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**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

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3 WILLIAM A. MUNDELL

4 Chairman

5 JIM IRVIN

6 Commissioner

7 MARC SPITZER

8 Commissioner

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9  
10 IN THE MATTER OF THE GENERIC  
11 PROCEEDINGS CONCERNING  
12 ELECTRIC RESTRUCTURING ISSUES

Docket No. E-00000A-02-0051

13  
14 IN THE MATTER OF ARIZONA PUBLIC  
15 SERVICE COMPANY'S REQUEST FOR  
16 A VARIANCE OF CERTAIN  
17 REQUIREMENTS OF A.A.C. R14-22-1606

Docket No. E-01345A-01-0822

18  
19 IN THE MATTER OF THE GENERIC  
20 PROCEEDING CONCERNING THE  
21 ARIZONA INDEPENDENT  
22 SCHEDULING ADMINISTRATOR

Docket No. E-00000A-01-0630

23  
24 IN THE MATTER OF TUCSON  
25 ELECTRIC POWER COMPANY'S  
26 APPLICATION FOR A VARIANCE OF  
27 CERTAIN ELECTRIC COMPETITION  
28 RULES COMPLIANCE DATES

Docket No. E-01933A-02-0069

29  
30 IN THE MATTER OF THE  
31 APPLICATION OF TUCSON ELECTRIC  
32 POWER COMPANY FOR APPROVAL  
33 OF ITS STRANDED COST RECOVERY

34  
35 **TRACK B POST HEARING BRIEF OF THE**  
36 **LAND AND WATER FUND OF THE ROCKIES**

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38 In this proceeding, the Land and Water Fund of the Rockies (LAW Fund) has  
39 sponsored the testimony of Dr. David Berry. Dr. Berry has extensive experience on  
40 electric utility and resource planning issues in Arizona and nationally, including  
41 experience as Chief Economist and Chief, Economics and Research, with the Arizona  
42 Corporation Commission (Commission) from 1985-1996. See Exhibit DB-1 to Direct

1 Testimony of Dr. David Berry (LAW-1). In his testimony, Dr. Berry discusses the  
2 benefits to Arizona and to its ratepayers of integrating demand-side management (DSM)  
3 and environmental risk management into the utility resource acquisition process. *See*  
4 *Berry Direct*, at pp.2-10; Transcript (Vol. IV), at p.821. To avoid slowing down the first  
5 round Track B competitive solicitation, he recommended that the Commission establish  
6 separate proceedings to develop Commission policies on DSM and environmental risk  
7 management. He also offered comments on the public participation and risk analysis  
8 components to the Staff Report, and he recommends inclusion of environmental  
9 information in the staff and independent monitor filing requirements. *See Berry Direct*,  
10 at pp-11-14; Transcript (Vol. IV), at pp.821-822. As discussed below, no party has raised  
11 any significant objections to Dr. Berry's testimony that cannot be addressed in his  
12 proposed process for implementing his recommendations. The LAW Fund requests that  
13 the Commission adopt Dr. Berry's recommendations in its order on the Track B process.

14

15 I. **The Commission Should Initiate a Separate Proceeding to Develop**  
16 **Commission Policy on Integrating Environmental Risks and Impacts into the**  
17 **Utility Resource Acquisition Process.**

18

19 Dr. Berry submitted direct testimony on the public interest in the environmental  
20 aspects of utility resource acquisitions, including: a) the Commissioners' previous  
21 statements on environmental matters, b) the recovery, through rates, of the costs of  
22 meeting environmental targets and requirements, and c) the environmental externalities  
23 of power production imposed on society and the ecology of the state. *See Berry Direct*, at  
24 p.6. Dr. Berry then discussed issue of climate change as illustrative of the public's  
25 interest in having Commission policy on managing the environmental risks to ratepayers

1 and minimizing the environmental impacts of utility resource acquisition decisions. *See*  
2 *id.*, at pp.6-9.

3 With respect to the Commissioners' previous statements on environmental  
4 matters, Dr. Berry pointed to a letter, dated July 18, 2002, from Commissioner Spitzer to  
5 the parties to the present docket, in which Commissioner Spitzer states, "the end state of  
6 this proposal is a future in which the wholesale electric market is competitive fair, and in  
7 which modern, efficient and clean generation replaces aged and highly polluting  
8 plants..." *See Berry Direct*, at p.6 (citing p.3 to the Spitzer letter). Likewise, Track A  
9 Decision No. 65154 states that, through the competitive solicitation process in Track B,  
10 "APS and TEP may decide to retire or displace inefficient, uneconomic, environmentally  
11 undesirable plants." *See id.* at p.6 (*citing* Decision No. 65154, at p.23, note 8).

12 Commissioner Spitzer, in his questions to counsel for RUCO in this proceeding,  
13 echoed the Commission's previously expressed concerns on the potential negative  
14 implications of utility resource acquisition decisions that focus narrowly on costs without  
15 consideration of environmental impacts:

16 It's been alluded to in some of the filings by some of the  
17 merchants, and that it is the potential for, in a pure least  
18 cost scenario, to have a plant that may be older, more  
19 polluting in terms of sulfur dioxide, carbon dioxide, nitrous  
20 oxide, or particulates, but because it's been fully  
21 depreciated may in fact be least cost compared with a  
22 newer plant that emits fewer of the environmentally  
23 hazardous compounds I have described. So in terms of a  
24 strict economic analysis, least cost could embody severe  
25 environmental harm.

26  
27 Transcript (Vol. I), at p. 41, line 23 – p. 44, line 8.

28  
29 Responding to the Commission's concerns, Dr. Berry provided testimony on how  
30 Track B can serve as a vehicle for achieving environmental improvements. *See Berry*

1 Direct, at pp.8-10; Transcript (Vol. IV), at p.827. He recommended that the Commission  
2 establish a policy for managing environmental risks, through a series of workshops and  
3 hearings. *See id.*, at Exhibit DB-3, entitled "Proposed Steps to Commission Adoption of  
4 an Environmental Risk Management Policy." The resulting environmental risk  
5 management policy would then be applied to the second and subsequent rounds of  
6 competitive solicitations and would not delay the first round of competitive solicitations.  
7 He urged the Commission to start the environmental risk management processes quickly,  
8 though, so that it can be comprehensively reviewed and completed in time to be applied,  
9 as an input, to the second and subsequent rounds of competitive solicitations, taking into  
10 account the time needed to refine the solicitation process for the second round.

11 Dr. Berry reasoned that, in the absence of managing environmental risks, Arizona  
12 faces the potential of locking in generation from more carbon-intensive generation  
13 resources or dirtier power plants consuming large volumes of water, and that the potential  
14 impacts of not considering these issues at the time of resource acquisition is higher costs  
15 in the long run. He cautioned, however, that competitive solicitations arising from Track  
16 B would accomplish environmental improvements only by happenstance unless the  
17 Commission directly addresses environmental issues. For example, APS plans to retire a  
18 few small units and doing so may result in environmental improvements. But APS does  
19 not have any additional plans to retire any other units which may be environmentally  
20 damaging. In particular, Mr. Peter M. Ewen, testifying on behalf of Arizona Public  
21 Service Company (APS) testified that APS intends to retire the 24 MW Childs/Irving  
22 hydro facility and the older West Phoenix units that are currently in cold reserve. On

1 cross-examination, Mr. Ewen testified as to APS' plans to retire additional units for  
2 environmental reasons:

3 Q: Does APS currently have any other plans to retire, to quote the  
4 Commission, environmentally undesirable units?  
5

6 A: No. We do not. Because we haven't determined that there are any  
7 environmentally undesirable units.  
8

9 Transcript (Vol. III), at p.647, lines 8-13.

10 The LAW Fund submits that the Commission will not attain its objective of  
11 achieving environmental improvement through the resource acquisition process unless it  
12 takes explicit, proactive steps to ensure that environmental factors are integrated into the  
13 competitive solicitation process. However, as a practical matter, the Commission's desire  
14 to implement Track B expeditiously means that there will not be time to integrate  
15 consideration of environmental performance into the first round competitive solicitation.  
16 Therefore, the Commission should act now, in its Track B order, to ensure that an  
17 environmental risk management policy is in place in time for second and subsequent  
18 solicitations.  
19

20 **II. The Commission Should Initiate a Separate Proceeding to Establish**  
21 **Commission Policy on Utility Acquisition of Demand-Side Management.**  
22

23 Dr. Berry testified on the economic, environmental and risk mitigation benefits to  
24 Arizona ratepayers of utility acquisition of DSM. *See* Berry Direct, at pp.2-5 (LAW-1).  
25 He explained that Arizona utilities currently only make minimal investments in DSM, if  
26 at all, and that significant DSM potential remained untapped.

27 Dr. Berry explained the public interest in DSM. Cost effective DSM is a resource  
28 which can help meet the demand for electric energy services at lower cost than

1 conventional generation resources. Thus, the public interest in DSM is to ensure that  
2 consumers' electric energy service bills are as low as possible. In addition, because DSM  
3 displaces electricity and generally has a stable cost, it helps consumers and utilities avoid  
4 fluctuations in the price of electricity and natural gas used to generate electricity.  
5 Further, DSM may reduce or eliminate the need for more transmission or distribution  
6 capacity, may avoid transmission constraints, and can reduce the environmental impacts  
7 of electricity consumption, including compliance costs associated with future  
8 environmental regulation. *See Berry Direct*, at p. 2 (LAW-1).

9 Because of the public interest in pursuing DSM, Dr. Berry recommended that  
10 cost effective DSM resources be actively sought out and acquired in a separate process to  
11 be developed through a series of workshops and a hearing. *See* "Proposed Steps to  
12 Commission Adoption of a DSM Policy," *Berry Direct*, at Exhibit DB-2. The resulting  
13 DSM acquisition process should be separate from competitive solicitations for  
14 conventional generation in order to be more attractive to DSM vendors. The DSM  
15 acquisition process should also include target levels of cost effective DSM kW and kWh  
16 savings and implementation time tables for APS and TEP. *See id.*, at p. 4.

17 The DSM requirements would be applied to the second and subsequent rounds of  
18 competitive solicitations and would not delay the first round of competitive solicitations.  
19 *See id.*, at pp.2-5. Dr. Berry advised that the Commission should start the DSM  
20 processes quickly so that it can be comprehensively reviewed and completed in time to be  
21 applied as inputs to the second and subsequent rounds of competitive solicitations, taking  
22 into account the time needed to refine the solicitation process for the second round.

23 The LAW Fund urges that the Commission adopt Dr. Berry's recommendations  
24 on DSM in its Track B order. No party has raised any substantive objections to Dr.  
25 Berry's recommendations on DSM that cannot be addressed in his proposed steps for  
26 developing a Commission policy on DSM. Mr. Steven Wheeler, in his rebuttal testimony  
27 on behalf of APS, does raise some concerns that must be addressed in developing a DSM

1 policy. *See* Wheeler Rebuttal, at pp. 9-11. However, Mr. Wheeler acknowledged on  
2 cross-examination that the process recommended by Dr. Berry could provide an adequate  
3 framework for addressing his concerns. *See* Transcript (Vol. III), at pp. 639-644; *see also*  
4 Transcript (Vol. IV, at pp. 824-825).

5  
6 **III. The Commission Should Accept Dr. Berry's Comments on the Staff Report.**

7  
8 In addition to testifying on environmental risks and DSM, Dr. Berry also offered  
9 several comments on the Staff report. Dr. Berry recommended:

- 10 • That the Commission expand public participation in various reviews  
11 contemplated for the first round of solicitations. Specifically, he  
12 recommended that: a) all interested parties should be allowed to review and  
13 comment on the bid solicitation materials (Berry Direct, at pp.11, 12 (citing  
14 Staff Report, at pp.8, 17)); b) the load forecast, resource plan and needs  
15 assessment should be available for review by all interested parties (Berry  
16 Direct, at p.8 (citing Staff Report, at p.14)); and c) all interested parties should  
17 be allowed to attend bidders' conferences (Berry Direct, at p.12 (citing Staff  
18 Report, at pp. 20, 21)).
- 19 • That the Commission direct Staff and the Independent Monitor to provide  
20 environmental information as part of their reports, including information on  
21 air emissions (carbon dioxide, carbon monoxide, sulfur oxides, nitrogen  
22 oxides, mercury, particulates) and water usage of the resources acquired and  
23 of the utilities' entire portfolios. Berry Direct, at p.12. This information

1 would be instructive for the Commission to evaluate whether the competitive  
2 solicitation process would result in improved environmental performance. *Id.*

3 • That the Commission require utilities to explicitly take into account price risk  
4 and management of that risk in their evaluations of competing proposals. *Id.*

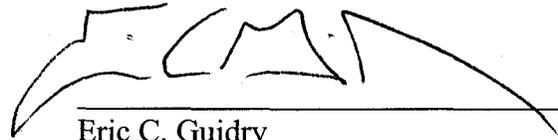
5 • That the Commission not require that the present value of rate impacts or  
6 revenue requirements be used as tests to determine decisively which portfolio  
7 of resources to acquire because these “tests” may not accurately reflect the  
8 benefits of DSM or correctly incorporate environmental impacts of power  
9 production. *See Berry Reply, at pp.1-4.*

10

1           WHEREFORE, the LAW Fund requests that the Commission establish separate  
2 proceedings to develop an environmental risk management policy and a DSM policy, and  
3 that it accept the LAW Fund's comments on the Staff Report with respect to public  
4 participation, environmental information requirements and the management of price risk.

5  
6 RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of December, 2002.

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