BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE – CHAIRMAN
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IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS 2016 RENEWABLE ENERGY STANDARD AND TARIFF 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

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INITIAL POST-HEARING BRIEF OF ARIZONA INVESTMENT COUNCIL

October 31, 2016

I. INTRODUCTION

The Arizona Corporation Commission ("ACC" or "Commission") has repeatedly recognized the need to mitigate unjustified cost shifts between customers. Indeed, many of the proposals made in Tucson Electric Power Company's ("TEP" or "the Company") initial rate case filing were intended to address that precise policy goal. The settlement agreement in this case punted certain of those proposals (those related to rate design and net metering) to a later phase of this proceeding. But several of the litigated issues equally raise or address cost-shift concerns, particularly those related to buy-through proposals and the Company's proposed enhancement to its lost fixed cost recovery mechanism ("LFCR"). The Commission should focus on alleviating and eradicating unproductive cost shifts, not instituting new programs, like buy-through service, that serve only to exacerbate the problem that the Commission seeks to address.

This brief will discuss the four issues that AIC believes are the most critical to TEP's shareholders: support of the partial settlement agreement; rejection of any buy-through program; approval of TEP's proposed modification to the LFCR; and approval of the Economic Development Rate.

AIC supports the partial settlement agreement because it is both in the public interest and beneficial to the financial health of the Company. While the agreed-upon base rate increase is 26 percent lower than the $109.5 million requested by TEP, it is a reasonable compromise considering the starting positions of the various parties in this case. In addition, investors and credit rating agencies generally look favorably on settlement agreements because they resolve issues that otherwise could lead to protracted litigation and undue regulatory delay. Adoption of the settlement agreement would be further indication of an improved regulatory climate conducive for investment in Arizona's utilities.

AIC strongly opposes the implementation of any buy through program for TEP. Buy-through programs are unconstitutional in Arizona because the generation rate that the customer pays is not set by the ACC after a consideration of the fair value of the

generation provider's property, but rather is determined solely by market forces. The programs should be rejected on that basis alone. Moreover, as a practical matter, the original buy-through program, Arizona Public Service Company's ("APS") AG-1 experimental rate rider, was implemented as a four year test program, which is to be fully vetted and analyzed in APS's next rate case (filed June 1, 2016). The pilot data has yet to be evaluated, although evidence presented in this case demonstrates that the program has serious flaws that impair the recovery of millions of dollars of program costs and result in cost shifts to other customers and shareholders. At a minimum, the fate of any new buy-through program should be determined after the Commission has the opportunity to examine the AG-1 data and determine whether a buy-through program is in the public interest, and, if so, how the program can be redesigned to address its deficiencies.

On the other hand, AIC supports TEP's proposed Rate Rider 13, the Economic Development rate. TEP's service territory has been slower to recover from the economic recession than other parts of Arizona, and encouraging economic development through incentives like discounted electricity rates will facilitate that recovery. Such an outcome will benefit the Company and all of its customers, and promote business growth and jobs in the Tucson metropolitan area.

AIC also supports the changes that TEP has proposed to its LFCR mechanism. The express purpose of the LFCR as approved by the Commission is to provide TEP with the opportunity to recover the fixed costs that it otherwise would have collected but for energy efficiency ("EE") programs and rooftop solar installations. Today, according to the Company, the LFCR recovers only 41% of its lost fixed costs associated with Commission-mandated EE and rooftop solar programs – the majority of those fixed costs are absorbed by shareholders. Without the updates that TEP proposes, TEP does not have a reasonable opportunity to recover its costs and earn its authorized rate of return, putting TEP in a position that would require it to file a constant string of rate proceedings. Such a result is neither just nor reasonable and could impact TEP's attractiveness to the investment community and impair its credit rating down the line.

Enhancing the Company's LFCR to correct these deficiencies will sustain TEP's creditworthiness, an end that benefits both the Company's shareholders and its customers and is in the public interest.

II. DISCUSSION OF ISSUES

A. The Buy-Through or Direct Access Proposals Should Be Rejected.

AIC strongly opposes the implementation of the various buy-through rate proposals at issue in this proceeding. TEP was required to propose a buy-through program as a result of a settlement agreement, which is why Rate Rider 14 is on the table. But the Company actively opposes the program, rightly noting that it allows "certain large customers to 'cherry pick' currently available capacity. . . ultimately resulting in costs being shifted to the remaining customers." (Jones Direct Testimony at 62:26 – 63:2). The proponents of buy-through programs assert that such offerings provide customers with choice and will stimulate economic development in Arizona. (Kevin Higgins Direct Testimony at 32:14-16). They are wrong. In reality, customers do not have a "choice" as to whether they may participate. Assuming the program is oversubscribed, as it always has been for APS and as proponents of the buy-through program believe it would be for TEP, whether a customer is actually able to participate is not a matter of "choice" but of dumb luck – whether or not they win the program lottery. (Higgins Hearing Testimony, Tr. at 1002:20 – 1003:6). Additionally, given the likelihood that any buy-through program will be fully subscribed at implementation, it would be a poor attractant for new businesses that would lack the opportunity even to attempt to participate. The program thus does not achieve any economic development benefit.

The buy-through rate proponents talk about "choice" and "economic sustainability," but those alleged benefits come at a significant cost to other customers – no matter what funding mechanism is used – and those who pay the subsidy have no "choice" not to pay it. (Yaquinto Surrebuttal Testimony at 6:17-20). The money has to

come from somewhere and someone other than the buy-through rate participant funds it. Even Commission Staff's witness recognizes that the proposed buy-through program chooses winners and creates losers in the business community. (Solganick Surrebuttal Testimony at 21:6-7). A program that subsidizes a few large customers on the backs of others and that cannot guarantee that the Company and its other customers will be shielded from financial harm simply does not serve the public interest.

AIC understands that economic development is important – it is part of our mission – but it is equally important to do it right. The Commission should pursue cost-justifiable economic development programs that make sense for the utility and all of its customers, rather than a program that benefits just a few large customers lucky enough to win a lottery. In approving a buy through program, the Commission would simply be allowing a backdoor way into retail competition, which is illegal in this State. The buy-through program structure presented here shares the same fundamental legal deficiencies as retail competition, with an energy rate that is set by the market without consideration paid to the fair value of the energy provider's plant in service. Put simply, the buy-through programs presented are legally dubious and do not achieve any policy goals that cannot be met by other legitimate and sustainable rate programs and structures.

1. The Buy-Through Program Proposals Are Unconstitutional in Arizona.

Certain parties to this case, including Arizonans for Electric Choice and Competition ("AECC") and Freeport Minerals Corporation ("Freeport"), have actively but unsuccessfully lobbied for the deregulation of Arizona's electric industry for more than 20 years. Their attempts failed time and again because the basic tenet of deregulation (also known as "direct access," "restructuring," or "retail competition") – that electric rates are set by the market and not the ACC – is illegal in Arizona, violating Article 15 of the Arizona Constitution.

Unlike most states where utilities are regulated by an authority that is created by and derives its power through a legislative grant, the ACC derives much of its power

directly from the Arizona Constitution. *See* Article 15, Section 3 ("The corporation commission shall have full power to, and shall, prescribe . . . just and reasonable rates and charges to be made and collected by public service corporations."). The ACC has "plenary" power over utility ratemaking, subject to the Constitutional requirement that it cannot set rates without ascertaining "the fair value of the property within the state of every public service company doing business therein." *See* Ariz. Const., Art. 15, Sec. 14.

As the Arizona Court of Appeals has made clear, "Article 15, Section 3 not only *empowers* the Commission to set just and reasonable rates, it *requires* the Commission to do so." *See Phelps Dodge Corp. v. Arizona Elec. Power Co-op.*, Inc., 207 Ariz. 95, 107 (2004) (emphasis added). Market forces may influence the ACC's determination of whether a rate is "just and reasonable," but the Commission cannot "abdicate its constitutional responsibility to set just and reasonable rates by allowing competitive market forces alone to do so." *Id.* Put plainly, allowing a rate to be set by the market is illegal in Arizona for two reasons: doing so (1) "improperly delegate(s) to the competitive marketplace the Commission's duty to set just and reasonable rates that provide for the needs of all whose interests are involved, including public service corporations and the consuming public;" and (2) violates the Constitutional requirement that rates include consideration of the fair value of the public service corporation's property. *Id.* at 108.

As the evidence at hearing made clear, the buy through rate proposals presented in this proceeding are constitutionally infirm, allowing the market to set the generation rate that buy-through customers pay without any attention from the ACC at all, let alone after consideration of the fair value of the third party provider's property. Under Rate Rider 14, which was proposed but opposed by the Company, the participating customer selects a third party electricity provider from whom to buy power. (Higgins Hearing Testimony, Tr. at 999: 20-25). The customer then negotiates a rate with that provider and executes a contract with it, requiring the provider to sell power to the utility at that negotiated rate and deliver it to the customer on the provider's behalf. (*Id.* at 1000:2-22). The utility

then bills the customer for generation supply at the exact rate negotiated between the customer and the provider. (*Id.* at 1000:23-1000:2). Neither the ACC nor the utility has any say in what that rate is, nor is it based on any analysis of the generation suppliers' plant in service. Rather, as AECC witness Mr. Higgins testified, "the rates would set by the market," (*Id.* at 1018:6-7), with no consideration given as to whether they are "'just and reasonable' to all whose interests are involved, including public service corporations and the consuming public." *See Phelps Dodge*, 207 Ariz. at 108. As *Phelps Dodge* made clear, such a transaction is patently illegal in Arizona.

The simple fact that the energy sale between the third party provider and the end user is sleeved through a utility is not enough for the market-based rate to pass constitutional muster. The arrangement is simply a sham transaction, intended to sidestep the constitutional requirements that the public service corporation providing power to the consumer must obtain a certificate of convenience and necessity from the ACC and charge rates set by the ACC based on the fair value of its property. The fictitious structure of buy-through service attempting to evade these requirements cannot withstand legal scrutiny. *See, e.g., Chicago, M. & St. P. Ry. Co. v. Minneapolis Civic & Commerce Ass'n*, 247 U.S. 490 (1918) ("courts will not permit themselves to be blinded or deceived by mere forms of law but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist"); *Natural Gas Service Co. v. Serv-Yu Co-op.*, 219 P.2d 324 (Ariz. 1950) ("if entering into contracts with customers would control the determination of whether [public utility regulations apply], that would be an easy way of evading the law"); *May Dep't Stores Co. v. Union Elec. Light & Power Co.*, 107 S.W.2d 41 (Mo. 1937) (holding that public utility corporation could not use contracts to circumvent the law for uniform regulation of public utility rates). Under the buy-through program, the ACC's ratemaking function is abdicated to the market just as surely as if the utility were not artificially inserted between the generation provider and the customer – a result expressly prohibited by *Phelps Dodge*.

AECC witness Higgins's five-year opt-out program, modeled almost identically after a program in place at Portland General Electric Company in Oregon (a state whose constitution does not preclude direct access), is also illegal in Arizona. Under this proposal, a capped amount of eligible customers would be permitted to procure power from third party providers and sleeve it through TEP in the precise manner described above, except that those customers would also pay a "transition adjustment" charge to the utility for a five year period. After the first five years, customers would continue to receive buy-through service with no further generation charge payments to TEP, "with the sole exception of unbundled fixed generation charges for customers that are located outside the TEP constrained transmission area." (Higgins Hearing Testimony, Tr. at 945:23 – 946:6). Put differently, customers participating in this opt-out program would transition to "100 percent market pricing using the buy-through construct after five years." (*Id.* at 946:9-11).

As with Rate Rider 14, the rates paid for generation service under the opt-out proposal would not be set by the ACC at all, let alone after a determination that they are "just and reasonable" and considering the fair value of the providers' plant in service. As Mr. Higgins himself admitted, but for a few operational distinctions not relevant to the legal analysis, there is no difference between his opt-out proposal and all-out direct access except for the fact that the market-based rate negotiated between the energy service provider and the opt-out customer is sleeved through the utility. (Higgins Hearing Testimony, Tr. at 1018:22-1020:5). But, as discussed above, that distinction is not sufficient to render the program legal under established Arizona law.

Importantly, Mr. Higgins proposes that the participation cap recommended for the opt-out program should be increased or potentially eliminated over time, so that, in theory, all of the eligible customers could ultimately choose to take power from the market through a buy-through structure instead of from TEP. (Higgins Hearing Testimony, Tr. at 1018:9-21). This fact underscores AECC's intent to achieve indirectly through a buy-through structure what it could not obtain directly: deregulation of

Arizona's electric industry. The law is clear: "Article 15, Section 14 of the Arizona Constitution requires the Commission to determine the fair value of Arizona property owned by a public service corporation and consider that determination in establishing just and reasonable rates. The Commission has broad discretion in determining the weight to be given the fair-value factor in any particular case, but may not simply ignore it." *Phelps Dodge*, 207 Ariz. at 128. Obtaining direct access for Arizona is a goal of AECC and Freeport, but the backdoor attainment of it through "buy-through service" ignores the fair value requirement and is as unconstitutional as was the Commission's attempt to deregulate the electric system two decades ago.

2. The Buy-Through Rate Proposals Are Premature.

Intervenors Freeport, AECC, and Noble Americas Energy Solutions ("Noble Solutions") argue that the Commission should implement a buy-through rate program that is "as similar as reasonably possible" to APS's AG-1 experimental pilot program without delay, notwithstanding the fact that APS has identified significant concerns about the sustainability of the program in its present state. (Higgins Direct Testimony at 33:3-4 and Yaquinto Direct Testimony at12:18-27). The concept of a buy-through program originated in APS's last rate case, in which the buy-through rate proponents in this case, specifically AECC, Noble Solutions, Freeport, and Wal-Mart, were parties. (Higgins Hearing Testimony, Tr. at 1004:14-17; McElrath Hearing Testimony, Tr. at 1727:7-9; and Hendrix Hearing Testimony, Tr. at 1858:9-10). Each of these parties agree that (1) the APS buy-through rate rider was intended to be experimental in nature; (2) the results of the APS buy-through program will be presented and analyzed during APS's next rate case, to be heard just months from now; and (3) the Commission will decide in that case whether and how to modify APS's buy-through program during the course of that proceeding. (Higgins Hearing Testimony, Tr. 1004:18-1005:23; McElrath Hearing Testimony, Tr. at 1728:11 - 19; Hendrix Hearing Testimony, Tr. at 1860:17 – 1861:5). These parties have also indicated that they intend to intervene in APS's upcoming rate case and will participate in the discussions regarding the APS AG-1 program at that time.

(Higgins Hearing Testimony, Tr. 1004:25-1005:2; McElrath Hearing Testimony, Tr. at 1727:18-20; Hendrix Hearing Testimony, Tr. at 1860:21-22).

In the APS experience, the cost of a buy-through program far outstrips the revenue brought in from the program's capacity reserve and other charges – charges that buy-through rate advocates seek largely to mirror here. (Yaquinto Direct Testimony at 13:11-28). Let the buy-through proponents argue their case based on vetted data, rather than hypothetical assumptions about what the program might or might not cost. They will have the opportunity to do so just a few short months from now. Until the buy-through program flaws are resolved in one way or another based on actual data that has been gathered over the course of five years, it makes little sense to move forward with another buy-through tariff for another utility– particularly one that is much smaller than APS and therefore has fewer resources to spend on trying to make what appears to be a costly and difficult program work. (Yaquinto Hearing Testimony, Tr. at 1162:24 – 1163:1 – 4).

3. Rate Rider 14 Results in a Cost Shift to the Unlucky Customers Who Cannot or Choose not to Participate in It.

Although AECC witness Kevin Higgins proposed a funding mechanism for Rate Rider 14 that he asserts would resolve the potential for financial harm to TEP or its customers, no party to this case but those who stand to profit from the buy-through program are comfortable that such a funding mechanism alleviates the concerns about it. As AIC understands Mr. Higgins' proposal, he would reserve $7.5 million of the revenue requirement reduction that would apply to customers in the classes that are eligible for Rate Rider 14 and use that amount to fund the program. (Higgins Hearing Testimony, Tr. at 945:10-16). In other words, customers in the eligible classes will pay more in electric rates than they otherwise would so that a lucky few of them can participate in a buy-through program. (*Id.* at 1053:2-6). While AECC and Freeport are willing to pay for the "choice" to *potentially* participate in the program, they do not represent all of the

customers in the eligible classes and cannot speak on those customers' behalf. (*Id.* at 1055:2-1056:3).

Neither is AIC convinced that Mr. Higgins' proposed funding mechanism for Rate Rider 14 is sufficient to cover the program costs. The $7.5 million funding amount depends on several assumptions regarding whether Mr. Higgins' unbundled rate design is accepted, whether the 15 percent reserve charge is accepted, whether the program is fully subscribed at implementation, and the size of the customers who end up winning the lottery, among other things. (*Id.* at 1009:9-1010:8). If the program costs more than Mr. Higgins predicts, it would result in a revenue deficiency that would need to be collected from other customers. (*Id.* at 1012:9-20). Mr. Higgins suggests that any such deficiency should be recovered through TEP's fuel adjustment clause, which could result in a cost shift to customers outside of the class that is eligible for the program. (*Id.*). AIC shares Commission Staff's concern about the cost shift created by Mr. Higgin's proposed funding mechanism: by not using the $7.5 million to change rates, those "left behind customers" in the eligible classes could be "paying for their competitor's privilege to temporarily leave the system and some of its fixed costs to the remaining customers." (Solganick Surrebuttal Testimony at 23:4-8). Put another way, participants in a buy-through program are subsidized by the customers remaining with the utility. Subsidized programs are not cost-based, do not make economic sense, and are not sustainable. The buy-through program should thus be firmly rejected as against the public interest.

4. The Buy-Through Rate Proponents' Proposed Modifications to Rate Rider 14 Exacerbate the Cost Shift.

AECC, Noble Solutions, Freeport, and Walmart each recommend modifying Rate Rider 14 in ways that serve only to enhance the risk that the program will result in a significant revenue deficiency for TEP that will be either absorbed by shareholders or borne by other customers.

For example, each of these parties recommends broadening the class eligibility (1) to include either Large General Service Customers ("LGS") or *all* commercial and

industrial customers, in addition to the LPS-TOU and 139kV customers; and (2) to increase the program scale by at least 100% or as much as 800% (from 30 MW to either 60 MW or 250 MW). (Higgins Direct Testimony at 34:13-20 and 1-2; Hendrix Hearing Testimony, Tr. at 1855:20 – 1856:1). AECC's justification for including all non-residential customers and increasing the program scale is to make TEP's buy-through program more closely align with the structure of APS's AG-1 rate, despite the anticipated flaws of the AG-1 program. The peak load for TEP's LGS, LPS and 138kV classes is only 575 MW, so Mr. Hendrix's proposal to increase the program size to 250MW (and include all non-residential customers) would allow almost *half* of the Company's non-residential customers to be eligible for it. (Jones Hearing Testimony, Tr. at 2641:2-3). If only the LPS and 138kV classes were eligible, then almost every customer in those classes could participate under Mr. Hendrix's proposal because their combined load is only 280-285MW. (*Id.* at 2641:4-5). Neither AIC nor TEP believes that increasing the program cap and eligibility is appropriate for a pilot program. (*Id.* at 2641:16-20).

The proposals that would allow smaller loads to aggregate to meet the threshold for buy-through service eligibility "add a whole other level of complication" to the program and should not be adopted. (Jones Hearing Testimony, Tr. at 2643:10-12). First, allowing aggregation expands the classes of customers that could be eligible for the program, creating a much broader cost shift. (*Id.* at 2643:12-14). Moreover, evidence indicated that aggregation would require the realignment of fuel purchasing patterns, increasing overall fuel costs to other customers by one percent. (*Id.* at 2643:17-19). Finally, allowing aggregation creates the new impediment of determining the necessary relationship between corporate entities to assess their eligibility for the program. (*Id.* at 2643:20-25). Put simply, aggregating smaller loads to allow additional customers to participate multiplies the concerns about the program, giving rise to additional risks and uncertainties. (*Id.* at 2644:8-10).

5. The Five Year Opt-Out Proposal Results in a Cost Shift.

The cost shift concerns associated with Rate Rider 14 apply equally to Mr. Higgins' five year opt-out proposal. First, the proposed transition charge would require the participating customer to pay the fixed generation costs for only five years, despite those facilities being placed in rates with 30, 40 or more years of life expectancy. (*Id.* at 2648:18-24). Were the opt-out customer to pay nothing after five years, the remaining generation costs would be shifted to the customers remaining on the utility's system. (*Id.* at 2649:13-416). Additionally, under the five year opt-out, the participating customer pays only this transition charge and not the unbundled generation charges (which include fixed generation charges, base power supply charges, the PPFAC, the ECA and the REST Surcharge). (Higgins Surrebuttal Testimony at 12:22- 13:1-2). The buy-through customer's ability to avoid those costs further exacerbates the associated revenue requirement deficiency, which would be paid by the Company's shareholders in the short term and by TEP's other customers over time. Finally, Mr. Higgins acknowledges that, for this proposal to work, it has to be a permanent program and not a limited term pilot. (Higgins Hearing Testimony, Tr. at 946:16-20). It makes little sense to institute a permanent buy-through program today, prior to vetting the actual impact of such programs in the APS rate case just a few months from now.

6. Freeport's Franchise Option Attempts to Forcibly Divest a Portion of TEP's Service Territory without the Requisite Legal Findings.

Freeport's proposed "franchise agreement" option is nothing more than a thinly veiled attempt to force TEP to divest a portion of its service territory. The law is clear that the Commission cannot deprive TEP of any part of its certificated service area without a showing that TEP is unable to provide safe, reliable and reasonable service – an evidentiary showing that Freeport wholly failed to make. *See, e.g., James P. Paul Water Co. v. Arizona Corp. Com'n.*, 137 Ariz. 426, 430-31 (holding that the ACC erred in deleting a portion of a utility's service territory without an evidentiary showing that the utility was unable or unwilling to provide service at reasonable rates). When the

Commission granted TEP its certificate of convenience and necessity ("CC&N"), it conferred upon the Company "the exclusive right to provide the relevant service for as long as [TEP] can provide adequate service at a reasonable rate." *Id.* Indeed, the courts have made clear that the grant of a CC&N "means that its holder has the right to an opportunity to provide the service it was certified to provide." *Id.* As long as the utility makes an adequate investment and renders competent and adequate service, it will have the privilege of a monopoly. *See, e.g., Application of Trico Electric Cooperative*, 92 Ariz. 373, 387-388 (1962).

Freeport presented no evidence that TEP is unable or unwilling to serve its mine. To the contrary, it readily admits that TEP is able to do so. (Hendrix Hearing Testimony, Tr. at 1730:20-22). Nor does Freeport quarrel with the adequacy or reliability of TEP's service to the mine. (*Id.* at 1730:23 – 1731:2). Freeport further agrees that TEP's rates were approved by the Commission, based on a finding that they are just and reasonable. (*Id.* at 1731:3-13). Indeed, Freeport signed the partial settlement agreement in this case finding the agreed-upon revenue requirement to be just and reasonable and in the public interest. Freeport did not present any evidence that would justify deleting a portion of TEP's certificated area under established law. There is thus no basis in the record that would allow the Commission to forcibly divest the mine from TEP's service territory, by franchise agreement or any other means,

B. The LFCR Should Be Enhanced to Include Unrecovered Distribution and Generation Costs.

AIC supports the Company's proposal to allow for the recovery of all of the fixed costs attributable to the distribution and generation components of retail sales through the LFCR. The LFCR is a rate rider intended to collect the unrecovered fixed costs associated with the Commission's energy efficiency and distributed generation requirements. (Hutchens Hearing Testimony, Tr. at 143:12-16). As the Commission has stated, "[b]ecause most of TEP's revenue requirement is recovered through volumetric charges, the Commission recognizes that by complying with the Rules' mandate to

reduce energy sales, without a way to recover the fixed costs that would otherwise have been recovered through kWh sales, TEP would not be given a reasonable opportunity to recover its authorized revenue requirement." Decision No. 73912.

As the evidence in this case made clear, the LFCR today recovers only 41% of the lost fixed costs associated with energy efficiency measures and rooftop solar installations, resulting in a revenue loss of almost $13 million in 2015 alone. (Hutchens Rejoinder Testimony at 4:11-12 and Jones Direct Testimony at 78:21-23). That level of revenue erosion is significant, depriving TEP of the opportunity to recover its costs and earn its authorized rate of return. Without enhancing the LFCR or establishing another means of collecting those costs, TEP will be required to file a constant string of rate proceedings – a result that is neither just nor reasonable. (Hutchens Rejoinder Testimony at 7:3-4). Such an outcome would almost certainly impair TEP's attractiveness to the investment community and could undermine its credit rating down the line. (Hutchens Hearing Testimony, Tr. at 146:7-21.) Enhancing the Company's LFCR to correct these deficiencies will sustain TEP's creditworthiness, an end that benefits both the Company's shareholders and its customers and is in the public interest. (Hutchens Hearing Testimony, Tr. at 146:22).

C. The Proposed Economic Development Rate Benefits All Customers and Should Be Adopted.

AIC also supports TEP's proposed Rate Rider 13, the proposed Economic Development Rate. TEP's service territory has been slower to recover from the economic recession than other parts of Arizona, and encouraging economic development through incentives like discounted electricity rates will facilitate that recovery – to the benefit of the Company and all of its customers. (Hutchens Hearing Testimony, Tr. at 147:20-23; 156:1-4; Yaquinto Hearing Testimony, Tr. at 1161:23 – 1162:1).

TEP has sufficient capacity to accommodate these discounts for attracting new business. (Direct Testimony Gary Yaquinto at 6:17-18). Further, the program targets those customers that TEP can most efficiently serve through its facilities – new or

expanding operations with high peak load demand and load factor characteristics. This fact alleviates any potential concerns over cost-shifts. (*Id.* at 6:22-24). Moreover, because TEP is mirroring the State's economic development tax credits for eligibility requirements, the Company has mitigated the administrative costs associated with implementing this program and any potential concerns over "free ridership." (*Id.* at 7:1-5).

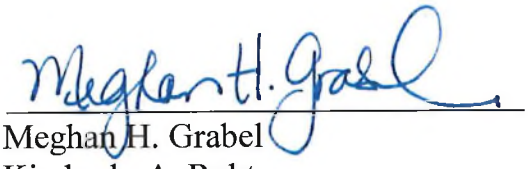
The proposed Economic Development Rate also has the potential to benefit other customers on the TEP system. As new customers enter the TEP service territory, TEP can spread its fixed costs over an increasing number of kWh or customers, resulting in lower electricity prices for all. (Hutchens Hearing Testimony, Tr. at 156: 5-7). AIC thus encourages the Commission to adopt Rate Rider 13.

III. CONCLUSION

For the foregoing reasons, AIC respectfully requests that the administrative law judge recommend accepting the partial settlement agreement, approving the economic development rate, and adopting TEP's proposed modifications to the LFCR. AIC further urges her honor not only to reject the proposed buy-through programs as against public policy, but to reach the legal conclusion that they are unlawful under the Arizona Constitution.

RESPECTFULLY SUBMITTED this 31st day of October, 2016.

OSBORN MALEDON, P.A.

By: 

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