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Gary Pierce
Chairman
(602) 542-3935

ARIZONA CORPORATION COMMISSION

September 26, 2012
2012 SEP 27 PM 12 52

**Re: Request for Legal Briefs – Tucson Electric Power Company’s (TEP)
2011 Energy Efficiency Implementation Plan; E-01933A-11-0055**

Dear Parties:

It would help my consideration of the above referenced case if the parties would file closing and reply legal briefs. Please address all relevant legal issues in your briefs, including but not limited to, the following:

- (1) Does the Commission have legal authority to change the formula for calculating TEP’s energy efficiency performance incentives outside a rate case?
- (2) If the answer to the first question is yes, must the parties to a rate decision, which establishes a performance incentive formula, have notice within the pendency of the rate case that the Commission may change the performance incentive formula outside of either that rate case or a future one?
- (3) Decision No. 70628 adopts “the performance incentive for the DSM adjustor mechanism as recommended by Staff in its Direct Rate Design Testimony,” which provides TEP the “opportunity to earn up to 10 percent of the measured net benefits from the eligible DSM programs, capped at 10 percent of the actual program spending.” May the Commission adopt a new performance incentive that differs from the one adopted in Decision No. 70628? If so, must the Commission utilize either a new rate case or an ARS § 40-252 process to reopen Decision No. 70628?
- (4) Paragraphs 20.12 and 20.13 of the settlement agreement approved by Decision No. 70628 prohibit the signatories to the settlement agreement from “tak[ing], support[ing], or propos[ing] any action that is inconsistent with” the settlement agreement, and require them to actively defend the settlement agreement before the Commission, courts or other regulatory agencies. Is advocating for a change in TEP’s performance incentives consistent with the settling parties’ obligations under Paragraphs 20.12 and 20.13? Should the ARS § 40-252 process that is recommended in the ROO be broadened to relieve the parties from their obligations under Paragraphs 20.12 and 20.13?
- (5) The rate design advocated by the parties is expected to have a bigger impact on TEP’s small businesses customers than its other customers. Is the rate design inappropriately discriminatory?

Please file your initial closing brief by October 12th, and your reply brief by October 26th.

Thank you,

Gary Pierce
Chairman

CC

Commissioner Bob Stump	Ernest Johnson
Commissioner Sandra D. Kennedy	Steve Olea
Commissioner Paul Newman	Janice Alward
Commissioner Brenda Burns	Lyn Farmer

Arizona Corporation Commission
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