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11 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 STATE OF ARIZONA, *ex rel.* KRISTIN K.
14 MAYES, Attorney General,

15 Plaintiff,

16 v.

17 ARIZONA CORPORATION
18 COMMISSION, NICK MYERS, in their
19 official capacity as a member of the Arizona
20 Corporation Commission, RACHEL
21 WALDEN, in their official capacity as a
22 member of the Arizona Corporation
23 Commission, LEA MÁRQUEZ PETERSON,
24 in their official capacity as a member of the
25 Arizona Corporation Commission, KEVIN
26 THOMPSON, in their official capacity as a
27 member of the Arizona Corporation
28 Commission, RENÉ LOPEZ, in their official
capacity as a member of the Arizona
Corporation Commission,

Defendants.

Case No.

COMPLAINT

(Appeal pursuant to A.R.S. § 40-254 and
Declaratory Judgement Action pursuant to
A.R.S. § 12-1831, et seq.); Ariz. R. Civ. P. 57)

This action is commenced pursuant to A.R.S. §40-254(A) to vacate and remand with instructions Defendant Arizona Corporation Commission’s (“Commission”) Decision No. 81587, which approved an Energy Supply Agreement (“ESA”) that unlawfully abdicated the Commission’s duty to set just and reasonable rates.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction.
2. The Commission's principal office is located in Maricopa County, Arizona.
3. The actions of the Commission and its members that are the subject of this Complaint occurred in Maricopa County, Arizona.

4. Jurisdiction and venue are proper in this Court pursuant to A.R.S. §§ 12-1831 *et seq.* and 40-254(A).

5. Under A.R.S. § 40-255, this action “shall be preferred and shall be heard and determined in preference to other civil matters except election actions.”

PARTIES

6. Plaintiff is the State of Arizona, *ex rel.* Kristin K. Mayes, the Attorney General of Arizona, who is authorized to prosecute this action pursuant to A.R.S. §40-254.

7. The Arizona Attorney General's Office is an executive branch agency created under Ariz. Const., art. 5 § 1.

8. Defendant, the Commission, is an agency of the State of Arizona established under Article 15 of the Arizona Constitution.

9. Defendants Nick Myers, Rachel Walden, Lea Márquez Peterson, Kevin Thompson and René Lopez, are Commissioners of the Arizona Corporation Commission and are named solely in their official capacities.

GENERAL FACTUAL ALLEGATIONS

10. The Commission determines the rates that public service corporations may charge their customers for electric service.

11. Article 15, Section 3 of the Arizona Constitution commands that “[t]he [Corporation] [Commission] shall have full power to, and shall, prescribe ... just and reasonable

1 ***rates and charges to be made and collected by public service corporations*** within the state for
2 service rendered therein[.]” (emphasis added).

3 12. Tucson Electric Power Company (“TEP”) is a public service corporation within the
4 meaning of Article 15, Section 2 of the Arizona Constitution that provides electric service to over
5 400,000 customers in the Tucson metropolitan area.

6 13. On August 25, 2025, TEP submitted to the Commission its Request to Approve
7 Special Agreement for Electric Service (“Request”) to supply Beale Infrastructure Group and its
8 affiliate Humphrey’s Peak Power, LLC (collectively, “Customer”) 286 MW of electricity to
9 supply the first phase of Customer’s planned data center in Pima County.
10 <https://docket.images.azcc.gov/E000045992.pdf?i=1770986513922>.

11 14. The Commission’s public docket for the Request does not contain any background
12 information, documents, or studies regarding the data center project with the exception of a
13 substantially redacted version of the proposed ESA. The proposed ESA included a provision in
14 Section 3.2 allowing for changes to the existing rate agreement.
15 <https://edocket.azcc.gov/search/docket-search/item-detail/29640>.

16 3.2 **Tariff Rate**. Utility will bill Customer and Customer will pay Utility for Electric
17 Service in accordance with the terms and conditions of the Bundled Standard Offer Service of
18 Rate TILPSTHV (including all taxes, fees, riders and other cost adjustments applicable to
19 Customer) (or a successor rate as set forth below) (“Tariff”) and Utility Rules and Regulations,
as such terms and conditions may be modified by this Agreement. [REDACTED]

20 [REDACTED] Electric Service hereunder may be changed to a different rate
21 schedule that replaces the Rate TILPSTHV only upon the mutual agreement of Utility and
22 Customer.

23 15. TEP’s Request states that “[t]he Customer is taking service under a Commission-
24 approved tariff, and the rates reflect the full cost of service from TEP without financial incentives
25 or discounts.” *Id.* at 2.

26 16. Section 3.2 of the ESA defines “Tariff Rate” as “Electric Service in accordance
27 with the terms and conditions of the Bundled Standard Offer Service of Rate TILPSTHV (or
28

1 successor rate as set forth below)."

2 17. The last sentence of Section 3.2 further allows TEP and the Customer to mutually
3 agree to change the rate schedule to replace Rate TILPSTHV without Commission approval.

4 18. A portion of Section 3.2 is redacted and presumably, based on its proximity to the
5 sentence abdicating rate-making authority, directly relates to such an agreement.

6 19. Section 3.2 does not impose any other limitations on the ability of TEP and
7 Customer to change the Commission-approved tariff. For example, Section 3.2 does not
8 otherwise contain any conditions regarding how and when the tariff rate may be changed, nor
9 does it include any requirement that the Commission review or approve TEP and Customer's
10 agreement to provide electric service under a rate schedule different than TILPSTHV.

11 20. Section 3.2 does not require the parties to remain within a Commission-approved
12 range of tariff rates when agreeing to a new rate schedule.

13 21. Section 3.2 does not require the parties to publish the substance of the new rate
14 schedule by which electricity under the contract will be provided.

15 22. Neither Section 3.2 nor any other section of the ESA requires that the parties
16 provide notice to either the Commission or the public of the rate schedule change by which
17 electricity under the contract will be provided.

18 23. Although the Commission has, on occasion, approved special contracts for electric
19 service between a public service corporation and a customer, such agreements typically do not
20 permit the parties to change the rates for service under the contract without Commission
21 approval.¹

22

23 ¹ See e.g., In the Matter of Tucson Electric Power Company for Approval of a Special Contract
24 with the Arizona Board of Regents For and on Behalf of The University of Arizona, Docket No.
25 E-01933A-19-0201 ("The Agreement provides that [University of Arizona] will remain on TEP's
26 Large Power Service ("LPS") Time-of-Use Tariff or the Large Power Service Time-of-Use
27 Voltage Tariff. Moreover, TEP will charge [University of Arizona] a fixed green energy charge
28 and a renewable integration cost instead of the standard energy rate set forth in the Tariff.")
<https://docket.images.azcc.gov/E000002531.pdf?i=1771373003577>; see also In the Matter of the
Application of Arizona Public Service Company For Approval of Electric Service Agreements
with the Arizona Board of Regents For and On the Behalf of Arizona State University, Docket
No. E-01345A-15-0394 ("APS will continue to supply electric service to ASU in accordance with
ASU's Electric Service Agreements and their designated rate schedules, as well as all generally

1 24. The Commission received numerous public comments in the public docket for the
2 Request, including the City of Tucson’s (“City”) November 25, 2025, Request to Open
3 Proceeding and Motion to Intervene.

4 <https://docket.images.azcc.gov/E000047841.pdf?i=1770986513922>.

5 25. The Commission did not respond to the City’s Request to Open Proceeding and
6 Motion to Intervene.

7 26. On December 3, 2025, the Commission held an Open Meeting wherein TEP
8 representatives presented numerous assertions claiming a number of purported benefits of the
9 ESA between TEP and Customer.

10 27. At the December 2025 Open Meeting, Commissioner Rachel Walden, now Vice
11 Chair of the Commission, raised a number of concerns with the ESA as written.

12 28. Additionally, at that same meeting, a significant number of TEP ratepayers voiced
13 opposition to the ESA.

14 29. Then-Commissioner Walden and TEP ratepayers asserted that the ESA would
15 obligate TEP to acquire incremental generating capacity to ensure Customer did not cause
16 reliability issues for other customers, which “would not otherwise bear until years in the future
17 when it would be incrementally added as [TEP’s] IRP [Integrated Resource Plan] forecasted.”
18 <https://docket.images.azcc.gov/0000215738.pdf?i=1770986513922>.

19 30. Of additional concern for Then-Commissioner Walden was the potential need to
20 acquire additional generation capacity to maintain TEP’s 15% reserve margin and that such
21 additional generation capacity would be acquired at a higher incremental cost to existing rate
22 payers which otherwise would not have been necessary to obtain until years into the future. *Id.*

23 31. On December 3, 2025, absent an evidentiary hearing to verify claims by TEP or to
24 investigate customer concerns, the Commission voted 4-1 to approve the ESA. Then-
25 Commissioner Walden dissented.

26 32. On December 10, 2025, the Commission published their Order, Decision No.

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28 applicable service schedules now in effect or as amended from time to time.”)
<https://docket.images.azcc.gov/0000166963.pdf?i=1770927247941>.

1 81587, approving the ESA. <https://docket.images.azcc.gov/0000215738.pdf?i=1771436462872>.

2 33. On December 30, 2025, the State submitted its Application for Rehearing
3 requesting the Commission vacate its Decision No. 81587 approving the ESA between TEP and
4 Customer.² <https://docket.images.azcc.gov/E000048509.pdf?i=1770986513922>.

5 34. In its Application for Rehearing, the State asserted the Commission's Decision No.
6 81587 delegated the Commission's exclusive ratemaking authority to TEP and the Customer,
7 failed to meet the Commission's constitutional duty to set just and reasonable rates, and permitted
8 discriminatory rates.

9 35. On January 20, 2026, the Commission denied the State's Application for Rehearing
10 by operation of law.

11 36. Pursuant to A.R.S. § 40-254(A), "any party in interest, or the attorney general on
12 behalf of the state, being dissatisfied with an order or decision of the commission, may within
13 thirty days after a rehearing is denied or granted, and not afterwards, commence an action in the
14 superior court in the county in which the commission has its office, against the commission as
15 defendant, ***to vacate, set aside, affirm in part, reverse in part or remand with instructions to the***
16 ***commission*** such order or decision on the ground that the valuation, rate, joint rate, toll, fare,
17 charge or finding, rule, classification or schedule, practice, demand, requirement, act or service
18 provided in the order or ***decision is unlawful, or that any rule, practice, act or service provided***
19 ***in the order is unreasonable.***" (emphasis added).

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28 ² As amended by State of Arizona's Corrected Request for Rehearing of Decision No. 81587.
<https://docket.images.azcc.gov/E000048509.pdf?i=1771436462872>.

COUNT I

**UNLAWFUL ABDICATION OF THE COMMISSION'S EXCLUSIVE RATEMAKING
AUTHORITY IN VIOLATION OF ARTICLE 15 § 3 OF THE ARIZONA
CONSTITUTION**

37. The State incorporates the forgoing allegations as set forth fully herein.

38. Article 15, § 3 of the Arizona Constitution provides the Arizona Corporation Commission with plenary and exclusive power to prescribe rates by public service corporations.

39. The Commission may not abdicate to external parties or forces its just and reasonable ratemaking responsibilities.³

40. The Commission abdicated its exclusive rate-making authority by approving an ESA that included the following provision: “Electric service hereunder may be changed to a different rate schedule that replaces the Rate TILPSTHV only upon mutual agreement of Utility and Customer.” <https://docket.images.azcc.gov/E000045992.pdf?i=1770986513922>.

41. “Abdicate” means “[d]isowning, relinquishing completely and to renounce.” *Black’s Law Dictionary* (12th Ed. 2024).

42. In permitting TEP (the aforementioned “Utility”) and Customer to select a “different rate schedule” by mutual agreement, Section 3.2 of the ESA unlawfully abdicates the Commission’s ratemaking responsibilities to two private parties in direct violation of the Arizona Constitution.

43. Neither Section 3.2 nor any other part of the ESA provides an intelligible principle or other substantive or procedural guardrail to constrain the discretion of TEP and Customer when exercising their authority to establish a rate schedule through mutual agreement.

44. Absent any substantive or procedural guidelines for establishing a mutually agreed upon rate schedule, the Commission completely relinquished its authority over future ratemaking between TEP and Customer.

45. The Commission relinquished its authority over the rates charged to Customer by TEP by allowing changes to the Commission-approved rate schedule without further

³ *Phelps Dodge Corp. v. Arizona Elec. Power Co-op., Inc.*, 207 Ariz. 95, 107, ¶ 32 (App. 2004), as amended on denial of reconsideration (Mar. 15, 2004).

Commission approval.

46. In approving the ESA, the Commission violated Article 15, § 3 of the Arizona Constitution because Section 3.2 is an unlawful abdication of its authority.

COUNT II

**UNLAWFUL ABDICATION OF THE COMMISSION'S CONSTITUTIONAL
DUTY TO ENSURE RATES ARE JUST AND REASONABLE IN VIOLATION OF
ARTICLE 15 § 3 OF THE ARIZONA CONSTITUTION**

47. The State incorporates the forgoing allegations as set forth fully herein.

48. Article 15, § 3 of the Arizona Constitution, requires that the Arizona Corporation Commission ensure that any rate charged to a customer by a public service corporation for services rendered are “just and reasonable.”

49. The Supreme Court recognizes that the Commission's responsibility to set just and reasonable rates is exclusive.⁴

50. To meet the constitutional standard for just and reasonable rates, the Commission must base the rates upon a determination of the fair value of the utility's in-state property. Ariz. Const. art. 15, § 14.

51. In approving the ESA, the Commission abdicated its constitutional and statutory duty to ensure that a public service corporation's rates are just and reasonable.

52. The ESA fails to require the Commission find any rate established by TEP and the Customer pursuant to Section 3.2 of the ESA is just and reasonable or to approve of any rate so established.

53. The ESA fails to require a mechanism whereby any rate established by the parties pursuant to Section 3.2 is based upon the fair value of TEP's in-state property as required by law.

54. The ESA fails to require that the parties conduct any other sort of procedure that might require that the rates established by mutual agreement pursuant to Section 3.2 are just and reasonable.

⁴ *Johnson Utilities v. Arizona Corporation Commission*, 249 Ariz. 215, 221 (2020).

55. The Commission's residual ability to re-open the ESA or exercise its constitutional or statutory powers to oversee public service corporations like TEP does not guarantee that the rate under the ESA is just and reasonable.

56. The Commission's approval of the ESA constitutes an unlawful abdication of its constitutional duty to ensure rates are just and reasonable in violation of Article 15, § 3 of the Arizona Constitution.

COUNT III

**THE PRACTICE OF ALLOWING CUSTOMERS TO ENGAGE IN
UNREGULATED SIDE AGREEMENTS IMPACTING RATE SCHEDULES
CONSISTENT WITH THE COMMISSION'S ORDER NO. 81587 IS
UNREASONABLE.**

57. The State incorporates the forgoing allegations as set forth fully herein.

58. Pursuant to A.R.S. § 40-254(A), “any party in interest, or the attorney general on behalf of the state, being dissatisfied with an order or decision of the commission, may within thirty days after a rehearing is denied or granted, and not afterwards, commence an action in the superior court in the county in which the commission has its office, against the commission as defendant, to vacate, set aside, affirm in part, reverse in part or remand with instructions to the commission such order or decision on the ground that the valuation, rate, joint rate, toll, fare, charge or finding, rule, classification or schedule, practice, demand, requirement, act or service provided in the order or decision is unlawful, *or that any rule, practice, act or service provided in the order is unreasonable.*” (emphasis added).

59. The Commission can approve special contracts for electric service between a public service corporation and a customer, but allowing such agreements to permit parties to change the rate schedule for electric service without further Commission approval is an unreasonable practice.

60. The practice is unreasonable because it bypasses the established ratemaking process, which requires standardized accounting procedures to set forth a “test year” of actual expenses and investments made during a twelve-month period, notice to the public, an

1 opportunity for interested parties to intervene, an opportunity for intervenors to submit requests
2 for additional information from the utility regarding the application, an opportunity for
3 intervenors to present evidence and written briefs of their own and to cross-examine other parties'
4 witnesses and a formal hearing before the Commission.

5 61. The practice is unreasonable because it allows TEP and Customer to establish rates
6 without ensuring the rates for service under the special contracts are just and reasonable.

7 62. The Commission's Decision No. 81587 approves an ESA containing a provision
8 in Section 3.2 allowing for rate schedule changes between a public service corporation and a
9 customer without Commission approval, which is exactly the type of unreasonable practice
10 contemplated by A.R.S. § 40-254(A).

RELIEF REQUESTED

12 **WHEREFORE**, the State respectfully requests this Court grant the following relief:

13 A. Expedited consideration of this matter pursuant to A.R.S. §40-255.

14 B. Declare, pursuant to A.R.S. § 12-1831, *et seq.*, and Ariz. R. Civ. P. 57, that the
15 Commission has the exclusive authority to prescribe rates for public service corporations
16 under Article 15, Section 3 of the Arizona Constitution;

17 C. Declare, pursuant to A.R.S. § 12-1831, *et seq.* and Ariz. R. Civ. P. 57, that the
18 Commission's Decision No. 81587 is unlawful because it approved an ESA that incorporated an
19 abdication of the Commission's exclusive ratemaking authority;

20 D. Vacate the Commission's Decision No. 81587 as unlawful;

21 E. Remand the matter to the Commission with instructions to strike the unlawful
22 abdication of authority provision from Section 3.2 prior to issuing a final decision on the ESA;

23 F. Vacate the Commission's Decision No. 81587 because it approves an unreasonable
24 practice of shifting ratemaking authority to private parties;

25 G. Award the State its costs and attorneys' fees incurred in bringing this action
26 pursuant to A.R.S. §12-348.01 and other applicable statutes or doctrines;

27 H. Award the State such further relief the Court deems just and proper under the
28 circumstances.

1 **RESPECTUFLY SUBMITTED** this 18th day of February, 2026.
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6 KRISTIN K. MAYES
7 Attorney General
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