

OPEN MEETING ITEM



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COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ORIGINAL



ARIZONA CORPORATION COMMISSION

EXECUTIVE DIRECTOR
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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DATE: JANUARY 18, 2011

DOCKET NO.: E-01933A-10-0266

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Order on:

TUCSON ELECTRIC POWER COMPANY
(AMEND DECISION NO. 72033)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JANUARY 27, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

FEBRUARY 1, 2011 and FEBRUARY 2, 2011

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

JAN 18 2011

DOCKETED BY

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF
9 TUCSON ELECTRIC POWER COMPANY FOR
10 APPROVAL OF ITS 2011 RENEWABLE
11 ENERGY STANDARD AND TARIFF
12 IMPLEMENTATION PLAN.

DOCKET NO. E-01933A-10-0266

DECISION NO. _____

ORDER AMENDING
DECISION NO. 72033

13 Open Meeting
14 February 1 and 2, 2011
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

17 Having considered the entire record herein and being fully advised in the premises, the
18 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

19 **FINDINGS OF FACT**

- 20 1. On July 1, 2010, Tucson Electric Power Company ("TEP") filed for Commission
21 approval its 2011 Renewable Energy Standard and Tariff ("REST") Implementation Plan.
- 22 2. On September 24, 2010, Freeport-McMoRan Copper & Gold, Inc. ("Freeport-
23 McMoRan") and Arizonans for Electric Choice and Competition ("AECC") filed a Motion to
24 Intervene in this docket.
- 25 3. On October 6, 2010, a Procedural Order was issued granting intervention to Freeport-
26 McMoRan and AECC.
- 27 4. On October 13, 2010, TEP filed an update to its proposed REST Implementation Plan.
- 28 5. On November 9, 2010, the Commission's Utilities Division ("Staff") filed a
Memorandum providing its recommendations for Commission action as to TEP's REST
Implementation Plan, along with a Proposed Order intended to carry out those recommendations. In

1 the Memorandum, Staff recommended approval of a new School Vocational Program ("SVP")
2 proposed by TEP, but with a reduction in requested administrative costs. (Staff Memorandum at 4,
3 13.) Staff's Proposed Order included the same recommendations for approval of the SVP, (Proposed
4 Order at 4-5, 15), but included an ordering paragraph denying the SVP (Proposed Order at 16).

5 6. Staff's Proposed Order was discussed extensively by the Commission at the Open
6 Meeting on November 23, 2010, but the SVP was not discussed.

7 7. At the Open Meeting on November 23, 2010, multiple amendments to Staff's
8 Proposed Order were discussed. One of these, Newman Proposed Amendment No. 6 ("Newman No.
9 6"), was designed to add \$1,501,610 to the commercial up-front incentive budget; to add \$453,375 to
10 the commercial performance-based incentive budget; to add \$75,000 to the information systems
11 budget line item; and to increase the monthly cap on the industrial/mining customer class to recover
12 those additional funds. Newman No. 6 was expressly intended to address concerns about the impact
13 of the Davis-Monthan Air Force Base project on the rest of the commercial distributed generation
14 market and with the size of the reduction in TEP's information systems budget line item.

15 8. After discussion, Newman No. 6 was withdrawn without a vote. (11/23/10 OM Tr. at
16 105.) The Proposed Order, as otherwise amended, was passed by a vote of five ayes and zero nays.
17 (11/23/10 OM Tr. at 106.)

18 9. Although Newman No. 6 was withdrawn and thus not approved by the Commission,
19 the changes proposed in Newman No. 6 were incorporated into Decision No. 72033, which was
20 issued on December 10, 2010. In Decision No. 72033, the provisions of Newman No. 6 are included
21 on page 18 as Findings of Fact Nos. 67 through 69 and on page 20 as the last two ordering paragraphs
22 on the page.

23 10. On December 16, 2010, Staff filed a Request for Procedural Order Nunc Pro Tunc
24 requesting that the Hearing Division issue a Procedural Order to remove from Decision No. 72033
25 Findings of Fact Nos. 67 through 69 and the last two ordering paragraphs on page 20.

26 11. On December 22, 2010, TEP filed Pricing Plans identified as complying with Decision
27 No. 72033. TEP did not reference any error in Decision No. 72033, but it appears that its Pricing
28 Plans do not adopt the increase in the monthly cap for the industrial customer class that would have

1 been adopted under Newman No. 6.

2 12. On December 29, 2010, Freeport-McMoRan and AECC filed an Application for
3 Rehearing of Decision No. 72033 to remove from the Decision the same language identified by Staff
4 in its Request for Procedural Order Nunc Pro Tunc. Freeport-McMoRan and AECC further
5 requested that pending correction of the error, enforcement of that portion of the Decision relating to
6 Newman No. 6 be stayed.

7 13. On January 12, 2011, Staff filed Staff's Second Request for Procedural Order Nunc
8 Pro Tunc, requesting that the ordering paragraph denying the SVP, on page 19 of the Decision, be
9 amended to approve the SVP, consistent with Staff's recommendations in the Memorandum and
10 Proposed Order.

11 14. At its January 18, 2011, Staff Open Meeting, the Commission voted to have the
12 Hearing Division issue a Recommended Order, for consideration at the Commission's February 1 and
13 2, 2011, Open Meeting, amending Decision No. 72033 to correct the errors identified by Freeport-
14 McMoRan and AECC's Application for Rehearing of Decision No. 72033 under A.R.S. § 40-253 and
15 identified by Staff in its Second Request for Procedural Order Nunc Pro Tunc.

16 15. It is apparent that the incorporation of the changes of Newman No. 6 into Decision
17 No. 72033 was done in error, and it is necessary and appropriate and in the public interest to correct
18 the Decision by removing those changes.

19 16. Furthermore, it is apparent that the denial of the SVP in the ordering paragraph on
20 page 19 of Decision No. 72033 was done in error, and it is necessary and appropriate and in the
21 public interest to correct the Decision by changing the denial to an approval.

22 CONCLUSIONS OF LAW

23 1. TEP is a public service corporation within the meaning of Article XV of the Arizona
24 Constitution and A.R.S. Title 40, Chapter 2.

25 2. The Commission has jurisdiction over TEP and the subject matter of its REST
26 Implementation Plan.

27 3. Freeport-McMoRan and AECC were granted intervention in this matter and thus have
28 standing under A.R.S. § 40-253 to file an Application for Rehearing of this matter.

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IT IS FURTHER ORDERED that all other provisions of Decision No. 72033 shall remain in effect.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SNH:db

1 SERVICE LIST FOR:

TUCSON ELECTRIC POWER COMPANY

2 DOCKET NOS:

E-01933A-10-0266

3

4 Bradley Carroll
SNELL & WILMER
One Arizona Center
5 400 East Van Buren Street
Phoenix, AZ 85004

6

7 C. Webb Crockett
Patrick J. Black
FENNEMORE CRAIG, PC
8 3003 North Central Avenue, Suite 2600
Phoenix, AZ 85012-2913

9

10 Michael W. Patten
ROSHKA DEWULF & PATTEN, PLC
One Arizona Center
11 400 East Van Buren Street, Suite 800
Phoenix, AZ 85004

12

13 Philip Dion
Melody Gilkey
TUCSON ELECTRIC POWER COMPANY
14 One South Church Avenue, Suite 200
Tucson, AZ 85701-1623

15

16 Scott Wakefield
RIDENOUR, HIENTON & LEWIS, PLLC
201 North Central Avenue, Suite 3300
17 Phoenix, AZ 85004-1052

18

19 Court Rich
M. Ryan Hurley
ROSE LAW GROUP
6613 North Scottsdale Road, Suite 200
20 Scottsdale, AZ 85250

21

22 Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
23 Phoenix, AZ 85007

24

25 Steven M. Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
26 Phoenix, AZ 85007

27

28