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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

2012 MAY 16 A 11: 02

CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAY 16 2012

DOCKETED BY *JM*

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

DOCKET NO. E-01933A-11-0055

**PROCEDURAL ORDER**

**BY THE COMMISSION:**

On January 31, 2011, Tucson Electric Power Company ("TEP" or "Company") filed with the Arizona Corporation Commission ("Commission") its application for approval of the Company's Energy Efficiency Implementation Plan for 2011-2012 ("Implementation Plan"). In the Implementation Plan, the Company proposed Demand-Side Management ("DSM") programs and measures for the 2012 program year; proposed a modification of the performance incentive structure; proposed an "Authorized Revenue Requirement True-up" ("ARRT") Mechanism intended to recover revenue requirement associated with energy efficiency kWh savings; and proposed a DSM Surcharge, which is the rate, per kWh that would recover the Company's proposed DSM costs, DSM Performance Incentive and ARRT.

On November 16, 2011, the Commission's Utilities Division ("Staff") filed a Staff Report and proposed form of Order for TEP's Implementation Plan for the Commission. Staff recommended a number of changes to the proposed Implementation Plan, including modifying some of the programs, the DSM surcharge, and performance incentives, and recommending against the ARRT until it can be addressed in TEP's next rate case. TEP filed Exceptions to Staff's Recommended Order. The Commission considered this matter at an Open Meeting that started on January 10, 2012. On January 11, 2012, the second day of Open Meeting, TEP, with the agreement of the other interested parties, requested an opportunity for interested parties to confer in order to determine if a compromise proposal could be reached.

1 On February 1, 2012, TEP filed a compromise Energy Efficiency Implementation Plan for  
2 2012 ("Compromise Plan"). According to TEP, the Compromise Plan: 1) adopts the programs  
3 recommended by Staff but at a funding level that is 75 percent of the that recommended by Staff; 2)  
4 adopts an Interim Performance Incentive which TEP believes will encourages increased program  
5 benefits and results, will provide a financial bridge until the next rate case, and avoids the need for a  
6 waiver of the Energy Efficiency Rules for 2012; 3) eliminates the proposed ARRT mechanism; 4)  
7 sets the 2012 budget at \$29,694,240; 5) sets the 2013 Implementation Plan budget at the same level  
8 as 2012, and retains the Interim Performance Incentive but allows TEP to propose modifications to  
9 the programs; and 6) sets the DSM Surcharge at \$0.003608 per kWh.<sup>1</sup> TEP claimed that the  
10 Compromise Plan would provide TEP a reasonable opportunity to meet the Energy Efficiency  
11 Standards for 2012 and possibly for 2013.

12 At an Open Meeting on March 16, 2012, Staff continued to recommend approval of its  
13 original proposal with two amendments. Staff proposed updating the DSM surcharge and establishing  
14 a deferral account to track the lost fixed costs arising from TEP's energy efficiency programs, such  
15 that the lost fixed costs could be dealt with in TEP's next rate case. Staff objects to the Compromise  
16 Plan, at least in part, because it believes that modifying the performance incentives cannot be  
17 achieved outside of a rate case. The Compromise Plan was supported by TEP, the Residential Utility  
18 Consumer Office ("RUCO") and Southwest Energy Efficiency Project ("SWEEP"). Freeport  
19 McMoRan Copper & Gold, Inc. and Arizonans for Electric Choice and Competition (collectively  
20 "AECC") also expressed concerns about the Compromise Plan and did not support it as presented.  
21 AECC sought an exemption /waiver from the DSM charge. At the March 16, 2012, Open Meeting,  
22 the Commission considered the Compromise Plan and Staff's alternative recommendations and voted  
23 to refer the matter to the Hearing Division to conduct an evidentiary hearing.

24 On April 11, 2012, TEP, RUCO, AECC, SWEEP and Western Resource Advocates  
25 ("WRA"), and Staff appeared at a Procedural Conference to discuss the scope of the Commission's  
26 directive for an evidentiary hearing, as well as related procedural and logistical questions, including  
27 \_\_\_\_\_

28 <sup>1</sup> TEP asserts this charge would result in incremental average bill impacts ranging from 2.39 percent to 2.94 percent for the various customer classes.

1 notice, intervention and public comment.<sup>2</sup>

2 On April 25, 2012, Staff filed Procedural Recommendations. Staff believes that the hearing  
3 should not be limited to TEP's Compromise Plan, but should encompass all options for TEP's Energy  
4 Efficiency Implementation Plan, and recommends consolidating this matter with TEP's forthcoming  
5 rate case.

6 On May 3, 2012, TEP filed Procedural Comments and an Updated Implementation Plan  
7 ("Updated Plan"). TEP states that it is prepared to have an evidentiary hearing on its Compromise  
8 Plan, but the passage of time has required it to update the Plan. TEP believes its Updated Plan offers  
9 a more robust "bridge" plan for energy efficiency than maintaining the status quo, and proposes that  
10 the Updated Plan commence on October 1, 2012. TEP recommends that the hearing focus on the  
11 Updated Plan, but acknowledges that parties should be permitted to raise alternatives. TEP also  
12 asserts that consideration of a lost fixed cost recovery or other decoupling mechanism should be  
13 addressed in conjunction with a rate case; and that issues that would affect all Arizona utilities, such  
14 as the proper cost/benefit analysis to evaluate energy efficiency programs, should be considered in a  
15 generic or rulemaking docket.

16 On May 3, 2012, SWEEP filed Comments. SWEEP states that it supports the Updated Plan  
17 and strongly favors moving forward with an energy efficiency plan in advance of the conclusion of  
18 TEP's rate case. SWEEP advocates focusing the evidentiary hearing on the Updated Plan, but  
19 recognizes that other parties should be allowed to address additional issues related to TEP's energy  
20 efficiency implementation.

21 On May 9, 2012, AECC filed Comments that recommend that the Commission proceed with  
22 the evidentiary hearing on the Updated Plan before the conclusion of TEP's upcoming rate case, and  
23 that the matter not be consolidated with the rate case.

24 During its Open Meeting deliberations on this matter, the Commission was faced with  
25 multiple and conflicting options, and referred the matter to the Hearing Division in order to garner  
26 additional information to help inform its decision. A proceeding that addresses all of the various

27 <sup>2</sup> The general consensus was that providing notice of the hearing would be in the public interest, especially if plans in  
28 addition to the plan submitted by TEP were to be discussed. See Transcript of the April 11, 2012, Procedural Conference  
("Tr.") at 47-52.

1 options is needed. By developing the factual record and evaluating legal constraints that may affect  
2 the different options, the Commission will be in a position to determine if any of the proposals should  
3 be adopted, if they can or should be modified, if a waiver is appropriate or necessary, and/or whether  
4 the matter should be consolidated with the forthcoming rate case.

5         The disagreements between the parties concerning the various proposals for TEP's 2012  
6 Implementation Plan appear to involve questions of law involving the funding mechanism as well as  
7 policy decisions to balance the appropriate funding level and the burden on ratepayers and/or the  
8 Company to pay for the programs. At this point in the proceeding, it is uncertain whether all of the  
9 issues related to the Implementation Plan can be resolved independently of a new rate case, or by re-  
10 opening the last rate case pursuant to A.R.S. §40-252, however, a hearing may allow the Commission  
11 to resolve some, if not all, issues affecting TEP's energy efficiency programs in advance of resolving  
12 the rate case.

13         Consequently, parties will be directed to file testimony setting forth their recommendation(s)  
14 for TEP's 2012 and 2013 Energy Efficiency Implementation Plan.<sup>3</sup> Interested parties may file  
15 testimony in support of TEP's Updated Plan, recommend modifications to that Plan or oppose the  
16 Plan, and/or recommend an alternate plan. To the extent the parties' positions hinge on legal issues,  
17 counsel should be prepared to identify these issues in opening statements at the hearing, and may file  
18 pre-hearing legal briefs at their option. Parties will have the ability to file rebuttal testimony and to  
19 provide additional responsive testimony at the hearing. Although the issue of the appropriate  
20 cost/benefit analysis that should be used to evaluate energy efficiency programs was raised during the  
21 discussion of this matter, that issue involves the entire industry and it is not practical to take it up as  
22 part of this proceeding given the need to proceed expeditiously with TEP's 2012 Implementation  
23 Plan.

24         IT IS THEREFORE ORDERED that the **hearing** in this matter shall commence on **July 11,**  
25 **2012**, at 10:00 a.m., or as soon thereafter as is practical at **the Commission's Tucson offices, Room**  
26 **222, 400 W. Congress St., Tucson, Arizona 85701.**

27 \_\_\_\_\_  
28 <sup>3</sup> Given that we are half way through 2012, and the forthcoming rate case will not conclude until some time in 2013, it makes sense that the Commission should address 2013 as well as 2012 plan years.

1 IT IS FURTHER ORDERED that a **pre-hearing conference** to discuss the conduct of the  
 2 hearing shall commence on **July 9, 2012, at 10:00 a.m.**, or as soon thereafter as is practical at **the**  
 3 **Commission's Tucson offices, Room 222, 400 W. Congress St., Tucson, Arizona 85701.**

4 IT IS FURTHER ORDERED that **parties shall file written direct testimony** and any  
 5 exhibits to be used at the hearing no later than **June 15, 2012.**

6 IT IS FURTHER ORDERED that parties shall file **rebuttal testimony no later than July 6,**  
 7 **2012.**

8 IT IS FURTHER ORDERED that TEP shall provide public notice of the hearing in this  
 9 matter, in the following form and style with the heading in no less than 14-point bold type and the  
 10 body in no less than 10-point regular type:

11 **PUBLIC NOTICE OF HEARING ON**  
 12 **TUCSON ELECTRIC POWER COMPANY**  
 13 **ENERGY EFFICIENCY IMPLEMENTATION**  
 14 **PLAN FOR 2011-2012**  
 15 **DOCKET NO. E-01933-11-0055**

16 **Summary**

17 On January 31, 2011, Tucson Electric Power Company ("TEP" or "Company")  
 18 filed with the Arizona Corporation Commission ("Commission") its application  
 19 for approval of the Company's Energy Efficiency Implementation Plan for 2011-  
 20 2012. On November 16, 2011, in a Staff Report, the Commission's Utilities  
 21 Division ("Staff") recommended modifications to the Company's proposal. The  
 22 Commission considered the Company's and Staff's proposals at Open Meetings  
 23 held on January 10, 2012, and March 15, 2012, and voted to refer the matter to the  
 24 Commission's Hearing Division to conduct an evidentiary hearing. On May 3,  
 25 2012, TEP filed an Updated Modified Energy Efficiency Plan for 2012-2013  
 26 ("Updated Plan") for the Commission's consideration in lieu of its original filing.

27 **Arizona Corporation Commission Public Hearing Information**

28 The Commission will hold a hearing on the TEP's Updated Modified Energy  
 Efficiency Plan and will take testimony supporting or opposing TEP's Updated  
 Plan, as well as on alternative proposals, such hearing to commence on **July 11,**  
**2012, at 10:00 a.m., or as soon as practical thereafter at the Commission's**  
**Tucson offices, Room 222, 400 West Congress St., Tucson, Arizona 85701.**

Public comments will be taken at the beginning of the hearing. Written public  
 comments may be submitted by mailing a letter referencing Docket No. E-  
 01933A-11-0055 to Arizona Corporation Commission, Consumer Services  
 Section, 1200 West Washington, Phoenix, AZ 85007, or by e-mail. For a form to  
 use and instructions on how to e-mail comments to the Commission, go to

1 [http://www.azcc.gov/divisions/utilities/forms/1\\_publiccommentform.pdf](http://www.azcc.gov/divisions/utilities/forms/1_publiccommentform.pdf). If you  
2 require assistance, you may contact the Consumer Services Section at 1-800-222-  
7000 or 520 628-6550.

### 3 About Intervention

4 The law provides for an open public hearing at which, under appropriate  
5 circumstances, interested parties may intervene. Any person or entity entitled by law  
6 to intervene and having a direct and substantial interest in the matter will be permitted  
7 to intervene. If you wish to intervene, you must file an original and 13 copies of a  
written motion to intervene with the Commission no later than **June 11, 2012**, and a  
copy of the motion to TEP or its counsel and to all parties of record. Your motion  
must contain the following:

- 8 1. Your name, address, and telephone number and the name, address and  
9 telephone number of any party upon whom service of documents is to  
10 be made, if not yourself.
- 11 2. A short statement of your interest in the proceeding (e.g., a customer of  
12 the Company, etc.).
- 13 3. A statement certifying that you have mailed a copy of the motion to  
14 intervene to the Company or its counsel and to all parties of record in  
15 the case.

16 The granting of motions to intervene shall be governed by A.A.C. R14-3-105,  
17 except that all motions to intervene must be filed on or before June 11, 2012. If  
18 representation by counsel is required by Rule 31 of the Rules of the Arizona  
19 Supreme Court, intervention will be conditioned upon the intervenor obtaining  
20 counsel to represent the intervenor. For information about requesting  
21 intervention, visit the Commission's website at  
22 <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The granting of  
23 intervention, among other things, entitles a party to present sworn evidence at the  
24 hearing and to cross-examine other witnesses. However, failure to intervene will  
25 not preclude any interested person or entity from appearing at the hearing and  
26 providing public comment on the application or from filing written comments in  
27 the record of the case.

### 28 ADA/Equal Access Information

The Commission does not discriminate on the basis of disability in admission to  
its public meetings. Persons with a disability may request a reasonable  
accommodation such as a sign language interpreter, as well as request this  
document in an alternative format, by contacting the ADA Coordinator, Shaylin  
Bernal, e-mail [SABernal@azcc.gov](mailto:SABernal@azcc.gov), voice phone number (602) 542-3931.  
Requests should be made as early as possible to allow time to arrange the  
accommodation.

IT IS FURTHER ORDERED that TEP shall cause the notice to be published in a newspaper  
of general circulation within its service area, **such publication to be complete by May 31, 2012.**

1 IT IS FURTHER ORDERED that TEP **shall file certification of publication** as soon as  
2 practicable after the publication has been completed.

3 IT IS FURTHER ORDERED that notice shall be deemed complete upon publication of same,  
4 notwithstanding the failure of an individual customer to read or receive the notice.

5 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
6 Communications) applies to this proceeding and shall remain in effect until the Commission's  
7 Decision in this matter is final and non-appealable.

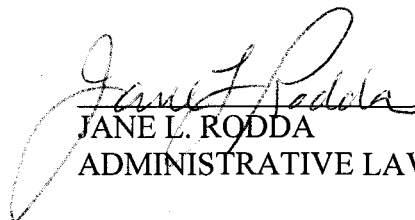
8 IT IS FURTHER ORDERED that all parties must comply with Rule 33 (c) and (d) of the  
9 Rules of the Arizona Supreme Court with respect to practice of law and admission pro hac vice.

10 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
11 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
12 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation  
13 to appear at all hearings and procedural conferences, as well as all Open Meetings for which the  
14 matter is scheduled for discussion, unless counsel has previously been granted permission to  
15 withdraw by the Administrative Law Judge.

16 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended  
17 pursuant to Rule 6(a) or (3) of the Rules of Civil Procedure.

18 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
19 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

20 DATED this 14<sup>th</sup> day of May, 2012.

21  
22   
23 JANE L. RODDA  
ADMINISTRATIVE LAW JUDGE

24 Copies of the foregoing mailed  
this 14<sup>th</sup> day of May, 2012 to:

25 Michael W. Patten  
26 ROSHKA DEWULF & PATTEN  
27 400 East Van Buren Street, Suite 800  
28 Phoenix, Arizona 85004

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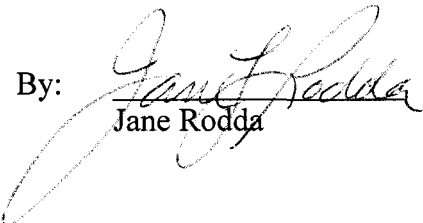
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