



0000112512

23

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

DOCKETED

Nov 13 2 59 PM '98

JIM IRVIN
COMMISSIONER-CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

NOV 13 1998

DOCUMENT CONTROL

DOCKETED BY *scl*

IN THE MATTER OF THE
APPLICATION OF TUCSON ELECTRIC
POWER COMPANY FOR APPROVAL
OF ITS STRANDED COST RECOVERY.

DOCKET NO. E-01933A-98-0471

IN THE MATTER OF THE FILING OF
TUCSON ELECTRIC POWER
COMPANY OF UNBUNDLED TARIFFS
PURSUANT TO A.A.C. R14-2-1601 et seq.

DOCKET NO. E-01933A-97-0772

IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR APPROVAL
OF ITS STRANDED COST RECOVERY

DOCKET NO. E-01345A-98-0473

IN THE MATTER OF THE FILING OF
ARIZONA PUBLIC SERVICE
COMPANY OF UNBUNDLED TARIFFS
PURSUANT TO A.A.C. R14-2-1601 et seq.

DOCKET NO. E-01345A-97-0773

IN THE MATTER OF COMPETITION IN
THE PROVISIONS OF ELECTRIC
SERVICES THROUGHOUT THE STATE
OF ARIZONA.

DOCKET NO. RE-00000C-94-165

PROCEDURAL ORDER

BY THE COMMISSION:

On November 5, 1998, the Utilities Division Staff ("Staff") of the Arizona Corporation Commission ("Commission") filed a Request for Procedural Order ("Request") to govern the Proposed Agreements between Staff and Tucson Electric Power Company ("TEP") and Staff and

1 Arizona Public Service Company ("APS") regarding outstanding issues in the above-captioned
2 dockets. Our November 6, 1998 Procedural Order requested intervenors to file comments to Staff's
3 Request by November 10, 1998.

4 On November 10, 1998, ASARCO Incorporated, Cypress Climax Metal Company, Inc.,
5 Enron Corp. and Arizonans for Electric Choice and Competition (collectively referred to as
6 "AECC"), the Arizona Attorney General's Office ("A.G.'s Office"), Citizens Utilities Company
7 ("Citizens"), Illinova Energy Partners ("Illinova"), Residential Utility Consumer Office ("RUCO"),
8 Arizona Electric Power Cooperative, Inc. ("AEPCO"), Calpine Power Services ("Calpine"), and the
9 Department of Defense ("DOD") filed Responses to Staff's Request.

10 While the Responses are summarized below, each Response was critical of Staff's Request
11 for not allowing adequate time to analyze and respond to the Proposed Agreements.

12 The following was extracted from AEPCO's Response: "[t]o allow interested parties only
13 a few days to analyze the results and formulate and present their positions is unfair, irrational and
14 a clear violation of due process." AEPCO suggested that the parties be given at least until December
15 1 to analyze this data and submit suggestions at that time for a more rational hearing schedule and
16 procedure.

17 Calpine also requested additional time to adequately analyze and provide meaningful
18 comments to the Proposed Agreements. Calpine proposed the evidentiary hearing be continued until
19 such time as "(a) Staff files an economic analysis of the proposed settlement agreement on
20 consumers and competitors, (b) all appropriate discovery has been completed, (c) a pre-hearing has
21 been held, and (d) all parties and their experts may have a reasonable opportunity to assess the
22 consequences and present their informed comments and prepare for direct and cross-examination."

23 DOD referred to Staff's proposed one week period to analyze the Proposed Agreements,
24 conduct discovery and prepare testimony for hearings as "an affront to any reasonable concept of
25 due process." According to DOD, it would be imprudent for the Commission to make hasty
26 decisions without benefit of informed input from those who will pay the vast majority of costs at
27 issue on these proceedings. DOD requested a minimum of three months be provided to conduct
28

1 discovery and prepare testimony.

2 RUCO indicated that Staff's expedited procedural schedule would not allow intervenors
3 adequate time to properly analyze the Proposed Agreements and present their views in a meaningful
4 manner to the Commission. According to RUCO, the issues to be resolved are among the most
5 significant ever to be decided by the Commission. Accordingly, RUCO requested the procedural
6 schedule proposed by Staff be extended to provide an adequate opportunity for a thorough analysis.

7 Illinova expressed concerns that Staff's proposed "procedural rush to judgement" does not
8 allow time to adequately analyze and comment upon the Proposed Agreement. Illinova requested
9 a procedural schedule be established to allow a reasonable opportunity to evaluate the Proposed
10 Agreement and to provide comments and/or objections to the Commission. Illinova also requested
11 post-hearing briefs be allowed in order to provide the Commission with accurate, coherent
12 information on the numerous complex and difficult issues.

13 According to Citizens, the Proposed Settlement would do the following:

- 14 A) "Gut" the Commission's Competition Rules that have been three years in the making;
15 B) Reverse the results of a six month process for the Stranded Cost Order; and
16 C) Discriminate against Citizens and the Co-ops.

17 Further, Citizens indicated that Staff has proposed that intervenors be required to file testimony on
18 November 17, 1998 without Staff, APS, or TEP being required to file supporting testimony on their
19 "back-room bargain". This would be followed by a hearing three days later. Citizens asserted that
20 Staff's proposal would barely give lip service to the constitutional rights of the intervenors. Citizens
21 proposed that a minimum of three months would be needed in order to allow meaningful input from
22 all interested parties.

23 The A.G.'s Office asserted that the expediency requested by Staff would deny interested
24 parties due process since there would be "inadequate time to review and understand this two-billion
25 dollar deal." As a result, the A.G.'s Office opposed Staff's Request.

26 AECC expressed the following concerns regarding the Proposed Settlement:

- 27 • The settlement agreements call for an inadequate market generation credit and will
28 therefore be anti-competitive.

- 1 • The APS settlement agreement fails to provide for the recovery of regulatory assets through market prices whenever feasible. Thus, this agreement creates the possibility that stranded costs will be overrecovered.
- 2 • The TEP settlement agreement partially diverts proceeds from the sale of TEP's generation assets to purchase APS' transmission assets instead of using such proceeds to reduce the CTC for TEP's customers.
- 3 • The agreements are incomplete. For instance, in several places where important financial information should be located, there are merely blanks. Further, important exhibits have not been attached.
- 4 • The agreements claim to take precedence over the lawfully promulgated Electric Competition Rules.
- 5 • On their face, the agreements cannot be modified and must be approved unchanged by November 25, 1998 in a non-appealable order.
- 6
- 7
- 8

9 AECC asserted that the schedule proposed by Staff would deny interested parties due
10 process. Further, AECC indicated that each of the Commissioners has expressed assurances that the
11 Commission would not "rubber stamp agreements negotiated by Staff behind closed doors" and that
12 all interested parties would be given an adequate opportunity to voice concerns. Because January
13 1, 1999 is rapidly approaching, AECC proposed all parties file comments and pre-filed testimony
14 on November 30, 1998 with a hearing commencing on December 2, 1998.¹

15 We concur with all the Responses that Staff's proposed procedural schedule does not provide
16 adequate time to analyze the Proposed Agreements. It also conflicts with previous statements made
17 by Commissioners that interested parties would have an opportunity to fully analyze any Proposed
18 Agreement. At the same time, we are cognizant that the Commission's self imposed January 1, 1999
19 deadline is rapidly approaching. We have attempted to balance these competing concerns in the
20 procedural schedule set forth hereafter.

21 IT IS THEREFORE ORDERED that Staff, Arizona Public Service Company, and Tucson
22 Electric Power Company shall file testimony in support of their Proposed Agreements by 4:00 p.m.
23 on November 20, 1998.

24 IT IS FURTHER ORDERED that all other parties shall file
25 testimony/comments/disagreements regarding the Proposed Agreements by 4:00 p.m. on November

26 _____
27 ¹ The Proposed Settlement contained a provision that they must be approved by November 25, 1998 or they
28 are void. AECC indicated that Staff, APS, and TEP should be willing to agree to a minor amendment to
accommodate the needs of the public that the agreement proposed to serve.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

30, 1998.

IT IS FURTHER ORDERED that Staff, Arizona Public Service Company and Tucson Electric Power Company shall file responsive testimony by 4:00 p.m. on December 4, 1998.

IT IS FURTHER ORDERED that the parties shall make arrangements for same day delivery of all prefiled testimony/comments/disagreements.

IT IS FURTHER ORDERED that Arizona Public Service Company and Tucson Electric Power Company shall make every effort to fax/hand deliver a copy of this Procedural Order to all the parties by the end of business, November 13, 1998.

DATED this 13th day of November, 1998.


JERRY L. RUDIBAUGH
CHIEF HEARING OFFICER

Copies of the foregoing mailed/delivered this 13th day of November, 1998 to:

Barbara Klemstine
ARIZONA PUBLIC SERVICE CO.
Law Department, Station 9909
P.O. Box 53999
Phoenix, Arizona 85072-3999

David C. Kennedy
LAW OFFICES OF DAVID C. KENNEDY
100 West Clarendon Avenue, Suite 200
Phoenix, Arizona 85012-3525

Greg Patterson
RUCO
2828 N Central Ave, Suite 1200
Phoenix, Arizona 85004

Norman J. Furuta
DEPARTMENT OF THE NAVY
900 Commodore Drive, Building 107
P.O. Box 272 (Attn. Code 90C)
San Bruno, California 94066-0720

Michael A. Curtis
MARTINEZ & CURTIS, P.C.
2712 North 7th Street
Phoenix, Arizona 85006
Attorneys for Arizona Municipal Power Users' Association

Thomas C. Horne
Michael S. Dulberg
HORNE, KAPLAN & BISTROW, P.C.
40 North Central Avenue, Suite 2800
Phoenix, Arizona 85004

Walter W. Meek, President
ARIZONA UTILITY INVESTORS ASSOCIATION
2100 N. Central Avenue, Suite 210
Phoenix, Arizona 85004

Barbara S. Bush
COALITION FOR RESPONSIBLE ENERGY EDUCATION
315 West Riviera Drive
Tempe, Arizona 85252

Rick Gilliam
LAND AND WATER FUND OF THE ROCKIES
2260 Baseline Road, Suite 200
Boulder, Colorado 80302

Sam Defraw (Attn. Code 16R)
Rate Intervention Division
NAVAL FACILITIES ENGINEERING COMMAND
200 Stovall Street, Room 10S12
Alexandria, Virginia 22332-2300

Charles R. Huggins
ARIZONA STATE AFL-CIO
5818 N. 7th Street, Suite 200
Phoenix, Arizona 85014-5811

Rick Lavis
ARIZONA COTTON GROWERS ASSOCIATION
4139 East Broadway Road
Phoenix, Arizona 85040

1	Steve Brittle DON'T WASTE ARIZONA, INC. 6205 South 12th Street Phoenix, Arizona 85040	Wallace Kolberg SOUTHWEST GAS CORP. P.O. Box 98510 Las Vegas, Nevada 89193-8510
2		
3	Karen Glennon 19037 N. 44th Avenue Glendale, Arizona 85308	A.B. Baardson NORDIC POWER 4281 N. Summerset Tucson, Arizona 85715
4	AJO IMPROVEMENT COMPANY P.O. Drawer 9 Ajo, Arizona 85321	Michael Rowley c/o CALPINE POWER SERVICES 50 West San Fernando, Suite 550 San Jose, California 95113
5		
6	COLUMBUS ELECTRIC COOPERATIVE, INC. P.O. Box 631 Deming, New Mexico 88031	Dan Neidlinger 3020 N. 17th Drive Phoenix, Arizona 85015
7		
8	CONTINENTAL DIVIDE ELECTRIC COOPERATIVE P.O. Box 1087 Grants, New Mexico 87020	Jessica Youle PAB300 SALT RIVER PROJECT P.O. Box 52025 Phoenix, Arizona 85072-2025
9	DIXIE ESCALANTE RURAL ELECTRIC ASSOCIATION CR Box 95 Beryl, Utah 84714	
10		
11	GARKANE POWER ASSOCIATION, INC. P.O. Box 790 Richfield, Utah 84701	Patricia Cooper AEPCO P.O. Box 670 Benson, Arizona 85602-0670
12		
13	MOHAVE ELECTRIC COOPERATIVE, INC. P.O. Box 1045 Bullhead City, Arizona 86430	Clifford Cauthen GRAHAM COUNTY ELECTRIC CO-OP P.O. Drawer B Pima, Arizona 85543
14	MORENCI WATER AND ELECTRIC COMPANY P.O. Box 68 Morenci, Arizona 85540	Marv Athey TRICO ELECTRIC COOPERATIVE P.O. Box 35970 Tucson, Arizona 85740
15		
16	ARIZONA DEPT OF COMMERCE ENERGY OFFICE 3800 North Central Avenue, 12th Floor Phoenix, Arizona 85012	Joe Eichelberger MAGMA COPPER COMPANY P.O. Box 37 Superior, Arizona 85273
17	Betty Pruitt ARIZONA COMMUNITY ACTION ASSOC. 2627 N. 3rd Street, Suite 2 Phoenix, Arizona 85004	Wayne Retzlaff NAVOPACHE ELECTRIC CO-OP INC. P.O. Box 308 Lakeside, Arizona 85929
18		
19	Choi Lee PHELPS DODGE CORP. 2600 N. Central Avenue Phoenix, Arizona 85004-3014	Craig Marks CITIZENS UTILITIES COMPANY 2901 N. Central Avenue, Suite 1660 Phoenix, Arizona 85012
20		
21	Bradley Carroll TUCSON ELECTRIC POWER CO. P.O. Box 711 Tucson, Arizona 85702	Steve Kean ENRON P.O. Box 1188 Houston, Texas 77251-1188
22		
23	Creden Huber SULPHER SPRINGS VALLEY ELECTRIC COOPERATIVE P.O. Box 820 Willcox, Arizona 85644	Jack Shilling DUNCAN VALLEY ELECTRIC COOPERATIVE P.O. Box 440 Duncan, Arizona 85534
24		
25	Mick McElrath CYPRUS CLIMAX METALS CO. P.O. Box 22015 Tempe, Arizona 85285-2015	
26		
27		
28		

1	Nancy Russell ARIZONA ASSOCIATION OF INDUSTRIES 2025 N. 3rd Street, Suite 175 Phoenix, Arizona 85004	John Jay List General Counsel NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORP. 2201 Cooperative Way Herndon, Virginia 21071
2		
3	Barry Huddleston DESTEC ENERGY P.O. Box 4411 Houston, Texas 77210-4411	Wallace Tillman Chief Counsel NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION 4301 Wilson Blvd. Arlington, Virginia 22203-1860
4		
5	Steve Montgomery JOHNSON CONTROLS 2032 West 4th Street Tempe, Arizona 85281	Robert Julian PPG 1500 Merrell Lane Belgrade, Montana 59714
6		
7	Terry Ross CENTER FOR ENERGY AND ECONOMIC DEVELOPMENT P.O. Box 288 Franktown, Colorado 80116-0288	C. Webb Crockett FENNEMORE CRAIG 3003 N. Central Avenue, Suite 2600 Phoenix, Arizona 85012-2913 Attorneys for Asarco, Inc., Cyprus Climax Metals Co., Enron, Inc. and AAEC
8		
9	Ken Saline K.R. SALINE & ASSOCIATES 160 N. Pasadena Suite 101 Mesa, AZ 85201-6764	Robert S. Lynch 340 E. Palm Lane, Suite 140 Phoenix, Arizona 85004-4529
10		
11	Louis A. Stahl STREICH LANG 2 North Central Avenue Phoenix, Arizona 85004	Douglas A. Oglesby Vantus Energy Corporation 353 Sacramento Street, Suite 1900 San Francisco, California 94111
12		
13	Sheryl Johnson TEXAS-NEW MEXICO POWER CO. 4100 International Plaza Fort Worth, Texas 76109	Michael Block Goldwater Institute Bank One Center 201 North Central Concourse Level Phoenix, Arizona 85004
14		
15	Ellen Corkhill AARP 5606 North 17th Street Phoenix, Arizona 85016	Stan Barnes Copper State Consulting Group 100 W Washington Street, Suite 1415 Phoenix, Arizona 85003
16		
17	Phyllis Rowe ARIZONA CONSUMERS COUNCIL 6841 N. 15th Place Phoenix, Arizona 85014	Carl Robert Aron Executive Vice President and COO Itron, Inc. 2818 N. Sullivan Road Spokane, Washington 99216
18		
19	Andrew Gregorich BHP COPPER P.O. Box M San Manuel, Arizona	Douglas Nelson DOUGLAS C NELSON PC 7000 N. 16th Street, Suite 120-307 Phoenix, Arizona 85020
20		
21	Larry McGraw USDA-RUS 6266 Weeping Willow Rio Rancho, New Mexico 87124	Lawrence V. Robertson Jr. MUNGER CHADWICK PLC 333 North Wilmot, Suite 300 Tucson, Arizona 85711-2634 Attorney for PGE Energy
22		
23	Jim Driscoll ARIZONA CITIZEN ACTION 2430 S. Mill, Suite 237 Tempe, Arizona 85282	
24		
25	William Baker ELECTRICAL DISTRICT NO. 6 P.O. Box 16450 Phoenix, Arizona 85011	Tom Broderick 6900 East Camelback Rd. # 700 Scottsdale, Arizona 85251
26		
27		
28		

1	Albert Sterman ARIZONA CONSUMERS COUNCIL 2849 East 8th Street Tucson, Arizona 85716	Larry K. Udall Arizona Municipal Power Users' Assoc. 2712 N. 7th Street Phoenix, Arizona 85006-1090
2		
3	Michael Grant GALLAGHER & KENNEDY 2600 N. Central Avenue Phoenix, Arizona 85004 Attorneys for AEPCCO	Roderick G. McDougall City Attorney Attn: Jesse Sears, Assistant Chief Counsel 200 W Washington Street, Suite 1300 Phoenix, Arizona 85003-1611
4		
5	Suzanne Dallimore Antitrust Unit Chief Department of Law Building Attorney General's Office 1275 West Washington Street Phoenix, Arizona 85007	William J. Murphy 200 W Washington Street, Suite 1400 Phoenix, Arizona 85003-1611
6		
7		
8	Lex Smith Michael Patten BROWN & BAIN PC 2901 N. Central Avenue Phoenix, Arizona 85001-0400 Attorneys for Morenci Water & Electric, Ajo Improvement & Phelps Dodge Corp.	Russell E. Jones 33 N. Stone Ave., Suite 2100 P.O. Box 2268 Tucson, Arizona 85702 Attorneys for Trico Electric Cooperative, Inc.
9		
10		Christopher Hitchcock P.O. Box 87 Bisbee, Arizona 85603-0087 Attorneys for Sulphur Springs Valley Electric Cooperative, Inc.
11	Vinnie Hunt CITY OF TUCSON Department of Operations 4004 S. Park Avenue, Building #2 Tucson, Arizona 85714	Myron L. Scott 1628 E. Southern Avenue, No. 9-328 Tempe, AZ 85282-2179 Attorneys for Arizona for a Better Environment
12		
13	Steve Wheeler Thomas M. Mumaw SNELL & WILMER One Arizona Center 400 E. Van Buren Street Phoenix, Arizona 85004-0001 Attorneys for APS	Andrew Bettwy Debra Jacobson SOUTHWEST GAS CORPORATION 5241 Spring Mountain Road Las Vegas, Nevada 89102
14		
15		
16		Barbara R. Goldberg OFFICE OF THE CITY ATTORNEY 3939 Civic Center Blvd. Scottsdale, Arizona 85251
17	William Sullivan MARTINEZ & CURTIS, P.C. 2716 N. 7th Street, Phoenix, Arizona 85006 Attorneys for Mohave Electric Cooperative and Navopache Electric Cooperative	Terry Ross Center for Energy & Economic Development P.O. Box 288 Franktown, Colorado 80116
18		
19		
20	Elizabeth S. Firkins INTERNATION BROTHERHOODL OF ELECTRICAL WORKERS, L.U. #1116 750 S. Tucson Blvd. Tucson, Arizona 85716-5698	Peter Glaser DOHERTY RUMBLE & BUTLER PA 1401 New York Ave., N.W., Suite 1100 Washington, DC 20005
21		
22	Norman J. Furuta Associate Counsel Engineering Field Activity West Naval Facilities Engineering Command 900 Commodore Drive, Bldg. 107 San Bruno, California 94066-5006	Phyllis Rowe ARIZONA CONSUMERS COUNCIL P.O. Box 1288 Phoenix, Arizona 85001
23		
24		Bradford A. Borman PacifiCorp 201 S. Main, Suite 2000 Salt Lake City, Utah 84140
25	Jeff Woner K.R. Saline & Associates 160 N. Pasadena Mesa, Arizona 85201	
26		
27	Carl Dabelstein 2211 E. Edna Avenue Phoenix, Arizona 85022	
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Timothy M. Hogan
Arizona Center for Law
in the Public Interest
202 E. McDowell Rd., Suite 153
Phoenix, Arizona 85004

Marcia Weeks
18970 N. 116th Lane
Surprise, Arizona 85374

John T. Travers
William H. Nau
272 Market Square, Suite 2724
Lake Forest, Illinois 60045

Timothy Michael Toy
WINTHROP, STIMSON, PUTNAM & ROBERTS
One Battery Park Plaza
New York, New York 10004-1490

Stephanie A. Conaghan
DUANE, MORRIS & HECKSCHER LLP
1667 K Street N.W., Suite 700
Washington, D.C. 20006-1608

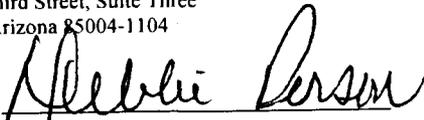
Raymond S. Heyman
Darlene M. Wauro
ROSHKA HEYMAN & DEWULF, PLC
Two Arizona Center
400 North 5th Street, Suite 1000
Phoenix, Arizona 85004
Attorneys for New Energy Ventures, L.L.C.

Billie Dean
AVIDD
P O Box 97
Marana, Arizona 85652-0987

Paul Bullis, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Director Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

ARIZONA REPORTING SERVICE, INC.
2627 N. Third Street, Suite Three
Phoenix, Arizona 85004-1104

By: 
Debbi Person
Secretary to Jerry Rudibaugh