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NEW APPLICATION

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BEFORE THE ARIZONA CORPORATION COMMISSION

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E-01933A-02-0069

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

Docket No. E-01933-02-_____

TUCSON ELECTRIC POWER
COMPANY'S REQUEST FOR A
VARIANCE

Tucson Electric Power Company ("TEP"), through undersigned counsel, and pursuant to A.A.C. R14-2-1614.C, respectfully requests that the Arizona Corporation Commission ("Commission") grant TEP a variance for the compliance dates set forth in A.A.C. R14-2-1606.B ("Rule 1606.B") and A.A.C. R14-2-1615.A ("Rule 1615.A"). Specifically, TEP is requesting that the Commission grant:

1. An extension of the compliance date in Rule 1606.B, which requires that power purchased by TEP for Standard Offer Service "shall be acquired from the competitive market through prudent, arm's length transactions, and with at least 50% through a competitive bid process"; and
2. An extension of the compliance date in Rule 1615.A, which requires that all competitive generation assets and competitive services be separated from TEP.

TEP requests that the compliance dates be extended to either: (a) December 31, 2003; or (b) a date six months after the Commission has issued a final order in "In the Matter of the Generic Proceedings Concerning Electric Restructuring Issues," A.C.C.

1 Docket No. E-00000A-02-0051 (the "Generic Restructuring Docket"),¹ whichever is the
2 later date.

3 Finally, as is discussed more fully herein, although TEP does not believe that this
4 Request for a Variance will require a modification of the TEP Settlement Agreement, TEP
5 requests that, to the extent required, the Commission approve any modification to the
6 Settlement Agreement approved in Decision No. 62103 (the "TEP Settlement Agreement")
7 deemed necessary in connection with this Request for a Variance. In support hereof, TEP
8 states:

9 **1. BACKGROUND.**

10 The current version of Rule 1606.B states:

11 After January 1, 2001, power purchased by an investor-owned Utility
12 Distribution Company for Standard Offer Service shall be acquired
13 from the competitive market through prudent, arms length transactions,
14 and with at least 50% through a competitive bid process (the "50% bid
15 requirement").

16 Thus, pursuant to Rule 1606.B, TEP will be obligated to purchase at least 50% of the
17 power for its Standard Offer Service through a competitive bid process.

18 Rule 1615.A states:

19 All competitive generation assets and competitive services shall be
20 separated from an Affected Utility prior to January 1, 2001. Such
21 separation shall either be to an unaffiliated party or to a separate
22 corporate affiliate or affiliates. If an Affected Utility chooses to
23 transfer its competitive generation assets or competitive services to a
24 competitive electric affiliate, such transfer shall be at a value
25 determined by the Commission to be fair and reasonable (the
26 "generation separation requirement").

27 ¹ TEP's request contemplates that all of the issues raised in A.C.C. Docket No. E-01345A-01-0822 (the "APS Variance Case"), A.C.C. Docket No. E-00000A-01-0630 (the "AISA Case") and the Generic Restructuring Docket will be consolidated and resolved in the Generic Restructuring Docket. In the event that consolidation of those cases does not occur, then TEP requests that the six-month period begin only when there are final orders resolving all of the issues raised in the APS Variance Case, AISA Case, this case and the Generic Restructuring Docket.

1 Pursuant to this rule, TEP will be obligated to separate its “competitive generation
2 assets and competitive services” by transferring them to either an unaffiliated party or to a
3 separate corporate affiliate or affiliates. Although these rules originally set a compliance
4 date of January 1, 2001, the TEP Settlement Agreement established a new 50% bid
5 requirement deadline and generation separation requirement deadline for TEP of December
6 31, 2002. [Decision No. 62103 at 14 and Attachment 1 at para. 3]

7 **2. THE REQUESTED VARIANCE IS IN THE PUBLIC INTEREST.**

8 TEP’s variance request is reasonable, limited to a defined period of time and,
9 consequently, in the public interest. TEP’s requested variance will maintain the status quo
10 while the Commission re-visits the Electric Competition Rules and related issues rather than
11 force TEP to undertake costly and permanent steps that might negatively impact TEP, its
12 customers and the Commission’s jurisdiction over TEP’s generation assets. Indeed, the
13 50% bid requirement and the generation separation requirement will cause major, and in
14 some instances, permanent modifications to TEP’s operations. To implement those
15 requirements will require a substantial commitment of TEP time and resources. To take
16 these steps at a time when the Commission and interested parties will be re-visiting the
17 Electric Competition Rules, which might result in a modification of the 50% bid
18 requirement and the generation separation requirement, does not seem to be prudent.

19 TEP’s concern about the long-term status of the Electric Competition Rules is based
20 upon recent events that have occurred in connection with the Generic Restructuring Docket
21 such as: (a) the comments of the Commissioners regarding the need to re-visit the Electric
22 Competition Rules at the December 5, 2001 procedural conference in the APS Variance
23 Case; (b) the letters expressing the same sentiment filed by Chairman Mundell and
24 Commissioner Spitzer on December 5, 2001; (c) the comments of Commission Staff filed in
25 response to the APS Variance Case application; (d) the comments filed by the parties and
26 intervenors in response to the December 11, 2001 Procedural Order; (e) Chairman
27 Mundell’s letter, dated January 14, 2002, which directed the Chief Administrative Law

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 Judge to open a generic docket regarding the Electric Competition Rules and to consolidate
2 it with the APS Variance Case and the AISA case and which invited interested parties to
3 respond to questions regarding Electric Competition; (f) the Commission's Procedural
4 Order, dated January 22, 2002, which opened the Generic Restructuring Docket; and (g)
5 Commissioner Sptizer's letter dated January 22, 2002 which invited parties to answer
6 additional questions regarding Electric Competition.

7 Moreover, given the recent history – and current state – of the western power
8 markets, TEP believes that neither an immediate transition to the 50% competitive bid
9 requirement or the generation separation requirement is prudent at this time.

10 For example, TEP believes that if it is required to meet the 50% bid requirement,
11 both TEP and its customers will be subject to the following negative situations. First, the
12 potential availability of reasonable competitive bids is simply unknown. Today, the entire
13 western wholesale power market is in a state of flux. That evolving market – including
14 recent and ongoing FERC activity, numerous proposed merchant plants and uncertainty
15 about transmission issues – makes it difficult to evaluate the reasonableness of competitive
16 bids in terms of duration of a contract and other contract terms.

17 Second, being obligated to a 50% bid requirement puts TEP at a distinct
18 disadvantage in obtaining acceptable bids. The experience of utilities in California
19 demonstrated that regulatory obligations placed on retail energy providers (such as TEP),
20 can create economic hardships for those providers in an immature competitive market. The
21 50% bid requirement potentially could increase the cost of wholesale power to be used for
22 Standard Offer Service.

23 Third, the California experience confirms the desirability of financially stable utility
24 distribution companies that can provide reliable service. The potential restrictions of the
25 50% bid requirement in an uncertain generation market may subject TEP to unwarranted
26 financial difficulties.

27 Fourth, the financial instability of some power marketers raises significant concerns.

1 TEP is concerned that if it is dependent upon obtaining a significant amount of its power
2 from these sources, it may not be able to meet its duty to provide reliable power to its
3 customers.

4 Extending the TEP compliance dates will merely allow a timely reconsideration of
5 these issues and the Electric Competition Rules, as a whole, without requiring TEP to
6 prematurely commit to significant changes that may not be required in the future.

7 TEP also believes that the variance is appropriate in light of the TEP Rate Case
8 Settlement Agreement approved in Decision No. 62103. Under that Settlement, TEP
9 customers have enjoyed rate reductions since 1999. [See Decision No. 62103 at Attachment
10 1 ("Settlement Agreement"), para. 5.1] TEP also agreed to freeze rates at those reduced
11 levels through 2008. [Settlement Agreement, paras. 5.1, 13.4] However, the TEP
12 Settlement Agreement also provides that TEP may seek to change those rates prior to the
13 end of 2008 in the event of (i) conditions or circumstances that constitute an emergency or
14 (ii) material changes in TEP's cost of service for Commission-regulated services resulting
15 from "federal, state or local laws, regulatory requirements, judicial decisions, actions or
16 orders. [Settlement Agreement, para. 13.4] TEP is concerned that premature compliance
17 with rules that may be changed could cause material changes in TEP's cost of Standard
18 Offer Service and may create emergency circumstances for TEP. The requested compliance
19 extension will eliminate that concern while the Commission reviews the Electric
20 Competition Rules.

21 **3. TEP SETTLEMENT AGREEMENT.**

22 Although TEP does not believe that the variance will materially modify the TEP
23 Settlement Agreement, it recognizes that other parties may argue to the contrary. To avoid
24 any such controversy, TEP further requests that if the Commission determines that the
25 variance does modify the TEP Settlement Agreement, then an order be issued approving
26 any such modification. Further, TEP has, in good faith, provided ample prior notice of this
27 filing to the parties to the TEP Settlement Agreement. TEP has conferred with the parties

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

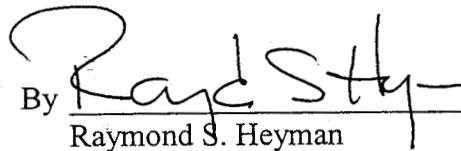
1 to the TEP Settlement Agreement, informed them of its intent to file a request for a variance
2 and provided them with a copy of this pleading several days prior to filing it with the
3 Commission.

4 **4. CONCLUSION.**

5 WHEREFORE, for all of the foregoing reasons, TEP requests that the Commission
6 issue an order granting TEP's Request for a Variance to the compliance dates for A.A.C.
7 R14-2-1606.B and A.A.C. R14-2-1615.A as set forth herein.

8
9 Respectfully submitted this 28th day of January, 2002.

10 **ROSHKA HEYMAN & DEWULF, PLC**

11
12 By 

13 Raymond S. Heyman
14 Michael W. Patten
15 One Arizona Center
16 400 East Van Buren Street, Suite 800
17 Phoenix, Arizona 85004

18 Attorneys for Tucson Electric Power Company

19 **ORIGINAL and 10 COPIES** of the foregoing
20 filed January 28, 2002, with:

21 Docket Control
22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington Street
24 Phoenix, Arizona 85007
25
26
27

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 **COPIES** of the foregoing hand-delivered
January 28, 2002, to:
2
3 The Honorable William A. Mundell, Chairman
4 The Honorable Jim Irvin, Commissioner
5 The Honorable Marc Spitzer, Commissioner

6
7 Lyn A. Farmer, Esq.
8 Chief Administrative Law Judge
9 Hearing Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13
14 Christopher Kempley, Esq.
15 Chief Counsel, Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19
20 Ernest Johnson
21 Director, Utilities Division
22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington Street
24 Phoenix, Arizona 85007

25
26 **COPIES** of the foregoing mailed
January 28, 2002, to:

27
28 Scott Wakefield, Esq.
29 RESIDENTIAL UTILITY CONSUMER OFFICE
30 2828 North Central Avenue, Suite 1200
31 Phoenix, Arizona 85004

32
33 Charles T. Stevens, Esq.
34 ARIZONANS FOR ELECTRIC CHOICE & COMPETITION
35 245 West Roosevelt
36 Phoenix, Arizona 85003

37
38 Mark Sirois
39 Executive Director
40 ARIZONA COMMUNITY ACTION ASSOCIATION
41 2627 North Third Street, #2
42 Phoenix, Arizona 85004

43

1 Mr. Jeffrey B. Guldner
2 SNELL & WILMER
3 One Arizona Center
4 400 East Van Buren Street
5 Phoenix, Arizona 85004-0001

6 
7
8
9

10
11 ROSHKA HEYMAN & DEWULF, PLC
12 ONE ARIZONA CENTER
13 400 EAST VAN BUREN STREET - SUITE 800
14 PHOENIX, ARIZONA 85004
15 TELEPHONE NO 602-256-6100
16 FACSIMILE 602-256-6800

17
18
19
20
21
22
23
24
25
26
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