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# OPEN MEETING

## MEMORANDUM

Arizona Corporation Commission

**DOCKETED**

DEC 31 2014

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AZ CORP COMMISSION

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TO: THE COMMISSION

FROM: Utilities Division

DATE: December 31, 2014

DOCKETED BY 

RE: IN THE MATTER OF THE APPLICATION OF ARIZONA ELECTRIC POWER COOPERATIVE, INC. FOR THE APPROVAL OF A TEMPORARY TARIFF RIDER (DOCKET NO. E-01773A-14-0379)

**ORIGINAL**

### INTRODUCTION

On October 31, 2014, Arizona Electric Power Company, Inc. ("AEPSCO") filed an application with the Arizona Corporation Commission ("Commission") requesting approval of a temporary rate rider to return to its six Class A members approximately \$7.8 million for excessive coal transportation costs AEPSCO paid in 2009-2011.

### BACKGROUND

AEPSCO is a not-for-profit, generation and transmission cooperative that was initially granted a Certificate of Convenience & Necessity ("CC&N") by the Commission in Decision No. 33677, dated February 13, 1962. AEPSCO provides generation and transmission services to three all-requirements distribution cooperative members ("ARM" or collectively "ARMs")<sup>1</sup> and three partial-requirements distribution cooperative members ("PRM" or collectively "PRMs"). The ARMs receive all of their power and energy needs from AEPSCO while each PRM only commits to purchase a fixed amount of capacity from AEPSCO and may secure additional power and energy from other sources. AEPSCO's board members consist of officers from each Class A member cooperative.

### APPLICATION

In December 2008, AEPSCO filed a complaint with the Surface Transportation Board ("STB"), challenging the reasonableness of the rates established by BNSF Railway Company (formerly Burlington Northern and Santa Fe Railway) and Union Pacific Railroad Company (collectively "Railroads").<sup>2</sup> The complaint requested that the STB prescribe reasonable rates and

<sup>1</sup>AEPSCO's three ARMs are Duncan Valley Electric Cooperative, Inc.; Graham County Electric Cooperative, Inc.; and Anza Electric Cooperative, Inc. Anza Electric Cooperative is located in southern California. AEPSCO's three PRMs are Mohave Electric Cooperative, Inc.; Sulphur Springs Valley Electric Cooperative, Inc.; and Trico Electric Cooperative, Inc.

<sup>2</sup>STB is the regulatory agency which has jurisdiction over railroad rates, service issues, and rail restructuring transactions (mergers, line sales, line construction, and line abandonments); certain trucking company, moving van, and non-contiguous ocean shipping company rate matters; certain intercity passenger bus company structure, financial, and operational matters; and rates and services of certain pipelines not regulated by the Federal Energy Regulatory Commission.

order reparations for overcharges for coal transportation. The STB ruled in AEPCO's favor, establishing lower rates and awarding approximately \$9.2 million dollars to AEPCO for coal transportation costs tendered from January 2009 through December 2011.<sup>3</sup> The Railroads appealed the STB Decision to the District of Columbia Court of Appeals ("Court of Appeals"). However, the Court of Appeals upheld the STB Decision.<sup>4</sup> As a result, AEPCO received a total of \$9,245,393.15 in reparations from the railroads.

During the time AEPCO overpaid fees to the Railroads, it had in place Firm Power Sale Agreements ("Agreements") with Salt River Project Agricultural Improvement and Power District ("SRP") and Electrical District No. 2 Pinal County ("ED2"). The monthly energy charges paid by SRP and ED2 to AEPCO, as part of the Agreements, included rail transportation costs as a component of the cost of coal. Therefore, pursuant to the Agreements, and as a result of the STB Decision, AEPCO owed SRP and ED2 \$1,228,194.93 and \$202,735.82, respectively, which has already been paid. The remaining funds of \$7,814,462.41 would be allocated to AEPCO's six Class A member cooperatives based on each member's usage of AEPCO's coal-fired generation during the 2009-2011 timeframe, subject to each member's maximum allowable capacity and energy agreements with AEPCO.<sup>5</sup>

AEPCO is proposing to refund each Class A member cooperative its share of the \$7,814,462.41 in reparations over a 24-month period. In addition, AEPCO's board has approved the timeframe for repayment as well as the calculations of the repayment amounts. The proposed Temporary Tariff Rider No. 1 would become effective retroactively on January 1, 2015. Below is a table that shows the allocation of the total amount to be returned to AEPCO's members.

Cooperative	Monthly Refund Amount	Total Amount Refunded
Anza	\$7,433.69	\$178,408.67
Duncan Valley	\$4,182.26	\$100,374.22
Graham County	\$24,377.15	\$585,051.65
Mohave	\$101,459.27	\$2,435,022.46
Sulphur Springs	\$99,856.47	\$2,396,555.18
Trico	\$88,293.76	\$2,119,050.23
<b>Member Total</b>	<b>\$325,602.60</b>	<b>\$7,814,462.41</b>

## RECOMMENDATIONS

<sup>3</sup> STB Decision No. 41181; November 22, 2011

<sup>4</sup> BNSF Ry. Co. v. Surface Transp. Bd., 748 F.3d 1295 (D.C. Cir. 2014)

<sup>5</sup> The allocated rates include 2012 average coal costs because those costs were partially based on coal inventory from prior years which included the excessive rail transportation costs.

Staff has reviewed AEPCO's application and recommends approval of its proposed Temporary Tariff Rider No. 1. In addition, Staff believes that a retroactive effective date of January 1, 2015, is appropriate, and therefore recommends approval. Further, Staff recommends that AEPCO file with Docket Control, as a compliance item, a revised Temporary Tariff Rider No. 1, consistent with the Decision in this matter within 15 days of the effective date of the Decision.



for

Steven M. Olea  
Director  
Utilities Division

SMO:CLA:sms\ML

ORIGINATOR: Candrea Allen

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BEFORE THE ARIZONA CORPORATION COMMISSION

- BOB STUMP  
Chairman
- GARY PIERCE  
Commissioner
- BRENDA BURNS  
Commissioner
- BOB BURNS  
Commissioner
- SUSAN BITTER SMITH  
Commissioner

IN THE MATTER OF THE APPLICATION  
 OF ARIZONA ELECTRIC POWER  
 COOPERATIVE, INC. FOR THE  
 APPROVAL OF A TEMPORARY TARIFF  
 RIDER

DOCKET NO. E-01773A-14-0379  
 DECISION NO. \_\_\_\_\_  
ORDER

Open Meeting  
 January 13 and 14, 2015  
 Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Arizona Electric Power Company, Inc. ("AEPSCO") is certificated to provide electric service as a public service corporation in the State of Arizona

INTRODUCTION

2. On October 31, 2014, AEPSCO filed an application with the Arizona Corporation Commission ("Commission") requesting approval of a temporary rate rider to return to its six Class A members approximately \$7.8 million for excessive coal transportation costs AEPSCO paid in 2009-2011.

BACKGROUND

3. AEPSCO is a not-for-profit, generation and transmission cooperative that was initially granted a Certificate of Convenience & Necessity ("CC&N") by the Commission in Decision No. 33677, dated February 13, 1962. AEPSCO provides generation and transmission services to three all-

1 requirements distribution cooperative members (“ARM” or collectively “ARMs”)<sup>1</sup> and three partial-  
2 requirements distribution cooperative members (“PRM” or collectively “PRMs”).

3 4. The ARMs receive all of their power and energy needs from AEPCO while each PRM  
4 only commits to purchase a fixed amount of capacity from AEPCO and may secure additional power  
5 and energy from other sources. AEPCO’s board members consist of officers from each Class A  
6 member cooperative.

### 7 APPLICATION

8 5. In December 2008, AEPCO filed a complaint with the Surface Transportation Board  
9 (“STB”), challenging the reasonableness of the rates established by BNSF Railway Company (formerly  
10 Burlington Northern and Santa Fe Railway) and Union Pacific Railroad Company (collectively  
11 “Railroads”).<sup>2</sup> The complaint requested that the STB prescribe reasonable rates and order reparations  
12 for overcharges for coal transportation.

13 6. The STB ruled in AEPCO’s favor, establishing lower rates and awarding  
14 approximately \$9.2 million dollars to AEPCO for coal transportation costs tendered from January  
15 2009 through December 2011.<sup>3</sup> The Railroads appealed the STB Decision to the District of Columbia  
16 Court of Appeals (“Court of Appeals”). However, the Court of Appeals upheld the STB Decision.<sup>4</sup>  
17 As a result, AEPCO received a total of \$9,245,393.15 in reparations from the railroads.

18 7. During the time AEPCO overpaid fees to the Railroads, it had in place Firm Power  
19 Sale Agreements (“Agreements”) with Salt River Project Agricultural Improvement and Power  
20 District (“SRP”) and Electrical District No. 2 Pinal County (“ED2”). The monthly energy charges  
21 paid by SRP and ED2 to AEPCO, as part of the Agreements, included rail transportation costs as a  
22 component of the cost of coal.

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24 <sup>1</sup>AEPCO’s three ARMs are Duncan Valley Electric Cooperative, Inc.; Graham County Electric Cooperative, Inc.; and  
25 Anza Electric Cooperative, Inc. Anza Electric Cooperative is located in southern California. AEPCO’s three PRMs are  
26 Mohave Electric Cooperative, Inc.; Sulphur Springs Valley Electric Cooperative, Inc.; and Trico Electric Cooperative, Inc.

27 <sup>2</sup> STB is the regulatory agency which has jurisdiction over railroad rates, service issues, and rail restructuring transactions  
(mergers, line sales, line construction, and line abandonments); certain trucking company, moving van, and non-contiguous  
28 ocean shipping company rate matters; certain intercity passenger bus company structure, financial, and operational matters;  
and rates and services of certain pipelines not regulated by the Federal Energy Regulatory Commission.

<sup>3</sup> STB Decision No. 41181; November 22, 2011

<sup>4</sup> BNSF Ry. Co. v. Surface Transp. Bd., 748 F.3d 1295 (D.C. Cir. 2014)

8. Therefore, pursuant to the Agreements, and as a result of the STB Decision, AEPCO owed SRP and ED2 \$1,228,194.93 and \$202,735.82, respectively, which has already been paid. The remaining funds of \$7,814,462.40 would be allocated to AEPCO's six Class A member cooperatives based on each member's usage of AEPCO's coal-fired generation during the 2009-2011 timeframe, subject to each member's maximum allowable capacity and energy agreements with AEPCO.<sup>5</sup>

9. AEPCO is proposing to refund each Class A member cooperative its share of the \$7,814,462.40 in reparations over a 24-month period. In addition, AEPCO's board has approved the timeframe for repayment as well as the calculations of the repayment amounts. The proposed Temporary Tariff Rider No. 1 would become effective retroactively on January 1, 2015. Below is a table that shows the allocation of the total amount to be returned to AEPCO's members.

Cooperative	Monthly Refund Amount	Total Amount Refunded
Anza	\$7,433.69	\$178,408.67
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Trico	\$88,293.76	\$2,119,050.23
<b>Member Total</b>	<b>\$325,602.60</b>	<b>\$7,814,462.41</b>

## RECOMMENDATIONS

10. Staff has reviewed AEPCO's application and recommends approval of its proposed Temporary Tariff Rider No. 1. In addition, Staff believes that a retroactive effective date of January 1, 2015, is appropriate, and therefore recommends approval. Further, Staff recommends that AEPCO file with Docket Control, as a compliance item, a revised Temporary Tariff Rider No. 1, consistent with the Decision in this matter within 15 days of the effective date of the Decision.

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<sup>5</sup>The allocated rates include 2012 average coal costs because those costs were partially based on coal inventory from prior years which included the excessive rail transportation costs.

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CONCLUSIONS OF LAW

1. Arizona Electric Power Cooperative, Inc. is a public service corporation within the meaning of Article XV, of the Arizona Constitution.

2. The Commission has jurisdiction over Arizona Electric Power Cooperative, Inc. and the subject matter of the application.

3. The Commission, having reviewed the application and Staff's memorandum dated December 31, 2014, concludes that it is in the public interest to authorize Arizona Electric Power Cooperative, Inc.'s Temporary Tariff Rider No. 1 to refund monies owed to its member cooperatives.

ORDER

IT IS THEREFORE ORDERED that the Arizona Electric Power Cooperative, Inc. Temporary Tariff Rider No. 1, is hereby approved as discussed herein.

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1 IT IS FURTHER ORDERED that the Temporary Tariff Rider No. 1 shall become effective  
2 retroactively, as of January 1, 2015.

3 IT IS FURTHER ORDERED that Arizona Electric Power Cooperative, Inc. shall file with  
4 Docket Control, as a compliance item, a revised Temporary Tariff No.1, consistent with the Decision  
5 in this matter within 15 days of the effective date of the Decision.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

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**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

SMO:CLA:sms/ML

1 SERVICE LIST FOR: Arizona Electric Power Cooperative, Inc.  
2 DOCKET NO.: E-01773A-14-0379

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