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March 21, 2013

Via FedEx

Docket Control Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Re: E-01933A-12-0291 Sierra Club Post-Hearing Brief

Please find enclosed the original and thirteen (13) copies of Sierra Club's Post-Hearing Brief in the above-referenced docket. This document is also being served by e-mail to all parties of record.

Please let me know if you have any questions. Thank you.

Respectfully submitted,

Derek Nelson, Program Assistant
Sierra Club
85 Second Street, Second Floor
San Francisco, CA 94105
derek.nelson@sierraclub.org

cc: Service List

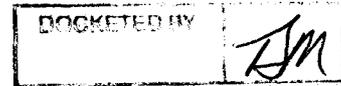


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MAR 22 2013



1 Travis Ritchie
CA State Bar No. 258084
2 (Admitted *pro hac vice* Nov. 8, 2012)
Sierra Club Environmental Law Program
3 85 Second Street, 2nd Floor
San Francisco, CA 941095
4 Email: travis.ritchie@sierraclub.org

5 Attorney for Sierra Club

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7 **Before the Arizona Corporation Commission**

8 BOB STUMP, Chairman
GARY PIERCE
9 BRENDA BURNS
SUSAN BITTER-SMITH
10 ROBERT BURNS

11 IN THE MATTER OF THE APPLICATION
12 OF TUCSON ELECTRIC POWER
COMPANY FOR THE ESTABLISHMENT OF
13 JUST AND REASONABLE RATES AND
CHARGES DESIGNED TO REALIZE A
14 REASONABLE RATE OF RETURN ON THE
FAIR VALUE OF ITS OPERATIONS
15 THROUGHOUT THE STATE OF ARIZONA.

Docket No. E-01933A-12-0291

**SIERRA CLUB
POST-HEARING BRIEF**

16
17 In accordance with the direction of the Administrative Law Judge at the March 4, 2013
18 pre-hearing conference, Sierra Club hereby submits the following post-hearing brief addressing
19 the Proposed Settlement Agreement in the above-captioned proceeding.

20 Sierra Club filed direct testimony in this proceeding on December 21, 2012
21 recommending that the Arizona Corporation Commission (“Commission”) reject Tucson Electric
22 Power’s (“TEP”) proposed Environmental Compliance Adjustor (“ECA”). After filing direct
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1 testimony, the parties engaged in several rounds of confidential settlement negotiations.¹
2 Ultimately, the parties agreed to, among other things, Section 9 of the Proposed Settlement
3 Agreement, which limited the ECA tracking mechanism to a cost cap equal to 0.25 percent of
4 TEP's total retail revenue. Although Sierra Club continues to believe that the ECA is not in the
5 best interest of customers, Sierra Club did not oppose that section of the Proposed Settlement
6 Agreement because the implementation of the cost cap limited the harmful incentive that the
7 ECA will create.

8 Notwithstanding the above-stated position on the ECA, Sierra Club did not sign the
9 Proposed Settlement Agreement because of its provisions related to the Lost Fixed Cost
10 Recovery ("LFCR") mechanism and the proposed increase to the basic service charge. Sierra
11 Club joins the Southwest Energy Efficiency Project ("SWEEP") in opposition to those
12 provisions. Sierra Club did not present testimony on those issues and did not participate in the
13 hearings on the Proposed Settlement Agreement; however, Sierra Club substantially agrees with
14 the testimony provided by SWEEP on that issue.

15 **I. ENVIRONMENTAL COMPLIANCE ADJUSTOR**

16 The proposed ECA would allow TEP to recover costs, subject to the Proposed Settlement
17 Agreement cap of 0.25 percent of total retail revenue, associated with new investments in
18 environmental emissions controls and in adding and acquiring new generating capacity without
19 waiting for the Company's next general rate case. For expenditures that are not yet in service by

20 ¹ Sierra Club's attorney, Travis Ritchie, participated in several telephone conferences to discuss
21 and negotiate the terms of the Proposed Settlement. However, given the confidential designation
22 of the settlement discussions, Mr. Ritchie was unable to convey any proposed terms or
23 conditions to Sierra Club members and decision makers who had not signed the confidentiality
24 agreement. As a volunteer-based grassroots organization, Sierra Club policy prohibits individual
25 members from entering into confidentiality agreements, such as the TEP confidentiality
agreement in this proceeding, that could potentially subject the Sierra Club to liability for any
accidental or unintended breach of confidentiality. As a result, the confidential nature of the
settlement discussions severely inhibited Sierra Club's ability to meaningfully participate.

1 the end of the year, TEP would be allowed to recover the on-going carrying costs on the
2 investments. For a plant that is placed in service by year-end, TEP would recover a return on the
3 investment, depreciation expenses, taxes, and the associated O&M costs.²

4 In direct testimony, the Company stated that it is facing “capital investments of
5 approximately \$300 million over the next five years to cover the costs associated with new
6 environmental mandates affecting several power plants.”³ Depending on the final outcome of
7 certain proposed regulations, TEP’s total capital outlays could approach \$400 million, in addition
8 to annual increases in O&M costs in the tens of millions of dollars.”⁴ The ECA as originally
9 proposed would have made recovery of those costs much easier for TEP by shifting the risks of
10 imprudent expenditures onto customers. Indeed, under the ECA as originally proposed, TEP
11 would have been able to recover the costs of those massive capital expenses without first
12 subjecting its decision making to a prudence review in a rate case.

13 The ECA as originally proposed would have eliminated the regulatory lag for certain
14 major capital expenses related to TEP’s coal fleet by automatically allowing such expenses to
15 flow through to rates. Such a mechanism presupposes that major capital expenses for
16 environmental compliance costs for TEP’s coal facilities are unavoidable, and the ECA as
17 originally proposed would have eliminated any incentive for TEP management to consider
18 whether alternatives to major capital expenditures at aging coal facilities could provide a better
19 value for ratepayers. With the Proposed Settlement Agreement’s cost cap, that risk is diminished;
20 however, the ECA mechanism still allows TEP to shift some of its risk of recovery on to
21 customers.

23 _____
24 ² Direct Testimony of David A. Schlissel, at page 4.

25 ³ Direct Testimony of Paul J. Bonavia, at page 14, lines 18-26.

⁴ Direct Testimony of David GT. Hutchens, at page 24, line 17, to page 25, line 15.

1 Sierra Club did not oppose the ECA provisions in the Proposed Settlement Agreement
2 because the imposition of the 0.25 percent cost cap reduces the incentive for TEP to blindly
3 proceed with risky capital investments at its coal facilities. Nevertheless, Sierra Club continues
4 to assert that sound utility practices require TEP to subject all of its capital expenditure decision
5 to the Commission for a prudence review prior to allowing recovery of those costs. These
6 ratemaking principles should apply regardless of whether the capital expenses are in excess of
7 \$400 million, as originally contemplated by TEP, or whether they are of a much smaller
8 magnitude and fall within the proposed cost cap.

9 **II. FULL DECOUPLING IS PREFERABLE TO THE LOST FIXED COST RECOVERY MECHANISM**

10 Sierra Club substantially agrees with the testimony filed by SWEEP regarding the LFCR.
11 Full revenue decoupling would better address the TEP financial disincentives relative to energy
12 efficiency than the LFCR provisions of the Proposed Settlement Agreement. The LFCR
13 mechanism in the Proposed Settlement Agreement does nothing to address the TEP financial
14 incentive to encourage customers to use more and effectively waste more electricity. The LFCR
15 mechanism also does much less for consumers than full revenue decoupling. Under full revenue
16 decoupling customer rates can be adjusted up or down. With the LFCR mechanism, customers
17 get an automatic rate increase.

18 Energy efficiency, as the least cost energy resource, should be strongly supported by the
19 Arizona Corporation Commission in any rate case decision and even more enthusiastically by
20 TEP and the Residential Utility Consumer Office. Energy efficiency not only saves money for
21 individual customers who take advantage of energy efficiency programs, it also saves money for
22 all ratepayers by lowering the total revenue requirement needs of TEP compared to the
23 alternative of building additional power plants.

1 **III. RECOMMENDATION**

2 Sierra Club recommends that the Commission reject the Proposed Settlement Agreement
3 submitted by TEP in this proceeding. The Commission should adopt SWEEP's recommendation
4 to substitute full revenue decoupling in place of the LFCR mechanism proposed in the
5 Settlement Agreement because full revenue decoupling more completely and effectively reduces
6 utility company disincentives for the support of activities that eliminate energy waste and reduce
7 utility bills.

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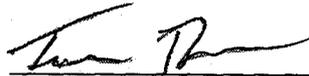
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Dated this 21st day of March, 2013

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Travis Ritchie
Sierra Club Environmental Law Program
85 Second Street, 2nd Floor
San Francisco, CA 94105
Phone: 415-977-5727
Fax: 415-977-5793
travis.ritchie@sierraclub.org
Attorney for Sierra Club

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1 The original and thirteen (13) copies
of the foregoing will be filed the 22nd
2 day of March 2013 with:

3 Docket Control Division
Arizona Corporation Commission
4 1200 West Washington Street
Phoenix, Arizona 85007

5 A copy of the same served by e-mail
6 or first class mail on or before
that same date to:

7 All Parties of Record:

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