



BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

Arizona Corporation Commission
DOCKETED

DEC 20 2002

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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
APPENDIX IN SUPPORT OF ITS POST-HEARING BRIEF
RE: TRACK B ISSUES

Tucson Electric Power Company, through undersigned counsel, hereby submits the
attached Appendix in support of its Post-Hearing Brief (filed December 18, 2002).

AZ CORP COMMISSION
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RESPECTFULLY SUBMITTED this 20th day of December, 2002.

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ORIGINAL and 19 COPIES of the foregoing
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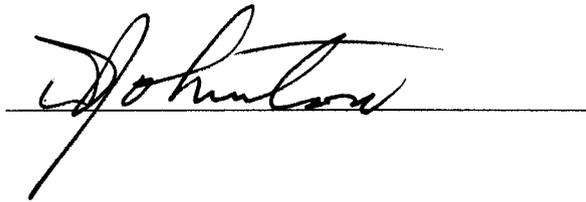
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Ernest G. Johnson, Esq.
Director, Utilities Division
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COPIES of the foregoing sent via mailed on
December 20, 2002, to the Parties that participated
in the Track B Hearing.



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3 WILLIAM A. MUNDELL
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DOCKET NO. E-00000A-01-0630

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

DOCKET NO. E-01933A-02-0069

15 IN THE MATTER OF THE APPLICATION OF
16 TUCSON ELECTRIC POWER COMPANY FOR
17 APPROVAL OF ITS STRANDED COST
RECOVERY.

DOCKET NO. E-1933A-98-0471

DECISION NO. 65154

OPINION AND ORDER

18 DATES OF HEARING:

June 14, 2002 (pre-hearing); June 17, 18, 19, 20, 21, 27,
and 28, 2002

19 PLACE OF HEARING:

Phoenix, Arizona

20 ADMINISTRATIVE LAW JUDGE:

Lyn Farmer

21 IN ATTENDANCE:

William A. Mundell, Chairman
Marc Spitzer, Commissioner

22 APPEARANCES:

23 Mr. Jay L. Shapiro, FENNEMORE CRAIG and Mr.
24 Michael R. Engleman, DICKSTEIN, SHAPIRO,
MORIN & OSHINSKY on behalf of Panda Gila River,
L.P.;

25 Mr. Lindy Funkhouser, Director, and Mr. Scott S.
26 Wakefield, Chief Counsel, on behalf of the Residential
Utility Consumer Office;

27 Mr. Thomas L. Mumaw, Senior Attorney, PINNACLE
28 WEST CORPORATION and Mr. Jeffrey B. Guldner,

1 IT IS FURTHER ORDERED that A.A.C. R14-2-1606(B) is stayed and Decision Nos. 61973
2 and 62103 are modified to stay the requirement that 100 percent of power purchased for Standard
3 Offer Service shall be acquired from the competitive market, with at least 50 percent through a
4 competitive bid process.

5 IT IS FURTHER ORDERED that A.A.C. R14-2-1611(A)'s applicability to APS and TEP's
6 captive customers is stayed.

7 IT IS FURTHER ORDERED that upon implementation of the outcome of Track B, APS shall
8 acquire, at a minimum, any required power that cannot be produced from its own existing assets,
9 through the competitive procurement process as developed in the Track B proceeding. The minimum
10 amount of power, the timing, and the form of procurement shall be determined in the Track B
11 proceeding.

12 IT IS FURTHER ORDERED that upon implementation of the outcome of Track B, TEP shall
13 acquire, at a minimum, any required power that cannot be produced from its own existing assets,
14 through the competitive procurement process as developed in the Track B proceeding. The minimum
15 amount of power, the timing, and the form of procurement shall be determined in the Track B
16 proceeding.

17 IT IS FURTHER ORDERED that the parties are directed to continue their efforts in Track B
18 of this proceeding to develop a competitive solicitation process that can begin by March 1, 2003. For
19 the purposes of the competitive solicitation process, the PWEC generating assets that APS may seek
20 to acquire from PWEC, shall not be counted as APS assets in determining the amount, timing and
21 manner of the competitive solicitation.

22 IT IS FURTHER ORDERED that Staff shall open a rulemaking to review the Retail Electric
23 Competition Rules in light of our decisions herein and to address issues resolved in Track B, and to
24 amend A.A.C. R14-2-1615(A), A.A.C. R14-2-1606(B), and A.A.C. R14-2-1611(A).

25 IT IS FURTHER ORDERED that APS and TEP shall work with Staff to develop a plan as
26 discussed herein to resolve reliability must-run generation concerns. Staff shall include results of
27 such a plan in the 2004 Biennial Transmission Assessment.

28 IT IS FURTHER ORDERED that APS and TEP shall file annual reliability must-run
generation study reports with the Commission in concert with their January 31 ten year plan, for
review prior to implementing any new RMR generation strategies until the 2004 Biennial
Transmission Assessment is issued.

IT IS FURTHER ORDERED that if APS wishes to pursue the issue of acquiring PWEC's

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Arizona Corporation Commission

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2 CHAIRMAN
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DOCKET NO. E-01345A-01-0822

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17 ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

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OPINION AND ORDER

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Phoenix, Arizona

28 ADMINISTRATIVE LAW JUDGE:

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9 through the competitive procurement process as developed in the Track B proceeding. The minimum
10 amount of power, the timing, and the form of procurement shall be determined in the Track B
11 proceeding.

12 IT IS FURTHER ORDERED that upon implementation of the outcome of Track B, TEP shall
13 acquire, at a minimum, any required power that cannot be produced from its own existing assets,
14 through the competitive procurement process as developed in the Track B proceeding. The minimum
15 amount of power, the timing, and the form of procurement shall be determined in the Track B
16 proceeding.

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18 of this proceeding to develop a competitive solicitation process that can begin by March 1, 2003. For
19 the purposes of the competitive solicitation process, the PWEC generating assets that APS may seek
20 to acquire from PWEC, shall not be counted as APS assets in determining the amount, timing and
21 manner of the competitive solicitation.

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23 Competition Rules in light of our decisions herein and to address issues resolved in Track B, and to
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27 such a plan in the 2004 Biennial Transmission Assessment.

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generation study reports with the Commission in concert with their January 31 ten year plan, for
review prior to implementing any new RMR generation strategies until the 2004 Biennial
Transmission Assessment is issued.

IT IS FURTHER ORDERED that if APS wishes to pursue the issue of acquiring PWEC's

3

**STAFF REPORT ON TRACK B:
COMPETITIVE SOLICITATION
DOCKET NOS E-00000A-02-0051 ET AL.**

OCTOBER 25, 2002

1 00000A-02-0051) was opened to examine various electric restructuring issues. The
2 Commissioners, through a series of letters requested that the parties file responses to questions
3 regarding certain aspects of electric competition in the generic electric restructuring docket. On
4 January 28, 2002, Tucson Electric Power Company ("TEP") filed a request for a variance to
5 A.A.C. R-14-2-1606(B). On April 25, 2002, the Arizona Corporation Commission
6 ("Commission") held a Special Open Meeting, at which the Commission stayed APS' Request for
7 a Variance, and directed that certain issues be addressed in the generic electric restructuring
8 docket. The Commission divided the issues to be addressed into two tracks, A and B. The Track
9 A issues identified are the transfer of assets and associated market power issues, code of conduct
10 issues, the Affiliated Interest rules, and jurisdictional issues. The Track B issue identified is the
11 development of a competitive solicitation process.

12 On September 10, 2002, in Decision No. 65154 the Commission issued its decision in the
13 Track A proceeding. In the Track A decision, the Commission stayed A.A.C. R-14-2-1606(B)
14 which required that 100 percent of power purchased for Standard Offer Service shall be acquired
15 from the competitive market, with at least 50 percent through competitive bid. However, the
16 decision directed APS and TEP to acquire, at a minimum, any required power that cannot be
17 produced from its own existing assets, through the competitive procurement process as developed
18 in the Track B proceeding. The Decision further ordered that the amount of power, timing, and
19 the form of procurement be determined in the Track B proceeding with the target date for a
20 competitive solicitation process taking place by March 1, 2002.

21 **B. Participants**

22 The parties that have participated in one or all of the Track B workshops are: APS, TEP,
23 Pinnacle West Capital Corporation, Panda Gila River, L.P., Reliant Resources, Inc., PG&E
24 National Energy Group, Harquahala Generating Company, Sempra Energy Resources, Wellton
25 Mohawk Generating Facility, Duke Energy North America, LLC, Calpine Corporation,
26 Southwestern Power Group II, PPL Southwest Generation Holdings, LLC, PPL EnergyPlus, LLC,
27 PPL Sundance Energy LLC, El Paso Electric, Desert Energy, Public Service Company of New
28 Mexico, Citizens Utilities Company, Salt River Project, the Grand Canyon State Electric

1 Cooperative, Association, Inc., the Arizona Independent Scheduling Administrator Association,
2 the Arizona Competitive Power Alliance, the Arizona Utilities Investors Association, Arizonans
3 for Electric Choice in Competition, Arizona Transmission Dependent Utility Group, Arizona
4 Clean Energy Industries Alliance, the Land and Water Fund of the Rockies, the Residential
5 Utilities Consumer Office, NERA Economic Consulting, R.W. Beck, Inc., Industrial Power
6 Technology, the City of Scottsdale, the City of Tucson, and Staff.

7 **C. Collaborative Process**

8 The workshops were conducted on July 24 and 25, 2002, August 13 and 14, 2002, and
9 September 26 and 27, 2002. Prior to each workshop, an agenda was sent electronically to the
10 distribution list and posted to the Utilities Division website. Staff developed a draft working
11 paper regarding the competitive solicitation process and parties were able to provide substantive
12 comment and make suggestions to Staff on the draft-solicitation process. A variety of issues
13 relating to competitive bidding were raised, and through the collaborative process, the parties
14 reached agreements in principal on several areas which are listed on page 34 of this report.
15

16 **3. The Solicitation Process**

17 **A. Specific Process Goals**

18
19 As more fully detailed in the following sections of this chapter, the Staff's goal in
20 proposing this process is to facilitate a manageable transition to a competitive wholesale power
21 market that provides economic benefits to consumers in Arizona. The proposed process has been
22 designed to be open to all bidders, flexible, understandable by all participants in the process, and
23 to result in reliable power being available over the long term at prices that are reasonable.

24 The process was developed with the view that prevailing wholesale market conditions are
25 dynamic and that the potentially favorable conditions for buyers today are subject to potentially
26 significant changes over time. Accordingly, the Staff has developed a process that aligns the
27 utilities' responsibilities for providing reliable service at reasonable rates with the authority to

1 **4. Consensus Issues Among Parties**

2 While there appeared to be few agreements among the participants to Track B when the
3 workshops began in July 2002 the vast majority of the issues that separated the parties at that time
4 were identified and discussed at the three workshops facilitated by the Staff. As a result of those
5 discussions, only seven issues remain to be resolved by the Commission. Those issues are
6 discussed in Section 5 of this Report.

7 During the workshops, the participants considered issues ranging from defining products
8 to be solicited through defining what will indicate that the solicitation failed. In reaching
9 consensus, the participants drew upon the experience of marketers who have participated in
10 competitive solicitations in other states and utility personnel responsible for meeting the needs of
11 consumers in Arizona. The Staff and its advisors directed the discussion through all necessary
12 areas, with special attention being paid to transmission access.

13 On the following pages we set forth a list of the major issues considered during the
14 workshop sessions and the agreements reached regarding those issues.

15

ISSUE	AGREEMENT IN PRINCIPLE
1. What is the appropriate way to structure the solicitation process?	<ol style="list-style-type: none"> 1. Structure must be transparent 2. Structured to meet goals of: <ol style="list-style-type: none"> a. System reliability b. No increase in consumer risk c. Reasonable prices to consumers d. Environmental standards met 3. Structure must be flexible <ol style="list-style-type: none"> a. Tailored to UDC b. Change over time c. Acquisition of multiple products from diverse generating sources should be encouraged. Multiple contracts from diverse suppliers are appropriate.
2. Are there power supplies that should be exempt from, or treated differently in, a competitive solicitation?	<ol style="list-style-type: none"> 1. Exempt from competitive solicitation: <ol style="list-style-type: none"> a. Existing contracts b. Future QF contracts
3. What role should Least Cost Planning play in competitive markets?	<ol style="list-style-type: none"> 1. UDC will continue to forecast load & develop supply portfolio 2. Least Cost Planning will not require self-build by UDC
4. Who should bear price risks?	<ol style="list-style-type: none"> 1. Assigning risk to UDC increases UDC cost 2. Assigning risk to bidders will increase bid prices 3. Contract fuel adjustment mechanisms are appropriate 4. UDC will be free to seek cost recovery in future proceedings
5. Should there be a standard approach to competitive solicitations?	<ol style="list-style-type: none"> 1. Process should accommodate all possible products 2. Same process should be used for all UDC's. 3. Load growth is contestable 4. Unmet needs are contestable 5. Contestable load will change over time 5. Affiliated suppliers may compete for load

ISSUE	AGREEMENT IN PRINCIPLE
6. How should UDC's meet the Environmental Portfolio Standards?	<ol style="list-style-type: none"> 1. Bidders should not be required to include EPS in each bid. 2. EPS, Renewables and DSM should be permitted to bid in first solicitation, but no mandated "bonus points" awarded in review process. 3. Any EPS not acquired through this solicitation should be acquired in a separate process.
7. How should a competitively procured power supply portfolio be structured?	<ol style="list-style-type: none"> 1. Current transmission allows some level of competitive solicitation 2. Must address load shape 4. Product diversity 5. Term diversity 6. Deliverability must be considered 7. Ancillary services are not to be solicited in the first solicitation as separate products. 8. Ancillary services should be phased in accordance with Standard Market Design. 9. Slice of system should not be bid in first solicitation. 10. Slice of system should not be included in the first solicitation. 11. Unit contingent bids may be used in 2003 Solicitation 12. Bids for multiple years should be considered in 2003 Solicitation
8. What are the acceptable pricing regimes?	<ol style="list-style-type: none"> 1. Bidders should have option to bid pricing structure. 2. UDC not required to accept a particular structure. 3. For first solicitation, UDC will use pricing structure and terms approved by Commission.
9. Does a competitive solicitation address market power concerns?	<ol style="list-style-type: none"> 1. Market power is mitigated by permitting bidders to identify equivalent transmission points 2. Deliverability of load must be verifiable 3. No preference to transmission should be given to UDC affiliates 4. Bidders' proposed transmission path cannot displace contract load or native load. 5. Through the use of equivalent delivery points, swaps should be permitted.

ISSUE	AGREEMENT IN PRINCIPLE
10. Who can participate in the solicitation?	1. Solicitation open to all bidders.
11. Are there requirements to qualify to bid?	<ol style="list-style-type: none"> 1. Pre-qualification of bidders should be required 2. All pre-qualification requirements should be disclosed before bidding. 3. Amount of any bid fee imposed on bidders to be disclosed before bidding. 4. Minimum qualification should be demonstration to provide creditworthiness.
12. How should bids be evaluated?	<ol style="list-style-type: none"> 1. Evaluation criteria disclosed with solicitation: <ol style="list-style-type: none"> a. Draft contract b. Review process c. Specific criteria d. Bidder & product requirements to close. 2. Commission Staff and Monitor should: <ol style="list-style-type: none"> a. Review solicitation before issuance b. Monitor bid review by UDC c. Monitor selection process d. Review bids and final selection(s) e. Assure fairness & arms-length review
13. Failure of the solicitation	<ol style="list-style-type: none"> 1. Solicitation will be a failure if: <ol style="list-style-type: none"> a. No consumer benefit b. No power contract is signed d. Commission determines the process, as employed, was flawed e. Market power exacerbated f. Not enough capacity to meet load 2. If solicitation fails, Commission should require immediate new solicitation 3. UDC should retain solicitation records beyond life of contract

1 **5. Unresolved Issues Among Parties**

2 At the conclusion of the sixth day of workshops, the participants agreed on a list of seven
3 unresolved issues to be presented to the Commission. The list was prepared to include all
4 unresolved issues raised by any individual participant who was present at the workshop on
5 September 27, 2002. Accordingly, the issues identified by the Staff and referenced in the Third
6 Procedural Order were all of the issues the workshop participants claimed were unresolved at the
7 end of the workshops. While discussed below, the Staff does not agree that all of these issues
8 should be addressed in this proceeding. The seven issues presented were:

- 9 A. What portion of APS' load represents its unmet needs?
10 B. How the Staff will determine and use the "price to beat".
11 C. The timing of Commission prudence evaluation of solicited contracts.
12 D. Should the utility or a third party conduct the solicitation in 2003?
13 E. The standards of conduct governing utility-affiliate communications.
14 F. Whether a least-cost planning process should be adopted by the Commission.
15 G. Whether the Commission should initiate a proceeding to address DSM and
16 Environmental Risk Mitigation.

17
18 The Third Procedural Order on Track B issues catalogs all of the issues presented by the
19 individual parties at the procedural conference held on October 2, 2002. Many of the issues are
20 variations of the seven issues listed above.

21 The procedural order also identifies issues that the Staff addressed in the Solicitation
22 Proposal and discussed with the workshop participants. The Staff position on how those issues
23 should be addressed by the Commission are set forth in the Solicitation Proposal, and a cross
24 reference to that document is provided for ease of reference.

1 **A. What portion of APS' load represents its unmet needs?**

2 This is the penultimate issue to be resolved by the Commission. Clearly, there must be a
3 clear identification of the capacity and energy that will be required in order to serve load before a
4 solicitation can occur. The Staff believes the solicitation in 2003 should be for the energy and
5 capacity the utility cannot supply from generation assets that are included in the utility's rate base,
6 from contracts in effect, as of September 1, 2002, and from generation sources it must take as a
7 result of law or regulation (QF's and Environmental Portfolio sources). This unmet need for each
8 of the next 4 years should be the minimum amount that is included in the solicitations in 2003.

9 In Section I, B of the Staff proposed solicitation process, charts are provided showing
10 Staff's current estimates of the capacity and energy needs for the next 4 years that should be
11 deemed to be contestable loads in the 2003 solicitations for TEP and APS. These estimates were
12 determined from information provided by the utilities during the workshops. In the case of TEP,
13 the figures were provided by the utility. APS declined to provide energy and capacity estimates
14 requiring the Staff to calculate the figures from information provided by the utility, which the
15 utility now claims, is erroneous. Staff may, upon receipt of revised APS data, schedule an
16 additional workshop to review APS' submitted data with the Track B participants and if
17 appropriate revise the estimates contained in this Report. The Staff further believes that these
18 estimates will need to be adjusted periodically to reflect changes in load, forecasted load, or
19 power supply identified over time.

20 **B. How the Staff will determine and use the "price to beat".**

21

22 During the workshops, some participants expressed the desire to have prompt Commission
23 review of selected bids, in order to reduce regulatory uncertainty resulting from the possibility of
24 a future disallowance of related costs. Staff did not agree that all contracts awarded under the
25 solicitation should be automatically approved by the Commission. However, Staff developed the
26 price to beat concept to provide certainty of Staff support for cost recovery as an alternative to an
27 expedited Commission review process.

1 The Staff will calculate the price to beat with the assistance of the independent monitor
2 before the solicitation is released to prospective bidders. Available information on the forecast
3 cost of delivered electricity in the Arizona market will be used to develop the price to beat. The
4 Staff will review multiple sources of data to be provided by the utilities and any participant in the
5 process who chooses to supply such data in establishing its price to beat. The price to beat is
6 discussed in Section V, E (Terms Required for Staff Recommendation) of the proposed Initial
7 Solicitation Process.

8
9 The "price to beat" calculated by the Staff will be used by the Staff to determine whether
10 Staff will support the prices contained in any contract, without further investigation, when the
11 utility seeks recovery of related costs from consumers. The price to beat will be used only by the
12 Staff, and will not be disclosed to the utility or to bidders, even after the solicitation is completed.
13 In this way, the chance that the price to beat will influence the evaluation process or the selection
14 decisions made by the utilities will be minimized. After the solicitation is completed and
15 contracts have been executed, the Staff will announce whether any of the winning bids have
16 satisfied the price to beat criteria and, in turn, whether any contracts executed will have the
17 support of the Staff in a future cost recovery proceeding.

18 **C. The timing of Commission prudence evaluation of executed contracts.**

19
20 In the opinion of the Staff, the Commission should review the contracts entered into as a
21 result of the solicitation at such time as the utility seeks to recover the associated costs from
22 customers.

23 During the Track B workshops some parties urged Commission review before contracts
24 were executed, arguing that this would remove the risk to both utilities and merchants of
25 regulatory disallowance and, presumably, result in lower cost bids. The Staff is interested in
26 ensuring that consumers receive service at the best price, but believes that factors beyond price
27 alone need to be considered in determining the reasonableness and prudence of decisions made by
28 regulated utilities. At least in the case of this first solicitation the Staff believes that sufficient

1 time must be allocated to a review of each utility's power supply portfolio resulting from the
2 solicitation to fully evaluate the success of the solicitation process implemented and the
3 reasonableness of the decisions made by the utility in the solicitation.

4 **D. Should the utility or a third party conduct the solicitation in 2003?**

5
6 The solicitation should be conducted by the utility barring evidence of impropriety by the
7 utility. The procurement of energy and capacity to meet the needs of consumers is the
8 responsibility of the utility. The judgment of a third party should not, in the ordinary situation, be
9 substituted for that of the utility. However, the Commission should, through the Staff and an
10 Independent Monitor, review the actions of the utility and be prepared to appoint a third party to
11 conduct the solicitation should the utility fail to conduct a fair and transparent solicitation. In
12 particular, should there be any evidence of improper contact between the utility and an affiliate,
13 the Commission should have a third party conduct the solicitation if it is determined that the
14 contact was a material violation of the standard of conduct.

15 **E. The standard of conduct governing utility-affiliate communications.**

16
17 For the solicitation to be successful all bidders must be treated equally, starting with
18 access to personnel assigned to the solicitation and information pertinent to the utilities' power
19 supply requirements and delivery capabilities. To accomplish this, an enforceable standard of
20 conduct controlling contact between any person including affiliated companies, their personnel
21 and contractors, that may bid in the solicitation and the utility must be established. Absent such
22 standards, bidders will lack confidence in the process, which may result in a less robust bidding
23 process.

24 The standards must require that all contact between the utility and its affiliates be on the
25 same terms and under the same conditions as with all other bidders. That is, there should be no
26 contact between the utility and affiliates that may bid in the solicitation, except through the
27 communications protocol established for bidders. The key elements of the Staff proposed
28 protocol is set forth in Section IV C of the Staff proposal (Section 3D). The protocol would

1 require the utility to establish a solicitation team by January 1, 2003, and prohibit contact relative
2 to the solicitation with the team by any individuals associated with any affiliate. The Staff
3 anticipates that the team would include personnel from the utility and such other personnel as the
4 utility may require and that those persons would be barred from assisting any affiliate in the
5 evaluation of the solicitation or preparing a bid in response to the solicitation.

6 The utility should be required to prepare a draft standard of conduct and provide it to the
7 Staff and the Independent Monitor as soon as possible as part of the pre-solicitation information
8 and document preparation process. Once the Staff and the Independent Monitor have completed
9 their review of the draft standard of conduct submitted by the utility and discussed changes with
10 the utility, the draft should be shared with the prospective bidders. Their input on the draft
11 standard of conduct will be reviewed by the Staff, the Independent Monitor and the utility. Upon
12 completion of that review, the utility should make all changes to the draft standard of conduct
13 deemed necessary and publish the final standard of conduct to the solicitation team and to all
14 interested parties as part of its solicitation information. As discussed above, the Staff believes the
15 utilities should begin that process in November 2002 and have all documents, including a draft
16 standard of conduct, completed by the end of January 2003.

17 An acceptable standard of conduct will, at a minimum, address the following:

- 18 • Personnel who may be assigned
- 19 • Roles and Responsibilities
- 20 • Maintenance of confidential information
- 21 • Communications with affiliated entities and persons
- 22 • Equal access to information for all persons
- 23 • No undue advantage included in solicitation terms and conditions
- 24 • Standards for evaluations
- 25 • Protocols for logging communications
- 26 • Records maintenance, including communications records
- 27 • Procedures for monitoring by Staff and independent monitor
- 28 • Procedures for verifying compliance, internal and external

1 **F. Whether a least-cost planning proceeding should be adopted by the Commission.**

2

3 Least-cost planning was an issue raised by RUCO during the workshops. No other
4 workshop participant joined RUCO in making this observation. Staff believes that least cost
5 planning is not an issue to be explored in this initial solicitation proceeding.

6 **G. Whether the Commission should initiate a proceeding to address DSM and**
7 **Environmental Risk Mitigation.**

8

9 The Law Fund requested that a proceeding be opened to examine the issue of how and
10 when a solicitation for DSM and Environmental Risk Mitigation should be factored into the
11 solicitation process. Staff believes that DSM and Environmental Risk Mitigation should not be
12 addressed by the Commission in this proceeding. Also, the Commission need not decide at this
13 time whether a separate proceeding is necessary to examine these issues.

14 Pursuant to the Staff proposed process, bidders would be free to submit bids that include
15 DSM or Environmental Risk Mitigation in response to a product solicitation, and utilities will be
16 required to evaluate those bids on the same basis as they evaluate all other bids. Several
17 participants in the Track B workshops have suggested that bidders should be required to include
18 in their bids an environmental component. Staff believes that bidders should not be required to
19 include DSM or Environmental Risk Mitigation components as a part of their response to a
20 solicitation but may do so if they deem it appropriate.

21 **6. Lessons To Be Learned From The Initial Solicitation**

22

23 While the proposed process described above is comprehensive and based on successful
24 models from other jurisdictions, the unique circumstances that exist in Arizona will undoubtedly
25 require that modifications to the process be made. The Staff has therefore planned to conduct
26 thorough post solicitation reviews of the process each utility employs to determine what changes,
27 if any, will need to be made to the process adopted by the Commission in this proceeding. While

1 the initial solicitations will be for all unmet needs presently identified, the Staff intends to review
2 the appropriateness of the process for meeting future needs as they present themselves. The
3 creation of an ISO or RTO or the ramifications of FERC's SMD NOPR will also need to be
4 considered and factored into changes that may be needed to assure that the solicitation process
5 can continue to meet the goals established by the Staff.

6 The Staff anticipates that codes of conduct and rules concerning affiliated transactions will
7 also be reviewed.

8 The Staff intends to review and, if necessary, to amend the process to reflect lessons
9 learned regarding the effectiveness of the various methods employed by the utilities to solicit
10 bids. In particular, the communications protocols established to manage relations with affiliated
11 companies, the power supply products solicited, the contract durations and terms and conditions
12 sought and the tools used to solicit and evaluate bids submitted will be reviewed.

13 Finally, the Staff will evaluate the time allocated to each phase of the process to determine
14 whether adequate time was allocated to allow for preparation of all required data, development of
15 specifications and bids and for comprehensive evaluations of all bids received.

16 7. Subsequent Solicitations

17
18 After completion of the initial solicitations, the Staff will conduct the reviews described
19 above in Chapter 6. To the extent that the Staff determines that changes to the process are
20 required, it will recommend such changes to the Commission.

21 While presented as the "initial" solicitation process, the Staff believes the process is
22 comprehensive and will be adequate to manage future solicitations to acquire power supplies to
23 meet unmet needs identified in the future or to meet needs of the utility in the event that asset
24 divestiture may be approved by the Commission. However, the creation of an ISO or RTO or the
25 implementation of FERC's SMD proposal may significantly alter the dynamics of competitive
26 wholesale markets and would likely require significant amendments to the process, particularly

1 with regard to the roles and responsibilities of the process participants and the range of power
2 supply products to be acquired.

3 **8. Appendix One To ACC Staff Report On Track B: An Overview Of Competitive**
4 **Solicitation In Selected States For Wholesale Supply 2002**

5
6 INTRODUCTION

7
8 As the restructuring of the electric utility industry in the United States has evolved,
9 regulators have examined various models in order to find the model that best provides sustainable
10 benefits to consumers from development of competitive markets. In some states, the focus has
11 been on retail choice accompanied by mandatory divestiture of generating assets. In other
12 jurisdictions, retail choice was encouraged without divestiture. Still other jurisdictions have
13 determined that neither retail choice nor divestiture is appropriate at this time, but that power
14 supply additions should be competitively procured. With each model, the utility retained the
15 responsibility for providing service to those customers who were not served by another supplier.

16 This review of the regulatory approaches of selected other state commissions concentrated
17 on how those commissions used competitive bidding processes to meet default service
18 obligations. A second part of the review examined what restrictions, if any, were imposed by
19 regulators on wholly-owned affiliates of utilities in competitive solicitations.

20 In summary, each state that implemented competitive solicitation for wholesale supply of
21 electricity adopted an approach unique to that jurisdiction. For example, states that required
22 divestiture of generation implemented solicitation programs designed to procure full system
23 requirements, typically with slice-of-system all requirement contracts, while utilities with owned-
24 generation used solicitation programs to supplement their installed capabilities. The processes
25 adopted were also significantly dependent on the state of development of the RTO, ISO, or power
26 pool in which the affected utilities operated. There is no "perfect model" that can be adapted
27 from another state for use in Arizona. Rather, the experience from a number of states should be

4

**STAFF REPORT ON TRACK B:
COMPETITIVE SOLICITATION
DOCKET NOS E-00000A-02-0051 ET AL.**

OCTOBER 25, 2002

1 **5. Unresolved Issues Among Parties**

2 At the conclusion of the sixth day of workshops, the participants agreed on a list of seven
3 unresolved issues to be presented to the Commission. The list was prepared to include all
4 unresolved issues raised by any individual participant who was present at the workshop on
5 September 27, 2002. Accordingly, the issues identified by the Staff and referenced in the Third
6 Procedural Order were all of the issues the workshop participants claimed were unresolved at the
7 end of the workshops. While discussed below, the Staff does not agree that all of these issues
8 should be addressed in this proceeding. The seven issues presented were:

- 9 A. What portion of APS' load represents its unmet needs?
- 10 B. How the Staff will determine and use the "price to beat".
- 11 C. The timing of Commission prudence evaluation of solicited contracts.
- 12 D. Should the utility or a third party conduct the solicitation in 2003?
- 13 E. The standards of conduct governing utility-affiliate communications.
- 14 F. Whether a least-cost planning process should be adopted by the Commission.
- 15 G. Whether the Commission should initiate a proceeding to address DSM and
16 Environmental Risk Mitigation.

17
18 The Third Procedural Order on Track B issues catalogs all of the issues presented by the
19 individual parties at the procedural conference held on October 2, 2002. Many of the issues are
20 variations of the seven issues listed above.

21 The procedural order also identifies issues that the Staff addressed in the Solicitation
22 Proposal and discussed with the workshop participants. The Staff position on how those issues
23 should be addressed by the Commission are set forth in the Solicitation Proposal, and a cross
24 reference to that document is provided for ease of reference.

5

BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER**

**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. 4-14-2-1606**

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

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

Docket No. E-01933A-98-0471

**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

TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: NEEDS ASSESSMENT AND PROCUREMENT PROPOSAL

NOVEMBER 4, 2002

TEP 1

1 TRACK B WORKSHOP BACKGROUND

2 Q: What has been TEP's involvement in the Track B Workshops?

3 A: TEP has actively participated in every Track B workshop. TEP has provided, and will
4 continue to provide, relevant information and data about TEP's resources, loads and
5 needs assessments in a timely manner to facilitate the group's discussions and agreement.

6 Q: What were the conclusions of key issues to TEP that were addressed and resolved to
7 TEP's satisfaction in the Track B Workshops?

8 A: TEP believed that several key TEP-related issues were addressed and resolved in the
9 workshops. Those issues were: (i) all of TEP's generation as of September 1, 2002,
10 whether owned or leased, would be included in TEP's resources for the purpose of
11 calculating the "Contestable Load", including the two new Reliability Must-Run
12 ("RMR") Combustion Turbines ("CTs") added in 2001 (DeMoss Petrie & North Loop
13 #4); (ii) TEP's wholesale load would be included in TEP's forecasted needs; (iii) TEP's
14 contestable load would be as set forth in Exhibit 1; and (iv) TEP could have its wholesale
15 marketing department involved in the solicitation process because TEP did not intend to
16 bid during that process.

17 Q: How were these issues apparently resolved?

18 A: The agreement on these issues was dependent on the inclusion of TEP's wholesale load
19 in calculating the contestable load. In short, the amount of Contestable Load represents a
20 settlement of all these issues. TEP had contended early in the workshop process that the
21 procurement of "any required power that cannot be produced from its own existing assets
22 through the competitive procurement process as developed in the Track B proceeding"¹
23 should still provide the utility's management the discretion to create a diverse and
24 balanced portfolio of energy purchases. This portfolio would include differing term and
25 price structures as well as differing products and procurement timing that met the utility's
26 procurement and risk management needs. With this view in mind, TEP had offered to
27 include its wholesale load in the procurement process since TEP would have nothing to

¹ ACC Decision No. 65154, p. 33.

6

**STAFF REPORT ON TRACK B:
COMPETITIVE SOLICITATION
DOCKET NOS E-00000A-02-0051 ET AL.**

OCTOBER 25, 2002

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2 At the conclusion of the sixth day of workshops, the participants agreed on a list of seven
3 unresolved issues to be presented to the Commission. The list was prepared to include all
4 unresolved issues raised by any individual participant who was present at the workshop on
5 September 27, 2002. Accordingly, the issues identified by the Staff and referenced in the Third
6 Procedural Order were all of the issues the workshop participants claimed were unresolved at the
7 end of the workshops. While discussed below, the Staff does not agree that all of these issues
8 should be addressed in this proceeding. The seven issues presented were:

- 9 A. What portion of APS' load represents its unmet needs?
10 B. How the Staff will determine and use the "price to beat".
11 C. The timing of Commission prudence evaluation of solicited contracts.
12 D. Should the utility or a third party conduct the solicitation in 2003?
13 E. The standards of conduct governing utility-affiliate communications.
14 F. Whether a least-cost planning process should be adopted by the Commission.
15 G. Whether the Commission should initiate a proceeding to address DSM and
16 Environmental Risk Mitigation.

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18 The Third Procedural Order on Track B issues catalogs all of the issues presented by the
19 individual parties at the procedural conference held on October 2, 2002. Many of the issues are
20 variations of the seven issues listed above.

21 The procedural order also identifies issues that the Staff addressed in the Solicitation
22 Proposal and discussed with the workshop participants. The Staff position on how those issues
23 should be addressed by the Commission are set forth in the Solicitation Proposal, and a cross
24 reference to that document is provided for ease of reference.

7

10/9/02



BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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

DOCKET NO. E-00000A-02-0051

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

DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

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

DOCKET NO. E-01933A-02-0069

**THIRD PROCEDURAL ORDER ON
TRACK B ISSUES**

BY THE COMMISSION:

On June 20, 2002, a Procedural Order was issued in these matters setting initial procedural deadlines in this matter. The June 20, 2002 Procedural Order adopted the proposal of the Commission's Utilities Division Staff ("Staff") to hold workshops, and for Staff to work toward the preparation of a Staff Report on Track B issues. The Procedural Order stated that the balance of the procedural schedule was dependent upon the Commission's Decision on the Track A issues, upon any consensus reached by the parties during the workshops or otherwise, and upon the need for a hearing.

On September 10, 2002, the Commission issued Decision No. 65154 in these dockets. Decision No. 65154 ordered the parties to continue their efforts in Track B to develop a competitive solicitation process that can begin by March 1, 2003. Decision No. 65154 also ordered that upon

1 implementation of the outcome of Track B, APS and TEP “shall acquire, at a minimum, any required
2 power that cannot be produced from its own existing assets, through the competitive procurement
3 process as developed in the Track B proceeding” and that “[T]he minimum amount of power, the
4 timing, and the form of procurement shall be determined in the Track B proceeding.”

5 On September 16, 2002, Staff filed a Request for Procedural Order asking that a hearing date
6 and associated procedural deadlines be set for the Track B issues. Staff proposed a hearing date of
7 November 20, 2002 and associated procedural deadlines. On September 18, 2002, Arizona Public
8 Service Company (“APS”) filed a response to the Request expressing its support for Staff’s proposed
9 schedule. On September 20, 2002, Panda Gila River, L.P. (“Panda”) filed a response supporting
10 Staff’s request for an evidentiary hearing and requesting a scheduling conference to allow all parties
11 to comment on the procedural schedule and on the issues to be addressed at any hearing.

12 On September 24, 2002, the Second Procedural Order on Track B issues was issued, setting a
13 date of October 1, 2002 for the parties to file their proposed procedural schedules and their lists of
14 specific issues remaining to be addressed at hearing, and setting a procedural conference for October
15 2, 2002.

16 On October 1, 2002, APS, Tucson Electric Power Company (“TEP”), Panda, the Wellton-
17 Mohawk Generating Facility (“Wellton-Mohawk”)¹, Reliant Resources, Inc. (“Reliant”), the Land
18 and Water Fund of the Rockies (“LAW Fund”), the Residential Utility Consumer Office (“RUCO”)
19 and Staff filed a list of the substantive issues they believe remain to be addressed at hearing. Also on
20 October 1, 2002, APS, PGR, the LAW Fund, WMGF, Reliant, and Staff filed proposed procedural
21 schedules.

22 The procedural conference was held as scheduled on October 2, 2002. Parties in attendance
23 included APS; TEP; Panda; Reliant; Wellton-Mohawk; Sempra Energy Resources (“Sempra”);
24 Southwestern Power Group II (“SWPG”); PPL Southwest Generation Holdings, LLC, PPL
25 EnergyPlus, LLC and PPL Sundance Energy LLC, (“PPL”); Harquahala Generating Company
26 (“Harquahala”); Arizona Competitive Power Alliance (“Alliance”); the Arizona Utility Investors
27

28 ¹ Wellton-Mohawk includes Dome Valley Energy Partners, LLC, Wellton-Mohawk Irrigation and Drainage District, and Yuma County Water Users’ Association.

1 Association (“AUIA”); the LAW Fund; RUCO; and Staff.

2 **Proposed Procedural Schedules**

3 APS, TEP and the LAW Fund continue to support Staff’s schedule as proposed in its
4 September 16, 2002 Request for Procedural Order. APS requests that to the extent the hearing date is
5 extended, that the time for it to file testimony be extended accordingly. Harquahala supports the
6 schedule proposed by Staff or a more aggressive schedule. Reliant and Wellton-Mohawk propose a
7 more accelerated schedule with the hearing to begin during the week of November 11, 2002. RUCO
8 believes that a two-week extension of the hearing and filing dates proposed by Staff would be
9 reasonable. Sempra and SWPG believe that any schedule should allow time for the filing of more
10 information by APS. Panda proposed an alternative schedule with a hearing to begin on December
11 16, 2002. Panda believes that a procedural schedule must be established to accommodate the
12 submission of sufficient information for the Commission to make a “needs assessment” and “product
13 determination” itself. Panda’s proposed schedule therefore includes, in addition to Staff’s proposed
14 October 25, 2002 date for filing the Staff Report, a November 1, 2002 date for APS to file its Long-
15 Term Resource Plan, Needs Assessment and product procurement proposal together with supporting
16 testimony. Panda proposes November 22, 2002 for the filing of testimony addressing the Staff
17 Report and the November 1, 2002 filing, and December 6, 2002 for Staff and APS to file responsive
18 testimony.

19 **Listed Issues**

20 In its October 1, 2002 filing, Staff provided a list agreed upon at the workshops of remaining
21 areas in dispute, which includes:

- 22 1. Unmet needs of APS
- 23 2. Price to beat
- 24 3. Commission approvals
- 25 4. Third-party solicitation manager/duties
- 26 5. Affiliate Code of Conduct
- 27 6. Least Cost Planning
- 28 7. Demand Side Management (“DSM”) and Environmental Risk Mitigation process

1 The parties agreed that the above list broadly encompasses the remaining contested issues.

2 Staff's filing also included its own formulation of the issues as follows: 1) What portion of
3 APS' load represents its unmet needs; 2) How Staff should determine and use "price to beat;" 3)
4 Timing of Commission prudence evaluation of solicited contracts; 4) Who conducts solicitation
5 (utilities or independent third party); 5) Standards of conduct governing utility-affiliate
6 communications; 6) Whether a least-cost planning proceeding should be adopted by the Commission
7 ; 7) Whether the Commission should initiate a proceeding to address DSM and Environmental Risk
8 Mitigation.

9 RUCO listed: 1) Utilities' submission of bids reflecting self-build options on a regulated cost-
10 of-service basis; 2) Least cost planning process for selecting winning bids, including delivered price,
11 to include bids ranging from 1-30 years, to the exclusion of "price to beat" methodology; 3) Bid
12 evaluation period.

13 The LAW Fund listed: 1) Management of Environmental Risk; 2) DSM; 3) Public input; 4)
14 Reporting of environmental impacts; 5) Price to beat; 6) Risk management.

15 APS' statement of issues included: 1) APS' unmet needs, including treatment of local
16 Reliability Must Run ("RMR") generation requirements; 2) Release to the utility of Staff's "price to
17 beat" after bid evaluation but prior to contract acceptance by the utility, as well as certain aspects of
18 the proposed implementation of this concept for multi-year deals or deals not having fixed prices; 3)
19 Commission approval of the process and outcome, and the implementation of a cost-recovery
20 mechanism; 4) Role of Staff and the monitor; 5) Bidder, utility and affiliate communication
21 protocols.

22 TEP listed: 1) Amount of TEP contestable load; 2) Involvement of a utility's marketing
23 employees in the competitive solicitation process; and 3) Arizona Independent Scheduling
24 Administrator ("AISA").

25 Reliant listed four overarching topics including: 1) Determination of the utility's resource
26 needs; 2) Identification of solicitation products; 3) Procurement process and methodology; and 4)
27 Regulatory certainty of solicitation outcome.

28 Wellton-Mohawk listed: 1) Encouragement of long-term contracts if a public purpose would

1 be served; 2) Provision of criteria incentives for renewable energy; and 3) Contestability of RMR
2 load.

3 Panda filed the agreed-upon list of issues as filed by Staff, but stated that two issues require
4 clarification for purposes of determining a procedural schedule: 1) Clarification that APS' unmet
5 needs for the next 3-5 years means the capacity and energy needs of APS to meet all its requirements
6 that are not met by currently-owned APS generation operating in a manner consistent with past
7 operations; 2) Clarification of third-party solicitation manager/duties to include needs assessment if
8 the Commission does not determine the utilities' needs and products to be procured in this
9 proceeding. Panda believes that APS must provide the information listed in Panda's proposed
10 November 1, 2002 filing in order for the Commission to have the information necessary to determine
11 "[T]he minimum amount of power, the timing, and the form of procurement shall be determined in
12 the Track B proceeding" as required by Decision No. 65154. Panda states that the current solicitation
13 proposal discussed in the workshops would require the submission of a resource plan and needs
14 assessment after the Track B hearing, leaving the selection of the form of the ultimate procurement
15 process to the purchasing utility.

16 **Discussion**

17 Several parties expressed concern with inclusion of Least Cost Planning issues and DSM and
18 Environmental Risk Mitigation process issues in the competitive solicitation proceeding. The LAW
19 Fund believes that DSM and Environmental Risk Mitigation issues should be considered in the
20 structuring of future competitive solicitations, but is not recommending that DSM and Environmental
21 Risk Mitigation be applied in the first solicitation. RUCO believes that the Least Cost Planning
22 framework can fit within the Track B solicitation issues. We see no reason to exclude these issues
23 from being addressed in pre-filed testimony in the Track B hearing.

24 Some parties objected to the issue of Arizona electric utilities' continued participation in the
25 AISA being decided in this proceeding. They believe that inclusion of the AISA issues in the Track
26 B proceeding would unnecessarily broaden the scope of the proceeding. Those parties pointed out
27 that the issue of retail competition is a separate issue from the competitive solicitation process. Staff
28 agreed that AISA issues require a determination, but that the determination should occur outside the

1 competitive solicitation process hearing. We agree with TEP that the AISA issues do require
2 resolution in the near future, but do not believe that their resolution is necessary to achieve resolution
3 of the more urgent competitive solicitation issues. A separate procedural order will be issued setting
4 an early 2003 hearing date on the AISA docket.

5 Other than the issue of the utilities' continued participation in the AISA, the issues listed in
6 the parties' filings are properly addressed in this proceeding.

7 APS objects to Panda's proposition that APS file its long-term resource plan, needs
8 assessment, and product procurement proposal by November 1, 2002. APS prefers the current Staff
9 workshop proposal that allows APS to finalize this information by the outside date of January 31,
10 2003 under the supervision of Staff and the third-party monitor, with the input of the parties. APS
11 does not believe that a formal contested hearing is necessary to determine its contestable load. APS
12 claimed that the information Panda proposes be submitted by November 1, 2002 could not be made
13 available until the end of 2002.

14 The parties, including Staff, indicated that at the end of the last workshop, they were surprised
15 by APS' indication that the capacity and energy figures used to estimate its energy needs, which had
16 been used in the workshops throughout the summer, were not accurate. APS stated that it had
17 informed the parties when it first provided the estimates that they were not accurate.

18 Reliant, Sempra, PPL, Harquahala, Wellton-Mohawk and the Alliance strongly support
19 Panda's position that these figures require updating prior to the hearing. Reliant states that utilities
20 are required to put out a forecast every year with their 10-year plan, and that a utility that is in the
21 market buying power must monitor its loads and should therefore have forecasts readily available,
22 with the understanding that a forecast is subject to change. Harquahala stated that the issue is not one
23 of precision and currency of the load forecast, but the methodology, and would accept a forecast that
24 APS has completed or updated slightly for purposes of this proceeding, with a finalized forecast to be
25 used for the actual procurement to be finalized by January 31, 2002. PPL believes that utilities would
26 have unmet needs and anticipated load information available as a matter of course and should be able
27 to make them available with rough accuracy, along with a delineation of the forecast process used.

28 Staff verified that its current proposal, from the workshop process, would have the final

1 determination of the amount of power, the timing, and the form of procurement be in large measure at
2 the discretion of the utility, with the independent monitor and Staff participating in the process. Staff
3 believes that product definition should be made outside the hearing process, and that such a procedure
4 meets the parameters of Decision No. 65154. Panda disagrees, and believes that for the initial
5 solicitation, the utility should not have the discretion to decide what the procurement process is going
6 to look like. Panda believes that Decision No. 65154 requires that the Commission make that
7 determination.

8 Staff agreed that the parties should not have to wait until January 31, 2003 to learn the general
9 boundaries of APS' needs assessment, and proposed holding an additional workshop for the parties to
10 try to resolve the issue. Staff believes that holding an additional workshop would give the parties an
11 opportunity to reach a greater level of consensus about APS' needs assessment and how APS
12 develops its needs assessment, and that a workshop would be more productive than conducting
13 discovery. APS stated that it could provide certain information prior to November 1, and would be
14 willing to provide it for an additional workshop prior to October 25, 2002, but that it could not
15 provide information/testimony on product determination, acquisition process, and a transmission
16 deliverability study by that date.

17 The issues of the utilities' needs assessments and procurement proposals are issues central to
18 the solicitation process. Whether the Commission determines that these issues must be finally
19 determined within or outside of the hearing process, the facts to support such a determination should
20 be made available to the parties prior to the hearing. The parties have been participating in
21 workshops on the development of a solicitation process since May of this year, and should be on
22 notice that such assessments and proposals are required. The provision of data supporting a parties'
23 position on these issues should therefore not be problematic. Under the requirements of Decision No.
24 65154, the Commission must determine, in this proceeding, the minimum amount of power, the
25 timing, and the form of procurement for APS and TEP to acquire, at a minimum, any required power
26 that cannot be produced from its own existing assets through a competitive procurement process.
27 Therefore, if the actual needs assessments and procurement proposals of TEP and APS are not going
28 to be addressed in the Staff Report, then the parties should have access to the utilities' needs

1 IT IS FURTHER ORDERED that all parties shall provide to each party of record two copies
2 of any work papers associated with their report/testimony concurrent with the filing of such
3 report/testimony.

4 IT IS FURTHER ORDERED that any substantive corrections, revisions, or supplements to
5 pre-filed testimony shall be reduced to writing and filed no later than five days before the witness is
6 scheduled to testify.

7 IT IS FURTHER ORDERED that the parties shall prepare a brief, written summary of the
8 pre-filed testimony of each of their witnesses and shall file each summary at least two working days
9 before the witness is scheduled to testify.

10 IT IS FURTHER ORDERED that copies of summaries should be served upon the Presiding
11 Officer, the Commissioners, and the Commissioners' aides as well as the parties of record.

12 IT IS FURTHER ORDERED that a **pre-hearing conference will be held on November 20,**
13 **2002 at 1:30 p.m.** for the purpose of scheduling witnesses² and the conduct of the hearing.

14 IT IS FURTHER ORDERED that any objections to any testimony or exhibits which have
15 been pre-filed as of November 18, 2002, shall be made before or at the November 20, 2002 pre-
16 hearing conference.

17 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and
18 regulations of the Commission, except that: **any objection to discovery requests shall be made**
19 **within 5 days³ of receipt and responses to discovery requests shall be made within 7 days of**
20 **receipt;** the response time may be extended by mutual agreement of the parties involved if the
21 request requires an extensive compilation effort.

22 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
23 discovery, any party seeking discovery may telephonically contact the Commission's Hearing
24 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such a
25 request, a procedural hearing will be convened as soon as practicable; and that the party making such
26

27 ² There will be limited opportunity to schedule witnesses for dates certain, and the parties are put on notice to make their
28 witnesses available November 21, 22, 25, 26 and 27.

³ "Days" means calendar days.

1 assessments and procurement proposals directly from the utilities in time to allow the parties to
2 respond in their testimony.

3 APS does not believe that a formal contested hearing is necessary to determine its contestable
4 load. It is preferable that the issues of the utilities' needs assessments and procurement proposals be
5 resolved in a workshop process, and reflected in the Staff Report, and we strongly encourage such a
6 resolution. However, if these issues cannot be so resolved, the time constraints under which a
7 decision must be made in this matter require that these issues be litigated.

8 IT IS THEREFORE ORDERED that the hearing on the Track B issues identified by the
9 parties, as set forth herein, will commence on **November 21, 2002, at 9:30 a.m.** at the Commission's
10 offices in Phoenix, Arizona.

11 IT IS FURTHER ORDERED that Staff shall file a Staff Report on the Track B issues
12 identified by the parties, as set forth herein, by **noon on October 25, 2002.**

13 IT IS FURTHER ORDERED that APS shall file a needs assessment and procurement
14 proposal, sufficient to inform the Commission in its determination of the minimum amount of power,
15 the timing, and the form of procurement as required by Decision No. 65154, together with supporting
16 testimony, by **noon on November 4, 2002.**

17 IT IS FURTHER ORDERED that TEP shall file a needs assessment and procurement
18 proposal, sufficient to inform the Commission in its determination of the minimum amount of power,
19 the timing, and the form of procurement as required by Decision No. 65154, together with supporting
20 testimony, by **noon on November 4, 2002.**

21 IT IS FURTHER ORDERED that all parties shall file testimony and associated exhibits on
22 the Track B issues identified by the parties, as set forth herein, including their response to the Staff
23 Report and to the filings by APS and TEP, by **noon on November 12, 2002.**

24 IT IS FURTHER ORDERED that all parties, including Staff, shall file testimony and
25 associated exhibits in response to the testimony filed, by **noon on November 18, 2002.**

26 IT IS FURTHER ORDERED that the Staff Report and all testimony filed shall include a table
27 of contents that lists the issues discussed.

28

1 a request shall forthwith contact all other parties to advise them of the hearing date and shall at the
2 hearing provide a statement confirming that the other parties were contacted.⁴

3 IT IS FURTHER ORDERED that Staff, APS, TEP, Panda, Reliant, Sempra, SWPG, PPL,
4 Harquahala, Wellton-Mohawk and the Alliance shall work together to provide notice of these
5 proceedings in such a way as to provide as full notice and opportunity for participation on the part of
6 the public as possible. Staff, APS, TEP, Panda, Reliant, Sempra, SWPG PPL, Harquahala, Wellton-
7 Mohawk and the Alliance shall docket evidence of such notice no later than November 8, 2002.

8 IT IS FURTHER ORDERED that any motions which are filed in this matter and which are
9 not ruled upon by the Commission within 10 days of the filing date of the motion shall be deemed
10 denied.

11 IT IS FURTHER ORDERED that any responses to motions shall be filed within five days of
12 the filing date of the motion.

13 IT IS FURTHER ORDERED that any replies shall be filed within five days of the filing date
14 of the response.

15 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
16 Communications) applies to this proceeding and shall remain in effect until the Commission's
17 Decision in this matter is final and non-appealable.

18 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
19 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

20 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
21 any portion of this Procedural Order by subsequent Procedural Order.

22 DATED this 9th day of October, 2002.

23
24 
TEENA WOLFE
25 ADMINISTRATIVE LAW JUDGE
26
27

28 ⁴ The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

1 Copies of the foregoing mailed/delivered
this 19th day of October, 2002 to:

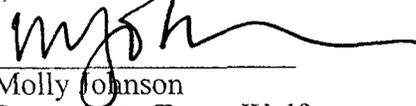
2
3 Service list for E-00000A-02-0051
4 (If you need a copy of the service list, please
5 e-mail mjohnson@cc.state.az.us.)

6 Christopher Kempley, Chief Counsel
7 Legal Division
8 ARIZONA CORPORATION COMMISSION
9 1200 W. Washington Street
10 Phoenix, Arizona 85007

11 Ernest G. Johnson, Director
12 Utilities Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
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16 ARIZONA REPORTING SERVICE, INC.
17 2627 North Third Street
18 Phoenix, AZ 85004-1103

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25
26
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28

By: 
Molly Johnson
Secretary to Teena Wolfe

8

BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER**

**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. 4-14-2-1606**

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

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

Docket No. E-01933A-98-0471

**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

DIRECT TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: TRACK B ISSUES

NOVEMBER 12, 2002

TEP 2

1 Q: If TEP felt that its contestable load was agreed to in the workshops, why did TEP list it as
2 an unresolved issue?

3 A: The agreement was basically a settlement of three related issues: (i) the inclusion of
4 TEP's new RMR CTs in its existing assets; (ii) the inclusion of TEP's wholesale load in
5 its contestable load calculation; and (iii) the ability of TEP's Wholesale Marketing
6 department to conduct TEP's solicitation. TEP listed the issue as unresolved in order to
7 be able to address the issue in front of the Commission in the event that resolution of any
8 of the three terms changed. As noted in my November 4, 2002 testimony, Staff's report
9 reversed the resolution of two of the three issues leaving only the inclusion of TEP's
10 wholesale load intact.

11 Q: Why does TEP request that its Wholesale Marketing department be allowed to conduct
12 the solicitation?

13 A: As discussed in my November 4, 2002 testimony, in light of the absence of any TEP
14 affiliate that could be involved in the process and the fact that the TEP procurement
15 functions currently fall into this group's purview, the requirement to prohibit this group
16 from participating would disadvantage TEP and impose an uneconomic and unnecessary
17 consequence on TEP.

18 Q: How would this disadvantage TEP and impose such burdens?

19 A: TEP's Wholesale Marketing department manages TEP's load and resources. In that
20 capacity, it performs the procurement of electricity and fuel by evaluating the operational
21 and economic terms of such procurement. While at times the economic evaluation can be
22 fairly straightforward, it often involves complex products that require detailed modeling
23 and market analysis. Further, the operational requirements of TEP's load and resources
24 require detailed and specific knowledge. It is TEP's Wholesale Marketing department
25 that has this knowledge and therefore the best ability to evaluate TEP's needs and assess
26 the solicitation options. If TEP must use others for this evaluation, TEP would lose this
27 critical knowledge and would incur increased (and unnecessary) costs by creating a
28 duplicate department that would be conducting the same analyses and tasks. Given the
29 lack of any TEP affiliate, the apparent prohibition on TEP's Wholesale Marketing

1 department provides no benefit to the process whatsoever and makes no sense. It should
2 be noted that no party to the workshops contested TEP's recommendation that its
3 wholesale group be allowed to conduct the solicitation process. Indeed, it appeared that
4 the recommendation was unanimously agreed upon.

5 Q: How does this change on the role of TEP's Wholesale Marketing department affect
6 TEP's position on its amount of Contestable Load?

7 A: If the other two issues are resolved to TEP's satisfaction – specifically that TEP's two
8 newest RMR CTs are included in its existing assets and TEP's Wholesale Marketing
9 department can conduct the solicitation – TEP will continue to include its wholesale load
10 in calculating its contestable load and commit to the capacity and energy quantities
11 provided in the workshops. Absent a favorable resolution of these issues for TEP, TEP
12 will take the position that its unmet needs should not be calculated including FERC
13 jurisdictional Market-Based Tariff Wholesale Agreements.

14 Q: Does the inclusion of TEP's wholesale load in calculating its unmet needs infer any
future rate-making treatment of the energy purchased in the solicitation?

15 A: No. The inclusion of the wholesale load was discussed in the workshops as a way to
16 address the existence of TEP wholesale contracts and to provide TEP with some amount
17 of load to bid in the solicitation process. Even though the wholesale load is under TEP's
18 market-based tariff – and *not* under a cost of service tariff – it was Staff's position that if
19 TEP did not include its wholesale load, Staff would contend that an equal amount of
20 TEP's existing generation assets should be set aside and not included in calculating
21 unmet needs – even though Decision No. 65154 contemplated that such assets should be
22 included in the contestable load calculation. The resulting unmet need is the same
23 regardless of whether wholesale load is included or an equal amount of existing
24 generation is excluded. In a spirit of compromise and for ease of computation, TEP
25 agreed to the inclusion of wholesale load. The fact that TEP's market-based wholesale
26 contracts were not moved to an affiliate should not unfairly disadvantage TEP.
27

28 Q: Does the inclusion of TEP's wholesale load in calculating its unmet needs infer the
inclusion of this or new wholesale load in future solicitations?

9

BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER**

**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. 4-14-2-1606**

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

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

Docket No. E-01933A-98-0471

**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

TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: NEEDS ASSESSMENT AND PROCUREMENT PROPOSAL

NOVEMBER 4, 2002

TEP 1

1 Q: Please describe TEP's wholesale contracts included in the load forecast.

2 A: TEP has three wholesale contracts that are included in the "Wholesale Load" line on the
3 Exhibit 3 and in the load demand forecast calculations in Exhibit 5. All three are sales
4 agreements under TEP's Market Based Sales Tariff and include 100 MW sale of capacity
5 and energy to SRP, a full-requirements capacity and energy sale to Navajo Tribal Utility
6 Authority and a 60 MW sale to Phelps Dodge Energy Services.

7 **TEP'S CONTESTABLE LOAD**

8 Q: Please summarize the contestable load results.

9 A: Exhibit 1 provides the TEP's Contestable Load for 2003 through 2006 as discussed in the
10 Track B workshop process and calculated using the above described process. TEP
11 believes that this is the appropriate contestable load to use for the solicitation process.

12 Q: Are these the same numbers supplied to the parties in the Track B workshops?

13 A: Yes. In fact, both Exhibits 1 and 3 hereto had been provided to Staff and the other parties
14 at the Track B workshops. Exhibit 1 is simply a tabulation of the data from the Exhibit 3
15 graphs.

16 Q: Does the Staff's October 25, 2002 Report on Competitive Solicitation reflect the same
17 Contested Load for TEP?

18 A: No. Staff has changed the amount of TEP's contestable load that the parties discussed in
19 the Workshop.

20 Q: Did Staff recognize the apparent agreement of the parties on the amount of TEP's
21 contestable load?

22 A: Apparently not. TEP was under the impression that the Contestable Load, as presented in
23 Exhibit 1, was accepted by all parties participating in the workshop. In particular, Staff
24 did not list TEP's unmet needs as an area of dispute on Staff's issue list submitted on
25 October 1, 2002. On the other hand, Staff did list APS's unmet needs as an area of
26 dispute.

Exhibit 1. TEP Contestable Load

Includes Two Newest RMR CTs in TEP's Existing Assets

	2003	2004	2005	2006
Capacity (MW)	147	214	346	393
Energy (GWh)	14	14	57	58

Includes Firm Wholesale Contracts as Load

Exhibit 2. TEP's Contestable Load without Two Newest RMR CTs

	2003	2004	2005	2006
Energy (GWh)	50	46	120	104

Includes Firm Wholesale Contracts as Load

10

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

FILE
ORIGINAL

IN THE MATTER OF THE GENERIC) PROCEEDINGS CONCERNING ELECTRIC) <u>RESTRUCTURING ISSUES.</u>)	DOCKET NO. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC) SERVICE COMPANY'S REQUEST FOR A) VARIANCE OF CERTAIN REQUIREMENTS OF) <u>A.A.C. R14-2-1606.</u>)	DOCKET NO. E-01345A-01-0822
IN THE MATTER OF THE GENERIC) PROCEEDINGS CONCERNING THE ARIZONA) INDEPENDENT SCHEDULING) <u>ADMINISTRATOR.</u>)	DOCKET NO. E-00000A-01-0630
IN THE MATTER OF TUCSON ELECTRIC) POWER COMPANY'S APPLICATION FOR A) VARIANCE OF CERTAIN ELECTRIC) <u>COMPETITION RULES COMPLIANCE DATES.</u>)	DOCKET NO. E-01933A-02-0069

TRACK B REBUTTAL TESTIMONY

OF

JERRY D. SMITH

ELECTRIC UTILITIES ENGINEER

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

November 18, 2002

1 **Q. Mr. Robert Kendall suggests that the competitive solicitation process is an ideal**
2 **mechanism to use to identify any generation solutions that could help resolve local**
3 **transmission import constraints and associated RMR conditions.⁷ Does Staff agree?**

4 **A.** Yes, Staff agrees with Mr. Kendall on this point. In fact, his reference to Track A
5 Decision No. 65154 ordering that APS and TEP work with Staff to develop a study plan
6 to resolve RMR generation concerns and include the resulting plans in the 2004 Biennial
7 Transmission Assessment is on point. Including RMR capacity and energy as contestable
8 load in the 2003 competitive solicitation will offer a market response reference for Staff
9 regarding the relative economic and environmental merits of generation solutions to the
10 transmission import constraint. Such a comparison is most important before finalizing the
11 ten-year RMR study plan results to be incorporated into the 2004 Biennial Transmission
12 Assessment.

13
14 **TREATMENT OF RMR IN CONTESTIBLE LOAD DETERMINATION**

15 **Q. How does Staff propose RMR capacity and energy be handled in the contestable**
16 **load determination?**

17 **A.** Staff recommends that APS and TEP RMR capacity and energy be added to the
18 contestable load tables provided at page 7 of the Track B Staff Report.

19
20 **Q. How does Staff propose to determine what quantity of APS and TEP RMR capacity**
21 **and energy should be included in Staff's definition of contestable load for the 2003**
22 **competitive solicitation?**

23 **A.** Staff agrees with Mr. Ewen that his metro Phoenix RMR figures should serve as a place
24 holder until completion of the RMR study to be filed with the Commission by January 31, 2003.⁸
25 The capacity need identified as "RMR Need" and the energy identified as "Total Energy" in Mr.
26 Ewen's Metro Phoenix Reliability Must Run Estimates should be used for this purpose.⁹ Staff's
27

28 ⁷ Direct Testimony, Welton-Mohawk Generation Facility, Robert W. Kendall, November 12, 2002, page 24.

⁸ Track B Testimony, APS, Peter M. Ewen, November 4, 2002, page 21.

⁹ Work Papers, APS Metro Phoenix Reliability Must Run Estimates, Peter M. Ewen, November 4, 2002, page 76

11

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

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

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

7)
8 IN THE MATTER OF THE GENERIC) DOCKET NO.
PROCEEDING CONCERNING THE) E-00000A-01-0630
9 ARIZONA INDEPENDENT SCHEDULING
ADMINISTRATOR.)

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

13

At: Phoenix, Arizona

14

Date: November 21, 2002

15

Filed: **DEC - 9 2002**

16

17

REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

VOLUME I
(Pages 1 through 210)

19

20

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21

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23

Prepared for:

By: DAWNA J. BOSWELL, RPR
Certified Court Reporter
Certificate No. 50326

24

25

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1 better way to proceed.

2 ALJ WOLFE: Okay. If you would like to
3 proceed, Ms. Wagner.

4 MS. WAGNER: Yes.

5 Q. (BY MS. WAGNER) Mr. Smith, let's begin with
6 S-5. First of all, Mr. Smith, can you tell us briefly
7 why, what led you to prepare S-5?

8 A. (BY MR. SMITH) S-5 is a replacement set of
9 contestable capacity and energy numbers that replaces
10 what was in Staff's Report on page 7. The Staff
11 Report was published in advance of the workshops that
12 we've had recently where there was considerable
13 refinement of the capacity energy numbers provided by
14 the industry, and Staff has felt it appropriate to use
15 the most recent information and update the tables to
16 reflect the new numbers and also to be consistent with
17 what is in Staff's rebuttal testimony in this case.

18 Q. All right. So would it be accurate to say
19 that Staff and all the parties received new
20 information at the workshop that took place after the
21 Staff Report was filed?

22 A. (BY MR. SMITH) That is correct, and we even
23 had data requests relative to this matter that were
24 received within the last few days that have also
25 contributed to this work product.

1 Q. All right. And were there also data and
2 other matters that were contained in testimony that
3 was filed since the last workshop?

4 A. (BY MR. SMITH) Yes. The factors that we had
5 embedded in both Staff's testimony and applicant's
6 testimony dealt with reliability must needs, capacity
7 of energy, whether that was contestable or not, and to
8 what degree the economy purchases and the reserves
9 were properly handled in the prior numbers.

10 Q. All right. Mr. Smith, could you take us
11 through the high points of S-5.

12 A. (BY MR. SMITH) Let me break it into two
13 components. Let me first speak to the APS component
14 of the tables. In the APS component, for capacity,
15 what we have basically done is taken the numbers
16 available from APS' most recent filings in this case
17 where they spoke to unmet needs. What we have done is
18 add to that. We have added an adjustment to provide
19 reserves for all load, not just for the APS
20 generation. We have added the capacity and energy for
21 the APS local supply generation for the Phoenix area.
22 We did not have energy numbers for the Yuma area which
23 was not identified in APS' area as reliability must
24 needs, numbers were not provided. So that is a number
25 that is missing in the energy table under APS Yuma

1 supply. That is yet to be determined, and we have an
2 RMR study effort that's going on that if nowhere else,
3 we will get it through that process.

4 Turning to the TEP capacity and energy, the
5 TEP capacity was determined by taking the retail load
6 that was in TEP's most recent filing of testimony and
7 subtracting out the transmission import limit for the
8 Tucson area to establish what portion of capacity is
9 constrained and would be RMR capacity that would be
10 met by local units.

11 Under the energy component for TEP, we have
12 taken what was previously identified as the unmet
13 needs in TEP's testimony that excludes the two
14 combustion turbines that are not yet in rate base, and
15 then yet to be determined is the local generation for
16 RMR purposes that would be needed to meet the
17 capacity, the RMR capacity requirements on an hourly
18 basis.

19 Q. All right.

20 Thank you, Mr. Smith.

21 MS. WAGNER: Your Honor, I will move for the
22 admission of S-5.

23 ALJ WOLFE: Are there any objections at this
24 time?

25 MR. MICHAUD: Your Honor --

12

BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

DOCKETED

SEP 10 2002

1
2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER

DOCKETED BY

mal

5
6 IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

DOCKET NO. E-00000A-02-0051

7
8 IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR
9 VARIANCE OF CERTAIN REQUIREMENTS OF
A.A.C. R14-2-1606.

DOCKET NO. E-01345A-01-0822

10
11 IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
12 ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

13
14 IN THE MATTER OF TUCSON ELECTRIC
POWER COMPANY'S APPLICATION FOR A
VARIANCE OF CERTAIN ELECTRIC
15 COMPETITION RULES COMPLIANCE DATES.

DOCKET NO. E-01933A-02-0069

16
17 IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
APPROVAL OF ITS STRANDED COST
RECOVERY.

DOCKET NO. E-1933A-98-0471

DECISION NO. 65154

OPINION AND ORDER

18 DATES OF HEARING:

June 14, 2002 (pre-hearing); June 17, 18, 19, 20, 21, 27,
and 28, 2002

19 PLACE OF HEARING:

Phoenix, Arizona

20 ADMINISTRATIVE LAW JUDGE:

Lyn Farmer

21 IN ATTENDANCE:

William A. Mundell, Chairman
Marc Spitzer, Commissioner

22
23 APPEARANCES:

Mr. Jay L. Shapiro, FENNEMORE CRAIG and Mr.
24 Michael R. Engleman, DICKSTEIN, SHAPIRO,
MORIN & OSHINSKY on behalf of Panda Gila River,
L.P.;

25 Mr. Lindy Funkhouser, Director, and Mr. Scott S.
26 Wakefield, Chief Counsel, on behalf of the Residential
Utility Consumer Office;

27 Mr. Thomas L. Mumaw, Senior Attorney, PINNACLE
28 WEST CORPORATION and Mr. Jeffrey B. Guldner,

1 Because the circumstances that the rules were designed to address have not developed, because
 2 asset transfer combined with an ineffective wholesale market places the public at substantial risk, and
 3 because it “appears that reliance on FERC to police the wholesale market may be ill advised”, Staff
 4 recommends that the Commission should not allow asset transfer until it is convinced that the transfer
 5 is in the public interest. Staff advises that “[w]ithout conditions designed to address market structure
 6 concerns, the transfer is not in the public interest.” (Staff Brief at p. 4, emphasis original).

7 Staff believes that before the Commission decides whether a particular utility should be allowed
 8 to divest, the utility should indicate whether it wants to divest.⁵ If a Company wants to divest, it
 9 should file market power studies and a proposed code of conduct, Track B should be concluded, and
 10 in any event, no reliability must-run generation (“RMR”) should be divested. Staff’s states that its
 11 recommendations on divestiture may have implications for future rate setting, because if a utility
 12 chooses to retain its assets, the Staff believes that the Commission should apply cost of service
 13 principles when setting rates.

14 In response to APS’ argument that the Commission is bound by the Settlement Agreement, Staff
 15 argues that the Commission is not contractually bound. Staff states that if a regulatory agency finds a
 16 proposed settlement to be reasonable, the terms of the settlement form the substance of a decision that
 17 binds all parties to the proceeding, and the approved agreement assumes the nature of an agency
 18 decision enacted in the public interest, losing its private contractual character. (Citing Cajun Elec.
 19 Power Coop., Inc. v. F.E.R.C., 924 F.2d 1132, 1135 (D.C. Cir. 1991). Staff also argues that it is
 20 unlikely that a contract was formed due to the Commission’s amendments to the agreement. Staff
 21 further argues that, assuming for the sake of argument that a contract exists, it is unenforceable
 22 because the “alleged contract was based on the existence of a workably competitive wholesale
 23 market, and because a workably competitive market does not exist, the purpose of the alleged
 24 contract has been frustrated, thereby excusing performance.” (Staff Brief at p. 19)

25 APS

26 APS believes that divestiture will benefit APS customers in the long run and will not harm
 27 them in the short run. It acknowledges that the benefits of divestiture are more long-term in nature,
 28 while the “risks of the market loom today”. (APS Brief at p. 12) APS points out that through its
 Settlement Agreement, its customers have protection against the market through June 2004, and that
 intermediate to long-term protection for consumers is available through the proposed PPA.

⁵ Staff recommends that utilities should inform the Commission within 30 days of the conclusion of Track B.

13

BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

DOCKETED

SEP 10 2002

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

DOCKETED BY	<i>mal</i>
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IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.

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

IN THE MATTER OF THE GENERIC PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR.

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

IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST RECOVERY.

DOCKET NO. E-00000A-02-0051

DOCKET NO. E-01345A-01-0822

DOCKET NO. E-00000A-01-0630

DOCKET NO. E-01933A-02-0069

DOCKET NO. E-1933A-98-0471

DECISION NO. 65154

OPINION AND ORDER

DATES OF HEARING: June 14, 2002 (pre-hearing); June 17, 18, 19, 20, 21, 27, and 28, 2002

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Lyn Farmer

IN ATTENDANCE: William A. Mundell, Chairman
Marc Spitzer, Commissioner

APPEARANCES: Mr. Jay L. Shapiro, FENNEMORE CRAIG and Mr. Michael R. Engleman, DICKSTEIN, SHAPIRO, MORIN & OSHINSKY on behalf of Panda Gila River, L.P.;

Mr. Lindy Funkhouser, Director, and Mr. Scott S. Wakefield, Chief Counsel, on behalf of the Residential Utility Consumer Office;

Mr. Thomas L. Mumaw, Senior Attorney, PINNACLE WEST CORPORATION and Mr. Jeffrey B. Guldner,

1 IT IS FURTHER ORDERED that A.A.C. R14-2-1606(B) is stayed and Decision Nos. 61973
2 and 62103 are modified to stay the requirement that 100 percent of power purchased for Standard
3 Offer Service shall be acquired from the competitive market, with at least 50 percent through a
4 competitive bid process.

5 IT IS FURTHER ORDERED that A.A.C. R14-2-1611(A)'s applicability to APS and TEP's
6 captive customers is stayed.

7 IT IS FURTHER ORDERED that upon implementation of the outcome of Track B, APS shall
8 acquire, at a minimum, any required power that cannot be produced from its own existing assets,
9 through the competitive procurement process as developed in the Track B proceeding. The minimum
10 amount of power, the timing, and the form of procurement shall be determined in the Track B
11 proceeding.

12 IT IS FURTHER ORDERED that upon implementation of the outcome of Track B, TEP shall
13 acquire, at a minimum, any required power that cannot be produced from its own existing assets,
14 through the competitive procurement process as developed in the Track B proceeding. The minimum
15 amount of power, the timing, and the form of procurement shall determined in the Track B
16 proceeding.

17 IT IS FURTHER ORDERED that the parties are directed to continue their efforts in Track B
18 of this proceeding to develop a competitive solicitation process that can begin by March 1, 2003. For
19 the purposes of the competitive solicitation process, the PWEC generating assets that APS may seek
20 to acquire from PWEC, shall not be counted as APS assets in determining the amount, timing and
21 manner of the competitive solicitation.

22 IT IS FURTHER ORDERED that Staff shall open a rulemaking to review the Retail Electric
23 Competition Rules in light of our decisions herein and to address issues resolved in Track B, and to
24 amend A.A.C. R14-2-1615(A), A.A.C. R14-2-1606(B), and A.A.C. R14-2-1611(A).

25 IT IS FURTHER ORDERED that APS and TEP shall work with Staff to develop a plan as
26 discussed herein to resolve reliability must-run generation concerns. Staff shall include results of
27 such a plan in the 2004 Biennial Transmission Assessment.

28 IT IS FURTHER ORDERED that APS and TEP shall file annual reliability must-run
generation study reports with the Commission in concert with their January 31 ten year plan, for
review prior to implementing any new RMR generation strategies until the 2004 Biennial
Transmission Assessment is issued.

IT IS FURTHER ORDERED that if APS wishes to pursue the issue of acquiring PWEC's

14

BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER**

**FILE
ORIGINAL**

**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. 4-14-2-1606**

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

RESPONSE TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: TRACK B ISSUES

NOVEMBER 18, 2002

TEP 3

1 Q: Why should any future RMR solicitation be performed separately from the initial 2003
2 solicitation?

3 A: At this stage of the game, including RMR obligations would greatly complicate and
4 prolong the solicitation process to the detriment of all parties involved. From TEP's
5 perspective, given the critical nature of RMR obligations, the competitive solicitation of
6 RMR would involve analyzing a completely new and different set of procurement issues
7 and would delay the 2003 process. Moreover, given TEP's unique situation where *all* of
8 its RMR generation is owned by TEP and is located within TEP's constrained load
9 pocket, it is highly unlikely that any third party could compete with these existing units
10 with new generation or transmission given the Staff's apparent focus on short-term
11 procurement for the 2003 solicitation. First, any new RMR generation (that would have
12 to be built in the TEP load pocket absent any immediate transmission upgrades into that
13 load pocket) or any transmission upgrades (that would allow access to RMR generation
14 outside of the load pocket) would require a long-term planning and commitment to
15 ensure the economic benefits. Second, any non-transmission or non-generation
16 alternatives that might be considered as a possible RMR solution would require extensive
17 analysis of their ability (and reliability) to meet TEP's actual RMR needs. Because of
18 this complexity and the importance of RMR, an RFP for RMR should focus only on
19 competing generation and transmission solutions. Any RMR solicitation focusing on
20 third-party generation or transmission solutions would require an extensive evaluation
21 and negotiation period that simply does not fit with the envisioned 2003 solicitation.

22 Q: Do you agree with Mr. Kendall's testimony (beginning at p. 16) that suggests including
23 Environmental Portfolio (EPS) obligations in the solicitation?

24 A: No. TEP believes that this solicitation should focus on procuring bulk wholesale power
25 needed to serve its customers. The inclusion of EPS in the procurement process
26 unnecessarily complicates the process. Because a utility can meet its EPS obligations in
27 a number of ways, including through the use of offsets and credits, it is not clear that the
28 Commission intended its inclusion in the solicitation process by using the term "required
29 power". As referenced in the October 25, 2002 Staff Report (at pp.32, 39) – and
apparently agreed to in the workshops (although not everyone seems to agree now) – the

15

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 IN THE MATTER OF THE GENERIC) DOCKET NO.
3 PROCEEDING CONCERNING ELECTRIC) E-00000A-02-0051
4 RESTRUCTURING ISSUES.)

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

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

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

13 At: Phoenix, Arizona
14 Date: November 25, 2002
15 Filed: **DEC 11 2002**

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 VOLUME III
18 (Pages 416 through 718)

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20 Court Reporting
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22 2627 North Third Street
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23 By: MICHELE E. BALMER, RPR
24 Certified Court Reporter
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24 Prepared for:

25 TEP

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1 not required by the Track A order. And in that same
2 order, it could imply that if those units are
3 contestable, that it would follow that they would be
4 subject to market competition and would not be
5 precluded from transfer to a competitive affiliate.
6 RMR was recommended by Staff in the Track A proceeding
7 not to be divested.

8 The inclusion of RMR capacity and energy was
9 never discussed in the workshop process. Let me
10 qualify that. The inclusion of RMR capacity and energy
11 of existing utility assets was never discussed or
12 contemplated in the workshops, of which I attended all
13 of them.

14 In the short run, there are both market power
15 and operational concerns for third party supplied RMR
16 to TEP's load area.

17 As I previously mentioned, all existing RMR is
18 supplied by TEP's existing assets, which means that
19 either a generation or transmission addition would be
20 necessary to provide a competitive alternative.

21 That is a longer time horizon and a more
22 complicated and longer negotiation process to look at
23 those competitive alternatives for something as
24 specific and something as critical to reliability as
25 RMR.

1 are built which make non-TEP owned generation reliably
2 deliverable to TEP in displacement of what otherwise
3 would be RMR generation by TEP-owned units, would TEP
4 agree that it should and would conduct a timely
5 competitive solicitation in which such displaceable RMR
6 capacity and energy would be contestable for the
7 immediately prospective and subsequent periods?

8 A. Yes. I think it would be reasonable for TEP.
9 And as stated further in my testimony, that TEP does
10 not have any qualms about competitively bidding RMR
11 solutions. That can provide many more sets of eyes
12 looking at the situation and taking into account
13 locations of future plants and planning accordingly.

14 Q. Would it, then, also be your testimony or
15 position that if the facts, which in TEP's view make
16 RMR contestability not make sense for TEP at this
17 point, were different such that those limitations or
18 lack of third party deliverable resources to compete,
19 etcetera, were not in existence, that contestability of
20 RMR would be appropriate at this point in time?

21 A. It would be appropriate if there were any plant
22 or any RMR solutions readily available. At this point,
23 it is my position that there are not. Having a voltage
24 limited system is very much different than having a
25 transmission limited system. So it requires actual

1 voltage support within TEP's constrained area, which
2 cannot be met with plants and, you know, a fair bit of
3 distance from TEP.

4 MR. MOYES: Thank you. Those are all of the
5 questions that I have, Your Honor.

6 ALJ WOLFE: Thank you, Mr. Moyes.

7 Mr. Engleman?

8 MR. ENGLEMAN: Thank you.

9

10 CROSS-EXAMINATION

11

12 Q. (BY MR. ENGLEMAN) Mike Engleman on behalf of
13 Panda. Mr. Hutchens, first of all, I wanted to say on
14 the record, thanks for your participation in the
15 workshops. It was appreciated and useful.

16 A. You're welcome.

17 Q. One or two quick questions. We've heard a lot
18 of discussion both in Staff's testimony and already
19 this morning with your testimony about the term economy
20 energy.

21 Could you define it as you understand it?

22 A. Yes, I will. I guess simply stated my
23 definition of economy energy is a purchase of market
24 energy that is under the incremental cost of a
25 utility's marginal resource, be that either a unit or a

16

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE GENERIC)
4 PROCEEDING CONCERNING ELECTRIC) DOCKET NO.
5 RESTRUCTURING ISSUES.) E-00000A-02-0051

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

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

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

19 At: Phoenix, Arizona

20 Date: November 22, 2002

21 Filed: DEC - 9 2002

22 REPORTER'S TRANSCRIPT OF PROCEEDINGS

23 VOLUME II
(Pages 211 through 415)

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By: DAWNA J. BOSWELL, RPR
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1 My guess is probably the utilities would have a better
2 feel for what could be effective solutions in terms of
3 transmission facilities.

4 Q. If you could turn to page 5 of your
5 testimony, that's Smith rebuttal testimony, for the
6 record. At page 5, starting at line 6, it appears
7 that Staff sets forth what is described as "Conditions
8 under which RMR capacity and energy could be
9 contestable." What did Staff mean by that particular
10 phrase, could be contestable?

11 A. (BY MR. SMITH) Staff is offering in lines 9
12 through 13 the three different types of situations
13 where parties other than the utility's own generators
14 could be effective in meeting the local load
15 requirements and not violating the transmission import
16 constraint of the utility.

17 Q. If these conditions did not exist for a
18 particular load pocket, a utility's particular load
19 pocket, would that utility need to bid out RMR
20 capacity or energy for that area?

21 A. (BY MR. SMITH) It's my testimony they would
22 because we would not know whether there were parties
23 that could meet that condition unless they bid. If
24 you had no bidders, that might be an indication that
25 none of those conditions could be met.

1 Q. So Staff would expect to see information on
2 those conditions as a response to the utility's
3 request for bid, is that correct?

4 A. (BY MR. SMITH) That's correct. This is the
5 market's opportunity to respond to the RMR conditions
6 that have been established by the utility.

7 Q. Will the RMR study address those conditions
8 as well?

9 A. (BY MR. SMITH) The RMR study will consider
10 the utility's views of the solutions that are viable,
11 whereas the, what we're proposing in the competitive
12 solicitation is an opportunity for the market to offer
13 solutions to resolve those constraints.

14 Q. And that would be in addition to the
15 opportunity for comment on the RMR study. Is that
16 Staff's belief?

17 A. (BY MR. SMITH) That's correct.

18 Q. With respect to the first condition listed on
19 page 5, in the TEP load pocket, isn't it true that
20 actual location of the generation facility within the
21 TEP load pocket affects the amount of RMR service that
22 that facility can provide? Basically the RMR benefit
23 of a local generation facility is site specific or
24 affected by its location?

25 A. (BY MR. SMITH) There's no question that any

1 generator located within a constraint area has varying
2 degrees of effectiveness in solving the import
3 constraint concerns.

4 Q. Are you aware of any existing significant
5 non-TEP generation in the TEP load pocket that would
6 meet condition 1?

7 A. (BY MR. SMITH) I am aware that there has
8 been considerable discussion about distributed
9 generation and renewable portfolio standards and
10 facilities in the TEP service area.

11 Q. Are there any that exist presently that you
12 are aware of?

13 A. (BY MR. SMITH) There are facilities that
14 exist. Whether they would be in a position to bid, I
15 do not know.

16 Q. And do you know whether they're in a location
17 to provide an RMR service?

18 A. (BY MR. SMITH) I would not be privy to that
19 information at this point.

20 Q. With respect to the third condition set forth
21 on page 5, Staff acknowledges that that condition
22 probably could not be met for some period of time, is
23 that correct?

24 A. (BY MR. SMITH) Condition 3 implies that a
25 remote generator would be willing to invest in the

1 transmission upgrade in order to meet the requirement,
2 and given the assumption that those transmission
3 upgrades have considerable lead time, it is Staff's
4 view that likely that option might not be available
5 for the short-term purchases. However, that doesn't
6 hold true for new generation combustion turbines which
7 can be installed in a very short period of time, and a
8 party could choose to invest in a constraint area and
9 accomplish that in a short period of time.

10 Q. Even a combustion turbine would need some
11 permitting and zoning, is that correct?

12 A. (BY MR. SMITH) That's correct, but depending
13 on the size, it might not have to go through the Power
14 Plant and Transmission Line Siting process.

15 Q. But there may be local permitting and --

16 A. (BY MR. SMITH) Local permitting and emission
17 and environmental standards to be met.

18 (An off-the-record discussion ensued.)

19 Q. (BY MR. PATTEN) It's fair to say there's no
20 guarantee that such permits will be obtained?

21 A. (BY MR. SMITH) I don't think we have any
22 evidence to suggest either scenario. Either scenario
23 is equally likely, I think, permitting or not
24 permitting.

25 Q. In the event of a local generation project or

1 a significant transmission line that would have to go
2 through the Line Siting process, Mr. Smith, have you
3 participated in those processes on behalf of Staff?

4 A. (BY MR. SMITH) I think I have weathered the
5 storm quite well considering the number of cases I've
6 been involved in, yes.

7 Q. I take it weathered the storm indicates that
8 particularly for a local generation project or a large
9 transmission project, there's often significant
10 opposition by the public?

11 A. (BY MR. SMITH) When you are talking about
12 size of the facilities that go through the siting
13 process, yes. For smaller units, no.

14 Q. And going through the Line Siting process for
15 a significant project, either generation or
16 transmission, would that take in excess of a year?

17 A. (BY MR. SMITH) Yes.

18 Q. And once --

19 A. (BY MR. SMITH) Your question was about the
20 siting process?

21 Q. Yes, the siting process.

22 A. (BY MR. SMITH) No, for the state siting
23 process, it's 240 days from initiation to Commission
24 decision.

25 Q. Once that's done, then the construction

1 begins?

2 A. (BY MR. SMITH) Yes.

3 Q. I may have asked you this already. The
4 conditions set forth there on page 5, is it the hope
5 of Staff that those conditions will be addressed in
6 the January RMR study or the expectation of Staff, I
7 suppose?

8 A. (BY MR. SMITH) It is Staff's desire and hope
9 that the utilities will consider all three conditions
10 as alternatives to the utility depending on its own
11 local generation to meet the RMR requirement.

12 Q. In Staff's position, are there short-term
13 competitive solutions, and I'm talking maybe a year or
14 two, that could meet TEP's RMR service needs?

15 A. (BY MR. SMITH) I don't know the specific
16 answer, but it's Staff's belief that given that TEP is
17 a voltage constraint area that the solutions available
18 to solve that are different and may offer some
19 solutions that are not long-term siting constraint
20 type of options.

21 Q. What sort of things might that be?

22 A. (BY MR. SMITH) Reactive devices such as
23 capacitors that can be placed on the system are an
24 example of devices that can be installed to deal with
25 the voltage concerns, and in fact, TEP has taken some

1 of those steps in its system already. To what degree
2 additional devices would be helpful is something that
3 could be pursued.

4 Q. Through the competitive solicitation process?

5 A. (BY MR. SMITH) Well, it could be, we would
6 hope that it is considered in the RMR study, and
7 certainly to the degree that the competitive
8 solicitation envisions those types of solutions be
9 available that they would consider them as well to
10 enable their generator to be effective in bidding into
11 the RMR area.

12 Q. Mr. Johnson, I will direct this to you. You
13 may want to defer it, but is it Staff's belief that,
14 what is Staff's position on whether or not TEP can
15 divest its existing RMR assets?

16 A. (BY MR. SMITH) In Track A, I believe the
17 Commission's decision was to require the utilities to
18 not divest or transfer their existing generation
19 assets, and in particular there was focus on RMR
20 units.

21 Q. Okay. And that's even if those assets are
22 not in rate base, correct? It did not make that
23 distinction?

24 A. (BY MR. SMITH) I believe the distinction was
25 utility-owned assets. I don't think in the Track A

17

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 IN THE MATTER OF THE GENERIC) DOCKET NO.
3 PROCEEDING CONCERNING ELECTRIC) E-00000A-02-0051
4 RESTRUCTURING ISSUES.)

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

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

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

18 At: Phoenix, Arizona

19 Date: November 27, 2002

20 Filed: DEC 11 2002

21 REPORTER'S TRANSCRIPT OF PROCEEDINGS

22 VOLUME V
(Pages 849 through 965)

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Prepared for:

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1 MR. KEMPLEY: Two comments. First, the numbers
2 that will be plugged in in corrected S-5 will come from
3 TEP. So I don't think that Mr. Patten's client will be
4 surprised by the number. But, obviously, TEP should
5 retain the right to object if they think that's
6 necessary.

7 In any event, at this point we anticipate being
8 in a position to file the corrected S-5 -- we expect to
9 have the number on Monday because that's when TEP says
10 we're going to have it. But I would think that Tuesday
11 or Wednesday might be a safe date to expect the filing.

12 ALJ WOLFE: Okay. Just to allow time in case
13 there is a problem, how about if we make that to be
14 filed on the 6th and then responses due on the 13th, if
15 any.

16 Would that satisfy your procedural concerns
17 Mr. Patten?

18 MR. PATTEN: That would be fine.

19 ALJ WOLFE: Okay. All right. And I didn't --
20 I know earlier there was a discussion of a possible
21 rebuttal case by both Staff and APS, and I want to make
22 sure you're afforded that opportunity.

23 Mr. Mumaw?

24 MR. MUMAW: I appreciate that I have that
25 opportunity, and I will not avail myself of it.

18

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE GENERIC)
4 PROCEEDING CONCERNING ELECTRIC) DOCKET NO.
5 RESTRUCTURING ISSUES.) E-00000A-02-0051

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

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

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

19 At: Phoenix, Arizona

20 Date: November 22, 2002

21 Filed: DEC - 9 2002

22 REPORTER'S TRANSCRIPT OF PROCEEDINGS

23 VOLUME II
(Pages 211 through 415)

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1 A. (BY MR. SMITH) That is correct.

2 Q. Where is the column for economy energy for
3 Tucson Electric Power?

4 A. (BY MR. SMITH) There is no column in the
5 table, and that was by intent that it was not
6 included. TEP has not proposed to supply its unmet
7 needs primarily using economy purchases, and in fact,
8 when we look at the historical record of TEP, we see
9 that historically, for the last four years, there has
10 only been two months that they have actually been a
11 net purchaser of economy.

12 Q. So is it, let me see if I understand this,
13 Mr. Smith, your testimony that Tucson Electric's
14 economy is insignificant, economy energy needs are
15 insignificant and that's why they're not included
16 there?

17 A. (BY MR. SMITH) Our assessment is that in
18 general, TEP's practice has been that they are a net
19 seller of economy transactions rather than a net
20 purchaser on a monthly basis.

21 Q. Okay. But, I'm sorry, Mr. Smith, how does
22 that lead you to the conclusion that their economy
23 purchases, net or otherwise, should not be contestable
24 in the same way Staff is proposing that APS' be
25 contestable?

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 IN THE MATTER OF THE GENERIC) DOCKET NO.
3 PROCEEDING CONCERNING ELECTRIC) E-00000A-02-0051
4 RESTRUCTURING ISSUES.)

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

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

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

13 At: Phoenix, Arizona
14 Date: November 27, 2002
15 Filed: **DEC 11 2002**

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 VOLUME V
18 (Pages 849 through 965)

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23 By: MICHELE E. BALMER, RPR
24 Certified Court Reporter
Certificate No. 50489

24 Prepared for:

25 TEP

**CERTIFIED COPY
(When in red)**

1 ALJ WOLFE: Mr. Meek, as a party to this case,
2 you would certainly be able to communicate with Staff
3 and find out whether they had any plans to make those.
4 They are not under any requirement to do so.

5 MR. KEMPLEY: I would be happy to respond --

6 ALJ WOLFE: Please.

7 MR. KEMPLEY: -- to Mr. Meek's statement
8 because it provides a segue to something that I needed
9 to say anyway.

10 At this time Staff doesn't have any intent to
11 issue a modified Staff Report. I guess in large part
12 because we don't think that would be a fruitful
13 exercise during the period while we're awaiting a
14 recommended opinion and order. And whether the order
15 that the Commission ultimately issues somehow requires
16 some amended Staff Report or not, I guess is something
17 that the Commission can consider.

18 We don't see any need to tinker with the
19 specific language of the Staff report, notwithstanding
20 the fact that it may not be adopted as written by the
21 Commission.

22 But I do want to make a statement with regard
23 to Exhibit S-5, because the cross-examination on that
24 exhibit leads Staff to the viewpoint that we intend to
25 file as a late-filed exhibit a corrected version of

1 Exhibit S-5 which will encompass two changes from
2 Exhibit S-5 as it stands before you.

3 The first change is -- both of them are under
4 the energy section. The APS short-term hedge amounts
5 will be deleted from Exhibit S-5 based on Staff's
6 recognition that the contracts that are encompassed in
7 the short-term hedge that were represented to us as
8 hedging contracts are, in fact, take-or-pay contracts.
9 So that will be deleted.

10 And with respect to Tucson Electric Power, an
11 amount will be included under the category of economy
12 purchase to recognize that Tucson Electric Power and
13 APS should be treated in an equivalent manner as was
14 established and discussed on cross. Simply there was a
15 series of misunderstanding that led to a zero figure on
16 Exhibit S-5 as it was previously presented. And there
17 will be a figure on the corrected S-5.

18 I would suggest that the parties have an
19 opportunity, of course, to object to that corrected
20 exhibit. And if it came to that, we would be available
21 for examination at a later time on the exhibit. I
22 certainly don't think it would come to that.

23 ALJ WOLFE: Okay.

24 MR. MUMAW: Mr. Kempley, may I also inquire,
25 during Mr. Smith's cross-examination, I believe he

19

1 voltage support within TEP's constrained area, which
2 cannot be met with plants and, you know, a fair bit of
3 distance from TEP.

4 MR. MOYES: Thank you. Those are all of the
5 questions that I have, Your Honor.

6 ALJ WOLFE: Thank you, Mr. Moyes.

7 Mr. Engleman?

8 MR. ENGLEMAN: Thank you.

9

10 CROSS-EXAMINATION

11

12 Q. (BY MR. ENGLEMAN) Mike Engleman on behalf of
13 Panda. Mr. Hutchens, first of all, I wanted to say on
14 the record, thanks for your participation in the
15 workshops. It was appreciated and useful.

16 A. You're welcome.

17 Q. One or two quick questions. We've heard a lot
18 of discussion both in Staff's testimony and already
19 this morning with your testimony about the term economy
20 energy.

21 Could you define it as you understand it?

22 A. Yes, I will. I guess simply stated my
23 definition of economy energy is a purchase of market
24 energy that is under the incremental cost of a
25 utility's marginal resource, be that either a unit or a

1 contract in the short-term or spot market.

2 Q. And when you say short-term, what term are you
3 referring to?

4 A. Roughly anywhere from an hour ahead to maybe as
5 far as seasonal-type, maybe two to three months. That
6 would be my estimate of those.

7 Q. If you could refer briefly to your rebuttal
8 testimony of November 18th at page 7, starting on
9 line 3.

10 There is a question there about reliance on
11 economy energy. And the question I had is, are the
12 contracts that you're referencing in the chart between
13 lines 11 and 12, are you referencing those as economy
14 purchases or something else?

15 A. No. I was referencing those as firm, longer
16 term purchases. We basically made those -- while the
17 term of the contract is short, those are what we call
18 our summer hedge purchases in those time frames, and
19 were made, oh, maybe three, four, five, up to six
20 months ahead of the summer season.

21 Q. Would you agree, Mr. Hutchens, that with the
22 Staff Report written as it is where it does not require
23 TEP to make any purchase as a result of the
24 solicitation, that there's no risk to TEP?

25 A. There may be no final risk. Although perceived

20

BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER**

**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. 4-14-2-1606**

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

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

Docket No. E-01933A-98-0471

**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

DIRECT TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: TRACK B ISSUES

NOVEMBER 12, 2002

TEP 2

1 two key facts underlying TEP's positions are: (i) TEP does not have any competitive
2 affiliates that will participate in the solicitation process and (ii) the TEP retail service area
3 faces significant transmission limitations that may affect TEP's competitive solicitation.
4 However, although the Commission Staff's October 25, 2002 Report contains many valid
5 conclusions that TEP fully supports, it fails to recognize TEP's unique position and
6 places uneconomic and unnecessary requirements on TEP. Moreover, those detrimental
7 requirements provide no benefit to other parties. TEP proposes two key modifications to
8 Staff's solicitation proposal to remedy TEP's concerns: (i) allowing TEP's wholesale
9 marketing department to conduct the competitive solicitation, thus avoiding the need to
10 create a duplicate, parallel department and (ii) allowing TEP to include all TEP
11 generation assets existing as of September 1, 2002 in the determination of TEP's
12 Contestable Load, not just assets "included in rate base."

13 TEP'S UNIQUE CIRCUMSTANCES

14 Q: What was the overriding concern throughout the Track B workshops?

15 A: The majority of the workshop discussion centered around insuring that Pinnacle West
16 would not be given any advantage over the other generators bidding into the solicitation
17 process, particularly given that it appeared that the vast majority of available contestable
18 load would be APS load. Thus, many of the proposed requirements that have been
19 included in Staff's proposed solicitation process were designed to specifically address the
20 issue of APS having an affiliate, Pinnacle West, with generation resources that would be
21 bidding into the solicitation. However, several of those general requirements create an
22 unnecessary burden on TEP given the difference between TEP and APS.

23 Q: What are the circumstances unique to TEP that should be noted in the development of the
24 Competitive Solicitation Process?

25 A: There are three important, unique circumstances: (i) TEP has no affiliate involved in the
26 marketing and trading of wholesale power; (ii) TEP has no generation affiliate that will
27 be bidding into the 2003 solicitation; and (iii) TEP has different transmission concerns
28 for delivery of energy to its load area.

1 Q: How does the absence of a TEP affiliate involved in the generation, marketing and
2 trading of wholesale power bidding into the solicitation process affect the process design?

3 A: TEP understands that Decision No. 65154 seeks to increase the competitiveness of the
4 wholesale electricity markets in Arizona by insuring all future needs are met through
5 competitive processes. However, even without the proposed competitive solicitation
6 process being developed in Track B, TEP currently procures all of its "required power
7 that cannot be produced from its own existing assets"¹ from unaffiliated third parties in
8 the wholesale market, as is now required by that Decision. Thus, TEP feels that it
9 already meets the spirit of Decision No. 65154 pertaining to the procurement of power
10 that cannot be produced from TEP's existing generation assets. It is only the requirement
11 that TEP use a specific solicitation process to procure that "required power" that will
12 create any change in TEP's resource management functions. To the extent the process is
13 being designed to avoid unfair competitive advantage by UDC affiliates, the lack of any
14 TEP affiliate obviates such concerns. The imposition on TEP of requirements focused on
15 eliminating unfair advantages for affiliates simply imposes an unnecessary burden on
TEP without any corresponding benefits.

17 Q: What specific transmission concerns exist for TEP's service area that need to be
18 addressed?

19 A: All of TEP's retail load is contained within a load pocket as identified by ACC Staff in its
20 Biennial Transmission Assessment. As such, this load can only be served through a
21 combination of (i) remote generation brought in over existing transmission facilities and
22 (ii) local generation resources owned and operated by TEP within the load pocket. Since
23 the late 1970's when TEP began participation in remote generation resources to obtain
24 economies of scale through regional resource development, as well as to reduce its
25 dependence on oil and gas generation, TEP has planned and developed its load serving
26 capabilities through a balanced mix of remote generation, local generation and
27 transmission additions that would be most economical and reliable for serving its
28 customers. That goal of achieving an optimal mix led TEP to install gas combustion

¹ ACC Decision No. 65154, p. 33.

21

BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
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MARC SPITZER
COMMISSIONER**

**IN THE MATTER OF THE GENERIC
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RESTRUCTURING ISSUES.**

Docket No. E-00000A-02-0051

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Docket No. E-00000A-01-0630

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COMPANY'S APPLICATION FOR A
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COMPETITION RULES COMPLIANCE
DATES**

Docket No. E-01933A-98-0471

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APPLICATION FOR A VARIANCE OF
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Docket No. E01933A-02-0069

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ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: TRACK B ISSUES

NOVEMBER 12, 2002

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BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

DOCKETED

SEP 10 2002

1
2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER

DOCKETED BY

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5
6 IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
7 RESTRUCTURING ISSUES.

DOCKET NO. E-00000A-02-0051

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

DOCKET NO. E-01345A-01-0822

10 IN THE MATTER OF THE GENERIC
11 PROCEEDING CONCERNING THE ARIZONA
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12 ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

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COMPETITION RULES COMPLIANCE DATES.

DOCKET NO. E-01933A-02-0069

15 IN THE MATTER OF THE APPLICATION OF
16 TUCSON ELECTRIC POWER COMPANY FOR
APPROVAL OF ITS STRANDED COST
17 RECOVERY.

DOCKET NO. E-1933A-98-0471

DECISION NO. 65154

OPINION AND ORDER

18 DATES OF HEARING:

June 14, 2002 (pre-hearing); June 17, 18, 19, 20, 21, 27,
and 28, 2002

19 PLACE OF HEARING:

Phoenix, Arizona

20 ADMINISTRATIVE LAW JUDGE:

Lyn Farmer

21 IN ATTENDANCE:

William A. Mundell, Chairman
Marc Spitzer, Commissioner

22
23 APPEARANCES:

Mr. Jay L. Shapiro, FENNEMORE CRAIG and Mr.
24 Michael R. Engleman, DICKSTEIN, SHAPIRO,
MORIN & OSHINSKY on behalf of Panda Gila River,
L.P.;

25 Mr. Lindy Funkhouser, Director, and Mr. Scott S.
26 Wakefield, Chief Counsel, on behalf of the Residential
Utility Consumer Office;

27 Mr. Thomas L. Mumaw, Senior Attorney, PINNACLE
28 WEST CORPORATION and Mr. Jeffrey B. Guldner,

1 IT IS FURTHER ORDERED that A.A.C. R14-2-1606(B) is stayed and Decision Nos. 61973
2 and 62103 are modified to stay the requirement that 100 percent of power purchased for Standard
3 Offer Service shall be acquired from the competitive market, with at least 50 percent through a
4 competitive bid process.

5 IT IS FURTHER ORDERED that A.A.C. R14-2-1611(A)'s applicability to APS and TEP's
6 captive customers is stayed.

7 IT IS FURTHER ORDERED that upon implementation of the outcome of Track B, APS shall
8 acquire, at a minimum, any required power that cannot be produced from its own existing assets,
9 through the competitive procurement process as developed in the Track B proceeding. The minimum
10 amount of power, the timing, and the form of procurement shall be determined in the Track B
11 proceeding.

12 IT IS FURTHER ORDERED that upon implementation of the outcome of Track B, TEP shall
13 acquire, at a minimum, any required power that cannot be produced from its own existing assets,
14 through the competitive procurement process as developed in the Track B proceeding. The minimum
15 amount of power, the timing, and the form of procurement shall determined in the Track B
16 proceeding.

17 IT IS FURTHER ORDERED that the parties are directed to continue their efforts in Track B
18 of this proceeding to develop a competitive solicitation process that can begin by March 1, 2003. For
19 the purposes of the competitive solicitation process, the PWEC generating assets that APS may seek
20 to acquire from PWEC, shall not be counted as APS assets in determining the amount, timing and
21 manner of the competitive solicitation.

22 IT IS FURTHER ORDERED that Staff shall open a rulemaking to review the Retail Electric
23 Competition Rules in light of our decisions herein and to address issues resolved in Track B, and to
24 amend A.A.C. R14-2-1615(A), A.A.C. R14-2-1606(B), and A.A.C. R14-2-1611(A).

25 IT IS FURTHER ORDERED that APS and TEP shall work with Staff to develop a plan as
26 discussed herein to resolve reliability must-run generation concerns. Staff shall include results of
27 such a plan in the 2004 Biennial Transmission Assessment.

28 IT IS FURTHER ORDERED that APS and TEP shall file annual reliability must-run
generation study reports with the Commission in concert with their January 31 ten year plan, for
review prior to implementing any new RMR generation strategies until the 2004 Biennial
Transmission Assessment is issued.

IT IS FURTHER ORDERED that if APS wishes to pursue the issue of acquiring PWEC's

23

BEFORE THE ARIZONA CORPORATION COMMISSION

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ON BEHALF OF

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RE: TRACK B ISSUES

NOVEMBER 12, 2002

TEP 2

1 Q: If TEP felt that its contestable load was agreed to in the workshops, why did TEP list it as
2 an unresolved issue?

3 A: The agreement was basically a settlement of three related issues: (i) the inclusion of
4 TEP's new RMR CTs in its existing assets; (ii) the inclusion of TEP's wholesale load in
5 its contestable load calculation; and (iii) the ability of TEP's Wholesale Marketing
6 department to conduct TEP's solicitation. TEP listed the issue as unresolved in order to
7 be able to address the issue in front of the Commission in the event that resolution of any
8 of the three terms changed. As noted in my November 4, 2002 testimony, Staff's report
9 reversed the resolution of two of the three issues leaving only the inclusion of TEP's
10 wholesale load intact.

11 Q: Why does TEP request that its Wholesale Marketing department be allowed to conduct
12 the solicitation?

13 A: As discussed in my November 4, 2002 testimony, in light of the absence of any TEP
14 affiliate that could be involved in the process and the fact that the TEP procurement
15 functions currently fall into this group's purview, the requirement to prohibit this group
16 from participating would disadvantage TEP and impose an uneconomic and unnecessary
17 consequence on TEP.

18 Q: How would this disadvantage TEP and impose such burdens?

19 A: TEP's Wholesale Marketing department manages TEP's load and resources. In that
20 capacity, it performs the procurement of electricity and fuel by evaluating the operational
21 and economic terms of such procurement. While at times the economic evaluation can be
22 fairly straightforward, it often involves complex products that require detailed modeling
23 and market analysis. Further, the operational requirements of TEP's load and resources
24 require detailed and specific knowledge. It is TEP's Wholesale Marketing department
25 that has this knowledge and therefore the best ability to evaluate TEP's needs and assess
26 the solicitation options. If TEP must use others for this evaluation, TEP would lose this
27 critical knowledge and would incur increased (and unnecessary) costs by creating a
28 duplicate department that would be conducting the same analyses and tasks. Given the
29 lack of any TEP affiliate, the apparent prohibition on TEP's Wholesale Marketing

1 department provides no benefit to the process whatsoever and makes no sense. It should
2 be noted that no party to the workshops contested TEP's recommendation that its
3 wholesale group be allowed to conduct the solicitation process. Indeed, it appeared that
4 the recommendation was unanimously agreed upon.

5 Q: How does this change on the role of TEP's Wholesale Marketing department affect
6 TEP's position on its amount of Contestable Load?

7 A: If the other two issues are resolved to TEP's satisfaction – specifically that TEP's two
8 newest RMR CTs are included in its existing assets and TEP's Wholesale Marketing
9 department can conduct the solicitation – TEP will continue to include its wholesale load
10 in calculating its contestable load and commit to the capacity and energy quantities
11 provided in the workshops. Absent a favorable resolution of these issues for TEP, TEP
12 will take the position that its unmet needs should not be calculated including FERC
13 jurisdictional Market-Based Tariff Wholesale Agreements.

14 Q: Does the inclusion of TEP's wholesale load in calculating its unmet needs infer any
15 future rate-making treatment of the energy purchased in the solicitation?

16 A: No. The inclusion of the wholesale load was discussed in the workshops as a way to
17 address the existence of TEP wholesale contracts and to provide TEP with some amount
18 of load to bid in the solicitation process. Even though the wholesale load is under TEP's
19 market-based tariff – and *not* under a cost of service tariff – it was Staff's position that if
20 TEP did not include its wholesale load, Staff would contend that an equal amount of
21 TEP's existing generation assets should be set aside and not included in calculating
22 unmet needs – even though Decision No. 65154 contemplated that such assets should be
23 included in the contestable load calculation. The resulting unmet need is the same
24 regardless of whether wholesale load is included or an equal amount of existing
25 generation is excluded. In a spirit of compromise and for ease of computation, TEP
26 agreed to the inclusion of wholesale load. The fact that TEP's market-based wholesale
27 contracts were not moved to an affiliate should not unfairly disadvantage TEP.

28 Q: Does the inclusion of TEP's wholesale load in calculating its unmet needs infer the
inclusion of this or new wholesale load in future solicitations?

24

BEFORE THE ARIZONA CORPORATION COMMISSION

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6 department to conduct TEP's solicitation. TEP listed the issue as unresolved in order to
7 be able to address the issue in front of the Commission in the event that resolution of any
8 of the three terms changed. As noted in my November 4, 2002 testimony, Staff's report
9 reversed the resolution of two of the three issues leaving only the inclusion of TEP's
10 wholesale load intact.

11 Q: Why does TEP request that its Wholesale Marketing department be allowed to conduct
12 the solicitation?

13 A: As discussed in my November 4, 2002 testimony, in light of the absence of any TEP
14 affiliate that could be involved in the process and the fact that the TEP procurement
15 functions currently fall into this group's purview, the requirement to prohibit this group
16 from participating would disadvantage TEP and impose an uneconomic and unnecessary
17 consequence on TEP.

18 Q: How would this disadvantage TEP and impose such burdens?

19 A: TEP's Wholesale Marketing department manages TEP's load and resources. In that
20 capacity, it performs the procurement of electricity and fuel by evaluating the operational
21 and economic terms of such procurement. While at times the economic evaluation can be
22 fairly straightforward, it often involves complex products that require detailed modeling
23 and market analysis. Further, the operational requirements of TEP's load and resources
24 require detailed and specific knowledge. It is TEP's Wholesale Marketing department
25 that has this knowledge and therefore the best ability to evaluate TEP's needs and assess
26 the solicitation options. If TEP must use others for this evaluation, TEP would lose this
27 critical knowledge and would incur increased (and unnecessary) costs by creating a
28 duplicate department that would be conducting the same analyses and tasks. Given the
29 lack of any TEP affiliate, the apparent prohibition on TEP's Wholesale Marketing

26

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 IN THE MATTER OF THE GENERIC) DOCKET NO.
3 PROCEEDING CONCERNING ELECTRIC) E-00000A-02-0051
4 RESTRUCTURING ISSUES.)

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

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

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

18 At: Phoenix, Arizona

19 Date: November 25, 2002

20 Filed: **DEC 11 2002**

21 REPORTER'S TRANSCRIPT OF PROCEEDINGS

22 VOLUME III
(Pages 416 through 718)

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24 Court Reporting
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27 Phoenix, Arizona 85004-1103

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By: MICHELE E. BALMER, RPR
Certified Court Reporter
Certificate No. 50489

28 Prepared for:

29 TEP

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1 MR. ROBERTSON: No. I'm in his November 12th
2 direct testimony. I believe that the November 4th is
3 what he referred to as his needs assessment, so I've
4 been using direct for purposes of the November 12th
5 testimony.

6 MR. MUMAW: Thank you.

7 Q. (BY MR. ROBERTSON) In that portion of your
8 answer, Mr. Hutchens, you make reference to detailed
9 modeling and market analyses, and also you make
10 reference to operational and economic terms.

11 And my question to you would be: Are the
12 company's detailed modeling and market analyses in its
13 evaluation of operational and economic terms of
14 procurement in the nature of those program simulations
15 that Sempra witness Doug Mitchell recommends be used
16 for the evaluation of competitive bids under the
17 Track B procurement process?

18 A. As I understand it, yes, they are. It's a --
19 PROMOD is the model that we use for our purposes.

20 Q. Okay. You've indicated in your extemporaneous
21 oral remarks this morning that your projection of your
22 contestable load does differ in several respects from
23 that calculated by the Commission Staff and depicted in
24 Exhibit S-5, did you not?

25 A. Yes, I have.

27

BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER**

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. 4-14-2-1606

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

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

Docket No. E-01933A-98-0471

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

DIRECT TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: TRACK B ISSUES

NOVEMBER 12, 2002

TEP 2

1 Q: How does the absence of a TEP affiliate involved in the generation, marketing and
2 trading of wholesale power bidding into the solicitation process affect the process design?

3 A: TEP understands that Decision No. 65154 seeks to increase the competitiveness of the
4 wholesale electricity markets in Arizona by insuring all future needs are met through
5 competitive processes. However, even without the proposed competitive solicitation
6 process being developed in Track B, TEP currently procures all of its "required power
7 that cannot be produced from its own existing assets"¹ from unaffiliated third parties in
8 the wholesale market, as is now required by that Decision. Thus, TEP feels that it
9 already meets the spirit of Decision No. 65154 pertaining to the procurement of power
10 that cannot be produced from TEP's existing generation assets. It is only the requirement
11 that TEP use a specific solicitation process to procure that "required power" that will
12 create any change in TEP's resource management functions. To the extent the process is
13 being designed to avoid unfair competitive advantage by UDC affiliates, the lack of any
14 TEP affiliate obviates such concerns. The imposition on TEP of requirements focused on
15 eliminating unfair advantages for affiliates simply imposes an unnecessary burden on
TEP without any corresponding benefits.

17 Q: What specific transmission concerns exist for TEP's service area that need to be
18 addressed?

19 A: All of TEP's retail load is contained within a load pocket as identified by ACC Staff in its
20 Biennial Transmission Assessment. As such, this load can only be served through a
21 combination of (i) remote generation brought in over existing transmission facilities and
22 (ii) local generation resources owned and operated by TEP within the load pocket. Since
23 the late 1970's when TEP began participation in remote generation resources to obtain
24 economies of scale through regional resource development, as well as to reduce its
25 dependence on oil and gas generation, TEP has planned and developed its load serving
26 capabilities through a balanced mix of remote generation, local generation and
27 transmission additions that would be most economical and reliable for serving its
28 customers. That goal of achieving an optimal mix led TEP to install gas combustion

¹ ACC Decision No. 65154, p. 33.

1 turbines ("CTs") in 2001 to provide the required voltage support capability at peak load
2 conditions. Under current Commission terminology these local units are referred to as
3 Reliability Must-Run ("RMR") units. These units (and other TEP RMR units) have been
4 considerably more cost effective than constructing a major transmission project to
5 provide additional import capability. Moreover, constructing additional transmission
6 facilities would have created excess transmission capacity not needed to serve the peak
7 load. This excess capacity would be idle and provide no benefit to TEP or its customers.
8 Further, TEP presently controls very little available transmission capacity ("ATC") to
9 transmit power from remote interconnection points into TEP's service territory.

10 Q: Does the location of the new merchant generation plants provide specific challenges?

11 A: Yes. The majority of the new merchant plants are located where there is no Firm ATC for
12 delivery to TEP's retail service area. Some plants are able to reach TEP's service area
13 but require multiple wheels from transmission providers resulting in uneconomic
14 alternatives when compared to the cost of TEP's own generating resources.

15 Q: How are these transmission constraints being remedied?

16 A: TEP is assessing options to improve import capability into TEP's retail service area. TEP
17 is working with merchants and other utilities to define other transmission bottlenecks and
18 using the Central Arizona Transmission Study ("CATS") process to plan additional
19 transmission upgrades accordingly. However, this is a long-term process and the
20 permitting and construction phases for new lines will put any line addition several years
21 out.

22 **COMMENTS ON TEP'S UNRESOLVED ISSUES**

23 Q: What were TEP's unresolved issues listed in its October 1, 2002 filing?

24 A: TEP listed two primary unresolved issues that it would like to address. The first is the
25 amount of TEP's Contestable load and the second is the involvement of TEP's marketing
26 employees in the solicitation process. As more fully explained in my November 4, 2002
27 Needs Assessment testimony, TEP was under the impression that these issues were
agreed upon by all parties participating in the workshops.

28

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 IN THE MATTER OF THE GENERIC) DOCKET NO.
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4 RESTRUCTURING ISSUES.)

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9 ADMINISTRATOR.)

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

13 At: Phoenix, Arizona

14 Date: November 25, 2002

15 Filed: DEC 11 2002

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23 By: MICHELE E. BALMER, RPR
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24 Prepared for:

25 TEP

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1 are built which make non-TEP owned generation reliably
2 deliverable to TEP in displacement of what otherwise
3 would be RMR generation by TEP-owned units, would TEP
4 agree that it should and would conduct a timely
5 competitive solicitation in which such displaceable RMR
6 capacity and energy would be contestable for the
7 immediately prospective and subsequent periods?

8 A. Yes. I think it would be reasonable for TEP.
9 And as stated further in my testimony, that TEP does
10 not have any qualms about competitively bidding RMR
11 solutions. That can provide many more sets of eyes
12 looking at the situation and taking into account
13 locations of future plants and planning accordingly.

14 Q. Would it, then, also be your testimony or
15 position that if the facts, which in TEP's view make
16 RMR contestability not make sense for TEP at this
17 point, were different such that those limitations or
18 lack of third party deliverable resources to compete,
19 etcetera, were not in existence, that contestability of
20 RMR would be appropriate at this point in time?

21 A. It would be appropriate if there were any plant
22 or any RMR solutions readily available. At this point,
23 it is my position that there are not. Having a voltage
24 limited system is very much different than having a
25 transmission limited system. So it requires actual

1 voltage support within TEP's constrained area, which
2 cannot be met with plants and, you know, a fair bit of
3 distance from TEP.

4 MR. MOYES: Thank you. Those are all of the
5 questions that I have, Your Honor.

6 ALJ WOLFE: Thank you, Mr. Moyes.

7 Mr. Engleman?

8 MR. ENGLEMAN: Thank you.

9

10 CROSS-EXAMINATION

11

12 Q. (BY MR. ENGLEMAN) Mike Engleman on behalf of
13 Panda. Mr. Hutchens, first of all, I wanted to say on
14 the record, thanks for your participation in the
15 workshops. It was appreciated and useful.

16 A. You're welcome.

17 Q. One or two quick questions. We've heard a lot
18 of discussion both in Staff's testimony and already
19 this morning with your testimony about the term economy
20 energy.

21 Could you define it as you understand it?

22 A. Yes, I will. I guess simply stated my
23 definition of economy energy is a purchase of market
24 energy that is under the incremental cost of a
25 utility's marginal resource, be that either a unit or a

29

BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER**

**FILE
ORIGINAL**

**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. 4-14-2-1606**

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

RESPONSE TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: TRACK B ISSUES

NOVEMBER 18, 2002

TEP 3

1 Q: Why should any future RMR solicitation be performed separately from the initial 2003
2 solicitation?

3 A: At this stage of the game, including RMR obligations would greatly complicate and
4 prolong the solicitation process to the detriment of all parties involved. From TEP's
5 perspective, given the critical nature of RMR obligations, the competitive solicitation of
6 RMR would involve analyzing a completely new and different set of procurement issues
7 and would delay the 2003 process. Moreover, given TEP's unique situation where *all* of
8 its RMR generation is owned by TEP and is located within TEP's constrained load
9 pocket, it is highly unlikely that any third party could compete with these existing units
10 with new generation or transmission given the Staff's apparent focus on short-term
11 procurement for the 2003 solicitation. First, any new RMR generation (that would have
12 to be built in the TEP load pocket absent any immediate transmission upgrades into that
13 load pocket) or any transmission upgrades (that would allow access to RMR generation
14 outside of the load pocket) would require a long-term planning and commitment to
15 ensure the economic benefits. Second, any non-transmission or non-generation
16 alternatives that might be considered as a possible RMR solution would require extensive
17 analysis of their ability (and reliability) to meet TEP's actual RMR needs. Because of
18 this complexity and the importance of RMR, an RFP for RMR should focus only on
19 competing generation and transmission solutions. Any RMR solicitation focusing on
20 third-party generation or transmission solutions would require an extensive evaluation
21 and negotiation period that simply does not fit with the envisioned 2003 solicitation.

22 Q: Do you agree with Mr. Kendall's testimony (beginning at p. 16) that suggests including
23 Environmental Portfolio (EPS) obligations in the solicitation?

24 A: No. TEP believes that this solicitation should focus on procuring bulk wholesale power
25 needed to serve its customers. The inclusion of EPS in the procurement process
26 unnecessarily complicates the process. Because a utility can meet its EPS obligations in
27 a number of ways, including through the use of offsets and credits, it is not clear that the
28 Commission intended its inclusion in the solicitation process by using the term "required
29 power". As referenced in the October 25, 2002 Staff Report (at pp.32, 39) – and
apparently agreed to in the workshops (although not everyone seems to agree now) – the

30

1 BEFORE THE ARIZONA CORPORATION COMMISSION

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9 IN THE MATTER OF TUCSON ELECTRIC) DOCKET NO.
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11 A VARIANCE OF CERTAIN ELECTRIC)
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13 DATES.)

13 At: Phoenix, Arizona
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15 Filed: **DEC 11 2002**

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23 By: MICHELE E. BALMER, RPR
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24 Prepared for:

25 TEP

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1 any amount of energy in the process.

2 As Mr. Johnson had put it, we had both been
3 invited to the dance, but neither of us are required to
4 actually dance.

5 That S-5 exhibit, with those numbers being so
6 much larger than TEP would have expected, it does mean
7 a lot to, quote, the investment community, when they
8 look at TEP. And I think we should reiterate Staff's
9 initial focus that this should be about process and not
10 about numbers.

11 The Staff in their November 18th testimony, and
12 as referenced in their S-5 Exhibit, has submitted that
13 all RMR should be contestable in the first
14 solicitation, including that provided by the utility's
15 own existing assets.

16 I would like to briefly discuss TEP's RMR
17 situation. All of TEP's current RMR is provided by
18 existing TEP-owned assets. TEP is, due to their load
19 pocket, we are a voltage limited system. It's not a
20 question of putting additional amount of wires in the
21 air. It's a question about voltage support. No one --
22 there's not one non-TEP plant currently in existence
23 today that can provide RMR for voltage support.

24 I would like to address in Exhibit S-5, there's
25 a couple of numbers in there that I will focus on. And

31

1 are built which make non-TEP owned generation reliably
2 deliverable to TEP in displacement of what otherwise
3 would be RMR generation by TEP-owned units, would TEP
4 agree that it should and would conduct a timely
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3 distance from TEP.

4 MR. MOYES: Thank you. Those are all of the
5 questions that I have, Your Honor.

6 ALJ WOLFE: Thank you, Mr. Moyes.

7 Mr. Engleman?

8 MR. ENGLEMAN: Thank you.

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12 Q. (BY MR. ENGLEMAN) Mike Engleman on behalf of
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18 of discussion both in Staff's testimony and already
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BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
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MARC SPITZER
COMMISSIONER**

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

Docket No. E-00000A-02-0051

**IN THE MATTER OF ARIZONA PUBLIC
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OF A.A.C. 4-14-2-1606**

Docket No. E-01345A-01-0822

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COMPANY'S APPLICATION FOR A
VARIANCE OF CERTAIN ELECTRIC POWER
COMPETITION RULES COMPLIANCE
DATES**

Docket No. E-01933A-98-0471

**ISSUES IN THE MATTER OF TUCSON
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APPLICATION FOR A VARIANCE OF
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COMPLIANCE DATES**

Docket No. E01933A-02-0069

DIRECT TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: TRACK B ISSUES

NOVEMBER 12, 2002

TEP 2

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8 Further, TEP presently controls very little available transmission capacity ("ATC") to
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14 alternatives when compared to the cost of TEP's own generating resources.

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19 transmission upgrades accordingly. However, this is a long-term process and the
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21 out.

22 **COMMENTS ON TEP'S UNRESOLVED ISSUES**

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24 A: TEP listed two primary unresolved issues that it would like to address. The first is the
25 amount of TEP's Contestable load and the second is the involvement of TEP's marketing
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27 Needs Assessment testimony, TEP was under the impression that these issues were
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BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
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IN THE MATTER OF THE GENERIC
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DIRECT TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: TRACK B ISSUES

NOVEMBER 12, 2002

TEP 2

1 Q: If TEP felt that its contestable load was agreed to in the workshops, why did TEP list it as
2 an unresolved issue?

3 A: The agreement was basically a settlement of three related issues: (i) the inclusion of
4 TEP's new RMR CTs in its existing assets; (ii) the inclusion of TEP's wholesale load in
5 its contestable load calculation; and (iii) the ability of TEP's Wholesale Marketing
6 department to conduct TEP's solicitation. TEP listed the issue as unresolved in order to
7 be able to address the issue in front of the Commission in the event that resolution of any
8 of the three terms changed. As noted in my November 4, 2002 testimony, Staff's report
9 reversed the resolution of two of the three issues leaving only the inclusion of TEP's
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12 the solicitation?

13 A: As discussed in my November 4, 2002 testimony, in light of the absence of any TEP
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15 functions currently fall into this group's purview, the requirement to prohibit this group
16 from participating would disadvantage TEP and impose an uneconomic and unnecessary
17 consequence on TEP.

18 Q: How would this disadvantage TEP and impose such burdens?

19 A: TEP's Wholesale Marketing department manages TEP's load and resources. In that
20 capacity, it performs the procurement of electricity and fuel by evaluating the operational
21 and economic terms of such procurement. While at times the economic evaluation can be
22 fairly straightforward, it often involves complex products that require detailed modeling
23 and market analysis. Further, the operational requirements of TEP's load and resources
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25 that has this knowledge and therefore the best ability to evaluate TEP's needs and assess
26 the solicitation options. If TEP must use others for this evaluation, TEP would lose this
27 critical knowledge and would incur increased (and unnecessary) costs by creating a
28 duplicate department that would be conducting the same analyses and tasks. Given the
29 lack of any TEP affiliate, the apparent prohibition on TEP's Wholesale Marketing

1 department provides no benefit to the process whatsoever and makes no sense. It should
2 be noted that no party to the workshops contested TEP's recommendation that its
3 wholesale group be allowed to conduct the solicitation process. Indeed, it appeared that
4 the recommendation was unanimously agreed upon.

5 Q: How does this change on the role of TEP's Wholesale Marketing department affect
6 TEP's position on its amount of Contestable Load?

7 A: If the other two issues are resolved to TEP's satisfaction – specifically that TEP's two
8 newest RMR CTs are included in its existing assets and TEP's Wholesale Marketing
9 department can conduct the solicitation – TEP will continue to include its wholesale load
10 in calculating its contestable load and commit to the capacity and energy quantities
11 provided in the workshops. Absent a favorable resolution of these issues for TEP, TEP
12 will take the position that its unmet needs should not be calculated including FERC
13 jurisdictional Market-Based Tariff Wholesale Agreements.

14 Q: Does the inclusion of TEP's wholesale load in calculating its unmet needs infer any
15 future rate-making treatment of the energy purchased in the solicitation?

16 A: No. The inclusion of the wholesale load was discussed in the workshops as a way to
17 address the existence of TEP wholesale contracts and to provide TEP with some amount
18 of load to bid in the solicitation process. Even though the wholesale load is under TEP's
19 market-based tariff – and *not* under a cost of service tariff – it was Staff's position that if
20 TEP did not include its wholesale load, Staff would contend that an equal amount of
21 TEP's existing generation assets should be set aside and not included in calculating
22 unmet needs – even though Decision No. 65154 contemplated that such assets should be
23 included in the contestable load calculation. The resulting unmet need is the same
24 regardless of whether wholesale load is included or an equal amount of existing
25 generation is excluded. In a spirit of compromise and for ease of computation, TEP
26 agreed to the inclusion of wholesale load. The fact that TEP's market-based wholesale
27 contracts were not moved to an affiliate should not unfairly disadvantage TEP.

28 Q: Does the inclusion of TEP's wholesale load in calculating its unmet needs infer the
inclusion of this or new wholesale load in future solicitations?

34

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 IN THE MATTER OF THE GENERIC) DOCKET NO.
3 PROCEEDING CONCERNING ELECTRIC) E-00000A-02-0051
4 RESTRUCTURING ISSUES.)

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

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

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

18 At: Phoenix, Arizona
19 Date: November 25, 2002
20 Filed: **DEC 11 2002**

21 REPORTER'S TRANSCRIPT OF PROCEEDINGS

22 VOLUME III
23 (Pages 416 through 718)

24 ARIZONA REPORTING SERVICES, INC.
25 Court Reporting
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By: MICHELE E. BALMER, RPR
Certified Court Reporter
Certificate No. 50489

Prepared for:

TEP

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(When in red)**

1 Company.

2 You indicate in your November 12th testimony
3 that you are the manager of wholesale marketing for
4 Tucson Electric Power Company, do you not?

5 A. Yes, I do.

6 Q. And on page 1 of that November 12th testimony,
7 at lines 6 through 8, you give a description of your
8 position responsibilities. You state, quote, I oversee
9 the wholesale marketing department and functions,
10 including wholesale gas and electricity procurement,
11 resource management, risk management, marketing,
12 scheduling, and trading, close quote.

13 Let me ask you if you would expand a little bit
14 on your functions and your responsibilities with regard
15 to electricity procurement and resource management.

16 A. Yes. I can talk about those. Typically in
17 TEP, the wholesale marketing department is involved
18 with several other departments in analyzing future
19 needs of both energy, capacity, and of both electricity
20 and natural gas.

21 The resource management end of that function is
22 directly related to managing our current existing
23 portfolio of assets and contracts, and minimizing both
24 the resource cost to provide our load to our retail and
25 wholesale customers.

35

BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER**

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. 4-14-2-1606

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

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

Docket No. E-01933A-98-0471

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

DIRECT TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: TRACK B ISSUES

NOVEMBER 12, 2002

TEP 2

1 two key facts underlying TEP's positions are: (i) TEP does not have any competitive
2 affiliates that will participate in the solicitation process and (ii) the TEP retail service area
3 faces significant transmission limitations that may affect TEP's competitive solicitation.
4 However, although the Commission Staff's October 25, 2002 Report contains many valid
5 conclusions that TEP fully supports, it fails to recognize TEP's unique position and
6 places uneconomic and unnecessary requirements on TEP. Moreover, those detrimental
7 requirements provide no benefit to other parties. TEP proposes two key modifications to
8 Staff's solicitation proposal to remedy TEP's concerns: (i) allowing TEP's wholesale
9 marketing department to conduct the competitive solicitation, thus avoiding the need to
10 create a duplicate, parallel department and (ii) allowing TEP to include all TEP
11 generation assets existing as of September 1, 2002 in the determination of TEP's
12 Contestable Load, not just assets "included in rate base."

13 TEP'S UNIQUE CIRCUMSTANCES

14 Q: What was the overriding concern throughout the Track B workshops?

15 A: The majority of the workshop discussion centered around insuring that Pinnacle West
16 would not be given any advantage over the other generators bidding into the solicitation
17 process, particularly given that it appeared that the vast majority of available contestable
18 load would be APS load. Thus, many of the proposed requirements that have been
19 included in Staff's proposed solicitation process were designed to specifically address the
20 issue of APS having an affiliate, Pinnacle West, with generation resources that would be
21 bidding into the solicitation. However, several of those general requirements create an
22 unnecessary burden on TEP given the difference between TEP and APS.

23 Q: What are the circumstances unique to TEP that should be noted in the development of the
24 Competitive Solicitation Process?

25 A: There are three important, unique circumstances: (i) TEP has no affiliate involved in the
26 marketing and trading of wholesale power; (ii) TEP has no generation affiliate that will
27 be bidding into the 2003 solicitation; and (iii) TEP has different transmission concerns
28 for delivery of energy to its load area.

1 Q: How does the absence of a TEP affiliate involved in the generation, marketing and
2 trading of wholesale power bidding into the solicitation process affect the process design?

3 A: TEP understands that Decision No. 65154 seeks to increase the competitiveness of the
4 wholesale electricity markets in Arizona by insuring all future needs are met through
5 competitive processes. However, even without the proposed competitive solicitation
6 process being developed in Track B, TEP currently procures all of its "required power
7 that cannot be produced from its own existing assets"¹ from unaffiliated third parties in
8 the wholesale market, as is now required by that Decision. Thus, TEP feels that it
9 already meets the spirit of Decision No. 65154 pertaining to the procurement of power
10 that cannot be produced from TEP's existing generation assets. It is only the requirement
11 that TEP use a specific solicitation process to procure that "required power" that will
12 create any change in TEP's resource management functions. To the extent the process is
13 being designed to avoid unfair competitive advantage by UDC affiliates, the lack of any
14 TEP affiliate obviates such concerns. The imposition on TEP of requirements focused on
15 eliminating unfair advantages for affiliates simply imposes an unnecessary burden on
TEP without any corresponding benefits.

17 Q: What specific transmission concerns exist for TEP's service area that need to be
18 addressed?

19 A: All of TEP's retail load is contained within a load pocket as identified by ACC Staff in its
20 Biennial Transmission Assessment. As such, this load can only be served through a
21 combination of (i) remote generation brought in over existing transmission facilities and
22 (ii) local generation resources owned and operated by TEP within the load pocket. Since
23 the late 1970's when TEP began participation in remote generation resources to obtain
24 economies of scale through regional resource development, as well as to reduce its
25 dependence on oil and gas generation, TEP has planned and developed its load serving
26 capabilities through a balanced mix of remote generation, local generation and
27 transmission additions that would be most economical and reliable for serving its
28 customers. That goal of achieving an optimal mix led TEP to install gas combustion

¹ ACC Decision No. 65154, p. 33.

36

BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER**

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. 4-14-2-1606

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

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

Docket No. E-01933A-98-0471

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

DIRECT TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: TRACK B ISSUES

NOVEMBER 12, 2002

TEP 2

1 Q: If TEP felt that its contestable load was agreed to in the workshops, why did TEP list it as
2 an unresolved issue?

3 A: The agreement was basically a settlement of three related issues: (i) the inclusion of
4 TEP's new RMR CTs in its existing assets; (ii) the inclusion of TEP's wholesale load in
5 its contestable load calculation; and (iii) the ability of TEP's Wholesale Marketing
6 department to conduct TEP's solicitation. TEP listed the issue as unresolved in order to
7 be able to address the issue in front of the Commission in the event that resolution of any
8 of the three terms changed. As noted in my November 4, 2002 testimony, Staff's report
9 reversed the resolution of two of the three issues leaving only the inclusion of TEP's
10 wholesale load intact.

11 Q: Why does TEP request that its Wholesale Marketing department be allowed to conduct
12 the solicitation?

13 A: As discussed in my November 4, 2002 testimony, in light of the absence of any TEP
14 affiliate that could be involved in the process and the fact that the TEP procurement
15 functions currently fall into this group's purview, the requirement to prohibit this group
16 from participating would disadvantage TEP and impose an uneconomic and unnecessary
17 consequence on TEP.

18 Q: How would this disadvantage TEP and impose such burdens?

19 A: TEP's Wholesale Marketing department manages TEP's load and resources. In that
20 capacity, it performs the procurement of electricity and fuel by evaluating the operational
21 and economic terms of such procurement. While at times the economic evaluation can be
22 fairly straightforward, it often involves complex products that require detailed modeling
23 and market analysis. Further, the operational requirements of TEP's load and resources
24 require detailed and specific knowledge. It is TEP's Wholesale Marketing department
25 that has this knowledge and therefore the best ability to evaluate TEP's needs and assess
26 the solicitation options. If TEP must use others for this evaluation, TEP would lose this
27 critical knowledge and would incur increased (and unnecessary) costs by creating a
28 duplicate department that would be conducting the same analyses and tasks. Given the
29 lack of any TEP affiliate, the apparent prohibition on TEP's Wholesale Marketing

1 department provides no benefit to the process whatsoever and makes no sense. It should
2 be noted that no party to the workshops contested TEP's recommendation that its
3 wholesale group be allowed to conduct the solicitation process. Indeed, it appeared that
4 the recommendation was unanimously agreed upon.

5 Q: How does this change on the role of TEP's Wholesale Marketing department affect
6 TEP's position on its amount of Contestable Load?

7 A: If the other two issues are resolved to TEP's satisfaction – specifically that TEP's two
8 newest RMR CTs are included in its existing assets and TEP's Wholesale Marketing
9 department can conduct the solicitation – TEP will continue to include its wholesale load
10 in calculating its contestable load and commit to the capacity and energy quantities
11 provided in the workshops. Absent a favorable resolution of these issues for TEP, TEP
12 will take the position that its unmet needs should not be calculated including FERC
13 jurisdictional Market-Based Tariff Wholesale Agreements.

14 Q: Does the inclusion of TEP's wholesale load in calculating its unmet needs infer any
future rate-making treatment of the energy purchased in the solicitation?

15 A: No. The inclusion of the wholesale load was discussed in the workshops as a way to
16 address the existence of TEP wholesale contracts and to provide TEP with some amount
17 of load to bid in the solicitation process. Even though the wholesale load is under TEP's
18 market-based tariff – and *not* under a cost of service tariff – it was Staff's position that if
19 TEP did not include its wholesale load, Staff would contend that an equal amount of
20 TEP's existing generation assets should be set aside and not included in calculating
21 unmet needs – even though Decision No. 65154 contemplated that such assets should be
22 included in the contestable load calculation. The resulting unmet need is the same
23 regardless of whether wholesale load is included or an equal amount of existing
24 generation is excluded. In a spirit of compromise and for ease of computation, TEP
25 agreed to the inclusion of wholesale load. The fact that TEP's market-based wholesale
26 contracts were not moved to an affiliate should not unfairly disadvantage TEP.
27

28 Q: Does the inclusion of TEP's wholesale load in calculating its unmet needs infer the
inclusion of this or new wholesale load in future solicitations?

1 To the extent that load is served pursuant to capacity or energy
2 contracts with Qualifying Facilities or Environmental Portfolio
3 Standard requirements, that load will also not be contestable. All
4 demand-side management commitments in place as of September
5 1, 2002, shall be considered in determining contestable load.”

- 6 2. Waive the applicability of Section IV. C, paragraph 1 [lines 10-19]
7 of the Staff Report with respect to TEP, thus allowing TEP’s
8 Wholesale Marketing department to be involved in the solicitation
9 process.

10 Q: Does this conclude your testimony?

11 A: Yes.

37

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

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

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

7)
8 IN THE MATTER OF THE GENERIC) DOCKET NO.
PROCEEDING CONCERNING THE) E-00000A-01-0630
9 ARIZONA INDEPENDENT SCHEDULING)
ADMINISTRATOR.)

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

13

At: Phoenix, Arizona

14

Date: November 21, 2002

15

Filed: **DEC - 9 2002**

16

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

VOLUME I

(Pages 1 through 210)

19

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ARIZONA REPORTING SERVICE, INC.

Court Reporting

Suite Three

2627 North Third Street

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23

By: DAWNA J. BOSWELL, RPR
Certified Court Reporter
Certificate No. 50326

24

Prepared for:

25

TEP

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ARIZONA REPORTING SERVICE, INC.
Realtime Specialists

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Phoenix, AZ

1 waivers that TEP is requesting it be granted with
2 regard to what otherwise would be required of it under
3 the Track B solicitation for 2003. My question to you
4 is going to be, and I'd like you to take a moment to
5 examine his testimony, does the Staff have a position
6 on the two waivers that TEP has requested.

7 A. (BY MR. JOHNSON) I think Mr. Smith should
8 address this question.

9 A. (BY MR. SMITH) In regard to request for
10 waiver number 1, I believe Staff Exhibit 5 would be in
11 conflict with granting such a waiver.

12 Q. You say would be inconsistent with granting
13 such a waiver?

14 A. (BY MR. SMITH) Yes, because we are using a
15 different set of contestable numbers.

16 I don't see, I don't see there being at issue
17 here TEP's wholesale marketing department being
18 allowed to participate and be involved in the
19 solicitation.

20 Q. Mr. Smith, let me ask you, in making your
21 response -- I'm sorry, I'll go back to Mr. Johnson.
22 Mr. Johnson, my follow-up question to Mr. Smith's
23 response would be in making his response, was he
24 assuming as a factual predicate TEP's contention that
25 it does not have any affiliate that it might be

38

**STAFF REPORT ON TRACK B:
COMPETITIVE SOLICITATION
DOCKET NOS E-00000A-02-0051 ET AL.**

OCTOBER 25, 2002

1 and the Independent Monitor will review forecast data provided by interested parties and compare
2 it to the forecasts provided by the utility when assessing the system needs.

3 **E. Commission**

4
5 The Commission may upon request of the Independent Monitor or at such time or times as
6 it deems appropriate, suspend or terminate the Solicitation in order to remedy any defect in the
7 solicitation process identified by the Independent Monitor. The Commission may order the utility
8 conducting the Solicitation to make changes to the solicitation process it deems necessary to
9 promote effectiveness, reasonableness, and fairness.

10 In the event that the Independent Monitor finds that the utility failed to conduct the
11 solicitation in an equitable manner, the Commission, after notice and hearing, may, among other
12 things, disallow the recovery of costs of power incurred pursuant to contracts entered as a result
13 of this Solicitation as well as the costs of conducting the solicitation or bar any bidder inequitably
14 awarded a contract as a result of the solicitation from bidding in any subsequent solicitation. If
15 the Commission finds that the utility failed to conduct an appropriate solicitation, it may order
16 that a new solicitation, conducted by an independent party, be commenced forthwith.

17 **III. Pre-Solicitation**

18
19 **A. Overview of process**

20
21 In order to be ready to conduct a solicitation by March 1, 2003, as required by the Track A
22 order, the utility must assemble information supporting the determination of products to be
23 solicited and the amount of each product that is needed. The utility must be prepared to evaluate,
24 without delay, all offers presented, including offers to deliver power to points that may differ
25 from the utility's requested points of interconnection. The required data typically collected in the
26 ordinary course of business will serve as the basis for all information to be provided to the Staff,
27 Independent Monitor and bidders, though some will need to be modified to be suitable for the

1 solicitation. To facilitate a timely solicitation, the utility should begin assembling the necessary
2 information without delay.

3 **B. Data Collection**

4
5 Prior to preparation of solicitation materials, supporting data shall be assembled by the
6 utility and provided to the Staff and the Independent Monitor for their review at the earliest date
7 practicable. These data shall include resource plans, load, price, and cost forecasts, and a network
8 transmission assessment containing such information and in formats acceptable to the Staff,
9 designed to facilitate the solicitation process. Once the Staff and the Independent Monitor have
10 completed their review, the following data shall be made available to bidders expressing intent to
11 bid and who have signed a confidentiality agreement: load forecasts, resource plans, needs
12 assessments, and transmission assessments, as appropriate. Price and cost forecasts for power
13 supplies and fuel costs prepared by, or available to the utility, will not be made available to
14 bidders. Bidders may provide comments to the Staff or Independent Monitor on the quality or
15 completeness of any information provided at any time.

16 In preparation for the solicitation, each utility shall prepare a list of potential bidders to
17 whom bid materials will be sent. That list should be as expansive as is reasonable. Once
18 assembled, that list is to be provided to the Staff and the Independent Monitor and posted on the
19 solicitation website. Identified potential bidders are to be contacted and invited to submit a letter
20 ~~of intent to bid~~. Prospective bidders not identified by the utility will be added to the bidders list
21 by submitting a letter of intent to bid.

22 **C. Resource Plans**

23
24 Prior to the first solicitation, each utility that will solicit power during 2003 must provide
25 to the Staff and the Independent Monitor its current 10-year load and energy forecast and resource
26 plan. Utility personnel must be made available to discuss the load forecast and resource plans
27 with the Staff and the Independent Monitor.

1 The Resource Plan must describe all power sources currently employed to meet load
2 including: generation owned by the utility, existing power supply contracts with affiliated and
3 non-affiliated utilities, planned additions and retirements, contract expirations, loads to be met
4 through the use of demand side management and contracts to satisfy the Environmental Portfolio
5 Standard. The Resource Plan should identify RMR plants, the hours during which such plants are
6 RMR, and the criteria employed to determine RMR. Additionally, the Resource Plan should
7 detail the utility's planned outage schedule and any planned unavailability of power from contract
8 suppliers. Planned reserve requirements shall also be specifically identified.

9 The utility will review with the Staff and the Independent Monitor the adequacy of
10 resources committed to serve expected loads and the reliability of the resources planned to serve
11 that load.

12 Based on the utility's load and energy forecast and the resource plan, the utility will
13 develop a needs assessment. The needs assessment will be designed to identify specific capacity
14 and energy needs and such other services and/or facilities as may be needed over the term of the
15 load forecast.

16 The load forecast, resource plan and needs assessment will be reviewed with the Staff and
17 the Independent Monitor.

18 **D. Price & Cost Forecasts**

19
20 Each utility will provide to the Staff and the Independent Monitor its four-year forecast of
21 its power supply costs from its existing power sources.

22 Each utility shall provide to the Staff and the Independent Monitor the forecast of fuel
23 prices that the utility used in preparation of its power supply costs and all other fuel forecasts
24 relied on, or reviewed by, the utility.

25 Additionally, each utility shall provide to the Staff and the Independent Monitor a four-
26 year forecast of the prices of wholesale power products, including both capacity and energy
27 products by season and time period, in Western wholesale markets for delivery in Arizona
28 prepared by an independent source that makes such estimates available in the normal course of its

1 business. Each utility shall also provide to the Staff and the Independent Monitor copies of all
2 other forecasts of the prices of wholesale power supplies in Western wholesale markets for
3 delivery in Arizona in the possession of or reviewed by the utility. The utility shall identify the
4 source of each such forecast, and explain the strengths and weaknesses of each of the forecasts
5 supplied.

6 Potential bidders may also submit wholesale price forecasts to the Staff. Those forecasts
7 must clearly identify the source of the forecast and all assumptions relied on in preparing the
8 forecast.

9 All forecasts provided will remain confidential and will serve as the basis for certain
10 evaluative and review purposes as are discussed later in this document. During the reviews
11 described above, the Staff and the Independent Monitor will examine the assumptions relied on in
12 making the forecasts and assessments presented.

13 **E. Deliverability Qualifications**

14
15 The utility must provide Staff and the Independent Monitor with a listing of each
16 committed use of its transmission capacity for the period over which resources are to be solicited.

17 The utility will perform and submit for review by the Staff and the Independent Monitor a
18 network transmission assessment of the maximum resource capacity that can be physically and
19 reliably accommodated simultaneously at all technologically feasible interconnection and delivery
20 points. Such transmission limitations are to be used as a guide in the evaluation of deliverability
21 of specific combinations of bid resource capacity and energy.

22 Upon completion of this review, the utility will be responsible for preparing and
23 conducting a solicitation that encourages multiple bidders to respond to the solicitation. The
24 specifics of products to be solicited, contract terms and conditions, terms of the confidentiality
25 agreement, and the specific solicitation mechanics to be employed will be at the discretion of the
26 utility. In any event, the process must be designed to promote acquisition of reliable power at
27 reasonable costs over the long term.

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F. Identification of Products

Each utility shall determine the specific products it will contract for in order to maintain an appropriately structured power supply portfolio. For 2003, utilities may request bids for firm power (e.g. on-peak and off-peak, annual or seasonal, capacity and energy blocks), and unit contingent supplies, as appropriate. Additionally, to the extent required, solicitations for ancillary services including, but not limited to, load following or spinning reserves, may be undertaken. It is, anticipated that bidders will provide all ancillary services required to support their bids. If the utility provides ancillary services to any generating asset not in its rate base, the utility shall make those ancillary services available to all bidders on the same terms and at the same price as available to those assets.

In identifying the products to be contracted for, the utility will specifically define the capacity and energy sought on a time-differentiated basis and the periods for which services will be purchased. The solicitation materials will contain the terms and conditions proposed by the utility, including the right of the utility to reject all bids and to amend the request for service without notice. The solicitation materials shall include a model contract.

IV. Preparation Of Initial Solicitation

A. Overview

The materials to be provided to potential bidders shall be prepared by the utility and shall be developed in a manner that facilitates the preparation of responsive and competitive bids. The materials must be accurate and sufficiently detailed so that no bidder is afforded an undue advantage. The terms and conditions must be reasonable and commercially acceptable and must be reviewed by the Independent Monitor and the Staff.

39

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

FILE
ORIGINAL

IN THE MATTER OF THE GENERIC)	DOCKET NO. E-00000A-02-0051
PROCEEDINGS CONCERNING ELECTRIC)	
<u>RESTRUCTURING ISSUE.</u>)	
IN THE MATTER OF ARIZONA PUBLIC)	DOCKET NO. E-01345A-01-0822
SERVICE COMPANY'S REQUEST FOR A)	
VARIANCE OF CERTAIN REQUIREMENTS OF)	
<u>A.A.C. R14-2-1606.</u>)	
IN THE MATTER OF THE GENERIC)	DOCKET NO. E-00000A-01-0630
PROCEEDINGS CONCERNING THE ARIZONA)	
INDEPENDENT SCHEDULING)	
<u>ADMINISTRATOR.</u>)	
IN THE MATTER OF TUCSON ELECTRIC)	DOCKET NO. E-01933A-02-0069
POWER COMPANY'S APPLICATION FOR A)	
VARIANCE OF CERTAIN ELECTRIC)	
<u>COMPETITION RULES COMPLIANCE DATES.</u>)	

TRACK B REBUTTAL TESTIMONY

OF

ALAN KESSLER

ON BEHALF OF

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

November 18, 2002

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A. As explained in the Staff Report at Page 7, the estimates contained in the Staff Report were based on information provided to the Staff by the utilities during the August workshops. The Staff used the capacity requirement and an average system capacity factor provided by the utilities to develop the estimate of unmet needs as presented in the Staff report. The Staff did not attempt to establish precise estimates of the contestable capacity or energy requirements for either utility because unmet needs are fluid. Under the Staff's approach, contestable load and energy would be adjusted during the Pre-Solicitation phase of the process to accommodate changes in projected load and system economics. Final unmet needs are expected to be quantified prior to the issuance of the initial solicitation.

Q. Did the utilities adopt that definition in preparing their needs assessments filed November 4, 2002?

A. No. In particular APS defined unmet needs as the difference between its forecast load and all capacity and energy it was physically capable of producing, irrespective of the cost of that generation.

Q. Did this create a significant difference between what the Staff proposed as unmet needs and what APS proposed?

A. Yes. The current APS approach significantly reduced the amount of energy APS proposed to solicit from what the company identified during the workshop.

Q. Would the APS approach mean that APS would not competitively acquire any significant amount of energy in the 2003 solicitation ?

40

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE GENERIC)
4 PROCEEDING CONCERNING ELECTRIC) DOCKET NO.
5 RESTRUCTURING ISSUES.) E-00000A-02-0051

6 IN THE MATTER OF ARIZONA PUBLIC) DOCKET NO.
7 SERVICE COMPANY'S REQUEST FOR) E-01345A-01-0822
8 VARIANCE OF CERTAIN REQUIREMENTS)
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13 IN THE MATTER OF TUCSON ELECTRIC) DOCKET NO.
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15 A VARIANCE OF CERTAIN ELECTRIC)
16 COMPETITION RULES COMPLIANCE)
17 DATES.)

18 At: Phoenix, Arizona

19 Date: November 22, 2002

20 Filed: DEC - 9 2002

21 REPORTER'S TRANSCRIPT OF PROCEEDINGS

22 VOLUME II
(Pages 211 through 415)

23 ARIZONA REPORTING SERVICE, INC.
24 Court Reporting
25 Suite Three
2627 North Third Street
Phoenix, Arizona 85004-1103

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27 Prepared for: By: DAWNA J. BOSWELL, RPR
28 Certified Court Reporter
29 Certificate No. 50326

30 TEP

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1 A. (BY MR. SMITH) Certainly the reserve
2 requirements are in place to address the issue you are
3 describing to some degree, and certainly there is a
4 need to make sure from a reserve perspective that
5 there are units locally that could avoid customers'
6 service being interrupted should there be an outage on
7 units providing the RMR service.

8 Q. And that's a factor that TEP should consider
9 in, or potentially consider in analysis of bids for
10 RMR service?

11 A. (BY MR. SMITH) That is a factor you would
12 consider whether you were bidding or self-providing.

13 Q. Let me have you look at Staff Exhibit 5 for
14 just a second. I want to direct you down to the last
15 line, actually, the second to the last line of the
16 lower table, the local generation supplied statement.

17 A. (BY MR. SMITH) Yes, I see that.

18 Q. My understanding was that you clarified that
19 to be RMR, local RMR generation, is that correct?

20 A. (BY MR. SMITH) That is correct. And in
21 fact, what I want to make sure is clear, we're trying
22 to build some consistency in our testimony here and
23 what is occurring in the RMR study effort. We will be
24 issuing a Biennial Transmission Assessment in a very
25 detailed fashion describing RMR conditions, and we are

1 expecting that definition to apply as we move forward
2 with contestable load assessments as well.

3 Q. Okay. I think yesterday you testified that
4 the zeros on that line are to be determined, but that
5 you estimated the line may be at least 1,000 gigawatt
6 hours, is that correct?

7 A. (BY MR. SMITH) That is what I have stated.

8 Q. And that assumes 1,000 gigawatt hours RMR
9 energy, is that correct?

10 A. (BY MR. SMITH) That, the 1,000 gigawatt
11 hours was based upon local generation, annual
12 generation. I at this point do not know what
13 percentage of that would be RMR capacity and energy.
14 Certainly the capacity, no, but the energy is in
15 question.

16 Q. Okay. So if the assumption that, if that
17 assumption is wrong, then that amount could be
18 significantly lower, is that correct?

19 A. (BY MR. SMITH) It would be whatever the RMR
20 energy production really is.

21 Q. Okay. And I understand that Staff intends to
22 further investigate that issue, is that correct?

23 A. (BY MR. SMITH) That is correct.

24 Q. If I told you that the October 2002 Draft
25 Biennial Transmission Assessment at page 77 stated

1 that TEP's annual RMR energy was 180 gigawatt hours,
2 would you have reason to disagree with that subject to
3 check?

4 A. (BY MR. SMITH) Given that we're working on
5 that report right now, that sounds about right, the
6 number I've been seeing in the report.

7 Q. Okay. So that could be the number there
8 instead of a thousand?

9 A. (BY MR. SMITH) I want to qualify my here
10 answer. The reason we have an RMR study ongoing is to
11 update and provide clarifying numbers that reconcile
12 any questions.

13 Q. That number could be as accurate as your
14 1,000 gigawatt hours?

15 A. (BY MR. SMITH) Correct. And by the way, the
16 1,000 gigawatt hours is really not my number. It was
17 taken from a historical number provided in data
18 requests from TEP for the year 2001.

19 Q. And I believe that number included RMR energy
20 and possibly some other energy, is that correct?

21 A. (BY MR. SMITH) It excluded economy sales, so
22 I would assume that it probably was some portion of
23 economic dispatch and another portion that was RMR
24 energy.

25 MR. PATTEN: Thank you, Mr. Smith. Thank

1 BEFORE THE ARIZONA CORPORATION COMMISSION

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17 DATES.)

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19 Date: November 25, 2002

20 Filed: DEC 11 2002

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By: MICHELE E. BALMER, RPR
Certified Court Reporter
Certificate No. 50489

Prepared for:

TEP

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1 introducing an element of fiction into this proceeding?

2 A. It is my opinion that it's not -- it would
3 provide no benefit by including those numbers. In a
4 longer term look at providing RMR capacity and energy
5 that does have a place, but not in this first
6 solicitation.

7 Q. You've anticipated my next question, which was
8 do you see any public benefit in including those
9 numbers in this solicitation?

10 A. No. I do not.

11 Q. But I think you indicated to Mr. Mumaw,
12 perhaps, that there is a downside to the company if
13 those numbers are -- or at least a potential downside
14 from a financial point of view if those numbers are
15 included?

16 A. Yes. There seems to be a perception by the
17 banking community that it is detrimental to TEP by
18 including such large numbers as 758 megawatts of
19 contestable capacity in the 2003 solicitation.

20 Q. Mr. Hutchens, is it clear to you whether the
21 Staff intends to issue an estimate of contestable RMR
22 load before the RMR studies are complete, or whether
23 they intend to do that afterwards?

24 A. That I'm not sure. I would imagine that
25 through the process that TEP would estimate those RMR

1 needs before the RMR studies so that it can get the
2 solicitation going down the road, and then would true
3 up those numbers after the RMR study and requisite
4 comments and adjustments to that study.

5 Q. Which would you prefer? For the studies to be
6 complete before any estimates are issued or the other
7 way around?

8 A. Well, certainly the studies should be complete
9 before -- in my opinion, the studies should be
10 completed first.

11 Q. Is that a strong recommendation?

12 A. Yes.

13 MR. MEEK: That's all, Your Honor.

14 ALJ WOLFE: Thank you, Mr. Meek.

15 Mr. Robertson?
16

17 CROSS-EXAMINATION
18

19 Q. (BY MR. ROBERTSON) Good morning, Mr. Hutchens.

20 A. Good morning.

21 Q. It's been a real love-fest for you so far. I
22 don't know if I'll be able to continue that, but we'll
23 see how it goes.

24 You indicated in the oral remarks that you made
25 this morning in response to certain questions from

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BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
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**IN THE MATTER OF THE GENERIC
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**ISSUES IN THE MATTER OF TUCSON
ELECTRIC POWER COMPANY'S
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COMPLIANCE DATES**

Docket No. E01933A-02-0069

TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: NEEDS ASSESSMENT AND PROCUREMENT PROPOSAL

NOVEMBER 4, 2002

TEP 1

1 Q: Please describe TEP's wholesale contracts included in the load forecast.

2 A: TEP has three wholesale contracts that are included in the "Wholesale Load" line on the
3 Exhibit 3 and in the load demand forecast calculations in Exhibit 5. All three are sales
4 agreements under TEP's Market Based Sales Tariff and include 100 MW sale of capacity
5 and energy to SRP, a full-requirements capacity and energy sale to Navajo Tribal Utility
6 Authority and a 60 MW sale to Phelps Dodge Energy Services.

7 **TEP'S CONTESTABLE LOAD**

8 Q: Please summarize the contestable load results.

9 A: Exhibit 1 provides the TEP's Contestable Load for 2003 through 2006 as discussed in the
10 Track B workshop process and calculated using the above described process. TEP
11 believes that this is the appropriate contestable load to use for the solicitation process.

12 Q: Are these the same numbers supplied to the parties in the Track B workshops?

13 A: Yes. In fact, both Exhibits 1 and 3 hereto had been provided to Staff and the other parties
14 at the Track B workshops. Exhibit 1 is simply a tabulation of the data from the Exhibit 3
15 graphs.

16 Q: Does the Staff's October 25, 2002 Report on Competitive Solicitation reflect the same
17 Contested Load for TEP?

18 A: No. Staff has changed the amount of TEP's contestable load that the parties discussed in
19 the Workshop.

20 Q: Did Staff recognize the apparent agreement of the parties on the amount of TEP's
21 contestable load?

22 A: Apparently not. TEP was under the impression that the Contestable Load, as presented in
23 Exhibit 1, was accepted by all parties participating in the workshop. In particular, Staff
24 did not list TEP's unmet needs as an area of dispute on Staff's issue list submitted on
25 October 1, 2002. On the other hand, Staff did list APS's unmet needs as an area of
26 dispute.

Exhibit 1. TEP Contestable Load

Includes Two Newest RMR CTs in TEP's Existing Assets

	2003	2004	2005	2006
Capacity (MW)	147	214	346	393
Energy (GWh)	14	14	57	58

Includes Firm Wholesale Contracts as Load

Exhibit 2. TEP's Contestable Load without Two Newest RMR CTs

	2003	2004	2005	2006
Energy (GWh)	50	46	120	104

Includes Firm Wholesale Contracts as Load

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BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER**

**IN THE MATTER OF THE GENERIC
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Docket No. E-00000A-02-0051

**IN THE MATTER OF ARIZONA PUBLIC
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Docket No. E-01345A-01-0822

**IN THE MATTER OF THE GENERIC
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Docket No. E-00000A-01-0630

**IN THE MATTER OF TUCSON ELECTRIC
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VARIANCE OF CERTAIN ELECTRIC POWER
COMPETITION RULES COMPLIANCE
DATES**

Docket No. E-01933A-98-0471

**ISSUES IN THE MATTER OF TUCSON
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ON BEHALF OF

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RE: NEEDS ASSESSMENT AND PROCUREMENT PROPOSAL

NOVEMBER 4, 2002

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23 Exhibit 1, was accepted by all parties participating in the workshop. In particular, Staff
24 did not list TEP's unmet needs as an area of dispute on Staff's issue list submitted on
25 October 1, 2002. On the other hand, Staff did list APS's unmet needs as an area of
26 dispute.

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**STAFF REPORT ON TRACK B:
COMPETITIVE SOLICITATION
DOCKET NOS E-00000A-02-0051 ET AL.**

OCTOBER 25, 2002

1 **D. Detailed Staff Proposed Solicitation Process**

2
3 **I. Scope Of 2003 Solicitation**

4
5 For 2003, the solicitation will be for all load and energy requirements not served by
6 generation owned by the utility and included in the utility's rate base as of September 1, 2002,
7 except to the extent that such generation is providing RMR service during RMR hours or by
8 power supplied pursuant to FERC or Commission approved contracts with affiliated and non-
9 affiliated suppliers entered into prior to September 1, 2002. To the extent that affiliated suppliers
10 provide service pursuant to contracts dated on or after September 1, 2002, such service will be
11 subject to competitive solicitation except to the extent that such contract is to provide RMR
12 service during RMR hours. To the extent that load is served pursuant to capacity or energy
13 contracts with Qualifying Facilities or Environmental Portfolio Standard requirements, that load
14 will also not be contestable. Any generation capacity owned by a utility that has not been
15 included in the utility's rate base may be bid by the utility in the initial solicitation on the same
16 terms and conditions as all other bidders, including affiliated bidders. All demand-side
17 management commitments in place as of September 1, 2002, shall be considered in determining
18 contestable load.

19 For solicitations during 2003, each utility may contract for energy and capacity deliveries
20 for differing time periods in order to test the efficiency of this process for acquiring short-term,
21 medium-term and long-term contracts. While it is anticipated that during 2003 each utility will
22 primarily require peaking capacity and energy with contract terms of one to three years, if, in the
23 judgment of the utility, market conditions or economic opportunities dictate contract terms longer
24 than three years, it will be the responsibility of the utility to enter into such contracts as are
25 reasonable. For resource planning purposes each utility must demonstrate that its power supply
26 portfolio contract durations are adequately diversified and that its portfolio's structure mitigates
27 both cost and reliability risks appropriately.

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**STAFF REPORT ON TRACK B:
COMPETITIVE SOLICITATION
DOCKET NOS E-00000A-02-0051 ET AL.**

OCTOBER 25, 2002

1 Based on information available at this time, contestable loads for each utility for each year
2 through 2006 are estimated to be:

3 CAPACITY (MW)

	2003	2004	2005	2006
APS ¹	1951	2289	2628	2898
TEP ²	242	309	441	488

4
5 ENERGY (MWH)

	2003	2004	2005	2006
APS ³	6,566,910	7,704,591	8,845,638	9,754,436
TEP ⁴	345,300	345,460	388,460	389,460

6
7 The above capacity numbers for APS were provided by APS at the August workshop and
8 were used by Staff to derive the energy numbers. Staff was subsequently informed by APS that
9 the numbers provided at the August workshop required revision. In response to a data request
10 from Staff, APS provided revised capacity and energy numbers on October 23, 2002. Staff has
11 not had time to review and analyze these numbers for inclusion in the Staff report by the October
12 25, 2002 publication date. APS' response to Staff's data request is included in this report as
13 Appendix Two.

14 **II. Roles & Responsibilities**

15
16 **A. Utility**

17

¹ Source: From data provided by APS at the August Workshop.

² Source: From data provided by TEP at the August Workshop, plus 95 MW of combustion turbines that are not presently in rate base.

³ Assumes 38.6% average annual load factor for all contestable capacity.

⁴ From August data provided by TEP plus 95 MW combustion turbines at 40% average annual load factor.

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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

Docket No. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
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Docket No. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
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Docket No. E-00000A-01-0630

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COMPANY'S APPLICATION FOR A
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COMPETITION RULES COMPLIANCE
DATES

Docket No. E-01933A-98-0471

ISSUES IN THE MATTER OF TUCSON
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APPLICATION FOR A VARIANCE OF
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COMPLIANCE DATES

Docket No. E01933A-02-0069

TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: NEEDS ASSESSMENT AND PROCUREMENT PROPOSAL

NOVEMBER 4, 2002

TEP 1

- 1 Q: How did the Staff Report change TEP's contestable load?
- 2 A: Staff did not include the RMR CTs added in 2001, discussed more fully above, as
3 existing assets in calculating the contestable load. Further, Staff used a 40% capacity
4 factor on these two RMR CTs in calculating the contestable load.
- 5 Q: Is a 40% capacity factor for these CT's accurate?
- 6 A: No. This is several times higher than TEP's forecast capacity of these units.
- 7 Q: Has TEP looked at what its contestable load would be without including the two new
8 CTs?
- 9 A: Yes. After reading Staff's report, TEP ran its needs assessment again excluding the two
10 newer RMR CTs as existing assets. Exhibit 2 shows the resulting amount of contestable
11 energy by year based on the same forecast and assumptions.
- 12 Q: Does the exclusion of the two CTs from existing assets preclude TEP from bidding that
13 capacity into the Solicitation?
- 14 A: No. However, as was discussed at length in the workshops, it unnecessarily complicates
15 the bidding process. TEP is a single economic entity that owns both of the CTs in
16 question. There is no affiliate involved with those units and there will be no rate impact
17 if the units are included in the solicitation because TEP's rates are frozen through 2008.
18 In fact, because the CTs are RMR units located within TEP's load pocket, it makes their
19 capacity impossible to replace with other assets in the solicitation process. In order for
20 TEP to "bid" this capacity and energy to itself, TEP would be required to set up a
21 separate group at TEP to perform the solicitation activities as currently prescribed by
22 Staff's report. It therefore creates a complicated bidding process that has no benefit to
23 any party and does not affect the solicitation outcome in any way.
- 24 Q: Why would TEP require a separate group to perform the solicitation?
- 25 A: Staff's current report requires that TEP's Wholesale Marketing department be excluded
26 from the procurement process. This is an unnecessary operational hurdle for TEP given
27 the fact that this is the group that manages TEP's load and resources and has the best
8 ability to evaluate TEP's needs and assess the solicitation bids. If this requirement is

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

FILE
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IN THE MATTER OF THE GENERIC)	DOCKET NO. E-00000A-02-0051
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<u>COMPETITION RULES COMPLIANCE DATES.)</u>	

TRACK B REBUTTAL TESTIMONY

OF

JERRY D. SMITH

ELECTRIC UTILITIES ENGINEER

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

November 18, 2002

1 **Q. Mr. Robert Kendall suggests that the competitive solicitation process is an ideal**
2 **mechanism to use to identify any generation solutions that could help resolve local**
3 **transmission import constraints and associated RMR conditions.⁷ Does Staff agree?**

4 A. Yes, Staff agrees with Mr. Kendall on this point. In fact, his reference to Track A
5 Decision No. 65154 ordering that APS and TEP work with Staff to develop a study plan
6 to resolve RMR generation concerns and include the resulting plans in the 2004 Biennial
7 Transmission Assessment is on point. Including RMR capacity and energy as contestable
8 load in the 2003 competitive solicitation will offer a market response reference for Staff
9 regarding the relative economic and environmental merits of generation solutions to the
10 transmission import constraint. Such a comparison is most important before finalizing the
11 ten-year RMR study plan results to be incorporated into the 2004 Biennial Transmission
12 Assessment.

13
14 **TREATMENT OF RMR IN CONTESTIBLE LOAD DETERMINATION**

15 **Q. How does Staff propose RMR capacity and energy be handled in the contestable**
16 **load determination?**

17 A. Staff recommends that APS and TEP RMR capacity and energy be added to the
18 contestable load tables provided at page 7 of the Track B Staff Report.

19
20 **Q. How does Staff propose to determine what quantity of APS and TEP RMR capacity**
21 **and energy should be included in Staff's definition of contestable load for the 2003**
22 **competitive solicitation?**

23 A. Staff agrees with Mr. Ewen that his metro Phoenix RMR figures should serve as a place
24 holder until completion of the RMR study to be filed with the Commission by January 31, 2003.⁸
25 The capacity need identified as "RMR Need" and the energy identified as "Total Energy" in Mr.
26 Ewen's Metro Phoenix Reliability Must Run Estimates should be used for this purpose.⁹ Staff's
27

28 ⁷ Direct Testimony, Welton-Mohawk Generation Facility, Robert W. Kendall, November 12, 2002, page 24.

⁸ Track B Testimony, APS, Peter M. Ewen, November 4, 2002, page 21.

⁹ Work Papers, APS Metro Phoenix Reliability Must Run Estimates, Peter M. Ewen, November 4, 2002, page 76

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

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Phoenix, Arizona 85004-1103

26 Prepared for: By: DAWNA J. BOSWELL, RPR
27 Certified Court Reporter
28 Certificate No. 50326

29 TEP

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1 Q. So the RMR study is just to determine an RMR
2 load and number, is that correct?

3 A. I would say it has a two-fold purpose. For
4 the Track B purpose, it serves to refine the RMR
5 contestable load numbers, but it also has a second
6 purpose, and that is to establish what is the proper
7 selection of choices to resolving the transmission
8 import constraint on a forward-moving basis. And that
9 in effect was the requirement of the Track A decision
10 requiring that that be filed, the plans resolving
11 transmission and import constraints be filed in the
12 2004 Biennial Transmission Assessment.

13 Q. And that's Staff's understanding or
14 interpretation of the Track A Order, is that correct?

15 A. (BY MR. SMITH) Yes, that's correct.

16 Q. Let me get a little more specific on the
17 contestability of RMR load. First, is the utility's
18 RMR load contestable even if that load is currently
19 being served by the utility's existing assets?

20 A. (BY MR. SMITH) That is what we're proposing.

21 Q. And that is still true even if those existing
22 assets are in rate base?

23 A. (BY MR. SMITH) That is accurate.

24 Q. What if the RMR load is currently being met
25 by a contract with a supplier? Is that a contestable

48

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 IN THE MATTER OF THE GENERIC) DOCKET NO.
3 PROCEEDING CONCERNING ELECTRIC) E-00000A-02-0051
4 RESTRUCTURING ISSUES.)

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

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

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

13 At: Phoenix, Arizona
14 Date: November 27, 2002
15 Filed: **DEC 11 2002**

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 VOLUME V
18 (Pages 849 through 965)

19 ARIZONA REPORTING SERVICES, INC.
20 Court Reporting
21 Suite Three
22 2627 North Third Street
Phoenix, Arizona 85004-1103

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23 By: MICHELE E. BALMER, RPR
24 Certified Court Reporter
Certificate No. 50489

24 Prepared for:

25 TEP

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1 ALJ WOLFE: Mr. Meek, as a party to this case,
2 you would certainly be able to communicate with Staff
3 and find out whether they had any plans to make those.
4 They are not under any requirement to do so.

5 MR. KEMPLEY: I would be happy to respond --

6 ALJ WOLFE: Please.

7 MR. KEMPLEY: -- to Mr. Meek's statement
8 because it provides a segue to something that I needed
9 to say anyway.

10 At this time Staff doesn't have any intent to
11 issue a modified Staff Report. I guess in large part
12 because we don't think that would be a fruitful
13 exercise during the period while we're awaiting a
14 recommended opinion and order. And whether the order
15 that the Commission ultimately issues somehow requires
16 some amended Staff Report or not, I guess is something
17 that the Commission can consider.

18 We don't see any need to tinker with the
19 specific language of the Staff report, notwithstanding
20 the fact that it may not be adopted as written by the
21 Commission.

22 But I do want to make a statement with regard
23 to Exhibit S-5, because the cross-examination on that
24 exhibit leads Staff to the viewpoint that we intend to
25 file as a late-filed exhibit a corrected version of

1 Exhibit S-5 which will encompass two changes from
2 Exhibit S-5 as it stands before you.

3 The first change is -- both of them are under
4 the energy section. The APS short-term hedge amounts
5 will be deleted from Exhibit S-5 based on Staff's
6 recognition that the contracts that are encompassed in
7 the short-term hedge that were represented to us as
8 hedging contracts are, in fact, take-or-pay contracts.
9 So that will be deleted.

10 And with respect to Tucson Electric Power, an
11 amount will be included under the category of economy
12 purchase to recognize that Tucson Electric Power and
13 APS should be treated in an equivalent manner as was
14 established and discussed on cross. Simply there was a
15 series of misunderstanding that led to a zero figure on
16 Exhibit S-5 as it was previously presented. And there
17 will be a figure on the corrected S-5.

18 I would suggest that the parties have an
19 opportunity, of course, to object to that corrected
20 exhibit. And if it came to that, we would be available
21 for examination at a later time on the exhibit. I
22 certainly don't think it would come to that.

23 ALJ WOLFE: Okay.

24 MR. MUMAW: Mr. Kempley, may I also inquire,
25 during Mr. Smith's cross-examination, I believe he

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

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

18 At: Phoenix, Arizona
19 Date: November 25, 2002
20 Filed: **DEC 11 2002**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME III
(Pages 416 through 718)

ARIZONA REPORTING SERVICES, INC.
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24 Prepared for:

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1 voltage support within TEP's constrained area, which
2 cannot be met with plants and, you know, a fair bit of
3 distance from TEP.

4 MR. MOYES: Thank you. Those are all of the
5 questions that I have, Your Honor.

6 ALJ WOLFE: Thank you, Mr. Moyes.

7 Mr. Engleman?

8 MR. ENGLEMAN: Thank you.

9

10 CROSS-EXAMINATION

11

12 Q. (BY MR. ENGLEMAN) Mike Engleman on behalf of
13 Panda. Mr. Hutchens, first of all, I wanted to say on
14 the record, thanks for your participation in the
15 workshops. It was appreciated and useful.

16 A. You're welcome.

17 Q. One or two quick questions. We've heard a lot
18 of discussion both in Staff's testimony and already
19 this morning with your testimony about the term economy
20 energy.

21 Could you define it as you understand it?

22 A. Yes, I will. I guess simply stated my
23 definition of economy energy is a purchase of market
24 energy that is under the incremental cost of a
25 utility's marginal resource, be that either a unit or a

1 contract in the short-term or spot market.

2 Q. And when you say short-term, what term are you
3 referring to?

4 A. Roughly anywhere from an hour ahead to maybe as
5 far as seasonal-type, maybe two to three months. That
6 would be my estimate of those.

7 Q. If you could refer briefly to your rebuttal
8 testimony of November 18th at page 7, starting on
9 line 3.

10 There is a question there about reliance on
11 economy energy. And the question I had is, are the
12 contracts that you're referencing in the chart between
13 lines 11 and 12, are you referencing those as economy
14 purchases or something else?

15 A. No. I was referencing those as firm, longer
16 term purchases. We basically made those -- while the
17 term of the contract is short, those are what we call
18 our summer hedge purchases in those time frames, and
19 were made, oh, maybe three, four, five, up to six
20 months ahead of the summer season.

21 Q. Would you agree, Mr. Hutchens, that with the
22 Staff Report written as it is where it does not require
23 TEP to make any purchase as a result of the
24 solicitation, that there's no risk to TEP?

25 A. There may be no final risk. Although perceived

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DIRECT TESTIMONY OF THOMAS J. CARLSON

On Behalf of Arizona Public Service Company

Docket No. E-00000A-02-0051, et al.

November 4, 2002

1 in the workshops or contained within either the draft or final Staff Report. APS
2 has attempted to comply with this unexpected filing mandate to the best of its
3 ability within the time permitted.

4 IV. SHORT-TERM PROCUREMENTS

5 **Q. WILL EITHER THE 2003 RFP OR THE POSSIBLE AUCTION IN 2004**
6 **AND BEYOND, IF SUCCESSFUL, RESULT IN THE ACQUISITION OF**
7 **THE PRECISE AMOUNT OF ALL APS PURCHASE POWER UNMET**
8 **NEEDS FOR 2003 THROUGH 2006?**

9 A. Only under the most implausibly fortuitous circumstances would this be the
10 case. We are talking here about forecasted unmet needs, and the one thing we all
11 know about forecasts is that they will be "off" by some amount. The weather
12 will be hotter or cooler than forecast. Population influx will be more or less than
13 forecast. APS generating units will experience more or less forced outages.
14 Planned outages will be shortened, lengthened, postponed or accelerated.
15 Perhaps the biggest unknown is the degree to which retail access cuts into our
16 forecasted demand and energy.

17 I could go on, but I think I have made my point. APS will continuously make
18 short-term purchases to cover short positions and sell existing resources to
19 liquidate long positions. Even when resources are acquired well in advance,
20 there is a constant re-evaluation of their continued appropriateness from both a
21 need and cost perspective. APS also routinely makes economy purchases (i.e.,
22 purchases of energy that are made when it is less expensive to buy short-term
23 power from the market than it would be to continue generating power using
24 APS-owned generation) on a balance of month, day-ahead, and/or real-time
25 basis. None of these purchases can be reasonably planned years in advance and
26 even the ability to predict them given a specified load forecast involves

1 numerous unknown variables. And as is the case with those resources acquired
2 to meet capacity and energy reliability needs, these short-term economy
3 purchases are continually managed right up to the moment of expected use to
4 produce the best results for our customers.

5
6 **Q. HOW WOULD APS GO ABOUT MAKING SUCH PURCHASES?**

7 A. As indicated in the Staff Report, APS would continue to make such purchases in
8 the ordinary course of business as it does today. See Staff Report at 4. In the
9 specific case of economic purchases, these are cost-driven. Presently, most of
10 our load demand is met with baseload nuclear and coal fired generation. For
11 APS and much of the West, the marginal generating resource is gas-fired. APS
12 can either purchase gas to run in one of its own units or purchase gas-fired
13 generation. If APS can generate electricity at a lower cost than the then
14 anticipated market price of power, we normally secure forward gas (gas
15 purchased today for delivery at some future date) to meet that anticipated
16 economy energy need. Conversely, if forward purchase power (power purchased
17 today for delivery at some future date) costs were lower, we would normally
18 secure forward power and reduce forward gas purchases. Even after this initial
19 decision is made (gas versus purchase power), we continually monitor market
20 conditions, and our initial gas or power position may be liquidated and replaced
21 with its alternative many times until the time of anticipated use by APS to serve
22 customers.

23 At present, APS secures economy and other short-term purchases through the
24 following process. Forward markets for energy are presented to APS daily in a
25 myriad of ways, including direct contact with counter-parties, use of brokers,
26

1 and access with online trading systems. Each day, APS reviews its current
2 position and the value of the forward energy market and determines whether or
3 not to procure economy or other short-term energy. Factors such as weather,
4 load, credit, plant outages, natural gas prices (spot and future), and product type
5 all impact the procurement process. Economy purchases are driven primarily by
6 price and credit. Other short term and real time purchases are driven more by
7 price and reliability.

8
9 A few new procedures are being studied and may be added regarding affiliate
10 transactions. APS is looking at the practicality of securing short-term purchases
11 (30 days or less) from independent brokers and the use of "blind" (i.e., the
12 identity of specific pre-qualified sellers is not known to the buyer) electronic
13 trading platforms such as ICE and Bloomberg. APS already uses such devices
14 for some short-term purchases today and will consider expanding their use or
15 consider yet other process changes for affiliate transactions if they increase the
16 efficiency and transparency of its short-term purchasing practices and if they do
17 not compromise the ultimate goal of producing maximum consumer benefits.
18 And, in situations when there are unanticipated and immediate threats to
19 reliability, APS will do what is necessary when it is necessary to address that
20 threat.

21
22 V. RISK MANAGEMENT

23 Q. **PLEASE IDENTIFY THE TYPES OF RISK WHICH APS AND ITS**
24 **CUSTOMERS ARE FACED WITH BECAUSE OF THIS TRACK B**
PROCUREMENT?

25 A. Any restriction on the Company's ability to procure its power needs limits its
26 flexibility and increases risk. For example, waiting until March of 2003 to

51

**STAFF REPORT ON TRACK B:
COMPETITIVE SOLICITATION
DOCKET NOS E-00000A-02-0051 ET AL.**

OCTOBER 25, 2002

1 manage their power supply portfolios in a prudent manner. The process also preserves all of the
2 Commission's ability to regulate the actions of its jurisdictional companies in a way that best
3 serves the public interest.

4 The process described below is intended to be used by Arizona utilities, as applicable, in
5 the initial solicitation for competitive power to be commenced by March 2003. If adopted, the
6 Track A requirement of beginning a competitive solicitation by March 2003 will be met.
7 Subsequent solicitations may be conducted using this process. More likely, changes to the
8 process will be recommended based on lessons learned from the initial solicitation and to reflect
9 changes in wholesale market conditions as well as to take into consideration non-price factors that
10 have not been incorporated into the process at this time.

11 **B. Assumptions Supporting the Proposed Process**

12
13 Basic assumptions were developed by the Staff in preparing this proposed Solicitation
14 Process, including the assumption that the process itself had to be flexible enough to allow
15 purchasing utilities and selling merchants the latitude to structure the terms and conditions under
16 which service would be provided in a manner that made economic, operational and regulatory
17 sense, and provided benefits to all affected parties. Accordingly, the Staff has assumed that this
18 process, if adopted, will be subject to changes based on the lessons learned during the initial
19 solicitation conducted by the utilities during 2003. To the extent that a utility has load
20 requirements, capacity or energy, not served by generating capacity owned by the utility or
21 through existing contracts for capacity or energy or from sources from which the utility must
22 purchase power as a result of law or regulation, that unmet need will be acquired through a
23 competitive solicitation. Short-term power and daily, weekly or monthly power acquired to meet
24 unplanned needs, would however continue to be purchased in the normal course of business as it
25 is today.

26 The Staff assumed that all current regulatory standards would be maintained and that post
27 solicitation reviews of the manner in which the solicitations were conducted and the

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE GENERIC)
4 PROCEEDING CONCERNING ELECTRIC) DOCKET NO.
5 RESTRUCTURING ISSUES.) E-00000A-02-0051

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

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

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

19 At: Phoenix, Arizona

20 Date: November 21, 2002

21 Filed: **DEC -9 2002**

22 REPORTER'S TRANSCRIPT OF PROCEEDINGS

23 VOLUME I
(Pages 1 through 210)

24 **ARIZONA REPORTING SERVICE, INC.**
25 Court Reporting
Suite Three
2627 North Third Street
Phoenix, Arizona 85004-1103

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26 Prepared for: By: DAWNA J. BOSWELL, RPR
27 Certified Court Reporter
28 Certificate No. 50326

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1 That's longer than I would usually like to
2 take, but that would be the introduction I would
3 offer.

4 MS. WAGNER: All right. Thank you,
5 Mr. Johnson, and thank you all members of the panel.
6 I have nothing further, and these witnesses are
7 available for cross-examination.

8 ALJ WOLFE: Ms. Potts who is filling in for
9 another attorney has asked if she could ask a few
10 questions first. You can ask your questions at this
11 time.

12 MS. POTTS: Thank you for taking me out of
13 order.

14

15 CROSS-EXAMINATION

16

17 Q. (BY MS. POTTS) My first question goes to
18 page 4, starting at line 23 of the October 25th
19 report, and I will read the sentence into the record.
20 It states, "Short-term power and daily, weekly or
21 monthly power acquired to meet unplanned needs would,
22 however, continue to be purchased in the normal course
23 of business as it is today." And my question is has
24 Staff revised their recommendation in light of APS'
25 proposal in this proceeding?

1 A. (BY MR. JOHNSON) I would allow Mr. Kessler
2 to address that question.

3 A. (BY MR. KESSLER) Thank you.

4 No, we have not. When we were talking about
5 short-term power there, we really were talking about
6 unplanned needs. That is a position we took during
7 most of the, during all of the workshops, and in
8 drafting this report, that was the position we had.
9 It remains our position today.

10 Q. Thank you.

11 Now, Mr. Kessler, if you could turn to your
12 rebuttal testimony on page 13, starting with line 23,
13 and again I will read it for the record. "The Staff
14 believes that bidders of renewable resources should be
15 allowed to bid in this initial solicitation and that
16 utilities should not be required to give credit for
17 the value of the renewable resource to the utility in
18 meeting the environmental portfolio standard."

19 My question is is it your opinion that if a
20 utility intends to give credit for a renewable
21 resource that the utility should clearly state in the
22 solicitation exactly how that utility intends to
23 calculate the credit?

24 A. (BY MR. KESSLER) Yes.

25 Q. Is it also your opinion that if a utility

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BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

DOCKETED

SEP 10 2002

1
2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER

DOCKETED BY

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5
6 IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

DOCKET NO. E-00000A-02-0051

7
8 IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR
9 VARIANCE OF CERTAIN REQUIREMENTS OF
A.A.C. R14-2-1606.

DOCKET NO. E-01345A-01-0822

10
11 IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
12 ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

13
14 IN THE MATTER OF TUCSON ELECTRIC
POWER COMPANY'S APPLICATION FOR A
VARIANCE OF CERTAIN ELECTRIC
15 COMPETITION RULES COMPLIANCE DATES.

DOCKET NO. E-01933A-02-0069

16
17 IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
APPROVAL OF ITS STRANDED COST
RECOVERY.

DOCKET NO. E-1933A-98-0471

DECISION NO. 65154

OPINION AND ORDER

18 DATES OF HEARING:

June 14, 2002 (pre-hearing); June 17, 18, 19, 20, 21, 27,
and 28, 2002

19 PLACE OF HEARING:

Phoenix, Arizona

20 ADMINISTRATIVE LAW JUDGE:

Lyn Farmer

21 IN ATTENDANCE:

William A. Mundell, Chairman
Marc Spitzer, Commissioner

22
23 APPEARANCES:

Mr. Jay L. Shapiro, FENNEMORE CRAIG and Mr.
24 Michael R. Engleman, DICKSTEIN, SHAPIRO,
MORIN & OSHINSKY on behalf of Panda Gila River,
L.P.;

25 Mr. Lindy Funkhouser, Director, and Mr. Scott S.
26 Wakefield, Chief Counsel, on behalf of the Residential
Utility Consumer Office;

27 Mr. Thomas L. Mumaw, Senior Attorney, PINNACLE
28 WEST CORPORATION and Mr. Jeffrey B. Guldner,

1 IT IS FURTHER ORDERED that A.A.C. R14-2-1606(B) is stayed and Decision Nos. 61973
2 and 62103 are modified to stay the requirement that 100 percent of power purchased for Standard
3 Offer Service shall be acquired from the competitive market, with at least 50 percent through a
4 competitive bid process.

5 IT IS FURTHER ORDERED that A.A.C. R14-2-1611(A)'s applicability to APS and TEP's
6 captive customers is stayed.

7 IT IS FURTHER ORDERED that upon implementation of the outcome of Track B, APS shall
8 acquire, at a minimum, any required power that cannot be produced from its own existing assets,
9 through the competitive procurement process as developed in the Track B proceeding. The minimum
10 amount of power, the timing, and the form of procurement shall be determined in the Track B
11 proceeding.

12 IT IS FURTHER ORDERED that upon implementation of the outcome of Track B, TEP shall
13 acquire, at a minimum, any required power that cannot be produced from its own existing assets,
14 through the competitive procurement process as developed in the Track B proceeding. The minimum
15 amount of power, the timing, and the form of procurement shall determined in the Track B
16 proceeding.

17 IT IS FURTHER ORDERED that the parties are directed to continue their efforts in Track B
18 of this proceeding to develop a competitive solicitation process that can begin by March 1, 2003. For
19 the purposes of the competitive solicitation process, the PWEC generating assets that APS may seek
20 to acquire from PWEC, shall not be counted as APS assets in determining the amount, timing and
21 manner of the competitive solicitation.

22 IT IS FURTHER ORDERED that Staff shall open a rulemaking to review the Retail Electric
23 Competition Rules in light of our decisions herein and to address issues resolved in Track B, and to
24 amend A.A.C. R14-2-1615(A), A.A.C. R14-2-1606(B), and A.A.C. R14-2-1611(A).

25 IT IS FURTHER ORDERED that APS and TEP shall work with Staff to develop a plan as
26 discussed herein to resolve reliability must-run generation concerns. Staff shall include results of
27 such a plan in the 2004 Biennial Transmission Assessment.

28 IT IS FURTHER ORDERED that APS and TEP shall file annual reliability must-run
generation study reports with the Commission in concert with their January 31 ten year plan, for
review prior to implementing any new RMR generation strategies until the 2004 Biennial
Transmission Assessment is issued.

IT IS FURTHER ORDERED that if APS wishes to pursue the issue of acquiring PWEC's

54

1 BEFORE THE ARIZONA CORPORATION COMMISSION

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16 COMPETITION RULES COMPLIANCE)
17 DATES.)

18 At: Phoenix, Arizona

19 Date: November 25, 2002

20 Filed: DEC 11 2002

21 REPORTER'S TRANSCRIPT OF PROCEEDINGS

22 VOLUME III

23 (Pages 416 through 718)

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25 Court Reporting

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By: MICHELE E. BALMER, RPR
Certified Court Reporter
Certificate No. 50489

27 Prepared for:

28 TEP

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1 any amount of energy in the process.

2 As Mr. Johnson had put it, we had both been
3 invited to the dance, but neither of us are required to
4 actually dance.

5 That S-5 exhibit, with those numbers being so
6 much larger than TEP would have expected, it does mean
7 a lot to, quote, the investment community, when they
8 look at TEP. And I think we should reiterate Staff's
9 initial focus that this should be about process and not
10 about numbers.

11 The Staff in their November 18th testimony, and
12 as referenced in their S-5 Exhibit, has submitted that
13 all RMR should be contestable in the first
14 solicitation, including that provided by the utility's
15 own existing assets.

16 I would like to briefly discuss TEP's RMR
17 situation. All of TEP's current RMR is provided by
18 existing TEP-owned assets. TEP is, due to their load
19 pocket, we are a voltage limited system. It's not a
20 question of putting additional amount of wires in the
21 air. It's a question about voltage support. No one --
22 there's not one non-TEP plant currently in existence
23 today that can provide RMR for voltage support.

24 I would like to address in Exhibit S-5, there's
25 a couple of numbers in there that I will focus on. And

55

BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

DOCKETED

SEP 10 2002

1
2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER

DOCKETED BY

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RESTRUCTURING ISSUES.

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DOCKET NO. E-01345A-01-0822

10
11 IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

12
13 IN THE MATTER OF TUCSON ELECTRIC
POWER COMPANY'S APPLICATION FOR A
14 VARIANCE OF CERTAIN ELECTRIC
COMPETITION RULES COMPLIANCE DATES.

DOCKET NO. E-01933A-02-0069

15
16 IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
17 APPROVAL OF ITS STRANDED COST
RECOVERY.

DOCKET NO. E-1933A-98-0471

DECISION NO. 65154

OPINION AND ORDER

18 DATES OF HEARING:

June 14, 2002 (pre-hearing); June 17, 18, 19, 20, 21, 27,
and 28, 2002

19 PLACE OF HEARING:

Phoenix, Arizona

20 ADMINISTRATIVE LAW JUDGE:

Lyn Farmer

21 IN ATTENDANCE:

William A. Mundell, Chairman
Marc Spitzer, Commissioner

22
23 APPEARANCES:

Mr. Jay L. Shapiro, FENNEMORE CRAIG and Mr.
Michael R. Engleman, DICKSTEIN, SHAPIRO,
MORIN & OSHINSKY on behalf of Panda Gila River,
L.P.;

24
25 Mr. Lindy Funkhouser, Director, and Mr. Scott S.
26 Wakefield, Chief Counsel, on behalf of the Residential
Utility Consumer Office;

27 Mr. Thomas L. Mumaw, Senior Attorney, PINNACLE
28 WEST CORPORATION and Mr. Jeffrey B. Guldner,

1 IT IS FURTHER ORDERED that A.A.C. R14-2-1606(B) is stayed and Decision Nos. 61973
2 and 62103 are modified to stay the requirement that 100 percent of power purchased for Standard
3 Offer Service shall be acquired from the competitive market, with at least 50 percent through a
4 competitive bid process.

5 IT IS FURTHER ORDERED that A.A.C. R14-2-1611(A)'s applicability to APS and TEP's
6 captive customers is stayed.

7 IT IS FURTHER ORDERED that upon implementation of the outcome of Track B, APS shall
8 acquire, at a minimum, any required power that cannot be produced from its own existing assets,
9 through the competitive procurement process as developed in the Track B proceeding. The minimum
10 amount of power, the timing, and the form of procurement shall be determined in the Track B
11 proceeding.

12 IT IS FURTHER ORDERED that upon implementation of the outcome of Track B, TEP shall
13 acquire, at a minimum, any required power that cannot be produced from its own existing assets,
14 through the competitive procurement process as developed in the Track B proceeding. The minimum
15 amount of power, the timing, and the form of procurement shall determined in the Track B
16 proceeding.

17 IT IS FURTHER ORDERED that the parties are directed to continue their efforts in Track B
18 of this proceeding to develop a competitive solicitation process that can begin by March 1, 2003. For
19 the purposes of the competitive solicitation process, the PWEC generating assets that APS may seek
20 to acquire from PWEC, shall not be counted as APS assets in determining the amount, timing and
21 manner of the competitive solicitation.

22 IT IS FURTHER ORDERED that Staff shall open a rulemaking to review the Retail Electric
23 Competition Rules in light of our decisions herein and to address issues resolved in Track B, and to
24 amend A.A.C. R14-2-1615(A), A.A.C. R14-2-1606(B), and A.A.C. R14-2-1611(A).

25 IT IS FURTHER ORDERED that APS and TEP shall work with Staff to develop a plan as
26 discussed herein to resolve reliability must-run generation concerns. Staff shall include results of
27 such a plan in the 2004 Biennial Transmission Assessment.

28 IT IS FURTHER ORDERED that APS and TEP shall file annual reliability must-run
generation study reports with the Commission in concert with their January 31 ten year plan, for
review prior to implementing any new RMR generation strategies until the 2004 Biennial
Transmission Assessment is issued.

IT IS FURTHER ORDERED that if APS wishes to pursue the issue of acquiring PWEC's

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BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

DOCKETED

SEP 10 2002

1
2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER

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5
6 IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

DOCKET NO. E-00000A-02-0051

7
8 IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR
9 VARIANCE OF CERTAIN REQUIREMENTS OF
A.A.C. R14-2-1606.

DOCKET NO. E-01345A-01-0822

10 IN THE MATTER OF THE GENERIC
11 PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
12 ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

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

DOCKET NO. E-01933A-02-0069

15 IN THE MATTER OF THE APPLICATION OF
16 TUCSON ELECTRIC POWER COMPANY FOR
APPROVAL OF ITS STRANDED COST
17 RECOVERY.

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20 ADMINISTRATIVE LAW JUDGE:

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25 Mr. Lindy Funkhouser, Director, and Mr. Scott S.
26 Wakefield, Chief Counsel, on behalf of the Residential
Utility Consumer Office;

27 Mr. Thomas L. Mumaw, Senior Attorney, PINNACLE
28 WEST CORPORATION and Mr. Jeffrey B. Guldner,

1 Because the circumstances that the rules were designed to address have not developed, because
2 asset transfer combined with an ineffective wholesale market places the public at substantial risk, and
3 because it “appears that reliance on FERC to police the wholesale market may be ill advised”, Staff
4 recommends that the Commission should not allow asset transfer until it is convinced that the transfer
5 is in the public interest. Staff advises that “[w]ithout conditions designed to address market structure
6 concerns, the transfer is not in the public interest.” (Staff Brief at p. 4, emphasis original).

7 Staff believes that before the Commission decides whether a particular utility should be allowed
8 to divest, the utility should indicate whether it wants to divest.⁵ If a Company wants to divest, it
9 should file market power studies and a proposed code of conduct, Track B should be concluded, and
10 in any event, no reliability must-run generation (“RMR”) should be divested. Staff’s states that its
11 recommendations on divestiture may have implications for future rate setting, because if a utility
12 chooses to retain its assets, the Staff believes that the Commission should apply cost of service
13 principles when setting rates.

14 In response to APS’ argument that the Commission is bound by the Settlement Agreement, Staff
15 argues that the Commission is not contractually bound. Staff states that if a regulatory agency finds a
16 proposed settlement to be reasonable, the terms of the settlement form the substance of a decision that
17 binds all parties to the proceeding, and the approved agreement assumes the nature of an agency
18 decision enacted in the public interest, losing its private contractual character. (Citing Cajun Elec.
19 Power Coop., Inc. v. F.E.R.C., 924 F.2d 1132, 1135 (D.C. Cir. 1991). Staff also argues that it is
20 unlikely that a contract was formed due to the Commission’s amendments to the agreement. Staff
21 further argues that, assuming for the sake of argument that a contract exists, it is unenforceable
22 because the “alleged contract was based on the existence of a workably competitive wholesale
23 market, and because a workably competitive market does not exist, the purpose of the alleged
24 contract has been frustrated, thereby excusing performance.” (Staff Brief at p. 19)

25 APS

26 APS believes that divestiture will benefit APS customers in the long run and will not harm
27 them in the short run. It acknowledges that the benefits of divestiture are more long-term in nature,
28 while the “risks of the market loom today”. (APS Brief at p. 12) APS points out that through its
Settlement Agreement, its customers have protection against the market through June 2004, and that
intermediate to long-term protection for consumers is available through the proposed PPA.

⁵ Staff recommends that utilities should inform the Commission within 30 days of the conclusion of Track B.

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE GENERIC)
4 PROCEEDING CONCERNING ELECTRIC) DOCKET NO.
5 RESTRUCTURING ISSUES.) E-00000A-02-0051

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

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

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

18 At: Phoenix, Arizona

19 Date: November 22, 2002

20 Filed: DEC - 9 2002

21 REPORTER'S TRANSCRIPT OF PROCEEDINGS

22 VOLUME II
(Pages 211 through 415)

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24 **ARIZONA REPORTING SERVICE, INC.**
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Suite Three
2627 North Third Street
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25 Prepared for: By: DAWNA J. BOSWELL, RPR
Certified Court Reporter
Certificate No. 50326

TEP

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1 that there's a provision in 65154 that indicated that
2 utility-owned RMR generation would be contestable in
3 Track B?

4 A. (BY MR. SMITH) I am not making that
5 contention, but I am not also claiming that there is
6 an exclusion of that opportunity either.

7 Q. Mr. Smith, do you recall what the Staff's
8 recommendation was in Track A on utility-owned RMR
9 generation?

10 A. (BY MR. SMITH) I believe there are, I
11 believe in that decision, there is the provision that
12 the RMR generation is to not be transferred, the
13 assets are not to be transferred was Staff's
14 testimony, and I believe the Commission broadened that
15 to say all of the generation assets would not be
16 transferred.

17 Q. And in fact, Mr. Smith, wasn't it Staff's
18 recommendation that APS not be permitted to transfer
19 its presently-owned RMR generation under any
20 circumstances?

21 A. (BY MR. SMITH) If you, if you have the
22 language in that, I will take your word for it.

23 MR. MUMAW: Can I approach the witness again?

24 ALJ WOLFE: Yes.

25 Q. (BY MR. MUMAW) I'm going to hand you a slug

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR A VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. R14-2-1606
IN THE MATTER OF THE GENERIC PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR
IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES
IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST RECOVERY

Docket No. E-00000A-02-0051

Docket No. E-01345A-01-0822

Docket No. E-00000A-01-0630

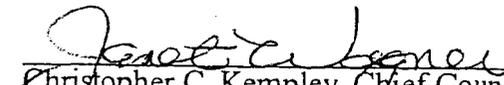
Docket No. E-01933A-02-0069

Docket No. E-01933A-98-0471

STAFF'S NOTICE OF FILING SUPPLEMENTAL TESTIMONY

Staff hereby provides its Notice of Filing of Supplemental Testimony of Matthew Rowell.

RESPECTFULLY SUBMITTED this 17th day of June, 2002.



Christopher C. Kempley, Chief Counsel
Janet F. Wagner, Attorney
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007
(602) 542-3402

1 Original and ten copies of the foregoing
2 filed this 17th day of June, 2002,
with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, AZ 85007

7 Copy of the foregoing mailed this 17th
8 day of June, 2002, to:

9 All parties of record

10 Nancy Roe

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

IN THE MATTER OF THE GENERIC)	DOCKET NO. E-00000A-02-0051
PROCEEDINGS CONCERNING ELECTRIC)	
<u>RESTRUCTURING ISSUES</u>)	
IN THE MATTER OF ARIZONA PUBLIC)	DOCKET NO. E-01345A-01-0822
SERVICE COMPANY'S REQUEST FOR A)	
VARIANCE OF CERTAIN REQUIREMENTS OF)	
<u>A.A.C. R14-2-1606</u>)	
IN THE MATTER OF THE GENERIC)	DOCKET NO. E-00000A-01-0630
PROCEEDING CONCERNING THE ARIZONA)	
INDEPENDENT SCHEDULING)	
<u>ADMINISTRATOR</u>)	
IN THE MATTER OF TUCSON ELECTRIC)	DOCKET NO. E-01933A-02-0069
POWER COMPANY'S APPLICATION FOR A)	
VARIANCE OF CERTAIN ELECTRIC)	
<u>COMPETITION RULES COMPLIANCE DATES</u>)	
IN THE MATTER OF THE APPLICATION OF)	DOCKET NO. E-01933A-98-0471
TUCSON ELECTRIC POWER COMPANY FOR)	
APPROVAL OF ITS STRANDED COST)	
<u>RECOVERY</u>)	

SUPPLEMENTAL

TESTIMONY

OF

MATTHEW ROWELL

CHIEF: TELECOMMUNICATIONS AND ENERGY SECTION

UTILITIES DIVISION

JUNE 17, 2002

1 **Introduction**

2 **Q. Please state your name and business address for the record.**

3 A. My name is Matthew Rowell. My business address is Arizona Corporation Commission, 1200
4 West Washington, Phoenix, Arizona 85007.

5
6 **Q. Are you the same Matthew Rowell who filed direct testimony in this proceeding on May
7 29, 2002?**

8 A. Yes.

9
10 **Q. What is the purpose of your testimony?**

11 A. The purpose of this testimony is to provide a supplement to my pre-filed testimony that is
12 intended to clarify some of the points made in my direct testimony. Specifically, I will address
13 the Staff's recommendations regarding a cost of service standard in a post transfer world.

14
15 **Q. On Page 7, Line 6, of your direct testimony you state that, "the established cost of service
16 for existing generators should be used as the price to beat during competitive solicitations
17 whether the utility has transferred its generation assets or not." By this statement, did
18 you mean that utilities that choose not to transfer their assets should be subjected to the
19 same sort of prudence review that Staff is recommending for those that choose to transfer
20 their assets to affiliates?**

21 A. No. This statement is meant to cover the eventuality of a utility that has chosen not to transfer
22 its assets and has also chosen to procure some of its necessary power from a competitive
23 solicitation process (excepting of course power procured to service load growth beyond the
24 utilities current capacity.) A utility that chooses not to transfer its assets and uses its retained
25 assets to serve its native load should not be required to demonstrate that there are no market-
26 based alternatives available. In other words, utilities that chose not to transfer should be
27 subject to traditional cost of service regulation.

28

1 Q. Specific to the case of a utility that chooses to transfer its generation assets from a UDC
2 to an affiliate, under what conditions does Staff recommend that the cost of service of the
3 transferred assets be considered?

4 A. The cost of service along with market prices should be considered during prudence evaluations
5 for retail ratemaking purposes. Of course, cost of service considerations could not be applied
6 when evaluating the prudence of power purchases by a UDC to serve load that is beyond the
7 utilities current capacity to supply.

8
9 Q. How does Staff envision such a process working?

10 A. For illustrative purposes, suppose a UDC which has transferred its generation assets to an
11 affiliate procures a portfolio of power resources to serve its standard offer load. Staff expects
12 the UDC's portfolio to contain a balanced mix of short-term contracts, long-term contracts, and
13 possibly a component of spot market purchases. During a rate case to determine the UDC's
14 retail rates, the prudence of that portfolio would need to be evaluated. As is usual, the
15 prudence review would only hold the UDC accountable for the information available to it at
16 the time decisions were made. For instance, if the UDC were to enter into a multi-year
17 contract and spot prices were to decline dramatically during its latter years, the costs of that
18 contract should not be automatically disallowed. Multi-year contracts are an appropriate
19 means to manage the risk of price fluctuations. UDCs should not be punished for insuring
20 against price spikes if prices happen to fall.

21
22 The cost of service of the transferred assets enters into the analysis if the cost of the UDC's
23 portfolio of power purchases is substantially higher than the cost of service of the transferred
24 assets. If that is the case, the UDC should expect to be subjected to enhanced scrutiny during
25 the prudence review. This will especially be the case for components of the portfolio that have
26 been purchased from the affiliate at prices above the cost of service. Staff is not proposing an
27 absolute lower of cost or market standard; the utilities should be afforded the opportunity to
28 justify their procurement strategy. Staff is simply stating that if a UDC's costs rise because

1 of the transfer of assets, it will and should be subjected to intense scrutiny during ratemaking
2 proceedings. This is a consideration the utilities should keep in mind when deciding whether
3 to transfer their assets or not. Staff recognizes that prudence reviews are not easy endeavors
4 to undertake; however, they are much more appropriate than the alternatives: an absolute lower
5 of cost or market standard or a straight pass through to retail customers that does not hold the
6 UDC accountable at all.

7
8 **Q. Will the utilities' cost of service always be relevant to prudence reviews?**

9 **A.** No. Staff sees the use of the cost of service during prudence reviews as a temporary measure.
10 Currently, the wholesale power market lacks a consistent and developed structure in the West.
11 With the lack of an RTO, the FERC's Standard Market Design proceeding unresolved, and
12 an untested AISA; Staff cannot recommend that we rely solely on the wholesale market to
13 arrive at just and reasonable rates. Once the wholesale market is functioning in a robust and
14 competitive manner, the cost of service standard will no longer be necessary.

15
16 **Q. Does this conclude your testimony.**

17 **A.** Yes, it does.
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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE GENERIC)
4 PROCEEDING CONCERNING ELECTRIC) DOCKET NO.
5 RESTRUCTURING ISSUES.) E-00000A-02-0051

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

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

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

19 At: Phoenix, Arizona

20 Date: November 22, 2002

21 Filed: DEC - 9 2002

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Prepared for: By: DAWNA J. BOSWELL, RPR
Certified Court Reporter
Certificate No. 50326

TEP

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1 generation, is that correct?

2 A. (BY MR. SMITH) That's one of the objectives,
3 yes.

4 MR. MUMAW: I actually have something I need
5 to be marked as an exhibit, Your Honor.

6 ALJ WOLFE: Would this be APS-1?

7 MR. MUMAW: I think that's probably a good
8 place to start.

9 MS. WAGNER: And Your Honor, very quickly,
10 I'm just going to make the same objection that I did
11 to the previous exhibit.

12 ALJ WOLFE: Okay. I'll take notice of what
13 has been marked as APS-1 which is the Notice of Filing
14 of Supplemental Testimony of Matthew Rowell in the
15 Track A proceeding just for expediency.

16 MR. MUMAW: Thank you, Your Honor.

17 Q. (BY MR. MUMAW) And I ask you, Mr. Smith, if
18 you could turn to page 1 of that testimony, lines 24
19 through 26. Do you see that?

20 A. (BY MR. SMITH) That was page 1, 21 through
21 26?

22 Q. Lines 24 through 26, the sentence beginning
23 with "A utility that." Do you see that?

24 A. (BY MR. SMITH) Yes.

25 Q. Would you read that sentence, please.

1 A. (BY MR. SMITH) This sentence is in answer to
2 a question relative to cost of service for existing
3 generators as price to beat. And the sentence reads,
4 "A utility that chooses not to transfer its assets and
5 uses its retained assets to serve its native load
6 should not be required to demonstrate that there are
7 no market-based current alternatives available."

8 Q. Thank you, Mr. Smith.

9 And again, I think you previously indicated
10 that Mr. Rowell is a member of the Staff?

11 A. (BY MR. SMITH) I would like to suggest,
12 Mr. Mumaw, that the next sentence broadens the context
13 of what was intended by reading as follows: "In other
14 words, utilities that choose not to transfer should be
15 subject to traditional cost of service regulation."

16 Q. And Mr. Smith, I understand the sentence
17 needs to be taken in context which is why I marked the
18 entire testimony of Mr. Rowell as an exhibit.

19 MR. MUMAW: And Your Honor I believe has
20 taken administrative notice of the entire testimony of
21 Mr. Rowell, or at least his supplemental testimony, is
22 that correct.

23 ALJ WOLFE: That's correct.

24 Q. (BY MR. MUMAW) Mr. Smith, how do you
25 reconcile your recommendation with that of Mr. Rowell

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BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER**

**FILE
ORIGINAL**

**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. 4-14-2-1606**

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

RESPONSE TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: TRACK B ISSUES

NOVEMBER 18, 2002

TEP 3

1 Q: Why should any future RMR solicitation be performed separately from the initial 2003
2 solicitation?

3 A: At this stage of the game, including RMR obligations would greatly complicate and
4 prolong the solicitation process to the detriment of all parties involved. From TEP's
5 perspective, given the critical nature of RMR obligations, the competitive solicitation of
6 RMR would involve analyzing a completely new and different set of procurement issues
7 and would delay the 2003 process. Moreover, given TEP's unique situation where *all* of
8 its RMR generation is owned by TEP and is located within TEP's constrained load
9 pocket, it is highly unlikely that any third party could compete with these existing units
10 with new generation or transmission given the Staff's apparent focus on short-term
11 procurement for the 2003 solicitation. First, any new RMR generation (that would have
12 to be built in the TEP load pocket absent any immediate transmission upgrades into that
13 load pocket) or any transmission upgrades (that would allow access to RMR generation
14 outside of the load pocket) would require a long-term planning and commitment to
15 ensure the economic benefits. Second, any non-transmission or non-generation
16 alternatives that might be considered as a possible RMR solution would require extensive
17 analysis of their ability (and reliability) to meet TEP's actual RMR needs. Because of
18 this complexity and the importance of RMR, an RFP for RMR should focus only on
19 competing generation and transmission solutions. Any RMR solicitation focusing on
20 third-party generation or transmission solutions would require an extensive evaluation
21 and negotiation period that simply does not fit with the envisioned 2003 solicitation.

22 Q: Do you agree with Mr. Kendall's testimony (beginning at p. 16) that suggests including
23 Environmental Portfolio (EPS) obligations in the solicitation?

24 A: No. TEP believes that this solicitation should focus on procuring bulk wholesale power
25 needed to serve its customers. The inclusion of EPS in the procurement process
26 unnecessarily complicates the process. Because a utility can meet its EPS obligations in
27 a number of ways, including through the use of offsets and credits, it is not clear that the
28 Commission intended its inclusion in the solicitation process by using the term "required
29 power". As referenced in the October 25, 2002 Staff Report (at pp.32, 39) – and
apparently agreed to in the workshops (although not everyone seems to agree now) – the

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE GENERIC)
PROCEEDING CONCERNING ELECTRIC) DOCKET NO.
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5 IN THE MATTER OF ARIZONA PUBLIC) DOCKET NO.
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12 DATES.)

13

At: Phoenix, Arizona

14

Date: November 22, 2002

15

Filed: DEC - 9 2002

16

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18

VOLUME II
(Pages 211 through 415)

19

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Prepared for: By: DAWNA J. BOSWELL, RPR
Certified Court Reporter
Certificate No. 50326

24

25 TEP

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1 My guess is probably the utilities would have a better
2 feel for what could be effective solutions in terms of
3 transmission facilities.

4 Q. If you could turn to page 5 of your
5 testimony, that's Smith rebuttal testimony, for the
6 record. At page 5, starting at line 6, it appears
7 that Staff sets forth what is described as "Conditions
8 under which RMR capacity and energy could be
9 contestable." What did Staff mean by that particular
10 phrase, could be contestable?

11 A. (BY MR. SMITH) Staff is offering in lines 9
12 through 13 the three different types of situations
13 where parties other than the utility's own generators
14 could be effective in meeting the local load
15 requirements and not violating the transmission import
16 constraint of the utility.

17 Q. If these conditions did not exist for a
18 particular load pocket, a utility's particular load
19 pocket, would that utility need to bid out RMR
20 capacity or energy for that area?

21 A. (BY MR. SMITH) It's my testimony they would
22 because we would not know whether there were parties
23 that could meet that condition unless they bid. If
24 you had no bidders, that might be an indication that
25 none of those conditions could be met.

1 Q. So Staff would expect to see information on
2 those conditions as a response to the utility's
3 request for bid, is that correct?

4 A. (BY MR. SMITH) That's correct. This is the
5 market's opportunity to respond to the RMR conditions
6 that have been established by the utility.

7 Q. Will the RMR study address those conditions
8 as well?

9 A. (BY MR. SMITH) The RMR study will consider
10 the utility's views of the solutions that are viable,
11 whereas the, what we're proposing in the competitive
12 solicitation is an opportunity for the market to offer
13 solutions to resolve those constraints.

14 Q. And that would be in addition to the
15 opportunity for comment on the RMR study. Is that
16 Staff's belief?

17 A. (BY MR. SMITH) That's correct.

18 Q. With respect to the first condition listed on
19 page 5, in the TEP load pocket, isn't it true that
20 actual location of the generation facility within the
21 TEP load pocket affects the amount of RMR service that
22 that facility can provide? Basically the RMR benefit
23 of a local generation facility is site specific or
24 affected by its location?

25 A. (BY MR. SMITH) There's no question that any

1 generator located within a constraint area has varying
2 degrees of effectiveness in solving the import
3 constraint concerns.

4 Q. Are you aware of any existing significant
5 non-TEP generation in the TEP load pocket that would
6 meet condition 1?

7 A. (BY MR. SMITH) I am aware that there has
8 been considerable discussion about distributed
9 generation and renewable portfolio standards and
10 facilities in the TEP service area.

11 Q. Are there any that exist presently that you
12 are aware of?

13 A. (BY MR. SMITH) There are facilities that
14 exist. Whether they would be in a position to bid, I
15 do not know.

16 Q. And do you know whether they're in a location
17 to provide an RMR service?

18 A. (BY MR. SMITH) I would not be privy to that
19 information at this point.

20 Q. With respect to the third condition set forth
21 on page 5, Staff acknowledges that that condition
22 probably could not be met for some period of time, is
23 that correct?

24 A. (BY MR. SMITH) Condition 3 implies that a
25 remote generator would be willing to invest in the

1 transmission upgrade in order to meet the requirement,
2 and given the assumption that those transmission
3 upgrades have considerable lead time, it is Staff's
4 view that likely that option might not be available
5 for the short-term purchases. However, that doesn't
6 hold true for new generation combustion turbines which
7 can be installed in a very short period of time, and a
8 party could choose to invest in a constraint area and
9 accomplish that in a short period of time.

10 Q. Even a combustion turbine would need some
11 permitting and zoning, is that correct?

12 A. (BY MR. SMITH) That's correct, but depending
13 on the size, it might not have to go through the Power
14 Plant and Transmission Line Siting process.

15 Q. But there may be local permitting and --

16 A. (BY MR. SMITH) Local permitting and emission
17 and environmental standards to be met.

18 (An off-the-record discussion ensued.)

19 Q. (BY MR. PATTEN) It's fair to say there's no
20 guarantee that such permits will be obtained?

21 A. (BY MR. SMITH) I don't think we have any
22 evidence to suggest either scenario. Either scenario
23 is equally likely, I think, permitting or not
24 permitting.

25 Q. In the event of a local generation project or

1 a significant transmission line that would have to go
2 through the Line Siting process, Mr. Smith, have you
3 participated in those processes on behalf of Staff?

4 A. (BY MR. SMITH) I think I have weathered the
5 storm quite well considering the number of cases I've
6 been involved in, yes.

7 Q. I take it weathered the storm indicates that
8 particularly for a local generation project or a large
9 transmission project, there's often significant
10 opposition by the public?

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12 size of the facilities that go through the siting
13 process, yes. For smaller units, no.

14 Q. And going through the Line Siting process for
15 a significant project, either generation or
16 transmission, would that take in excess of a year?

17 A. (BY MR. SMITH) Yes.

18 Q. And once --

19 A. (BY MR. SMITH) Your question was about the
20 siting process?

21 Q. Yes, the siting process.

22 A. (BY MR. SMITH) No, for the state siting
23 process, it's 240 days from initiation to Commission
24 decision.

25 Q. Once that's done, then the construction

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2 A. (BY MR. SMITH) Yes.

3 Q. I may have asked you this already. The
4 conditions set forth there on page 5, is it the hope
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8 A. (BY MR. SMITH) It is Staff's desire and hope
9 that the utilities will consider all three conditions
10 as alternatives to the utility depending on its own
11 local generation to meet the RMR requirement.

12 Q. In Staff's position, are there short-term
13 competitive solutions, and I'm talking maybe a year or
14 two, that could meet TEP's RMR service needs?

15 A. (BY MR. SMITH) I don't know the specific
16 answer, but it's Staff's belief that given that TEP is
17 a voltage constraint area that the solutions available
18 to solve that are different and may offer some
19 solutions that are not long-term siting constraint
20 type of options.

21 Q. What sort of things might that be?

22 A. (BY MR. SMITH) Reactive devices such as
23 capacitors that can be placed on the system are an
24 example of devices that can be installed to deal with
25 the voltage concerns, and in fact, TEP has taken some

1 of those steps in its system already. To what degree
2 additional devices would be helpful is something that
3 could be pursued.

4 Q. Through the competitive solicitation process?

5 A. (BY MR. SMITH) Well, it could be, we would
6 hope that it is considered in the RMR study, and
7 certainly to the degree that the competitive
8 solicitation envisions those types of solutions be
9 available that they would consider them as well to
10 enable their generator to be effective in bidding into
11 the RMR area.

12 Q. Mr. Johnson, I will direct this to you. You
13 may want to defer it, but is it Staff's belief that,
14 what is Staff's position on whether or not TEP can
15 divest its existing RMR assets?

16 A. (BY MR. SMITH) In Track A, I believe the
17 Commission's decision was to require the utilities to
18 not divest or transfer their existing generation
19 assets, and in particular there was focus on RMR
20 units.

21 Q. Okay. And that's even if those assets are
22 not in rate base, correct? It did not make that
23 distinction?

24 A. (BY MR. SMITH) I believe the distinction was
25 utility-owned assets. I don't think in the Track A

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2 IN THE MATTER OF THE GENERIC) DOCKET NO.
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4 RESTRUCTURING ISSUES.)

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

9 IN THE MATTER OF THE GENERIC) DOCKET NO.
10 PROCEEDING CONCERNING THE) E-00000A-01-0630
11 ARIZONA INDEPENDENT SCHEDULING)
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13 IN THE MATTER OF TUCSON ELECTRIC) DOCKET NO.
14 POWER COMPANY'S APPLICATION FOR) E-01933A-02-0069
15 A VARIANCE OF CERTAIN ELECTRIC)
16 COMPETITION RULES COMPLIANCE)
17 DATES.)

18 At: Phoenix, Arizona

19 Date: November 25, 2002

20 Filed: DEC 11 2002

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(Pages 416 through 718)

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28 Prepared for:

29 TEP

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1 not required by the Track A order. And in that same
2 order, it could imply that if those units are
3 contestable, that it would follow that they would be
4 subject to market competition and would not be
5 precluded from transfer to a competitive affiliate.
6 RMR was recommended by Staff in the Track A proceeding
7 not to be divested.

8 The inclusion of RMR capacity and energy was
9 never discussed in the workshop process. Let me
10 qualify that. The inclusion of RMR capacity and energy
11 of existing utility assets was never discussed or
12 contemplated in the workshops, of which I attended all
13 of them.

14 In the short run, there are both market power
15 and operational concerns for third party supplied RMR
16 to TEP's load area.

17 As I previously mentioned, all existing RMR is
18 supplied by TEP's existing assets, which means that
19 either a generation or transmission addition would be
20 necessary to provide a competitive alternative.

21 That is a longer time horizon and a more
22 complicated and longer negotiation process to look at
23 those competitive alternatives for something as
24 specific and something as critical to reliability as
25 RMR.

1 are built which make non-TEP owned generation reliably
2 deliverable to TEP in displacement of what otherwise
3 would be RMR generation by TEP-owned units, would TEP
4 agree that it should and would conduct a timely
5 competitive solicitation in which such displaceable RMR
6 capacity and energy would be contestable for the
7 immediately prospective and subsequent periods?

8 A. Yes. I think it would be reasonable for TEP.
9 And as stated further in my testimony, that TEP does
10 not have any qualms about competitively bidding RMR
11 solutions. That can provide many more sets of eyes
12 looking at the situation and taking into account
13 locations of future plants and planning accordingly.

14 Q. Would it, then, also be your testimony or
15 position that if the facts, which in TEP's view make
16 RMR contestability not make sense for TEP at this
17 point, were different such that those limitations or
18 lack of third party deliverable resources to compete,
19 etcetera, were not in existence, that contestability of
20 RMR would be appropriate at this point in time?

21 A. It would be appropriate if there were any plant
22 or any RMR solutions readily available. At this point,
23 it is my position that there are not. Having a voltage
24 limited system is very much different than having a
25 transmission limited system. So it requires actual

1 voltage support within TEP's constrained area, which
2 cannot be met with plants and, you know, a fair bit of
3 distance from TEP.

4 MR. MOYES: Thank you. Those are all of the
5 questions that I have, Your Honor.

6 ALJ WOLFE: Thank you, Mr. Moyes.

7 Mr. Engleman?

8 MR. ENGLEMAN: Thank you.

9

10 CROSS-EXAMINATION

11

12 Q. (BY MR. ENGLEMAN) Mike Engleman on behalf of
13 Panda. Mr. Hutchens, first of all, I wanted to say on
14 the record, thanks for your participation in the
15 workshops. It was appreciated and useful.

16 A. You're welcome.

17 Q. One or two quick questions. We've heard a lot
18 of discussion both in Staff's testimony and already
19 this morning with your testimony about the term economy
20 energy.

21 Could you define it as you understand it?

22 A. Yes, I will. I guess simply stated my
23 definition of economy energy is a purchase of market
24 energy that is under the incremental cost of a
25 utility's marginal resource, be that either a unit or a

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

FILE
ORIGINAL

IN THE MATTER OF THE GENERIC)	DOCKET NO. E-00000A-02-0051
PROCEEDINGS CONCERNING ELECTRIC)	
<u>RESTRUCTURING ISSUES.</u>)	
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<u>ADMINISTRATOR.</u>)	
IN THE MATTER OF TUCSON ELECTRIC)	DOCKET NO. E-01933A-02-0069
POWER COMPANY'S APPLICATION FOR A)	
VARIANCE OF CERTAIN ELECTRIC)	
<u>COMPETITION RULES COMPLIANCE DATES.)</u>	

TRACK B REBUTTAL TESTIMONY

OF

JERRY D. SMITH

ELECTRIC UTILITIES ENGINEER

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

November 18, 2002

1 earlier in this rebuttal testimony. In fact, that is why Staff took particular steps to include
2 the deliverability qualifications section of our recommended solicitation process.⁴
3

4 **Q. Does Staff support the supposition that RMR capacity and energy should be**
5 **considered contestable for the 2003 competitive solicitation?**

6 A. Staff believes RMR capacity and energy should be considered contestable. Throughout
7 the Track B workshops, Staff has stated conditions under which RMR capacity and
8 energy could be contestable. Dr. Craig Roach has eloquently captured those conditions in
9 his testimony.⁵ RMR capacity and energy could be contestable if: 1) non-utility owned or
10 non-rate based generation units exist locally, 2) remote generation has access to non-APS
11 or non-TEP firm transmission capacity to delivery to the respective local area, or 3)
12 remote generation offers to finance transmission improvements to mitigate the
13 transmission import constraint. While the third condition may not be achievable within
14 the early years of the 2003 solicitation, it may be feasible for the later years.
15

16 **Q. Mr. Curtis L. Kebler expressed concerns about the RMR hours, capacity and**
17 **energy not being known until a decision in the Track B process is rendered.⁶ Does**
18 **Staff share this concern?**

19 A. Yes, we do. However, transmission providers have committed to an RMR Study Plan that
20 will be documented in the 2002 Biennial Transmission Assessment. That commitment
21 includes an agreement to perform RMR Studies for years 2003-2007 to be filed with the
22 Commission in January 2003. The identification of RMR hours, capacity and energy is
23 one of the study requirements. Refinement of the transmission import limitation is also a
24 requirement of that study. The resulting study information will then be available to
25 incorporate in the pre-solicitation activities of the 2003 competitive solicitation process.
26
27

28 ⁴ Ibid, pages 15 and 18.

⁵ Testimony of Dr. Craig R. Roach, TECO/Panda Gila River, November 12, 2002, page 27.

⁶ Direct Testimony, Reliant Resources, Curtis L. Kebler, November 12, 2002, page 16.

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1 any amount of energy in the process.

2 As Mr. Johnson had put it, we had both been
3 invited to the dance, but neither of us are required to
4 actually dance.

5 That S-5 exhibit, with those numbers being so
6 much larger than TEP would have expected, it does mean
7 a lot to, quote, the investment community, when they
8 look at TEP. And I think we should reiterate Staff's
9 initial focus that this should be about process and not
10 about numbers.

11 The Staff in their November 18th testimony, and
12 as referenced in their S-5 Exhibit, has submitted that
13 all RMR should be contestable in the first
14 solicitation, including that provided by the utility's
15 own existing assets.

16 I would like to briefly discuss TEP's RMR
17 situation. All of TEP's current RMR is provided by
18 existing TEP-owned assets. TEP is, due to their load
19 pocket, we are a voltage limited system. It's not a
20 question of putting additional amount of wires in the
21 air. It's a question about voltage support. No one --
22 there's not one non-TEP plant currently in existence
23 today that can provide RMR for voltage support.

24 I would like to address in Exhibit S-5, there's
25 a couple of numbers in there that I will focus on. And

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13 At: Phoenix, Arizona
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15 Filed: **DEC 11 2002**

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17 DATES.)

18 At: Phoenix, Arizona

19 Date: November 22, 2002

20 Filed: DEC - 9 2002

21 REPORTER'S TRANSCRIPT OF PROCEEDINGS

22 VOLUME II
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Certificate No. 50326

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18 DATES.)

19 At: Phoenix, Arizona

20 Date: November 21, 2002

21 Filed: **DEC - 9 2002**

22 REPORTER'S TRANSCRIPT OF PROCEEDINGS

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1 prices on a particular day or a particular month are
2 less than that \$30 price, is there the opportunity
3 still under that scenario for an economy purchase that
4 would save the ratepayers even more money?

5 A. (BY MR. KESSLER) Only in one of two
6 circumstances. If APS' system marginal costs for its
7 other, for its next available unit was greater than
8 the spot market cost, then yes, they could displace
9 additional generation from their own existing assets,
10 or if the, for instance, the \$30 energy that was
11 purchased was purchased on a dispatchable basis, they
12 could displace that contract energy.

13 Q. Let's explore that a little bit. If it's
14 purchased on a dispatchable basis, then is it your
15 understanding that APS has the opportunity to dispatch
16 that or not dispatch it as it sees fit?

17 A. (BY MR. KESSLER) It's the terms on which it
18 contracts for that energy.

19 Q. And in that scenario, the utility can in fact
20 both lock in savings and present ratepayers with the
21 opportunity to get even more savings in the spot
22 market?

23 A. (BY MR. KESSLER) That's our belief. If
24 those kinds of contracts and offers are made
25 available, that is the belief that the Staff has of a

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 IN THE MATTER OF THE GENERIC) DOCKET NO.
3 PROCEEDING CONCERNING ELECTRIC) E-00000A-02-0051
4 RESTRUCTURING ISSUES.))

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

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

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

13 At: Phoenix, Arizona

14 Date: November 25, 2002

15 Filed: **DEC 11 2002**

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 VOLUME III
18 (Pages 416 through 718)

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1 voltage support within TEP's constrained area, which
2 cannot be met with plants and, you know, a fair bit of
3 distance from TEP.

4 MR. MOYES: Thank you. Those are all of the
5 questions that I have, Your Honor.

6 ALJ WOLFE: Thank you, Mr. Moyes.

7 Mr. Engleman?

8 MR. ENGLEMAN: Thank you.

9

10 CROSS-EXAMINATION

11

12 Q. (BY MR. ENGLEMAN) Mike Engleman on behalf of
13 Panda. Mr. Hutchens, first of all, I wanted to say on
14 the record, thanks for your participation in the
15 workshops. It was appreciated and useful.

16 A. You're welcome.

17 Q. One or two quick questions. We've heard a lot
18 of discussion both in Staff's testimony and already
19 this morning with your testimony about the term economy
20 energy.

21 Could you define it as you understand it?

22 A. Yes, I will. I guess simply stated my
23 definition of economy energy is a purchase of market
24 energy that is under the incremental cost of a
25 utility's marginal resource, be that either a unit or a

1 contract in the short-term or spot market.

2 Q. And when you say short-term, what term are you
3 referring to?

4 A. Roughly anywhere from an hour ahead to maybe as
5 far as seasonal-type, maybe two to three months. That
6 would be my estimate of those.

7 Q. If you could refer briefly to your rebuttal
8 testimony of November 18th at page 7, starting on
9 line 3.

10 There is a question there about reliance on
11 economy energy. And the question I had is, are the
12 contracts that you're referencing in the chart between
13 lines 11 and 12, are you referencing those as economy
14 purchases or something else?

15 A. No. I was referencing those as firm, longer
16 term purchases. We basically made those -- while the
17 term of the contract is short, those are what we call
18 our summer hedge purchases in those time frames, and
19 were made, oh, maybe three, four, five, up to six
20 months ahead of the summer season.

21 Q. Would you agree, Mr. Hutchens, that with the
22 Staff Report written as it is where it does not require
23 TEP to make any purchase as a result of the
24 solicitation, that there's no risk to TEP?

25 A. There may be no final risk. Although perceived

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**STAFF REPORT ON TRACK B:
COMPETITIVE SOLICITATION
DOCKET NOS E-00000A-02-0051 ET AL.**

OCTOBER 25, 2002

1 **F. Identification of Products**

2
3 Each utility shall determine the specific products it will contract for in order to maintain
4 an appropriately structured power supply portfolio. For 2003, utilities may request bids for firm
5 power (e.g. on-peak and off-peak, annual or seasonal, capacity and energy blocks), and unit
6 contingent supplies, as appropriate. Additionally, to the extent required, solicitations for ancillary
7 services including, but not limited to, load following or spinning reserves, may be undertaken. It
8 is, anticipated that bidders will provide all ancillary services required to support their bids. If the
9 utility provides ancillary services to any generating asset not in its rate base, the utility shall make
10 those ancillary services available to all bidders on the same terms and at the same price as
11 available to those assets.

12 In identifying the products to be contracted for, the utility will specifically define the
13 capacity and energy sought on a time-differentiated basis and the periods for which services will
14 be purchased. The solicitation materials will contain the terms and conditions proposed by the
15 utility, including the right of the utility to reject all bids and to amend the request for service
16 without notice. The solicitation materials shall include a model contract.

17 **IV. Preparation Of Initial Solicitation**

18
19 **A. Overview**

20
21 The materials to be provided to potential bidders shall be prepared by the utility and shall
22 be developed in a manner that facilitates the preparation of responsive and competitive bids. The
23 materials must be accurate and sufficiently detailed so that no bidder is afforded an undue
24 advantage. The terms and conditions must be reasonable and commercially acceptable and must
25 be reviewed by the Independent Monitor and the Staff.

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

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3 IN THE MATTER OF THE GENERIC)
4 PROCEEDING CONCERNING ELECTRIC) DOCKET NO.
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12 ARIZONA INDEPENDENT SCHEDULING
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15 POWER COMPANY'S APPLICATION FOR) E-01933A-02-0069
16 A VARIANCE OF CERTAIN ELECTRIC)
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1 A. (BY MR. JOHNSON) At some risk of stepping
2 out of my element, I will tell you that at a
3 conceptual level, we do not find refinement as
4 substantial change.

5 Q. I also understand that from the Staff Report
6 that precision of the number is not quite as important
7 because there is not a requirement to purchase the
8 number that goes out for solicitation.

9 A. (BY MR. JOHNSON) Well, there is not a
10 mandated amount that has to be purchased by the
11 utilities. I can agree with that.

12 Q. In that context, in going back to the
13 October 25th Staff Report, that report on page, I
14 believe it's page 7, first of all, let me ask a
15 question with respect to the Staff Report. It's my
16 understanding that Staff desires that the Staff Report
17 ultimately become part of an Order in Track B, is that
18 correct?

19 A. (BY MR. JOHNSON) The Staff Report could form
20 the basis for the Commission decision in Track B.

21 Q. Going back to the chart on page 7 of the
22 Staff Report, there are capacity and energy numbers in
23 there that Staff has indicated it came up with based
24 upon information that was given to Staff from the
25 utilities. And my question is we started everything

1 today talking about risk to the ratepayers and harm to
2 the ratepayers. In Staff's opinion, is there any harm
3 to ratepayers in these numbers going out as the
4 solicitation numbers?

5 A. (BY MR. JOHNSON) I guess I would respond as
6 follows. With the clarification that what Staff is
7 urging of the utilities is that they go to the dance
8 without an obligation to dance, I think I would be in
9 agreement with your comment.

10 A. (BY MR. SMITH) If I might add something on
11 that, this ties back into the earlier comment about
12 refinement not being viewed as significant change. I
13 need to highlight on Exhibit S-5 the one item that is
14 missing for TEP, the local generation from an energy
15 standpoint could be significant. We would expect
16 that's probably somewhere in the neighborhood of a
17 thousand gigawatt hours annually, and compared to the
18 50 to 100 that we're showing in the total, I think you
19 would have to say that is significant, but it's
20 significant only in terms of that we had not yet
21 included the number.

22 And secondly, the table that we have on page
23 7 of the Staff Report, I think there's a distinction
24 that we need to make in terms of what's happened with
25 capacity and energy between page 7 and Staff Exhibit

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Date: November 22, 2002

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1 terms of how you would evaluate the bids relative to
2 the local units.

3 Q. It sounds like it could be a proxy. It's
4 just the amount of that proxy may depend on whether
5 it's the WestConnect or the other, is that correct?

6 A. (BY MR. SMITH) I believe that's correct.
7 Again, Staff has continued to take the position that
8 while we are setting a contestable load for which we
9 feel there should be a procurement process, we leave
10 the decision to the utility and expect the utility to
11 make the proper judgment on behalf of consumers.

12 Q. If TEP accepts a competitive bid on its RMR
13 service load, is it Staff's position that TEP will be
14 able to recover the resulting market price in its
15 rates?

16 A. (BY MR. SMITH) Your question was if it
17 accepts a bid?

18 Q. Right, a competitive bid.

19 A. (BY MR. SMITH) A competitive bid. I would
20 suggest that whether it's an RMR unit or not, the
21 recovery issue is one that Staff has put to
22 engineering terms that that would be a price recovery,
23 and would be addressed in rate hearings at the
24 appropriate time. To the degree that you use your own
25 units, those that are rate based, you are already

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1 any amount of energy in the process.

2 As Mr. Johnson had put it, we had both been
3 invited to the dance, but neither of us are required to
4 actually dance.

5 That S-5 exhibit, with those numbers being so
6 much larger than TEP would have expected, it does mean
7 a lot to, quote, the investment community, when they
8 look at TEP. And I think we should reiterate Staff's
9 initial focus that this should be about process and not
10 about numbers.

11 The Staff in their November 18th testimony, and
12 as referenced in their S-5 Exhibit, has submitted that
13 all RMR should be contestable in the first
14 solicitation, including that provided by the utility's
15 own existing assets.

16 I would like to briefly discuss TEP's RMR
17 situation. All of TEP's current RMR is provided by
18 existing TEP-owned assets. TEP is, due to their load
19 pocket, we are a voltage limited system. It's not a
20 question of putting additional amount of wires in the
21 air. It's a question about voltage support. No one --
22 there's not one non-TEP plant currently in existence
23 today that can provide RMR for voltage support.

24 I would like to address in Exhibit S-5, there's
25 a couple of numbers in there that I will focus on. And

1 economics of utility generation are part of the
2 evaluation phase of an RFP, not something that's done
3 in the presolicitation phase.

4 This term should not be included. The process
5 should require for a sufficient variety of products,
6 not quantity, in order to determine the economics of
7 the utility resources. The amount of bids that are
8 received will be a function of the types of energy and
9 services solicited, not a volume solicited.

10 Q. Does that conclude your comments on the
11 November 18th testimony and the testimony that you've
12 heard at hearing last week?

13 A. Yes, it does.

14 MR. PATTEN: Thank you, Mr. Hutchens.

15 Mr. Hutchens is available for cross-
16 examination.

17 ALJ WOLFE: Thank you, Mr. Patten.

18 Mr. Mumaw, do you have questions for
19 Mr. Hutchens?

20 MR. MUMAW: Just a few.

21

22 CROSS-EXAMINATION

23

24 Q. (BY MR. MUMAW) Mr. Hutchens, you touched on
25 the issue of the effect that a large number being

1 essentially broadcast to the world that APS would be
2 required to solicit in capacity and energy would have
3 an effect on the investment community.

4 Could you explain that?

5 A. I could probably best explain that by a
6 specific example. Being in the wholesale marketing
7 area, I don't generally have that much to do with
8 refinancing or the financing of TEP's debt or other
9 like events.

10 However, in this past refinancing that we have
11 completed just recently, the questions specifically
12 from bankers to me about what was the numbers being
13 competitively solicited and what did they mean were
14 being asked for -- so that these bankers could get a
15 measure of what they thought our risk was.

16 Q. Can I take it from that, Mr. Hutchens, that the
17 investment community doesn't regard a requirement to
18 bid a large amount of capacity and energy as a
19 positive?

20 A. Not without a whole bunch of other qualifiers.
21 I imagine not.

22 Q. Including some sort of adjustment mechanism to
23 allow cost recovery?

24 A. That is specifically the question in TEP's
25 case, yes.

1 Q. Just to kind of put a closing on this,
2 Mr. Hutchens, the suggestion that may have been left by
3 some of the questioners last week that the size of
4 number doesn't matter since you're not required to take
5 all of it, you would disagree with that?

6 A. Yes. I would disagree.

7 Q. In your November 12th testimony at page 9, you
8 discuss TEP's position on qualifying facilities. Do
9 you see that?

10 A. Yes, I do.

11 Q. And I believe you indicate that at least it was
12 TEP's belief that there was this consensus that new QF
13 agreements or, in other words, QF agreements or
14 proposed QF agreements after September 1st, 2002 would
15 not be exempt from the competitive bidding process; is
16 that correct?

17 A. Yes, that is.

18 Q. And am I correct that that was out of concern
19 that one of the proposed merchant plants may get itself
20 or has gotten itself qualified as a QF; and, therefore,
21 might preempt the other merchant generators from
22 bidding?

23 A. Yes. That was a concern.

24 Q. And in your testimony you seem to indicate that
25 perhaps there should be some sort of distinction made

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

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13 IN THE MATTER OF TUCSON ELECTRIC) DOCKET NO.
14 POWER COMPANY'S APPLICATION FOR) E-01933A-02-0069
15 A VARIANCE OF CERTAIN ELECTRIC)
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17 DATES.)

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1 other things, correct?

2 A. (BY MR. SMITH) That's correct.

3 Q. Is it fair to say that determining
4 contestable RMR load is more complicated than
5 determining non-RMR load, given the transmission
6 aspect?

7 A. (BY MR. SMITH) Certainly RMR -- let me say
8 it this way. Certainly load that falls in the
9 category of being contestable RMR capacity and energy
10 is more difficult to define than simply establishing a
11 load forecast because you have to consider multiple
12 factors including the transmission system, what hours
13 it would exceed the transmission import constraints,
14 et cetera.

15 Q. My understanding is that the transmission
16 constraint analysis will be the RMR study that's
17 anticipated to be done at the end of January.

18 A. (BY MR. SMITH) That's correct.

19 Q. And my understanding from the testimony
20 yesterday is that once that study is completed at the
21 end of January, Staff will accept comment on that
22 study, is that correct?

23 A. (BY MR. SMITH). The utilities are to complete
24 the studies and file a report with their ten-year
25 plans that are due to be filed with the Commission by

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

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1 like to answer it.

2 A. (BY MR. JOHNSON) I will refer it to
3 Mr. Smith.

4 A. (BY MR. SMITH) The term RMR service has to
5 do with providing the capacity energy needs within a
6 local constrained area during those hours in which the
7 local load exceeds the transmission import capability
8 of that local system.

9 Q. And RMR service is intended to insure system
10 reliability in general?

11 A. (BY MR. SMITH) That is correct.

12 Q. And is RMR service necessary to meet consumer
13 load?

14 A. (BY MR. SMITH) It is necessary to meet
15 whatever load is located within, internal to that
16 constraint.

17 Q. Would that also include voltage stability?

18 A. (BY MR. SMITH) It includes thermal voltage
19 stability and VAR margin and also stability, general
20 stability concerns.

21 Q. Could you briefly explain what voltage
22 stability is?

23 A. (BY MR. SMITH) Voltage stability has to do
24 with the fact that the voltage that individual buses,
25 stations in the system must remain within a prescribed

1 voltage range to be considered acceptable voltage for
2 consumer purposes. And during a disturbance, if the
3 voltage excursion is outside those ranges and does not
4 return within that range within a specified period of
5 time, it would be considered to be unstable, that it
6 is not performing in a consistent fashion with
7 standards.

8 Q. And RMR local generation is designed to
9 insure that stability?

10 A. (BY MR. SMITH) Local generation is one means
11 of addressing voltage instability.

12 Q. What entity is obligated to meet the RMR
13 service load in a utility service area?

14 A. (BY MR. SMITH) The quality of service,
15 reliability of service obligation resides with the
16 utility distribution company.

17 Q. What happens if RMR service is not provided
18 when needed?

19 A. (BY MR. SMITH) Then the quality of service
20 is deteriorating and the utility would be found to be
21 not in compliance with its obligations to provide
22 reliable service.

23 Q. What might be the impact on the utility's
24 electric consumer?

25 A. (BY MR. SMITH) The impact on the consumer

1 could be anything from simply being at risk should a
2 disturbance occur all the way to a customer or group
3 of customers being required to be out of service
4 because there is inadequate system to serve.

5 Q. I just want to confirm that I understand the
6 Staff's position now. Is it Staff's position now that
7 all of the utility's RMR load is contestable?

8 A. (BY MR. SMITH) That is what we have
9 attempted to accomplish with our Exhibit S-5.

10 Q. And I believe that Mr. Smith, that your
11 rebuttal testimony also provides that position, is
12 that correct?

13 A. (BY MR. SMITH) That is correct, it provides
14 the foundation for that.

15 Q. And is that position different than set forth
16 in the Staff Report at page 6?

17 A. (BY MR. SMITH) If you could refer to a
18 particular location.

19 Q. It would be page 6, lines 5 through 12.

20 A. (BY MR. SMITH) I believe that you will find
21 that what Staff has stated in terms of contestable
22 load was that consistent with what was in the Track A
23 Order, that it at least have certain characteristics,
24 and what we've done in this clarification and rebuttal
25 is clarify that we would add to that minimum

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BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

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2 WILLIAM A. MUNDELL
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3 JIM IRVIN
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4 MARC SPITZER
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6 IN THE MATTER OF THE GENERIC
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DOCKET NO. E-00000A-02-0051

7
8 IN THE MATTER OF ARIZONA PUBLIC
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DOCKET NO. E-01933A-02-0069

16
17 IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
APPROVAL OF ITS STRANDED COST
RECOVERY.

DOCKET NO. E-1933A-98-0471

DECISION NO. 65154

OPINION AND ORDER

18 DATES OF HEARING:

June 14, 2002 (pre-hearing); June 17, 18, 19, 20, 21, 27,
and 28, 2002

19 PLACE OF HEARING:

Phoenix, Arizona

20 ADMINISTRATIVE LAW JUDGE:

Lyn Farmer

21 IN ATTENDANCE:

William A. Mundell, Chairman
Marc Spitzer, Commissioner

22
23 APPEARANCES:

Mr. Jay L. Shapiro, FENNEMORE CRAIG and Mr.
24 Michael R. Engleman, DICKSTEIN, SHAPIRO,
MORIN & OSHINSKY on behalf of Panda Gila River,
L.P.;

25 Mr. Lindy Funkhouser, Director, and Mr. Scott S.
26 Wakefield, Chief Counsel, on behalf of the Residential
Utility Consumer Office;

27 Mr. Thomas L. Mumaw, Senior Attorney, PINNACLE
28 WEST CORPORATION and Mr. Jeffrey B. Guldner,

1 IT IS FURTHER ORDERED that A.A.C. R14-2-1606(B) is stayed and Decision Nos. 61973
2 and 62103 are modified to stay the requirement that 100 percent of power purchased for Standard
3 Offer Service shall be acquired from the competitive market, with at least 50 percent through a
4 competitive bid process.

5 IT IS FURTHER ORDERED that A.A.C. R14-2-1611(A)'s applicability to APS and TEP's
6 captive customers is stayed.

7 IT IS FURTHER ORDERED that upon implementation of the outcome of Track B, APS shall
8 acquire, at a minimum, any required power that cannot be produced from its own existing assets,
9 through the competitive procurement process as developed in the Track B proceeding. The minimum
10 amount of power, the timing, and the form of procurement shall be determined in the Track B
11 proceeding.

12 IT IS FURTHER ORDERED that upon implementation of the outcome of Track B, TEP shall
13 acquire, at a minimum, any required power that cannot be produced from its own existing assets,
14 through the competitive procurement process as developed in the Track B proceeding. The minimum
15 amount of power, the timing, and the form of procurement shall be determined in the Track B
16 proceeding.

17 IT IS FURTHER ORDERED that the parties are directed to continue their efforts in Track B
18 of this proceeding to develop a competitive solicitation process that can begin by March 1, 2003. For
19 the purposes of the competitive solicitation process, the PWEC generating assets that APS may seek
20 to acquire from PWEC, shall not be counted as APS assets in determining the amount, timing and
21 manner of the competitive solicitation.

22 IT IS FURTHER ORDERED that Staff shall open a rulemaking to review the Retail Electric
23 Competition Rules in light of our decisions herein and to address issues resolved in Track B, and to
24 amend A.A.C. R14-2-1615(A), A.A.C. R14-2-1606(B), and A.A.C. R14-2-1611(A).

25 IT IS FURTHER ORDERED that APS and TEP shall work with Staff to develop a plan as
26 discussed herein to resolve reliability must-run generation concerns. Staff shall include results of
27 such a plan in the 2004 Biennial Transmission Assessment.

28 IT IS FURTHER ORDERED that APS and TEP shall file annual reliability must-run
generation study reports with the Commission in concert with their January 31 ten year plan, for
review prior to implementing any new RMR generation strategies until the 2004 Biennial
Transmission Assessment is issued.

IT IS FURTHER ORDERED that if APS wishes to pursue the issue of acquiring PWEC's

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

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

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

7)
8 IN THE MATTER OF THE GENERIC) DOCKET NO.
PROCEEDING CONCERNING THE) E-00000A-01-0630
9 ARIZONA INDEPENDENT SCHEDULING)
ADMINISTRATOR.)

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

13

At: Phoenix, Arizona

14

Date: November 22, 2002

15

Filed: DEC - 9 2002

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(Pages 211 through 415)

19

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Prepared for:

By: DAWNA J. BOSWELL, RPR
Certified Court Reporter
Certificate No. 50326

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TEP

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(602) 274-9944
Phoenix, AZ

1 Q. So the RMR study is just to determine an RMR
2 load and number, is that correct?

3 A. I would say it has a two-fold purpose. For
4 the Track B purpose, it serves to refine the RMR
5 contestable load numbers, but it also has a second
6 purpose, and that is to establish what is the proper
7 selection of choices to resolving the transmission
8 import constraint on a forward-moving basis. And that
9 in effect was the requirement of the Track A decision
10 requiring that that be filed, the plans resolving
11 transmission and import constraints be filed in the
12 2004 Biennial Transmission Assessment.

13 Q. And that's Staff's understanding or
14 interpretation of the Track A Order, is that correct?

15 A. (BY MR. SMITH) Yes, that's correct.

16 Q. Let me get a little more specific on the
17 contestability of RMR load. First, is the utility's
18 RMR load contestable even if that load is currently
19 being served by the utility's existing assets?

20 A. (BY MR. SMITH) That is what we're proposing.

21 Q. And that is still true even if those existing
22 assets are in rate base?

23 A. (BY MR. SMITH) That is accurate.

24 Q. What if the RMR load is currently being met
25 by a contract with a supplier? Is that a contestable

1 other things, correct?

2 A. (BY MR. SMITH) That's correct.

3 Q. Is it fair to say that determining
4 contestable RMR load is more complicated than
5 determining non-RMR load, given the transmission
6 aspect?

7 A. (BY MR. SMITH) Certainly RMR -- let me say
8 it this way. Certainly load that falls in the
9 category of being contestable RMR capacity and energy
10 is more difficult to define than simply establishing a
11 load forecast because you have to consider multiple
12 factors including the transmission system, what hours
13 it would exceed the transmission import constraints,
14 et cetera.

15 Q. My understanding is that the transmission
16 constraint analysis will be the RMR study that's
17 anticipated to be done at the end of January.

18 A. (BY MR. SMITH) That's correct.

19 Q. And my understanding from the testimony
20 yesterday is that once that study is completed at the
21 end of January, Staff will accept comment on that
22 study, is that correct?

23 A. (BY MR. SMITH). The utilities are to complete
24 the studies and file a report with their ten-year
25 plans that are due to be filed with the Commission by

1 January 31st of each year.

2 Q. And let me just ask the question again, and I
3 understand that Staff is then going to take comment on
4 that study, is that correct?

5 A. (BY MR. SMITH) Those are filed as public
6 documents in Docket Control, and the public is
7 available, has access and availability to comment on
8 those documents.

9 Q. Has Staff thought about how long it will
10 allow comment on those documents?

11 A. (BY MR. SMITH) We have not at this stage
12 contemplated any time limitations.

13 Q. So it could be a week, a month, some period
14 of time after it's filed at the end of January?

15 A. (BY MR. SMITH) That would be up to the
16 parties that choose to comment, just when they choose
17 to offer those comments.

18 Q. Is it possible that Staff would modify the
19 transmission constraint analysis based on comment of
20 parties on that study?

21 A. (BY MR. SMITH) I doubt that we would change
22 the content of what is supplied by the transmission
23 providers. Certainly comments will be considered as
24 Staff evaluates the merits of the reports that have
25 been filed.

1 Q. And the merits of the reports would go
2 towards actually determining the contestable RMR load,
3 is that correct?

4 A. (BY MR. SMITH) That is correct.

5 Q. And if the analysis of transmission
6 constraint is modified as a result of comment, that
7 could change the amount of contestable RMR load, is
8 that right?

9 A. (BY MR. SMITH) That's correct.

10 Q. Would it be possible that the comments might
11 also change what acceptable RMR solutions might be
12 available?

13 A. (BY MR. SMITH) I would expect that certainly
14 the industry might have different views than the
15 incumbent utilities relative to the merits of various
16 alternatives.

17 Q. Might it also affect appropriate delivery
18 points to meet RMR load?

19 A. (BY MR. SMITH) Very possible.

20 Q. What about RMR plant locations?

21 A. (BY MR. SMITH) Possible that there would be
22 different views on that matter as well.

23 Q. What about the nature of additional
24 transmission facilities into the load pocket?

25 A. (BY MR. SMITH) There I don't have a sense.

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

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

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TEP

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Phoenix, AZ

1 like to answer it.

2 A. (BY MR. JOHNSON) I will refer it to
3 Mr. Smith.

4 A. (BY MR. SMITH) The term RMR service has to
5 do with providing the capacity energy needs within a
6 local constrained area during those hours in which the
7 local load exceeds the transmission import capability
8 of that local system.

9 Q. And RMR service is intended to insure system
10 reliability in general?

11 A. (BY MR. SMITH) That is correct.

12 Q. And is RMR service necessary to meet consumer
13 load?

14 A. (BY MR. SMITH) It is necessary to meet
15 whatever load is located within, internal to that
16 constraint.

17 Q. Would that also include voltage stability?

18 A. (BY MR. SMITH) It includes thermal voltage
19 stability and VAR margin and also stability, general
20 stability concerns.

21 Q. Could you briefly explain what voltage
22 stability is?

23 A. (BY MR. SMITH) Voltage stability has to do
24 with the fact that the voltage that individual buses,
25 stations in the system must remain within a prescribed

1 voltage range to be considered acceptable voltage for
2 consumer purposes. And during a disturbance, if the
3 voltage excursion is outside those ranges and does not
4 return within that range within a specified period of
5 time, it would be considered to be unstable, that it
6 is not performing in a consistent fashion with
7 standards.

8 Q. And RMR local generation is designed to
9 insure that stability?

10 A. (BY MR. SMITH) Local generation is one means
11 of addressing voltage instability.

12 Q. What entity is obligated to meet the RMR
13 service load in a utility service area?

14 A. (BY MR. SMITH) The quality of service,
15 reliability of service obligation resides with the
16 utility distribution company.

17 Q. What happens if RMR service is not provided
18 when needed?

19 A. (BY MR. SMITH) Then the quality of service
20 is deteriorating and the utility would be found to be
21 not in compliance with its obligations to provide
22 reliable service.

23 Q. What might be the impact on the utility's
24 electric consumer?

25 A. (BY MR. SMITH) The impact on the consumer

1 could be anything from simply being at risk should a
2 disturbance occur all the way to a customer or group
3 of customers being required to be out of service
4 because there is inadequate system to serve.

5 Q. I just want to confirm that I understand the
6 Staff's position now. Is it Staff's position now that
7 all of the utility's RMR load is contestable?

8 A. (BY MR. SMITH) That is what we have
9 attempted to accomplish with our Exhibit S-5.

10 Q. And I believe that Mr. Smith, that your
11 rebuttal testimony also provides that position, is
12 that correct?

13 A. (BY MR. SMITH) That is correct, it provides
14 the foundation for that.

15 Q. And is that position different than set forth
16 in the Staff Report at page 6?

17 A. (BY MR. SMITH) If you could refer to a
18 particular location.

19 Q. It would be page 6, lines 5 through 12.

20 A. (BY MR. SMITH) I believe that you will find
21 that what Staff has stated in terms of contestable
22 load was that consistent with what was in the Track A
23 Order, that it at least have certain characteristics,
24 and what we've done in this clarification and rebuttal
25 is clarify that we would add to that minimum

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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

SEP 10 2002

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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
PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

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

DOCKET NO. E-01933A-02-0069

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DECISION NO. 65154

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APPEARANCES:

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Michael R. Engleman, DICKSTEIN, SHAPIRO,
MORIN & OSHINSKY on behalf of Panda Gila River,
L.P.;

Mr. Lindy Funkhouser, Director, and Mr. Scott S.
Wakefield, Chief Counsel, on behalf of the Residential
Utility Consumer Office;

Mr. Thomas L. Mumaw, Senior Attorney, PINNACLE
WEST CORPORATION and Mr. Jeffrey B. Guldner,

1 Because the circumstances that the rules were designed to address have not developed, because
 2 asset transfer combined with an ineffective wholesale market places the public at substantial risk, and
 3 because it “appears that reliance on FERC to police the wholesale market may be ill advised”, Staff
 4 recommends that the Commission should not allow asset transfer until it is convinced that the transfer
 5 is in the public interest. Staff advises that “[w]ithout conditions designed to address market structure
 6 concerns, the transfer is not in the public interest.” (Staff Brief at p. 4, emphasis original).

7 Staff believes that before the Commission decides whether a particular utility should be allowed
 8 to divest, the utility should indicate whether it wants to divest.⁵ If a Company wants to divest, it
 9 should file market power studies and a proposed code of conduct, Track B should be concluded, and
 10 in any event, no reliability must-run generation (“RMR”) should be divested. Staff’s states that its
 11 recommendations on divestiture may have implications for future rate setting, because if a utility
 12 chooses to retain its assets, the Staff believes that the Commission should apply cost of service
 13 principles when setting rates.

14 In response to APS’ argument that the Commission is bound by the Settlement Agreement, Staff
 15 argues that the Commission is not contractually bound. Staff states that if a regulatory agency finds a
 16 proposed settlement to be reasonable, the terms of the settlement form the substance of a decision that
 17 binds all parties to the proceeding, and the approved agreement assumes the nature of an agency
 18 decision enacted in the public interest, losing its private contractual character. (Citing Cajun Elec.
 19 Power Coop., Inc. v. F.E.R.C., 924 F.2d 1132, 1135 (D.C. Cir. 1991). Staff also argues that it is
 20 unlikely that a contract was formed due to the Commission’s amendments to the agreement. Staff
 21 further argues that, assuming for the sake of argument that a contract exists, it is unenforceable
 22 because the “alleged contract was based on the existence of a workably competitive wholesale
 23 market, and because a workably competitive market does not exist, the purpose of the alleged
 24 contract has been frustrated, thereby excusing performance.” (Staff Brief at p. 19)

25 APS

26 APS believes that divestiture will benefit APS customers in the long run and will not harm
 27 them in the short run. It acknowledges that the benefits of divestiture are more long-term in nature,
 28 while the ‘fisks of the market loom today’. (APS Brief at p. 12) APS points out that through its
 Settlement Agreement, its customers have protection against the market through June 2004, and that
 intermediate to long-term protection for consumers is available through the proposed PPA.

⁵ Staff recommends that utilities should inform the Commission within 30 days of the conclusion of Track B.

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

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PROCEEDING CONCERNING ELECTRIC) DOCKET NO.
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1 voltage range to be considered acceptable voltage for
2 consumer purposes. And during a disturbance, if the
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11 of addressing voltage instability.

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13 service load in a utility service area?

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15 reliability of service obligation resides with the
16 utility distribution company.

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18 when needed?

19 A. (BY MR. SMITH) Then the quality of service
20 is deteriorating and the utility would be found to be
21 not in compliance with its obligations to provide
22 reliable service.

23 Q. What might be the impact on the utility's
24 electric consumer?

25 A. (BY MR. SMITH) The impact on the consumer

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BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER**

**FILE
ORIGINAL**

**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. 4-14-2-1606**

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

RESPONSE TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: TRACK B ISSUES

NOVEMBER 18, 2002

TEP 3

1 Q: Why should any future RMR solicitation be performed separately from the initial 2003
2 solicitation?

3 A: At this stage of the game, including RMR obligations would greatly complicate and
4 prolong the solicitation process to the detriment of all parties involved. From TEP's
5 perspective, given the critical nature of RMR obligations, the competitive solicitation of
6 RMR would involve analyzing a completely new and different set of procurement issues
7 and would delay the 2003 process. Moreover, given TEP's unique situation where *all* of
8 its RMR generation is owned by TEP and is located within TEP's constrained load
9 pocket, it is highly unlikely that any third party could compete with these existing units
10 with new generation or transmission given the Staff's apparent focus on short-term
11 procurement for the 2003 solicitation. First, any new RMR generation (that would have
12 to be built in the TEP load pocket absent any immediate transmission upgrades into that
13 load pocket) or any transmission upgrades (that would allow access to RMR generation
14 outside of the load pocket) would require a long-term planning and commitment to
15 ensure the economic benefits. Second, any non-transmission or non-generation
16 alternatives that might be considered as a possible RMR solution would require extensive
17 analysis of their ability (and reliability) to meet TEP's actual RMR needs. Because of
18 this complexity and the importance of RMR, an RFP for RMR should focus only on
19 competing generation and transmission solutions. Any RMR solicitation focusing on
20 third-party generation or transmission solutions would require an extensive evaluation
21 and negotiation period that simply does not fit with the envisioned 2003 solicitation.

22 Q: Do you agree with Mr. Kendall's testimony (beginning at p. 16) that suggests including
23 Environmental Portfolio (EPS) obligations in the solicitation?

24 A: No. TEP believes that this solicitation should focus on procuring bulk wholesale power
25 needed to serve its customers. The inclusion of EPS in the procurement process
26 unnecessarily complicates the process. Because a utility can meet its EPS obligations in
27 a number of ways, including through the use of offsets and credits, it is not clear that the
28 Commission intended its inclusion in the solicitation process by using the term "required
29 power". As referenced in the October 25, 2002 Staff Report (at pp.32, 39) – and
apparently agreed to in the workshops (although not everyone seems to agree now) – the

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BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER**

**IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
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Docket No. E-00000A-02-0051

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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

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

Docket No. E-01933A-98-0471

**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

TESTIMONY OF DAVID HUTCHENS

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

RE: NEEDS ASSESSMENT AND PROCUREMENT PROPOSAL

NOVEMBER 4, 2002

TEP 1

1 Q: Please describe TEP's wholesale contracts included in the load forecast.
2 A: TEP has three wholesale contracts that are included in the "Wholesale Load" line on the
3 Exhibit 3 and in the load demand forecast calculations in Exhibit 5. All three are sales
4 agreements under TEP's Market Based Sales Tariff and include 100 MW sale of capacity
5 and energy to SRP, a full-requirements capacity and energy sale to Navajo Tribal Utility
6 Authority and a 60 MW sale to Phelps Dodge Energy Services.

7 **TEP'S CONTESTABLE LOAD**

8 Q: Please summarize the contestable load results.
9 A: Exhibit 1 provides the TEP's Contestable Load for 2003 through 2006 as discussed in the
10 Track B workshop process and calculated using the above described process. TEP
11 believes that this is the appropriate contestable load to use for the solicitation process.

12 Q: Are these the same numbers supplied to the parties in the Track B workshops?
13 A: Yes. In fact, both Exhibits 1 and 3 hereto had been provided to Staff and the other parties
14 at the Track B workshops. Exhibit 1 is simply a tabulation of the data from the Exhibit 3
15 graphs.

16 Q: Does the Staff's October 25, 2002 Report on Competitive Solicitation reflect the same
17 Contested Load for TEP?

18 A: No. Staff has changed the amount of TEP's contestable load that the parties discussed in
19 the Workshop.

20 Q: Did Staff recognize the apparent agreement of the parties on the amount of TEP's
21 contestable load?

22 A: Apparently not. TEP was under the impression that the Contestable Load, as presented in
23 Exhibit 1, was accepted by all parties participating in the workshop. In particular, Staff
24 did not list TEP's unmet needs as an area of dispute on Staff's issue list submitted on
25 October 1, 2002. On the other hand, Staff did list APS's unmet needs as an area of
26 dispute.

Exhibit 1. TEP Contestable Load
Includes Two Newest RMR CTs in TEP's Existing Assets

	2003	2004	2005	2006
Capacity (MW)	147	214	346	393
Energy (GWh)	14	14	57	58

Includes Firm Wholesale Contracts as Load

Exhibit 2. TEP's Contestable Load without Two Newest RMR CTs

	2003	2004	2005	2006
Energy (GWh)	50	46	120	104

Includes Firm Wholesale Contracts as Load