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BEFORE THE ARIZONA CORPORATION COMMISSION

**JEFF HATCH-MILLER**  
Chairman  
**WILLIAM A. MUNDELL**  
Commissioner  
**MARC SPITZER**  
Commissioner  
**MIKE GLEASON**  
Commissioner  
**KRISTIN K. MAYES**  
Commissioner

Arizona Corporation Commission

**DOCKETED**

MAR 11 2005

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AZ CORP COMMISSION  
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2005 MAR 11 P 4: 02

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IN THE MATTER OF THE  
GENERIC PROCEEDINGS  
CONCERNING ELECTRIC  
RESTRUCTURING

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF ARIZONA  
PUBLIC SERVICE COMPANY'S  
REQUEST FOR VARIANCE OF  
CERTAIN REQUIREMENTS OF  
A.A.C. 4-14-2-1606

DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE  
GENERIC PROCEEDINGS  
CONCERNING THE ARIZONA  
INDEPENDENT SCHEDULING  
ADMINISTRATOR

DOCKET NO. E-00000A-01-0630

IN THE MATTER OF TUCSON  
ELECTRIC COMPANY'S  
APPLICATION FOR A  
VARIANCE OF CERTAIN  
ELECTRIC POWER  
COMPETITION RULES  
COMPLIANCE DATES

ISSUES IN THE MATTER OF  
TUCSON ELECTRIC POWER  
COMPANY'S APPLICATION  
FOR A VARIANCE OF CERTAIN  
ELECTRIC COMPETITION  
RULES COMPLIANCE DATES

DOCKET NO. E-01933A-02-0069

**AECC RESPONSE TO AEPCO  
SUPPLEMENTAL FILING AND  
REQUEST FOR OFFICIAL NOTICE**

Arizonans for Electric Choice and Competition ("AECC") hereby submits  
this Response to Arizona Electric Power Cooperative, Inc.'s ("AEPCO")  
Supplemental filing and Request for Official Notice, filed February 2, 2005.

1 In its Procedural Order of February 18, 2005, the Commission invited  
2 parties to respond to AEPCO's recent claim that the proceeding in Docket No. E-  
3 00000A-01-0630 is now moot, given that the Court of Appeals opinion<sup>1</sup> declaring  
4 the Arizona Independent Scheduling Administration ("AISA") requirements of  
5 A.A.C. R14-2-1609 to be invalid was now final. AEPCO is incorrect in claiming  
6 that the proceeding is now moot.

7 The AISA is a duly incorporated entity with a FERC-approved tariff and  
8 protocols. The AISA was created by its members to ensure non-discriminatory  
9 access to transmission in furtherance of the Commission's policy of offering  
10 Arizona customers the option of retail access service. The invalidation of the  
11 AISA-related language in the Electric Competition Rules does not eliminate the  
12 AISA, nor does it eliminate the obligation of Arizona Public Service Company  
13 ("APS") and Tucson Electric Power Company ("TEP") to participate in the AISA.

14 The participation of APS and TEP in the AISA is a requirement of the  
15 respective Settlement Agreements entered into by both Companies that were  
16 approved by the Commission in 1999. AECC is a party to both of these  
17 Agreements and considers the AISA provision in each Agreement to be an  
18 essential part of said Agreements. Among other things, these Settlement  
19 Agreements allow customers the option of taking retail access service and have  
20 provided stranded cost recovery to the utilities. The AISA provisions in the  
21 Settlement Agreements are an integral part of providing retail access options to  
22 customers, as negotiated among the Parties. The AISA settlement provisions do  
23 not reference R14-2-1609 and are not dependent in any way on a specific mandate  
24 in the Electric Competition Rules to participate in the AISA. Indeed, the very  
25 existence of the AISA provisions in the Agreements underscores the independence

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26 <sup>1</sup> *Phelps Dodge Corporation, et al., v. AEPCO, et al., 207 Ariz. 95, 83 Pl.3d 573 (2004).*

1 of the obligations of the Parties to support the AISA, separate and apart from a  
2 specific mandate in the Rules.

3 The relevant language from the APS and TEP Settlement Agreements is as  
4 follows.

5 APS:

6 "7.6. APS shall actively support the Arizona Independent  
7 Scheduling Administrator ("AISA") and the formation of the Desert Star  
8 Independent System Operator. APS agrees to modify its OATT to be  
9 consistent with any FERC approved AISA protocols. The Parties reserve  
10 their rights with respect to any AISA protocols, including the right to  
11 challenge or seek modifications to, or waivers from, such protocols. APS  
12 shall file changes to its existing OATT consistent with this section within  
13 ten (10) days of Commission approval of this Agreement pursuant to  
14 Section 6.1." (Page 9 of the Settlement Agreement)

11 TEP:

12 "9.1 TEP shall fully support the development of the Arizona  
13 Independent Scheduling Administrator ("AISA") and Desert STAR. TEP  
14 shall modify its FERC Open Access Transmission Tariff ("OATT") to be  
15 fully compatible with the AISA/ISO Bylaws and Protocols Manual. The  
16 Parties reserve their rights with respect to any AISA protocols, including  
17 the right to challenge or seek modifications to, or waivers from, such  
18 protocols. TEP shall file changes to its existing OATT consistent with this  
19 Section within ten (10) days of Commission approval of this Settlement  
20 Agreement pursuant to Section 13.3." (Page 10 of the Settlement  
21 Agreement)

18 Despite the fact that APS and TEP have obligations to support the AISA  
19 that are independent from R14-2-1609, this Commission's consideration of the  
20 AISA in this docket remains relevant as a matter of public policy. The AISA  
21 exists to support the Commission's policy of providing customers with retail  
22 choice. The Court may have precluded the Commission from *mandating*  
23 participation in the AISA for a utility not otherwise so obligated, but the  
24 Commission is not precluded from *supporting* the continuation of the AISA as a  
25 matter of public policy, nor is the Commission precluded from requiring that  
26 Parties to approved settlement agreements adhere to the terms of those

1 agreements, including, in this instance, the obligation to participate in the AISA.

2 Under A.A.C. R14-2-1609(A), the Commission is empowered to ensure  
3 that Affected Utilities provide non-discriminatory open access to transmission and  
4 distribution facilities to serve all customers. The standard OATT-based  
5 transmission regime was developed by FERC with wholesale transactions in mind,  
6 and it does not address the unique circumstances that arise when implementing a  
7 state retail direct access program. In considering the existing obligations under  
8 A.A.C. R14-2-1609(A), the implementation and oversight of operating protocols  
9 for retail access service is best administered and modified by an independent  
10 body, such as the AISA, rather than through unilateral Open Access Transmission  
11 Tariff ("OATT") filings by individual transmission providers.

12 AECC believes the record of this docket reaffirms the importance of the  
13 AISA in supporting the Commission's policy of providing retail choice. Even  
14 though, in recent years, the underlying economics have not supported using direct  
15 access service in Arizona, it remains a valuable option going forward. The  
16 proposed unbundling of APS' rates now pending before the Commission, the  
17 imminent removal of APS stranded cost charges, the commitment to a retail  
18 competition business model demonstrated by a number of national retail suppliers,  
19 and the development of merchant generation in Arizona combine to improve the  
20 economical viability of retail choice going forward.

21 AECC recommends that the Commission issue the following findings in this  
22 docket:

- 23 1. The AISA is a FERC-jurisdictional entity that was created to ensure non-  
24 discriminatory access to transmission for retail access service in Arizona in  
25 furtherance of the Commission's policy of offering the choice of retail  
26 direct access service to customers.

- 1 2. APS and TEP have entered into Commission-approved Settlement  
2 Agreements with parties that obligate APS and TEP to support the AISA,  
3 independent of the requirements in R14-2-1609.
- 4 3. The AISA ensures non-discriminatory access to transmission for retail  
5 service in Arizona in the absence of a Regional Transmission Organization.
- 6 4. The AISA Board has responded to the current lack of retail direct access  
7 activity in Arizona by downsizing the AISA to the minimum size  
8 practicable that still retains the critical mass needed to keep the entity  
9 intact. This approach appropriately keeps the option of direct access  
10 available to Arizona customers, to be utilized as the opportunity to shop  
11 improves.
- 12 5. The continued participation of APS and TEP in the AISA, in compliance  
13 with their respective Settlement Agreements, is in the public interest.
- 14 6. APS, TEP, and other Affected Utilities shall continue to be allowed to  
15 recover the prudent costs of participation in the AISA, as provided in the  
16 applicable cost recovery mechanisms approved by the Commission in other  
17 dockets.

18 RESPECTFULLY SUBMITTED this 11th day of March 2005.

19 FENNEMORE CRAIG, P.C.

20  
21 By:   
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and Competition

1 **ORIGINAL AND 21 COPIES** of the foregoing  
2 **FILED** this 11<sup>th</sup> day of March 2005 with:

3 **DOCKET CONTROL**  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 and **COPY HAND-DELIVERED** to:

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and **COPY MAILED/\*E-MAILED** to each party listed on the June 18, 2003 Procedural Order.

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