

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH, Chairman Arizona Corporation Commission
 BOB STUMP
 BOB BURNS
 DOUG LITTLE
 TOM FORESE

DOCKETED

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 AZ CORP COMMISSION
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 APPLICATION

IN THE MATTER OF APPLICATION OF TUCSON) DOCKET NO. E-1933A-15-0344
 ELECTRIC POWER COMPANY FOR AN ORDER)
 PERMITTING EXPENSES RELATED TO)
 PURSUING TAX REFUNDS TO BE RECOVERED)
 THROUGH ITS PURCHASE POWER AND FUEL)
 ADJUSTMENT CLAUSE MECHANISM)

E-01933A-15-0344

Tucson Electric Power Company ("TEP" or the "Company"), through undersigned counsel, hereby requests that the Commission grant TEP authority to pass certain expenses through its purchase power and fuel adjustment clause ("PPFAC") that are related to pursuing certain tax refunds. Any fuel-related tax refunds (or similar refunds) are credited to TEP customers through its PPFAC ("PPFAC Tax Refunds"). However, TEP does not have the ability to similarly pass through expenses associated with the pursuit of PPFAC Tax Refunds, even though those refunds directly benefit its customers. The inability to recover those expenses acts as an unfortunate disincentive to pursuing tax refunds that could directly benefit customers. Therefore, TEP requests the Commission issue an order modifying its PPFAC to allow recovery of reasonable outside professional expenses incurred in seeking PPFAC Tax Refunds.

I. Background.

TEP is currently pursuing refunds of tax assessments in both New Mexico and Arizona. In New Mexico, TEP was assessed taxes on coal purchased in New Mexico for use at Springerville Generating Station ("SGS"). TEP currently obtains coal supply for SGS from Peabody Coal Sales at its Lee Ranch and El Segundo Mines, which are located near Grants, New Mexico. SGS provides base load energy to TEP's retail customers. TEP also has been assessed taxes on natural gas purchased for use at Luna Generating Facility ("Luna"), which is located in New Mexico.

1 Luna is operated as a peaking plant during high demand periods and to displace purchased power
2 requirements. Finally, in Arizona, TEP was assessed taxes related to purchases of lime used at
3 SGS.

4 TEP believes that it may be eligible to receive up to approximately \$17 million in refunds
5 for taxes the State of New Mexico assessed between 2012 and 2014 for SGS-related coal
6 purchases; and up to \$2.9 million in refunds for taxes the State of New Mexico assessed between
7 2011 and 2014 for Luna-related natural-gas purchases. In addition, TEP believes that it may be
8 entitled to approximately \$5 million for tax refunds from Arizona for SGS-related lime purchases.

9 TEP has already filed a claim against the State of New Mexico for natural-gas purchases
10 for Luna made between July and December, 2011, prior to the expiration of the statute of
11 limitations in order to preserve this potential benefit for its customers. The Company is moving
12 forward with additional claims related to subsequent natural gas purchases and coal purchases.
13 TEP attempts to use internal personnel to pursue tax refunds to the extent possible. However,
14 pursuing such refunds often requires particular expertise that TEP personnel do not possess,
15 particularly in states outside of Arizona. For example, TEP does not have the in-house legal
16 expertise to pursue New Mexico tax claims. Therefore, TEP has retained New Mexico tax
17 consultants and counsel to pursue its claims for refund against the State of New Mexico. It will
18 also need to retain outside counsel for limited purposes in pursuit of Arizona tax refunds.

19 To the extent TEP is successful in its pursuit of these tax refunds, the tax refunds would
20 provide significant direct benefits to TEP's customers because they are passed through the PPFAC
21 as a credit. However, pursuing tax refunds is never a certain endeavor. TEP seeks refunds only
22 when there is a reasonable potential for success. Moreover, TEP has attempted to mitigate the
23 costs of pursuing PPFAC Tax Refunds. For example, in New Mexico, TEP was able to retain
24 professional assistance on a contingency fee basis. Therefore, there is no cost if the appeal is not
25 successful. However, under the current PPFAC, should TEP obtain a PPFAC Tax Refund, TEP
26 would have to credit the full amount of the refund through the PPFAC without being able to offset
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1 the related fees incurred to obtain those benefits. Given that potential, inequitable result, TEP has
2 a disincentive to pursue such tax refunds.

3 **II. Authority Requested.**

4 TEP seeks authority to pass through its PPFAC any reasonable and prudent outside
5 professional expenses it incurs in pursuing PPFAC Tax Refunds. Such authority would encourage
6 the Company to actively pursue tax refunds that would directly benefit its customers. However,
7 TEP's PPFAC currently does not provide for such a pass-through and the PPFAC would need to
8 be modified to provide such authority. The Company's PPFAC Plan of Administration ("PPFAC
9 POA"), at Section 9.B, does allow for "Other Allowable Costs/Credits" to be passed through the
10 PPFAC, to be expanded upon order of the Commission. TEP requests that the Commission
11 invoke that existing provision in the PPFAC to add the recovery of expenses related to pursuing
12 fuel-related tax refunds.

13 While the timing of any tax refunds is uncertain, TEP seeks Commission authority now, so
14 that the expenses related to the recovery of fuel-related tax refunds can be passed through the
15 PPFAC. TEP proposes that the following language be added to Section 9.B of its PPFAC POA:

16 "Outside Professional fees and expenses incurred in seeking tax refunds that are creditable
17 through the PPFAC."

18 **III. Conclusion.**

19 WHEREFORE, TEP requests that the Commission issue an Order granting TEP:

- 20 (1) Authority to recover through the PPFAC its reasonable and prudent outside
21 professional fees and expenses incurred in pursuing tax refunds that would result in a
22 credit to its PPFAC; and
23 (2) Any additional relief as the Commission deems just and proper.

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2 RESPECTFULLY SUBMITTED this 15th day of October, 2015.

3 TUCSON ELECTRIC POWER COMPANY

4
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19 Original and thirteen copies of the foregoing
20 filed this 15th day of October, 2015, with:

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25 Copy of the foregoing hand-delivered
26 this 15th day of October, 2015, to:

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