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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

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IN THE MATTER OF THE
GENERIC PROCEEDINGS
CONCERNING ELECTRIC
RESTRUCTURING

DOCKET NO. E-00000A-01-0000

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 opinion¹ 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

26 ¹ *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)

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

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.

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

RESPECTFULLY SUBMITTED this 11th day of March 2005.

FENNEMORE CRAIG, P.C.

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1 **ORIGINAL AND 21 COPIES** of the foregoing
2 **FILED** this 11th 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:

8 Lyn Farmer,
9 Chief Administrative Law Judge
10 Presiding Officer
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12 1200 W. Washington Street
13 Phoenix, Arizona 85007

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

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