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

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. R14-2-1606

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

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

Docket No. E01933A-02-0069

**TUCSON ELECTRIC POWER COMPANY'S
POST-HEARING BRIEF ON TRACK B ISSUES**

Tucson Electric Power Company ("TEP"), through undersigned counsel, submits its initial post-hearing brief in the "Track B" portion of these dockets.

OVERVIEW

In Decision No. 65154 (the "Track A Order"), the Commission ordered that the "parties are directed to continue their efforts in Track B of this proceeding to develop a competitive solicitation process that can begin by March 1, 2003." [Decision No. 65154 at 33:14-15 (Appendix Tab ("App.") 1)]¹ The Commission further ordered that "TEP shall acquire, at a minimum, any

¹ TEP will be submitting a supporting appendix that contains cited excerpts of the record.

1 required power that cannot be produced from its own existing assets, through the competitive
2 procurement process developed in the Track B proceeding.” [Track A Order at 33:10-12 (App. 2)]

3 In response to the Track A Order, Commission Staff and interested parties continued to
4 engage in workshops to identify the “unmet needs” or “contestable load” of TEP and APS, as well
5 as to identify unresolved issues regarding the competitive solicitation process.² [Staff Ex. 1 at 2:21
6 to 3:14; 30:1 to 41:2 (App. 3)] The Track B hearing was intended to address the issues left
7 unresolved by the workshop process. [Staff Ex. 1 at 34:2-8 (App. 4)] TEP believed that several
8 issues, including the amount of TEP’s contestable load and the ability of TEP’s Wholesale
9 Marketing department to conduct TEP’s competitive solicitation, had been resolved by consensus
10 at the workshops. [TEP Ex. 1 at 2:6-16 (App. 5)] Indeed, those issues were not listed as
11 “unresolved issues” by Staff or any other party. [See Staff Ex. 1 at 34:5-20 (App. 6); Third
12 Procedural Order on Track B Issues (dated October 2, 2002) (App. 7)] However, in light of the
13 prefiled testimony, including the October 25 Staff Report, and the hearing itself, Staff’s position on
14 TEP’s contestable load has now changed.

15 TEP’s position in the Track B proceeding is simple, straightforward and comports with the
16 Track A Order. This position is founded in the unique circumstances facing TEP’s service area
17 and is the same position that had consensus support during the Track B workshops. In sum, TEP
18 requests the Commission to make the following determinations:

19 **1. TEP’s Wholesale Marketing department can conduct the competitive**
20 **solicitation on behalf of TEP.** TEP does not have an affiliate that will be bidding on any
21 contestable load in the upcoming solicitation and there is no need for TEP to incur the expense to
22 create a separate department to duplicate the Wholesale Marketing department’s expertise and
23 activities. [TEP Ex. 2 at 5:11 to 6:4 (App. 8)]
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26 ² Throughout the workshops and during the Track B hearing, the terms “unmet needs” and
27 “contestable loads” have been used. “Unmet needs” connote those capacity and energy needs that simply
cannot be met by the utility’s existing assets. “Contestable load” connotes the amount of capacity and
energy that must be put out to bid in the solicitation process.

1 2. **TEP's contestable load for the initial competitive solicitation shall**
2 **include only the TEP's capacity and energy needs that cannot be met by TEP's existing**
3 **assets.** It should not include either reliability must-run (RMR) capacity or energy that can be
4 provided by TEP's existing assets or economy energy purchases that might be made on the spot
5 market. This determination is based on the plain language of the Track A Order regarding what
6 power needs must be offered in the competitive procurement process. TEP submitted documenta-
7 tion setting forth the capacity and energy that cannot be produced from its own existing assets.
8 [TEP Ex. 1 at 7:8-15 and Exhibit 2 thereto (App. 9)]

9 Staff has proposed that all of TEP's RMR capacity and energy, even if its provided by
10 TEP's existing assets, must be bid in the competitive solicitation. This proposal was first hinted at
11 in Staff's Rebuttal Testimony [Staff Ex. 4 at 6:15-18 (App. 10)] and finally fleshed out at the
12 hearing itself in Staff Exhibit 5. [Track B Hearing Transcript ("Tr.") at 51:5 - 53: 18 (App. 11)]
13 As such, TEP and the other parties were not able to address this proposal at the workshops or in
14 their direct or rebuttal testimony. TEP submits that such a requirement is unnecessary and goes
15 beyond the intent of the Track A Order. Indeed, during the Track A proceeding, Staff
16 recommended that no RMR generation should be divested [Track A Order at 11:6-11 (App. 12)]
17 and the Commission ordered that APS and TEP must file annual reliability must run generation
18 study reports with the Commission at the end of January 2003 [Track A Order at 33:21-27 (App.
19 13)]. Moreover, it became apparent during the course of the hearing that, given the nature of
20 TEP's service area, no realistic short-term RMR solutions are available on a competitive basis.
21 [TEP Ex. 3 at 5:1-21 (App. 14); Tr. at 485:14 to 486:3, 430:14-25 (App. 15); see Tr. at 277:4 to
22 283:3 (App. 16)] If the Commission decides that RMR capacity energy should be competitively
23 bid, TEP urges the Commission to do so at a subsequent competitive solicitation to allow numerous
24 open issues concerning RMR generation to be resolved.

1 Staff also has suggested that TEP may need to bid all of its economy energy purchases.³
2 Again, this recommendation was not presented until late in the hearing – indeed, it was not even
3 included in Staff Ex. 5 – thus precluding TEP from addressing the issue at the workshops or in its
4 direct or rebuttal testimony. [See Tr. at 315:2-20, 959:22 to 960:17 (App. 18)] An economy
5 energy purchase is a market purchase made in the short term or on the spot market when the market
6 price is lower than the incremental cost of the utility’s marginal resource. [Tr. at 486:22 to 487:9
7 (App. 19)] While utility forecasts typically include an estimate of economy purchases based on
8 expected short-term market conditions, a utility cannot plan on such purchases or make them in
9 advance. Depending on the actual market conditions, resource costs and load, a utility may or may
10 not make *any* economy energy purchases during a given period of time. Bidding out such
11 potentially illusory needs is unnecessary and a futile exercise given that it would be impossible to
12 pre-determine the timing and quantity of economy purchases on an economic basis.

13 In effect, both of Staff’s proposed additions to TEP’s contestable load are unnecessary and
14 will create a more complicated and costly procurement process without producing any reasonably-
15 expected benefit to any party involved.

16 DISCUSSION

17 A. TEP’s Unique Circumstances

18 There are several unique circumstances regarding TEP that underlie TEP’s two specific
19 requests in the Track B proceeding. First, TEP does not have a generation affiliate or a
20 marketing/trading affiliate participating in the 2003 solicitation. [TEP Ex. 2 at 2:23 to 3:16 (App.
21 20)] Therefore, TEP already buys all of its power needs that cannot be provided by TEP’s existing
22 assets – TEP’s truly unmet needs – from unaffiliated third-party providers. [TEP Ex. 2 at 3:5-10
23 (App. 21)] That is what the Track A Order requires. [Track A Order at 33:10-14 (App. 22)]
24 TEP’s Wholesale Marketing department is responsible for acquiring the necessary capacity and
25 energy to meet those unmet needs. [TEP Ex. 2 at 5:11 to 6:4 (App. 23)] Presently, TEP acquires
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27 ³ Staff was directed to decide by December 6, 2002, whether it intended to include economy energy
in TEP’s contestable load. [Tr. at 963:7-15 (App. 17)] TEP has not received any such information to date.

1 such capacity and energy from third-party providers through a variety of methods, not a single
2 specific date-certain competitive solicitation as is being proposed in Track B. [TEP Ex. 2 at 3:10-
3 12 (App. 24)] Indeed, with or without the Track B proceeding, TEP would be soliciting proposals
4 from any party that may be able to meet TEP's unmet needs. In reviewing third-party proposals,
5 TEP already conducts the type of economic analysis proposed by many of the parties in deciding
6 how to meet its unmet capacity and energy needs. [TEP Ex. 2 at 5:19-23 (App. 25); Tr. at 479:11-
7 17 (App. 26)]

8 Second, TEP faces transmission limitations into its service area. [TEP Ex. 2 at 3:17 to 4:9
9 (App. 27)] As a result, importing power from outside TEP's service area can be difficult with
10 respect to most new merchant plants because that supply may be uneconomic or unreliable.
11 Moreover, TEP cannot import any RMR energy to meet its RMR needs because TEP's system is a
12 voltage limited system. [Tr. at 485:19 to 486:3 (App. 28)] All of TEP's RMR capacity and energy
13 are provided from existing TEP generation assets located within the TEP load pocket. [TEP Ex. 3
14 at 5:7-11 (App. 29); Tr. at 428:16-18 (App. 30)] The vast majority of TEP's RMR needs are for
15 voltage stabilization of the system, which can only be served by TEP's local generation. [Tr. at
16 485:14 to 486:3 (App. 31)] TEP's existing RMR local generation units are economical, costing
17 significantly less than either incremental gas generation with an increased fixed cost or a major
18 transmission project to increase import capability. [TEP Ex. 2 at 4:3-5 (App. 32)] At this point,
19 because all of TEP's RMR requirements are met from "existing assets" as defined in the Track A
20 Order, none of TEP's truly unmet needs include any of its RMR capacity or energy.⁴

21 **B. TEP's Wholesale Marketing Department Should Conduct TEP's Competitive**
22 **Solicitation.**

23 TEP Wholesale Marketing department currently buys all necessary capacity and energy to
24 meet TEP's actual unmet needs. [TEP Ex. 2 at 5:11 to 6:4 (App. 33); see Tr. at 441:13-25 (App.
25 34)] That is precisely the activity that is contemplated under the Track B competitive solicitation
26 process. TEP does not have an affiliate that will bid in the upcoming competitive solicitation

27 ⁴ TEP recognizes the need for additional transmission into its service area, as evidenced by its recent application for (and the Commission's approval of) a new Saguaro/Tortalita 500kV link.

1 process. [TEP Ex. 2 at 2:23 to 3:16 (App. 35)] Therefore, TEP submits that it is not necessary for
2 TEP to incur the expense to create an entire new department for this initial solicitation. TEP's
3 Wholesale Marketing department is skilled and prepared to conduct such a solicitation and no
4 potential bidder will be prejudiced by that participation.

5 TEP proposed this recommendation in its direct testimony [TEP Ex. 2 at 5:11 to 6:4, 12:6-9
6 (App. 36)] and no party in the Track B proceeding objected to TEP's proposal. Indeed, Staff
7 acknowledged at the hearing that it would be acceptable for TEP's Wholesale Marketing
8 department to conduct TEP's competitive solicitation developed in Track B. [See Tr. at 89:16-19
9 (App. 37)] In view of the Staff support, the lack of any opposition and the potential costs savings
10 to TEP, TEP submits that its in the public interest to allow TEP's Wholesale Marketing department
11 to conduct TEP's Track B competitive solicitation.

12 TEP acknowledges that if at some point in the future there is a TEP affiliate that could
13 participate in a competitive solicitation on a TEP contestable load, then appropriate steps should be
14 taken to address the specific affiliate concerns. However, that is not the case here.

15 **C. TEP's Contestable Load Should Only Include TEP's Power Needs That Are**
16 **Not Met by TEP's Existing Assets.**

17 TEP submits that the Track B Order should focus on defining the types of capacity and
18 energy products that should be included in contestable load for this initial solicitation and should
19 not try to set specific numbers for contestable load. It became apparent at the hearing that some of
20 Staff's proposed contestable load amounts were rough estimates that were to be refined in the pre-
21 solicitation process set forth in the Staff Report. [See Staff Ex. 1 at 12:17 to 16:16 (App. 38); Staff
22 Ex. 3 at 7:2-11 (App. 39); Tr. at 288:20 to 290:12, 438:20 to 439:4 (App. 40)] In light of the
23 intended refinement of actual contestable load numbers, the Commission should not set actual
24 numbers but should clarify what loads and resources should be included in the definition of
25 contestable load. That approach would present the most efficient guidance to the parties and would
26 eliminate exceptions over whether specific contestable load amounts are accurate. It also would
27 ameliorate TEP's concern that the financial community may misunderstand the Track B Order if it

1 contains large contestable load amounts, particularly when actual amount of contestable load will
2 be refined later and the utilities are not necessarily obligated to accept bids on that load.

3 With respect to the types of products that should be included in contestable load, the
4 Commission should focus on those products that can serve capacity and energy needs that cannot
5 be met by TEP's existing assets or that can reasonably be expected to elicit an economically
6 acceptable bid. TEP is committed to participating in the solicitation process. However, it is not in
7 the public interest to overload this solicitation process with products, such as RMR service or
8 economy energy, that are not suitable for the proposed solicitation process and that cannot
9 reasonably be acquired economically through that process.

10 **1. TEP's Contestable Load.**

11 The Commission should adhere to the express guidance set forth in its Track A Order
12 regarding the scope of the competitive procurement process. It should confirm that the types of
13 load to be included in contestable load are only those loads that cannot be met by existing utility
14 assets. If the Commission decides to include specific contestable load numbers in its Track B
15 Order, it should adopt TEP's calculations of its actual unmet capacity and energy needs. In the
16 November 4, 2002 testimony of David Hutchens regarding needs assessment, TEP identified the
17 specific amounts of capacity and energy that TEP cannot serve with its existing assets. [TEP Ex. 1
18 at 7:8-15 and Ex. 1 thereto (App. 41)] TEP submits that, pursuant to the Track A Order, those
19 amounts should comprise TEP's contestable load that must be bid out in the upcoming competitive
20 solicitation. Indeed, there was consensus during the workshop process that those amounts were
21 appropriate for TEP. [TEP Ex. 1 at 7:22-23 (App. 42)] Moreover, neither Staff nor any party has
22 refuted TEP's calculation of those particular unmet needs (*i.e.*, TEP's needs that are not served by
23 TEP's existing assets).

24 **2. Staff's Changing Definition of Contestable Load.**

25 Subsequent to the workshops, Staff's definition of TEP's "contestable load" began to
26 expand beyond the actual unmet needs of TEP. To begin with, in the October 25, 2002 Staff
27 Report, Staff stated that existing TEP assets not presently included in rate base should not be

1 considered an existing asset for determination of unmet needs. [Staff Ex. 1 at 6:5-7 (App. 43)] As
2 a result of Staff's expanded definition, a small portion of TEP's RMR capacity and energy needs
3 that were presently served by two existing TEP combustion turbine would be added to the TEP
4 contestable load. [Staff Ex. 1 at 7 n.4 (App. 44); TEP Ex. 1 at 8:1-23 (App. 45)]

5 Next, in its November 18, 2002 Rebuttal, Staff further expanded the scope of capacity and
6 energy that should be included in TEP's contestable load determination to include *all* RMR
7 capacity and energy, regardless of whether that power was provided by existing TEP assets that
8 *already were* included in rate base. [Staff Ex. 4 at 6:15-18 (App. 46)] Staff confirmed that new
9 position at the hearing. [Tr. at 271:16-23 (App. 47)]

10 Further, at the hearing, Staff indicated for the first time that it might want to include TEP's
11 "economy energy" purchases in TEP's the contestable load. [Tr. at 959:22 to 960:17 (App. 48)]
12 Economy energy purchases are purchases that *might* be made by a utility, typically on the spot
13 market, where the market price of energy is less than the incremental cost of energy generated by
14 the utility's marginal assets. [See Tr. at 486:22 to 487:9 (App. 49)] There is no capacity charge
15 associated with such purchases and the purchases are only made if the market conditions are
16 acceptable. [APS Ex. 2 at 12:5 to 14:7 (App. 50)] There is no guarantee that a utility will purchase
17 any particular amount of economy energy over any given period. [Id.] Indeed, Staff has
18 acknowledged that it does not intend to include "unplanned" short-term purchases in contestable
19 load. [Staff Ex. 1 at 4:23-24 (App. 51); Tr. at 66:17 to 67:9 (App. 52)] Yet, the line between
20 contestable economy purchases and noncontestable economy purchases has not yet been clearly
21 drawn by Staff. TEP submits that line should not be drawn – if it is even possible to do so – for
22 this initial solicitation process.

23 **3. Staff's Definition of "Contestable Load" is Overreaching and**
24 **Unreasonable.**

25 Staff's evolving definition of "contestable load" improperly includes capacity and energy
26 that can already be provided TEP's existing assets. This definition goes beyond the express
27 directive of the Track A Order – "shall acquire, at a minimum, any require power that cannot be
produced from its own existing assets" [Track A Order at 33:11-12 (App. 53)] – and reads too

1 much into the Commission's phrase "at a minimum." Indeed, TEP submits that the Staff's
2 definition adds elements to "contestable load" that are unreasonable or unnecessary to meet the
3 ultimate intent of the Track A Order.

4 With respect to including RMR service, all of TEP's RMR service needs currently are
5 provided by TEP's existing assets. [Tr. at 428:16-18 (App. 54)] Procuring RMR service that is
6 served by existing assets conflicts with both the Track A Order and the Staff's position in the Track
7 A proceeding. The Track A Order focused only on solicitation of load that cannot be met by
8 existing assets. [Track A Order at 33:10-14 (App. 55)] Moreover, in the Track A proceeding,
9 Staff expressly argued that no RMR generation should be divested. [Track A Order at 11:8-9
10 (App. 56); see Tr. at 335:7-16 (App. 57)] Staff further stated in the Track A proceeding that a
11 utility that did not divest its assets "should not be required to demonstrate that there are no market-
12 based current alternatives available" with respect to justifying the cost of service of those existing
13 assets. [Notice of Filing of Supplemental Testimony of Matthew Rowell in the Track A
14 Proceeding (Staff Ex. 17 in Track A Hearing) at 1:21-26 (App. 58); see Tr. at 343:12 to 344:15
15 (App. 59)] Yet Staff now wants to include any RMR load served by those assets in contestable
16 load, which effectively does just the opposite of Staff's Track A position.

17 It is also apparent that there are no realistic competitive short-term RMR service solutions
18 available for the TEP service area. [See TEP Ex. 3 at 5:1-21 (App. 60); Tr. at 277:4 to 283:3,
19 430:14-25, 485:14 to 486:3 (App. 61)] Staff identified several factors to use in determining
20 whether or not particular RMR capacity and energy should be considered contestable. [See Staff
21 Ex. 4 at 5:6-14 (App. 62)] In fact, all three of the conditions likely cannot be met for the TEP
22 service area in the short term: (i) there are no existing non-TEP owned generation units within
23 TEP's local service area [Tr. at 428:21-23 (App. 63)]; (ii) TEP RMR needs cannot be met by
24 remote generation due to existing transmission import limitations and the primary need of local
25 generation for voltage support [Tr. at 485:14 to 486:3 (App. 64)]; and (iii) transmission
26 improvements or new local generation are long-term solutions requiring significant permitting and
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1 construction time [Tr. at 279:20 to 282:2 (App. 65)]. Thus, it would be inappropriate to require
2 TEP to bid RMR capacity and energy in this process.

3 With respect to including economy energy in contestable load, “economy energy” is, by
4 definition, purchased to replace energy that *could* be provided by TEP’s existing assets. [See Tr. at
5 182:2-12, 486:22 to 487:9 (App. 66)] Moreover, economy energy purchases are already made at
6 the lowest available market rate for a particular product, which is basically the ultimate goal of the
7 Track B competitive solicitation. However, although a utility can estimate the amount of economy
8 energy purchases over a period of time, it cannot plan exactly when those purchases will be made
9 or guarantee whether the purchases will be made at all. The actual timing and amount of energy
10 purchases are dictated by a number of factors that influence the market. That is why such
11 purchases typically are made on the spot market. Using a formalized solicitation process is an
12 anathema to effective economy energy purchases. TEP will not derive any better-than-market
13 benefits by bidding out economy energy through the formal solicitation process, particularly if it
14 cannot accurately identify when it will need a certain amount of spot energy.

15 The ironic twist on Staff’s expanded definition of “contestable load” is that Staff justifies its
16 position by confirming that TEP would not have to accept any bids on its contestable load. [Staff
17 Ex. 1 at 16:14-26 (App. 67); *see, e.g.*, Tr. at 170:21 to 171:9, 285:6-11 (App. 68)] Thus, although
18 TEP would have to bid contestable load that could be provided by TEP’s own existing assets –
19 here, both RMR service and economy energy – TEP is not obligated to accept any bids in response
20 to its bid requests.

21 TEP agrees that it should not be obligated to accept bids in the upcoming solicitation.
22 However, it also should not be obligated to bid out certain load that is not suitable to the proposed
23 initial solicitation process. The cost of the competitive solicitation process is significant and it is
24 not in the public interest to require a utility to incur costs for soliciting products with likely no
25 chance of receiving an acceptable bid.

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1 **4. The Appropriate Approach to Contestable Load Determination in**
2 **Track B.**

3 In sum, TEP urges the Commission to confirm that contestable load includes only those
4 loads that cannot be met by existing utility assets. The Commission should not set the specific
5 amount of TEP's contestable load in this Order. Rather, it should provide sufficient guidance on
6 the appropriate definition of contestable load to allow careful and accurate contestable load
7 calculations in the pre-solicitation phase of the process. Indeed, the Staff's proposed definition of
8 contestable load – along with Staff's "draft" load calculations – could be misinterpreted by the
9 financial community. [See Tr. at 428:5-10, 433:24 to 435:5 (App. 69)] To the extent the Track B
10 Order sets forth large contestable loads, it may inappropriately suggest that significant existing
11 utility assets will be rendered worthless. TEP is concerned about the future financial repercussions
12 of a Track B Order that identifies a large "contestable load," even if TEP is not obligated to accept
13 competitive bids on that load.

13 **D. RMR Energy or Capacity Should Not be Included in the Initial Solicitation**
14 **Process.**

15 Even if the Commission concludes that RMR service should be included in contestable
16 load, it should not require RMR service to be bid in the initial solicitation process. It became clear
17 during the course of the hearing that RMR capacity and energy needs are more complicated than
18 the basic capacity and energy needs of a utility. [Tr. at 274:3-14 (App. 70)] RMR needs are
19 affected by transmission limitations, system voltage stability, and a number of other factors. [Id.]
20 Yet RMR service is critical to reliable service for consumers. [Tr. at 267:4-16, 268:17 to 269:4
21 (App. 71)] The Commission recognized the importance and complexity of RMR service in
22 ordering TEP and APS to file an RMR study by the end of January 2003. [Track A Order at 33:24-
23 27 (App. 72)] As a result of the uncertainty surrounding RMR needs and the ongoing RMR study,
24 the Commission should defer any competitive solicitation of RMR energy and capacity. As Staff
25 acknowledged at the hearing, the RMR study may be modified based on comment from other
26 parties and that could affect any potential RMR solicitation amounts. [Tr. at 271:1-12, 274:15 to
27 276:22 (App. 73)] In light of the ongoing RMR analysis – and the potential timing for a final
resolution of RMR issues that will impact the accuracy of the RMR energy and capacity needs – it

1 is likely that the entire solicitation process will be delayed if RMR needs must be included in the
2 initial competitive solicitation.

3 Moreover, RMR capacity and energy is critical to proper utility function. [Tr. at 267:4 to
4 269:4 (App. 74)] Staff recognized that importance in the Track A proceeding by recommending no
5 RMR generation be divested. [Track A Order at 11:16-10 (App. 75)] The utility is ultimately
6 responsible for providing RMR energy and capacity [Tr. at 268:12-16 (App. 76)], and soliciting
7 and analyzing bids for RMR capacity and energy involves issues beyond a basic unmet
8 needs/contestable load analysis that focuses primarily on price. The inclusion of RMR service in
9 contestable load will unnecessarily complicate the initial solicitation process. [TEP Ex. 3 at 5:1-21
10 (App. 77)] Given the critical nature of RMR service and the unique circumstances involved in
11 determining RMR service needs, the Commission should not include any competitive solicitation
12 of RMR capacity or energy in this initial procurement process.

13 **CONCLUSION**

14 TEP requests the Commission to:

15 (i) allow TEP's Wholesale Marketing department to conduct TEP's Track B
16 competitive solicitation process; and

17 (ii) determine TEP's contestable load to be the TEP load that cannot be served by
18 TEP's existing assets, as set forth in the November 4, 2002 testimony of David Hutchens [TEP Ex.
19 1 at 7:8-15 and Ex. 1 thereto (App. 78)], thus excluding RMR service and economy energy from
20 TEP's contestable load in the initial solicitation process.

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RESPECTFULLY SUBMITTED this 18th day of December, 2002.

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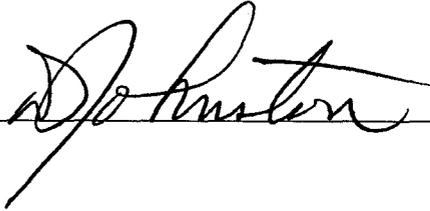
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A handwritten signature in cursive script, appearing to read "D. Johnston", is written over a horizontal line. The signature is positioned between lines 4 and 6 of the page.