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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner

AZ CORP COMMISSION
DOCUMENT CONTROL
Arizona Corporation Commission
DOCKETED
AUG 30 1999

IN THE MATTER OF THE
APPLICATION OF TUCSON ELECTRIC
POWER COMPANY FOR APPROVAL
OF ITS PLAN FOR STRANDED COST
RECOVERY AND FOR RELATED
APPROVALS, AUTHORIZATIONS AND
WAIVERS

DOCKET NO. E-01933A-98-0471

DOCKETED BY
[Signature]

IN THE MATTER OF THE FILING OF
TUCSON ELECTRIC POWER
COMPANY OF UNBUNDLED TARIFFS
PURSUANT TO A.A.C. R14-2-1602 ET.
SEQ.

DOCKET NO. E-01933A-97-0772

IN THE MATTER OF THE
COMPETITION IN THE PROVISION OF
ELECTRIC SERVICES THROUGHOUT
THE STATE OF ARIZONA

DOCKET NO. RE-00000C-94-0165

**CYPRUS CLIMAX METALS, INC., ASARCO, INCORPORATED
AND ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION'S
POST HEARING BRIEF**

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1 Cyprus Climax Metals Company, ASARCO Incorporated, and Arizonans for
2 Electric Choice and Competition¹ (collectively "AECC") hereby file their Post Hearing
3 Brief in the above captioned dockets concerning the TEP Settlement Agreement. In
4 this brief, AECC summarizes its reasons for joining TEP and the other signatories to
5 the TEP Settlement in urging the Arizona Corporation Commission ("Commission") to
6 approve the TEP Settlement without further modification. In addition, AECC
7 addresses the failure by those opposing the TEP Settlement to demonstrate that the
8 public interest warrants further modification or rejection of the Agreement by the
9 Commission. In particular, this brief discusses the suggestion by the Department of
10 Defense that the Commission modify the TEP Settlement by reallocating a
11 disproportionate amount of TEP's stranded costs to contract customers in violation of
12 the Commission's stranded cost order (Decision No. 61677, April 27, 1999) and the
13 proposed Electric Competition Rules.

14 AECC has endeavored to succinctly state its position herein. Neither AECC's
15 failure to address any additional issue which supports approval of the Settlement nor
16 AECC's failure to respond to any specific issue raised in opposition should be taken
17 to indicate that AECC believes such issues justify the Commission withholding
18 approval. In short, the record in this docket clearly illustrates that approval of the
19 TEP Settlement is in the public interest.

20
21 ¹ Arizonans for Electric Choice and Competition is a coalition of energy consumers in
22 favor of competition and includes Cable Systems International, BHP Copper, Motorola,
23 Chemical Lime, Intel, Honeywell, Allied Signal, Cyprus Climax Metals, Asarco, Phelps
24 Dodge, Homebuilders of Central Arizona, Arizona Mining Industry Gets Our Support,
25 Arizona Food Marketing Alliance, Arizona Association of Industries, Arizona Multihousing
26 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 I. **AECC SUPPORTS APPROVAL OF THE TEP SETTLEMENT AGREEMENT**
2 **BECAUSE IT IS IN THE PUBLIC INTEREST.**

3 AECC's support for the TEP Settlement is explained in the pre-filed and hearing
4 testimony of its expert witness Kevin Higgins in this docket. As explained, the TEP
5 Settlement reflects the agreement of TEP and its customers to the introduction of
6 competition in TEP's service territory. In discharging its governmental
7 responsibilities, the Commission must protect the public interest by balancing the
8 interests of both TEP and its customers. In this docket, that balance is reflected in
9 the terms and conditions upon which TEP's service territory will be opened up to full
10 retail access.

11 There are a number of public benefits to be realized from approval of the TEP
12 Settlement. For example, approval of the TEP Settlement brings the introduction of
13 competition to TEP's service territory by eliminating TEP's on-going legal challenges
14 to the Commission's adoption of the Electric Competition Rules, the Commission's
15 orders approving stranded cost recovery and the issuance of CC&Ns to new market
16 entrants. In place of such litigation, the Commission makes Arizona's second largest
17 public service corporation a zealous advocate of electric deregulation.

18 Energy consumers will benefit from competition in TEP's service territory
19 through greater choice. Following approval of the Settlement, a substantial number
20 of customers in TEP's service territory will have an immediate opportunity to choose
21 an alternative electric service provider. Several ESPs have, or are in the process of,
22 obtaining authorization from the Commission to sell competitive energy services in
23 TEP's service territory. Because consumers will select an alternative supplier if they
24 feel that the selection will result in reduced rates for electric utility services, greater
25 choice translates into lower rates for electric utility service. Indeed, the rate freezes
26 provided for in the TEP Settlement provide rate stability promoting competition by

1 allowing ESPs to offer greater choices in the competitive market. On the other hand,
2 for those consumers unable or unwilling to choose competitive services from an ESP,
3 the Settlement offers the guarantee of lower prices for electricity. This follows from
4 the across the board rate decreases for all customers TEP has agreed to in the
5 Settlement.

6 Finally, the TEP Settlement is in the public interest because it is consistent
7 with the Commission's proposed Electric Competition Rules and its final stranded
8 cost order. The Commission has encouraged the various stakeholders to undertake
9 efforts to reach agreement regarding the terms and conditions for opening the
10 incumbent utilities' service territories to competition. The Commission explicitly
11 recognized settlement as a viable option for determining how an affected utility's
12 stranded costs would be determined. (Decision 61677 at 4). Consistent with the
13 stranded cost order's settlement option, TEP and its consumers have agreed to a
14 methodology for determining and collecting stranded costs. Thus, the Settlement
15 furthers the Commission's goal of resolving stranded cost issues on the way to
16 deregulation.

17 Furthermore, under the Rules, TEP is required to prepare, submit to the
18 Commission and abide by an approved code of conduct designed to protect against
19 improper cross-subsidization between affiliates and abuses of market power. In
20 connection with the proceedings regarding the TEP Settlement, TEP has already
21 submitted an interim code of conduct that includes the input of the other parties to
22 the Settlement.

23 The Rules also require that TEP's rates for various competitive and non-
24 competitive services be unbundled so that consumers are provided information
25 necessary to make informed choices regarding the selection of alternative energy
26 service providers. TEP has set forth its unbundled tariffs in connection with these

1 proceedings in a manner that will provide the information consumers need to make
2 informed choices in a competitive environment.

3 The Rules also require separation of TEP's generation assets in order to
4 address vertical market power. Under the Settlement, TEP will transfer all of its
5 generation and other competitive assets to a separate subsidiary at market value. In
6 addition, the Settlement commits TEP to the development of the Arizona Independent
7 System Administrator or AISA and an ISO as required by the Commission's proposed
8 Electric Competition Rules. In sum, as these examples demonstrate, the TEP
9 Settlement is consistent with the Commission's proposed Electric Competition Rules
10 and other orders governing deregulation.

11 **II. THOSE SEEKING MODIFICATION OR REJECTION OF THE TEP SETTLEMENT**
12 **AGREEMENT HAVE FAILED TO DEMONSTRATE THAT APPROVAL OF THE**
13 **SETTLEMENT AS SUBMITTED WOULD NOT BE IN THE PUBLIC INTEREST.**

14 The settlement executed by TEP and the various customers represents a "give
15 and take" resolution. Viewed as a whole, the TEP Settlement is like a complex
16 tapestry woven from the individual threads provided by its makers. Like the
17 individual threads of a tapestry, the distinct parts of the TEP Settlement are
18 inextricably linked together. Altering particular terms and conditions of the TEP
19 Settlement, like pulling on individual strings of a tapestry, risks unraveling the entire
20 agreement.

21 Notwithstanding the delicate balance reflected in the TEP Settlement, the
22 parties were able to agree on an increased adder to be reflected on the bill in
23 combination with the MGC, expanded participation in future TEP proceedings and
24 accepted most of Staff's recommendations regarding waivers from compliance with
25 certain provisions of the proposed Electric Competition Rules. These changes, which
26 are all "consumer friendly," were agreed to in an effort to satisfy the concerns of
some of the intervenors. As a result of these additions to the TEP Settlement, the

1 Agreement now has unprecedented support from stakeholders. In fact, Intervenor
2 New West Energy took the extraordinary step of withdrawing its opposition to the
3 TEP Settlement in the middle of the hearing.

4 At this time, only one party, Commonwealth Energy, an ESP entering Arizona's
5 deregulation process at the eleventh hour who has not even filed an application for a
6 competitive CC&N, seeks outright rejection of the TEP Settlement. However, none
7 of the evidence provided by Commonwealth provides a basis for the Commission to
8 withhold approval of the Settlement. Rather, the evidence presented in opposition
9 demonstrates nothing more than the self-serving interest of Commonwealth to create
10 a playing field tilted in its favor. In this manner, Commonwealth aims to increase its
11 potential profits at the expense of Arizona's electric consumers.

12 In order to accomplish this goal, Commonwealth demands higher "shopping
13 credits" (the market generation credit plus the adder) allowing it to charge higher
14 prices for the competitive services they propose to offer. However, the evidence
15 clearly demonstrated that the credits called for in the TEP Settlement provide
16 sufficient headroom for efficient ESPs to offer competitive services in Arizona during
17 the transition period. Thereafter, consumers' opportunities to select a competitive
18 supplier can only increase. Meanwhile, the benefits to be received by consumers
19 from the approval of the TEP Settlement, the introduction of competition as well as
20 guaranteed price reductions can be realized.

21 The Department of Defense ("Department"), although not seeking rejection,
22 asks the Commission to amend the TEP Settlement in a manner that would deprive
23 AECC's members of the benefit of their bargain. Specifically, the Department
24 suggests that the Commission modify the TEP Settlement so that contract customers
25 would be required to pay a higher CTC than currently required under the Settlement
26 Agreement. The Department's proposal seeks conversion of the floating CTC

1 component of stranded costs called for in the TEP Settlement into a fixed charge
2 which is then added to the fixed CTC already called for under the TEP Settlement.
3 The Department's witness then allocates this additional CTC to customers
4 disproportionately.

5 There are several problems with the Department's suggested modification to
6 the Settlement Agreement. First, adoption of the proposal would be contrary to the
7 proportionality provisions of the Commission's proposed Electric Competition Rules.
8 Pursuant to R14-2-1607.F, which provision is consistent with the proportionality
9 provision contained in the Legislature's rules governing deregulation of public power
10 entities, stranded cost recovery shall occur in a manner which does not require any
11 customer or customer class to pay a greater proportion of such costs than are
12 currently being paid under existing rates. In addition, the Commission's stranded
13 cost order provides that "no customer or customer class shall receive a rate increase
14 as a result of stranded cost recovery." (Decision No. 61677 at 2). Under the
15 Department's proposed CTC allocation, contract customers would receive a rate
16 increase because they would be required to pay stranded costs in an amount that is
17 disproportionate to the amount included in their current rates. Indeed, the
18 Department's own witness admitted during the hearing that his proposal would be
19 contrary to the Commission's Rules and Orders.

20 A second problem with the Department's proposal is that it eliminates the
21 benefits of the floating CTC to consumers as a hedge against price risk. The floating
22 CTC changes inversely with changes in the market price of power. Therefore,
23 customers are hedged against rising prices. The changes the Department seeks
24 would fundamentally change the nature of the TEP Settlement by eliminating this
25 important consumer protection.

26 The rates paid by all customers, including contract customers, currently

1 include recovery of those costs which will be stranded following the introduction of
2 competition. The recovery of such costs from customers through rates, including
3 contract customers, will continue following the introduction of competition through
4 the application of the CTC. As provided for in the TEP Settlement, the recovery of
5 stranded costs from all customers, including contract customers, conforms to the
6 proposed Electric Competition Rules and the Commission's stranded cost order
7 because such recovery is both proportionate to recovery under current rates and does
8 not result in a rate increase to any customer or customer class.

9 For the above reasons, the Department of Defense's suggested modifications
10 must be rejected.

11 **III. TEP SETTLEMENT IS SUFFICIENT TO PROMOTE EFFICIENT COMPETITION IN**
12 **TEP'S SERVICE TERRITORY.**

13 As reflected above, combined market generation credit and adder resulting
14 from the TEP Settlement is sufficient to promote efficient competition in TEP's
15 service territory. Further, AECC joins in TEP's assertion that, as reflected above, the
16 TEP Settlement is consistent with the Commission's Electric Competition Rules,
17 including, among other things, the Rules' requirement that TEP transfer its generation
18 assets, continue the provision of services covered by the System Benefits charge,
19 establish a code of conduct and unbundle standard offer rates.

20 **IV. THE COMMISSION IS NOT OBLIGATED TO DETERMINE THE "FAIR VALUE"**
21 **OF TEP'S UTILITY PROPERTY IN ORDER TO APPROVE THE TEP**
22 **SETTLEMENT.**

23 The Commission is not obligated to make a traditional finding of "fair value" in
24 order to approve a decrease in TEP's rates for the provision of electrical utility
25 service. Nothing in the Arizona Constitution nor the Arizona Revised Statutes
26 prohibits a public service corporation from voluntarily reducing its rates for the
services it provides. Those opposing the TEP Settlement including the rate

1 reductions, advance the absurd proposition that a rate reduction is not in the public
2 interest unless the Commission first determines the fair value of TEP's property, its
3 costs of service, and from there, sets rates that are "just and reasonable."

4 The TEP Settlement unbundles TEP's current Standard Offer rates and calls for
5 the recovery of stranded costs through the CTC. Thus, stranded costs are being
6 separately identified not created or increased. Nor are any rates being increased as a
7 result of the CTC. There is absolutely no legal or practical requirement that the
8 Commission determine the fair value of TEP's utility property before approving this
9 type of unbundling or the rate reductions that are included in the TEP Settlement. It
10 certainly will not aid the Commission in approving the rate reductions to determine
11 the fair value of such property. It will, however, postpone the approval of the rate
12 reductions set forth in the TEP Settlement pending the determination of the fair value
13 of TEP's property. Clearly, this would *not* be in the public interest.

14 **V. THE PARTIES TO THE TEP SETTLEMENT DID NOT INTEND TO UNLAWFULLY**
15 **BIND FUTURE COMMISSIONS.**

16 The parties intended that the negotiated provisions would not be unilaterally
17 changed in a manner that could deprive them of the benefit of their bargain.
18 Nevertheless, AECC is cognizant of the concern that has been raised that approval of
19 the TEP Settlement would be "unlawfully" binding on future Commissions on
20 ratemaking issues related to TEP. Accordingly, AECC joins in TEP's suggestion that
21 the TEP Settlement be modified to include clarifying language that the Settlement is
22 binding on the Commission to "to the fullest extent permitted by law."

23 **VI. CONCLUSION.**

24 AECC's reasons for entering into and requesting Commission approval of the
25 TEP Settlement are easily summarized: The TEP Settlement portrays a finely woven
26 compromise that will bring about competition in TEP's service territory at the earliest

1 possible date. As a consequence, AECC urges the Commission to expeditiously issue
2 its order approving the TEP Settlement without further modification.

3 DATED this 30th day of August, 1999.

4 FENNEMORE CRAIG, P.C.

5
6 By 

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