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Arizona Corporation Commission
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DATE: AUGUST 21, 2012

DOCKET NO.: E-01933A-11-0055

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge ~~Jane Rodda~~. The recommendation has been filed in the form of an Opinion and Order on:

TUCSON ELECTRIC POWER COMPANY
(2011-2012 ENERGY EFFICIENCY IMPLEMENTATION PLAN)

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:

AUGUST 30, 2012

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:

SEPTEMBER 19, 2012 AND SEPTEMBER 20, 2012

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.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

BEFORE THE ARIZONA CORPORATION COMMISSION

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 DECISION NO. ______________ **OPINION AND ORDER**

DATE OF HEARING:	July 11, and 12, 2012
PLACE OF HEARING:	Tucson, Arizona
ADMINISTRATIVE LAW JUDGE:	Jane L. Rodda
APPEARANCES:	Mr. Michael W. Patten, ROSHKA, DEWULF & PATTEN, and Mr. Bradley S. Carroll, TUCSON ELECTRIC POWER COMPANY, on behalf of Tucson Electric Power Company; Mr. Daniel W. Pozefsky, RESIDENTIAL UTILITY CONSUMER OFFICE; Mr. C. Webb Crockett, FENNEMORE CRAIG, PC, on behalf of Freeport-McMoRan Copper and Gold, Inc. and Arizonans for Electric Choice and Competition; Mr. Timothy Hogan, ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST, on behalf of Southwest Energy Efficiency Project and Western Resource Advocates; Mr. Lawrence V. Robertson, Jr. on behalf of EnerNOC, Inc.; and Mr. Charles Hains, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission

THE COMMISSION:

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Having considered the entire record herein and being fully advised in the premises, the

Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

Procedural History

1. On January 31, 2011, pursuant to A.A.C. R14-2-2405, Tucson Electric Power Company ("TEP" or "Company") filed with the Commission its application for approval of the Company's Energy Efficiency Implementation Plan for 2011-2012 ("Implementation Plan").[1] On August 22, 2011, TEP filed updated information to its Implementation Plan.[2]

2. In the Implementation Plan, the Company proposed Demand-Side Management ("DSM") programs and measures for the 2011-2012 program years, with budgets totaling $18,182,475 in 2011, and $24,759,193 for 2012; a modification of the Performance Incentive structure (resulting in payments of $16.4 million for two years); a form of a lost fixed cost recovery mechanism entitled an "Authorized Revenue Requirement True-up" ("ARRT") mechanism which was intended to recover revenue requirement associated with energy efficiency kWh savings; and a DSM Surcharge ("DSMS") of $0.006343 per kWh.[3]

3. Intervention in this matter was granted to Freeport McMoRan Copper & Gold, Inc. and Arizonans for Electric Choice and Competition (collectively "AECC"), the Residential Utility Consumer Office ("RUCO"), the Southwest Energy Efficiency Project ("SWEEP"), Western Resource Advocates ("WRA"), and EnerNOC, Inc. ("EnerNOC").

4. On September 26, 2011, AECC filed Comments objecting to the Implementation Plan because the proposed DSMS increase was too great, the proposal was designed to overshoot the Energy Efficiency targets, the incentive proposal was too "rich" and the ARRT would have violated the terms of TEP's 2008 Rate Case Settlement. AECC advocated restructuring the DSMS as a percentage rider.

5. On November 16, 2011, the Commission's Utilities Division ("Staff") filed a Staff Report and proposed form of Order ("Proposed Order") for the Commission's consideration.[4]

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[1] Ex TEP-5.
[2] Ex TEP-6.
[3] The current DSMS is $0.001249 per kWh.
[4] Ex S-3.

According to the Staff Report, Staff focused its review and analysis on the newly proposed programs and changes to existing programs and new Implementation Plan components, along with the Company's proposals regarding the ARRT and methodology for calculating the DSMS. Staff recommended modifications to the Company's proposed Implementation Plan, including modifications to some of the proposed DSM programs and eliminating the changes to the Performance Incentive in the DSMS. Staff opposed adopting the ARRT and recommended to defer consideration of lost fixed cost recovery until TEP's next rate case. Staff recommended a 2012 program budget of $24,739,193, and a DSMS of $0.003812 per kWh.[5]

6. On December 2, 2011, TEP filed Exceptions to Staff's Proposed Order. TEP argued that Staff's Proposed Order is inconsistent with the Commission Decoupling Policy and is confiscatory as it does not allow TEP the opportunity to recover its costs and earn a reasonable return. TEP stated that if the Commission did not provide for recovery of lost fixed costs revenues through the ARRT, then TEP requested a waiver from the savings standard in the Electric Energy Efficiency Rules and a change in its DSM program budget until a lost fixed cost recovery mechanism for TEP could be adopted by the Commission.[6] In addition, TEP argued that Staff's proposed Order should be amended to update the Performance Incentives so that they encourage program efficiency and savings, rather than program spending as currently designed.[7]

7. On January 6, and 9, 2012, SWEEP filed Comments on the Implementation Plan and the Staff Report and Proposed Order. SWEEP supported the programs and measures found cost-effective by Staff in its Staff Report and opposed the ARRT. SWEEP argued that addressing financial disincentives is crucial, and suggested that TEP track its lost fixed cost revenues associated with its energy efficiency measures and seek recovery in its next rate case. SWEEP strongly opposed the idea of waiving compliance with the Energy Efficiency standards until the financial disincentives can be addressed in a rate case. SWEEP asserted that it is important to recognize the unique situation TEP faces of not being able to implement a lost fixed cost revenue mechanism until 2013 in its next rate case. SWEEP supported a new Performance Incentive structure that would encourage better

[5] *Id.*
[6] December Exceptions at 2 and 3. *See also* Transcript of the January 10, 2012, Open Meeting at 84-87.
[7] December Exceptions at 3.

delivery of cost-effective energy efficiency. SWEEP did not believe that the current Performance Incentive approved in the 2008 Rate Case met the objectives most desired in a performance incentive, in that it does not focus on cost-effective delivery of energy efficiency and does not clearly define measurable and verifiable goals.

8. The Commission considered Staff's Proposed Order at an Open Meeting on January 10, and 11, 2012. The Commission did not take action on TEP's proposed Implementation Plan or Staff's recommended modifications, and agreed to give the parties an opportunity to confer in order to determine if a compromise proposal could be reached.

9. On January 12, 2012, TEP filed a Notice of Filing Customer Notification, indicating that all customers received a notice with their bills beginning February 15, 2011, and ending March 15, 2011, that TEP had filed its Implementation Plan pursuant to the requirements of A.A.C. R14-2-2405.C.

10. On January 31, 2012, TEP sent a letter to all parties to TEP's 2008 Rate Case (Docket Nos. E-01933A-07-0402 and E-01933A-05-0650) as well as to the current docket, that informed them that TEP's Energy Efficiency Implementation Plan proposes to modify the Performance Incentive and the DSMS.[8]

11. On February 1, 2012, TEP filed a proposed Modified Energy Efficiency Implementation Plan for 2012 ("Modified Plan"). The Modified Plan was a compromise reached among TEP, RUCO, SWEEP, and AECC (except as to the rate impact). The Modified Plan: 1) adopted the DSM programs recommended by Staff in the November 16, 2011, Staff Report and Proposed Order, but at a reduced funding level of $18,532,605, which is 75 percent of Staff's recommended level; 2) adopted an Interim Performance Incentive that TEP stated was needed to provide additional program benefits and provide a financial bridge until TEP's next rate case; 3) eliminated the ARRT mechanism; 4) set the total 2012 budget at $29,694,239;[9] 5) set the 2013

[8] TEP provided information where interested parties could view the proposed Implementation Plan, and notice that TEP expected the Commission to consider the proposals at an Open Meeting on February 14-15, 2012. On February 17, 2012, TEP send a follow-up letter to the parties in the 2008 Rate Case docket informing them it believed the Commission would consider the Implementation Plan at a February 23, 2012, Open Meeting.

[9] The Modified Plan was drafted to commence March 1, 2012 and continue through December 2013, and included a 2012 Program budget of $18,532,605, a carry over balance of $2,807,057, a 2010 Performance Incentive of $557,324, a 2011 Performance Incentive of $550,874 and a 2012 Performance Incentive of $7,246,379.

Implementation Plan budget at the same level as 2012; 6) retained the Interim Performance Incentive but allowed TEP to propose modifications to the programs; and 7) set the DSMS at $0.003608 per kWh. TEP asserted that the Modified Plan would provide TEP a reasonable opportunity to meet the Energy Efficiency Standards for 2012 and possibly for 2013.

12. On February 14, 2012, AECC filed Comments on the Modified Plan. AECC stated that the Modified Plan was a significant improvement over TEP's initial filing, and that although AECC supported approval of the structure of the Modified Plan (e.g. the percentage surcharge for non-residential customers and elimination of the ARRT) AECC believed that the overall budget was still too high and resulted in too great of an increase for TEP customers.

13. On February 29, 2012, Staff filed a Revised Staff Report, which updated Staff's original recommendations. Staff offered several alternatives for Commission consideration including updating the DSMS; allowing TEP to defer unrecovered fixed costs associated with energy efficiency savings; allowing a waiver of the 2012 standard, but not the 2020 standard; and modifying the Company's proposed Interim Performance Incentive. Staff continued to recommend a Program budget of $24,739,193 for 2012, and to maintain the current Performance Incentive structure.[10] Staff's revisions updated the DSMS to $0.003877 per kWh.[11] Of the alternatives Staff's presented, Staff recommended updating the DSMS to reflect updated information on TEP's program spending and sales and establishing a deferral account so that the lost fixed costs could be dealt with in TEP's next rate case.[12]

14. On March 7, 2012, TEP filed Comments on Staff's Update to TEP's Energy Efficiency Plan.[13] TEP argued that Staff's revised proposals are inadequate because they did not provide for immediate relief for the "confiscatory" impact of Energy Efficiency Standard compliance and the unknown nature of the deferral methodology did not provide certainty of any recovery of lost fixed cost revenues. TEP also noted that the revised Staff Proposal resulted in a higher DSMS than under the Company's Modified Plan.

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[10] Staff's total recommended budget was $34,668,899.
[11] Ex S-4; *see also* Transcript of the March 16, 2012, Open Meeting at 225.
[12] Ex S-4 at 2.
[13] The same date, TEP filed a Notice of Errata correcting the DSMS in the Modified Plan.

15. On March 12, 2012, SWEEP filed Comments on the Modified Plan and on March 15, 2012, filed Revised Comments on Staff's Revised Plan. SWEEP supported the Modified Plan as a framework that enables the delivery of cost-effective energy efficiency opportunities. In the spirit of compromise, SWEEP was willing to accept lower program budgets and the equal percent allocation of the DSMS to non-residential customers, but specifically reserved the right to argue for a different long-term solution. SWEEP favored substituting annual energy savings for the net benefits in determining the Performance Incentive; for an 80 percent threshold instead of a floor for TEP to receive a Performance Incentive payment; and for a cap on the Performance Incentive at 120 percent of target energy savings.

16. At an Open Meeting on March 16, 2012, the Commission considered the Modified Plan and Staff's Revised Proposed Order. The Commission did not adopt an Implementation Plan for TEP at that time and voted to refer the matter to the Hearing Division to conduct an evidentiary hearing.

17. On April 11, 2012, TEP, RUCO, AECC, SWEEP, WRA and Staff appeared through counsel at a Procedural Conference to discuss the scope of the Commission's directive for an evidentiary hearing as well as related procedural and logistical questions.

18. On April 25, 2012, Staff filed Procedural Recommendations which clarified its recommendations made at the April 11, 2012 Procedural Conference, and recommended that the evidentiary proceeding should encompass the full range of options, and that this matter be consolidated with TEP's forthcoming rate case.[14]

19. On May 3, 2012, TEP filed Procedural Comments. TEP asserted that the passage of time necessitated updating the Modified Plan, and TEP attached a copy of an Updated Implementation Plan ("Updated Plan"). TEP proposed that the Updated Plan commence on October 1, 2012, and claimed that it would be a more robust "bridge" plan for energy efficiency than maintaining the status quo. TEP suggested that the hearing focus on the Updated Plan, but acknowledged that other parties should be permitted to raise alternatives. TEP agreed that

[14] At that time TEP was expected to file a rate case on July 2, 2012, in which it would propose new rates to go into effect by August 1, 2013. *See* Docket No. E-01933A-12-0126 (TEP's Notice of Intent to file rate case). TEP filed its rate case on July 2, 2012, as expected. *See* Docket No. E-01933A-12-0291 ("2012 Rate Case").

consideration of a lost fixed cost recovery or other decoupling-type mechanism should be addressed in conjunction with a rate case; and asserted that issues that would affect all Arizona utilities, such as the proper cost/benefit analysis for energy efficiency, should be considered in a generic or ratemaking docket.

20. On May 3, 2012, SWEEP filed Comments. SWEEP stated that it supports the Updated Plan and is in strong favor of moving forward with an energy efficiency plan in advance of the conclusion of TEP's rate case. SWEEP advocated focusing the evidentiary hearing on the Updated Plan, but recognized that other parties should be allowed to address additional issues related to TEP's energy efficiency implementation.

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

22. On May 11, 2012, TEP filed a Request to have its proposed Updated Plan be accepted as its 2013 Implementation Plan under A.A.C. R14-2-2405.

23. By Procedural Order dated May 14, 2012, it was determined that the evidentiary hearing would commence on July 11, 2012, and would address TEP's Updated Plan, as well as any alternative proposals.[15]

24. On May 31, 2012, TEP filed an Affidavit of Publication indicating notice of the hearing was published in *The Arizona Daily Star*, a newspaper of general circulation in its service area, on May 26, 2012.

25. On June 15, 2012, TEP filed the direct testimony of David G. Hutchens and Denise Smith; RUCO filed the direct testimony of Jodie Jerich; SWEEP filed the direct testimony of Jeff Schlegel; AECC filed the direct testimony of Kevin Higgins; and Staff filed the direct testimony of Julie McNeely-Kirwin. On June 15, 2012, pursuant to the directives of the May 14, 2012, Procedural Order, TEP filed a pre-hearing Legal Brief addressing the ability to modify the Performance

[15] On May 12, 2012, TEP filed a request regarding the possible telephonic appearance of a witness. There were no objections and by Procedural Order dated May 21, 2012, it was determined that witness appearances would be discussed at the July 9, 2012, pre-hearing conference.

Incentive in connection with consideration of an Implementation Plan.[16]

26. On July 6, 2012, TEP filed the rebuttal testimony of Mr. Hutchens and Ms. Smith; RUCO filed the rebuttal testimony of Ms. Jerich; SWEEP filed the rebuttal testimony of Mr. Schlegel; AECC filed the rebuttal testimony of Mr. Higgins; EnerNOC filed the rebuttal testimony of Mona Tierny-Lloyd; and Staff filed the rebuttal testimony of Ms. McNeely-Kirwin.

27. On July 9, 2012, the parties participated in a Procedural Conference to discuss scheduling witnesses and other matters related to the conduct of the hearing. The parties agreed at that time that they would argue their legal points during Closing Arguments at the conclusion of the hearing rather than prepare and file written briefs.

28. The hearing convened as scheduled before a duly authorized Administrative Law Judge on July 11, 2012, and continued through July 12, 2012.

29. At the commencement of the evidentiary hearing, forty members of the public appeared to provide public comment on TEP's Updated Plan.[17] Only one customer appearing at that time was not in favor of adopting TEP's Updated Plan because of the cost to ratepayers. The remaining comments addressed the dramatically negative effects of TEP scaling back its DSM programs to 2010 levels, and/or the benefits of Energy Efficiency programs, and urged the Commission to adopt the Updated Plan. In addition, the Commission has received numerous written public comments filed in this matter. The vast majority of written comments support Energy Efficiency; the few consumers who wrote opposing the proposal were against an additional surcharge.[18]

History And Background

30. TEP's current rates were set in Decision No. 70628 (December 1, 2008) ("2008 Rate Case"), at which time the Commission adopted the 2008 Rate Case Settlement Agreement which included a moratorium on base rates until January 1, 2013.[19] In the 2008 Rate Case, the Commission approved a DSM adjustor mechanism to collect the costs of Commission approved DSM programs.

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[16] The opportunity to file a pre-hearing legal brief was optional; no other party filed a pre-hearing legal brief.
[17] Transcript of the July 11-12, 2012 hearing ("Hrg Tr.") at 9-90.
[18] Several expressed the belief that the proposal would increase the residential surcharge for Energy Efficiency from an average of $1.10 to over $5.00.
[19] TEP could not file a rate case application sooner than June 30, 2012. Decision No. 70628 at 12.

One of the components of the 2008 Rate Case DSM adjustor was a formula for calculating a Performance Incentive intended to encourage TEP to engage in DSM programs.[20]

31. TEP's current DSMS of $0.001249 per kWh was set in Decision No. 71720 (June 3, 2010). Decision No. 71720 set the DSMS to allow recovery of the 2010 estimated program expenses, a 2009 Performance Incentive, and some under-recovery of previous years' program costs. At that time, the Commission did not alter the DSMS mechanism that was approved in the 2008 Rate Case.

32. The Commission adopted the Electric Energy Efficiency Rules, A.A.C. R14-2-2401 *et seq* ("EEE Rules"), in Decision No. 71819 (August 10, 2010). The EEE Rules became effective January 1, 2011. The EEE Rules establish goals for electric utilities, including TEP, to reduce retail electric sales each year by a set percentage. For 2012 the savings goal is 1.25 percent; in 2012 the cumulative savings goal is 3.0 percent, and in 2013, the cumulative savings goal is 5 percent. The cumulative savings goal is 22 percent by 2020.

33. On December 29, 2010, the Commission issued a Policy Statement Regarding Utility Disincentives to Energy Efficiency and Decoupled Rate Structures ("Decoupling Policy Statement").[21] In the Decoupling Policy Statement, the Commission found that "[s]ome form of decoupling or alternative for addressing financial disincentives must be adopted in order to encourage and enable aggressive use of demand side management programs and the achievement of Arizona's Electric and Gas Energy Efficiency Standards, which will benefit ratepayers and minimize utility costs."[22]

34. TEP estimated that because its energy-based (per kWh) charge collects some of its fixed costs, it would lose $39 million of revenues as a result of complying with the EEE Rules in 2011, 2012 and 2013.[23] According to TEP, under its current rate design, for every 1 percent reduction in retail energy sales, its fixed cost recovery is reduced by 1.0 percent.[24] TEP asserts that the impact on TEP's revenues as a result of the EEE Rules is exacerbated by the fact that the 2008 Rate Case did

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[20] Decision No. 70628 at 29.
[21] Docket Nos. E-00000J-08-0314 and G-00000C-08-0314.
[22] Decoupling Policy Statement at 30.
[23] *See* TEP's December 2, 2011 Exceptions to Staff's Proposed Order ("December Exceptions"), and Ex TEP-1 Hutchens Dir at 4. Because TEP does not expect to reach the 2012 savings goal, Ms. Smith revised the estimate of lost fixed cost revenues to $27 to $28 million for the three years. Hrg Tr. at 308-09.
[24] Ex TEP-1 Hutchens Dir at 4.

not take into account the reduced usage subsequently required by the Commission in the EEE Rules or TEP's rate moratorium.[25]

35. TEP argued at Open Meetings and in the hearing in this matter that Staff's proposal to defer consideration of recovery of the lost fixed costs until TEP's next rate case, is inconsistent with the purpose and intent of the Commission's Decoupling Policy Statement; violates TEP's 2008 Rate Case Order; and is confiscatory and inconsistent with the Commission's obligations under the Arizona Constitution to set just and reasonable rates, and with the United States and Arizona Constitutions to allow the Company to recover its costs and earn a reasonable return on its investments.

36. In its December Exceptions to the Staff Report, as well as during the March 16, 2012, Open Meeting, TEP informed the Commission that if the Commission was not going to adopt a solution that would provide TEP with additional revenues (either a type of decoupling mechanism or Performance Incentive), TEP would cut back its DSM programs to the levels last approved by the Commission in 2010.[26] Subsequently, TEP modified its DSM/Energy Efficiency Programs to reflect the "status quo" funding generated by the DSMS approved in 2010, or approximately $7.5 million per year.[27] TEP's reductions resulted in the following impacts:

(a) put on hold the following DSM programs that had not yet been acted on by the Commission – The Multi-Family Direct Install Program, Schools Facility Program, Retro-Commissioning Program, Bid for Efficiency Program, Behavioral Comprehensive Program, Combined Heat and Power Joint Program, Appliance Recycling Program, and Residential Financing Program;

(b) suspended the following approved programs – Large Business and Small Business

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[25] December Exceptions at 4. Hrg Tr. at 92.

[26] See December Exceptions at 12 and Transcript of the March 16, 2012, Open Meeting at 278.

[27] Ex TEP-3 Smith Dir at 6-7. To determine the actual amount available for program spending, the Company estimated its annual revenue collections from the current DSMS ($11 million) and compared it with TEP's under-recovered costs as of December 31, 2011. Based on the level of annual DSMS collections, TEP believed that in order to maintain a marginal level of DSM/Energy Efficiency program funding, it would extend the collection of its $6.5 million in under-recovered costs over a two year period, which resulted in reducing the annual program budgets to $7.5 million per year.

Direct-Install Program, the Existing Home Program;[28] and

(c) Reduced the activity in the following approved programs – Shade Tree Program, Home Energy Reports, CFL Buy-Down Program, Commercial and Industrial Direct Load Control, and Residential New Construction Program.

37. After the Commission referred the matter to the Hearing Division, TEP filed its Updated Plan to account for the passage of time between March 2012, when the Modified Plan was proposed to go into effect, and the date TEP expected that the Commission could act to approve a new plan going forward.[29] The Updated Plan retains the modified Performance Incentive of the Modified Plan and revises the budget to reflect a 15 month period from October 1, 2012, to December 31, 2013. It also reflects a rate design structure for Commercial Customers based on a percentage of their energy bill rather than on a per kWh basis. The Updated Plan is proposed as a short-term interim solution to provide Energy Efficiency Programs through 2013, while a longer-term solution to providing Energy Efficiency programs can be considered in TEP's 2012 Rate Case. The Updated Plan is supported by TEP, AECC, RUCO, SWEEP, WRA and EnerNOC.

38. Staff does not support the Updated Plan. Staff objects to the proposal to modify the Performance Incentive, and believes that the percentage of bill approach for non-residential customers imposes an unfair bill impact on the smaller commercial customers.[30] As reflected in Ms. McNeely-Kirwin's testimony,[31] Staff recommends the following:

(a) Approval of those programs and measures recommended for approval in Staff's Proposed Order that was docketed on November 16, 2011, and amended on February 29, 2012.

(b) That TEP's Implementation Plan Budget be increased from the $18.5 million proposed by the Company to approximately $23 million in order to enable TEP to meet, or more closely approach, the Energy Efficiency Standard.

(c) That waivers for the 2012 and 2013 Energy Efficiency Standard not be approved.

[28] TEP notified the independent contractors that the program would be suspended, and with the small amount of funds still available, the Company began developing an alternate plan to continue offering certain pieces of the program without incentive payments. Ex TEP-3 at 8.

[29] The Modified Plan adopted Staff's proposed DSM programs, but at lower funding levels, retained TEP's proposed modified Performance Incentives, and reflected an overall budget that would go into effect in March 2012.

[30] Ex S-1 McNeely-Kirwin Dir at 3; Hrg Tr. at 107-08.

[31] Ex S-1 at 15.

(d) That TEP's proposed Interim Performance Incentive not be approved and that the current Performance Incentive methodology remain unchanged until it is reviewed in TEP's next rate case.

(e) That the DSMS remain on a per kWh basis for all customer classes.

(f) There be no floor payments for Performance Incentives.

(g) Approval of TEP's requested waiver from filing a 2013 Implementation Plan.

(h) That not only actual costs, but that the 2012 Performance Incentive itself, be trued-up to ensure that it reflects an incentive level based on actual, rather than projected, savings.

(i) That a lost fixed cost recovery mechanism be dealt with as part of TEP's 2012 Rate Case, but if a lost fixed cost recovery mechanism is dealt with as part of this proceeding, that TEP should be authorized to defer un-recovered fixed costs associated with energy efficiency savings, using a methodology to be approved by Staff.[32]

39. Staff proposed two alternatives if the Commission did not agree with its primary recommendation. Alternative 1 would adopt TEP's program and measures budget of $18.5 million, but retain Staff's recommendation regarding the Performance Incentive and Rate Design. Under Alternative 1, Staff recommends: (i) granting a waiver of the Energy Efficiency Standards for 2012 and 2013; (ii) approving the programs and measures as recommended in the amended Staff Report; (iii) approving a budget of $18.5 as proposed by the Company; (iv) approving Staff's recommendations for true-up; (v) waiving the need to file an Implementation Plan for 2013; and (vi) resetting the DSMS at $0.002284 per kWh to reflect TEP's proposed spending level and Staff's recommended Performance Incentive and recovery methodologies.[33]

40. Staff's Alternative 2 is to maintain the status quo, with a program and measures budget of $7.5 million. Under this proposal, Staff recommends granting a waiver of the Energy Efficiency Standards for 2012 and 2013; resetting the DSMS at $0.001432 to reflect the $7.5 million spending level; maintaining the existing methodology for the Performance Incentive; granting a waiver of filing a 2013 Implementation Plan; truing-up as previously recommended; and addressing

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[32] Ex S-2 McNeely-Kirwin Reb at 1.
[33] Ex S-1 at 16.

all issues related to the DSM budget and the Performance Incentive structure in TEP's 2012 Rate Case.[34]

41. Staff also recommends that if the Commission approves Staff's primary recommendation, or Alternative 1, and also elects to address lost fixed cost revenues in this docket, TEP should be authorized to defer unrecovered fixed costs as Staff recommended in its Direct testimony.[35]

42. The following chart illustrates the components of the Updated Plan and Staff's recommendations:[36]

	TEP Original Plan	Modified Plan[37] Mar 2012 – Dec 2013 22 months	Updated Plan Oct 2012 – Dec 2013 15 months	Staff's Recommended Plan[38] Oct 2012 – Dec 2013 15 months	Staff's Alt 1[39]	Staff's Alt 2[40]
Program Costs						
2012 Program Budget	$24,739,192	$18,532,606	N/A	N/A	N/A	N/A
2013 Program Budget	N/A	$18,532,606	N/A	N/A	N/A	N/A
October 2012 – December 2013 Program Budget	N/A	N/A	$18,532,605	$23,165,758	$18,532,605	$9,310,031
Performance Incentive[41]						
2010	$1,114,648	$1,114,648	$1,114,648	$1,114,648	$1,114,648	$1,114,648
2011	$6,706,524	$1,101,749	$1,101,749	$1,101,749	$1,101,749	$1,101,749
2012	$8,577,172	$7,246,379	$3,283,854	$902,986	$902,986	$564,872
2013	N/A	$7,246,379	TBD in 2012 Rate Case	N/A	N/A	N/A
Balance of Under-collected Approved Program Costs						

[34] Ex S-1 at 18.
[35] Ex S-2 at 1.
[36] Although the table includes TEP's original Implementation Plan proposal and the Modified Plan for comparison purposes, the options presented at hearing were Staff's Proposal (and Alternatives 1 and 2) and the Updated Plan.
[37] Ex TEP-3 Smith Dir at DS-1 Table 2; *See also* TEP Modified Plan at 15.
[38] Ex S-1 at 6.
[39] *Id.* at 17.
[40] *Id.* at 18.
[41] The 2010 and 2011 Performance Incentives are calculated using the Performance Incentive methodology adopted in the 2008 Rate Case. TEP is proposing an Interim Performance Incentive for 2012. Staff's proposal utilizes the 2008 Rate Case Performance Incentive Methodology for 2012.

Thru 2011[42]	$13,440,236	$5,614,113	$3,862,556	$3,861,556	$3,861,556	$3,861,556
ARRT						
2011-2012	$16,768,377	N/A	N/A	N/A	N/A	N/A
Total	$71,346,149	$59,338,480	$27,894,411	$30,146,697	$25,513,544	$15,952,856

43. Because of the passage of time, TEP's proposal has evolved from a plan for 2011-2012, to one that will cover the fifteen months from October 1, 2012, through December 2013. The Company states that in order for it to have sufficient time to collect the proposed budget through the DSMS in the Updated Plan, TEP must begin collections through the new DSMS by October 1, 2012.[43] The Company states that an October 1, 2012, approval for proposed program budgets will also allow it to lift restrictions on existing program participation and begin to ramp-up new program offerings in an effort to meet the EEE Rules in 2013. In addition, Ms. Smith testified that TEP has been awarded a U.S. Department of Energy grant for "Smart Grid Data Access" to study the savings potential from installation of residential in-home displays. She states that TEP must provide a total of $677,450 in matching funds, equipment and support for the grant, and that TEP must come up with an additional $200,000, which is included in the Program budgets.[44] TEP is concerned that if the Updated Plan is not approved by October 1, 2012, the Company could be at risk of losing the grant.

44. TEP states that under the Updated Plan it will not be able to meet the EEE Rule standards for 2012 or 2013.[45] Ms. Smith estimated that if the Updated Pan is approved by October 1, 2012, TEP would reach about 75 percent of the 2012 energy savings goal, and 90% of the 2013 goal.[46]

45. The Performance Incentive established in the 2008 Rate Case allows TEP to recover up to 10 percent of net benefits from the DSM/Energy Efficiency programs, with a cap of 10 percent

[42] Ms. Smith testified that this amount is that portion of program costs expended through 2011 which have not yet been collected by the current DSMS. The amount has decreased over time as more of the previously uncollected amounts are recovered by the surcharge. Hrg Tr. at 266-67.
[43] Hrg Tr. at 94.
[44] Ex TEP-3 at 16; Hrg Tr. at 252 and 277.
[45] Ex TEP-3 at 16.
[46] Hrg Tr. at 253. She estimated that if the Updated Plan were approved by September 1, 2012, TEP could attain 80 to 85 percent of the 2012 goal.

of costs, excluding costs for Low-income Weatherization, Education and Outreach, and Demand Response Programs.

46. The Updated Plan contains an Interim Performance Incentive that was created by SWEEP, and is intended to focus on the Company's performance in delivering cost-effective energy efficiency programs, rather than on the Company's spending for energy efficiency programs.[47] The Interim Performance Incentive has two parts: (1) a base Performance Incentive; and (2) additional performance metrics.

> <u>I. The Base Performance Incentive</u>
> The Base Performance Incentive includes 7 percent of the net benefits achieved from Energy Efficiency Programs delivered during 2012, with a tiered structure that allows for a lower payment if TEP meets 80 percent of the energy efficiency net benefits goal and a higher payment if the Company meets up to 120 percent of the goal. Net benefits are determined by subtracting the calculated Societal Cost of program delivery from the calculated Societal Benefits derived through those same energy efficiency programs. Thus, net benefits will be greater if program costs are kept lower while delivering increased societal benefits.
>
> <u>II. Additional Performance Metrics</u>
> Part II of the Interim Performance Incentive consists of five specified performance metrics. Payments would be made on individual metrics, and follow the same tiered structure with 80 percent being the floor value and 120 percent being the maximum value.

47. The Company provided the following calculation of the Interim Performance Incentive for 2012:[48]

<u>Part I – Base Performance Incentive</u>		
DSM Costs		$11,040,296
2012 Net Benefits		$22,626,485
Shared Savings		7%
Part 1: Base Energy Efficiency Shared Benefits (net benefits x 7.0%)		$1,583,854
<u>Part II – Other Performance Metrics</u>	<u>Target</u>	<u>Dollars</u>
Net Benefits per customer dollar spent (net benefits/actual spending)	2:1	$1,100,00
Community weatherization workshops	30	$150,000

[47] Ex TEP-3 at 13-14.
[48] *Id.* at 14-15.

Community outreach – monthly outreach to seniors on EE (Starting Oct)	4	$150,000
Loan Program – train contractors on TEP's new loan program	8	$150,000
Low Income Weatherization – 5 % increase in participation over 2011	163	$150,000
Part II: Other Performance Metrics at 100% Goal		$1,700,000

The new Interim Performance Incentive for 2012

At 80% of Goal	$2,627,083
At 100% of Goal	$3,283,854
At 120% of Goal	$3,940,625

48. The Updated Plan calls for a DSMS of $0.002497 per kWh for residential customers and a charge of 2.86 percent on all charges (except taxes and other governmental assessments) for commercial customers.

49. Staff's proposed plan would result in a DSMS of $0.002699 per kWh for all customer classes.

50. The following table illustrates the bill impact of the Updated Plan and Staff's proposals for average usage amounts for the different customer classes:[49]

Customer Class:	Ave. Monthly Usage (kWh)	Current Average Bill Impact @ $0.001249/kWh For all customer classes	Updated Plan Average Bill Impact @ $0.002497 for Residential And 2.68% for Non-residential	Staff's Plan Average Bill Impact @ $0.002699/kWh for all customer classes	Staff's Alt 1 Average Bill Impact @ $0.002284/kWh for all customer classes	Staff's Alt 2 Average Bill Impact @ $0.001428/kWh for all customer classes
Residential	880	$1.10	$2.20	$2.38	$2.01	$1.26
Small Commercial	4,300	$5.37	$13.60	$11.61	$9.82	$6.14
Large Commercial	160,000	$199.84	$460.26	$431.84	$365.44	$228.48
Industrial	1,500,000	$1,873.50	$3,392.50	$4,048.50	$3,426.00	$2,142.00

51. In its 2012 Rate Case (Docket No. E-01933A-12-0291, filed on July 2, 2012), TEP

[49] Ex S-1 at 7, 17 and 19.

proposes a new method for recovering lost fixed cost revenues that does not involve Performance Incentives. TEP asserts that its 2014 Energy Efficiency Plan will be addressed in conjunction with its 2012 Rate Case, however, at this time, TEP has not proposed new energy efficiency programs or measures in its 2012 Rate Case filing.[50]

Arguments For and Against the Current Proposals

Performance Incentive

52. One of the disagreements in this proceeding is whether the Commission should adopt the new Interim Performance Incentive proposed by TEP, or maintain the current Performance Incentive approved in the 2008 Rate Case Settlement.

53. Staff argues that because the current DSMS (which includes the Performance Incentive) was adopted as part of the 2008 Rate Case Settlement, the Commission cannot modify the DSMS methodology without re-opening the 2008 Rate Case pursuant to A.R.S. §40-252 in order to give parties to the Commission Decision notice of the proposed change and an opportunity to be heard.[51]

54. In addition, Staff opposes altering the methodology for calculating the Performance Incentive because in Staff's view: (i) the proposal significantly increases the Performance Incentive at the expense of ratepayers;[52] (ii) the proposed payment associated with "Net Benefits per customer spent" in Part II of the Interim Performance Incentive amounts to a double recovery of the payment in Part I of the metric; (iii) the payments associated with the other four metrics in Part II are not justified by direct, measurable and verifiable kWh savings; and (iv) it is preferable to review the Performance Incentive in TEP's next rate case.[53] Staff also objects to a floor payment if TEP falls short of 80 percent of the goal, and believes that the metrics are not sufficiently stringent.[54]

55. Staff argues that it is not reasonable to allocate $1.1 million for the 2-to-1 ratios projected for "Net Benefits to customer dollar spent" (Part II –Other Performance Metrics) because

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[50] Hrg Tr. at 264-66.
[51] *Id.* at 486-87.
[52] According to Staff's projections, under the current methodology, TEP would receive a Performance Incentive of approximately $903,000 for 2012, versus receiving revenues ranging between $2.6 million and $3.9 million under the Updated Plan methodology. Ex S-1 at 9.
[53] Ex S-1 at 8-9.
[54] *Id.* at 11.

the $1.1 million would be in addition to the $1.6 million Base Performance Incentive which is based on the same Net Benefits.[55] Staff believes a 2-to-1 ratio is too modest to either demonstrate an enhanced focus on improved benefit-to-cost ratios, or to merit an additional $1.1 million payment. In addition, Staff believes that the other Part II metrics are not of a type that can produce direct and measurable savings. Staff does not believe that TEP has demonstrated that there are measurable savings associated with community weatherization workshops, or senior outreach and loan programs. While Staff recognizes there would be a linkage between increased participation in the Low-Income Weatherization program and energy savings, Staff finds that TEP did not explain the nexus between the 5 percent target and the proposed $150,000 payment.[56]

56. Staff opposed the proposed floor Interim Performance Incentive because in Staff's view it would have the effect of guaranteeing a $2.6 million Performance Incentive, regardless of the savings actually achieved. Staff argues it does not make sense to guarantee recovery for lost fixed costs at a level higher than what the utility may actually experience.[57] In addition, Staff is concerned that the high guarantee will not encourage energy efficiency above the "floor."[58]

57. Staff argues that changes to the DSMS mechanism and to the Performance Incentive structure are complex and can produce a wide range of consequences for ratepayers. Staff believes that rate cases provide a better opportunity for intervention and for potential problems or inequities from changes in rate design to be identified and resolved.[59]

58. TEP argues that the existing Performance Incentive is designed to encourage greater spending on DSM and Energy Efficiency, while the proposed Interim Performance Incentive encourages cost-effective DSM and energy efficiency programs by focusing on cost-effective programs and actual performance. It argues the Interim Performance Incentive structure is preferable because it encourages cost savings rather than increased spending to increase the Performance Incentive.[60] TEP proposes that the Interim Performance Incentive be trued-up to actual performance

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[55] *Id.* at 9.
[56] *Id.* at 10.
[57] Staff believes that the Interim Performance Incentive in the Updated Plan is a substitute for a lost fixed cost revenue recovery mechanism. Hrg Tr. at 415 and 487.
[58] Ex S-1 at 11.
[59] Ex S-2 at 4.
[60] TEP Legal Brief at 2.

in the 2012 Rate Case.[61]

59. TEP argues that the express language of the EEE Rules and sound public policy support approving the Interim Performance Incentive as part of TEP's Updated Plan. TEP asserts that the plain language in A.A.C. R14-2-2411 expressly provides that the Commission can consider a performance incentive in the implementation process and reward a utility for achieving the energy efficiency standard:

> In the implementation plans required by R14-2-2405, an affected utility may propose for Commission review a performance incentive to assist in achieving the energy efficiency standard set forth in R14-2-2404. The Commission <u>may also</u> consider performance incentives in a general rate case.[62]

TEP notes that although the EEE Rules acknowledge that performance incentives "may also" be addressed in a rate case, the EEE Rules do not require it. Moreover, TEP argues the Interim Performance Incentive is merely a bridge that is subject to true-up in TEP's 2012 Rate Case, and most likely will only exist for about a year, until superseded by a new mechanism coming out of the 2012 Rate Case.[63]

60. TEP argues that the rulemaking record, and evolution of A.A.C. R14-2-2411, supports establishing or modifying a performance incentive in connection with the energy efficiency implementation plan process. According to TEP, in the rulemaking process several stakeholders expressed concerns with having a specific performance incentive structure set in the EEE Rules, and preferred to have performance incentives considered in connection with implementation plans, so that they could be tied to the objectives of a specific program and take into account changing circumstances without having to change the EEE Rules.[64] TEP states that, ultimately, it was this approach not to specify performance incentives that was approved in Decision No. 71436 (December 18, 2009) which opened the rulemaking docket for the EEE Rules, and which carried forward to the final version of the EEE Rules.

61. In addition, TEP argues that in the recent Arizona Public Service ("APS") rate case,

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[61] Ex TEP-2 Hutchens Reb at 4.
[62] A.A.C. R14-2-2411 (emphasis added).
[63] TEP Legal Brief at 3.
[64] *Id.* at 4-5.

the Commission reinforced its intention to establish or modify a performance incentive on an annual basis during the implementation plan even if the performance incentive is adopted in a rate case.[65] TEP states that in Decision No. 73183, the Commission found that there should be flexibility to determine the structure of performance incentives within the process of evaluating implementation plans:

> While we appreciate the ability and opportunity to develop new performance incentives tied to energy efficiency, we believe that Performance Incentives, just like the implementation plan that they are parcel of, should be reviewed and established on an annual or periodic basis as part of the [Demand-Side Management Adjustment Clause]. As conditions change for each implementation plan, there should be flexibility in how performance incentives are structured, including the flexibility to eliminate Performance Incentives for any given year. Therefore, performance incentive formulas will be deliberated and determined in each implementation plan.[66]

TEP argues that this approach reflects sound policy for timely review and modification that can address current circumstances without binding the Commission to a delayed or cumbersome process for review and modification.

62. Given that the EEE Rules appear to expressly provide that performance incentives can be modified outside of a rate case in connection with the implementation plan process, TEP does not agree with Staff that to modify the Performance Incentive in this case would require re-opening the 2008 Rate Case.[67] The other parties agree with TEP on this point.[68]

63. Moreover, TEP argues that it sent written notice to the parties to the 2008 Rate Case notifying them that it was proposing to modify the Performance Incentive that was adopted in that proceeding, and that while several of those signatories are participating in this docket, no other party indicated an objection.[69]

64. SWEEP argued that the intent of A.R.S. §40-252 is to provide notice to affected parties, and that in this case, there has been such notice and opportunity to be heard, even if the

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[65] Decision No. 73183 (May 24, 2012).
[66] Decision No. 73183 at 41.
[67] Hrg Tr. at 446-47 and 495.
[68] *Id.* at 446-47, 459, 470, 495.
[69] *Id.* at 446-47. The signatories to the 2008 Rate Case Settlement Agreement included TEP, Staff, AECC, Arizona Investment Council, the Department of Defense, Southwest Power Group/Sempra/Mesquite, Kroger, the International Brotherhood of Electrical Workers Local No. 1116, and Ms. Cynthia Zwick. RUCO intervened in the 2008 Rate Case, but did not sign the Settlement. SWEEP intervened and neither supported nor opposed the 2008 Rate Case Settlement, but argued for a DSM program adjustor. *See* Decision No. 70628 at 29.

matter has not been re-opened pursuant to the statute.[70] AECC believes that changes to a performance incentive are permissible under the EEE Rule rubric,[71] and generally agreed with TEP's legal analysis.[72]

65. Ms. Smith testified for TEP that the floor payments were a requirement that originated from accountants who wanted assurances of cost recovery in order to book the revenues.[73] She stated further that the Interim Performance Incentive minimum payments only relate to 2012 and that TEP is already over the performance floor.[74] Ms. Smith also testified that the Part II metrics do not amount to double recovery of benefits measured in Part I because the two metrics measure different things—the Part I metric is incentive to deliver Energy Efficiency Programs that produce greater net benefits, while the Part II "net benefits per customer dollar spent" measures the efficiency of delivering cost-effective Energy Efficiency Programs.[75]

66. SWEEP views performance incentives as an important policy instrument that the Commission should use during the implementation plan process to influence and direct energy efficiency outcomes.[76] In January 2012, SWEEP proposed that TEP work with Staff and the parties to draft an improved Performance Incentive that would create a clear connection between the level of the incentive and the achievement of cost-effective energy savings.[77] SWEEP supports the Performance Incentive level in the Updated Plan.[78] SWEEP notes that TEP has been nationally recognized for its energy efficiency programs even while it has experienced lost revenues over the last three years. SWEEP understands Staff's concerns about the floor payment, but believes that it is highly unlikely that TEP would receive a Performance Incentive payment without delivering the significant customer savings and benefits to which it has committed.[79] SWEEP supports the Interim Performance Incentive metrics as proposed in the Updated Plan as they are aligned with activities and

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[70] Hrg Tr. at 470-71.
[71] *Id.* at 208.
[72] *Id.* at 455.
[73] *Id.* at 256.
[74] *Id.* at 293 and 307.
[75] Ex TEP-4 at 3; Hrg Tr. at 296.
[76] SWEEP's January 9, 2012 Comments.
[77] *Id.*
[78] Ex SWEEP-2 at 2-3.
[79] Hrg Tr. at 345-48; Ex SWEEP-2 at 3.

outcomes that provide value to customers. SWEEP drafted the proposed Interim Performance Incentive metrics to address the shortcomings of the existing Performance Incentive that focus on spending rather than results.[80]

67. RUCO favors the Interim Performance Incentive over the existing Performance Incentive because the Interim Performance Incentive does not focus on spending, but rather on performance.[81] RUCO understands that the Interim Performance Incentive is higher in the Updated Plan than in the Staff's proposal, but RUCO recognizes that it is part of a package for delivering Energy Efficiency opportunities, and that the overall package of the Updated Plan is balanced and reasonable.[82] RUCO notes that the 2012 Performance Incentive has decreased from the originally proposed $8.5 million to the $3.2 million in the Updated Plan.

68. Mr. Higgins, for AECC, also noted that TEP agreed to reduce its Performance Incentive in the Updated Plan which results in a more favorable impact on ratepayers.[83]

<u>Rate Design</u>

69. Staff is concerned that under TEP's proposal the non-residential DSMS is based on a percentage of the non-residential customer's bill, as opposed to on a per-kWh basis.[84] Staff asserts that the change is inequitable as it would tend to shift per-kWh costs for energy efficiency from the large non-residential customers to smaller non-residential customers.[85] Staff calculated that under the Updated Plan, large industrial customers would pay the lowest DSMS rate on a per kWh basis, and small commercial customers would pay the highest DSMS rate on a per-kWh basis.[86] Staff does not find that the parties presented a convincing rationale to justify switching to the percentage-of-bill recovery method for non-residential customers.[87]

70. Staff believes that a per-kWh rate multiplied against the usage figure is more

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[80] Hrg Tr. at 360-1 and 368. *See also* SWEEP's January 9, 2012 Comments.
[81] Hrg Tr. at 480.
[82] *Id.* at 215-16 and 219-20.
[83] Ex AECC-1 Higgins Dir at 6.
[84] Ex S-1 at 12.
[85] *Id.*
[86] Ex S-1 at 12-13. Staff calculated that under the Updated Plan, Residential customers would pay a DSMS rate of $0.002497 per kWh; and that the <u>effective</u> per-kWh rate for small commercial customers would be $0.003163, for large commercial customer would be $0.002877 and for industrial customers would be $0.002262.
[87] Ex S-2 at 6.

transparent than the percentage-of-bill recovery method.[88] Staff also believes that the range of consequences that could result from changing the billing methodology are best considered in the context of a rate case.[89]

71. The percentage-of-bill approach for non-residential customers was not one originally advocated by TEP, but was a critical issue for AECC. AECC did not object to a per-kWh charge while that charge was relatively small, however, with the advent of the 2012 Implementation Plan, the proposed charges associated with DSM and Energy Efficiency were so great that AECC strongly opposed the increase.[90] According to Mr. Higgins, TEP's original proposed DSMS, which increased from $0.001249/kWh to $0.006343/kWh, would have increased overall rates for residential customers by 5.3 percent, for small commercial customers by 4.6 percent, for larger commercial customers by 6.2 percent, for industrial customers by 7.8 percent, and for mining customers by 9.0 percent.[91] The percentage of the DSMS of the customer's bill would have ranged from 5.4 percent for small commercial customers, to 9.0 percent for industrial customers, and up to 10.3 percent for mining customers.[92] AECC believed the rate impact would have been unreasonable and recommended that the Commission adopt a uniform percentage DSMS that would not exceed 3 percent.

72. Mr. Higgins testified that several other western states utilize the percentage based charge for DSM, and asserts that the equal percentage DSMS makes the cost of funding energy efficiency proportionate to each non-residential customer's bill, and better reflects the potential benefits the customer might receive as a result of the energy efficiency programs.[93] Mr. Higgins points out that because of load factors and other differences in how they utilize the utility distribution system, it is more expensive for the utility to serve the small commercial customers than the large industrial customers and that this is reflected in the rates that they pay.[94] He states that because a

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[88] Ex S-2 at 7.
[89] Ex S-2 at 3; Tr. at 343.
[90] Hrg Tr. at 178-79 and 451-54.
[91] Ex AECC-1 Higgins Dir at 4.
[92] *Id.*
[93] Ex AECC-2 Higgins Reb at 4. Western states that utilize a percentage DSM/EE Rider are New Mexico, Idaho, Utah and Wyoming. See Ex AECC-1 at 7-8, and Table KCH-1.
[94] Hrg Tr. at 180.

small commercial customer pays a higher rate per-kWh for power, that customer will save more money than an industrial customer for every kilowatt-hour of reduced energy consumption. Thus, he argues it makes sense for the effective per kWh charge for funding the energy efficiency programs to be higher for these customers than for larger customers.[95] Mr. Higgins acknowledges that the percentage increase for the small commercial class is greater than for the larger users, but argued that the impact is a result of the fact that larger customers currently pay a higher percentage of their bill toward energy efficiency than the smaller customers.[96]

73. SWEEP expressed concerns in its direct testimony about the bill impact on the smaller commercial customers, but does not object to the percentage-of-bill approach for non-residential customer as long as the small commercial customers as a class, receive at least the level of energy efficiency program funding as is collected from these customers so that they receive the benefits of their contributions.[97] SWEEP believes that the Updated Plan provides the small business customers with opportunities to save, and that the funding levels of the Updated Plan are appropriate to provide benefits.[98]

Staff's Proposals

74. Staff's primary recommendation includes a budget for energy efficiency programs and measures of approximately $23 million (compared to the Updated Plan of $18.5 million). Staff believes that the additional funds would allow TEP to come closer to meeting the energy efficiency goals for 2012 and 2013.[99] Staff's proposed budget is based on the monthly average of the program costs that TEP proposed in the Modified Plan filed in February 2012.[100]

75. Staff prefers its primary recommendation, and has no preference between its proposed Alternatives 1 and 2.[101] Staff prefers all of its alternatives to the Updated Plan.[102]

76. Staff argued that while it did not believe that its proposal would result in confiscatory

[95] Ex AECC-2 at 5.
[96] *Id.* at 2-3.
[97] Ex SWEEP-2 at 3.
[98] Hrg Tr. at 368.
[99] Ex S-1 at 4. *See also* Hrg Tr. at 281.
[100] Hrg Tr. at 421.
[101] *Id.* at 423.
[102] *Id.* at 424.

rates, if the Commission opts to address lost fixed costs in the docket, the Commission could authorize TEP to defer un-recovered fixed costs.[103] Under Staff's proposal, TEP would submit a proposed methodology for calculating and recording un-recovered fixed costs for Staff's approval within 30 days of the effective date of this Order.[104]

77. TEP argues that the Interim Performance Incentive is a critical part of the Updated Plan, and is needed to provide a more robust Energy Efficiency Program while giving TEP a financial bridge until the Commission can approve a more coordinated solution.[105] TEP is concerned that Staff's recommendation for a deferral of lost fixed costs does not provide enough guidance or methodology as to how TEP would recover those costs.[106] TEP argues that Staff's deferral proposal does not contain a deadline for Staff action; does not provide immediate relief for the "confiscatory" impact of the Energy Efficiency standard compliance; and does not provide any assurances that TEP will actually recover its lost fixed costs.[107]

78. Ms. Smith testified that TEP did not believe it could spend the extra money provided in Staff's increased budget in a cost efficient manner.[108] She testified that the increased budget would not help the Company get closer to meeting the energy savings goal for 2012 because of the time necessary to ramp up the programs.[109]

79. SWEEP is concerned that Staff's alternative proposals do not have broad support and would result in more delay.[110] SWEEP supports the Updated Plan as a short-term solution and as the best way to deliver the benefits of energy efficiency to ratepayers immediately.

80. EnerNOC argued that Staff's primary proposal and alternatives: 1) would not result in finality, as all but Alternate 2 (status quo) would face challenges from TEP and others; 2) do not significantly improve TEP's ability to meet the 2012 goals; and 3) all but the status quo would have

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[103] Ex S-1 at 14; Ex S-2 at 8; Hrg Tr. at 425.

[104] Staff does not appear to expressly recommend that the Commission authorize TEP to defer its lost fixed costs if the Commission adopts Staff's proposals, but in its Revised Staff Report and during Closing Argument Staff recognizes and promotes a deferral account as a means for addressing TEP's concerns about lost fixed costs associated with energy efficiency savings. Hrg Tr. at 488-89.

[105] Ex TEP-2 at 4.

[106] *Id.* at 5.

[107] *Id.* at 5-6.

[108] Hrg Tr. at 281.

[109] *Id.* at 272-75 and 283.

[110] Ex SWEEP-2 at 2.

greater rate impacts than the Updated Plan.[111] EnerNOC believes maintaining the status quo solves nothing and would set TEP back in complying with the energy efficiency standard in the future.[112]

81. RUCO argues that Staff's primary proposal is more costly to ratepayers than the Updated Plan.[113] RUCO strongly opposed the concept of a deferral account because the structure is currently unknown and because a deferral account usually adds costs to the ratepayers due to carrying charges.

82. AECC argued that the deferral proposal violated the prohibition on retroactive rate-making and asserted that if the Commission cannot adopt a lost fixed cost recovery mechanism, it cannot do the same thing by deferral order. AECC does not believe that fixed costs for a prior period can be recovered from future ratepayers.[114]

Other Issues

Flexibility

83. In her Rebuttal testimony, Ms. McNeely-Kirwin clarified that if the Commission approves Staff's primary recommendation or either Alternative 1 or 2, it should approve the measures and programs that Staff recommended in its Proposed Order. She states that approving all of the programs and measures that Staff has found to be cost effective will provide TEP with an enhanced range of options on which to focus its energy efficiency efforts, at whatever spending level is ultimately approved.[115]

84. In its Proposed Order, Staff recommended that TEP be allowed to shift funding from measure to measure, or from less active to more active programs, for up to 25 percent of the budget originally allocated to the less active program, and that budget shifting only be done within, and not between the Residential and Non-Residential program sectors. Staff also recommended that TEP be allowed to increase the overall Implementation Plan budget by up to 5 percent, if the increases are allocated to cost-effective measures and programs.[116]

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[111] Hrg Tr. at 460-62.
[112] *Id.* at 466.
[113] *Id.* at 215-16.
[114] *Id.* at 450.
[115] Ex S-2 at 5.
[116] Ex S-3, Staff Report at 46 and Recommended Order at 68.

85. SWEEP supports budget flexibility and recommends that the Commission permit program budget flexibility by allowing TEP to exceed any DSM program budget by up to 15 percent without prior Commission authorization.[117] If the Commission was concerned about over-spending, SWEEP suggested that it could impose a limit on total DSM expenditures, by directing that total expenditures may not exceed the total DSM budget by more than 5 percent (as an example).

True-up

86. Staff asserted that if the Updated Plan is approved, the Commission should clarify that not only "actual costs" but the Performance Incentive itself should be trued-up to ensure that it reflects an incentive level based on actual, rather than projected savings.[118] Staff states by way of example, that if the Net Benefits actually achieved fall below projections, the Performance Incentive would be recalculated to reflect those savings and the difference between the projected and actual Performance Incentive would be taken into account when the DSMS is reset.

Waiver

87. In its December Exceptions to the Staff Report, TEP stated that if the Commission did not approve its proposed Implementation Plan, it requested a waiver. The Updated Plan filed on May 3, 2012, also contained a statement that "TEP will not meet the EEES for either 2012 or 2013 under the updated Plan and will need a waiver from the EEES for 2012 and 2013." Subsequently, TEP revised its position, and determined that that it would not seek, nor would it need a waiver from the 2012 or 2013 standards.[119] TEP agrees with SWEEP's analysis that because the savings standard is cumulative, TEP has the opportunity to make-up for the time delay.[120]

88. SWEEP opposes a waiver of the savings standard, and does not believe a waiver is necessary because the EEE Rules are a cumulative goal, such that it is not critical that a utility exactly meet each year's stated target goal for energy savings.[121]

2013-2014 Implementation Plan

89. SWEEP argues that in 2013, TEP should prepare a filing that will propose new energy

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117 SWEEP January 9, 2012 Comments.
118 Ex S-1 at 13.
119 Hrg Tr. at 121.
120 *Id.* at 494.
121 *Id.* at 349.

efficiency programs or enhancements in order to ensure that it continues along a pathway to achieve the cumulative energy savings under the EEE Rules.[122] SWEEP recommended that TEP be required to file an implementation plan containing specific programs and measures no later than March 1, 2013.[123] SWEEP understands that TEP is proposing a new treatment of DSM costs, but is very concerned that if TEP's new proposal is not adopted, there will not be another timely opportunity to raise this issue. SWEEP believes it is likely that DSM and Energy Efficiency programs in the future will look different than current programs.[124]

90. TEP states that it has proposed an entirely new way to address Energy Efficiency in its 2012 Rate Case, and that SWEEP's recommendation is unnecessary and inconsistent with TEP's proposal.[125]

91. Staff did not believe that the Commission needs to give direction to TEP in this docket concerning Energy Efficiency for the second half of 2013 or 2014, and believes that TEP must follow the EEE Rules.[126]

Analysis and Resolution

92. There is no dispute among the parties that the programs and measures that Staff found to be cost effective and which Staff recommended for approval in its Staff Report and Proposed Order should be approved. A description of each of the recommended programs and measures is set forth in the November 16, 2011, Staff Report and Proposed Order.[127] Consequently, we find that the following DSM and Energy Efficiency Programs and Measures as described, and as modified by Staff's recommendations in the November 16, 2011, Staff Report, should be approved:[128]

Residential Sector

- Appliance Recycling (N)
- Multi-Family Housing Efficient Program (N)
- Efficient Products (formerly the CFL Buy-Down Program)
- Low Income Weatherization
- Residential New Construction

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[122] Ex SWEEP-2 at 2.
[123] Hrg Tr. at 472-73 and 476-77.
[124] *Id.* at 378-381.
[125] *Id.* at 497.
[126] *Id.* at 493.
[127] The scope of the July 2012, hearing did not encompass reviewing the specific programs and measures, nor the methodology for determining if a program is cost-effective.
[128] Those programs marked with an "(N)" are new programs.

Existing Homes and Audit Direct Install (Formerly Residential HVAC Program)
Shade Tree
Residential Direct Load Control – Pilot

Commercial Sector
Bid for Efficiency – Pilot (N)
Retro-Commissioning (N)
Schools Facilities (N)
CHP Joint Program – Pilot (N)
Small Business Direct Install
C&I Comprehensive
Commercial Direct Load Control
Commercial New Construction

Behavioral Sector
Behavior Comprehensive
Home Energy Reports

Support Sector
Residential Energy Financing (N)
Energy Codes Enhancement Program (N)
Education and Outreach
Support and Program Development

93. As recognized in the Commission's Decoupling Policy Statement, instituting a requirement to reduce energy sales results in a conflict for utilities between sales growth and promoting energy efficiency. Especially when a portion of a utility's fixed costs are recovered in its energy charge, the net lost revenue and profit erosion effect can be a disincentive to provide consumers with cost-saving efficiency measures, and may negatively impact investment returns. Consequently, to the extent possible, the Commission tries to coordinate approving energy efficiency programs with instituting some type of mechanism to overcome the disincentives. The rate moratorium approved in the 2008 Rate Case, however, inhibits our ability to address the disincentives and financial impacts on TEP by means of a lost fixed cost recovery mechanism at this time.

94. At the same time, we find that it is not in the public interest to revert to the 2010 level of spending on DSM/Energy Efficiency until the end of TEP's pending rate case. To do so would cause TEP to fall further behind in meeting the 2012 and 2013 energy savings goals, and could create a hardship on the Company and ratepayers in subsequent years when the Company would have to catch-up to the cumulative standards in the EEE Rules. Maintaining the 2010 status quo would put on hold, or significantly reduce spending on, programs such as the School Facilities Program, Appliance Recycling, Audit Direct Install and Commercial Direct Load Control, to name but a few,

and could potentially jeopardize TEP's Department of Energy grant for the residential in-home displays. The public comments received in this docket are testimonials to the value of the programs and to the devastating effects on jobs in the community and on families' attempts to save money and protect the environment that arise from cutting DSM and Energy Efficiency spending back to 2010 levels.

95. Although A.A.C. R14-2-2411 appears to permit a utility to propose a new or modified performance incentive in the context of an implementation plan, Commission Rules cannot override the Commission's obligations under the Arizona Constitution. The EEE Rules were adopted after the Commission found that TEP's current rates and charges under the 2008 Rate Case Settlement Agreement were just and reasonable. The parties to Decision No. 70268 did not know that several years later the Commission would adopt EEE Rules that appear to permit the implementation of a modified or new Performance Incentive in the DSMS outside of a rate case. The APS rate case in which the Commission acknowledges the public policy arguments that favor reviewing performance incentives with each implementation plan, did not affect a prior finding that the DSMS and its performance incentive were just and reasonable, but rather addressed modifying the charge prospectively. Parties to the APS case are now on notice that in the future the Commission may alter the performance incentive adopted in that case in connection with a future implementation plan. That is a different situation than the one we face in the current Docket, where parties neither had notice under existing rules, nor through a finding by the Commission in a rate case, that the Performance Incentive could be subject to modification.

96. Consequently, in order for the Commission to give consideration to the Updated Plan, we find that Decision No. 70268, should be reopened pursuant to A.R.S. §40-252. We find that due process requires that the parties to the 2008 Rate Case be notified and given an opportunity to be heard on the proposals that would modify the rates approved in that Decision. Prior to the evidentiary hearing, TEP notified the parties of its proposed modifications to the Performance Incentive, and informed them that the Commission would be considering the proposals at an Open Meeting. Notice of the hearing was published. None of the 2008 Rate Case participants, other than those already

intervenors in this docket, took action.[129] In addition to the previous notice, a copy of the Recommended Opinion and Order was sent to all parties on the service list for E-01933A-07-0402 and E-01933A-05-0650, as notice of the proposals being considered in this Docket.[130] The 2008 Rate Case parties have had an opportunity to file comments or exceptions to the Recommended Opinion and Order and to appear at the Open Meeting to be heard on the issues discussed in this docket. Such notice and opportunity to be heard fulfills the due process obligations of A.R.S. §40-252.

97. Based on the totality of circumstances, we find that the Updated Plan presents the best course for moving forward with energy efficiency for TEP until we can address the issue again in the context of its rate case. While Staff's proposal would also bring energy efficiency opportunities to TEP's ratepayers, the Updated Plan has broader support and will result in less delay and avoid future litigation, allowing all parties to focus immediately on achieving energy savings. The Updated Plan is less expensive than Staff's primary recommendation, although we acknowledge that Staff's proposal is more costly only because it contains a higher program budget. The evidence in this proceeding indicates that the extra funds in Staff's budget would not appreciably improve TEP's ability to comply with the 2012 standard vis-a-vis the Updated Plan because of the limited duration of the Updated Plan.

98. TEP has reduced its requested performance incentive substantially in the course of this proceeding. It does not appear that TEP will receive payments without demonstrating performance as a result of the floor payment because the testimony indicates that it is likely that TEP will meet the 80 percent floor for 2012. Because TEP could receive a higher payment if it achieves greater savings, neither does there appear disincentive for TEP to strive for greater cost-effective savings. TEP has demonstrated good faith in attempting to meet its savings goal to date, and by approving the Interim Performance Incentive, we fully expect TEP to continue its efforts to meet the goals set forth in the Rules. Although Part II of the Interim Performance Incentive metric based on the number of

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[129] We note that EnerNOC did not intervene in this matter until after the Commission's March 2012 Open Meeting.

[130] A Procedural Order was sent to the parties of record in Docket Nos. E-01933A-07-0402 and E-01933A-05-0650, along with a copy of the Recommended Opinion and Order in this Docket, informing the parties to the 2008 Rate Case that the Commission would consider the recommendation to re-open the 2008 Rate Case pursuant to A.R.S. §40-252 in order to consider the proposed Interim Performance Incentive, and inviting them to file Exceptions to the Recommended Opinion and Order in this Docket and to appear at the Open Meeting at which it would be heard.

workshops, outreach and training is not tied to specific savings results, based on the testimony of SWEEP, we find that they are not without known benefits. That component of Part II of the Interim Performance Incentive metric that measures the net benefit to actual customer dollar spent appears to give TEP extra incentive to promote the most cost-effective programs; whether or not it double counts the "net benefits" calculation utilized in Part I of the metric, or merely uses the net benefit calculation to promote cost-effective spending, is not critical to our analysis of the Interim Performance Incentive as a whole. We find that the overall mechanism promotes the public interest by encouraging greater cost-effective energy savings, and that in this case, at this time, the Interim Performance Incentive is reasonable and should be adopted.

99. It is in the public interest for TEP to come as close as possible to meeting its 2012 savings goals so that it has less ground to make up in subsequent years. The Interim Performance Incentive provides TEP greater financial support and resources to meet the 2012 goal. We want to encourage the most cost-effective approach as possible, and find that the Interim Performance Incentive is reasonably constructed to that end. The Interim Performance Incentive is essentially a negotiated amount that TEP argues is the absolute minimum it can accept to provide DSM programs above 2010 spending levels. It will result in TEP receiving a higher payment than under the 2008 Performance Incentive, but it also restructures the incentive payment to focus more on cost-effective spending than on total spending. Without the incentive, we believe that important new programs that the public clearly wants may not receive sufficient support. Staff's Alternative 1 would be less expensive than the Updated Plan, because the potential Performance Incentive payments would be less, but because it relies on the 2008 Performance Incentive it does not provide the extra financial support for TEP to make an aggressive push to achieve maximum 2012 savings, and does not encourage spending on the most cost-efficient programs. Because the Interim Performance Incentive applies only to 2012, and TEP has faced a significant disruption in its 2012 energy efficiency programs, the Company will have to act aggressively to reach the goals of the incentive.

100. The 2012 Rate Case will determine what compensation is appropriate for 2013, and by adopting the Updated Plan, we are not committing to approving rates that involve the Performance Incentive utilized in the Updated Plan or any form of performance incentive, for that matter.

101. Performance incentives are not a lost fixed cost recovery mechanism, although they can play a similar role of encouraging a utility to engage in energy efficiency efforts. Performance incentives provide a payment to the utility for the lost opportunity of earning a return on investments that will not be required because of energy efficiency efforts. This is different than providing additional revenues to a utility for the lost fixed costs from selling less electricity, and providing a reasonable opportunity for the utility to realize its authorized revenue requirement. Although the Commission has approved a Performance Incentive for TEP in the past and the EEE Rules contemplate that performance incentives can be considered, it does not mean that the paradigm under which utilities provide service in the future will always include compensation for lost opportunities to invest in plant. In the meantime, however, performance incentives may be a reasonable and helpful means to transition to the new paradigm.

102. There does not appear to be a dispute about what will be subject to true-up, but to be clear, we agree with Staff that in the true-up process, actual energy savings and spending should be assessed and appropriate adjustments made to the DSMS when it is reset.

103. We do not find in this Docket that TEP's current rates without the DSMS provided in the Updated Plan are confiscatory. The record is not sufficient for such a determination, nor is TEP pressing this issue under the Updated Plan.

104. We do not believe that deferral of the lost fixed costs associated with TEP's Energy Efficiency Programs is in the public interest at this time. TEP is not requesting it under the Updated Plan, and such deferral would be a complex undertaking that could result in additional litigation, and in the long-run, additional costs to ratepayers due to carrying charges. We believe the Updated Plan presents finality and allows all parties to devote their time to a long-term solution for obtaining the benefits of Energy Efficiency in the most cost-efficient and fair manner possible.

105. We do not believe that the rate impact on the small commercial class of customers to be unfair or unreasonable. This customer class is more costly to serve than the larger higher load customers, and as such pays a higher per kWh rate. The differential between Staff's proposal and the Updated Plan is $1.99 a month for the average small commercial customer. The discussion surrounding this issue has demonstrated that this class of customer can achieve significant savings by

taking advantage of the programs being offered. The programs being approved provide opportunity for all customer classes to take advantage of the potential savings, and there is no evidence that any one class is not obtaining a benefit commensurate with its contribution.

106. TEP is no longer requesting a waiver for the 2012 or 2013 EEE Rule Standard. Given our approval of the Updated Plan, a waiver for 2012 is not necessary. Time remains in 2012 for TEP to obtain additional savings if it acts aggressively and immediately. How close to the 2012 goal TEP can come is uncertain, but TEP and other interested parties promote the Updated Plan as the best means at this point in time for TEP to make the best progress toward the 2012 goal. TEP anticipates coming close to the standard for 2013, and it would be premature to determine the need for a waiver for that year at this time.

107. The Updated Plan covers the year 2013, thus, TEP has effectively complied with the requirement to file an Implementation Plan for 2013, and there is no need to grant a waiver from filing that year's implementation plan under A.A.C. R14-2-2405(A).

108. The 2012 Rate Case may provide for a different implementation plan for the second half of 2013 and all of 2014. Although after the experience of this proceeding, we understand SWEEP's concerns about having specific proposed programs and measures on file in time to have them approved for 2014, implementation plan-year 2014 is beyond the scope of this proceeding. We agree with Staff that TEP should follow the EEE Rules regarding its 2014 Plan. The EEE Rules would require TEP to file its 2014 Implementation Plan by June 1, 2013.[131] Unless the Commission approves a different process in the 2012 Rate Case, we expect that TEP would make all of its required filings under the EEE Rules in a timely manner.

CONCLUSIONS OF LAW

1. TEP is an Arizona public service corporation within the meaning of Article XV, Section 2, of the Arizona Constitution.

2. The Commission has jurisdiction over TEP and over the subject matter of the application.

[131] A.A.C. R14-2-2405(A).

3. Re-opening Decision No. 70268 pursuant to A.R.S. § 40-252 is in the public interest.

4. Notice of the Implementation Plan, the hearing and the re-opening of the 2008 Rate Case pursuant to A.R.S. §40-252 were in accordance with law.

5. Based on the totality of the record, it is in the public interest to approve TEP's Updated Energy Efficiency Implementation Plan as discussed herein.

ORDER

IT IS THEREFORE ORDERED that Decision No. 70268 is re-opened pursuant to A.R.S. §40-252, and parties to Decision No. 70268 had notice that the Commission may modify the DSM Surcharge and Performance Incentive adopted in that Decision.

IT IS FURTHER ORDERED that Tucson Electric Power Company's Updated 2011-2012 Implementation Plan filed on May 3, 2012, is approved as discussed herein, with the following program budgets:

Program	Updated Plan Budget
Residential Sector	
Efficient Products	$2,453,253
Appliance Recycling	$755,095
Residential New Construction	$1,011,949
Existing Homes and Audit Direct Install	$2,304,525
Shade Tree	$250,681
Low Income Weatherization	$526,464
Multi-Family	$181,565
Residential Direct Load Control – Pilot	$167,864
Subtotal	$7,651,396
Commercial Sector	
C&I Comprehensive Program	$3,728,462
Commercial Direct Load Control	$1,431,445
Small Business Direct Install	$2,044,806
Commercial New Construction	$515,702
Bid for Efficiency- Pilot	$388,846
Retro-Commissioning	$336,493
Schools Facilities	$170,049
CHP Joint Program – Pilot	$22,000
Subtotal	$8,637,804
Behavioral Sector	
Home Energy Reports	$699,197
Behavioral Comprehensive Program	$724,151
Subtotal	$1,423,349

Support Sector	
Education and outreach	$155,250
Residential Energy Financing	$315,405
Codes Support	$73,288
Program Development, Analysis and Reporting Software	$276,115
Subtotal	$820,058
Total	$18,532,606

IT IS FURTHER ORDERED that Tucson Electric Power Company shall have the flexibility to transfer funding among cost-effective measures, within each program, to accommodate varying participation levels, and in cases where a measure is not approved, the funding associated with that measure shall be used to fund cost-effective measures within the same program, if possible.

IT IS FURTHER ORDERED that Tucson Electric Power Company shall have the flexibility to move up to 25 percent of funding from program to program within each sector, to accommodate varying participation levels, however, funding may not be transferred out of the Low-Income Weatherization program, and budget shifting shall only be done within, and not between the Residential and Non-Residential program sectors.

IT IS FURTHER ORDERED that Tucson Electric Power Company shall be allowed to increase the overall Implementation Plan budget by up to 5 percent if the increases are allocated to cost-effective measures and programs.

IT IS FURTHER ORDERED that Tucson Electric Power Company shall track federal standards, including those for lighting, to ensure that measures promoted by the Tucson Electric Power Company Updated Implementation Plan offer cost-effective savings over and above current baselines.

Appliance Recycling

IT IS FURTHER ORDERED that the Tucson Electric Power Company Appliance Recycling Program is approved and shall include both the refrigerator and freezer measures.

IT IS FURTHER ORDERED that Tucson Electric Power Company shall offer a $30 incentive, but that the overall budget for incentives shall not be decreased.

Multi-Family Housing Efficiency

IT IS FURTHER ORDERED that the Multi-Family Program is approved, with older, less efficient and low-income complexes as a primary focus.

Efficient Products

IT IS FURTHER ORDERED that the Efficient Products Program is approved, and shall continue to offer CFLs, with the addition of the Variable Speed Pool Pump, Advanced Power Strip and Pool Pump Timer measures.

IT IS FURTHER ORDERED that the Residential LED Light measure is not approved at this time.

IT IS FURTHER ORDERED that the lifespan of the CFL measures shall be re-evaluated for Tucson Electric Power Company's next Implementation Plan, and any changes to these assumptions shall be incorporated into cost-effectiveness and savings calculations for the Efficient Products Program.

Low-Income Weatherization

IT IS FURTHER ORDERED that the Low-Income Weatherization Program is approved for continuation as part of Tucson Electric Power Company's Implementation Plan.

IT IS FURTHER ORDERED that Tucson Electric Power Company shall be allowed to tie the eligibility level for this program to the eligibility level set for the federal Low-Income Home Energy Assistance Program ("LIHEAP"), so that the eligibility levels remain consistent over time.

Residential New Construction

IT IS FURTHER ORDERED that the Tier 1 measure is approved for continuation.

IT IS FURTHER ORDERED that the Tier 2 and Tier 3 measures shall be discontinued once the Residential New Construction Program has met its existing commitments for Tier 2 and Tier 3 homes.

Existing Homes and Audit Direct Install

IT IS FURTHER ORDERED that the Existing Homes and Audit Direct Install Program is approved for continuance.

Shade Tree

IT IS FURTHER ORDERED that the Shade Tree Program is approved for continuance.

Residential and Small Commercial Direct Load Control

IT IS FURTHER ORDERED that the Residential and Small Commercial Direct Load Control Program is approved to continue.

Bid for Efficiency

IT IS FURTHER ORDERED that the Tucson Electric Power Company Bid for Efficiency Pilot Program is approved as a two-year pilot program as discussed in the November 16, 2011, Staff Report in this docket.

IT IS FURTHER ORDERED that individual project incentives under this program shall be capped at 60 percent of the incremental costs of the efficiency measures included in the project.

Retro-Commissioning

IT IS FURTHER ORDERED that the Tucson Electric Power Company Retro-Commissioning Program is approved.

School Facilities

IT IS FURTHER ORDERED that the School Facilities Program is approved.

CHP

IT IS FURTHER ORDERED that the CHP Joint Program is approved.

Small Business Direct Install

IT IS FURTHER ORDERED that the Small Business Direct Install Program is approved to continue, with the proposed new measures in Tucson Electric Power Company's Implementation Plan.

C&I Comprehensive

IT IS FURTHER ORDERED that the C&I Comprehensive Program is approved, except for the proposed additional measure LED Street and Parking Lights.

Commercial Direct Load Control

IT IS FURTHER ORDERED that the C&I Direct Load Control Program is approved for continuation.

Commercial New Construction

IT IS FURTHER ORDERED that the Commercial New Construction Program, including the high-performance glazing measure, is approved for a second two-year period.

IT IS FURTHER ORDERED that Tucson Electric Power Company shall implement the recommendations in the "Assessment of Baseline Practices for Commercial New Construction" prepared by Navigant Consulting, including modification of Program performance thresholds (for public buildings) and Program applications to differentiate between public and private sector facilities.

IT IS FURTHER ORDERED that Measurement & Evaluation statistics for the Commercial New Construction Program shall be included in the DSM reports filed with the Commission.

IT IS FURTHER ORDERED that Tucson Electric Power Company shall continue the Commercial New Construction Program's outreach efforts by targeting building owner, developer and design professional organizations, lenders and lender industry associations, and local building code officials.

IT IS FURTHER ORDERED that information announcing the availability of the Commercial New Construction Program shall occupy a more prominent position on the Tucson Electric Power Company website.

Behavioral Comprehensive

IT IS FURTHER ORDERED that the Behavioral Comprehensive Program, and all its subprograms, is approved.

Residential Energy Financing

IT IS FURTHER ORDERED that the Residential Energy Efficiency Financing Program is approved for a two-year pilot as described in the November 16, 2011, Staff Report in this docket.

IT IS FURTHER ORDERED that Tucson Electric Power Company's request that the DSM Surcharge for the Residential Energy Financing Program be collected only from Residential Customers is not approved.

Energy Codes Enhancement

IT IS FURTHER ORDERED that Tucson Electric Power Company's Energy Codes Enhancement Program is approved, subject to implementation of the MER and Reporting protocols contained in the November 16, 2011, Staff Report in this docket, and that the program shall be renamed the Energy Code and Standards Enhancement Program.

IT IS FURTHER ORDERED that Tucson Electric Power Company is allowed under A.A.C. R14-2-2404(E) to also count toward meeting the Energy Efficiency Standard in A.A.C. R14-2-2404, for 2012 through 2020, up to one-third of the energy savings resulting from energy efficiency appliance standards, if the energy savings are quantified and reported through a measurement and evaluation study undertaken by Tucson Electric Power Company, and Tucson Electric Power Company demonstrates and documents its efforts in support of the adoption or implementation of the energy efficiency appliance standard, but shall not be used in the energy savings calculation used to determine Tucson Electric Power Company's performance incentive.

Education and Outreach

IT IS FURTHER ORDERED that the Education and Outreach (or Consumer Education and Outreach) Program is approved for continuation, with the modifications proposed in the November 16, 2011, Staff Report in this docket.

Program Development

IT IS FURTHER ORDERED that the budget amounts allocated to program development, analysis and reporting software costs shall be included in the budget, and are approved, as shown in Tucson Electric Power Company's Updated Implementation Plan.

DSMS

IT IS FURTHER ORDERED that the DSMS shall include: (i) the program spending approved by this Order; (ii) the Performance Incentives for 2010 and 2011 as calculated in the manner set forth in the 2008 Rate Case; and (iii) the Interim Performance Incentives, as calculated in the manner set forth in the Updated Plan.

IT IS FURTHER ORDERED that calculation of the DSMS shall take into account the current DSMS bank balance.

IT IS FURTHER ORDERED the DSMS shall be calculated as discussed herein and reset to $0.002497 per kWh for residential customers and to a 2.86 percent rate on all charges (except taxes and other governmental assessments) for all other customer classes until further Order of the Commission.

IT IS FURTHER ORDERED that the DSMS approved herein shall be effective as of October 1, 2012.

IT IS FURTHER ORDERED that the current surcharge filing and DSM reporting requirement shall be superseded by the reporting requirements of A.A.C. R14-2-2409.

IT IS FURTHER ORDERED that in any year during which Tucson Electric Power Company does not file an Implementation Plan, or does not address the DSM adjustor reset within its Implementation Plan, an adjustor reset application shall be filed separately, no later than April 1.

IT IS FURTHER ORDERED that Tucson Electric Power Company file a tariff in compliance with this Decision within 30 days of the effective date of this Decision.

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 __________________ 2012.

____
ERNEST G. JOHNSON
EXCUTIVE DIRECTOR

DISSENT ________________________

DISSENT ________________________

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