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REHEARING 9/16/98

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation
DOCKETED

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AZ CORP COMMISSION

Aug 28 1 58 PM '98

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Commissioner - Chairman
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AUG 28 1998
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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 MOTION FOR**
) **RECONSIDERATION**

Tucson Electric Power Company ("TEP" or "Company"), pursuant to A.R.S § 40-253 and A.A.C. R14-3-111, hereby moves the Arizona Corporation Commission ("Commission") to reconsider Decision No. 61071 ("Decision"), issued on August 10, 1998.

I. BACKGROUND.

On December 26, 1996, the Commission issued ACC Decision No. 59943 in which it adopted A.A.C. R14-2-1601 through R14-2-1616 ("the Competition Rules"). The Competition Rules require that, beginning January 1, 1999, "Affected Utilities" such as TEP, begin opening up their certificated service territories to competition by other electric service providers ("ESPs"). On August 10, 1998, the Commission issued the Decision, whereby it adopted extensive amendments to the Competition Rules (the "Rule Amendments"). The Rule Amendments are designed to facilitate the implementation of retail electric competition by the Commission's January 1, 1999 deadline. Although the Company commends Staff and the Commission for taking the initiative on this difficult task, the Rule Amendments need further clarification and leave several critical issues unresolved and will have unintended consequences. The Company will continue to work with the Commission and Staff in this docket (as well as in other related dockets) to resolve these and other issues.

As a matter of general concern, the Rule Amendments contain unresolved operational and implementation issues such as a lack of standardized service acquisition and ISA agreements and CC&N requirements. Also, with respect to the CC&N application process, TEP notes that instead of incorporating necessary details and requirements in Proposed Rule R14-2-1603, the Commission has

1 recently issued a CC&N application form for new ESPs. It appears that the Commission is
2 attempting to promulgate additional rules through the form, as opposed to incorporating the
3 substantive requirements set forth in the application form into the Proposed Rules. TEP does not
4 believe this is appropriate, as many of the provisions in the application form appeared for the first
5 time without comment or input from the stakeholders.

6 **II. NO EMERGENCY EXISTS WHICH JUSTIFIES ADOPTING THE RULE**
7 **AMENDMENTS ON AN EMERGENCY BASIS.**

8 First, the Commission should reconsider its adoption of the Decision on an emergency basis.
9 Arizona's Administrative Procedures Act permits the Commission to make its rules immediately
10 effective if doing so is "necessary for immediate preservation of the public health, safety or welfare,"
11 and "the notice and public participation requirements are impracticable." A.R.S. § 41-1026(E). If,
12 however, the emergency situation is caused by the Commission's own timing, the standard is higher,
13 requiring "*substantial* evidence that failure to approve the rule as an emergency measure will result
14 in *imminent substantial peril* to the public health, safety or welfare." A.R.S. § 41-1026(A)
15 (emphasis added). Because, no such emergency exists here, the Commission cannot avoid the
16 Administrative Procedures Act's normal notice-and-comment procedure. As TEP suggested in its
17 Exceptions, the Commission should take an additional 60 days to resolve the outstanding
18 implementation and operational issues and then commence the rulemaking process for the Amended
19 Rules to become effective on January 1, 1999.

20 **III. TEP PRESERVES AND INCORPORATES BY REFERENCE ALL OBJECTIONS**
21 **TO THE COMPETITION RULES.**

22 As the Commission is aware, TEP is party to a Superior Court action challenging the
23 Competition Rules. See *Tucson Electric Power Company v. Arizona Corporation Commission*,
24 Maricopa County Cause No. 97-03748 (Consolidated) (the "TEP Action"). Other parties as well
25 have challenged the Competition Rules in various forums and the legality of those rules has not been
26 definitively adjudicated. For the same reasons that the Competition Rules themselves are invalid,
27 the Rule Amendments are likewise invalid. TEP therefore incorporates by reference and preserves
28 its objections to the Competition Rules set forth to the Commission and in the TEP Action.

29 ...
30 ...

1 **IV. TEP INCORPORATES BY REFERENCE ITS COMMENTS AND EXCEPTIONS TO**
2 **THE RULE AMENDMENTS.**

3 TEP also incorporates by reference its Comments/Exceptions to Proposed Order Adopting
4 Rule Amendments, which were filed on July 31, 1998 and a copy of which is attached hereto as
5 Exhibit 1. In those Comments/Exceptions, TEP set forth several objections to the Rule
6 Amendments. Although the Commission adopted some of TEP's Comments/Exceptions, there are
7 several respects of the Rule Amendments that are still vague or leave critical issues unresolved. The
8 Rule Amendments also have unintended consequences for the Affected Utilities. Because TEP's
9 views are already set forth in detail in its Comments/Exceptions, TEP will incorporate those
10 Comments/Exceptions herein by reference.

11 **V. SPECIFIC ISSUES RAISED IN TEP'S EXCEPTIONS.**

12 **1. R14-2-1603. Certificates of Convenience and Necessity.**

13 TEP is concerned that the Amended Rule does not address the settlement process
14 between ESPs and UDCs. The primary settlement issues that TEP is concerned with involve the
15 process by which the UDC determines whether the actual power used by the ESPs' customers is
16 greater than, equal to or less than the power scheduled and delivered by the ESP and the
17 reconciliation of resulting differences. This includes issues relating to pricing of such power
18 variances.

19 **2. R14-2-1604. Competitive Phases.**

20 **A.1.** TEP believes that utilizing a single "non-coincident" peak has unintended
21 consequences. Only customers with 1 MW minimum demand should be eligible for direct access.
22 Given TEP's customer base, the non-coincident peak criterion would expand the direct access
23 eligibility from the 1 MW customer base to well beyond the 20 percent of TEP's 1995 system retail
24 peak demand. It would also have the effect of making the 40 kW aggregation meaningless, as well
25 as impose additional burdens to administer. As the 20 percent cap could be easily reached, there will
26 be customers that have loads in excess of 1 MW that will not be able to access the competitive
27 market during the transition period.

28 **A.2.** In the third sentence, TEP suggests replacing "month" with "six months."
29 Doing so will better characterize a customer whose load or usage is more consistently at least 40 kW
30 or 16,500 kWh.

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3. R14-2-1607. Recovery of Stranded Cost of Affected Utilities.

A. Delete “by means such as expanding wholesale or retail markets, or offering a wider scope of services for profit, among others.” As is, this sentence suggests that the Affected Utility use profits from “expanding [its] wholesale or retail markets,” or a “wider scope of services” to mitigate stranded costs. It is unclear whether the markets and services mentioned are regulated or unregulated (*i.e.*, competitive). TEP anticipates that most, if not all, new products and services in the electric industry will develop in the unregulated, competitive marketplace. The very nature of “unregulated” means that the Commission will not require that profits from such activities be used to offset costs in the regulated arena.

F. TEP disagrees with the self-generation exclusion set forth in Paragraph F. If the Proposed Rule is not modified to ensure that customers who choose to self-generate are responsible for stranded costs just as any other existing customer, a potentially large and improper economic incentive for self-generation will be created. This is due to the ability of such customers to avoid stranded cost charges. The result of the Amended Rules as written will be to significantly increase uneconomic self-generation while increasing stranded cost burdens on customers who purchase their power in the competitive marketplace. TEP proposes the following change:

A Competitive Transition Charge may be assessed only from customer purchases made in the competitive market using the provisions of this Article. Any reduction in electricity purchases from an Affected Utility resulting from demand-side management or the use of renewable resources shall not be used to calculate or recover any Stranded Cost from a customer.

4. R14-2-1608. System Benefits Charge.

TEP believes that either this section, or the definition of System Benefits Charge, should incorporate competitive access implementation and evaluation program costs in the System Benefits Charge. The Amended Rules do not mention who will be responsible for paying for competitive access implementation costs. TEP believes that all Affected Utility customers should pay for the costs of implementing and evaluating the new marketplace, because a) restructuring was ordered by the Commission, and b) all customers and “market-players” potentially stand to benefit from it.

1 **5. R14-2-1610. Transmission and Distribution Access.**

2 **A.** Add at the end of the paragraph “in accordance with FERC Orders 888
3 and 889.”

4 **G.** TEP believes that the use of Scheduling Coordinators must be a mandatory
5 requirement for all ESPs (including Aggregators and Self-Aggregators who are not required to use
6 an ESP) under this Amended Rule. In order for open access to occur, there needs to be a Scheduling
7 Coordinator to fill the role as an intermediary between the competitive market and the system control
8 areas. Without the Scheduling Coordinator, the control areas will be unable to properly schedule
9 power, which could jeopardize system reliability. TEP also believes that the Rules should specify
10 minimum requirements for the Scheduling Coordinators such as a 24 hour a day, seven day a week
11 operation and a license. The Commission working group studying this issue has supported this
12 concept.

13 **6. R14-2-1617. Electric Affiliate Transaction Rules.**

14 TEP believes that this section should not be adopted at this time. There needs to be
15 further input by the Affected Utilities with respect to the implications of these Amended Rules from
16 both a financial and operational perspective, as well as an assessment as to whether the Proposed
17 Rules give a competitive advantage to non-Affected Utilities. Notwithstanding TEP’s position and
18 without waiver thereof:

19 **A.1.** TEP believes that this section can be eliminated because the provisions of **A.2**
20 contain all of the necessary safeguards. It is also unclear as to its purpose in light of **A.2**.

21 **A.6.** TEP believes that there is no purpose to be served by this provision except to
22 disadvantage smaller corporate entities such as TEP. It makes a presumption that separation is
23 appropriate in all instances when the Commission has always had the ability to review affiliate
24 relationships under the Affiliate Rules. What this does is to deny day-to-day expertise necessary to
25 efficiently carry out responsibilities to different entities. So long as proper allocation and conflict
26 policies are in effect, this provision is unnecessary. At the very least, the Proposed Rule should
27 provide for a waiver by the Commission upon a demonstration by the Affected Utility that
28 appropriate procedures have been implemented that ensure that the utilization of common board
29 members and corporate officers does not allow for the sharing of confidential information with
30 affiliates or otherwise circumvent the purpose of this Proposed Rule.

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