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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
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E-01345A-01-0822  
E-00000A-01-0630  
E-01933A-02-0069  
E-01933A-98-0471

2002 MAY 20 P 4: 32

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE GENERIC  
PROCEEDINGS CONCERNING ELECTRIC  
RESTRUCTURING ISSUES.

Docket No. E-00000A-02-0051

**TUCSON ELECTRIC POWER  
COMPANY'S COMMENTS TO  
COMMISSION STAFF'S REQUEST  
FOR A PROCEDURAL ORDER**

Tucson Electric Power Company ("TEP"), through undersigned counsel, hereby provides the Commission Staff with its comments to the topics identified in "Staff's Request for a Procedural Order" dated May 13, 2002 ("Staff's Request"), as follows:

Staff's Request seeks written comments by parties to this docket to four (4) topics: (1) criteria for selecting the independent evaluator; (2) the role of the independent evaluator; (3) the payment arrangements for the independent evaluator; and (4) a description of various types of competitive solicitations and their attributes.

Staff's Request assumes several critical factors that TEP does not believe are settled. First, that the Commission's re-evaluation of the Electric Competition Rules has concluded that electric competition is in the best public interest and how it should proceed. Second, that if electric competition is to proceed, then competitive solicitation is an appropriate component of the process. And, third, that an independent evaluator is necessary. TEP's mention of these factors should not be interpreted as opposition to the

Arizona Corporation Commission

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1 Procedural Order or Staff's Request. However, TEP believes that the Commission must  
2 formally and separately address each of these factors.<sup>1</sup> The Commission's ultimate  
3 determination of these factors may impact TEP's comments stated herein.  
4

5  
6 **I. Criteria for Selecting the Independent Evaluator.**

7 TEP has indicated in its "Track B Proposals" that it does not believe that an  
8 independent evaluator is necessary to the development of a competitive solicitation  
9 process. TEP believes that there is sufficient expertise among the utilities, merchants,  
10 Commission Staff and other intervenors in this proceeding to establish guidelines for the  
11 competitive solicitation of electric power. Also, up to this point in time, there have been  
12 few competitive solicitation processes that have been implemented (and with limited  
13 experience with which to judge their long term success) so TEP is not convinced that an  
14 independent evaluator would have incrementally more experience in developing  
15 appropriate policies and procedures than the participants in this docket.  
16  
17

18 However, if the Commission Staff hires an independent evaluator to assist it, then  
19 TEP believes that the following criteria should be met to ensure that the evaluator selected  
20 is experienced and independent:  
21  
22

23 \_\_\_\_\_  
24 <sup>1</sup> TEP reserves its right to participate in all aspects of the proceedings in this docket and to  
25 express its position (whether in support of, or in opposition to) these factors as well as any others  
26 that may arise. By participating in these proceedings, TEP does waive any claim, position or  
27 defense that it may have to any issue related to the Commission's re-evaluation of the Electric  
Competition Rules.

1 a. The independent evaluator does not have a financial interest in and is  
2 not representing any utility, ESP or merchant power provider certificated in  
3 Arizona (or whose application for a certificate is pending) or who owns or is  
4 constructing a power plant in the State.

5  
6 b. The independent evaluator has prior experience in developing  
7 policies and procedures for competitive solicitation in the electric power industry.

8 c. The independent evaluator has prior experience with wholesale  
9 power markets in the Southwest Region of California, Nevada, Arizona and New  
10 Mexico.

11  
12 d. The independent evaluator is not representing any Regional  
13 Transmission Organization, Independent Systems Organization or the Federal  
14 Energy Regulatory Commission.

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17 **II. The Role of the Independent Evaluator.**

18 The Procedural Order referred to the involvement of an “independent  
19 consultant/evaluator” in the competitive solicitation process. TEP believes that  
20 Commission Staff should fill the role of the independent evaluator. In fact, TEP believes  
21 that the Procedural Order contemplates such a role for Commission Staff. See Procedural  
22 Order dated May 2, 2002 at 2, lines 3-8.

23  
24 The Staff’s Request, however, simply refers to an “independent evaluator”. TEP is  
25 unsure if the Staff Request’s different terminology reflects a change in envisioned duties of  
26 the independent consultant/evaluator referenced in the Procedural Order. Obviously, if the  
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Commission Staff desires to retain a consultant to advise it relative to its role as an evaluator, TEP would not object to the scope that the Commission Staff might define. However, if the Commission Staff is proposing that the independent evaluator would take on the role of overseeing the competitive solicitation process and participants, then TEP offers the following recommendation:

The independent evaluator could monitor the development of the procedures and policies for the competitive solicitation process. Incumbent utilities should propose the procedure for competitive solicitation as well as submit proposed forms of Requests for Proposals ("RFPs"). Interested parties could provide their comments to the procedure and proposed forms of RFPs. The independent evaluator could act as a mediator for any disputes between the terms of the proposals of the incumbent utilities and the comments of the parties. If the independent evaluator determined that an unresolved procedure or RFP term was anti-competitive he could recommend that the Commission hold a hearing/arbitration on the issue for resolution. The independent evaluator could also reduce to writing the final procedures and acceptable RFP forms for competitive solicitation.

1     **III.    The Payment Arrangements for The Independent Evaluator.**

2           TEP believes that if Commission Staff hires an independent consultant to advise it,  
3 then the Commission's standard hiring and payment arrangements should apply. If,  
4 however, Commission Staff and other parties believe that an independent evaluator is  
5 necessary, then TEP would suggest that those parties share in the cost. This could be  
6 accomplished by an assessment to those supporting parties or as part of a bid response fee.  
7  
8 Inasmuch as TEP does not believe that an independent evaluator is necessary, it also  
9 believes that it would not be prudent to expend TEP funds to pay for the independent  
10 evaluator.

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13     **IV.    A Description of Various Types of Competitive Solicitations and Their**  
14     **Attributes.**

15           TEP has had limited experience in comparative competitive solicitation processes.  
16 TEP is familiar with the RFP process, "on-line trading platforms" and telephone  
17 brokerage. TEP is aware that some jurisdictions, such as New Jersey, are looking to a  
18 more sophisticated auction program. Each of these processes has sufficient flexibility that  
19 it can be adjusted to meet specific circumstances and desired results. However, TEP  
20 believes that until the Commission provides a definitive framework for electric  
21 competition it will be difficult, if not impossible, to assess in a meaningful fashion, the  
22 benefits and detriments of any competitive solicitation process.  
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1           **A.     RFPs.**

2           TEP defines the RFP process as involving a written request (the RFP) for the  
3 acquisition of electric products and/or services that is distributed by a purchaser to  
4 potential sellers. The RFP should include well-defined protocols and schedules for  
5 products and/or services. The RFP process may establish criteria for the qualification of  
6 potential sellers and for the determination of how to select the “winning” seller.  
7

8           The potential benefits for the RFP process include:

- 9
- 10          1. The RFP process is used in many contexts and participants generally understand  
11             the nature of the process and the obligations attendant to it.
  - 12          2. The RFP process allows the purchaser to establish the terms and conditions of  
13             the transaction so that responses are limited to those who are interested to meet  
14             those terms.
  - 15          3. The RFP process normally allows the purchaser time to conduct necessary due  
16             diligence on the sellers.
- 17

18

19           The potential drawbacks to the RFP process include:

- 20
- 21          1. The RFP process can be time-consuming in its preparation and execution.
  - 22          2. There may be limited flexibility in the transaction as the purchaser is locked into  
23             the terms and conditions of the RFP even if circumstances change.
  - 24          3. The evaluation of the RFP responses may be difficult depending upon the  
25             selection criteria.
- 26
- 27

1 The RFP process is generally viewed as easily understood and fair. However, it  
2 may not be the most efficient process in a market that is volatile with frequent changes in  
3 product and price. The RFP process is generally not very transparent as respondents to  
4 RFPs usually are not aware of the terms and conditions of each response.

5  
6 **B. AUCTIONS.**

7 TEP believes that it is important for the Commission Staff to decide upon formal  
8 criteria for an "auction" in the electric competition arena. The generally accepted  
9 definition of auction is "a public sale of property to the highest bidder".<sup>2</sup> In its brief review  
10 of the auction process, TEP believes that many activities can be classified as an auction.  
11 Telephone brokerage is one of the oldest trading methods in the electric power market that  
12 uses a bidding process. Also, in a general sense, the RFP process could be considered an  
13 auction. TEP is aware of certain "on-line trading platforms" that involve bidding  
14 procedures that could be classified as auctions such as the Intercontinental Exchange  
15 ("ICE") and the Automated Power Exchange ("APX"). The California Power Exchange  
16 used bidding procedures when it was operational. In New Jersey, it appears that a more  
17 sophisticated form of auction is being implemented with descending rounds of participants  
18 until the winner is determined. It is likely that some participants will recommend that  
19 types of auctions or bidding used in other disciplines should be adapted to the electric  
20 power market. Each such auction process will need to be analyzed in the context of its  
21 terms, conditions and purposes.  
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26  
27 <sup>2</sup> See: Webster's New Collegiate Dictionary (G. & C. Merriam Co. 1980) at 73; Black's  
Law Dictionary 5<sup>th</sup> Edition (West Publishing Co. 1979) at 119.

**ROSHKA HEYMAN & DEWULF, PLC**

ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

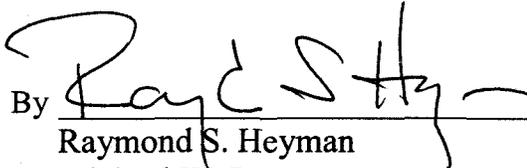
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TEP believes that once the Commission Staff determines if it will recommend that an auction be used as a competitive solicitation process it should select a specific type of auction and then request participant input on the benefits and drawbacks of the selected auction process. This will allow the participants to indicate any modifications or objections to the auction process.

TEP believes that generally auctions are viewed as being fair and transparent.

Respectfully submitted this 20th day of May 2002.

**ROSHKA HEYMAN & DEWULF, PLC**

By 

Raymond S. Heyman  
Michael W. Patten  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004

Attorneys for Tucson Electric Power Company

**ORIGINAL and 10 COPIES** filed  
May 20, 2002, with:

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

**ROSHKA HEYMAN & DEWULF, PLC**

ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

1  
2  
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**COPIES** hand-delivered May 20, 2002, to:

CHAIRMAN WILLIAM MUNDELL  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Commissioner Jim Irvin  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Commissioner Marc Spitzer  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Lyn A. Farmer, Esq.  
Chief Administrative Law Judge  
Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Christopher Kempley, Esq.  
Chief Counsel, Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Ernest Johnson  
Director, Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

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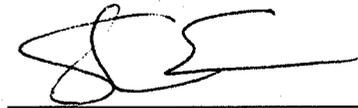
**ROSHKA HEYMAN & DEWULF, PLC**

ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

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- 27

Electronic Mail Service List  
Docket No. E-00000A-02-0051

Michael A. Curtis  
William P. Sullivan  
Paul R. Michaud  
MARTINEZ & CURTIS, P.C.  
2712 North 7th Street  
Phoenix, Arizona 85006

Attorneys for Arizona Municipal Power Users Association, Mohave Electric Cooperative, Inc.,  
Navopache Electric Cooperative, Inc., Reliant Resources, Inc. & Primesouth, Inc.

[mcurtis401@aol.com](mailto:mcurtis401@aol.com)

[wsullivan@martinezcurtis.com](mailto:wsullivan@martinezcurtis.com)

[pmichaud@martinezcurtis.com](mailto:pmichaud@martinezcurtis.com)

C. Webb Crockett  
Jay L. Shapiro  
FENNEMORE CRAIG, PC  
3003 N. Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913  
Attorneys for Panda Gila River, L.P.  
[Wcrockett@fclaw.com](mailto:Wcrockett@fclaw.com)  
[Jshapiro@fclaw.com](mailto:Jshapiro@fclaw.com)

Lawrence V. Robertson Jr.  
MUNGER CHADWICK, PLC  
333 North Wilmot, Suite 300  
Tucson, Arizona 85711-2634  
Attorney for Southwestern Power Group, II, LLC; Bowie Power Station, LLC; Toltec Power Station, LLC;  
and Sempra Energy Resources  
[Lvrobertson@mungerchadwick.com](mailto:Lvrobertson@mungerchadwick.com)

Tom Wran  
Southwestern Power Group II  
[Twran@southwesternpower.com](mailto:Twran@southwesternpower.com)

Theodore E. Roberts  
SEMPRA ENERGY RESOURCES  
101 Ash Street, HQ 12-B  
San Diego, California 92101-3017  
[Troberts@sempra.com](mailto:Troberts@sempra.com)

William J. Murphy  
CITY OF PHOENIX  
200 West Washington Street, Suite 1400  
Phoenix, Arizona 85003-1611  
[Bill.murphy@phoenix.gov](mailto:Bill.murphy@phoenix.gov)

Russell E. Jones  
WATERFALL ECONOMIDIS CALDWELL  
HANSHAW & VILLAMANA, P.C.  
5210 E. Williams Circle, Suite 800  
Tucson, Arizona 85711  
Attorneys for Trico Electric Cooperative, Inc.  
[Rjones@wechv.com](mailto:Rjones@wechv.com)

Christopher Hitchcock  
HITCHCOCK & HICKS  
P.O. Box 87  
Bisbee, Arizona 85603-0087  
Attorney for Sulphur Springs Valley Electric Cooperative, Inc.  
[Lawyers@bisbeelaw.com](mailto:Lawyers@bisbeelaw.com)

Michael Grant  
GALLAGHER & KENNEDY  
2575 East Camelback Road  
Phoenix, Arizona 85016-9225  
Attorneys for AEPCO, Graham County Electric Cooperative,  
and Duncan Valley Electric Cooperative.  
[Mmg@gknet.com](mailto:Mmg@gknet.com)

Jay I. Moyes  
MOYES STOREY  
3003 N. Central Ave., Suite 1250  
Phoenix, Arizona 85012  
Attorneys for PPL Southwest Generation Holdings, LLC;  
PPL EnergyPlus, LLC and PPL Sundance Energy, LLC  
[Jimoyes@lawms.com](mailto:Jimoyes@lawms.com)

Patricia Cooper  
AEPCO/SSWEPCO  
P.O. Box 670  
Benson, Arizona 85602  
[Pcooper@aepnet.org](mailto:Pcooper@aepnet.org)

Patrick J. Sanderson  
ARIZONA INDEPENDENT SCHEDULING  
ADMINISTRATOR ASSOCIATION  
P.O. Box 6277  
Phoenix, Arizona 85005-6277  
[Psanderson@az-isa.org](mailto:Psanderson@az-isa.org)

Roger K. Ferland  
QUARLES & BRADY STREICH LANG, L.L.P.  
Renaissance One  
Two North Central Avenue  
Phoenix, Arizona 85004-2391  
[Rferland@quarles.com](mailto:Rferland@quarles.com)

Jeffrey Guldner  
Thomas L. Mumaw  
SNELL & WILMER  
400 E. Van Buren,  
One Arizona Center  
Phoenix, Arizona 85004-0001  
[Tmumaw@swlaw.com](mailto:Tmumaw@swlaw.com)

Robert Baltes  
ARIZONA COGENERATION ASSOC.  
7250 N. 16<sup>th</sup> Street, Suite 102  
Phoenix, Arizona 85020-5270  
[Bbaltes@bvaeng.com](mailto:Bbaltes@bvaeng.com)

Jana Van Ness  
APS  
Mail Station 9905  
P.O. Box 53999  
Phoenix, Arizona 85072-3999  
[Jana.vanness@aps.com](mailto:Jana.vanness@aps.com)

Greg Patterson  
5432 E. Avalon  
Phoenix, Arizona 85018  
[Gpatterson@aol.com](mailto:Gpatterson@aol.com)

John Wallace  
Grand Canyon State Electric Co-op  
120 N. 44<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85034-1822  
[Jwallace@gcseca.org](mailto:Jwallace@gcseca.org)

Kelly Barr  
Jana Brandt  
SRP  
Mail Station PAB211  
P.O. Box 52025  
Phoenix, Arizona 85072-2025  
[Kjbarr@srpnet.com](mailto:Kjbarr@srpnet.com)  
[Jkbrandt@srpnet.com](mailto:Jkbrandt@srpnet.com)

Michael L. Kurtz  
BORHM KURTZ & LOWRY  
36 E. Seventh Street, Suite 2110  
Cincinnati, Ohio 45202  
[Mkurtzlaw@aol.com](mailto:Mkurtzlaw@aol.com)

William P. Inman  
Dept. of Revenue  
1600 W. Monroe, Room 911  
Phoenix, Arizona 85007  
[InmanW@revenue.state.az.us](mailto:InmanW@revenue.state.az.us)

Vicki G. Sandler  
c/o Linda Spell  
APS Energy Services  
P.O. Box 53901  
Mail Station 8103  
Phoenix, Arizona 85072-3901  
[Linda\\_spell@apses.com](mailto:Linda_spell@apses.com)

Lori Glover  
STIRLING ENERGY SYSTEMS  
2920 E. Camelback Rd., Suite 150  
Phoenix, Arizona 85016  
[Lglover@stirlingenergy.com](mailto:Lglover@stirlingenergy.com)

Peter Van Haren  
CITY OF PHOENIX  
Attn: Jesse W. Sears  
200 W. Washington Street, Suite 1300  
Phoenix, Arizona 85003-1611  
[Jesse.sears@phoenix.gov](mailto:Jesse.sears@phoenix.gov)

Robert Annan  
ARIZONA CLEAN ENERGY INDUSTRIES ALLIANCE  
6605 E. Evening Glow Drive  
Scottsdale, Arizona 85262  
[Annan@primenet.com](mailto:Annan@primenet.com)

Jeff Schlegel  
SWEEP  
1167 Samalayuca Drive  
Tucson, Arizona 85704-3224  
[Schlegelj@aol.com](mailto:Schlegelj@aol.com)

Philip Key  
RENEWABLE ENERGY LEADERSHIP GROUP  
10631 E. Autumn Sage Drive  
Scottsdale, Arizona 85259  
[Keytaic@aol.com](mailto:Keytaic@aol.com)

Howard Geller  
SWEEP  
2260 Baseline Rd., Suite 200  
Boulder, Colorado 80302  
[Hgeller@swenergy.org](mailto:Hgeller@swenergy.org)

Paul Bullis  
OFFICE OF THE ATTORNEY GENERAL  
1275 W. Washington Street  
Phoenix, Arizona 85007  
[Paul.bullis@ag.state.az.us](mailto:Paul.bullis@ag.state.az.us)

Mary-Ellen Kane  
ACAA  
2627 N. 3<sup>rd</sup> Street, Suite Two  
Phoenix, Arizona 85004  
[Mkane@azcaa.org](mailto:Mkane@azcaa.org)

Laurie Woodall  
OFFICE OF THE ATTORNEY GENERAL  
15 S. 15<sup>th</sup> Avenue  
Phoenix, Arizona 85007  
[Laurie.woodall@ag.state.az.us](mailto:Laurie.woodall@ag.state.az.us)

Aaron Thomas  
AES NewEnergy  
350 S. Grand Avenue, Suite 2950  
Los Angeles, California 90071  
[Aaron.thomas@aes.com](mailto:Aaron.thomas@aes.com)

Donna M. Bronski  
CITY OF SCOTTSDALE  
3939 N. Drinkwater Blvd  
Scottsdale, Arizona 85251  
[Dbronski@ci.scottsdale.az.us](mailto:Dbronski@ci.scottsdale.az.us)

Theresa Mead  
AES NewEnergy  
P.O. Box 65447  
Tucson, Arizona 85728  
[Theresa.mead@aes.com](mailto:Theresa.mead@aes.com)

Larry F. Eisenstat  
Frederick D. Ochsenhirt  
Michael R. Engleman  
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP  
2101 L Street, NW  
Washington, DC 20037  
[Eisenstatl@dsmo.com](mailto:Eisenstatl@dsmo.com)  
[Ochsenhirtf@dsmo.com](mailto:Ochsenhirtf@dsmo.com)

Jesse Dillon  
PPL Services Corp.  
2 N. Ninth Street  
Allentown, Pennsylvania 18101-1179  
[Jadillon@pplweb.com](mailto:Jadillon@pplweb.com)

Gary A. Dodge  
HATCH, JAMES & DODGE  
10 W. Broadway, Suite 400  
Salt Lake City, Utah 84101  
[Gdodge@hjdllaw.com](mailto:Gdodge@hjdllaw.com)

David A. Crabtree  
Dierdre A. Brown  
TECO POWER SERVICES CORP.  
P.O. Box 111  
Tampa, Florida 33602  
[Dacrabtree@tecoenergy.com](mailto:Dacrabtree@tecoenergy.com)  
[Dabrown@tecoenergy.com](mailto:Dabrown@tecoenergy.com)

Michael A. Trentel  
Patrick W. Burnett  
PANDA ENERGY INTERNATIONAL INC  
4100 Spring Valley, Suite 1010  
Dallas, Texas 75244  
[Michaelt@pandaenergy.com](mailto:Michaelt@pandaenergy.com)  
[Patb@pandaenergy.com](mailto:Patb@pandaenergy.com)

Gary A. Dodge  
HATCH, JAMES & DODGE  
10 W. Broadway, Suite 400  
Salt Lake City, Utah 84101  
[Gdodge@hjdllaw.com](mailto:Gdodge@hjdllaw.com)

John Wallace  
Director of Regulatory and Strategic Services  
Grand Canyon State Electric Cooperative Association  
120 N. 44<sup>th</sup> Street  
Phoenix, AZ 85034  
[jwallace@gcseca.org](mailto:jwallace@gcseca.org)

CONSOLIDATED ELECTRIC VARIANCE W/E-MAIL ADDRESSES- service list (4/23/02)

Lindy Funkhouser  
Scott S. Wakefield  
RUCO  
2828 N Central Ave, Suite 1200  
Phoenix, Arizona 85004

Michael A. Curtis  
William P. Sullivan  
Paul R. Michaud  
MARTINEZ & CURTIS, P.C.  
2712 North 7th Street  
Phoenix, Arizona 85006  
Attorneys for Arizona Municipal Power Users  
Association, Mohave Electric Cooperative, Inc.,  
Navopache Electric Cooperative, Inc., Reliant  
Resources, Inc. & Primesouth, Inc.  
[mcurtis401@aol.com](mailto:mcurtis401@aol.com)  
[wsullivan@martinezcurtis.com](mailto:wsullivan@martinezcurtis.com)  
[pmichaud@martinezcurtis.com](mailto:pmichaud@martinezcurtis.com)

Walter W. Meek, President  
ARIZONA UTILITY INVESTORS ASSOCIATION  
2100 N. Central Avenue, Suite 210  
Phoenix, Arizona 85004

Rick Gilliam  
Eric C. Guidry  
LAND AND WATER FUND OF THE ROCKIES  
ENERGY PROJECT  
2260 Baseline Road, Suite 200  
Boulder, Colorado 80302

Terry Frothun  
ARIZONA STATE AFL-CIO  
5818 N. 7th Street, Suite 200  
Phoenix, Arizona 85014-5811

Norman J. Furuta  
DEPARTMENT OF THE NAVY  
900 Commodore Drive, Building 107  
San Bruno, California 94066-5006

Barbara S. Bush  
COALITION FOR RESPONSIBLE ENERGY  
EDUCATION  
315 West Riviera Drive  
Tempe, Arizona 85252

Sam Defraw (Attn. Code 00I)  
Rate Intervention Division  
NAVAL FACILITIES ENGINEERING COMMAND  
Building 212, 4<sup>th</sup> Floor  
901 M Street, SE  
Washington, DC 20374-5018

Rick Lavis  
ARIZONA COTTON GROWERS ASSOCIATION  
4139 East Broadway Road  
Phoenix, Arizona 85040

Steve Brittle  
DON'T WASTE ARIZONA, INC.  
6205 South 12th Street  
Phoenix, Arizona 85040

COLUMBUS ELECTRIC COOPERATIVE, INC.  
P.O. Box 631  
Deming, New Mexico 88031

CONTINENTAL DIVIDE ELECTRIC  
COOPERATIVE  
P.O. Box 1087  
Grants, New Mexico 87020

DIXIE ESCALANTE RURAL ELECTRIC  
ASSOCIATION  
CR Box 95  
Beryl, Utah 84714

GARKANE POWER ASSOCIATION, INC.  
P.O. Box 790  
Richfield, Utah 84701

ARIZONA DEPT OF COMMERCE  
ENERGY OFFICE  
3800 North Central Avenue, 12th Floor  
Phoenix, Arizona 85012

ARIZONA COMMUNITY ACTION ASSOC.  
2627 N. 3rd Street, Suite 2  
Phoenix, Arizona 85004

TUCSON ELECTRIC POWER CO.  
Legal Dept - DB203  
220 W 6<sup>th</sup> Street  
P.O. Box 711  
Tucson, Arizona 85702-0711

A.B. Baardson  
Mountain Country Co-Generation  
6463 N. Desert Breeze Court  
Tucson, AZ 85750

Jessica Youle  
PAB300  
SALT RIVER PROJECT  
P.O. Box 52025  
Phoenix, Arizona 85072-2025

Joe Eichelberger  
MAGMA COPPER COMPANY  
P.O. Box 37  
Superior, Arizona 85273

Craig Marks  
CITIZENS UTILITIES COMPANY  
2901 N. Central Avenue, Suite 1660  
Phoenix, Arizona 85012-2736

Barry Huddleston  
DESTEC ENERGY  
P.O. Box 4411  
Houston, Texas 77210-4411

Steve Montgomery  
JOHNSON CONTROLS  
2032 West 4th Street  
Tempe, Arizona 85281

Terry Ross  
CENTER FOR ENERGY AND  
ECONOMIC DEVELOPMENT  
P.O. Box 288  
Franktown, Colorado 80116-0288

Clara Peterson  
AARP  
HC 31, Box 977  
Happy Jack, Arizona 86024

Larry McGraw  
USDA-RUS  
6266 Weeping Willow  
Rio Rancho, New Mexico 87124

Jim Driscoll  
ARIZONA CITIZEN ACTION  
5160 E. Bellevue Street, Apt. 101  
Tucson, AZ 85712-4828

William Baker  
ELECTRICAL DISTRICT NO. 6  
7310 N. 16<sup>th</sup> Street, Suite 320  
Phoenix, Arizona 85020

Robert Julian  
PPG  
1500 Merrell Lane  
Belgrade, Montana 59714

C. Webb Crockett  
Jay L. Shapiro  
FENNEMORE CRAIG, PC  
3003 N. Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913  
Attorneys for Panda Gila River, L.P.  
[Wcrockett@fclaw.com](mailto:Wcrockett@fclaw.com)  
[Jshapiro@fclaw.com](mailto:Jshapiro@fclaw.com)

Robert S. Lynch  
340 E. Palm Lane, Suite 140  
Phoenix, Arizona 85004-4529  
Attorney for Arizona Transmission Dependent  
Utility Group

K.R. Saline  
K.R. SALINE & ASSOCIATES  
Consulting Engineers  
160 N. Pasadena, Suite 101  
Mesa, Arizona 85201-6764

Carl Robert Aron  
Executive Vice President and COO  
ITRON, INC.  
2818 N. Sullivan Road  
Spokane, Washington 99216

Douglas Nelson  
DOUGLAS C. NELSON PC  
7000 N. 16th Street, Suite 120-307  
Phoenix, Arizona 85020-5547  
Attorney for Calpine Power Services

Lawrence V. Robertson Jr.

MUNGER CHADWICK, PLC  
333 North Wilmot, Suite 300  
Tucson, Arizona 85711-2634  
Attorney for Southwestern Power Group, II, LLC;  
Bowie Power Station, LLC; Toltec Power Station,  
LLC; and Sempra Energy Resources  
[Lvrobertson@mungerchadwick.com](mailto:Lvrobertson@mungerchadwick.com)

Tom Wran  
Southwestern Power Group II  
[Twray@southwesternpower.com](mailto:Twray@southwesternpower.com)

Theodore E. Roberts  
SEMPRA ENERGY RESOURCES  
101 Ash Street, HQ 12-B  
San Diego, California 92101-3017  
[Troberts@sempra.com](mailto:Troberts@sempra.com)

Albert Sterman  
ARIZONA CONSUMERS COUNCIL  
2849 East 8th Street  
Tucson, Arizona 85716

Michael Grant  
GALLAGHER & KENNEDY  
2575 East Camelback Road  
Phoenix, Arizona 85016-9225  
Attorneys for AEPSCO, Graham County Electric  
Cooperative, and Duncan Valley Electric  
Cooperative.  
[Mmg@gknet.com](mailto:Mmg@gknet.com)

Vinnie Hunt  
CITY OF TUCSON  
Department of Operations  
4004 S. Park Avenue, Building #2  
Tucson, Arizona 85714

Ryle J. Carl III  
INTERNATION BROTHERHOOD OF  
ELECTRICAL WORKERS, L.U. #1116  
750 S. Tucson Blvd.  
Tucson, Arizona 85716-5698

Carl Dabelstein  
CITIZENS COMMUNICATIONS  
2901 N. Central Ave., Suite 1660  
Phoenix, Arizona 85012

Roderick G. McDougall, City Attorney

CITY OF PHOENIX  
Attn: Jesse Sears, Assistant Chief Counsel  
200 W Washington Street, Suite 1300  
Phoenix, Arizona 85003-1611

William J. Murphy  
CITY OF PHOENIX  
200 West Washington Street, Suite 1400  
Phoenix, Arizona 85003-1611  
[Bill.murphy@phoenix.gov](mailto:Bill.murphy@phoenix.gov)

Russell E. Jones  
WATERFALL ECONOMIDIS CALDWELL  
HANSHAW & VILLAMANA, P.C.  
5210 E. Williams Circle, Suite 800  
Tucson, Arizona 85711  
Attorneys for Trico Electric Cooperative, Inc.  
[Rjones@wechv.com](mailto:Rjones@wechv.com)

Christopher Hitchcock  
HITCHCOCK & HICKS  
P.O. Box 87  
Bisbee, Arizona 85603-0087  
Attorney for Sulphur Springs Valley  
Electric Cooperative, Inc.  
[Lawyers@bisbeelaw.com](mailto:Lawyers@bisbeelaw.com)

Andrew Bettwy  
Debra Jacobson  
SOUTHWEST GAS CORPORATION  
5241 Spring Mountain Road  
Las Vegas, Nevada 89150-0001

Barbara R. Goldberg  
OFFICE OF THE CITY ATTORNEY  
3939 Civic Center Blvd.  
Scottsdale, Arizona 85251

Bradford A. Borman  
PACIFICORP  
201 S. Main, Suite 2000  
Salt Lake City, Utah 84140

Timothy M. Hogan  
ARIZONA CENTER FOR LAW  
IN THE PUBLIC INTEREST  
202 E. McDowell Rd., Suite 153  
Phoenix, Arizona 85004

Marcia Weeks  
18970 N. 116th Lane  
Surprise, Arizona 85374

John T. Travers  
William H. Nau  
272 Market Square, Suite 2724  
Lake Forest, Illinois 60045

Timothy Michael Toy  
WINTHROP, STIMSON, PUTNAM & ROBERTS  
One Battery Park Plaza  
New York, New York 10004-1490

Chuck Miessner  
NEV SOUTHWEST LLC  
P.O. Box 711, Mailstop-DA308  
Tucson, Arizona 85702-0711

Billie Dean  
AVIDD  
P O Box 97  
Marana, Arizona 85652-0987

Raymond B. Wuslich  
WINSTON & STRAWN  
1400 L Street, NW  
Washington, DC 20005

Steven C. Gross  
PORTER SIMON  
40200 Truckee Airport Road  
Truckee, California 96161-3307  
Attorneys for M-S-R Public Power Agency

Donald R. Allen  
John P. Coyle  
DUNCAN & ALLEN  
1575 Eye Street, N.W., Suite 300  
Washington, DC 20005

Ward Camp  
PHASER ADVANCED METERING SERVICES  
400 Gold SW, Suite 1200  
Albuquerque, New Mexico 87102

Theresa Drake  
IDAHO POWER COMPANY  
P.O. Box 70  
Boise, Idaho 83707

Libby Brydolf  
CALIFORNIA ENERGY MARKETS  
NEWSLETTER  
2419 Bancroft Street  
San Diego, California 92104

Paul W. Taylor  
R W BECK  
2201 E. Camelback Rd Suite 115-B  
Phoenix, Arizona 85016-3433

James P. Barlett  
5333 N. 7<sup>th</sup> Street, Suite B-215  
Phoenix, Arizona 85014  
Attorney for Arizona Power Authority

Jay I. Moyes  
MOYES STOREY  
3003 N. Central Ave., Suite 1250  
Phoenix, Arizona 85012  
Attorneys for PPL Southwest Generation Holdings,  
LLC; PPL EnergyPlus, LLC and PPL Sundance  
Energy, LLC  
[Jimoyes@lawms.com](mailto:Jimoyes@lawms.com)

Stephen L. Teichler  
Stephanie A. Conaghan  
DUANE MORRIS & HECKSCHER, LLP  
1667 K Street NW, Suite 700  
Washington, DC 20006

Kathy T. Puckett  
SHELL OIL COMPANY  
200 N. Dairy Ashford  
Houston, Texas 77079

Andrew N. Chau  
SHELL ENERGY SERVICES CO., LLC  
1221 Lamar, Suite 1000  
Houston, Texas 77010

Peter Q. Nyce, Jr.  
DEPARTMENT OF THE ARMY  
JALS-RS Suite 713  
901 N. Stuart Street  
Arlington, Virginia 22203-1837

Michelle Ahlmer  
ARIZONA RETAILERS ASSOCIATION  
224 W. 2<sup>nd</sup> Street  
Mesa, Arizona 85201-6504

Dan Neidlinger

NEIDLINGER & ASSOCIATES  
3020 N. 17<sup>th</sup> Drive  
Phoenix, Arizona 85015

Chuck Garcia  
PNM, Law Department  
Alvarado Square, MS 0806  
Albuquerque, New Mexico 87158

Sanford J. Asman  
570 Vinington Court  
Dunwoody, Georgia 30350-5710

Patricia Cooper  
AEP/CO/SSWEPCO  
P.O. Box 670  
Benson, Arizona 85602  
[Pcooper@aepnet.org](mailto:Pcooper@aepnet.org)

Steve Segal  
LEBOEUF, LAMB, GREENE, & MACRAE  
633 17<sup>th</sup> Street, Suite 2000  
Denver, Colorado 80202-3620

Holly E. Chastain  
SCHLUMBERGER RESOURCE  
MANAGEMENT SERVICES, INC.  
5430 Metric Place  
Norcross, Georgia 30092-2550

Leslie Lawner  
ENRON CORP  
712 North Lea  
Roswell, New Mexico 88201

Alan Watts  
Southern California Public Power Agency  
529 Hilda Court  
Anaheim, California 92806

Frederick M. Bloom  
Commonwealth Energy Corporation  
15991 Red Hill Avenue, Suite 201  
Tustin, California 92780

Margaret McConnell  
Maricopa Community Colleges  
2411 W. 14<sup>th</sup> Street  
Tempe, Arizona 85281-6942

Brian Soth  
FIRSTPOINT SERVICES, INC.  
1001 S.W. 5<sup>th</sup> Ave, Suite 500  
Portland, Oregon 97204

Jay Kaprosy  
PHOENIX CHAMBER OF COMMERCE  
201 N. Central Ave., 27<sup>th</sup> Floor  
Phoenix, Arizona 85073

Kevin McSpadden  
MILBANK, TWEED, HADLEY AND  
MCCLOY, LLP  
601 S. Figueroa, 30<sup>th</sup> Floor  
Los Angeles, California 90017

M.C. Arendes, Jr.  
C3 COMMUNICATIONS, INC.  
2600 Via Fortuna, Suite 500  
Austin, Texas 78746

Patrick J. Sanderson  
ARIZONA INDEPENDENT SCHEDULING  
ADMINISTRATOR ASSOCIATION  
P.O. Box 6277  
Phoenix, Arizona 85005-6277  
[Psanderson@az-isa.org](mailto:Psanderson@az-isa.org)

Roger K. Ferland  
QUARLES & BRADY STREICH LANG, L.L.P.  
Renaissance One  
Two North Central Avenue  
Phoenix, Arizona 85004-2391  
[Rferland@quarles.com](mailto:Rferland@quarles.com)

Charles T. Stevens  
ARIZONANS FOR ELECTRIC CHOICE &  
COMPETITION  
245 W. Roosevelt  
Phoenix, Arizona 85003

Mark Sirois  
ARIZONA COMMUNITY ACTION ASSOC.  
2627 N. Third Street, Suite 2  
Phoenix, Arizona 85004

Jeffrey Guldner  
Thomas L. Mumaw  
SNELL & WILMER  
400 E. Van Buren,  
One Arizona Center  
Phoenix, Arizona 85004-0001  
[Tmumaw@swlaw.com](mailto:Tmumaw@swlaw.com)

Steven J. Duffy

RIDGE & ISAACSON PC  
3101 N. Central Avenue, Suite 740  
Phoenix, Arizona 85012

Greg Patterson  
5432 E. Avalon  
Phoenix, Arizona 85018  
[Gpatterson@aol.com](mailto:Gpatterson@aol.com)

John Wallace  
Grand Canyon State Electric Co-op  
120 N. 44<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85034-1822  
[Jwallace@gcseca.org](mailto:Jwallace@gcseca.org)

Steven Lavigne  
DUKE ENERGY  
4 Triad Center, Suite 1000  
Salt Lake City, Utah 84180

Dennis L. Delaney  
K.R. SALINE & ASSOC.  
160 N. Pasadena, Suite 101  
Mesa, Arizona 85201-6764

Kevin C. Higgins  
ENERGY STRATEGIES, LLC  
30 Market Street, Suite 200  
Salt Lake City, Utah 84101

Michael L. Kurtz  
BORHM KURTZ & LOWRY  
36 E. Seventh Street, Suite 2110  
Cincinnati, Ohio 45202  
[Mkurtzlaw@aol.com](mailto:Mkurtzlaw@aol.com)

David Berry  
P.O. Box 1064  
Scottsdale, Arizona 85252

William P. Inman  
Dept. of Revenue  
1600 W. Monroe, Room 911  
Phoenix, Arizona 85007  
[InmanW@revenue.state.az.us](mailto:InmanW@revenue.state.az.us)

Robert Baltes

ARIZONA COGENERATION ASSOC.  
7250 N. 16<sup>th</sup> Street, Suite 102  
Phoenix, Arizona 85020-5270  
[Bbaltes@bvaeng.com](mailto:Bbaltes@bvaeng.com)

Jana Van Ness  
APS  
Mail Station 9905  
P.O. Box 53999  
Phoenix, Arizona 85072-3999  
[Jana.vanness@aps.com](mailto:Jana.vanness@aps.com)

David Couture  
TEP  
4350 E. Irvington Road  
Tucson, Arizona 85714

Kelly Barr  
Jana Brandt  
SRP  
Mail Station PAB211  
P.O. Box 52025  
Phoenix, Arizona 85072-2025  
[Kjbarr@srpnet.com](mailto:Kjbarr@srpnet.com)  
[Jkbrandt@srpnet.com](mailto:Jkbrandt@srpnet.com)

Randall H. Warner  
JONES SKELTON & HOCHULI PLC  
2901 N. Central Avenue, Suite 800  
Phoenix, Arizona 85012

John A. LaSota, Jr.  
MILLER LASOTA & PETERS, PLC  
5225 N. Central Ave., Suite 235  
Phoenix, Arizona 85012

Peter W. Frost  
Conoco Gas and Power Marketing  
600 N. Dairy Ashford, CH-1068  
Houston, Texas 77079

Joan Walker-Ratliff  
Conoco Gas and Power Marketing  
1000 S. Pine, 125-4 ST UPO  
Ponca City, Oklahoma 74602

Vicki G. Sandler

C/o Linda Spell  
APS Energy Services  
P.O. Box 53901  
Mail Station 8103  
Phoenix, Arizona 85072-3901  
[Linda\\_spell@apses.com](mailto:Linda_spell@apses.com)

Lori Glover  
STIRLING ENERGY SYSTEMS  
2920 E. Camelback Rd., Suite 150  
Phoenix, Arizona 85016  
[Lglover@stirlingenergy.com](mailto:Lglover@stirlingenergy.com)

Jeff Schlegel  
SWEEP  
1167 Samalayuca Drive  
Tucson, Arizona 85704-3224  
[Schlegelj@aol.com](mailto:Schlegelj@aol.com)

Howard Geller  
SWEEP  
2260 Baseline Rd., Suite 200  
Boulder, Colorado 80302  
[Hgeller@swenergy.org](mailto:Hgeller@swenergy.org)

Mary-Ellen Kane  
ACAA  
2627 N. 3<sup>rd</sup> Street, Suite Two  
Phoenix, Arizona 85004  
[Mkane@azcaa.org](mailto:Mkane@azcaa.org)

Aaron Thomas  
AES NewEnergy  
350 S. Grand Avenue, Suite 2950  
Los Angeles, California 90071  
[Aaron.thomas@aes.com](mailto:Aaron.thomas@aes.com)

Theresa Mead  
AES NewEnergy  
P.O. Box 65447  
Tucson, Arizona 85728  
[Theresa.mead@aes.com](mailto:Theresa.mead@aes.com)

Peter Van Haren

CITY OF PHOENIX  
Attn: Jesse W. Sears  
200 W. Washington Street, Suite 1300  
Phoenix, Arizona 85003-1611  
[Jesse.sears@phoenix.gov](mailto:Jesse.sears@phoenix.gov)

Robert Annan  
ARIZONA CLEAN ENERGY INDUSTRIES  
ALLIANCE  
6605 E. Evening Glow Drive  
Scottsdale, Arizona 85262  
[Annan@primenet.com](mailto:Annan@primenet.com)

Curtis L. Kebler  
RELIANT RESOURCES, INC.  
8996 Etiwanda Avenue  
Rancho Cucamonga, California 91739

Philip Key  
RENEWABLE ENERGY LEADERSHIP GROUP  
10631 E. Autumn Sage Drive  
Scottsdale, Arizona 85259  
[Keytaic@aol.com](mailto:Keytaic@aol.com)

Paul Bullis  
OFFICE OF THE ATTORNEY GENERAL  
1275 W. Washington Street  
Phoenix, Arizona 85007  
[Paul.bullis@ag.state.az.us](mailto:Paul.bullis@ag.state.az.us)

Laurie Woodall  
OFFICE OF THE ATTORNEY GENERAL  
15 S. 15<sup>th</sup> Avenue  
Phoenix, Arizona 85007  
[Laurie.woodall@ag.state.az.us](mailto:Laurie.woodall@ag.state.az.us)

Donna M. Bronski  
CITY OF SCOTTSDALE  
3939 N. Drinkwater Blvd  
Scottsdale, Arizona 85251  
[Dbronski@ci.scottsdale.az.us](mailto:Dbronski@ci.scottsdale.az.us)

Larry F. Eisenstat

Frederick D. Ochsenhirt  
Michael R. Engleman  
DICKSTEIN SHAPIRO MORIN & OSHINSKY  
LLP  
2101 L Street, NW  
Washington, DC 20037  
[Eisenstatl@dsmo.com](mailto:Eisenstatl@dsmo.com)  
[Ochsenhirtf@dsmo.com](mailto:Ochsenhirtf@dsmo.com)

David A. Crabtree  
Dierdre A. Brown  
TECO POWER SERVICES CORP.  
P.O. Box 111  
Tampa, Florida 33602  
[Dacrabtree@tecoenergy.com](mailto:Dacrabtree@tecoenergy.com)  
[Dabrown@tecoenergy.com](mailto:Dabrown@tecoenergy.com)

Michael A. Trentel  
Patrick W. Burnett  
PANDA ENERGY INTERNATIONAL INC  
4100 Spring Valley, Suite 1010  
Dallas, Texas 75244  
[Michaelt@pandaenergy.com](mailto:Michaelt@pandaenergy.com)  
[Patb@pandaenergy.com](mailto:Patb@pandaenergy.com)

Jesse Dillon  
PPL Services Corp.  
2 N. Ninth Street  
Allentown, Pennsylvania 18101-1179  
[Jadillon@pplweb.com](mailto:Jadillon@pplweb.com)

Gary A. Dodge  
HATCH, JAMES & DODGE  
10 W. Broadway, Suite 400  
Salt Lake City, Utah 84101  
[Gdodge@hjdllaw.com](mailto:Gdodge@hjdllaw.com)

Christopher Kempley, Chief Counsel  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington Street  
Phoenix, Arizona 85007

Ernest G. Johnson, Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

ARIZONA REPORTING SERVICE, INC.  
2627 N. Third Street, Suite Three  
Phoenix, Arizona 85004-1104