ORIGINAL

0000130030

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2011 SEP 26 P 4:13

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
SEP 26 2011
DOCKETED BY

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS 2011-2012 ENERGY EFFICIENCY IMPLEMENTATION PLAN

Docket No. E-01933A-11-0055

COMMENTS AND OBJECTIONS OF FREEPORT-MCMORAN COPPER & GOLD INC. AND ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION

Freeport-McMoRan Copper & Gold, Inc. (Freeport-McMoRan) and Arizonans for Electric Choice and Competition (AECC) (collectively "AECC") hereby submits its comments on, and objections to Tucson Electric Power Company's Application for Approval of its 2011-2012 Energy Efficiency Implementation Plan

I. Overview of AECC's Position and Recommendations

On January 31, 2011, Tucson Electric Power ("TEP") filed an Application for Approval of its 2011-2012 Energy Efficiency Implementation Plan ("TEP Initial Filing"). This filing was supplemented by TEP on June 30, 2011 and updated by TEP on August 23, 2011 ("TEP Filing Update").

TEP's proposal calls for a dramatic, five-fold increase in TEP's DSM Surcharge, from $.001249/kWh to $.006343/kWh. The proposed surcharge is intended to recover program costs, an expanded performance incentive payment to TEP, and a proposed Authorized Revenue Requirement True-Up ("ARRT").

AECC registers its strong objection to TEP's proposal. The proposal constitutes a significant rate increase that should be rejected by the Commission. Specifically, AECC

FENNEMORE CRAIG
PROFESSIONAL CORPORATION
PHOENIX

objects to TEP's proposal for the following reasons:

- The overall rate increase is too great. TEP's proposal would increase average rates by 5.3% for Residential customers, 4.6% for small commercial customers, 6.2% for large commercial customers, 7.8% for industrial customers, and 9.0% for mining customers. In lieu of TEP's proposal, AECC recommends that the Commission adopt a uniform percentage DSM surcharge that would not exceed 3% for any rate schedule.
- TEP's proposal is designed to overshoot the Commission's energy efficiency ("EE") targets. Given the significant price tag of TEP's proposal, the cost burden to customers should not be exacerbated by funding levels that are more than necessary to meet EE goals.
- TEP's incentive proposal is too rich. TEP's incentive proposal would increase performance incentives paid to TEP from $1.1 million in 2010 to $16.4 million over the period 2011-2012. TEP's incentive proposal explodes beyond current levels, in part, because it seeks to eliminate the previously-approved cap of 10% of program expenses. In addition, TEP is also proposing to be paid an incentive in advance of achieving its EE targets, rather than after the fact.
- The requested ARRT of $16.8 million is an improper rate increase. By the terms of the 2008 Settlement Agreement in Docket No. E-01933A-07-0402, TEP is precluded from increasing base rates prior to December 31, 2012. TEP's proposal to increase fixed cost recovery through the ARRT is a de facto increase in base rates and a violation of the Settlement Agreement and Arizona Law. This proposal should be rejected by the Commission.

If its request for the ARRT is rejected, TEP requests a waiver from the 2011 and 2012 EE Standard. AECC does not object to TEP's request for a waiver from the 2011 and 2012 EE Standard if the waiver is accompanied by commensurate relief from the DSM Surcharge proposed by TEP.

II. TEP's Proposed Rate Increase is Too Great

As shown in Table 1 below, TEP's proposal would increase rates for customers anywhere from 4.6% to 9.0%. This is the type of material rate increase that is more properly considered in a general rate case – and not from a discretionary program that is supposed to save customers money. While investment in cost-effective energy efficiency is a worthwhile objective, it is also critical to be mindful of the rate impact of implementing utility programs. TEP's proposal fails to reasonably consider such rate impacts. The size of the DSM rate increase proposed by TEP in its 2011-2012 Plan is particularly burdensome in light of the prolonged economic downturn that has plagued Arizona residents and businesses.

Table 1
(Source: TEP Filing Update; TEP FERC Form 1 (2010))

Proposed DSM Surcharge Increase by Rate Schedule				
Rate Schedule	Revenue Per kWh Sold	Proposed Increase/kWh	Percent Increase	Total Surcharge/Rev
1 - Residential	$0.0969	$0.005094	5.26%	6.22%
10 - General Service	$0.1114	$0.005094	4.57%	5.44%
13 - Large General Service	$0.0818	$0.005094	6.23%	7.30%
14 - Large Light & Power	$0.0652	$0.005094	7.81%	9.02%
Large Light & Power - Mining	$0.0564	$0.005094	9.03%	10.31%
Total Retail	$0.0894	$0.005094	5.70%	6.71%

In 2010, TEP DSM program expenditures totaled $13 million, which was about 1.6% of retail revenue. [TEP Filing Update, Exhibit 5; FERC Form 1]. The current DSM Surcharge of $.001249/kWh collects revenues in a comparable amount. AECC did not object to this level of program expenditure even though it has a cost impact on customers. However, the proposed charge of $.006343/kWh would balloon DSM charges to 6.7% of retail revenue (see Table 1). For industrial and mining customers, the DSM Surcharge would comprise 9-10% of customer bills. This level of rate impact on customers for DSM is alarming and suggestive of a program that is about to catapult out of control.

It is not reasonable to impose this level of cost burden on TEP customers for this program, even for EE investments that are cost effective. DSM cost-effectiveness is measured (properly) over the life of the DSM investment by comparing it to the cost of supply-side alternatives. Yet, the costs of the supply-side alternatives with which DSM competes are recovered from customers in a very different manner than the cost of DSM investments: supply side costs are recovered from customers over the life of the investment, e.g., 35 years, smoothing out the rate impact over time, whereas DSM investment costs are recovered in full upfront, i.e., expensed in a single year. This mismatch between cost recovery periods of supply-side and demand-side resources explains, in part, why DSM that is cost effective can nevertheless cause unreasonable rate impacts. That is clearly the case with TEP's proposal. A common sense alternative is called for here.

AECC recommends that the TEP DSM Surcharge be restructured as an across-the-board percentage rider. Our recommended **maximum** level for this rider to be applied to each rate schedule is 3%, which is in line with the DSM riders adopted in other states. In the West, utilities in Utah, New Mexico, Wyoming, and Idaho each use percentage riders. Several of these are presented in Table 2 below. A percentage rider will increase the transparency to customers of DSM program costs.

. . .

. . .

. . .

. . .

. . .

. . .

Table 2

Percentage DSM Riders in Western States	
Utility	DSM Rider
El Paso Electric (New Mexico)	1.8052%
Idaho Power	4.75%
Public Service Co. of New Mexico	2.262%
Rocky Mountain Power (Idaho)	3.40%
Rocky Mountain Power (Utah)	3.70% (Industrial) / 3.91% (Residential)
Rocky Mountain Power (Wyoming)	0.43% (Industrial) / 1.87% (Residential)

If the DSM Surcharge is levied at AECC's maximum-recommended level of 3%, it would collect approximately $25 million per year. This level of funding still would nearly double the funds available for EE programs relative to 2010 levels, and is fully sufficient to recover TEP's claimed annual program cost requirements of $24.7 million at 2012 levels.

III. TEP's Proposal Is Designed to Overshoot the Commission's EE Targets

TEP's target energy efficiency savings is 116,133 MWh in 2011 and 163,367 MWh in 2012. [TEP Initial Filing, Table 3-2] In its updated Plan, TEP projects DSM program energy savings of 135,781 MWh in 2011 and 175,365 MWh for 2012, [TEP Filing Update, p. 2] which is 111% of the cumulative savings target for 2011-2012. Thus, TEP's proposed 2012 funding level of $24.7 million for programs is more than is needed to meet the Commission's EE targets. Given the significant price tag of TEP's proposal, the cost burden to customers should not be exacerbated by funding levels that are more than necessary to meet the Commission's EE targets.

IV. TEP's Proposal for $16.4 million in Utility Performance Incentive Payments Should Be Rejected

Currently, TEP's approved performance incentive is equal to 10% of societal benefits, capped at 10% of program expenditures. In 2010, this produced a performance incentive of $1.1 million. [TEP Initial Filing, Exhibit 3, Table 2]. TEP now proposes to be paid a performance incentive of approximately 8 times that amount on an annualized basis: $16.4 million for the 2011-2012 period. This dramatic increase in the proposed utility performance incentive is a significant contributor to the inflated DSM Surcharge that TEP seeks to impose on customers.

In significant part, the increase in the cost of the utility performance incentive stems from TEP's proposal to eliminate the cap on the incentive equal to 10% of program expenditures. [TEP Initial Filing, pp. 52-53] When the linkage to program expenditures is severed, the incentive payment to TEP soars.

AECC opposes the adoption of this unnecessary increase in customer costs. TEP program expenditure in 2012 is projected to be approximately double that of 2010. Thus, under the <u>currently-approved</u> incentive mechanism, TEP's performance incentive could <u>double</u> relative to its 2010 incentive. A doubling of the incentive payment should be sufficient for TEP. A further quadrupling of the incentive payment is not a reasonable cost burden to impose on customers.

Moreover, TEP is proposing to include its 2011-2012 incentive payments in rates prior to demonstrating program success. TEP has the cart before the horse. The incentive payments should only be charged to customers if and after TEP has met the milestones required for such payments.

V. The Requested ARRT Is an Improper Rate Increase and violates Arizona Law

TEP is requesting an additional $16.8 million through its proposed ARRT. This mechanism would increase rates to customers to compensate TEP for its projected reduction in fixed cost recovery attributable to EE programs. In the alternative, TEP requests a waiver from the 2011 and 2012 EE Standard. [TEP Initial Filing, pp .55-56;

TEP Filing Update, p. 2]

TEP's request for a rate increase through the proposed ARRT violates the 2008 Settlement Agreement in Docket No. E-01933A-07-0402 and Arizona Law. Paragraph 10.1 of that Agreement provides for a rate case moratorium that freezes base rates through the end of 2012:

> Except as otherwise expressly provided herein, TEP's base rates, as authorized in the Commission order approving this agreement, shall remain frozen through December 31, 2012, and no Signatory shall seek any change to TEP's base rates that would take effect before January 1, 2013.

Fixed cost recovery occurs through base rates. The fixed cost recovery "true-up" that TEP seeks is effectively a $16.8 million increase in its base rates; simply shifting the recovery to the DSM Rider does not change the nature or substance of the rate increase being requested.

AECC is a Signatory to the 2008 Settlement Agreement, and is entitled, along with other customers, to the benefit of its bargain in agreeing to the terms of the rate increase adopted as part of that Agreement, including the enforcement of the rate case moratorium through the end of 2012. The proposed ARRT violates that Settlement Agreement and Arizona Law and should be rejected by the Commission.

AECC does not object to TEP's alternative request for a waiver from the 2011 and 2012 EE Standard, if the waiver is accompanied by commensurate relief from the burdensome DSM Surcharge proposed by TEP.

VI. Conclusion

AECC objects to TEP's proposal to dramatically impose a five-fold increase in its DSM surcharge to recover program costs and an expanded performance incentive payment to TEP and the proposed Authorized Revenue Requirement True-Up for the reasons set forth above.

RESPECTFULLY SUBMITTED this 26th day of September 2011.

FENNEMORE CRAIG, P.C.

By
C. Webb Crockett
Patrick J. Black
3003 N. Central Avenue, Ste. 2600
Phoenix, AZ 85012-2913

Attorneys for Freeport-McMoRan Copper & Gold Inc. and Arizonans for Electric Choice and Competition

ORIGINAL and **13 COPIES** of the foregoing **FILED** this 26th day of September 2011 with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

COPY of the foregoing was **HAND-DELIVERED/ MAILED** this 26th day of September 2011 to:

Lyn Farmer
Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Janice Alward
Chief Counsel Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Steve Olea, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Michael W. Patten
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

Phillip J. Dion
Tucson Electric Power Company
One South Church Avenue, Suite 200
Tucson, Arizona 85701

By: W. M. McClachan

2495743

FENNEMORE CRAIG
PROFESSIONAL CORPORATION
PHOENIX