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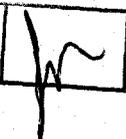
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Commissioner
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Commissioner

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

IN THE MATTER OF THE FILING OF TUCSON) DOCKET NO. E-01933A-97-0772
ELECTRIC POWER COMPANY OF)
UNBUNDLED TARIFFS PURSUANT TO A.A.C.)
R14-2-1602 *et seq.*)

IN THE MATTER OF THE COMPETITION IN) DOCKET NO. RE-00000C-94-0165
THE PROVISION OF ELECTRIC SERVICES)
THROUGHOUT THE STATE OF ARIZONA.) TUCSON ELECTRIC POWER
COMPANY'S POST HEARING
BRIEF

Tucson Electric Power Company ("TEP" or "Company"), through undersigned counsel, hereby submits this Post-Hearing Brief in the above-captioned matters.

I. INTRODUCTION

Pursuant to Arizona Corporation Commission ("Commission") Decision No. 61677 ("Decision"), TEP filed a Settlement Agreement dated June 9, 1999 ("Settlement") between TEP, Arizonans for Electric Choice and Competition ("AECC")¹, the Residential Utility Consumer Office ("RUCO"), and Arizona Community Action Association ("ACAA") (collectively, the "Parties"). The Settlement was the culmination of several months of negotiations between the Parties in which a

¹ AECC consists of the following organizations: Arizonans for Electric Choice and Competition is a coalition of energy consumers in support of competition and includes Cable Systems International, BHP Copper, Motorola, Chemical Lime, Intel, Honeywell, Allied Signal, Cyprus Climax Metals, Asarco, Phelps Dodge, Homebuilders of Central Arizona, Arizona Mining Industry Gets Our Support, Arizona Food Marketing Alliance, Arizona Association of Industries, Arizona Multihousing Association, Arizona Rock Products Association, Arizona Restaurant Association, Arizona Retailers Association, Boeing, Arizona School Board Association, National Federation of Independent Business, Arizona Hospital Association, Lockheed Martin, Abbot Labs, and Raytheon.

1 compromise was reached with respect to many key issues that had been outstanding that, without
2 resolution, would have been an impediment to the commencement of competitive retail access in
3 Arizona. Although no particular Party can claim that it obtained everything it wanted in the
4 Settlement, all of the Parties acknowledge that the Settlement is fair, reasonable and in the public's
5 best interest.

6 The primary benefits of the Settlement include the following:

- 7 • First, and foremost, the Settlement allows competition to start in TEP's service territory
8 by opening up competitive retail access to more than 20 percent of TEP's customers,
9 including residential customers, in accordance with the Commission's currently proposed
10 implementation schedule.
- 11 • The Settlement resolves the issue of TEP's stranded costs by establishing a recovery
12 methodology tied to known and measurable factors, as well as market-based
13 determinants, to ensure that customers only pay appropriate stranded costs, while
14 providing a recovery path for TEP so as to avoid potentially adverse financial
15 implications.
- 16 • The Settlement provides for 2, one percent rate decreases for all customers, both standard
17 offer and competitive. TEP's customers are already enjoying the benefits of the first one
18 percent decrease today.
- 19 • The Settlement establishes TEP's unbundled distribution tariffs.
- 20 • The Settlement provides for rate stability for TEP's distribution customers by freezing
21 distribution and standard offer rates (subject to the rate decreases) during the stranded
22 cost recovery period through 2008. This means that regardless of inflationary and other
23 cost factors, customers will not see an increase in rates for the next nine years.
- 24 • Although rates cannot increase for nine years, the Settlement provides that TEP will make
25 a rate filing with the Commission in 2004 to make any necessary adjustments to its rates
26 and charges that can only result in rates decreasing or staying the same for the remaining
27 four years of the recovery period.
- 28 • The Settlement provides that TEP will continue funding system benefits charges,
29 including its low income, DSM and renewable programs at current levels.

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- 1 • The Settlement provides that TEP will commit to the Arizona Independent System
2 Administrator that provides for non-discriminatory open access and movement towards
3 the establishment of an Independent System Operator. This is also consistent with recent
4 pronouncements by the Federal Energy Regulatory Commission ("FERC") regarding
5 Regional Transmission Organizations. Additionally, the Settlement provides that TEP
6 will file a change to its FERC Open Access Tariff, to facilitate competitive retail access,
7 within ten days of Commission approval of the Settlement.
- 8 • The Settlement resolves vertical market power issues by requiring TEP to transfer its
9 generation and other competitive assets to a separate subsidiary at market value.
- 10 • The Settlement provides that TEP will move to dismiss with prejudice its outstanding
11 litigation against the Commission and will assist the Commission in any remaining
12 litigation regarding implementation of the Electric Competition Rules.
- 13 • Through the MGC/Adder approach, the Settlement provides a reasonable opportunity for
14 serious and efficient ESPs to offer competitive choice to TEP's customers without undue
15 subsidies to the ESPs by TEP and its shareholders.²
- 16 • The Settlement sets forth an Interim Code of Conduct that will govern all transactions
17 between TEP and its affiliates engaged in providing competitive retail access.

18 During the course of the proceeding, Staff and several Intervenors requested modifications to
19 the Settlement. Consequently, the Parties agreed to, and already have, modified the Settlement to
20 incorporate such modifications. These modifications include:

- 21 • An across the board twenty percent increase in the Adder.
- 22 • Combined MGC and Adder on customers' bills.
- 23 • A clarification that any interested party may participate in future rate proceedings
24 regarding TEP's rates or the Adder.
- 25 • Use of a three-day average when computing the MGC.
- 26 • Utilization of an alternative index for the MGC calculation in the event that the Palo
27 Verde NYMEX becomes unusable.

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30 ² At the hearing, TEP agreed to a 20 percent (.7 mill average) increase of the proposed Adder for all customers. Consequently, New West Energy withdrew its other recommendations and any opposition to the Settlement and urged Commission adoption of the Settlement as modified. This increase in the Adder also resolved one of Staff's major issues, as well as addressed one of the concerns raised by other ESPs regarding increasing the amount of the Adder.

- 1 • Acceptance of all of Staff's recommendations regarding TEP's waiver requests with the
2 exception of Condition Nos. 23 and 25.

3 Additionally, TEP agreed that any interested party should be permitted to participate with
4 respect to TEP's Final Code of Conduct and that TEP will file with the Commission revised tariffs
5 following any changes,

6 Based upon the foregoing, TEP requests that the Commission approve the Settlement without
7 further modification.

8 **II. THE PROPOSED STRANDED COST RECOVERY METHODOLOGY SHOULD BE**
9 **APPROVED**

10 TEP's proposed method for recovery of stranded costs is unique in that it is designed to
11 ensure that TEP neither over-recovers or under-recovers stranded costs while ensuring that TEP does
12 not have to suffer write-offs given its financial situation. As testified by Ms. Kissinger, in
13 determining the 2008 recovery period, TEP did an analysis based upon the Company's projections of
14 market prices through 2008. Under this analysis, TEP believes that if its market assumptions are
15 correct, TEP would recover approximately \$683 million of stranded costs. This does not mean that
16 this is the amount that TEP will actually recover. It could be more or less than that amount
17 depending upon the market price of power. This is one of the reasons TEP chose not to fix an
18 amount of stranded costs. Despite the suggestion of some of the Intervenors, if TEP were to fix an
19 amount of stranded cost, as testified to by Ms. Kissinger, the amount would almost certainly be
20 wrong, since no one can predict the market. (Transcript of proceeding ("Tr.") 434-444.) For TEP to
21 fix an amount, it would have to set an amount with sufficient "headroom" which would either make
22 recovery by 2008 impossible, or force TEP to raise rates to cover the CTC to avoid write-offs. This
23 is why TEP's solution of tying stranded cost recovery to the market through the floating component
24 of the CTC is an efficient and equitable method.

25 Additionally, contrary to the proposal put forth by DOD, the provisions of the Settlement
26 regarding special contract customers are consistent with the Electric Competition Rules and prior
27 Commission practice with respect to special contracts. (Rebuttal testimony of James Pignatelli, Page
28 7, Lines 1-5; Tr. 252-255.) Mr. Neidlinger's suggestion that TEP should forego what he believes to
29 be the stranded costs shortfall from special contract customers is inconsistent with TEP's ability to
30 have a reasonable opportunity to recover its stranded costs. Moreover, even Mr. Neidlinger

1 reluctantly agreed that his suggestion that special contract customers would voluntarily renegotiate
2 their contracts to pay more stranded costs is just not realistic. (Tr. 242.)

3 For these reasons, TEP believes that its stranded cost recovery methodology is in the public
4 interest and should be approved without change.

5 **III. THE PROPOSED TRANSFER OF TEP'S GENERATION AND OTHER**
6 **COMPETITIVE ASSETS SHOULD BE APPROVED**

7 Under the Settlement, TEP will transfer at market value its generation and other assets to a
8 separate TEP subsidiary on for before December 31, 2002. Only two Intervenors commented on this
9 proposal. First, Commonwealth suggests that the Commission require an auction and divestiture of
10 competitive assets to make such a determination. The stranded cost calculation and recovery
11 methodology under the Settlement does not contemplate an auction and divestiture nor is an auction
12 and divestiture required under the Commission's Electric Competition Rules. Therefore, this
13 suggestion should be rejected. In its comments, Enron requests two clarifications. First, an
14 identification of what assets will be transferred and second, the exact methodology used to determine
15 the market value for the transfer. With regard to the first issue, TEP has already identified the
16 generation plant assets that will be transferred. With respect to all other generation and other
17 competitive assets, Section 3.1 of the Settlement specifically provides that "TEP shall transfer its
18 generation and other assets deemed to be competitive (as defined in the Electric Competition
19 Rules) . . ." Therefore, TEP will comply with the Electric Competition Rules to identify the
20 competitive assets that all Affected Utilities will be required to transfer. With respect to the exact
21 methodology that will be used, the rebuttal testimony of Karen Kissinger (Page 3, Line 22) (which
22 was filed subsequent to Enron's comments) specifically states that Statement of Financial Accounting
23 Standards No. 121, *Accounting for the Impairment of Long-Lived assets to be Disposed Of* will be
24 the standard.

25 **IV. THE PROPOSED UNBUNDLED TARIFFS SHOULD BE APPROVED**

26 **A. TEP has Unbundled its Rates Consistent with the Electric Competition Rules.**

27 Mr. Erdwurm's testimony establishes that TEP unbundled its existing Commission-
28 approved tariffs to derive the unbundled distribution tariffs set forth in Exhibit B to the Settlement.
29 This is consistent with the Commission's Electric Competition Rules for the unbundling of an
30 Affected Utility's rates and charges. Moreover, unbundling TEP's existing Commission-approved

1 rates and charges forms the legal basis as to why a rate case is not required under Arizona law. (See
2 Section VII below.)

3 **B. TEP's 2.6 Cent T&D Rate is Based on the Unbundling of Rates From TEP's Last**
4 **General Rate Case and is Consistent With the Electric Competition Rules.**

5 Mr. Erdwurm testified that the 2.6 cent T&D rate is based on the findings from TEP's last
6 rate case and is consistent with the Electric Competition Rules. (Tr. 514.) Moreover, Ms. Smith
7 testified that after a very careful review, she was satisfied that the 2.6 cent rate was a "fair
8 representation of current distribution and transmission costs." (Tr. 399.)

9 **C. TEP's Unbundled Metering and Billing Charges Have Been Unbundled Consistent**
10 **With Prior Commission Decisions.**

11 At the hearing, Ms. Smith recommended on behalf of Staff that "the metering and billing
12 charges should be at the level that the that the company filed in the November settlement which were
13 consistent with the overall 2.6-cent distribution rate." (Tr. 384.) Ms. Smith also testified in her
14 direct testimony that: "According to the response to Staff Request LS-7, these rates 'reflect' cost
15 levels and methodology from the last general rate case. However, they were 'adjusted downward' to
16 satisfy the constraint of the 'bundled levels'." (Page 7.) The concerns raised by Ms. Smith appear to
17 stem from a misinterpretation of TEP's response to Staff Data Request LS-7. The "adjusting
18 downward" of certain components is not only appropriate, but is necessary to satisfy constraints that
19 rates reflect costs and that unbundled components sum to bundled rates. Mr. Erdwurm testified that
20 the metering and billing charges were unbundled consistent with the Company's last two general rate
21 cases. (Rebuttal testimony Page 5 and Tr. 513-514.) Mr. Erdwurm further testified that the charges
22 were based on average costs, not marginal costs. (Tr. 514.) Mr. Erdwurm explained that "bare-
23 bones" customer charges, the sum of the unbundled service drop, billing, metering and meter reading
24 components, were based on the average embedded costs as determined in TEP's last two general rate
25 cases. In response to questions by Staff, Mr. Erdwurm testified that there can be some variation
26 between rate design and the cost allocation study. In effect, the cost allocation study is a guide for
27 rate design, but there can be other considerations. However, with respect to customer charges, the
28 Commission determined that such charges would be tied directly to its finding of average embedded
29 costs for the associated components. That is, in the case of customer charges, rate design would
30 match the average embedded cost study. (Tr. 559.)

1 At the hearing, Ms. Smith testified that she believed that TEP had increased the charges
2 for other distribution services to maintain the customer charge constraint and to adhere to the overall
3 2.6 cent T&D rate. (Tr. 383.) Notwithstanding Ms. Smith's concerns, TEP reiterates that it is
4 appropriate, and consistent with the last two general rate cases for the Company to maintain a
5 customer charge constraint consistent with the Commission's prior findings. Again, it is crucial to
6 reemphasize that with respect to customer charges, the Commission *required* rate design to match
7 cost of service, and that is exactly what TEP has done in establishing the proposed metering and
8 billing credits.

9 The way these charges were unbundled is consistent with how all of TEP's rates and
10 charges were unbundled for the Settlement pursuant to the Electric Competition Rules. Whether
11 these credits can stimulate competition with respect to metering and billing and how these credits
12 were arrived at in the November settlement are not the issues. The only relevant issue is whether
13 TEP unbundled these charges in accordance with the Electric Competition Rules and consistent with
14 the last rate case. It is clear from Mr. Erdwurm's testimony that this is how the Company unbundled
15 these charges. To follow the suggestion of Staff and other Intervenors to artificially increase these
16 credits would single out these charges for unbundling in a manner that is inconsistent with the way
17 TEP's other rates and charges have been unbundled and would violate the very basic premise that
18 unbundled charges should sum to the bundled components. The Commission and interested parties
19 will be free to re-examine this issue at the 2004 filing. For now, for consistency reasons and to
20 ensure that TEP is not subsidizing competitors, TEP's metering and billing charges should not be
21 modified.

22 **V. THE PROPOSED WAIVERS SHOULD BE APPROVED AS SET FORTH IN THE**
23 **AMENDED SETTLEMENT**

24 TEP has agreed to accept almost all of Staff's waiver recommendations and the Amended
25 Settlement incorporates such recommendations. With respect to Condition Nos. 23 and 25, Staff
26 recommended that consideration of these waivers be deferred until consideration of TEP's Final
27 Code of Conduct. TEP believes that this it is not necessary or appropriate and that the waivers
28 should be granted at this time. Conditions No 23 and 25 require employees of TEP to keep time
29 sheets on a "positive basis" and for TEP, UniSource and sister companies to maintain up-to-date job
30 descriptions for their respective employees. On Page 17 of Mr. Pignatelli's direct testimony, he

1 states that in light of the Code of Conduct, these conditions are unnecessary and put TEP at a
2 competitive disadvantage by requiring it to do something its competitors are not required to do.
3 Because of the proposed allocations set forth in TEP's Interim Code of Conduct, the concerns that
4 gave rise to these conditions in 1997 will no longer exist. Further, although it is likely that any Final
5 Code of Conduct or Affiliate Rules approved by the Commission will address allocation issues, it is
6 unlikely that the specifics of keeping positive time sheets or maintaining up-to-date job descriptions
7 will be addressed. Finally, when asked on cross-examination if there was some comfort that could
8 be taken if the Interim Code of Conduct addressed the issues which gave rise to Condition Nos. 23
9 and 25 and the Commission waived them at this time, Mr. Williamson responded "yes." (Tr. 416.)
10 These conditions stemmed from TEP being a vertically integrated utility in a holding company
11 structure. In light of the adoption of the Electric Competition Rules and the Interim Code of
12 Conduct, these conditions should be waived at this time.

13 **VI. THE PROPOSED INTERIM CODE OF CONDUCT SHOULD BE APPROVED**

14 TEP modeled its Interim Code of Conduct after the Affiliate Transactions Rule that was in an
15 earlier version of the Electric Competition Rules. The Interim Code of Conduct is a bridge to govern
16 transactions between TEP and any competitive affiliate once competitive retail access begins in
17 TEP's service territory. TEP recognizes that the Commission may have a separate proceeding to
18 determine Final Codes of Conduct to apply to all Affected Utilities and/or amend the Electric
19 Competition Rules in the future. As indicated in Section 7.1 of the Settlement, "TEP will voluntarily
20 comply with the Interim Code of Conduct until the Commission approves a final Code of Conduct
21 for TEP in accordance with the Electric Competition Rules."

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1 VII. APPROVAL OF THE SETTLEMENT IS CONSISTENT WITH THE INHERENT
2 AUTHORITY OVER PUBLIC SERVICE CORPORATIONS³

3 A. Commission Approval of TEP's Proposed Unbundled Rates and Charges Satisfies
4 Article XV of the Arizona Constitution.

5 1. A finding of fair value is not required to approve the Settlement.

6 Article XV, Section 14 of the Arizona Constitution provides that "to aid it in the
7 proper discharge of its duties" the Commission shall ascertain the fair value of utility property.
8 Arizona courts have, however, only applied this provision to a traditional rate case seeking either a
9 rate increase or (in one instance) an involuntary rate reduction. See *Arizona Corp. Comm'n v.*
10 *Arizona Pub. Svc. Co.*, 113 Ariz. 368, 370-71, 555 P.2d 326, 328-329 (1976) (increase to existing
11 rates); *Mountain States Tel. & Tel. Co. v. Arizona Corp. Comm'n*, 137 Ariz. 566, 568, 672 P. 2d 495,
12 497 (Ct. App. 1983) (increase to existing rates); *Scates v. Arizona Corp. Comm'n*, 118 Ariz. 531,
13 534, 578 P. 2d. 612, 615 (Ct. App. 1978) (increase to existing rates); *Simms v. Round Valley Light &*
14 *Power Co.*, 80 Ariz. 145, 153, 294 P.2d 378, 383 (1956) (involuntary rate reduction).

15 In a published opinion, the Attorney General concluded that a fair value finding is not
16 required for every "modification" to a public service corporation's rates, because in many instances
17 such finding would not "aid" the Commission in regulating rates and that to require otherwise
18 "would be an intolerable burden upon the regulatory process." Op. Atty. Gen. 71-15 at 37 (May 19,
19 1971). Moreover, Arizona trial courts have recently dismissed overly strict interpretations of the
20 constitutional fair value provision. See *US West v. Arizona Corp. Comm'n*, Slip Op., Maricopa Cty.
21 Super. Ct. CV 96-18667 (July 13, 1998) (holding that a fair value finding is unnecessary when
22 certifying new telecommunications providers (review pending). Because TEP is not seeking a rate
23 increase, and because the adjudication of stranded cost recovery and rate unbundling is not a "rate
24 case," the Commission need not make a fair value determination to satisfy the Arizona Constitution.

25 Notwithstanding, the evidence presented at the hearing by Mr. Erdworm confirms that
26 TEP's unbundled distribution rates were a mere unbundling of TEP's existing bundled rates that
27 were approved by the Commission in the last general rate case. In TEP's last general rate case
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30 ³ In the July 28, 1999 comments filed by the Arizona Consumers Council ("Council"), the Council incorporated by
reference comments made on its behalf by Timothy S. Hogan from the Arizona Center for Law in the Public Interest
in the APS proceeding. This section addresses some of those legal issues.

1 (Decision No. 59594 dated March 29, 1996), the Commission made a specific fair value
2 determination for TEP that established the rates and charges that comprise the unbundled distribution
3 rates.⁴

4 **2. The Commission is not required to conduct a rate case to unbundle or lower**
5 **existing rates.**

6 There are no constitutional provisions, statutes or regulations that require a public
7 service corporation to file a rate case (or for the Commission to conduct a rate case) before the
8 Commission can approve a voluntary rate reduction. See A.R.S. Section 40-250(A), "No public
9 service corporation shall *raise* any rate . . . except upon a showing before the commission and a
10 finding by the commission that an *increase* is justified."; A.A.C. R14-2-103, "Defining Filing
11 Requirements in Support of a Request by a Public Service Corporation Doing Business in Arizona
12 for a Determination of the Value of Property of the Corporation and the Rate of Return Thereon, or
13 Support of Proposed *Increased* Rates or Charges." This was also testified to by Staff at the hearing.
14 (Tr. 417.) The Settlement Agreement provides for a two percent rate reduction of TEP's existing
15 rates and charges which the Commission has already determined in a prior rate proceeding are just
16 and reasonable. Moreover, as discussed above, TEP is merely unbundling its existing rates and
17 charges into various components as required under the Commission's own Electric Competition
18 Rules.

19 **3. The cost associated with the CTC is already a component of TEP's rates and is**
20 **not a new rate or charge.**

21 The CTC proposed in the Settlement for recovery of stranded costs is another
22 unbundled component of TEP's existing rates which are comprised of Commission-approved
23 regulatory assets, as well as Commission-approved prudently incurred generation costs already in
24 rate base. If the CTC was not an unbundled component, TEP would have to *increase* rates in order
25 to recover it when in fact TEP is freezing rates (subject to the rate decreases contemplated in the
26 Settlement.)

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30 ⁴ TEP did, however, provide Staff an analysis of TEP's fair value rate base for purposes of the Settlement in response to Staff's Data Request No. LS-3, Supplement 1, which was attached to the rebuttal testimony of Bentley Erdwurm as Exhibit DBE-1.

1 **4. The Commission has in the past approved rate decreases and rate moratoriums**
2 **without a rate case that had the effect of binding future Commissions.**

3 Notwithstanding the provisions of A.R.S. Section 40-246, the Commission has
4 approved settlement agreements that contained rate decreases and rate moratoriums for public
5 service corporations. (See Decision No. 59594 issue on March 29, 1996 and Decision No. 61104
6 issued on August 29, 1998.) These settlements were bilateral contracts which obligated the utility to
7 lower rates and/or not seek an increase in its rates and charges for a specific period of time and for
8 the Commission not to take any action to require the utility to involuntarily lower its rates and
9 charges during the moratorium period. These actions are clearly within the Commission's legal
10 authority.

11 **5. Approval of the Settlement is within the Commission's ratemaking authority.**

12 The Commission inherently has "a range of legislative discretion" in ratemaking
13 matters. See *Simms*, 80 Ariz. at 154, 294 P.2d. at 384. The Commission has the authority to address
14 "specialized" situations on a case-by-case basis when particular circumstances warrant such
15 treatment. *Arizona Corp. Comm'n v. Palm Springs Util. Co.*, 24 Ariz. App. 124, 128, 536 P.2d. 245.
16 250 (1975). The unbundling of existing rates and the resolution of stranded costs for an Affected
17 Utility under the Commission's Electric Competition rules is such a "specialized" situation. It does
18 not require a rate case or a particular method of ratemaking.

19 **B. The Settlement Does Not Unlawfully Bind Future Commissions.**

20 As discussed above, there are instances where the Commission has acted in ratemaking
21 matters that had the effect of binding future Commissions. Section 13.3 of the Settlement was
22 negotiated between the parties to ensure that the Settlement would not be abrogated in the future.
23 Hence, Section 13.3 of the Settlement makes the Commission a party to the Settlement through its
24 approval.

25 The introduction of competitive retail access in Arizona will fundamentally and forever
26 change the way TEP will be able to operate in the future. Currently, TEP has a CC&N to provide
27 monopoly electric service in its territory. Through this Settlement, TEP has agreed to a modification
28 of its CC&N to permit competitive retail access in its service territory and lose its monopoly with
29 respect to generation and other competitive services. Upon approval of this order, TEP will be
30 required to immediately go off FAS 71 for accounting purposes and will be required to immediately

1 write down generation assets under FAS 121. Once this occurs, there is no going back. If a future
2 Commission changes any or all aspects of the Settlement, TEP can't go back on FAS 71 or write-up
3 its assets. To the extent that the reasonable opportunity for recovery of stranded costs provided
4 under the Settlement is diminished in any way, TEP might incur write-offs that can have serious
5 financial implications for the Company. It is important that approval of this Settlement provides a
6 significant degree of certainty to TEP, customers and the financial community.⁵ This is the reason
7 behind Section 13.3 of the Agreement. However, TEP did not intend for this provision to unlawfully
8 bind a future Commission on ratemaking issues. Therefore, TEP would not oppose the inclusion of
9 clarifying language to the Settlement that states "to the fullest extent permitted by law," the
10 Agreement shall be enforceable against this and future Commissions.

11 **VIII. CONCLUSION**

12 Based upon the evidence presented at the hearing, practically all of the stakeholders that
13 participated in the proceeding either recommend that the Commission approve the Settlement, or do
14 not oppose the Settlement. These stakeholders include the Company, Staff, residential customers,
15 commercial and industrial customers and various ESPs. This is a comprehensive Settlement that has
16 broad-based support in its current form and is in the public interest. To the extent that modifications

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⁵ This degree of certainty would also be a prerequisite if TEP determines to seek Commission authorization in the future to securitize the CTC pursuant to Section 2.1(g) of the Settlement.

1 were necessary, the Parties have already made such modifications. Further changes to the Settlement
2 will upset the delicate balance of financial, competitive and other interests that are represented by the
3 final product that has been presented for approval. Moreover, the evidence presented at the hearing
4 does not justify any further modifications of the Settlement. TEP urges the Commission to approve
5 this Settlement in its current form and bring choice to TEP's customers before the end of this year.

6 RESPECTFULLY SUBMITTED this 30th day of August, 1999.

7 TUCSON ELECTRIC POWER COMPANY

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9
10 By: 

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12 Senior Counsel, Regulatory Affairs
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15 **Original and fourteen copies of the foregoing**
16 **filed this 30th day of August, 1999, with:**

17 Docket Control
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, AZ 85007

21 **Copy of the foregoing hand-delivered**
22 **this 30th day of August, 1999, to:**

23 Carl J. Kunasek, Chairman
24 Jim Irvin, Commissioner
25 William A. Mundell, Commissioner
26 ARIZONA CORPORATION COMMISSION
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28 Phoenix, AZ 85007

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11 **Copy of the foregoing mailed/faxed/e-mailed**
12 **This 30th day of August, 1999, to:**

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