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Arizona Corporation Commission

DOCKETED

SEP 18 2012

Paul Bonavia,
Chief Executive Officer, Tucson Electric Power
One South Church Avenue, Suite 200
Tucson, Arizona 85701-1623

DOCKETED BY 

**Re: Tucson Electric Power Company's 2011 Energy Efficiency Implementation
Plan E-01933A-11-0055**

Dear Mr. Bonavia,

I was frankly surprised by your September 17th letter, which ironically expresses your "surprise and disappointment" that the Recommended Opinion and Order ("ROO") for Tucson Electric Power Company's ("TEP" or "Company") application for approval of its 2011-2012 Energy Efficiency Implementation Plan ("2011-2012 Plan") is not on the Commission's September 19/20, 2012 agenda and blames the Commission for "deny[ing] TEP's customers the cost-effective energy efficiency programs that they overwhelmingly support and deserve." Perhaps you are unaware that TEP's representatives specifically asked me not to schedule consideration of TEP's energy efficiency item on September 19th, leaving only a narrow and insufficient one- to two-hour window for the Commission to consider the item on the 20th. To now be blamed by TEP for failing to schedule the item in September is indeed ironic.¹

Moreover, I was disappointed to read your complaints about the 19 months that have elapsed since TEP first filed its 2011-2012 Plan, especially since the delay has been caused by TEP, not the Commission. It was TEP that proposed substantial changes to its DSM adjuster mechanism—sweetening by millions of dollars the performance incentive for TEP—outside of a rate case. In fact, when Commission Staff proposed on November 16, 2011 a \$25 million² energy efficiency budget to approve the very energy efficiency programs that you now complain are being "denied" to your customers, TEP strenuously

¹ Your letter also references TEP's "good faith" efforts to obtain a grant from the U.S. Department of Energy for Smart Grid Data Access in the amount of \$500,000. Left unexplained in your letter, though, is why TEP is unable to participate in the project without Commission acting on its 2011-2012 Plan. TEP can always utilize traditional utility financing mechanisms to finance prudent endeavors. Moreover, according to Denise Smith's testimony in the hearing, the Department of Energy program is related to the In-Home Display measure, which was approved by the Commission in Decision No. 71846, so utilization of the money collected via TEP's existing DSM surcharge appears to be permissible as well. Hrg Tr. at 277-78.

² Please note that Commission Staff's \$25 million budget would fund more energy efficiency than the \$18 million budget TEP now seeks.

objected to Staff's proposal, called it confiscatory and demanded a hearing on its 2011-2012 Plan. As an accommodation to TEP's objections, the Commission granted TEP's request for a hearing. Only in an upside down world does it make sense to hear you complain that a 2011-2012 energy efficiency plan for your company has not been approved: Staff's proposed energy efficiency plan for your company has not been approved because you demanded that it not be!

At this point, the Commission has concluded the hearing you requested, and the administrative law judge has recommended approval of the "Updated Plan" you filed with the Commission on May 3, 2012. However, Commission Staff filed exceptions to the ROO (a relatively rare occurrence in itself) because Staff continues to believe the implementation of a new performance incentive for TEP outside of a rate case is inappropriate and because Staff is concerned that the rate design advocated by TEP shifts too much of the cost of TEP's Updated Plan to small business.

I have not scheduled TEP's item for Commission consideration because I am still researching the significant legal issues that are raised by TEP's proposal. My concerns about the legality of the proposal are magnified by the fact that the settling parties supporting TEP's Updated Plan expressly stipulate that their support for the Plan is not precedential. If TEP's proposal to increase its performance incentive outside of a rate case is legal and appropriate in this case, then why do the settling parties object to establishing precedent on this matter for future cases? It is also notable that the parties have not filed legal briefs in this matter. I will likely request the parties to file closing and reply legal briefs, as is customary for Commission matters that have been set for a hearing.

In closing, however, I agree with your stated desire to avoid further delay. To this end, TEP can avoid further delay by withdrawing its request to increase its performance incentive outside of a rate case and supporting either Staff's proposed \$25 million plan or Staff's alternative \$18 million plan, as described in the ROO. The Commission could quickly approve a new energy efficiency plan if TEP would stop objecting to Staff's proposed plans as confiscatory and illegal.

Sincerely,



Gary Pierce
Chairman

cc

Commissioner Bob Stump	Ernest Johnson
Commissioner Sandra D. Kennedy	Janice Alward
Commissioner Paul Newman	Lyn Farmer
Commissioner Brenda Burns	Parties to the Docket