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MAR 16 2005

BEFORE THE ARIZONA CORPORATION COMMISSION

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2005 MAR 16 P 4: 38

AZ CORP COMMISSION
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IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR A
VARIANCE OF CERTAIN REQUIREMENTS OF
A.A.C. R14-2-1606.

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
ADMINISTRATOR.

DOCKET NO. E-01345A-01-0822

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

DOCKET NO. E-00000A-01-0630

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

**TUCSON ELECTRIC POWER
COMPANY'S RESPONSE TO THE
AISA PROCEDURAL ORDER**

Tucson Electric Power Company ("TEP"), through undersigned counsel, hereby files its response to the Procedural Order dated February 18, 2005 and filed in the dockets captioned above regarding the status of the Arizona Independent Scheduling Administrator (the "AISA Procedural Order"), as follows:

INTRODUCTION.

On January 25, 2005, the Arizona Court of Appeals issued a mandate in Phelps Dodge Corporation, et. al. v. Arizona Electric Power Cooperative, Inc., et al., 207 Ariz. 95, 83 P.3d 573 (App. 2004) (the "Phelps Dodge case"), indicating that the Arizona Supreme Court denied the petition for review of that case.

1 On February 2, 2005, Arizona Electric Power Cooperative, Inc. ("AEPCO") filed a copy of
2 the mandate with the Arizona Corporation Commission ("Commission") and requested that official
3 notice be taken thereof. Further, AEPCO stated that the Court of Appeals' determination in the
4 Phelps Dodge case that A.A.C. R14-2-1609 (C) – (J) was invalid mooted proceedings in Docket
5 No. E-00000A-01-0630 the ("AISA docket").

6 On February 18, 2005, the Presiding Administrative Law Judge issued the AISA
7 Procedural Order which, among other things, solicited responses (i) to AEPCO's filing; and (ii) the
8 effect of the Phelps Dodge case on the AISA docket.

9 **TEP's RESPONSE.**

10 In the Phelps Dodge case, the Court of Appeals stated:

11 [A.A.C. R14-2-1609] subsections (C)-(J), which the
12 Cooperatives challenge, direct Affected utilities to each
13 create an independent scheduling administrator and a
14 scheduling coordinator to oversee fair access to
15 transmission services in a manner substantially prescribed
16 by the Commission.

17 ...

18 In sum, we hold that the Commission lacked constitutional
19 or legislative authority to promulgate R14-2-1609 (C)-(J).
20 (Id at 113)

21 Section 4.2 of the TEP 1999 Settlement Agreement (Decision No. 62103) provides that
22 TEP's cost for variable must-run generation shall be billed directly to scheduling coordinators in
23 accordance with AISA protocols and shall be included in the standard offer generation charge.

24 Section 9.1 of the TEP 1999 Settlement Agreement provides that TEP shall fully support
25 the development of the AISA, and shall modify its FERC Open Access Transmission Tariff to be
26 fully compatible with the AISA Bylaws and Protocols Manual.

27 The Phelps Dodge case makes it clear that those provisions of A.A.C. R14-2-1609 that
provide for the creation of the AISA are neither valid nor enforceable. This state of affairs calls
into question the status of Sections 4.2 and 9.1 of the TEP 1999 Settlement Agreement and TEP's
duties and responsibilities in connection therewith. TEP believes that, in light of the Phelps

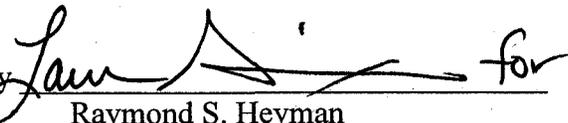
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Dodge case, it is appropriate for the Commission to provide notice of the steps it will take, if any, regarding (i) the AISA-related Electric Competition Rules; and (ii) any terms of settlement agreements (such as the TEP 1999 Settlement Agreement) that are based upon the invalidated AISA related rules.

RESPECTFULLY SUBMITTED this 11th day of March 2005.

ROSHKA HEYMAN & DEWULF, PLC

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2 filed this 11th day of March 2005 with:

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8 this 11th day of March 2005 to:

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