01933A-98-0471
 FOR APPROVAL OF ITS STRANDED)
 COST RECOVERY.)

At: Tucson, Arizona
 Date: October 22, 2002
 Filed: NOV - 6 2002

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ARIZONA REPORTING SERVICE, INC.
 Court Reporting
 Suite Three
 2627 North Third Street
 Phoenix, Arizona 85004-1103

By: DAWNNA J. BOSWELL, RPR
 Certified Court Reporter
 Certificate No. 50326

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HEARING DIVISION

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1	INDEX TO EXAMINATIONS	
2	WITNESS	PAGE
3	LELAND R. SNOOK	
4	Direct Examination by Mr. Heyman	14
5	Cross-Examination by Mr. Nyce	23
6	Cross-Examination by Mr. Gellman	27
7	Examination by ALJ Rodda	35
8	Redirect Examination by Mr. Heyman	48
9	Recross-Examination by Mr. Gellman	54
10		
11	DAN L. NEIDLINGER	
12	Direct Examination by Mr. Nyce	55
13	Cross-Examination by Mr. Wakefield	62
14	Cross-Examination by Mr. Heyman	65
15	Examination by ALJ Rodda	68
16	Redirect Examination by Mr. Nyce	74
17		
18	BARBARA KEENE	
19	Direct Examination by Mr. Gellman	75
20	Cross-Examination by Mr. Heyman	78
21	Examination by ALJ Rodda	91
22	Redirect Examination by Mr. Gellman	97
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
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15
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17
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19
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INDEX TO EXHIBITS

NO.	DESCRIPTION	IDENTIFIED	ADMITTED
TEP-1	Direct Testimony of Leland R. Snook	14	17
TEP-2	Revision to Direct Testimony of Leland R. Snook	14	17
TEP-3	Rebuttal Testimony of Leland R. Snook	14	17
DOD-1	Direct Testimony of Dan L. Neidlinger	55	57
S-1	Direct Testimony of Barbara Keene	13	77
S-2	Tucson Electric Power Partial Requirements Service document	13	--

000272003

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before
3 the Arizona Corporation Commission, in Conference Room
4 222 of said Commission, 400 West Congress Street,
5 Tucson, Arizona, commencing at 10:10 a.m. on the 22nd
6 day of October, 2002.

7

8 BEFORE: JANE L. RODDA, Administrative Law Judge

9

10 APPEARANCES:

11

For Applicant Tucson Electric Power Company:

12

ROSHKA, HEYMAN & DeWULF, PLC
By Mr. Raymond S. Heyman
400 East Van Buren Street
Suite 800
Phoenix, Arizona 85004-2262

13

14

15

16 For Intervenor Department of Defense:

17

MR. PETER Q. NYCE, JR.
901 North Stuart Street
JALS-RS Suite 713
Arlington, Virginia 22203-1837

18

19

20 For Residential Utility Consumer Office:

21

RESIDENTIAL UTILITY CONSUMER OFFICE
By Mr. Scott S. Wakefield
2828 North Central Avenue
Suite 1200
Phoenix, Arizona 85004-1022

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23

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1 APPEARANCES: (Continued)

2 For Arizona Corporation Commission Staff:

3 ARIZONA CORPORATION COMMISSION
4 Legal Division
5 By Mr. Jason D. Gellman
6 1200 West Washington
7 Phoenix, Arizona 85007-0001

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DAWNA J. BOSWELL
CCR No. 50326

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1 ALJ RODDA: I think we can go on the record
2 now. This is the time for the hearing in Docket
3 Numbers E-1933A-02-345 and E-1933A-98-471, In the
4 Matters of Application of TEP for Approval of New
5 Partial Requirements Tariffs, Modification of Existing
6 Partial Requirements Service Tariff 101, and
7 Elimination of the QF Tariffs, and In the Matter of
8 TEP's Stranded Cost Recovery.

9 Good morning, everyone. My name is Jane
10 Rodda, and I am the administrative law judge assigned
11 to this matter who will make the recommended opinion
12 and order for the Commission's disposition.

13 The first thing I would like to do this
14 morning is take appearances of the parties. On behalf
15 of TEP.

16 MR. HEYMAN: Good morning, Your Honor. Ray
17 Heyman from the law firm of Roshka, Heyman & DeWulf on
18 behalf of Tucson Electric Power.

19 ALJ RODDA: Welcome to Tucson.

20 MR. HEYMAN: Thank you.

21 ALJ RODDA: And on behalf of intervenors,
22 Department of Defense.

23 MR. NYCE: My name is Peter Q. Nyce, spelled
24 N-y-c-e, Jr., on behalf of the Department of Defense.

25 ALJ RODDA: And RUCO is here.

000272003

1 MR. WAKEFIELD: Scott Wakefield for the
2 Residential Utility Consumer Office.

3 ALJ RODDA: Okay. Are there any other
4 intervenors? There are other intervenors in the
5 case, but I will ask if there are any other
6 intervenors here this morning that want to make an
7 appearance.

8 All right, then on behalf of Staff.

9 MR. GELLMAN: Good morning, Your Honor, Jason
10 Gellman on behalf of Commission Staff.

11 ALJ RODDA: And I'll just note for the record
12 that the Arizona Cogeneration Association filed
13 testimony in this matter but did not appear at either
14 the prehearing conference and apparently are not here
15 today, and I haven't heard from them one way or the
16 other. And I was talking to Mr. Heyman before; he
17 hadn't heard from them. Does anyone know what
18 happened to them? All right. I'm not going to worry
19 about them then.

20 Anything you want to discuss preliminarily
21 before we get started? Okay, hearing none, I'll ask
22 or mention that this is the time for public comment.
23 Are there any members of the public present who wish
24 to makes comments on either the tariff applications or
25 the modification to the market generation credit?

1 All right. So let the record reflect there are no
2 members of the public present this morning that wish
3 to make public comment.

4 And so I will ask Mr. Heyman, do you have an
5 opening you would like to make?

6 MR. HEYMAN: Yes, I do. Thank you.

7 Your Honor, Tucson Electric Power Company has
8 filed an application with the Commission seeking
9 approval of three things: First, the implementation
10 of new partial requirements service or PRS tariffs;
11 second, the modification of existing tariff PRS-101;
12 and third, the elimination of the existing qualifying
13 facility or QF tariffs.

14 In addition, the Commission has consolidated
15 this case with TEP's request to clarify modifications
16 necessary to TEP's MGC calculation as contained in the
17 1999 Settlement Agreement.

18 TEP has filed its application to modify its
19 tariffs at this time for several important reasons.
20 First off, the electric industry has changed over the
21 past several years as far as cogeneration, distributed
22 generation, and qualifying facilities are concerned.
23 TEP's QF tariffs have not been updated, and are out of
24 step with realities of the industry.

25 Second, the Commission has sponsored

0002720003

1 workshops to address the status of distributed
2 generation units and interconnection issues. The
3 final report produced from the workshops in June 2000
4 recommended that changes be made to existing tariffs
5 and new ones be proposed that would better meet the
6 needs of distributed generation producers. Because no
7 rulemaking proceedings have been initiated to address
8 the report's recommendations over the past two years,
9 TEP's proposed PRF tariffs meet the objectives of the
10 recommendations.

11 Third, TEP had been communicating and working
12 with Commission Staff on how to proceed with
13 distributed generation customers, and quite frankly,
14 it appeared to TEP that there was not a consensus at
15 Staff as to how it would implement the recommendations
16 of the DG Workshop Report. So TEP proceeded to file
17 the Application with the Commission as is common
18 practice.

19 TEP believes that the new PRS tariffs are in
20 the public interest because they provide backup,
21 standby or supplemental service to customers utilizing
22 any type of distributed generation. Currently, TEP's
23 existing QF tariffs do not apply to self-generating
24 customers who are not QFs under the Public Utility
25 Regulatory Policies Act of 1978 otherwise known as

1 PURPA.

2 Current Tariff PRS-101 is offered to any QF
3 with a certified capacity of 100 kilowatts or less
4 which generates other than firm power. In its
5 application, TEP is proposing that PRS-101 be modified
6 so that it is available to any customer with certified
7 capacity of 100 kilowatts or less generating power
8 through the use of renewable energy resources. TEP's
9 intention was that this would be an incentive to
10 customers who generate electricity through renewable
11 energy resources. Mr. Snook, TEP's witness, will
12 address some concessions that TEP is making to PRS-101
13 in light of Staff's testimony.

14 TEP proposes eliminating its existing QF
15 tariffs because the new PRS tariffs are broader in
16 scope and will be available to existing QF customers.
17 In short, TEP believes the proposed changes in tariffs
18 are necessary and are in line with the findings of the
19 DG Working Group Report.

20 Finally, TEP is recommending a modification
21 to the calculation of the market generation credit
22 contained in the 1999 Settlement Agreement because two
23 indices used are no longer available. All signatories
24 to the 1999 Settlement Agreement have agreed to TEP's
25 proposal for calculating the MGC as is set forth in

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1 TEP's filings in this case.

2 In support of its application, TEP will
3 present the testimony of Mr. Leland Snook who is the
4 manager of Customer and Regulatory Relations. As
5 Mr. Snook testified in his direct and rebuttal
6 testimony, the time is right for the Commission to
7 authorize TEP to updates its filings to better meet
8 the needs of DG customers.

9 Thank you.

10 ALJ RODDA: Thank you.

11 Mr. Wakefield, do you have an opening?

12 MR. WAKEFIELD: Just to say that RUCO
13 supports TEP's application, motion for clarification
14 of the settlement agreement with respect to MGC.

15 ALJ RODDA: Mr. Nyce?

16 MR. NYCE: I will waive opening statement and
17 defer to Mr. Neidlinger's testimony.

18 ALJ RODDA: Mr. Gellman.

19 MR. GELLMAN: Good morning, Your Honor.

20 I guess the question for Staff in this case
21 and the question we focused on is over the elimination
22 of the QF tariffs TEP proposes. And we agree there
23 have been changes over the years with regards to
24 restructuring in the electric industry, and the DG
25 Working Group was put in place in part to try to deal

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1 with those issues.

2 But I guess Staff's main issue is that
3 there's still issues that need to be done, and given
4 that the whole cogeneration small power producer issue
5 started with the public passing the Public Utility
6 Regulatory Policies Act or PURPA, given that decision,
7 Commission Decisions 56271 and then earlier 52345
8 basically were a framework to get rates regarding
9 cogeneration and small power producers following the
10 Public Utility Regulatory Policies Act. And given
11 that those are still in effect, Staff believes that
12 the existing QF tariffs that TEP seeks to eliminate in
13 this hearing should not be eliminated and that there's
14 still a purpose for them, even with all the changes
15 that are going on with the electric industry.

16 And part of the issue also goes to the
17 continuing nature of the restructuring in Arizona,
18 that we're not on a clear path, that there's still
19 issues that need to be resolved, that Track A and
20 Track B as far as the generic proceedings are still
21 going on, and there are several issues that still need
22 to be decided as far as where Arizona is ultimately
23 going to go.

24 With regards to the DGI Working Group, there
25 are still, even in the DGI Working Group Report, there

000272003

1 are still issues that they note that need to be
2 addressed, and they recommend at least in part of
3 their report that workshops, subsequent workshops
4 should be conducted.

5 Given all of those, and given that the DGI
6 Working Group Report has not been memorialized in a
7 Commission decision, given Commission 56271 is still
8 in effect to this point, again, Staff believes that
9 the existing QF tariffs do have a role, and this is
10 not the appropriate time to eliminate those tariffs.

11 With regard to the exhibits Staff intends to
12 present to support its argument, Exhibit S-1 is
13 another copy of the direct testimony of Barbara Keene
14 who will be testifying on behalf of Staff in today's
15 hearing. And then as far as Exhibit S-2 goes, we
16 marked a complete copy of the DGI Working Group Report
17 that was part of TEP's documentation. We photocopied
18 excerpts that we will probably focus on for this
19 hearing, and those are the two exhibits that Staff
20 marked for this proceeding.

21 Thank you.

22 ALJ RODDA: Okay. Thank you, Mr. Gellman.

23 Mr. Heyman, do you want to call your first
24 witness?

25 MR. HEYMAN: Yes, we would like to call

1 Mr. Leland Snook to the witness stand.

2 Your Honor, prior to Mr. Snook taking the
3 stand, I've had marked for identification as Exhibit
4 TEP-1 the direct testimony of Leland R. Snook dated
5 August 30, 2002; as Exhibit TEP-2, the notice of
6 filing revised page of direct testimony of Leland R.
7 Snook with its attachment which was the revised page;
8 and as Exhibit TEP-3 the rebuttal testimony of Leland
9 R. Snook dated October 11, 2002.

10

11 LELAND R. SNOOK,
12 called as a witness on behalf of the Applicant, having
13 been first duly sworn by the Certified Court Reporter,
14 was examined and testified as follows:

15

16 DIRECT EXAMINATION

17

18 Q. (BY MR. HEYMAN) Mr. Snook, do you have what
19 has been marked for identification as Exhibits TEP-1,
20 2, and 3 in front of you?

21 A. Yes, I do.

22 Q. With regard to Exhibit TEP-1, is this a copy
23 of the direct testimony that was prepared by you and
24 under your direct supervision and was filed with the
25 Commission in this case?

000272003

1 A. Yes, it is.

2 Q. And do you adopt this as your direct
3 testimony in this case?

4 A. Yes, I do.

5 Q. And so if I were to ask you the questions set
6 forth in TEP-1 under oath, your answers under oath
7 would be the same as set forth therein with the
8 modification of Exhibit TEP-2?

9 A. With one exception.

10 Q. Would you note that for the record, please.

11 A. On page 13 of Exhibit 1, line 6 and a half,
12 at the end of the sentence that reads, where it ends,
13 "Under PRS-101," I would insert at the end, "all of
14 which generate with renewable resources." And then
15 on line 7 and a half, at the end of the sentence, I
16 would insert, "with respect to the buy-back price."

17 Q. Would you please read those two sentences
18 then as you would modify them.

19 A. "TEP currently has 30 DGs participating under
20 PRS-101, all of which generate with renewable
21 resources. The proposed changes to PRS-101 will
22 affect only 19 of those DGs with respect to the
23 buy-back price."

24 Q. Thank you.

25 With regard to Exhibit TEP-2, is this a

1 revised page 13 that was prepared by you and under
2 your supervision?

3 A. Yes.

4 Q. I'll note that the revisions that Mr. Snook
5 just made on lines 6 and 7 of page 13 are not
6 reflected in the Exhibit TEP-2, so they would have to
7 be read together.

8 Do you adopt the revisions made in page 13 as
9 contained in TEP Exhibit 2 as part of your sworn
10 testimony in this proceeding?

11 A. Yes, I do.

12 Q. Would you now turn with me to Exhibit TEP-3
13 which is rebuttal testimony. Was this testimony
14 prepared by you and under your supervision?

15 A. Yes, it was.

16 Q. And do you adopt this as your rebuttal
17 testimony in this proceeding?

18 A. Yes, I do.

19 Q. So if I were to ask you the questions stated
20 in Exhibit TEP-3, your answers under oath would be the
21 same as set forth therein?

22 A. That's correct.

23 MR. HEYMAN: I move for admission of Exhibits
24 TEP-1, TEP-2, and TEP-3, please.

25 ALJ RODDA: Okay. Any objections to those

000272003

1 exhibits?

2 MR. GELLMAN: No objection, Your Honor.

3 ALJ RODDA: Okay. Hearing no objections,
4 TEP-1, 2, and 3 are admitted.

5 MR. HEYMAN: Your Honor, Mr. Snook has a
6 summary of his testimony, and in addition, in his
7 rebuttal testimony, we had indicated that there had
8 been some outstanding discovery to the Arizona
9 Cogeneration people and the testimony that had been
10 filed there. In light of the fact that it appears
11 that the cogeneration testimony is not going to be
12 admitted into the record, we will forego the comments
13 that Mr. Snook was going to have on that, unless
14 somewhere along the line that testimony is going to be
15 somehow put into the record, then we would like to
16 have the opportunity to comment on it.

17 ALJ RODDA: Okay.

18 MR. HEYMAN: So I guess what I'm saying is we
19 won't bring it up now, but if somehow the cogen.
20 moves to have the testimony admitted, we would like to
21 reserve our right to maybe put in a written statement
22 of what Mr. Snook would have said.

23 ALJ RODDA: Okay.

24 Q. (BY MR. HEYMAN) Mr. Snook, would you please
25 provide us with a summary of your testimony in this

000272003

1 case.

2 A. I am sponsoring Tucson Electric Power's
3 application filed with the Arizona Corporation
4 Commission on May 10th of 2002. I'm also sponsoring
5 TEP's motion for clarification of the settlement
6 agreement which was filed with the Commission on March
7 14 of 2002 and which has been joined with TEP's
8 application by the presiding administrative law judge.

9 TEP currently has QF tariffs in place whereby
10 customers who generate their own power can receive
11 backup, standby and supplemental service, what TEP has
12 referred to as partial requirements service, provided
13 that the customer is a qualifying facility as that
14 term is defined by PURPA.

15 However, circumstances have changed since the
16 implementation of the QF tariffs. Technology and
17 economics have developed to the point where there are
18 many viable potential DG customers whose facilities
19 are not and in fact need not be QFs. These non-QF DG
20 customers should be able to receive partial
21 requirement service pursuant to tariffs that are
22 specifically designed for their circumstances.

23 In light of this, TEP has designed new PRS
24 tariffs to be an improvement of the QF tariffs, and
25 better match the changing electric industry by making

1 partial requirement service tariffs available to both
2 QF and non-QF subgeneration customers and by designing
3 them to recover only those costs actually incurred by
4 TEP to provide partial requirement service.

5 By definition, a DG customer, whether they
6 are QF or not, simply is not a full requirements
7 customer. TEP believes that if it tried to apply full
8 requirements tariffs to DG customers, it would create
9 an economic mismatch of costs and revenues that would
10 result in a revenue shortfall because the installation
11 of a DG unit by a customer will reduce the number of
12 hours that they actually take service from the company
13 over the utility's distribution and transmission
14 system.

15 TEP's full requirements tariffs were designed
16 based on assumptions of a full requirement utilization
17 by the customer. If we change only the underlying
18 assumption for full customer utilization without, if
19 that's the only thing that's changed, the cost to TEP
20 of providing transmission and distribution service is
21 unchanged, but there's less usage from the customer
22 over which TEP can recover the cost of service.

23 In order to maintain fair rates for full
24 requirements customers and to avoid partial
25 requirements customers reaping a windfall actually at

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1 the expense of full requirements customers, TEP has
2 designed new PRS rates that accurately reflect the
3 cost of service for PRS customers.

4 Establishing tariffs that provide for safe,
5 efficient, reliable and fairly-priced electric service
6 is in the public interest, and I believe the new PRS
7 tariffs accomplish this goal for the PRS customers.
8 TEP and the Commission Staff have participated in the
9 DGI Working Group whose recommendations are in line
10 with the proposals in the application.

11 On June 28, 2000, the DGI Advisory Committee
12 issued the Working Group Final Report which
13 recommended that the Commission design fair and
14 reasonable tariffs considering proper recovery of
15 utility cost, backup power for partial requirements
16 tariffs, and PURPA qualifying facilities while
17 providing consistent treatment of DG relative to other
18 consumer services. The report also states that DG
19 providers suggested that existing partial requirements
20 tariffs were developed under a bundled regime of the
21 past, and these tariffs should be reviewed and revised
22 where appropriate to insure conformance with an
23 unbundled world.

24 I believe TEP's new tariffs are designed
25 consistent with the advisory committee's

1 recommendation to recover the costs actually incurred
2 by TEP to provide partial requirement service. In the
3 new PRS tariffs, TEP matched cost recovery with the
4 cost to serve by, one, appropriately allocating fixed
5 and variable costs for the transmission and
6 distribution system between customer demand and energy
7 charges based on lower system utilization by partial
8 requirements customers and also by separating
9 distribution and transmission costs from generation
10 costs.

11 Customers benefit from the market-based
12 pricing under the new PRS tariffs because they will
13 only pay for generation when it is used as opposed to
14 the QF tariffs where generation capacity must be
15 reserved. Further, TEP believes that the new PRS
16 tariffs better reflect the intention of PURPA than the
17 existing QF tariffs because all similarly-situated
18 customers receive the same service regardless of their
19 QF status.

20 That concludes the summary of my testimony.

21 Q. (BY MR. HEYMAN) Thank you.

22 Mr. Snook, have you had an opportunity to
23 review Staff witness Ms. Keene's testimony
24 specifically regarding PRS-101 where she suggests that
25 that tariff not be changed to exclude cogeneration

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1 facilities?

2 A. Yes, I have.

3 Q. Do you have any comments you would like to
4 make on that at this time?

5 A. Yes. Ms. Keene suggests that PRS-101 not be
6 changed to exclude cogeneration facilities, and TEP's
7 intent as indicated by the revision on page 13 of my
8 direct testimony in Exhibit TEP Exhibit 2, TEP intends
9 to honor all of its obligations under PURPA. And upon
10 reflection, although TEP believes what we originally
11 proposed was appropriate in the changing utility
12 environment in Arizona, TEP agrees to retain the
13 applicability of PRS-101 and also prospectively to
14 PRS-102 if it remains in effect to include QFs under
15 PURPA as suggested by Ms. Keene in her testimony on
16 pages 4 and 5.

17 MR. HEYMAN: Thank you.

18 With that, Your Honor, we have no further
19 comments and would propose that Mr. Snook be subject
20 to cross-examination.

21 ALJ RODDA: Okay. Mr. Wakefield?

22 MR. WAKEFIELD: No questions.

23 ALJ RODDA: Mr. Nyce.

24 MR. NYCE: Yes, ma'am, please.

25 CROSS-EXAMINATION

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Q. (BY MR. NYCE) Good morning, Mr. Snook.

A. Good morning.

Q. My name is Pete Nyce. I work for the Department of Defense.

Both Fort Huachuca and Davis-Monthan Air Force Base currently take service from TEP under a Full Requirement Rates Schedule LLT-14, is that correct?

A. That's correct.

Q. Would current self-generation activities at either of these DOD installations qualify them for service under the company's proposed PRS-14 tariff?

A. The subgeneration activities currently ongoing that I'm aware of by Fort Huachuca or Davis-Monthan are primarily small renewable installations. Those installations would not require the Fort or Davis-Monthan to take service under partial requirements.

Q. What criteria or self-generation threshold would you apply to either of these customers to deem them a partial requirements customer?

A. We haven't set a specific test for that. We would address that on a case by case basis, primarily looking at what we would deem material with respect to

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1 the total load of the customer. In this particular
2 instance, TEP is aware of the installations, has
3 discussed those installations with the customer, and
4 they further the company and the state's goal of
5 advancing the deployment of renewable generation
6 resources.

7 Q. How many customers does the company currently
8 serve under QF tariffs 101 through 106?

9 A. I believe from data requests and from my
10 direct testimony, there's 31 in total.

11 Q. Okay. Can you indicate the number of
12 customers under each tariff?

13 A. There are 30 customers taking service under
14 PRS-101, and there is one customer that as a component
15 of its special contract has PRS-106.

16 Q. Are there currently any pending applications
17 for service under any of these tariffs?

18 A. The company has no pending applications for
19 service.

20 Q. How many customers does the company currently
21 serve under optional self-generation tariffs 107 or
22 108?

23 A. There are no customers that are being served
24 under 107 or 108.

25 Q. Are there currently any pending applications

1 for service under 107 or 108?

2 A. No, there's not.

3 Q. Referring you to page 4, line 25 of your
4 direct testimony, you state that applying full
5 requirements tariffs to DG customers would create "an
6 economic mismatch of costs and revenues that would
7 result in a revenue shortfall." Can you provide an
8 estimate of the annual revenue shortfall currently
9 experienced by TEP attributable to its QF or DG
10 customers?

11 A. The 30 customers that are taking service
12 under PRS-101, most are unaffected by the proposed
13 changes, and there is no revenue shortfall associated
14 with those customers. The customer under PRS-106,
15 that's part of the special contract arrangement. And
16 106 has actually never been utilized, so there's no
17 revenue shortfall associated with that existing
18 customer as it stands at this time. That statement in
19 my direct testimony is referring to prospectively
20 rather than looking backwards.

21 Q. So what you're saying is currently, there's
22 no revenue shortfall?

23 A. That's correct.

24 Q. Since there are no pending applications for
25 QF or DG service, there isn't a revenue shortfall

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1 problem at this time with respect to future customers.

2 Is that also correct?

3 A. TEP has had several inquiries that have
4 resulted in special contracts, and in fact, this
5 filing generated several customer complaints with
6 customers that we had been negotiating special
7 agreements. Had those customers taken service under
8 our existing tariffs, there would have been a revenue
9 shortfall.

10 Q. But since there currently are no pending
11 applications, there isn't currently a revenue
12 shortfall. Is that what you just said?

13 A. There isn't currently a revenue shortfall.
14 However, if a customer were to take service under the
15 tariff, there would be, which is why we believe they
16 are inappropriate to leave available.

17 Q. Isn't it a fact that the annual backup,
18 standby, and supplemental service charges under the
19 proposed PRS-14 tariff for a large self-generation
20 customer with a generator outage of five percent or
21 less would be more than double those charged under the
22 current 107, 108 rate schedules?

23 A. I would have to see a specific example to
24 agree with the assumption.

25 Q. All right.

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1 A. I think many times we focus on the per unit
2 cost, and I think that is the incorrect analysis to do
3 in isolation.

4 Q. You stated that currently, no customers are
5 taking service under 107 or 108. Assuming that my
6 illustration above would result in doubling, would the
7 doubling of rates almost guarantee that there will
8 never be any customers taking service under the
9 Proposed Replacement Tariff PRS-14?

10 A. I would disagree that even given the
11 assumption of a doubling that PRS-14 would discourage
12 distributed generation. I think it would encourage
13 economic self-generation and discourage uneconomic
14 self-generation.

15 MR. NYCE: Thank you. That's all the
16 questions I have.

17 ALJ RODDA: Mr. Gellman.

18 MR. GELLMAN: Thank you.

19

20 CROSS-EXAMINATION

21

22 Q. (BY MR. GELLMAN) Good morning, Mr. Snook.

23 A. Good morning.

24 Q. Is it fair to say that TEP's position
25 regarding the new tariffs is that they will be a

1 benefit in light of the changing electric industry?

2 A. That's correct. It's changing electric
3 industry both at state and federal levels.

4 Q. And that it's also TEP's position that the
5 PRS Tariffs 103 through 108, also known as the QF
6 tariffs, are outdated in today's climate?

7 A. That's correct.

8 Q. And with regards to dealing with distributed
9 generation and the changing industry, the DGI Working
10 Group was formed?

11 A. That's correct.

12 Q. And were you part of that working group?

13 A. I was not directly involved.

14 Q. Are you familiar with the DGI Working Group?

15 A. Yes, I am.

16 Q. And are you familiar with the report that
17 came out regarding their findings?

18 A. I'm somewhat familiar.

19 Q. And is it also true that qualified small
20 power producers and qualified cogeneration facilities
21 under PURPA are also a sub-group of distributed
22 generation?

23 A. That's correct.

24 Q. And is it also fair to say that the DGI
25 Working Group is still a work in progress?

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1 A. I think it is a work in progress, but it's
2 stalled. The second step has never, you know, the
3 continuation of that process where the Commission
4 would initiate a statewide rulemaking on how to
5 address the changing environment has not taken place.

6 Q. And so it's fair to say that the DGI Working
7 Group's findings have not yet been memorialized in a
8 Commission decision?

9 A. That's correct.

10 Q. And it's also true with regards to electric
11 restructuring in "retail competition" in Arizona that
12 we're still in a state of flux?

13 A. That's correct.

14 MR. GELLMAN: And Your Honor, may I approach?

15 ALJ RODDA: Yes, please.

16 Q. (BY MR. GELLMAN) Showing you what has been
17 marked as Exhibit S-2 for purposes of identification,
18 do you recognize that?

19 A. Yes, I do.

20 Q. Could you tell the Court what that is?

21 A. This is a document that Tucson Electric
22 provided to Staff in a meeting with Staff. I'm not
23 sure of the exact date. It was several months back.

24 Q. And is it a document that you are familiar
25 with?

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1 A. Yes, I am somewhat familiar with it.

2 Q. And included as part of that document is the
3 DGI Working Group Report?

4 A. That's correct.

5 Q. If you could turn to page 2 of the DGI
6 Working Group Report, and for the record, that is the
7 first page of the excerpt that Staff has provided to
8 the parties, and we have extra copies available.

9 Looking at Section 1.4 entitled Key Findings
10 and Recommendations for Rulemaking, and bullet item
11 number 1, isn't it true that the Advisory Committee or
12 the DGI Working Group recommended a workshop to be
13 held subsequent to the findings that are subsequent to
14 the issuance of this report?

15 A. That's correct. It says concurrent with a
16 rulemaking.

17 Q. And this bullet item number 1 is also largely
18 what you quoted on page 3, I believe, of your rebuttal
19 testimony?

20 A. Yes. I believe it was an issue that there
21 was consensus among the participants that this should
22 take place. There were issues that were unresolved,
23 but this was one issue that there was agreement on.

24 Q. And so even though the DGI Working Group
25 findings -- let me rephrase the question. Even though

1 it's true that the DGI Working Group made findings
2 similar to what TEP is advocating today, they still
3 recommended subsequent workshops to be done on the
4 issues?

5 A. Yes, they did.

6 Q. And turning to page 12, I believe, of that
7 report which is the second page of the excerpt, isn't
8 it true that on that page, the DGI Working Group
9 listed in the middle of the page about six issues that
10 weren't addressed in this report that probably need to
11 be addressed?

12 A. That's correct.

13 Q. And it was TEP's attempt in this case to try
14 and address those issues with these new tariffs. Is
15 that a fair statement?

16 A. TEP's tariffs would address some of these
17 issues as well as other issues that there was full
18 agreement on.

19 Q. So issues in addition to the six that are
20 listed here, correct?

21 A. That's correct.

22 Q. So even though it was TEP's attempt to try
23 and address these issues consistent with the DGI
24 Working Group, we're not exactly sure whether the
25 Commission would agree with those changes or agree

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1 with those, with what TEP has put forth, especially in
2 light of the, all the issues facing electric
3 restructuring. Is that a fair statement?

4 A. Well, I would disagree a little bit. I mean,
5 that's in part why we filed these tariffs, because
6 we've waited over two years, and there hasn't been any
7 continuation of the process from the DGI Working
8 Group. And retail direct access, the electric
9 competition rules in the state, are not the only
10 significant event that has a bearing on the changing
11 world. For example, FERC Order 888 and 889 that
12 unbundled generation and transmission occurred in 1995
13 and there hasn't been any addressing of how QFs are
14 treated with respect to that change, which is
15 significant. And the existing tariffs did not address
16 that, and therein lies the most significant flaws in
17 the current tariffs.

18 Q. So just to understand you correctly, even
19 though what the State of Arizona does with electric
20 restructuring is not the whole equation, it certainly
21 is fair to say it's a significant part of the
22 equation?

23 A. I think the electric competition rules have
24 generated much consumer interest in self-generation,
25 so I think it's the genesis behind much of that.

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1 However, that interest exists with customers now. And
2 even if the competition rules did not exist, we would
3 still have to have tariffs that provide for service to
4 these customers. And FERC order 888 has occurred
5 several years behind us, and we have not modified the
6 tariffs to address issues that were created by the
7 separation of generation and transmission.

8 Q. And you understand that it's not Staff's
9 position that they, that we oppose the establishment
10 of the new partial requirement service tariffs,
11 referring to PRS-10, 13, and 14, just that Staff
12 opposes the elimination of the existing QF tariffs.
13 Is that your understanding?

14 A. Yes. One thing that troubles TEP about that
15 is having tariffs that are available for customers
16 where there's multiple tariffs, and then similarly
17 situated customers being treated differently or having
18 the potential for that different treatment if those
19 tariffs are left in place without updating the
20 pricing.

21 Q. Let me follow up on that. The purpose of the
22 portion of the PURPA that deals with cogeneration and
23 small power production is to encourage that sort of
24 generation, for lack of a better phrase. Is that a
25 fair statement?

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1 A. That's correct.

2 Q. So despite the arguments for and against that
3 particular portion of the PURPA, it is still in effect
4 today, correct?

5 A. That's correct, and we believe our PRS
6 tariffs as filed with elimination of the existing
7 tariffs would meet all the requirements of PURPA.

8 Q. But in light of the PURPA when it was
9 originally passed, the Commission approved Decision
10 56271 which basically set a framework for
11 establishing, for lack of a better term, the cost with
12 the QF tariffs or established guidelines for
13 establishing those types of QF tariffs, is that
14 correct?

15 A. That's correct, but that was in 1989, so --
16 1988 or 1989, I'm not sure of the exact date. A lot
17 has changed since then. In fact, FERC Order 888 came
18 out in 1995, and there hasn't been a statewide
19 rulemaking to address changes.

20 Q. Understanding all that, though, Commission
21 Decision 56271 is the decision we have regarding these
22 qualified cogeneration and small power producers,
23 correct?

24 A. That's correct.

25 MR. GELLMAN: May I have one moment, Your

1 Honor?

2 ALJ RODDA: Yes.

3 MR. GELLMAN: Thank you, Mr. Snook. I have
4 no further questions.

5

6

EXAMINATION

7

8 Q. (BY ALJ RODDA) Okay. So if I understand
9 correctly, currently you only have one customer taking
10 service under any of the qualified facility tariffs?

11 A. That's correct. Under PRS-106, we have a
12 special contract customer that has a small
13 self-generating unit on their property, and we use
14 that tariff to back that unit up.

15 Q. There's something you said earlier, and I'm
16 trying to recall what it was, because I didn't
17 understand it. It had something to do with when you
18 filed this application, you had complaints from
19 customers who were trying to negotiate special
20 contracts. Was it partial requirements services, was
21 that --

22 A. Yes.

23 Q. And why were they upset?

24 A. The customers that we were negotiating with
25 had requested service under our QF tariffs, and we,

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1 and it wasn't clear to the company that they actually
2 were QFs. So we were in discussions with them about
3 alternative ways of serving their partial requirements
4 needs, and we had developed our draft tariffs shortly
5 after the DGI Work Group finished their study. So we
6 had talked about these tariffs with customers for
7 quite some time. In fact, the two customers that did
8 file complaints, the University of Arizona and Tucson
9 District Energy, we have subsequently negotiated
10 special arrangements with those customers and the
11 Commission has approved those agreements.

12 Q. Okay. So currently, your partial
13 requirements customers, what do they do? Is it a
14 case, is it a special agreement every time?

15 A. That's what we've attempted to do. We have
16 at this point I believe three arrangements that are
17 special contracts that have been approved. When
18 customers approach us, we give them our, the tariffs
19 that we filed for approval as a template for a special
20 agreement.

21 Q. Can we look at the PRS-10? Is that one of
22 the newly proposed ones?

23 A. Yes, it is.

24 Q. Okay. And what I want, on the first page of
25 that, you've got under backup, near the bottom,

1 backup, standby service, there's customer charge, then
2 standby demand charge per kilowatt then backup demand
3 charge per kilowatt hour. Maybe, can you tell me, for
4 the customer charge, well, maybe you should tell me,
5 who would this tariff apply to?

6 A. This would apply to our general service
7 customers that have partial requirements needs less
8 than 200 kW.

9 Q. And so for the customer charge, well, before
10 I get there, I think the other two you are proposing
11 in this proceeding are PRS-13 and 14, is that right?

12 A. That's correct.

13 Q. And those are the larger --

14 A. Yes, they're what we designated our existing
15 full requirements are 10, 13, and 14, so they're
16 consistent in customer size with our existing full
17 requirements tariffs.

18 Q. That's nice. All right. So you've got the
19 customer charge. What is that intended to cover in
20 terms of your cost?

21 A. The customer charge in our unbundled charges
22 I believe was intended to cover metering, billing, the
23 service drop to the customer.

24 Q. And then the demand charge, what is that
25 supposed to be covering?

1 A. The demand and the energy are somewhat
2 allocated based on your distribution and transmission
3 charges, and our unbundled charges, they're broken
4 into a number of components, but broadly just
5 transmission and distribution wires.

6 Q. And how did you decide what would go into
7 demand and what would go into energy?

8 A. On these tariffs, we took our full
9 requirements tariffs, and then reallocated the cost.
10 In our full requirements tariff, there was an
11 allocation of fixed cost which would be the demand
12 component and variable costs that we recover through
13 the energy. What we did in this case, because there's
14 less utilization, we reallocated some of the energy
15 charge-back into demand. It wasn't tied specifically
16 to components. If in fact we made, if we converted to
17 fixed charge, everything that we felt was a fixed
18 facility that the company had, most of the charges
19 would be fixed.

20 Q. Okay. In your testimony, you talk about
21 assuming an average ten percent load factor for
22 partial requirements customers, and then apply that to
23 the average unbundled rate. What does that mean, and
24 what is the ten percent load factor?

25 A. The ten percent load factor was an assumption

1 we made to approximate the use of our system of a
2 partial requirements customer, essentially that ten
3 percent of the time, if you will, in simple terms or
4 ten percent of the total energy if they took energy at
5 a continuous rate, ten percent of that energy would be
6 flowing over our wires. Our average load factor for
7 full requirements is in the low 50 percent range on
8 our system.

9 Q. Well, how do you know what their load factor
10 is? I mean, how do you know what their total
11 requirements is if you're not providing it to them, or
12 is it done on an aggregate?

13 A. Well, knowing their total requirements isn't
14 critical to this calculation. It's really, we're
15 looking at what we, the residual that we would
16 continue to serve, and that's what the ten percent is
17 intended to represent, the remainder of load that we
18 would continue to serve. So, however, in our
19 interconnection procedures that we've developed, we
20 would require customers to give us the information
21 from their generating unit so that we would know what
22 the unit was doing, and then above a certain size for
23 system reliability, we would need to know it on a real
24 time basis.

25 Q. Okay. Do I take it that it's your belief

1 that eliminating the tariffs that you want to
2 eliminate here is not a material change under the
3 settlement agreement?

4 A. That's correct.

5 Q. Why is that?

6 A. I would refer to my rebuttal testimony on
7 page 8. It's a different question that I'm answering,
8 but the same logic applies, that the tariffs that
9 we're seeking to freeze were designed and became
10 effective outside of a general rate case and
11 therefore, they were not included in our cost of
12 service at that time, and succeeding rate cases did
13 not include these rates because no customers were on
14 those tariffs.

15 Q. And when you use the word freeze, which I
16 think I've seen several times in the testimony, what
17 does that mean?

18 A. The freeze would just effectively impact the
19 one customer that presently has 106 as a component of
20 its special contract. We would continue to use that
21 for that customer during the term of their agreement.
22 Their agreement, their special agreement ends within
23 the next 18 months.

24 Q. Now, you also I believe make reference to an
25 APS Tariff E-36.

1 A. That's correct.

2 Q. Now, what was that about? E-36 is similar,
3 I mean, you say it's similar, but tell me what it is
4 exactly. Is it a partial requirements tariff?

5 A. E-36 is an APS tariff for station use
6 service, and it has similar design criteria.

7 Q. I don't know what you mean by station use.

8 A. In their tariff, it states that it's for
9 start up and/or auxiliary load requirements for
10 generation plants with a power supply capacity greater
11 than three megawatts, and this tariff would be
12 applicable to a self-generator that was greater than
13 three megawatts. It also would be broadly applicable
14 to a large power plant that needs station service.
15 Station use service typically for power plants just
16 means power plant needs energy, it needs electricity
17 to start their process, and so that's typically what
18 that's used for. However, it would also be applicable
19 to a self-generator who has load and is serving part
20 of their load.

21 Q. This DGI Working Group, did the Commission
22 ever approve this report or what happened? Can you
23 just tell me about the process or what happened to
24 this report? It's just out there?

25 A. My recollection is that the report was filed

1 with the Commission. The working group was created as
2 part of the approval of the competition rules, and the
3 work group went out and did their analysis and tried
4 to get consensus on the issues, and then they filed
5 their report. With these recommendations that we've
6 discussed, there has been no follow-up action on that.

7 Q. I think it was the Department of Defense
8 that, and maybe you can state in terms of prefiled
9 testimony, talking about perhaps the rates aren't
10 designed, weren't initially designed properly in terms
11 of recovering, I think transmission distribution
12 costs. I think it had to do with the demand versus
13 the energy recovery of those costs, but I may be
14 mistaken and need to have that clarified later. But
15 do you, is it your opinion that the existing qualified
16 facility tariffs are improperly designed?

17 A. To answer that question, I think that given
18 the guidelines set out in the two decisions, I'm not,
19 I can refer and find the numbers, the two decisions
20 that Mr. Gellman was referring to, those existing
21 tariffs are designed consistent with the principles in
22 those orders. I think some of what Department of
23 Defense was getting at is not just the QF tariffs but
24 just TEP's tariffs in general, and the tariffs were
25 developed through ratemaking processes. So I would

1 disagree with the presumption.

2 Q. Do you see from your proposed changes, all
3 the proposed changes to various tariffs, is there
4 going to be material effect on revenues?

5 A. I don't believe there would be.

6 Q. Because you currently don't have any
7 customers on those tariffs?

8 A. That's correct.

9 Q. Okay. You keep, I think one of the premises
10 of your testimony is treating customers in like
11 situations similarly, and not making any distinction
12 between whether a facility is a qualified facility
13 versus another kind of DG facility. But isn't there a
14 reason, or are qualified facilities different because
15 they exist? I mean, there's some federal regulation
16 out there that creates qualified facilities, isn't
17 there?

18 A. That's correct. There is a difference
19 between a qualifying facility and a nonqualifying
20 facility, a difference in what they do with additional
21 harnessing the waste heat, for example, from a
22 generating unit to generate additional energy or to
23 use in a process. So on the customer side, there's a
24 difference. From the utility's perspective, they're
25 the same. Electrically, they look and operate the

1 same. So from a utility service standpoint, there is
2 no difference.

3 Q. So your costs of serving those facilities are
4 the same?

5 A. That's correct.

6 Q. But might there be some reason why we --
7 never mind.

8 Earlier I think maybe in your summary, you
9 mentioned a benefit to QF providers, I think it was
10 that they didn't have to pay for reserves or
11 something. Does that sound familiar?

12 A. Yes, in our QF tariffs, a customer pays a
13 reservation charge for the capacity, generation
14 capacity. In our PRS tariffs, the generation
15 component is the MGC piece, and they only pay for
16 generation when they actually take energy from us.
17 The remaining period of time, they do pay a
18 reservation charge for wires, but not for generation.

19 Q. Okay. I take it from a question that
20 Mr. Nyce asked you that unless I have specifics, you
21 can't tell me how a customer that could qualify under
22 a QF tariff would be affected under your PRS tariff,
23 is that correct?

24 A. Your Honor, I will do my best.

25 Q. Well, I don't have the technical ability to

1 give you an example.

2 A. I think given specific examples, it's easier
3 to determine just because there are so many different
4 particular situations a customer could operate under,
5 and there's many ways to, even with specific examples,
6 to create a situation where the tariff, any tariff,
7 appears unfair to a particular customer, just given
8 the uniqueness of their situation. So sometimes the
9 relative comparisons, it really is more appropriate to
10 compare a range of examples or scenarios and see how
11 different sized customers, different types of
12 customers would fair under the tariffs. And the
13 tariffs we filed, there are some customers that would
14 pay more under our filed tariffs, proposed tariffs,
15 than our QF tariffs. There are also customers that
16 would pay much less. So it depends on the particular
17 situation. It's a different design, and the key to
18 the design is it's designed to more appropriately
19 recover our wires cost and pass generation through
20 than our existing tariffs.

21 Q. Okay. So looking now at your revised page 13
22 which is T-2, and basically are you saying here that
23 if you have to do it under PURPA, you will do it?

24 A. How I would characterize TEP-2 is that we
25 intend to honor all of our obligations under PURPA.

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1 One issue that comes up it seems like annually with
2 Congress, and there's pending legislation right now
3 that may not get out of Joint, I think it's called
4 Joint Committee or whatever between the Senate and the
5 House is to repeal PURPA, and the Public Utility
6 Holding Company Act, for that matter. But the
7 obligation under PURPA, to the extent that it exists,
8 we intend to honor that.

9 Q. So I think, there's so many numbers, numbered
10 tariffs in this case, but I think Staff had a
11 recommendation regarding the PRS-101, and that was to
12 keep the cogen. as part of that, is that correct?

13 A. That's correct.

14 Q. And you have agreed to that?

15 A. That's correct.

16 Q. What about the PRS-102 and 103? Were there
17 any issues?

18 A. 102, it's a similar tariff to 101. TEP
19 believes that currently, no customer that we are
20 serving under 101 came close to qualifying under 102.
21 101 is for nonfirm sell-back to the company, and 102
22 is for firm. And it's an impractical possibility for
23 a customer to actually deliver firm power without
24 having a backup generating source to make sure when
25 their unit goes down they're delivering to us. So the

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1 design was for a premium to be applied for firm
2 service, that it has more value to the company. But
3 there's a practical limitation to the customer's
4 ability to offer that, which is why we've suggested
5 that it be frozen. However, if the determination was
6 to retain that tariff, we would suggest that it be
7 modified with corresponding changes to PRS-101 to make
8 the two tariffs match.

9 Q. Okay. So if no one comes close to qualifying
10 under 102, what's the harm in keeping it?

11 A. It's, there is no harm in keeping it.

12 Q. And if it is, it's best to modify it to match
13 101?

14 A. That's correct.

15 Q. And then 103, can you refresh my memory what
16 103 is?

17 A. 103, I'm going to look it up here. 103
18 essentially provides the service that we have proposed
19 with PRS-10. It's for our small customers, and in
20 this case, it's under 100 kW, and it contains
21 provisions for supplementary backup, maintenance, and
22 interruptible service. So it's a one-size-fits-all
23 tariff for our small general service customers that
24 have partial requirements needs.

25 In my rebuttal testimony, I cover, this could

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1 have some applicability to residential. However, if
2 the customer intended to sell back energy to us and
3 took service under PRS-101, their full requirements
4 tariff is used to serve the remainder of their needs.
5 So eliminating 103 would not impact a customer 100 kW
6 and less that has partial requirements needs.

7 ALJ RODDA: Okay. I think that's all I have.

8 Mr. Heyman, did you have any redirect?

9 MR. HEYMAN: I do. I have a couple areas I
10 would like to clear up, please.

11

12

REDIRECT EXAMINATION

13

14 Q. (BY MR. HEYMAN) Mr. Snook, let's talk a
15 little bit about the decisions that Ms. Keene
16 mentioned in her testimony and that Mr. Gellman asked
17 you about. In general terms, is it your understanding
18 that Decisions Numbers 52345 and 56271 were issued in
19 the 1980s?

20 A. That's correct.

21 Q. Is it your understanding that Decision Number
22 56271 was issued prior to FERC Order 888?

23 A. That's correct.

24 Q. And I'll just avow for the record that 56271
25 was issued after 52345. Is that your understanding

1 recommendations that were made in that workshop are
2 the ones that TEP followed in preparing its
3 application?

4 A. That's correct.

5 Q. Are you aware of any plans for additional
6 workshops of the DGI Working Group?

7 A. To my knowledge, there is nothing pending.

8 Q. Are you aware of any proposed rulemaking that
9 would be conducted pursuant to the DGI Workshop Final
10 Report?

11 A. To my knowledge, there is nothing pending at
12 this time.

13 Q. And that final report has been issued over
14 two years, is that correct?

15 A. Yes. It was issued over two years ago.

16 Q. What do you believe TEP is supposed to do
17 when a DG customer comes to it and says it wants to
18 take service? And let me give you some options. Are
19 you to tell them they're to wait until a workshop has
20 been conducted or that the rulemaking proceeding has
21 been conducted or do you believe that there is an
22 obligation you have to deal with them presently?

23 A. We believe we have an obligation to deal with
24 them in the present, and absent applicable tariffs,
25 TEP has entered into discussions for special

1 arrangement, unique arrangement, with the customer.

2 Q. The APS tariffs have been mentioned a couple
3 times.

4 MR. HEYMAN: Your Honor, if I might approach
5 Mr. Snook and then give you a copy of what has been
6 marked for identification, I have another copy I can
7 give Mr. Snook, but I want to make sure you have it.

8 ALJ RODDA: Okay. Great.

9 Q. (BY MR. HEYMAN) Mr. Snook, what I want you
10 to do is look at the last tab of S-2 which says APS
11 Tariffs. The first tariff there is a Tariff E-51, and
12 it has stamped on that frozen. Can you tell us what
13 E-51 applies to and your understanding of how and why
14 this was frozen.

15 A. E-52 was --

16 Q. E-51.

17 A. E-51 was APS's tariff that was responsive to
18 cogeneration facilities 100 kW and less, it says over,
19 small power production facilities over 100 kW.

20 Q. And your understanding is when was this
21 frozen?

22 A. I believe it was frozen July 1, 2001.

23 Q. That would have been done by the Commission
24 or would that have been done by APS?

25 A. It would have been done pursuant to

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1 Commission order.

2 Q. If we could turn to the last page of this,
3 this is the exhibit which is APS Tariff E-36. Is this
4 the station use tariff you were discussing with the
5 administrative law judge previously?

6 A. Yes, it is.

7 Q. And tell us what your understanding is of how
8 this was implemented and how it is similar to the PRS
9 tariffs that TEP is proposing in this case.

10 A. My understanding is APS filed this tariff for
11 approval, it became effective March 1, 2001, and it's
12 similar to our filing in that it separates out
13 transmission and distribution costs from the
14 generation and has a market price for generation.

15 Q. And when was this, again, to your
16 understanding approved by the Commission?

17 A. March 1, 2001.

18 Q. And based upon this action that the
19 Commission took regarding the tariffs of APS, do you
20 think that it is out of character for TEP to seek
21 Commission approval of the PRS tariffs and a freezing
22 of the QF tariffs as contained in the application?

23 A. No, I do not.

24 Q. In your opinion, is there any reason to treat
25 self-generation customers who are QFs differently from

1 self-generation customers who are not QFs under TEP's
2 rate tariffs?

3 A. No, I believe they should be treated in the
4 same fashion.

5 Q. And you had mentioned a little bit of that
6 with the administrative law judge, and you indicated
7 that one reason is because from a customer standpoint,
8 a QF or a non-QF self-generator is viewed the same as,
9 by TEP, is that correct?

10 A. That's right. From TEP's perspective, they
11 look, act, and feel the same.

12 Q. Is it your understanding that over the past
13 several years, the technology of self-generation units
14 has evolved and progressed?

15 A. That's correct, and many more customers are
16 looking at self-generation absent a QF process.

17 Q. Is it possible then that a QF unit could
18 employ the same technology that a non-QF
19 self-generation unit could?

20 A. Yes, that's true.

21 Q. Is it possible that they could have the same
22 type of capacity and output, whether they be QFs or
23 non-QFs?

24 A. That's correct.

25 MR. HEYMAN: I think that's all the questions

1 I have. Thank you.

2 ALJ RODDA: Anyone have any further
3 questions?

4 MR. GELLMAN: Could I briefly, Your Honor?

5 ALJ RODDA: Yes.

6

7

RECROSS-EXAMINATION

8

9 Q. (BY MR. GELLMAN) Mr. Snook, in regards to
10 the APS Tariff E-51 and the fact that you said it was
11 approved in March of 2001, is that a fair statement of
12 your testimony?

13 A. That's correct.

14 Q. Or frozen in 2001?

15 A. Which tariff number was that, 51?

16 Q. E-51.

17 A. What I was reading there was the date, the
18 effective date. Actually, I'm looking in the
19 application, and it looks like it was actually frozen
20 in July of 1996.

21 Q. And was it -- let me rephrase. Referring to
22 APS E-51 again, is it your understanding that that
23 tariff was frozen as a result of a rate case involving
24 APS?

25 A. That is my understanding.

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1 MR. GELLMAN: Thank you. No further
2 questions.

3 ALJ RODDA: Thank you, Mr. Snook. You may be
4 excused.

5 THE WITNESS: Thank you.

6 ALJ RODDA: Let's take a short break. Then
7 we will start with Mr. Neidlinger.

8 (A recess ensued.)

9 ALJ RODDA: Let's go back on the record then.
10 We will have this witness sworn.

11

12

DAN L. NEIDLINGER,

13 called as a witness on behalf of Intervenor Department
14 of Defense, having been first duly sworn by the
15 Certified Court Reporter, was examined and testified
16 as follows:

17

18

DIRECT EXAMINATION

19

20 Q. (BY MR. NYCE) For the record, we have marked
21 Mr. Neidlinger's direct testimony as DOD No. 1.

22 Mr. Neidlinger, would you state your name and
23 address for the record.

24 A. My name is Dan L. Neidlinger. My business
25 address is 3020 North 17th Drive, Phoenix, Arizona.

1 Q. For whom are you appearing in this case?

2 A. I am appearing on behalf of the Department of
3 Defense.

4 Q. Have you prepared a document called Direct
5 Testimony of Mr. Dan L. Neidlinger which has been
6 marked as DOD-1 for presentation?

7 A. Yes, I have.

8 Q. Do you have any additions or corrections?

9 A. I have one minor correction. On page 1 of my
10 prepared testimony, I state that Fort Huachuca is
11 located near Sierra Vista, Arizona. In fact, it is
12 part of or included within the city limits of Sierra
13 Vista.

14 Q. So we can take the sentence that says located
15 near and put located in, is that correct?

16 A. That's correct. That's the only correction.

17 Q. With that correction, is DOD-1 true and
18 correct to the best of your knowledge and belief?

19 A. Yes, it is.

20 Q. Do you adopt it as your presentation in this
21 case?

22 A. I do.

23 Q. If I were to ask you the questions set forth
24 therein, would your answers be the same?

25 A. Yes, they would.

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1 MR. NYCE: Your Honor, at this point, I would
2 like to move DOD-1 subject to cross-examination.

3 ALJ RODDA: Any objection to DOD-1?

4 MR. GELLMAN: No objection, Your Honor.

5 ALJ RODDA: DOD-1 is admitted.

6 Q. (BY MR. NYCE) Would you now provide a
7 summary of your testimony.

8 A. Yes.

9 I've listened closely this morning to the
10 presentation to date. I have no, absolutely no
11 objection to the company updating and revising its QF
12 tariffs, and augmenting these tariffs with partial
13 requirements tariffs that would be applicable to
14 non-QF facilities. My basic problem with the filing
15 at this point in time is that it's just not cost
16 related. By that I mean it, as a matter of fact, has
17 some significant anti-competitive overtones to it due
18 to the level and the magnitude of the charges that
19 would be incurred under these tariffs by future
20 partial requirements customers.

21 Recognizing the fact that there are only a
22 handful of customers taking service under the current
23 tariffs, one should initially ask the question, if the
24 company is giving away the store, so to speak, with
25 the current tariffs, why doesn't the company have

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1 numerous customers on the current tariffs and a stack
2 of applications from them? That's the first question.
3 I can't answer that question, but certainly I can
4 answer the question that the filing of the new tariffs
5 is certainly not going to add any applications in the
6 in-basket with respect to partial requirements.

7 And the problem is this. The company has
8 taken a take-or-pay position through its proposed
9 rates, PRS rates, with respect to distribution and
10 transmission facilities. It's in essence telling a
11 prospective customer that would only be on the system
12 for a very short period of time at some point during
13 the year that it must continue to pay the same level
14 of charges of transmission and distribution charges
15 that it would pay if it was a full requirements
16 customer.

17 To give you an analogy, take a seasonal
18 residential customer, for instance. Say the customer
19 spends three or four months of the year in Tucson,
20 then disappears during the winter months to Minnesota.
21 The customer would not pay anywhere close to its "fair
22 share" of distribution and transmission costs under
23 the company's current rates. So the company's
24 ratemaking concept or philosophy in this case has been
25 flip-flopped 180 degrees.

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1 And if I could go to this sheet of paper, I
2 think this will demonstrate my point. For the court
3 reporter, I'll try to describe a little bit what I'm
4 sketching, but what I will draw here is a curve which
5 describes the relationship between load factor and
6 coincident factor on an electric system. This curve
7 is commonly known as a Barri curve. I don't know
8 whether anybody here knows what a Barri curve is, but
9 in any event, it looks something like this with the X
10 axis being load factor and the Y axis representing
11 coincident factor. And you might say, "What's the
12 importance of this curve?" This curve is very
13 important and has been used historically to allocate
14 costs related to production, transmission, and
15 distribution to customer classes when we do a cost
16 allocation study and set revenue requirements.

17 For instance, in this case, if we had a
18 90 percent load factor customer, that customer would
19 be coincident with the system at about a .9 factor.
20 In other words, that customer would have say a one
21 megawatt peak. At the time of the system peak, its
22 demand would be 900 kW or 90 percent of that customers
23 or group of customers' total peak. In this case,
24 we're talking about a 10 percent class of customers.
25 They don't have a 90 percent load factor; they have a

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1 10 percent load factor. The coincidence to the system
2 for that group of customers is not 90 percent; it's 30
3 percent. The company's proposed tariffs assume that
4 this group of customers should still pay at this same
5 level, not at this level.

6 Again, going back to my part-time residential
7 customer, the company's tariffs don't have an energy
8 ratchet that says, "Mr. Part-timer, you know, you used
9 5,000 kilowatt hours in December, or 2000. Therefore,
10 we're going to send you a bill in July for 2000
11 kilowatt hours, regardless of whether you are here or
12 not." Nor do the residential rates, for instance,
13 have a basic service charge that would do the same
14 thing. In other words, the basic service charge I
15 think with the company now for residential is
16 approximately \$5. Well, if you want to carry the
17 company's cost, pricing concept to the residential
18 class, you say, "Well, the monthly charge shouldn't be
19 5 bucks. It ought to be 25 bucks. Whether you're
20 here or you aren't, you're going to pay 25 bucks a
21 month."

22 So basically, that's my biggest problem with
23 the company's proposal, that the costing and pricing
24 of these tariffs is just not appropriate. In
25 addition, there are certain terms and conditions for

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1 service that in my view aren't justified. The two
2 year, 100 percent ratchet I think is a good example of
3 that.

4 And finally, to demonstrate what the effect
5 of, for instance, the PRS-14 tariff would be on a
6 customer, if you took Fort Huachuca's load and applied
7 the PRS-14 tariff, Fort Huachuca would be billed
8 approximately \$860,000 annually for backup and standby
9 service, although it generated essentially all of its
10 power. That's an absurd result that in my view would
11 make adoption of that tariff by Fort Huachuca just, it
12 just couldn't live with that kind of annual billing.
13 So if you just look at it from an end result
14 standpoint, it's a rate that can't fly. And that I
15 think concludes my summary.

16 MR. NYCE: If Your Honor please,
17 Mr. Neidlinger is tendered for cross-examination.

18 ALJ RODDA: Thank you.

19 Staff, do you have any questions?

20 MR. GELLMAN: No questions from Staff, Your
21 Honor.

22 ALJ RODDA: Mr. Wakefield?

23

24

25

CROSS-EXAMINATION

1

2 Q. (BY MR. WAKEFIELD) Good morning,
3 Mr. Neidlinger.

4 A. Good morning.

5 Q. On page 3 of your testimony, up at the top,
6 you state that TEP's current rates are the product of
7 incorrect costing and pricing methods used in past
8 rate proceedings.

9 A. Correct.

10 Q. The specific costing and pricing methods you
11 are referring to, are those the ones you just
12 described in your summary?

13 A. No, just the opposite.

14 One of the reasons for TEP's concerns, and I
15 think it may be a valid concern, don't get me wrong,
16 is that a partial requirements customer could take
17 advantage of improper revenue and rate design
18 practices for this company in the past.

19 Let me give you an example. Let's take a
20 small commercial customer, could be a Burger King,
21 could be a Circle K, has a load of probably 75 kW to
22 100 kW, in that neighborhood. Their current rates on,
23 based upon historical costing in my view are too high.
24 The overall revenue requirement is too high, for
25 starters. Then they compound that error by moving a

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1 lot of demand cost, demand-related cost into the
2 energy component.

3 Well, obviously if you're a full requirements
4 customer under that rate, that rate design may be just
5 fine, but if you're a partial requirements customer
6 and jump on the system for a few hours during the
7 year, you avoid from a cost of service standpoint a
8 lot of demand charges, because the demand charges have
9 been rolled into the energy rate.

10 What the company has attempted to do, and
11 again, I don't have any quarrel with the objective,
12 has been to reverse that process with these PRS
13 tariffs by moving a lot of that demand and energy back
14 into fixed demand charges. And I guess my point in
15 that testimony is if the rate has been properly costed
16 and priced to begin with, then the magnitude of any
17 shortfall potentially incurred by a partial
18 requirements customer would be mitigated. But under
19 the current rate design, it's possible that the
20 partial requirements customer can take advantage of
21 those flaws.

22 Q. So the pricing and costing methodology you
23 claim has been used that is incorrect is the inclusion
24 of fixed cost in the energy component?

25 A. That has to do with the rate design, and it

1 has to do with including fixed costs and allocating
2 those costs among customer classes on an energy basis.

3 Q. In what specific docket were these alleged
4 incorrect methods used?

5 A. Every docket that I can recall within the
6 last 15 years.

7 Q. And who determined that these methods are
8 incorrect?

9 A. The Commission adopted the methods presented
10 by the company. My point and my testimony is that in
11 my view, the methods were incorrect. The Commission
12 adopted those methods. They did. But in my view,
13 they're wrong, and now the company is beginning to see
14 that those type of rate design policies can come back
15 and bite them, so to speak, under these conditions.

16 Q. You go on in your testimony in the same
17 paragraph to state that TEP's industrial and
18 commercial customers are paying rates that exceed
19 their cost of service?

20 A. Yes.

21 Q. Did you perform a cost of service study to
22 determine that?

23 A. Not a current one, no. I had historical cost
24 of service studies that document that, yes.

25 Q. When the Commission is designing rates for

1 public utility, is cost of service the only leveling
2 factor they have to consider?

3 A. No.

4 MR. WAKEFIELD: Thank you. No further
5 questions.

6 ALJ RODDA: Mr. Heyman.

7 MR. HEYMAN: You know, I didn't have any
8 questions until he changed his testimony about Fort
9 Huachuca and Sierra Vista. That has brought a flood
10 of questions.

11

12

CROSS-EXAMINATION

13

14 Q. (BY MR. HEYMAN) Good morning, Mr. Neidlinger.

15 A. Good morning.

16 Q. Have you had a chance to review the open
17 access transmission tariff that TEP filed at FERC?

18 A. No, I haven't.

19 Q. So you would not be in a position to testify
20 as to whether or not the PRS tariffs that TEP is
21 proposing in this case are consistent with their, what
22 I'll call OATT filing at FERC?

23 A. I have no reason to believe they are not
24 consistent.

25 Q. Are you aware that all of TEP's retail

1 customers and some of its wholesale customers take
2 service under the network access service as prescribed
3 in TEP's O-A-T-T, the OATT?

4 A. I didn't understand your question.

5 Q. My question is are you aware that TEP's
6 retail customers, and some of the wholesale customers,
7 actually take service under network access service as
8 prescribed in TEP's OATT? And you may not be aware
9 of it.

10 A. I'm not aware of it.

11 Q. Okay. Are you aware that for a customer to
12 take transmission service on less than a monthly
13 basis, the customer must schedule firm point to point
14 service under TEP's OATT prior to the day or hour that
15 it's needed?

16 A. That would be reasonable. I'm not aware of
17 the specific provision in that type of service.

18 Q. Just a general question then, in your
19 experience, do forced outages of distributed
20 generation units occur randomly?

21 A. Yes, I think for the most part they do.

22 Q. And are you aware that TEP cannot reserve
23 transmission only for distributed generation outages
24 that may be forced outages because we don't know when
25 they're going to occur?

1 A. Well, when you say reserve, they certainly
2 can't schedule ahead of time for forced outages if we
3 don't know when they're going to occur. I agree with
4 that statement.

5 Q. So in order to be able to have transmission
6 available for forced outages, TEP would have to have
7 transmission availability 100 percent of the time. Do
8 you agree with that?

9 A. Yes, and the system is designed to provide
10 service for that customer when that customer decided
11 to go from full requirements to partial requirements.

12 Q. Are you familiar with the Open Access Same
13 Time Information System utilized by TEP?

14 A. No, I'm not.

15 Q. Actually, I had a bunch of questions that
16 needed a knowledge of TEP's OATT and the OASIS which
17 is the Open Access Same Time Information System, and
18 is it fair to say that based upon your unfamiliarity
19 with those for this case that if I were to ask you
20 specific details about them that the answer would
21 probably be you are not familiar with them?

22 A. That would be my answer, yes.

23 Q. Okay.

24 You indicated that every TEP docket within
25 the last 15 years used an incorrect methodology?

1 A. In my view, yes, that's correct.

2 Q. And I think you also acknowledged that the
3 Commission has not accepted your view at this time?

4 A. In recent past, that's correct.

5 Q. Okay. You indicated that the Department of
6 Defense is involved with Davis-Monthan and Fort
7 Huachuca. Is Fort Huachuca served from a dedicated
8 transmission line?

9 A. Yes, it is. I might add the dedicated
10 transmission line with the exception of some recent
11 upgrades is fully depreciated.

12 MR. HEYMAN: Give me one second.

13 I think that's all the questions I have for
14 you. Thank you, Mr. Neidlinger.

15

16

EXAMINATION

17

18 Q. (BY ALJ RODDA) I just want to make sure I
19 understand. What I think I heard you say was that TEP
20 might have a point in trying to move some of the fixed
21 costs into the demand charge, and isn't that what
22 they're trying to do here?

23 A. That's what they have done, yes. In contrast
24 to their rate design for a full requirements customer
25 which includes a lot of fixed costs in the energy

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1 component, they've instead reversed the design process
2 for their PRS, proposed PRS tariffs by moving some of
3 those costs back into demand charges and additionally
4 ratcheting those demand charges at
5 100 percent for a 24-month period. And that was going
6 back, saying that that partial requirements customer
7 is responsible for all of those costs which, as I
8 tried to demonstrate with my curve, is not true,
9 regardless of whether they're only taking service on a
10 part-time basis or on a full time basis. And that's
11 analogous to saying to other customers such as my
12 snowbird customer, residential customer, that if we
13 carry through that same concept to even full
14 requirements customers that we should either have an
15 energy ratchet for residential customers or we should
16 have our monthly service charge increase by a factor
17 of three or four so that that customer in Minnesota is
18 still paying for his "fair share" of its distribution
19 costs.

20 Q. So the reason you think it's inappropriate
21 here is because it's not applied the same way to all
22 customers?

23 A. I'm saying not only that, but the costing is
24 incorrect. I think that the company's costing system
25 and pricing for residential customers is probably not

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1 too bad. And maybe the 5 bucks is a little low, but
2 it certainly would be wrong in my view to either apply
3 it, an energy ratchet to residential to get the
4 snowbirds or to increase the monthly service charge to
5 \$25 just to get the snowbirds, because I don't agree
6 with that costing.

7 I agree with the costing pricing that says
8 that there is some relationship between the amount of
9 time you're on the system and the amount of time
10 you're off the system, that by definition, the
11 customer that's on the system 100 percent of the time
12 should pay X dollars, but the guy that isn't there but
13 only a portion of the time shouldn't have to pay X
14 dollars forever, that you're overburdening that
15 customer from a cost assignment standpoint.

16 Q. Okay. I think you said earlier in your
17 summary that you disagreed also with the revenue
18 requirement. Were you talking about the revenue
19 requirement that's being collected from a certain
20 class customers?

21 A. Yes.

22 Q. Not overall revenue?

23 A. What I was saying in terms of the overall
24 costing and setting of revenue requirements
25 historically for this company, that at least in my

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1 opinion, the revenue requirement assigned to
2 commercial and industrial customers has exceeded their
3 cost of service due to the methods that have been
4 adopted.

5 Q. All right. I have heard or I've read in your
6 testimony and heard today, too, about this ratchet. I
7 think also the cogen. people were talking about
8 ratchets. Can you explain to me, when you use the
9 word ratcheting, and as you have used it here, what
10 does that mean?

11 A. A ratchet is the same as a take or pay. In
12 other words, it establishes a level of charges that
13 the customer is required to pay for some period of
14 time in the future based upon a historical level. In
15 the case of the PRS tariffs, they would ratchet based
16 upon either the installed capacity of the generators
17 or a demand set by that customer, that they would be
18 required, in the case of a PRS-14 customer, to pay
19 4.48 a month times that maximum kW demand for 24
20 months. Now, the current ratchet, demand ratchet
21 provisions in the full requirements rates as I recall
22 for Rate 14 customers is not at 100 percent level.
23 It's at 67 percent for 11 months, not 24. And as I am
24 recalling, in the Rate 13 schedule, it's 50 percent
25 for 11 months.

1 Q. Okay.

2 Now, Fort Huachuca, I mean, you give an
3 example of if they had to take under the PRS-14 of
4 \$860,000.

5 A. Right.

6 Q. What kind of customer are they currently?

7 A. They're a full requirements customer with
8 annual billings of approximately under Rate 14
9 approximately \$6 million a year. But under my
10 illustration, assuming that Fort Huachuca would
11 install all of its generation to generate all of its
12 own power, 100 percent of its power, under a likely
13 scenario, partial requirements service under 14, it
14 would still be required to pay TEP 860,000 a year for
15 primarily transmission service. And that's, of
16 course, in my view an absurd result, and the Fort
17 would never agree to that, and it would make any
18 self-generation at the Fort completely nonfeasible.
19 And if the costing had been done in accordance with
20 traditional engineering, accepted engineering
21 practices, it wouldn't be 4.48 a month ratcheted for
22 24 months. It would be on the magnitude of a third of
23 that.

24 Q. So ultimately, I guess your recommendation
25 regarding, I'm looking at the summary of your

1 conclusions and recommendations in your testimony on
2 page 6, it says, "PRS rate should be revised based on
3 the updated cost of service and load research data."

4 A. Yes, I --

5 Q. You believe that needs to be done before we
6 adopt these proposed tariffs. And does that need to
7 be done as part of a rate case or can that be done
8 outside of a rate case?

9 A. Well, I don't know. I'm not a lawyer. I
10 think you can already see that the PRS filings have
11 blown apart the confines of the last rate case
12 significantly, with all the terms and provisions. So
13 to argue that the current filing is within the
14 confines of the 1996 rate case I think is ludicrous.
15 But I don't have any problem going back and trying to
16 revise the costing pricing based upon the '96 case and
17 subsequent unbundled rate file to do it correctly.
18 But the company has argued that these rates are
19 completely out of touch with reality. We need to
20 update them. Well, if you're going to update, let's
21 update. Let's update everything.

22 ALJ RODDA: Okay. I don't think I have
23 anything further.

24 Mr. Nyce, did you have any redirect?

25 MR. NYCE: Yes. One moment.

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REDIRECT EXAMINATION

Q. (BY MR. NYCE) Dan, do you have an opinion of the likelihood of a forced outage on a partial requirements customer being coincident with a system peak?

A. It's extremely unlikely.

Q. Is there anything further you'd like to explain about that?

A. No, I can't give you a statistic. You would have to take a look at the generation configuration of that customer as to what the likelihood of a failure might be.

Q. How about the likelihood of a forced outage of all members of the class or the rate schedule on the system peak?

A. Very small.

MR. NYCE: Thank you.

ALJ RODDA: Before you go, you don't have any issues, or do you have any issues with the revision of the market generation credit?

THE WITNESS: No, I don't.

ALJ RODDA: Thank you.

Did anyone else have, based on that last

1 question, any recross?

2 All right. You can be excused.

3 THE WITNESS: Thank you.

4 ALJ RODDA: Let's go off the record.

5 (An off-the-record discussion ensued.)

6 ALJ RODDA: Let's go back on the record and
7 call Barbara Keene.

8

9

BARBARA KEENE,

10 called as a witness on behalf of the Staff, having
11 been first duly sworn by the Certified Court Reporter,
12 was examined and testified as follows:

13

14

DIRECT EXAMINATION

15

16 Q. (BY MR. GELLMAN) Would you please state your
17 name and business address for the record.

18 A. My name is Barbara Keene. My business
19 address is 1200 West Washington Street in Phoenix.

20 Q. And by whom are you employed?

21 A. I am employed by the Utilities Division of
22 the Arizona Corporation Commission.

23 Q. And what is your position with the
24 Corporation Commission?

25 A. I'm a Public Utilities Analyst.

1 Q. And could you briefly describe your duties
2 for the record.

3 A. Among other duties, I review utility tariff
4 filings and special contracts.

5 Q. And as part of your duties with the
6 Corporation Commission, were you assigned to the case,
7 this case before the Court involving the Tucson
8 Electric Power approval of the partial requirements
9 tariffs?

10 A. Yes, I was.

11 Q. And as part of your analysis, did you write a
12 Staff Report, write testimony regarding this
13 application?

14 A. Yes, I did.

15 Q. For the record, that application, or that
16 testimony has been marked as Exhibit S-1. Was that
17 testimony prepared by you or under your direction?

18 A. Yes, it was.

19 Q. And at this time, do you have any corrections
20 or changes to make to that testimony?

21 A. I have something to add. I prepared a
22 statement regarding fair value and would like to read
23 it into the record.

24 "Staff analyzed this application in terms of
25 whether there were fair value implications. It is

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1 impossible to know the exact amount of any impact on
2 TEP's revenue resulting from either TEP's proposals in
3 this case or Staff's proposals. However, compared to
4 TEP's total revenue, any impact from these proposals
5 would be de minimus and any impact on TEP's fair value
6 rate base and rate of return would also be
7 de minimus."

8 Q. And besides that addition, are there any
9 other changes or corrections at this time?

10 A. No.

11 MR. GELLMAN: Your Honor, at this time, I
12 move for the admission of Exhibit S-1.

13 ALJ RODDA: Okay. Any objections to S-1?
14 S-1 is admitted.

15 Q. (BY MR. GELLMAN) At this point, Ms. Keene,
16 is there anything you would like to add?

17 A. No.

18 MR. GELLMAN: Your Honor, no further
19 questions. I offer the witness for cross-examination.

20 ALJ RODDA: Mr. Nyce, any questions?

21 MR. NYCE: No questions, Your Honor.

22 ALJ RODDA: Mr. Wakefield?

23 MR. WAKEFIELD: No.

24 ALJ RODDA: Mr. Heyman?

25 MR. HEYMAN: Yes.

1 ALJ RODDA: Thank goodness.

2 MR. HEYMAN: It would have made sense to go
3 to lunch and not come back if I didn't.

4

5 CROSS-EXAMINATION

6

7 Q. (BY MR. HEYMAN) Ms. Keene, we talked a
8 little bit about the DGI Working Group. Did you
9 directly participate in that?

10 A. I did participate in one of the
11 subcommittees.

12 Q. Which subcommittee was that?

13 A. Not the one that dealt with tariffs. I can't
14 remember right off the name of it, but it dealt with
15 interconnecting, like a DG filing application to
16 connect.

17 Q. But it's fair to say that the subcommittee of
18 the DGI Working Group that came up with the findings
19 and recommendations that are in Section 1.4 of page 2
20 of the Final Report was not a group you were involved
21 in?

22 A. That's correct.

23 Q. Mr. Snook indicated and TEP has stated in the
24 record here that it was TEP's belief that there wasn't
25 a consensus among Staff as to how to proceed with the

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1 recommendations from the DGI Working Group Report.

2 Would you agree with that assessment?

3 A. I'm not sure I understand the question.

4 Q. Okay. TEP has made the statement that it did
5 not believe that Staff was unified in how to proceed
6 with implementing the recommendations and the findings
7 of the Final Report of the DGI Working Group. Would
8 you agree with that observation by TEP?

9 A. No, not really. The report recommended that
10 working groups be held to clarify some issues like the
11 tariffs. That was one thing that -- there were
12 several issues, not just the ones that weren't
13 addressed, but the ones that there was not consensus
14 on. And those workshops have not been held. It's not
15 a matter, though, of Staff not agreeing on whether,
16 how to proceed with holding those workshops. I think
17 it's more of a time constraint issue.

18 Q. So that I understand, it's your testimony
19 that since June of 2000 to October of 2002, there have
20 been time constraints that have prevented Commission
21 Staff from holding additional DGI workshops?

22 A. That is correct.

23 Q. There was also some recommendations about
24 rulemaking taking place, and there has not been a
25 rulemaking docket opened with regard to PRS tariffs,

1 is that correct?

2 A. It's the same issue of the time constraint.

3 Q. What are the time constraints that prevent
4 Staff from initiating workshops?

5 A. Not enough Staff people for the amount of
6 work that we need to do on various issues.

7 Q. There have been a number of workshops that
8 have been held since June of 2002 conducted by Staff
9 on a variety of other issues, though, isn't that
10 correct?

11 A. That is correct.

12 Q. Could it be that it's a prioritization issue
13 of Staff as to which workshops it's going to hold and
14 which it's not?

15 A. Yes.

16 Q. Okay.

17 I need to ask you about what I think I
18 understand your testimony is a concern that you have
19 that PRS tariffs not be adopted at this time because
20 we're not in a rate case proceeding, is that correct?

21 A. No. I did not say that the PRS tariffs
22 should not be adopted. I suggested some modifications
23 to them. I didn't want the QF tariffs to be
24 eliminated.

25 Q. So just so that I'm clear, it is not Staff's

0002720003

1 concern that the Application be acted upon outside of
2 a rate case proceeding?

3 A. Well, I do have a concern with tariffs being
4 eliminated outside of a rate case proceeding as well
5 as any rates increased for a customer or potential
6 customer outside a rate case proceeding.

7 Q. Okay. Well, let me go through this then so
8 that the record is clear. On page 5 of your
9 testimony, beginning on line 15, you do indicate that
10 some of the proposed changes to PRS-101 would be
11 acceptable to Staff, isn't that correct?

12 A. That's correct.

13 Q. And then if we flip over in your testimony to
14 page 10, line 18, where the question is "What is
15 Staff's recommendation regarding PRS-10," Staff
16 recommends that PRS-10 be approved with modifications
17 in this proceeding?

18 A. That is correct.

19 Q. Okay. And if we then flip over to page 11,
20 line 22, "What is Staff's recommendation regarding PRS
21 13," the answer is, "Staff recommends that PRS 13 be
22 approved with modifications, "as well, is that
23 correct?

24 A. That's correct.

25 Q. And that's in this proceeding as well?

1 A. That's correct.

2 Q. Okay.

3 I asked Mr. Snook a couple of questions about
4 the chronology of the Commission's decisions that you
5 cited in your testimony and FERC Order 888. I want to
6 see if there's some agreement in the record on this.
7 My understanding is that Decision Number 52345 was
8 issued in 1981. Is that your understanding as well?

9 A. I forget the decision numbers.

10 Q. It was the first.

11 A. The first one that I cited was 1981.

12 Q. And Decision Number 56271 was issued around
13 1989, is that correct?

14 A. 1988.

15 Q. 1988. And do you agree that FERC Order 888
16 was issued subsequent to Decision Number 56271?

17 A. That is correct.

18 Q. Do you also agree with Mr. Snook's testimony
19 that prior to FERC Order 888, generation and
20 transmission costs were bundled for ratemaking
21 purposes?

22 A. On retail rates they were bundled much longer
23 than that.

24 Q. Right. What about wholesale rates, what's
25 your understanding?

000272003

1 A. I would say that would be correct about
2 wholesale rates.

3 Q. And that subsequent to FERC Order 888,
4 utilities were required to unbundled transmission and
5 generation costs for ratemaking purposes, is that
6 correct?

7 A. Are you talking about the wholesale level?

8 Q. Correct.

9 A. Yes.

10 Q. Okay. And you agree that TEP's QF rates that
11 are currently in place were implemented between 1989
12 and 1995 or so when FERC 888 was issued?

13 A. Could you repeat the question?

14 Q. Let me reword it a little bit. Do you agree
15 that TEP's current QF rates were implemented after the
16 issuance of Decision 56271 but before the issuance of
17 FERC 888?

18 A. That is correct, but they're retail rates,
19 not wholesale.

20 Q. I understand.

21 Do you believe that it's appropriate for TEP
22 to continue dealing with each DG customer request for
23 service through a special contract as opposed to a
24 tariff?

25 A. No. I would like to see a tariff in place,

1 as long as the rates are the proper rates and that
2 they don't discourage distributed generation unduly.

3 Q. So you don't object to TEP implementing new
4 and revised rates for distributed generation
5 customers. Your dispute with TEP is more over how to
6 do it?

7 A. Well, right now, there aren't enough tariffs
8 that deal, that would serve customers who are not QFs,
9 so we need to have those tariffs in place. But as far
10 as changing the rates for the QF customers or
11 potential customers, I would rather see that be done
12 in the context of a general rate case.

13 Q. Okay. In your analysis of TEP's proposed PRS
14 rates, the new ones, do you agree with Mr. Snook's
15 assessment that they are broad enough to provide
16 service to self-generation units that are QF's as well
17 as non-QF's?

18 A. I would agree.

19 Q. And I asked Mr. Snook this question, and I'll
20 ask you. Do you believe that DG units that are not
21 QFs should be treated differently in TEP's tariffs
22 than QFs are?

23 A. There may be reasons to treat QFs
24 differently. There is federal support to PURPA that
25 does give QF's certain advantages. The purpose is to

1 encourage QFs, and state policies, it's the same way.
2 So I think there may well be reasons to treat the
3 customers differently.

4 Q. So that it's clear, what are the reasons, the
5 distinctions that you see between a QF and a non-QF
6 that would justify treating them separately under
7 TEP's tariff's?

8 A. There are societal benefits for a customer
9 that uses renewables and cogeneration, and those
10 benefits are not the same as with the self-generation
11 user that is not using renewables for cogeneration.

12 Q. Is that the only one that you had in mind?

13 A. That's the major one.

14 Q. Okay. When you say societal benefits, what
15 do you mean by that?

16 A. Reduced pollution, reduced reliance on fossil
17 fuels, all the benefits of using renewable energy and
18 the savings involved with cogen. where you use waste
19 heat or waste product.

20 Q. I asked Mr. Snook this question, and we will
21 see if you agree. I asked whether or not technology
22 in the industry had developed to the point where QF
23 and non-QF could use the same technology for producing
24 power. Do you agree with that?

25 A. Not necessarily.

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1 Q. Isn't it possible that you could have a
2 self-generation unit that uses renewable resources
3 that is not filed to be a QF and therefore is not a
4 QF?

5 A. That is possible, because there are some
6 ownership restrictions on QF.

7 Q. And in that instance, there would be no
8 reason to distinguish between the one or the other, is
9 that correct? And I will even say that limited
10 instance.

11 A. I would agree with that.

12 Q. Do you think that it should be the
13 responsibility of TEP to police whether a distributed
14 generation unit that says it is a QF is in fact a QF,
15 that it's gone through all the procedures and received
16 all of the approvals from FERC?

17 A. Well, FERC does allow, I can't think of the
18 word, where a customer can self-certify.

19 Q. Self-certification?

20 A. Yes, self-certification. And then anyone can
21 challenge that later on, but if they have done that,
22 you know, they followed all the procedures, FERC does
23 assume they are a QF.

24 Q. I appreciate the distinction between assuming
25 they are a QF and requesting verification. How would

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1 TEP go about policing distributed generation units to
2 determine whether or not they are in fact QFs or not?

3 A. Well, you could ask for a copy of the
4 application that was the self-certification.

5 Q. Okay. Are you familiar with the
6 nondiscrimination provisions of PURPA?

7 A. Probably a little bit.

8 Q. Would you feel comfortable in answering
9 questions about it I guess is the better question.

10 A. I can try.

11 Q. Exhibit S-2 which is the blue one, do you
12 have that in front of you?

13 A. I have that, yes.

14 Q. By the way, have you seen this document
15 before?

16 A. Yes.

17 Q. And what was the context in which you first
18 saw this document?

19 A. TEP provided it to Staff.

20 Q. Okay. Do you remember about how long ago
21 that was, months?

22 A. It was after this application was filed, but
23 I don't remember -- well, okay, we received in it
24 July.

25 Q. And it was as part of a meeting, some of this

1 ongoing communication between Staff and TEP with
2 regard to this issue?

3 A. Right.

4 Q. Okay. If you could go to the tab that says
5 Code of Federal Regulations, and the first page is
6 numbered 725. If you could flip to 742; are you
7 there?

8 A. Yes.

9 Q. It's Section Number 292.305, and if I could
10 read A-2 quickly. It says, "Rates for sales shall be
11 just and reasonable and in the public interest and
12 shall not discriminate against any qualifying facility
13 in comparison to rates for sales to other customers
14 served by electric utility."

15 My only question to you, Ms. Keene, is is
16 this a provision that you relied upon in forming the
17 conclusions and the recommendations that you did in
18 your testimony in this case?

19 A. I have read it, and it does say not
20 discriminate against a QF, but it doesn't say that it
21 can't discriminate in favor of a QF.

22 Q. And so your -- well, I guess my question was
23 was this something that you relied upon in forming
24 your conclusions in this case.

25 A. I read it, and I read a lot, so I guess so.

000272003

1 Q. And I guess by your answer, were you
2 indicating to us that you interpreted this to mean
3 that a utility could discriminate in favor of a QF?

4 A. Right. A QF would not be treated any worse
5 than anybody else, but it doesn't say they can't be
6 treated better.

7 Q. Okay. And did you rely upon any
8 interpretations of this, either by counsel or by FERC
9 issue or order, to reach that conclusion?

10 A. No, just in looking at other parts of PURPA
11 and FERC regulations in that they are encouraging QFs.
12 So otherwise, there would be no reason to have that
13 provision.

14 Q. Okay. You've had a chance to review
15 Mr. Snook's rebuttal testimony, is that correct?

16 A. Yes.

17 Q. And you will note that in page 6 of his
18 rebuttal testimony, he refers to several places in
19 your direct testimony where you talk about potential
20 situations that might occur. Let's just flip, if you
21 have --

22 A. Actually, I don't.

23 MR. HEYMAN: Your Honor, could I approach?
24 I have a copy of it.

25 Q. (BY MR. HEYMAN) Probably the best place for

1 us to start looking at would be page 6. I just want
2 to see if you have any additional information from the
3 time that this was filed.

4 At line 7, your testimony is cited as,
5 "Although no customers are currently being served
6 under PRS-103, customers may be planning facilities
7 while relying on the fact that PRS-103 is available."

8 Are you aware of any potential customers of
9 TEP who are planning facilities relying on the fact
10 that PRS-103 is available?

11 A. I am not aware of any specific plans, but I
12 do know in this particular case there were a lot of
13 intervenors and entities who wanted to be on the
14 service list. They had interest in this, and it may
15 well be they had plans.

16 Q. They didn't show up here today.

17 A. Well --

18 Q. They're not here.

19 Let's go to the next one. Line 11 with
20 regard to PRS-103, 104, 105 and 106, it says, "Even
21 though only one customer is currently being served on
22 these tariffs, there may be other customers planning
23 facilities while relying on the fact that these
24 tariffs are available."

25 I believe Mr. Snook indicated that the one

1 customer actually has a provision in a special
2 contract dealing with 106, is that correct?

3 A. That's my understanding.

4 Q. Are you aware of any customers that are
5 currently being served under 103 or 104?

6 A. No, I would have the same response to this
7 question as the previous question.

8 Q. And then just for sake of brevity, if I were
9 to ask you about the quote regarding 107 and 108,
10 would your answer be the same?

11 A. Yes. And there is at least one intervenor
12 present who may have some plans. So just because I
13 don't know about the plans, that doesn't mean --

14 Q. And I don't want you to speculate. Are you
15 aware that Fort Huachuca or DOD have any plans?

16 A. No.

17 MR. HEYMAN: Okay. I think that's all the
18 questions I have for Ms. Keene.

19 ALJ RODDA: Thank you.

20

21

EXAMINATION

22

23 Q. (BY ALJ RODDA) I guess I just need some
24 clarification on exactly what you're recommending. I
25 understand about the QF tariffs. You're recommending

000272003

1 that they not be eliminated at this time because, even
2 if there aren't any customers on them or one customer,
3 there may be people who have relied upon their
4 existence. Is that correct?

5 A. Yes, that's correct.

6 Q. Okay. And then with regard to the existing
7 partial requirements service tariffs that TEP wants to
8 eliminate in this proceeding, your recommendation is
9 that they not be eliminated, is that correct?

10 A. At this time.

11 Q. Okay. And then for -- for basically the same
12 reasons, right? Just for, because there might be
13 some customers that are relying on --

14 A. Yes.

15 Q. Okay.

16 Then with regard to the newly-proposed
17 partial requirements tariffs, it looks like Staff is
18 recommending that they be approved with modifications,
19 or at least I see that sentence.

20 A. That's correct.

21 Q. But that Staff has some concerns that the
22 rates might not be appropriate, or the proposed
23 charges, components of the rates might not be
24 appropriate?

25 A. That's correct.

1 Q. And so I guess I'm not sure how you can
2 recommend that they be approved if they're not
3 properly priced. I mean, I'm not sure if I can
4 reconcile exactly what it is you're recommending. So
5 maybe you could explain to me --

6 A. Yes. There's two major recommendations. One
7 is that supplemental power be priced at the full
8 requirement rate. That is what every other utility
9 does, including APS. When they had E-51 frozen in
10 their last rate case the two new tariffs, 52 and 53,
11 did contain that provision, that the supplemental
12 power would be priced at the otherwise applicable
13 tariff, actually less the basic service charge, so
14 it's even less.

15 Then my other recommendation was that they
16 lower the rates by the amount of savings that would be
17 achieved by having to distribute generation in their
18 area.

19 Q. Do you have a quantification of that amount?

20 A. No, I don't. I think the company would be in
21 the best position to come up with those numbers.

22 Q. And so ultimately then, is your
23 recommendation in terms of what you want, what Staff's
24 position is in terms of an order, would it be they
25 should refile, because you would still need to be able

1 to review that?

2 A. Right. They would probably have to conduct a
3 study of what it would be and file revised rates. I
4 don't know if they could be approved by Staff in
5 compliance to the order or if it would need to be a
6 proceeding like through an Open Meeting before the
7 Commission.

8 Q. In terms of basic assumptions that TEP used
9 when they were providing these tariffs in terms of
10 load factors, did you review that as part of your
11 review?

12 A. I did review some cost data that they
13 provided, and I really wasn't sure about that aspect.

14 Q. Okay. Then there's been some discussions
15 about the structure of the rates in terms of demand
16 charges and energy charges. I'm not sure how that, I
17 mean, does Staff have an opinion on whether they are
18 fairly allocating the transmission and distribution
19 costs, or is it, do they fairly allocate transmission
20 costs, partial service requirements to customers?

21 A. Well, they started with the full requirements
22 rates, and if those were allocated properly, then
23 these other rates may be allocated properly. But
24 it's, it was very difficult to determine.

25 Q. And what do you, what would you need to make

1 that determination, or what's missing here, a full
2 rate case?

3 A. That would be the ideal situation.

4 Q. Is TEP permitted under the last settlement
5 agreement to institute a full rate case?

6 A. They're actually required to file a rate case
7 in 2004, but they're not allowed to increase rates
8 until 2008.

9 Q. What does that mean? I mean, what are they
10 going to accomplish in 2004? They can't increase
11 rates to any customer class?

12 A. I don't remember the exact wording, if it's
13 to any customer class. I don't remember that, or if
14 it's just in general the entire revenue requirements.
15 I'm not sure. I think it might take an attorney to
16 determine that.

17 Q. Okay. Since I, I think -- were the
18 newly-proposed PRS-10, 13, and 14, were they supposed
19 to take the place of these other PRSs, 102, 3, 4, 5,
20 6, 7, 8 that were going to be eliminated?

21 A. Yes, that is my understanding.

22 Q. Does it make sense to have them both?

23 A. Well, my concern is that the rates may be
24 higher on the proposed tariffs. Because they're
25 structured so differently, it was hard for me to

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1 determine that, but even TEP was concerned about
2 revenue shortfall if customers were on the QF tariffs.
3 So they seemed to think those rates are lower than the
4 other rates, and I'm concerned of increasing any
5 customer or potential customer rates outside of a rate
6 case.

7 Q. So in Mr. Snook's rebuttal, he mentioned
8 something about in response to your recommendations
9 regarding 101, 102, and 103, I think, that
10 residential, I have a typo on my notes, so I think I'm
11 not qualified, residential something, take service
12 under 101 and not 103. That doesn't affect your
13 ultimate recommendation, does it?

14 A. No, it doesn't. I believe Mr. Snook
15 clarified on the stand where a residential customer is
16 going to sell that excess to the company, they would
17 be on 101, and then they would buy their needs on the
18 full requirements tariff, whereas if they're not going
19 to sell back, then they would be on the 103.

20 ALJ RODDA: Okay. Thank you.

21 Mr. Gellman, did you have any redirect?

22 MR. GELLMAN: Yes, Your Honor.

23

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REDIRECT EXAMINATION

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Q. (BY MR. GELLMAN) Ms. Keene, is it fair to say that Staff's position in regards to the new tariffs, referring to PRS-10, 13, and 14 is that Staff doesn't oppose the placement of those tariffs, or putting those tariffs into effect for partial requirements customers who are not qualified cogen. facilities or qualified small power producers?

A. My understanding is that they would be available for both QFs and non-QFs, and if we can keep the existing QF tariffs, then the QF would have a choice of one or the other.

Q. So to follow up on questions from Mr. Heyman, Staff supports the idea of having tariffs for additional partial requirements customers who don't happen to be qualified cogen. or qualified small power producers, QFs?

A. That's correct. There is a need for especially a tariff for the smaller distributed generation and those who are not QFs.

Q. And to follow up on that, the fundamental point is the QF tariffs should be still kept in place because of the societal benefits that you mentioned on cross-examination that are supported by PURPA and Commission Decision 56271?

1 A. That is correct.

2 Q. And some of those societal benefits would be,
3 for example, to support renewable generation, even on
4 a small scale basis?

5 A. Yes.

6 Q. And to support perhaps more efficient uses of
7 energy such as cogeneration?

8 A. Yes.

9 Q. So even though from, I guess a cost of, or
10 from a TEP or utility standpoint, there might be no
11 difference, from a customer or societal standpoint,
12 there could be a significant difference between
13 qualified facilities and non-qualified facilities?

14 A. Yes.

15 Q. With regards to the DGI Working Group we've
16 been talking about all morning and into the afternoon,
17 is it your understanding that it's, Staff agrees with
18 the findings in the DGI Working Group Report that has
19 been presented as part of Exhibit S-2?

20 A. I think the report is more of a compilation
21 of ideas expressed at the workshop. I don't know that
22 it's a matter of Staff agreeing to it or not.

23 Q. But it would be fair to say that Staff's
24 position is reflected largely in that Working Group
25 Report, correct?

1 A. Since Staff wrote that report, that's
2 probably correct.

3 Q. And it would probably be fair to say and it's
4 probably your understanding that Staff -- let me
5 rephrase the question. It's your understanding that
6 Staff supports the idea in the DGI working report
7 regarding additional workshops to address additional
8 issues cited on page 12 that haven't yet been
9 addressed?

10 A. That is correct.

11 Q. And one of the issues in this case is that
12 even though TEP has gone forward and even though there
13 has been some time constraints and some issues with
14 priorities, we don't know at this point whether the
15 Commission would support TEP's interpretation of how
16 these additional issues should be interpreted?

17 A. That's correct.

18 Q. Regarding Commission Decision 56271, is it
19 your understanding that even though that decision is
20 old, it still has some applicability in today's day
21 and age?

22 A. Yes, it does.

23 Q. And even though there's been a lot of changes
24 in, with electric restructuring and in the electric
25 utility industry, Decision 56271 is still the

1 Commission's adoption of PURPA and trying to support
2 cogeneration and small power producers?

3 A. It's still in effect.

4 Q. And that Commission Decision 56271 still
5 achieves that encouragement of cogeneration and small
6 power production?

7 A. Yes, it does.

8 Q. And Ms. Keene, is it also your understanding
9 that until recently, the University of Arizona and
10 Tucson District Energy were also more or less part of
11 this proceeding as well?

12 A. That is correct.

13 MR. GELLMAN: Thank you. I have no further
14 questions.

15 ALJ RODDA: Mr. Heyman?

16 MR. HEYMAN: No, thank you.

17 ALJ RODDA: Okay. Thank you, Ms. Keene.

18 Let's take a short break to give the court
19 reporter a break, and you can do closing if you have
20 any.

21 MR. HEYMAN: I don't have a closing, but I
22 would like to ask about a briefing schedule.

23 (An off-the-record discussion ensued.)

24 ALJ RODDA: Let's go back on the record for a
25 moment.

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1 While we were off the record, I think there
2 was general consensus that briefs, we would have one
3 round of initial briefs due, well, not initial
4 anymore, one round of closing briefs due on
5 November 18th, and to at least at this point just have
6 one round of briefing unless something extraordinary
7 comes up in the closing briefs in which case the
8 parties will ask for leave to file a reply brief, or
9 whatever it would be called.

10 With that, we will conclude the hearing and
11 take the matter under advisement pending your closing
12 briefs.

13 Thank you all for coming to Tucson.

14 (The hearing concluded at 1:04 p.m.)

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1 STATE OF ARIZONA)
 2) ss.
 3 COUNTY OF MARICOPA)
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7 I, DAWNA J. BOSWELL, Certified Court
 8 Reporter No. 50326 for the State of Arizona, do hereby
 9 certify that the foregoing printed pages constitute a
 10 full, true and accurate transcript of the proceedings
 11 had in the foregoing
 12 matter, all done to the best of my skill and ability.

13
 14 WITNESS my hand this 4th day of November,
 15 2002.

16
 17 Dawna J. Boswell
 18 DAWNA J. BOSWELL
 19 Certified Court Reporter
 20 Certificate No. 50326
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