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**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission **NOV 24 11 13 AM '98**

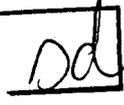
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**NOV 24 1998**

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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 Our November 13, 1998 Procedural Order established filing dates for intervenors as well as  
11 Staff, TEP and APS. On November 17, 1998, Staff filed a Request for Reconsideration and  
12 Modification of Procedural Order ("Request for Reconsideration"). On November 18, 1998, TEP  
13 filed its Response to the Request for Reconsideration. On November 18, 1998, the A.G.'s office  
14 filed its Objections to the Request for Reconsideration. On November 19, 1998, AEPCO filed its  
15 Response to the Request for Reconsideration. On November 20, 1998, RUCO filed its Response  
16 to the Request for Reconsideration. On November 20, 1998, AECC filed its Response to the  
17 Request for Reconsideration.

18 In its Request for Reconsideration, Staff emphasized the need to move this matter along  
19 expeditiously and requested modifications to our November 13, 1998 Procedural Order. According  
20 to Staff, the intervenors filing time could be moved from 4:00 p.m. to noon on November 30, 1998  
21 without prejudicing the intervenors. Further, Staff proposed the responsive testimony of Staff, TEP  
22 and APS could be filed on December 2, 1998 with a hearing commencing on December 3, 1998.  
23 In addition, Staff proposed the "formalities of a question and answer format not be required."

24 TEP supported Staff's Request for Reconsideration. According to TEP, a decision is needed  
25 as soon as possible so that the January 1, 1999 start date for competition can begin. Further, TEP  
26 argued that the Commission can not alter or amend TEP's exclusive CC&N territory until the  
27 stranded cost issue is resolved. Lastly, TEP asserted a hearing date must be established so that  
28

1 witnesses can be scheduled.

2 RUCO objected to Staff's proposal to shorten an "already hasty procedural schedule."  
3 According to RUCO, a hearing only one day after Staff, APS and TEP file their responsive  
4 testimony does not provide adequate time for intervenors to analyze that testimony. RUCO also  
5 objected to this matter being concluded with an Open Meeting without any opportunity to file post-  
6 hearing briefs.

7 AECC did not oppose the request to move up the time for filing of testimony. However,  
8 AECC did object to the proposal that "the formalities of a question and answer format not be  
9 required" and that Staff, TEP and APS be allowed to "clarify or expand on this pre-filed responsive  
10 testimony during direct examination". According to AECC, "there are issues of extraordinary public  
11 importance involved in this proceeding" and the intervenors are entitled to full disclosure of the basis  
12 for the settlement in advance of the hearing.

13 AEPCO opposed Staff's request to move intervenors filing time since the small number of  
14 days to respond already covers Thanksgiving week. Further, AEPCO indicated Staff's procedural  
15 request allows neither interested parties nor the Commission adequate time to analyze, comment on  
16 and consider the merits of the proposal.

17 The A.G.'s Office asserted that Staff's request will deny intervenors an adequate time to  
18 analyze and review testimony, and prepare experts for an evidentiary hearing which will have far  
19 reaching consequences. As a result, the A.G.'s Office objected to Staff's Request for  
20 Reconsideration.

21 While it was clearly not Staff's intent, we find that some aspects of their Request for  
22 Reconsideration does in fact prejudice the rights of other parties as well as the Commission. As  
23 pointed out by some of the intervenors, their short time frame to file comments and testimony  
24 already encompass the Thanksgiving holiday. As a result, we find Staff's proposal to further shorten  
25 the time frame does prejudice the rights of other parties.

26 We find that Staff's proposal to shorten the time frame for Staff, TEP and APS to file  
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1 responsive testimony would only prejudice themselves<sup>1</sup>. Accordingly, we will grant Staff's request  
2 to move the date for responsive testimony.

3 We do find the remaining requests of Staff would prejudice the intervenors as well as this  
4 Commission. The procedural schedule has already been expedited in order to accommodate the  
5 January 1, 1999 date.<sup>2</sup> To rush these complex matters to a conclusion without a thorough review  
6 would not be in the public interest. In order to provide any meaningful opportunity to prepare for  
7 a hearing, it is imperative that Staff, TEP and APS provide all of their direct responsive testimony  
8 in a formal question and answer format. We also agree with the various intervenors that there must  
9 be at least a minimum of time between filing of responsive testimony and commencement of  
10 hearing. The intervenors as well as the Commission need an opportunity to read and digest the  
11 testimony.<sup>3</sup> Weighing the Commission's interest in starting competition on January 1, 1999 against  
12 the parties' due process rights and the public interest, we find the earliest a hearing can commence  
13 is December 7, 1998.<sup>4</sup> This will also enable a pre-hearing conference to be held on December 4,  
14 1998 in order to schedule witnesses and discuss other procedural matters.

15 IT IS THEREFORE ORDERED that a hearing on the Proposed Agreements shall be held  
16 at 10:00 a.m. on December 7, 1998 at the Commission's offices, 1200 West Washington Street,  
17 Phoenix, Arizona 85007.

18 IT IS FURTHER ORDERED that Staff, Arizona Public Service Company and Tucson  
19 Electric Power Company shall file responsive testimony by 12:00 p.m. on December 3, 1998.

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

22 IT IS FURTHER ORDERED that a pre-hearing conference shall be held at 1:00 p.m. on  
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1 TEP filed support of Staff's request and we will assume since APS did not respond to the request that they  
25 too support the request.

26 2 Apparently, Staff believes the Commission must have an order issued and passed at least twenty-one days  
27 prior to January 1, 1999 in order for the time frame to expire for rehearing as set forth in A.R.S. § 40-253.

28 3 See Page 7 of the October 7, 1998 Transcript.

4 On November 19, 1998, the A.G.'s Office filed a Motion for Continuance and for Expedited Order. On  
November 23, 1998, AECC filed Joinder to that Motion. Our November 23, 1998 Procedural Order has set that  
matter for oral arguments on November 24, 1998.

1 December 4, 1998 at the Commission's offices in Phoenix, Arizona.

2 IT IS FURTHER ORDERED that Arizona Public Service Company and Tucson Electric  
3 Power Company shall make effort to fax/hand deliver a copy of this Procedural Order to all the  
4 parties by the end of business, November 24, 1998.

5 DATED this 24th day of November, 1998.

6   
7 JERRY L. RUDIBAUGH  
8 CHIEF HEARING OFFICER

9 Copies of the foregoing mailed/delivered  
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