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IN THE MATTER OF THE GENERIC) DOCKET NO. E-00000A-02-0051
PROCEEDINGS CONCERNING ELECTRIC)
RESTRUCTURING ISSUES)

IN THE MATTER OF ARIZONA PUBLIC) DOCKET NO. E-01345A-01-0822
SERVICE COMPANY'S REQUEST FOR)
VARIANCE OF CERTAIN REQUIREMENTS)
OF A.A.C. R14-2-1606)

IN THE MATTER OF THE GENERIC) DOCKET NO. E-00000A-01-0630
PROCEEDING CONCERNING THE)
ARIZONA INDEPENDENT SCHEDULING)
ADMINISTRATOR)

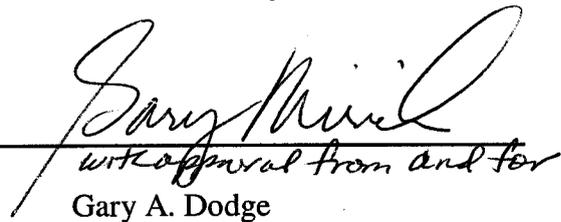
IN THE MATTER OF TUCSON ELECTRIC) DOCKET NO. E-01933A-02-0069
POWER COMPANY'S APPLICATION FOR)
A VARIANCE OF CERTAIN ELECTRIC)
COMPETITION RULES COMPLIANCE)
DATES)

IN THE MATTER OF THE APPLICATION) DOCKET NO. E-01933A-98-0471
OF TUCSON ELECTRIC POWER COMPANY))
FOR APPROVAL OF ITS STRANDED COST)
RECOVERY)

**PRE-FILED REBUTTAL
TESTIMONY OF ARIZONANS
FOR ELECTRIC CHOICE
AND COMPETITION**

Arizonans for Electric Choice and Competition (AECC) hereby submits its Rebuttal
Testimony concerning the TEP matter in the above-captioned proceedings.

1 RESPECTFULLY SUBMITTED this 11th day of June, 2002.

2
3  *w/ approval from and for*

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15 Original and ten (10) copies of the foregoing
16 filed this 11th day of June, 2002, with:

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18 Docket Control Division
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, Arizona 85007
22

23 Copies of the foregoing were mailed/delivered this 11th day of June 2002 to the attached
24 service list.

TABLE OF CONTENTS

1

Rebuttal Testimony of Kevin C. Higgins

2

3

4

Rebuttal of James S. Pignatelli.....1

1 **REBUTTAL TESTIMONY OF KEVIN C. HIGGINS**

2

3 **Q. Please state your name and business address.**

4 A. Kevin C. Higgins, 39 Market Street, Suite 200, Salt Lake City, Utah,
5 84101.

6 **Q. By whom are you employed and in what capacity?**

7 A. I am a Principal in the firm of Energy Strategies, LLC. Energy Strategies
8 is a private consulting firm specializing in the economic and policy analysis
9 applicable to energy production, transportation, and consumption.

10 **Q. On whose behalf are you testifying in this proceeding?**

11 A. My testimony is being sponsored by Arizonans for Electric Choice and
12 Competition (AECC).

13 **Q. Are you the same Kevin C. Higgins who has filed direct testimony in this
14 proceeding?**

15 A. Yes, I am.

16 **Q. What is the purpose of your rebuttal testimony?**

17 A. My rebuttal testimony responds to a proposal in the direct testimony of
18 James S. Pignatelli of Tucson Electric Power (TEP) that would repudiate a key
19 aspect of TEP's Commission-approved Settlement Agreement with AECC, the
20 Residential Utility Consumer Office, and Arizona Community Action
21 Association.¹

22 **Q. Specifically what proposal by Mr. Pignatelli would repudiate a portion of
23 TEP's Settlement Agreement?**

1 A. On page 14 of his direct testimony, Mr. Pignatelli proposes that all
2 residential customers and commercial and industrial customers with loads under 3
3 MW be excluded from electric competition.

4 **Q. How is that a violation of the TEP Settlement Agreement?**

5 A. Paragraph 1.2 of the TEP Settlement ensures direct access rights for *all*
6 customers.² Mr. Pignatelli's proposal would abrogate that right for the vast
7 majority of TEP's customers while offering them absolutely nothing in exchange.
8 It is a blatant attempt by a signatory to an agreement to advance its own pre-
9 settlement objectives in contravention of the commitments it made when it struck
10 its deal and received the benefits of its bargain. It is a one-sided, bad faith
11 proposition that is not even within the scope of the Track A issues identified by
12 the Commission. Mr. Pignatelli's proposal should be rejected.

13 **Q. How does Mr. Pignatelli's proposal advance TEP's pre-settlement**
14 **objectives?**

15 A. TEP had long opposed extending direct access rights to smaller customers
16 in the first place.³ Now, after committing in its settlement agreement to extending
17 these rights to all customers, TEP is using the generic docket as a pretext to
18 resuscitate its pre-settlement litigation position. Eliminating direct access rights

¹ Arizona Corporation Commission Decision No. 62103, November 30, 1999.

² Paragraph 1.2 states in part: "Unless subject to judicial or regulatory restraint, all TEP customers will be eligible to receive Competitive Retail Access on January 1, 2001." For TEP to be the active agent in seeking regulatory restraint of this provision is a violation of paragraph 14.2 of the Settlement Agreement which provides that: "Neither the Parties nor the Commission shall take or propose any action which would be inconsistent with the provisions of this Settlement Agreement."

³ See for example RE-00000C-94-0165, "TEP's Exceptions to Proposed Order Adopting Amendments to the Electric Competition Rules," February 17, 1999, p. 2: "Only customers with 1 MW minimum demand should be eligible for direct access."

1 for the majority of its customers would be a major step toward fulfilling TEP's
2 apparent aspiration to eradicate customer choice in its service territory.

3 **Q. Wouldn't eliminating direct access for the majority of TEP's customers**
4 **provide them with the benefit of stable rates through 2008?**

5 A. No. TEP customers *already have* the assurance of stable rates through the
6 end of 2008 by virtue of the settlement agreement – *and* they all have direct
7 access rights as well. Customers would gain nothing from adoption of Mr.
8 Pignatelli's proposal, while losing an option that might have significant value to
9 them in the future.

10 **Q. Are there provisions of the TEP Settlement Agreement that AECC would**
11 **change if it could effect such changes unilaterally?**

12 A. Of course. As in any settlement, a compromise was reached, and AECC
13 accepted a final result that was short of what we would have sought in litigation.
14 If AECC were to emulate TEP's strategy of lobbying for after-the-fact changes to
15 the deal, the first thing AECC would seek to have changed is the size of the
16 "Adders" used in the determination of TEP's shopping credit. The Adder is
17 intended to capture the difference between a 100-percent-load-factor market price
18 and actual customer load characteristics, plus an additional amount for costs not
19 readily quantifiable until a more mature Arizona market has developed.⁴ The size
20 of the Adder is one of the most important drivers in the economics of direct
21 access in TEP's service territory: the larger the Adder, the larger the shopping
22 credit for direct access service. The lack of direct access activity in TEP's
23 territory is an indication that the Adders are too small, although the TEP witnesses

1 do not bother to mention this in their assessment of the retail market. To the
2 extent that TEP is concerned that there are insufficient shopping opportunities for
3 residential customers and commercial and industrial customers under 3 MW, TEP
4 should be advocating for larger Adders to rectify this. Similarly, TEP could
5 propose to lower its stranded cost charges for these customers.

6 **Q. Is there an opportunity in the TEP Settlement Agreement to revisit the size**
7 **of the Adders?**

8 A. Yes. The settlement agreement allows this issue to be re-opened after June
9 1, 2004, at which time the Commission will have the opportunity to reconsider the
10 Adders in the settlement agreement and reset them, if necessary.⁵ In my opinion,
11 there will be a strong case for increasing the Adders at that time, which will have
12 the effect of improving the economics of retail shopping. I view Mr. Pignatelli's
13 proposal to eliminate direct access for the majority of TEP's customers as an
14 opportunistic, preemptive strike against having the Adders adjusted upward in
15 2004.

16 **Q. Please summarize the recommendations in your rebuttal testimony.**

17 A. The Commission should reject Mr. Pignatelli's proposal to exclude all
18 residential customers and commercial and industrial customers with loads under 3
19 MW from electric competition. His proposal is a blatant violation of TEP's
20 Settlement Agreement and would abrogate direct access rights for the vast
21 majority of TEP's customers while offering them absolutely nothing in exchange.

22 **Q. Does this conclude your rebuttal testimony?**

⁴ TEP Settlement Agreement, par. 2.1(e) and (f).

⁵ TEP Settlement Agreement, par. 2.1(f).

1 A.

Yes, it does.

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