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ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission
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BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE
CHAIRMAN

BOB STUMP
COMMISSIONER

BOB BURNS
COMMISSIONER

TOM FORESE
COMMISSIONER

ANDY TOBIN
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
APPROVAL OF ITS 2016 RENEWABLE
ENERGY STANDARD IMPLEMENTATION
PLAN

DOCKET NO. E-01933A-15-0239

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
THE ESTABLISHMENT OF JUST AND
REASONABLE RATES AND CHARGES
DESIGNED TO REALIZE A REASONABLE
RATE OF RETURN ON THE FAIR VALUE OF
THE PROPERTIES OF TUCSON ELECTRIC
POWER COMPANY DEVOTED TO ITS
OPERATIONS THROUGHOUT THE STATE OF
ARIZONA AND FOR RELATED APPROVALS

DOCKET NO. E-01933A-15-0322

**THE ENERGY FREEDOM
COALITION OF AMERICA'S
REPLY IN SUPPORT OF ITS
MOTION FOR PROCEDURAL
CONFERENCE**

The Energy Freedom Coalition of America ("EFCA"), by and through its undersigned counsel, hereby submits this Reply in Support of its Motion for Procedural Conference in the above-captioned proceeding (the "Proceeding"). On June 17, 2016, EFCA filed its Motion for a Procedural Conference (the "Motion"). On June 21, 2016, Tucson Electric Power ("TEP") filed its Opposition (the "Opposition") to the Motion, requesting that the Arizona Corporation Commission (the "Commission") deny the Motion. For the reasons set forth below, it is

1 appropriate to grant EFCA's Motion and convene a procedural conference to discuss how to assure
2 a fair hearing for all parties moving forward.

3 **I. TEP Misrepresents EFCA's Request.**

4 EFCA requested to have a procedural conference to address how the Commission can
5 mitigate any prejudicial impacts that would otherwise be caused if the Applicant changes position
6 at the last minute or any party introduces new witnesses and new studies just days before hearing.
7 In its reply, TEP suggests that EFCA is attempting to "tie the hands of TEP"¹ simply by requesting
8 a procedural conference to discuss how time might be added in certain circumstances to avoid
9 prejudicing any parties and to assure a fair hearing. TEP argues that there is nothing improper
10 about reevaluating and modifying positions throughout the pendency of a rate case proceeding and
11 EFCA agrees. However, TEP wrongly argues that "taken to its logical conclusion, EFCA's
12 arguments would prevent TEP from agreeing with EFCA recommendations that differ from TEP's
13 filed proposal."² This argument misrepresents the concerns EFCA raised in its Motion, and
14 suggests that EFCA is attempting to restrict TEP's ability to negotiate its position in this
15 Proceeding. EFCA's proposals would not stop TEP from agreeing with EFCA, but instead would
16 guarantee a fair hearing where no parties are prejudiced by late changes or late released studies or
17 witnesses.

18 A good summary of EFCA's request appeared on page 3 of the original Motion and stated,
19 "[i]n the event the Applicant changes positions or a party introduces new witnesses or new studies
20 as set forth above, EFCA believes the parties must be given sufficient time to perform discovery
21 and prepare rebuttal to avoid prejudice." As clearly set out in the above quoted sentence, EFCA
22 does not seek to prohibit changes to positions as TEP alleges, but to ensure that should last minute
23 changes occur, adequate safeguards are in place to allow intervenors fair time to react. EFCA's
24 interest is in a fair hearing for all parties, including TEP. It is understood that parties may alter
25 their positions as a proceeding progresses; however a party can gain a substantial advantage over
26 another by introducing new witnesses, studies, or reports or altogether changing its position on

28 ¹ Opposition to EFCA's Motion for a Procedural Conference at 1, Commission Docket No. E-01933A-15-0322.

² Citation

1 key issues just days before the hearing. This is true regardless of whether it occurs in good faith or
2 as a deliberate litigation strategy.

3 TEP's reply characterizes the legitimate concerns EFCA has raised in the Motion as "false
4 allegations," "baseless," and "wholly erroneous."³ As stated above, EFCA is simply trying to
5 ensure that intervenors to this docket have fair time to react to proposals set forth by TEP,
6 particularly in light of what has occurred in other recent rate case dockets. Absent some form of
7 safeguard that would accomplish the objective of avoiding advantage conferred by unfairly
8 surprising litigants, TEP (and other utilities with pending rate cases) are incentivized to present
9 their ultimate proposals as late as possible, putting intervenors in the very difficult position of
10 attempting to conduct discovery during an active hearing.

11 **II. Discovery Concurrent to an Ongoing the Hearing is Insufficient.**

12 Despite TEP's absurd assertion that rate design modifications like the one recently
13 attempted in the case of Trico Electric Cooperative just three weeks⁴ prior to the due date for direct
14 testimony leaves parties "significant time" to evaluate the proposal before filing testimony, and
15 therefore is not prejudicial, the reality is plainly the opposite. Note that the Commission is required
16 to file its Staff Report and/or testimony within 180 days from the time a rate application is filed.⁵
17 This timing rule permits Staff, other intervenors, and the public a full *six months* to evaluate the
18 entire rate case application, including rate design proposals. This lengthy timeframe not only
19 demonstrates the depth of analysis required to evaluate a rate case application, but also establishes
20 the timeframe for analysis the parties to the docket may rely on to conduct their own respective
21 analyses.

22 Conducting discovery while simultaneously conducting an active hearing places an unfair
23 burden on the parties who are responding to a new proposal. TEP states that it believes all parties
24 should adhere to the Procedural Order, and that that schedule allows all parties adequate time to
25 address issues raised by other parties.⁶ Under that schedule, TEP's original rate design was filed
26 in November of last year, and the intervenors to the docket have now spent seven months preparing

27 ³ *Id.*

⁴ *Id.* at 4.

28 ⁵ A.A.C. R14-2-103 (B)(11)(b).

⁶ *Id.* at 5.

1 testimony and preparing for the hearing on the basis of that proposal. EFCA agrees that the parties
2 should adhere to the schedule, provided that neither TEP nor any other party is permitted to
3 prejudice the proceeding with a late modification. At the very least, if there is a late modification,
4 parties should be granted sufficient additional time to review and respond.

5 On the issue of late filed witnesses and studies, TEP goes on to point out that the "Hearing
6 Division has been very accommodating in allowing discovery to continue, even during the hearing,
7 for parties that claimed a need for additional discovery."⁷ This assertion implies that a situation
8 requiring such accommodation is acceptable or even a desired outcome. While this may be
9 acceptable for TEP when the parties scrambling to simultaneously litigate a hearing and undertake
10 discovery are those opposing aspects of its proposal, it is not fair to impose that burden on the
11 intervenors or even to encourage ambush as a litigation strategy. Extending discovery into the
12 midst of the hearing should be a last resort, not standard procedure. EFCA merely seeks to discuss
13 this issue and lay the groundwork to avoid parties gaining an unfair and unwarranted advantage.

14 **III. A Procedural Conference is Appropriate to address this Issue.**

15 Despite TEP's claims to the contrary, EFCA maintains that a procedural conference will
16 help the parties ensure a fair hearing. It would be appropriate for the parties to inform one another
17 of known pending alterations to positions or additional studies being undertaken prior to the
18 hearing so that adequate time to respond may be allocated. As such, all parties would be on an
19 equal playing field as the hearing approaches. This is especially important as TEP is not the only
20 party to the docket who could potentially prejudice the proceeding with a late filed proposal. If,
21 for example, Arizona Investment Council, or another intervenor aligned with TEP were to
22 introduce new witnesses, studies, or voluminous or detailed documents in surrebuttal testimony
23 only 14 days before the hearing, the effect would be equally damaging.

24 **IV. Conclusion**

25 It is in the best interest of all the parties to assure a fair hearing. In the event of late changes
26 in position or the late introduction of new studies or witnesses, the parties should have adequate
27 time to review, investigate, and respond as needed. EFCA believes that the appropriate time to

28 _____
⁷ *Id.*

1 address the likelihood of a late filing is now rather than on the eve of hearing. Therefore, EFCA
2 renews its request for a procedural conference to address the issues described herein.

3 **RESPECTFULLY SUBMITTED** this 22nd day of June 2016.

4
5
6 /s/ Court S. Rich
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8 Rose Law Group pc
9 Attorney for Energy Freedom Coalition of America

10 **Original and 13 copies filed on**
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