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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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Arizona Corporation Commission

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7 IN THE MATTER OF THE GENERIC
8 PROCEEDINGS CONCERNING ELECTRIC
9 RESTRUCTURING ISSUES.

Docket No. E-00000A-02-0051

9 IN THE MATTER OF ARIZONA PUBLIC
10 SERVICE COMPANY'S REQUEST FOR
11 VARIANCE OF CERTAIN REQUIREMENTS
12 OF A.A.C. R14-2-1606

~~Docket No. E-01345A-01-0822~~

12 IN THE MATTER OF THE GENERIC
13 PROCEEDINGS CONCERNING THE
14 ARIZONA INDEPENDENT SCHEDULING
15 ADMINISTRATOR

Docket No. E-00000A-01-0630

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

Docket No. E01933A-02-0069

18
19 **TUCSON ELECTRIC POWER COMPANY'S**
20 **RESPONSE BRIEF ON TRACK B ISSUES**

21 Tucson Electric Power Company ("TEP"), through undersigned counsel, submits its
22 response brief on Track B Issues. After reviewing the various post-hearing briefs submitted in the
23 Track B proceeding, TEP believes that the recommendations in its initial post-hearing brief on
24 Track B issues remain appropriate for this initial competition solicitation process. In response,
25 TEP further comments on several key issues as set forth below.

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DISCUSSION

A. Track B Should Identify the Method of Determining Contestable Load, Not the Specific Amount of Contestable Load.

In its Opening Brief, TEP urged the Commission to focus on the method for determining contestable load for the upcoming solicitation. Because the amount of contestable load will be refined and adjusted in the pre-solicitation process, TEP submits that it is unnecessary for the Commission to adopt any specific numbers for contestable load in the Track B Order. Indeed, in its Initial Closing Brief, Staff has stated that the Track B proceeding is not a search for a “magic” number,” and that it will be “necessary to update” any present contestable load number in the pre-solicitation process. [Staff’s Initial Closing Brief at 6:1-15] If any contestable load number set forth in the Track B Order will be subject to such adjustment, there is no need to set such numbers. Rather, the Commission should clearly spell out the types of load and the appropriate methodologies for determining contestable load. Specific numbers in the Track B Order may have undesired consequences and such consequences are not warranted where those numbers are subject to change and do not represent loads for which bids must be accepted. [See TEP Initial Post-Hearing Brief at 6:21 to 7:2, 11:6-12; APS Initial Post-Hearing Brief at 13:1-21] A focus on methodology in the Track B Order will still meet the Commission’s goals for a competitive solicitation without undue harm to the utilities that are participating in that solicitation.¹

B. The Initial Solicitation Should Focus on Unmet Needs.

In its initial post-hearing brief, TEP urged the Commission to follow the express language of the Track A Order in setting the parameters of the *initial* solicitation. Staff seeks to greatly expand the scope of this initial solicitation through a broad interpretation of the phrase “at a minimum.” [Staff’s Initial Closing Brief at 4:4-10] TEP submits that such a broad interpretation

¹ The focus on methodology, not numbers, also ameliorates concerns about including Staff’s newly-proposed contestable load numbers in the Track B Order. [See Ex. A to Staff’s Initial Closing Brief] The revised Staff Exhibit 5 should have been submitted on December 6, 2002, not with the initial post-hearing brief. The new contestable load amounts in that revised exhibit have not been subject to cross-examination or other inquiry and should not be adopted in the Track B Order, particularly since Staff acknowledges those loads will be refined and adjusted in the pre-solicitation process.

1 may be counterproductive in this initial competitive solicitation by unnecessarily complicating that
2 solicitation. Moreover, TEP agrees with APS's interpretation of the Track A Order, which
3 considers the Track A Order as a whole in addressing what is appropriate under the phrase "at a
4 minimum." [APS Initial Post-Hearing Brief at 4:12 to 6:10] Moreover, to the extent Staff seeks to
5 incorporate the term "economically" through its Staff Report, TEP is concerned such an approach
6 may implicate the entire load of a utility and subject that load to competitive solicitation. Again,
7 such a broad approach is inappropriate in this *initial* solicitation process because it will
8 unnecessarily complicate the process and interfere with an assessment of how a competitive
9 solicitation may be best conducted in the future.

10 **C. RMR Load Should Be Excluded from Contestable Load.**

11 In its Initial Closing Brief, Staff has continued to press for the inclusion of RMR load in
12 contestable load. Part of Staff's justification for inclusion is that long-term transmission
13 enhancements could resolve the RMR issues. [Staff's Initial Closing Brief at 4:19] Long-term
14 solutions are contrary to the generally anticipated 2003-2006 time frame to be covered by the
15 initial solicitation. Moreover, Staff's suggestion that RMR load be bid and managed in accordance
16 with applicable AISA and West Connect protocols [Staff's Initial Closing Brief at 4:20-21] creates
17 a dilemma for TEP because it would require TEP to seek a market-based solution for RMR at the
18 same time TEP's OATT requires RMR to be provided at a cost basis [Tr. at 431:10-18]. Finally,
19 Staff acknowledges that the RMR loads numbers will have to be adjusted based on the final results
20 of the impending RMR Study. [Staff's Initial Closing Brief at 6:4-6] Given the interest in RMR
21 issues, that resolution may significantly delay this initial solicitation if RMR must be included in
22 the contestable load.

23 **D. Unplanned Economy Energy Purchases Should Be Excluded from Contestable**
24 **Load.**

25 Staff has reiterated its position that utilities should retain their ability to fill unplanned or
26 unexpected needs from the spot market when appropriate and that those needs are not contestable
27 load. [Staff's Initial Closing Brief at 5:22] TEP basically has defined its "economy energy"

1 purchases to fall within that exception to “contestable” economy energy. [Tr. at 486:17 to 487:6]
2 Yet, Staff now seeks to include all of TEP’s spot market purchases in TEP’s contestable load.
3 [Staff’s Initial Closing Brief at 3:14-21] In fact, future economy purchases may be estimated in
4 amount, but they are never planned and may never actually occur. Moreover, TEP submits that it
5 is difficult to establish a bright line between contestable economy energy purchases and
6 noncontestable economy energy purchase based on Staff’s “exception” to contestable economy
7 energy load. Once that line is clear, contestable economy energy loads will need to be adjusted.
8 Again, the need for such an adjustment to specific numbers confirms that the Track B Order should
9 focus on methodology, not numbers.

10 CONCLUSION

11 The Commission should adopt the recommendations set forth in TEP’s initial post-hearing
12 brief.

13
14 RESPECTFULLY SUBMITTED this 31st day of December, 2002.

15 **ROSHKA HEYMAN & DEWULF, PLC**

16
17 By 

18 Raymond S. Heyman
19 Michael W. Patten
20 One Arizona Center
21 400 East Van Buren Street, Suite 800
22 Phoenix, Arizona 85004
23 (602) 256-6100

24 Attorneys for Tucson Electric Power Company

25 **ORIGINAL and 19 COPIES** of the foregoing
26 filed December 31, 2002, with:

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

1 **COPIES** of the foregoing hand-delivered
2 December 31, 2002, to:

3 The Honorable William A. Mundell
4 Chairman
5 ARIZONA CORPORATION COMMISSION
6 1200 West Washington
7 Phoenix, Arizona 85007

8 The Honorable Jim Irvin
9 Commissioner
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington
12 Phoenix, Arizona 85007

13 The Honorable Marc Spitzer
14 Commissioner
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington
17 Phoenix, Arizona 85007

18 Teena I. Wolfe, Esq.
19 ALJ, Hearing Division
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, Arizona 85007

23 Christopher Kempley, Esq.
24 Janet Wagner, Esq.
25 Legal Division
26 ARIZONA CORPORATION COMMISSION
27 1200 West Washington Street
Phoenix, Arizona 85007

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

28 **COPIES** of the foregoing sent via mailed on
29 December 31, 2002, to the Parties that participated
30 in the Track B Hearing.

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