

1 In its Closing Brief, Staff effectively ignores that evidentiary and legal process that has
2 already taken place. Staff argues that “given the timing and complexity of the issues in this case,”
3 it would be better to evaluate the interim performance incentive in TEP’s pending rate case.²
4 Staff’s Closing Brief also raises new legal issues for the first time -- issues that the Joint
5 Respondents submit are not well taken for the reasons discussed below. Staff had an opportunity
6 to present these legal positions and substantive recommendations regarding the Updated Plan at
7 the evidentiary hearing. To the extent that Staff actually raised them, those legal positions and
8 recommendation were rejected in the ROO. Ultimately, putting those unfounded legal issues
9 aside, Staff appears to conclude that the Commission has the authority to approve the Updated
10 Plan and modify the performance incentive in this docket.

11 As set forth in their initial Response, Joint Respondents believe the Commission has the
12 legal authority to approve the Updated Plan. It is a bridge mechanism to increase energy
13 efficiency options in TEP’s service area well before the conclusion of the pending rate case.
14 TEP’s customers overwhelmingly support the Updated Plan and the Joint Respondents, even with
15 their diverse interests, believe that it is in the public interest to approve the Updated Plan at this
16 time.

17 **Reply to Staff’s Closing Brief**

18 **Issue 1:**

19 Contrary to Staff’s assertion, the Updated Plan will not change the structure of TEP’s
20 adjustor mechanism (the Demand-Side Management Surcharge (“DSMS”)) that was approved by
21 the Commission in TEP’s last rate case. The DSMS already is used to pass through costs of TEP’s
22 DSM and EE programs, including the performance incentives earned by TEP.³ The current
23 performance incentive varies from year-to-year, depending on TEP’s performance, and those
24 changes are ultimately captured through the DSMS.⁴ The proposed interim performance incentive
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26 ² Staff’s Closing Brief at 4.

27 ³ 2008 Settlement Agreement, Section 9.3.

⁴ 2008 Settlement Agreement, Section 9.5. Indeed, the DSMS has been increased since it was initially set
in the last rate case, including increased amounts of performance incentive being recovered through the

1 also will be recovered through the existing DSMS, thus nothing in the structure of the DSMS is
2 being modified under the Updated Plan. Moreover, contrary to the existing performance
3 incentive, the proposed interim performance incentive is even more beneficial to rate payers and is
4 in the public interest because it has a hard cap on the amount that could be recovered. As Staff
5 acknowledged, the existing performance incentive does not have any cap on the amount that could
6 be recovered under that incentive.⁵ Therefore, it is possible that more could be recovered under
7 the existing performance incentive than the proposed interim performance incentive.

8 Staff also has mischaracterized the purpose of performance incentives. Such incentives are
9 not specifically designed to “impact earnings erosion.” Performance incentives are intended to
10 incent utilities to use the DSMS (ratepayer) funds in a more efficient and cost-effective manner.
11 In other words, the Commission expressly provided for a performance incentive in its EE Rules to
12 essentially incent utilities to get the most “bang for the buck” from the DMS and EE programs.⁶
13 Performance incentives also are not incorporated into a utility’s rate case revenue requirement or
14 authorized rate of return

15 Staff’s eleventh hour citation to *Scates* is misplaced.⁷ *Scates v. Ariz. Corp. Comm’n*, 118
16 Ariz. 531, 578 P.2d 612 (App. 1978). As noted above, the current performance incentive has no
17 cap on incentives that could be recovered through the DSMS. Given that the proposed interim
18 incentive is capped, the amount of revenue to be recovered under the Updated Plan through the
19 DSMS is not necessarily more that under the current incentive. Nor will it result in TEP earning a
20 rate of return greater than what the Commission authorized in the last rate case. The DSMS will
21 simply allow for a pass-through of approved DSM costs. Therefore, *Scates* is not implicated by
22 the Updated Plan.

23 Further, Staff has presented a novel interpretation of A.A.C. 14-2-2411 that would
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25 DSMS. [Decision No. 71106 (June 5,2009) and Decision No. 71720 (June 3, 2010)]

26 ⁵ Hearing Transcript at 413-14.

27 ⁶ Hearing Transcript at 345-48.

⁷ Staff had never raised a *Scates* issue prior to its Closing Brief, although it had ample opportunity and invitation to do so.

1 effectively preclude the adoption of any performance incentive outside of a rate case. However,
2 such an interpretation is contrary to the plain language of Rule 2411, the administrative history of
3 Rule 2411 (as set forth in Joint Respondents' Initial Response), the discussions in the EE
4 rulemaking workshops, and sound public policy. It is important to have the performance incentive
5 aligned with the implementation plan at the time the implementation plan is approved, which the
6 Commission's EE Rule contemplates. Moreover, should the implementation plan change, the
7 Commission should have an opportunity to modify the performance incentive in conjunction with
8 the implementation plan changes. The Commission should not have to wait until the utility files a
9 rate case, which could be many years into the future. Staff's assertion that a utility may propose a
10 performance incentive outside of a rate case, but then must wait until a rate case before the
11 Commission may consider the proposal, makes no practical sense and is inconsistent with the
12 plain meaning and intent of A.A.C. R14-2-2411.

13 Finally, Staff's position contradicts what the Commission has already done under the EE
14 Rules. The Commission has already approved a performance incentive for UNS Electric outside
15 of a rate case.⁸ The Commission had authority to do so, just as it has authority to approve the
16 Updated Plan with a new performance incentive.

17 **Issue 2:**

18 Staff did not provide any additional comment on this issue. The Joint Respondents stand
19 by their initial comments on this issue.

20 **Issue 3:**

21 As Staff has acknowledged in its Closing Brief, the Commission has the authority under
22 A.R.S. § 40-252 to modify Decision No. 70628, including the performance incentive. Staff,
23 however, would prefer that the Commission wait until TEP's rate case to make any changes, citing
24 "regulatory certainty and finality."⁹ Although the Joint Parties disagree with Staff's application of
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27 ⁸ Decision No. 72747 (January 20, 2012).

⁹ Ironically, Decision No. 70628 has been amended once previously by the Commission to modify TEP's
line extension tariff. Decision No. 72501 (July 25, 2011).

1 *Scates*, this disagreement is easily resolved. Staff acknowledges that “amending a prior rate case
2 pursuant to ARS § 40-252 so as to effect a rate change is within the authority of the
3 Commission.”¹⁰ In fact, the ROO recommends that Decision No. 70268 be re-opened pursuant to
4 §40-252 for Due Process considerations of the parties to TEP’s previous rate case. Doing so also
5 satisfies Staff’s concern and would allow the customers served by TEP to reap the financial and
6 environmental benefits of the EE program in the Updated Plan. Postponing the 2012 EE
7 Implementation Plan until the conclusion of the pending rate case is not in the best interests of
8 TEP’s ratepayers.

9 There also have been several regulatory changes that undermine Staff’s assertion and that
10 are the impetus for the Update Plan. Since TEP’s last rate case, the Commission adopted the EE
11 Rules. As TEP has repeatedly stated, the Updated Plan is merely a bridge plan to allow it to
12 provide additional EE programs to TEP’s customers prior to the completion of its pending rate
13 case. TEP has had overwhelming support from its community for expanding the EE programs and
14 for approval of the Updated Plan. Further delay is not in the public interest.

15 Moreover, Staff’s concerns about notice and opportunity to be heard are not supported by
16 the facts. As Staff acknowledges, TEP did provide notice to the parties in its last rate case. As the
17 ROO noted and as Staff admits, no party has raised any concerns about the changes to the
18 performance incentive.¹¹ Staff also did not acknowledge that the Hearing Division has
19 subsequently provided additional notice to those parties. No party to TEP’s last rate case has
20 raised any concerns in response despite repeated notices and opportunities to do so.

21 **Issue 4:**

22 Again, Staff acknowledges that the Commission has authority to amend Decision No.
23 70628, including the performance incentive. However, Staff again states its preference to wait
24 until TEP’s pending rate case if its recommendations are not adopted. As stated above with
25 respect to Issue 3, the Joint Respondents believe it is in the public interest to approve the Updated
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27 ¹⁰ Staff Closing Brief at 3.

¹¹ ROO at 30-31.

1 Plan at this time.

2 In suggesting that the complexity of the issues require a more comprehensive evaluation,
3 Staff ignores that evidentiary hearing process that led to the thorough ROO on the legal and
4 substantive issues in this docket. Moreover, it should be emphasized that this is merely a bridge
5 implementation plan carefully designed to address a unique situation. In its rate case, TEP has
6 proposed a different manner of meeting the EE Standard. Deferring the issues on this interim
7 bridge mechanism to the rate case is not an efficient approach and acts to deprive TEP's customers
8 of timely additional EE benefits.

9 **Issue 5:**

10 **A. Staff Mischaracterizes the Cost Burden of the Rate Design Advocated by the**
11 **Parties on Small Commercial Customers**

12 Staff restates its belief that the rate design in the Updated Plan "requires the small business
13 customer class to shoulder a disproportionately higher percentage burden than the other customer
14 classes."¹² This claim is simply not correct. The rate design is an *equal percentage* charge for
15 every single non-residential customer. No non-residential customer would pay more than 2.86
16 percent of their bill, none would pay less. Thus, it is impossible for the small business customer
17 class – or any other non-residential customer for that matter – to pay a disproportionately higher
18 percentage burden than the other non-residential customer classes under this rate design.

19 Staff further asserts that its concern "is heightened by the fact that the small business
20 customer class already bears the highest proportionate burden of supporting energy efficiency
21 programs...."¹³ This assertion of "fact" is also incorrect. Under the current rate design, the small
22 business customer class bears among the *lowest* proportionate burdens of supporting energy
23 efficiency programs of any customer class.¹⁴ Staff attempts to buttress this misstatement of fact
24 by claiming it was confirmed by Mr. Higgins's testimony.¹⁵ On the contrary, Mr. Higgins

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26 ¹² Staff Closing Brief at 5, lines 19-21.

27 ¹³ Ibid at 5, lines 21-23.

¹⁴ Higgins Rebuttal at 2, line 20 to 3, line 3.

¹⁵ Closing Brief at 5, lines 21-23. Staff repeats this claim at 6, lines 9-11.

1 provided no support whatsoever for this claim in his testimony. The full excerpt from the
2 transcript cited by Staff in support of its claim reads as follows:

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4 **Mr. Hains:** When you look at it this way then, if we were looking at it
5 from a perspective of an equal percentage-of-bill, would you agree that the
6 starting point, that using the per kilowatt hour basis that is used currently, that if
7 instead we were to use an equal percentage-of-bill format, that the small
8 commercials are paying more per kilowatt hour for usage and for the EE
9 contribution under an equal percentage-of-bill format?

10 **Mr. Higgins:** If we were to change, but **that's not where we are today.**
11 If we were to change to an equal percentage-of-bill format, yes, a small
12 commercial customer would pay more per kilowatt hour for energy and more per
13 kilowatt hour for EE, and they **should** because they are more expensive to serve
14 per kilowatt hour. And if they save a kilowatt hour by participating in a program,
15 they're **going to save more money per kilowatt hour than a large customer**
16 **would.**¹⁶

17 There is nothing in this exchange that supports Staff's claim that the small business
18 customer class currently bears the highest proportionate burden of supporting energy efficiency
19 programs. Rather, the exchange addresses a different subject: the implications of moving to an
20 equal percentage-of-bill format.

21 In the exchange, Mr. Higgins agrees that if an equal percentage rider were converted back
22 into a cents-per-kWh charge, the cents-per-kWh rate would be higher for small commercial
23 customers than for larger non-residential customers. He goes on to point out that this outcome is
24 reasonable because it is more expensive for the utility to generate and deliver one kilowatt-hour to
25 a small non-residential customer than to a large industrial customer and notes that because a small
26 commercial customer pays a higher rate per-kWh for power than larger customers, the small
27 commercial customer will save more money than a large customer for every kilowatt-hour of
28 reduced energy consumption.¹⁷

29 In short, Staff has misconstrued both the status quo and the proposed rate design in
30 fundamental ways. Contrary to Staff's claim, small commercial customers are **not** shouldering a

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37 ¹⁶ Hearing Transcript at 201:19 – 202:10 (emphasis added).

¹⁷ See also Higgins Rebuttal at 5-6.

1 higher proportionate burden for EE programs under the current rate design – in fact it is among the
2 lowest proportionate burdens. And contrary to Staff’s claim, the rate design in the Updated Plan
3 does **not** require the small business customer class to shoulder a disproportionately higher
4 percentage burden than the other customer classes, but rather the **same** percentage burden as every
5 other non-Residential customer.

6 **B. Staff’s Contention that the Interests of Small Commercial Customers Have**
7 **Not Been Adequately Considered by the Parties is Misplaced.**

8 Staff asserts that there were no advocates for small business customers among the Parties
9 and claims that its recommendations “reflect a balance of the interests of all customer classes as
10 well as the utility interests.” Contrary to Staff’s assertion, the interests of small commercial
11 customers were indeed taken into account in the negotiation process and the Updated Plan
12 supported by the Joint Respondents. The advocacy by RUCO and AECC for lower DSMS
13 charges than was initially proposed by TEP extended not just to residential and industrial
14 customers – but to **all** customers.

15 It is particularly revealing to consider how the small commercial customer class would
16 have fared under the recommended positions advocated by Staff in this proceeding and how they
17 fare under the rate design in the Updated Plan. In its Open Meeting Memorandum docketed
18 February 12, 2012, Staff recommended a DSMS of \$.003877 per kWh for all customers –
19 including small commercial customers. Staff’s own analysis in that Memorandum demonstrates
20 that the rate impact on small commercial customers Staff recommended is significantly greater
21 than the Updated Plan. The tables on page 4 of Staff’s Memorandum reveal that adoption of
22 Staff’s February 12 recommendation would have increased small commercial customer rates by
23 3.43%.¹⁸ However, in contrast, as shown in Table 4 of Exhibit DS-1 in the Direct Testimony of
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25 ¹⁸ The top table on page 4 of Staff’s Memorandum shows that the rate increase for a typical GS customer
26 would be \$595.32 if a DSMS of \$.003608/kWh were adopted (\$.003608 x 165,000 kWh = \$595.32). Using
27 these same parameters, if the DSMS were set at \$.003877/kWh as recommended by Staff in the
Memorandum, the rate increase would be \$639.71 (\$.003877 x 165,000 kWh = \$639.71). Applying this
increase to the bottom table on page 4, it shows a rate increase of 3.43% ($\$639.71 / (19,245.57 - 595.32) = 3.43\%$).

1 Denise Smith, the average rate increase on small commercial customers from the Updated Plan is
2 only half that amount: 1.71%.


3 The proof is in the final result negotiated by the Parties. Because of the efforts of the
4 Parties, small commercial customers will receive the benefit of EE charges in the final package
5 negotiated by the Parties that are materially lower than the EE charges advocated by Staff in
6 February. The negotiation process encouraged by the Commission worked, and small commercial
7 customers benefited from it.

8 **Conclusion**

9 The Joint Respondents reiterate that there are no legal impediments to preclude the
10 Commission from approving the Updated Plan as set forth in the ROO. Joint Respondents request
11 that the Commission consider and approve the Updated Plan as expeditiously as possible.

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13 RESPECTFULLY SUBMITTED this 26th day of October 2012.

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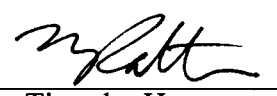
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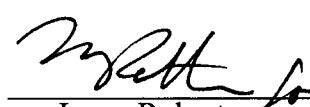
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