

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

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AZ CORP COMMISSION
DOCUMENT CONTROL

8 IN THE MATTER OF THE FILING OF GENERAL
9 RATE CASE INFORMATION BY TUCSON
10 ELECTRIC POWER COMPANY PURSUANT TO
11 DECISION NO. 62103.

DOCKET NO. E-01933A-04-0408

PROCEDURAL ORDER

12 **BY THE COMMISSION:**

13 On May 4, 2005, Tucson Electric Power Company ("TEP" or "Company") filed a Motion for
14 a Declaratory Order and Request for Procedural Conference ("Motion") in Docket No. E-01933A-04-
15 0408 ("2004 Rate Review").¹ TEP is seeking a declaratory order stating the methodology that the
16 Arizona Corporation Commission ("Commission") will apply to determine TEP's rates for generation
17 service after the current Competition Transition Charge ("CTC") terminates in 2008. In its pleading,
18 TEP claims that if the Commission intends to "rescind TEP's authorization to charge market-based
19 rates for generation service" such change will have immediate consequences for the 1999 Settlement
20 Agreement, the 2004 Rate Review and future TEP rate cases.

21 On May 17, 2005, the Residential Utility Consumer Office ("RUCO") filed a Response to
22 TEP's Motion. RUCO opposed the Motion and disagrees that in Decision No. 62103, in which the
23 Commission approved the 1999 Settlement Agreement and instituted the CTC, the Commission
24 committed to market-based rates after 2008.

25 On May 17, 2005, Arizonans for Electric Choice and Competition, Phelps Dodge Mining
26 Company and ASARCO, Inc. (collectively "AECC") filed a Response to TEP's Motion. AECC
27 opposes the Motion being considered in the 2004 Rate Review proceeding, and believes the
28 Commission should continue with the rate review.

¹ TEP filed the same request in Docket Nos. E-00000A-02-0051, E-00000A-01-0630, E-01345A-01-0822 and E-01933A-02-0069.

1 On May 20, 2005, The Arizona Utility Investors Association ("AUIA") filed a Response to
2 TEP's Motion, supporting the request. AUIA believes it may be more efficient to consider the
3 Motion in a consolidated docket.

4 On May 20, 2005, Commission Staff filed a Response to the Motion, arguing that the
5 Commission should deny TEP's Motion. In the alternative, Staff requests that if the Commission
6 determines to pursue TEP's request, that TEP should be required to file testimony in support of its
7 Motion. Staff also requested that the Commission modify the Procedural Order in the Rate Review
8 proceeding to allow an indefinite continuance to allow Staff and other parties to avoid preparing and
9 filing testimony that may be mooted by TEP making supplemental filings in the 2004 Rate Review
10 proceeding.

11 By Procedural Order dated June 1, 2005, a Procedural Conference to consider TEP's Motion
12 was set for June 7, 2005.

13 On May 31, 2005, all parties to the 2004 Rate Review signed a Stipulation to suspend the
14 procedural schedule in the docket until the Commission can consider the Motion.

15 On June 1, 2005, TEP filed a Reply in Support of its Motion.

16 At the June 7, 2005, Procedural Conference pursuant to the request of the parties in their May
17 30, 2005 Stipulation, the Administrative Law Judge suspended the Procedural Schedule of the 2004
18 Rate Review proceeding pending further Order.²

19 TEP filed its Motion in the 2004 Rate Review Docket as well as the generic electric
20 restructuring dockets. TEP did not file its Motion in the Dockets Nos. E-01933A-93-0471, E-
21 01933A-97-0722 or RE-00000C-94-0165 in which the Commission had approved the 1999
22 Settlement Agreement and implemented the Market Generation Credit ("MGC") and CTC
23 mechanism.³ The Motion appears to be a request to clarify Decision No. 62103 and the 1999
24 Settlement Agreement.

25 We do not find a connection between the calculation of TEP's rates at the end of 2008 and the
26 pending 2004 Rate Review. In adopting the 1999 Settlement Agreement, Decision No. 62103
27

28 ² The schedule would have had parties filing direct testimony on June 13, 2005.

³ Docket No. E-01933A-98-0471 had been consolidated with the generic dockets in the Track A proceeding.

1 provided that in June 2004, TEP would make a rate case filing so that the Commission could
 2 determine if the Company is over-earning and whether rates should be reduced. TEP argued that its
 3 Motion and the 2004 Rate Review are connected because if the Commission ultimately determines
 4 that after December 31, 2008, Standard Offer rates will be determined by traditional Cost of Service
 5 methodology, then the 1999 Settlement Agreement is arguably no longer in effect, and the Company
 6 would be entitled to file for a rate increase prior to December 31, 2008.⁴ Thus, according to TEP, if
 7 the Commission were to rule that cost-based rates would be employed after December 31, 2008, the
 8 information used in the pending 2004 Rate Review proceeding could be utilized as the basis for a rate
 9 case.

10 TEP's alleged link between the Motion and the 2004 Rate Review is too speculative to justify
 11 further delay in the Commission's inquiry whether the Company is over- or under-earning. The
 12 obligation to engage in a rate review in June 2004 is an undisputed obligation under Decision No.
 13 62103. Thus, we will re-instate a revised schedule for filing testimony in the 2004 Rate Review as
 14 follows:

15	Staff and Intervenor testimony	June 24, 2005
16	TEP Rebuttal testimony	July 22, 2005
17	Staff and Intervenor surrebuttal	August 12, 2005
18	TEP Rejoinder	August 26, 2005
19	Pre-hearing Conference	September 6, 2005
20	Hearing	September 12, 2005

21 In the event Staff and Intervenor testimony filed on June 24, 2005 indicates that no party
 22 believes the Company is over-earning, then a hearing on the rate filing may not be necessary. Thus, a
 23 Procedural Conference for the purpose of re-evaluating the established procedures will commence on
 24 July 6, 2005 at the Commission's Tucson offices.⁵

25 TEP's Motion is not characterized as a motion to re-open the record, and it is unclear whether
 26 this Motion, filed in Dockets Nos. E-00000A-02-0051, E-00000A-01-0630, E-01345A-01-0822 and
 27

28 ⁴ Under the terms of the 1999 Settlement Agreement, TEP cannot seek a rate increase prior to December 31, 2008.

⁵ The Procedural Conference originally set for this purpose on June 21, 2005 will be vacated.

1 E-01933A-02-0069 achieves the goal that TEP is seeking, which appears to be a clarification of a
 2 prior Commission Decision. If this is indeed TEP's goal, we question whether the appropriate
 3 dockets have been identified and whether the request should be a request to reopen certain dockets
 4 pursuant to A.R.S. § 40-252. Thus, we take no action at this time on TEP's Motion, but suggest that
 5 TEP re-consider the appropriate procedures for accomplishing its goals, which may include, but not
 6 necessarily be limited to, a motion to re-open the record or a new application.

7 IT IS THEREFORE ORDERED that the modified procedural schedule in the 2004 Rate
 8 Review shall resume as set forth hereinabove.

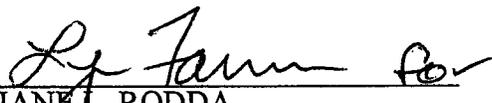
9 IT IS FURTHER ORDERED that the June 21, 2005 Procedural Conference in the 2004 Rate
 10 Review is vacated.

11 IT IS FURTHER ORDERED that a **Procedural Conference** to evaluate the need for hearing
 12 in the **2004 Rate Review** shall commence on **July 6, 2005, at 1:30 p.m.**, at the Commission's offices,
 13 **Room 131, 400 West Congress, Tucson, Arizona 85701**. The telephone number for parties wishing
 14 to participate telephonically is **(602) 542-9009**.

15 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
 16 Communications) continues to apply to this proceeding as it has been set for hearing.

17 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
 18 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

19 DATED this 10 day of June, 2005.

20 
 21 JANE L. RODDA
 ADMINISTRATIVE LAW JUDGE

22 Copies of the foregoing mailed
 23 this 10 day of June, 2005 to:

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