

ORIGINAL



0000129966

1 Timothy M. Hogan (004567)
2 ARIZONA CENTER FOR LAW
3 IN THE PUBLIC INTEREST
4 202 E. McDowell Rd., Suite 153
5 Phoenix, Arizona 85004
6 (602) 258-8850
7 thogan@aclpi.org

RECEIVED

2011 SEP 23 A 11:40

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

SEP 23 2011

DOCKETED BY

8 Attorneys for Southwest Energy
9 Efficiency Project

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

10 GARY PIERCE – CHAIRMAN
11 BOB STUMP
12 SANDRA D. KENNEDY
13 PAUL NEWMAN
14 BRENDA BURNS

15 IN THE MATTER OF THE APPLICATION OF
16 SOUTHWEST GAS CORPORATION FOR THE
17 ESTABLISHMENT OF JUST AND REASONABLE
18 RATES AND CHARGES DESIGNED TO
19 REALIZE A REASONABLE RATE OF RETURN
20 ON THE FAIR VALUE OF ITS PROPERTIES
21 THROUGHOUT ARIZONA.

Docket No. G-01551A-10-0458

**SOUTHWEST ENERGY
EFFICIENCY PROJECT'S
REPLY BRIEF**

I. RUCO'S ARGUMENTS OPPOSING DECOUPLING ARE FLAWED AND SHOULD BE REJECTED

22 RUCO argues that the economy in Arizona is poor, and therefore it is not the right time to
23 implement decoupling. RUCO Brief at 5. In fact, the increased opportunities for customers to reduce
24 their energy bills through expanded energy efficiency programs, supported by an enthusiastic and
25 responsive Southwest Gas Company whose financial interests are better aligned with the interests of
26 its customers (through the implementation of decoupling), will result in lower economic stress on
27 customers. The combination of increased energy efficiency and full decoupling provides the best
28 opportunity for customers to reduce their energy costs.

1 RUCO also argues that the ratepayer benefits of decoupling are not adequate to support the
2 adoption of decoupling at this time. RUCO Brief at 5. The testimony in this case, as set forth in the
3 Settlement Agreement, in Staff's testimony, in SWEEP's testimony, and in the testimony of other
4 parties describes and documents substantial and meaningful benefits to ratepayers. In addition to the
5 benefits described in the Settlement Agreement and in direct testimony, the Company has also
6 revised its EE & RET Plan, noting that customers would receive over \$33 million in net economic
7 benefits (benefits exceeding costs) from the enhanced EE and RET programs in the modified Plan – a
8 significant increase in net benefits over the initial Plan. Modified EE & RET Plan at 5.

9
10 As noted in SWEEP's testimony and in the testimony of other parties, there are other
11 significant benefits to ratepayers under Option B, including the stay out provision and moratorium on
12 general rate case applications of over five years, which applies for Option B only, and Option B has
13 the lower revenue requirement of the two alternatives.

14 The full decoupling mechanism in Option B contains important customer protections,
15 including the cap of 5% of non-gas revenue on any upwards adjustments (increases in customer
16 natural gas bills). Also, there are important reporting, earnings test, and customer education
17 provisions in Option B to enable Commission review, implementation, and monitoring of the
18 performance of the decoupling mechanism in the early years of its implementation.

19
20 Taken together, the Settlement Agreement and Option B provide the combination of customer
21 benefits and customer protections that demonstrate that Option B is in the public interest and should
22 be adopted by the Commission.

23 RUCO also asserts that the public does not support decoupling at this time. RUCO Brief at 9.
24 SWEEP acknowledges that it is unfortunate that some members of the public have been misinformed
25 by an anti-decoupling campaign. Despite some public comments in the docket, the fact remains that
26 when a customer uses less energy, a customer pays less on their utility bill – and this fact is
27 indisputable.
28

1 **II. THE COMMISSION SHOULD ADOPT FULL DECOUPLING AS SET FORTH IN**
2 **OPTION B**

3 RUCO opposes the Settlement Agreement and both alternatives in the Agreement. Option B
4 (full revenue decoupling) should be adopted by the Commission because it effectively reduces the
5 utility disincentive and automatic penalty to energy efficiency and better aligns the financial interest
6 of the Company with the interests of customers, thereby resulting in more opportunities for customers
7 to reduce their energy bills. Option B is fully consistent with the Commission-approved Policy
8 Statement on Decoupling. Further, Option B results in a lower base rate increase than Option A.
9
10 SWEEP Testimony and Brief.

11 The financial interest of Southwest Gas should be better aligned with the interests of
12 Southwest Gas customers by reducing financial disincentives to utility support of energy efficiency,
13 thereby resulting in more energy savings and larger reductions in customer energy bills – and Option
14 B will achieve this result.

15
16 Option B also would reduce the financial disincentive and automatic penalty the Company
17 experiences when it would support other policies that reduce customer energy bills, including
18 building energy codes, appliance efficiency standards, and state initiatives and legislation, in addition
19 to the Gas Energy Efficiency Standard and the EE and RET programs. These other policies are very
20 effective and cost-efficient ways to help customers reduce their energy use. And they achieve the
21 gas bill savings at lower costs to ratepayers than conventional ratepayer-funded energy efficiency
22 programs.
23

24 As the testimony in this case states, only RUCO opposes decoupling. All other parties
25 support or are neutral on decoupling. Staff equally supports Options A and B and does not state a
26 preference. SWEEP, NRDC, AIC, and the Company support Option B as the preferred alternative.
27
28

1 There are compelling arguments for Option B and strong support from the parties for Option B in this
2 case, and the Commission should approve Option B.

3 **III. RUCO'S ANALYSIS OF THE LEGAL ISSUES ASSOCIATED WITH DECOUPLING**
4 **IS FLAWED**

5 RUCO seems to assert that decoupling would be unconstitutional in Arizona but professes to
6 remain agnostic about the issue. It variously characterizes decoupling as "a stretch which runs afoul
7 of the Arizona Court's interpretation that exceptions to the fair value requirement should be narrowly
8 construed" and that both Options A and B would be "constitutionally challenged." RUCO Brief at
9 21, 22. It then describes those challenges but concludes by acknowledging that there may be a "fair
10 value connection that RUCO has not contemplated." RUCO Brief at 23. It claims hesitation in
11 drawing any legal conclusions until it has a chance to exhaust its legal research and consider the
12 arguments raised by other parties.

13
14 Decoupling has been a topic of discussion at the Commission for several years now
15 culminating in the Commission's adoption of its policy statement on decoupling last year. It is hard
16 to imagine what additional efforts RUCO would have to make in order to exhaust its legal research
17 because the universe of Arizona cases dealing with the fair value requirement is limited. Indeed, all
18 of them have been discussed in the opening briefs of the parties. It is clear that RUCO wants to use
19 its perception of potential legal issues associated with decoupling as a wedge to resist Commission
20 approval of the settlement in this case but it is time for RUCO to make a decision. Either it believes
21 decoupling is unconstitutional or it doesn't. If it doesn't then decoupling shouldn't be used (at least
22 from a legal standpoint) as a basis for a position to oppose the settlement.

23 RUCO claims that decoupling is not an appropriate adjustment mechanism of the kind that the
24 courts have approved in Arizona. It allows that the decoupling mechanisms under options A and B
25 "may superficially appear to be similar to the purchase gas and similar streamlined rate adjustment
26 processes which have been historically used by the Commission" but that there are important
27
28

1 distinctions between those pass through rate adjustments and the approach contemplated with respect
2 to Options A and B. RUCO Brief at 22.

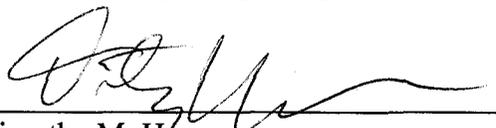
3 RUCO claims that the purchase gas adjustment mechanism and similar adjustors are narrowly
4 crafted to simply "pass-through" to customers' changes in certain out of pocket operating costs
5 without any intent to increase or decrease the return on fair value that will be earned by the utility.
6 However, there is no meaningful distinction between the pass-through of changes in gas prices and a
7 mechanism to allow the recovery of fixed costs. Both are designed to prevent the erosion of the
8 authorized return on fair value. The fact that one is caused by an increase in commodity price and the
9 other is caused by a decrease in consumption has no relevance. Both a purchased gas adjustor and a
10 decoupling mechanism are designed to allow for the recovery of costs which would otherwise deny a
11 utility the opportunity to earn the return authorized by the Commission.
12

13 Likewise, RUCO attempts to distinguish between a purchased gas adjustment mechanism and
14 a decoupling mechanism on the grounds that the decoupling mechanism is tied to changes in
15 revenues instead of costs such as is the case with the purchased gas adjustment mechanism. RUCO
16 Brief at 23. Again, this is a false distinction. Whether it is a change in revenues or costs that are
17 outside the control of the utility is of no difference. The point is that an adjustment mechanism is
18 designed to allow the recovery of costs (in the case of decoupling it is fixed costs) that are otherwise
19 incapable of being recovered in the absence of an adjustment mechanism. The focus in both cases is
20 the recovery of costs that have already been approved by the Commission. Decoupling mechanisms
21 do not permit an adjustment in the amount of those costs but only allow for the recovery of the fixed
22 costs identified and approved in the rate case. It is hard to understand how a mechanism that allows
23 for the recovery of specific costs that were approved by the Commission in a full rate case runs afoul
24 of Arizona's constitutional requirement that rates be established based upon the fair value of a
25 utility's property.
26
27
28

1 Finally, RUCO maintains that the purpose of a streamlined process for the recovery of these
2 fixed costs is "not to pass through changes in operating expenses, but to bolster or maintain the
3 company's earnings." *Id.* Obviously, any adjustment mechanism is designed to prevent the erosion
4 of utility's earnings. Without a purchased gas adjustment mechanism, Southwest Gas would have
5 been in bankruptcy a long time ago. The truth is that there is no other reason to establish an
6 adjustment mechanism except to modulate the impact of factors beyond the utility's control on its
7 earnings. In this case, it is known and undisputed that Southwest Gas has been unable to recover its
8 fixed costs because of a steady decline in revenues per customer. Short of increasing the basic
9 service charge by close to 300%, a decoupling mechanism is simply an alternative way of assuring
10 recovery of those costs. Given that no party has argued that an increase in the basic service charge
11 sufficient to assure recovery of the company's fixed costs is unconstitutional, it is difficult to see how
12 a mechanism that allows for the recovery of those fixed costs in a volumetric charge makes any
13 difference at least from a legal standpoint.
14
15

16 RESPECTFULLY SUBMITTED this 23rd day of September, 2011.

17 ARIZONA CENTER FOR LAW
18 IN THE PUBLIC INTEREST

19
20 By 

21 Timothy M. Hogan
22 ARIZONA CENTER FOR LAW
23 IN THE PUBLIC INTEREST
24 202 E. McDowell Rd., Suite 153
25 Phoenix, Arizona 85004
26 Attorneys for Southwest Energy
27 Efficiency Project
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORIGINAL and 13 COPIES of the
foregoing filed this 23rd day of
September, 2011 to:

Docketing Supervisor
Docket Control
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

COPIES of the foregoing
electronically mailed this
23rd day of September, 2011 to:

All Parties of Record

By: 