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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
EXCEPTIONS TO RECOMMENDED OPINION AND ORDER
IN "TRACK B"

Tucson Electric Power Company ("TEP"), through undersigned counsel, hereby submits its exceptions to (a) the Recommended Opinion and Order, issued January 29, 2003 ("ROO"); and (b) Hearing Division Proposed Amendment #1, issued February 4, 2003 (the "Amendment"), in the Track B proceeding held in the consolidated dockets referenced above, as follows:

Exception No. 1: A Utility Should Not Be Forced to Accept an Unreasonable Bid for Its Unmet Needs.

The ROO, as modified by the Amendment, apparently mandates that TEP must acquire, by

1 competitive solicitation, all of its “Unmet Needs.” [ROO at 69:6, 70:28, 75:14; Amendment at 2]¹
2 The impact of this mandate is that TEP will be precluded from rejecting the bids it receives for
3 Unmet Needs *even if* all of those bids:

- 4 1. are patently unreasonable;
- 5 2. are uneconomical;
- 6 3. decrease system reliability;
- 7 4. utilize energy from sources that create adverse environmental
8 effects; or
- 9 5. will result in a variety of other impacts contrary to the goals of
10 this competitive solicitation.

11 Although the ROO does allow a utility to reject all bids for “Contestable Load”² beyond
12 Unmet Needs, based upon economic and technical analyses [ROO at 68:26-69:6], it does not – but
13 should – provide a similar safeguard regarding the analysis and acceptance of bids for Unmet
14 Needs.

15 TEP is also concerned that the ROO does not clearly state the time period for which TEP
16 must obtain Unmet Needs through the competitive solicitation process. Obviously, if TEP is
17 required to secure long-term commitments, the preclusion from rejecting all bids in the event that
18 they are contrary to the public interest becomes more problematic.

19 TEP’s concern that it may not receive acceptable bids is based on several factors. First,
20 TEP’s service area faces transmission import limitations that could restrict the number of bids it
21 receives. Those transmission import limitations may also increase the bid price due to the need for
22 either convoluted transmission pathways into the TEP service area or not-yet-constructed
23 transmission pathways to the TEP service area. Moreover, bids that incorporate and rely upon
24 new facilities are speculative given construction uncertainties, and would serve only Unmet Needs

25 ¹ “Unmet Needs” is the equivalent to the ROO’s reference to “any required power that cannot be
26 produced from [] existing assets.” [See ROO at 14:9-15:20]

27 ² “Contestable Load” is the amount of energy and capacity a utility must bid in the competitive
solicitation and that amount includes required power that cannot be produced from its existing assets or
existing contracts. [See ROO at 15:6-10]

1 in the future. Second, TEP simply has no guarantee that it will receive any bid that can pass a
2 proper economic and technical analysis. Indeed, TEP does not have a competitive affiliate that
3 could bid on TEP's Unmet Needs and that could provide some security that at least one reasonable
4 bid would be received. TEP proposes that the Commission include the same type of analytical
5 "safety net" for Unmet Needs bidding – as is recommended for Contestable Load beyond Unmet
6 Needs – to avoid a situation where TEP must accept a bid that is against the public interest.

7 Staff's position regarding the acceptance of bids appears to support TEP's proposal. Staff
8 repeatedly stated that *all* bids could be rejected under appropriate circumstances and did not carve
9 out an exception for Unmet Needs. [See, e.g., Staff Ex. 1 at 16:14-26; see, e.g., Tr. at 170:21 to
10 171:9, 285:6-11] In its Initial Closing Brief, Staff further stated that "[t]he utilities should have
11 the right to reject all bids if the bids do not reasonably meet the needs of the utility and its
12 customers. Indeed, since the utilities will still be expected to supply electricity to their customers
13 in a prudent manner, they will have an *obligation* to reject uneconomic bids." [Staff's Initial
14 Closing Brief at 5:19-22 (emphasis in original)]

15 To remedy the problem of the mandatory acceptance of an unreasonable bid for Unmet
16 Needs, TEP requests that the Commission: (i) amend the ROO by adding the phrase "and bids for
17 unmet needs" after the word "bids" on page 75:12; and (ii) reject the portions of the Hearing
18 Division's Amendment that propose to modify pages 69:6, 70:28 and 75:14 of the ROO.

19 **Exception No. 2: "Existing Assets" Should Include TEP's Non Rate-**
20 **Based Assets.**

21 The ROO's calculation of Unmet Needs excludes existing non rate-based assets. [ROO at
22 76:2] By so doing, the Commission is penalizing TEP for recently-constructed facilities that were
23 necessary to serve TEP's expanding native load. Specifically, in 2001, TEP installed two
24 Combustion Turbines within its service area. Staff's calculation of TEP's Unmet Needs in Exhibit
25 S-5 excludes those turbines. [See Amendment at 1 (proposing to add Ex. S-5 as Exhibit B to the
26 ROO)] Under the 1999 Stranded Cost Settlement Agreement, TEP would not be able to include
27 these turbines in a rate case until 2008 even though they were needed for service. In the interim,

1 TEP submits it is unfair to ignore those turbines when calculating Unmet Needs.

2 TEP recommends that the ROO be modified to include *all* existing assets of the utilities as
3 of September 1, 2002 for the purposes of competitive solicitations.

4 ***Exception No. 3: Contestable Load Should Include Only Retail Load,***
5 ***Not Wholesale Load.***

6 One of the key goals of the Track A and Track B proceedings is to encourage “ the
7 development of a robust competitive wholesale market for generation.” [Decision No. 65154
8 (“Track A Order”) at 30:13-15] By adopting Staff’s Unmet Needs calculation in Ex. S-5, the
9 ROO effectively includes wholesale load in Unmet Needs. If wholesale load is included in
10 contestable load, it could interfere with the development of a robust wholesale generation market
11 by requiring TEP to obtain power to serve its wholesale load through the competitive solicitation
12 process. For example, any future wholesale sales by TEP would have to be supplied with power
13 obtained through this solicitation process rather than directly from the wholesale market. This
14 would disadvantage TEP in the wholesale market and require TEP to absorb additional risks of not
15 being able to procure power for its wholesale load in a timely manner and as it sees prudent. As a
16 result, TEP could effectively be precluded from further participating in the wholesale market
17 because the solicitation process creates economic and logistical hurdles that do not allow the
18 utilities to act in the competitive manner necessary to meet the demands of the wholesale market.
19 The inclusion of wholesale load in calculating Unmet Needs or “required power” would
20 completely remove a utility’s discretion regarding wholesale transactions. That will *discourage*,
21 rather encourage, the development of a robust wholesale market by taking two of Arizona’s
22 primary wholesale participants out of the market.

23 Although the ROO is silent on the issue of whether wholesale load should be included in a
24 utility’s Contestable Load, it does adopt Staff’s proposed Unmet Needs as set forth in the revised
25 Exhibit S-5 as part of TEP’s contestable load. [ROO at 37:12-20] Those Unmet Needs include
26 TEP’s wholesale energy load. [TEP Ex. 1 at 1:21-26; *see* Ex. S-5, footnote 7 (citing TEP Ex. 1 as
27 the source of the unmet need amounts)] To avoid setting the precedence of including wholesale

1 load as part of contestable load, the ROO should be amended to clarify that contestable load
2 includes only retail load, not wholesale load, by: (i) inserting the phrase “except to the extent those
3 estimates include wholesale load” after the phrase “be reasonable” on page 37:13 of the ROO; and
4 (ii) inserting the phrase “for their retail load” after the word “power” on page 68:24 of the ROO.

5 ***Exception No. 4: RMR Load Should Not Be Included in the Initial***
6 ***Competitive Solicitation.***

7 TEP agrees that, at some point, it may be appropriate to bid out Reliability Must Run
8 (“RMR”) load through a competitive solicitation. However, given the status of the RMR load
9 estimates, the potential for significantly modifying those RMR load amounts and the potential
10 time it might take to arrive at appropriate RMR load numbers, TEP urges to Commission to
11 exclude RMR load from this initial competitive solicitation.

12 First, one of the significant justifications of including RMR load in a competitive
13 solicitation is to obtain accurate information about whether the market will provide solutions to
14 transmission import constraints. [See ROO at 25:4-6] If the RMR load analysis is rushed to meet
15 the apparent solicitation timeline, the Commission may not receive meaningful information on
16 market solutions to RMR needs.

17 Second, it became clear during the course of the hearing that RMR capacity and energy
18 needs are more complicated than the basic capacity and energy needs of a utility. [See, e.g., Tr. at
19 274:3-14] RMR needs are affected by transmission limitations, system voltage stability, and a
20 number of other factors. [Id.] Yet RMR service is critical to reliable service for consumers. [See
21 Tr. at 267:4-16, 268:17 to 269:4]³ Moreover, soliciting and analyzing bids for RMR capacity and
22 energy involves many issues beyond analyzing a bid for non-RMR contestable load that focuses
23 primarily on price. Bidding RMR load will complicate this initial solicitation process.

24 Third, as has been acknowledged in the ROO, the RMR study may be modified based on
25 comment from other parties and that could affect any potential RMR solicitation amounts. [See
26

27 ³ RMR capacity and energy is critical to proper utility function. Staff recognized that importance
in the Track A proceeding by recommending no RMR generation be divested. [Track A Order at 11:16-10]

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1 ROO at 25:16 to 26:20]⁴ Waiting for a final RMR Study that incorporates all comments of
2 interested parties, and then applying those results to the contestable load, may delay the
3 solicitation.

4 Given the critical nature of RMR service and the unique circumstances involved in
5 determining RMR needs, the Commission should not include any competitive solicitation of RMR
6 capacity or energy in this initial procurement process.

7 WHEREFORE, TEP respectfully requests that the Commission amend the
8 Recommended Opinion and Order as set forth in these exceptions.

9
10 RESPECTFULLY SUBMITTED this 10th day of February, 2003.

11 **ROSHKA HEYMAN & DEWULF, PLC**

12
13 By 
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22 **ORIGINAL and 19 COPIES** of the foregoing
23 filed February 10, 2003, with:

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30 ⁴ The ROO suggests that there will be “additions” to TEP’s contestable load based on the final
31 RMR Study. [ROO at 35:14, 37:17] In fact, there will be *adjustments* – either up *or* down – based on the
32 final Study and the ROO should be amended to replace the word “additions” with the word “adjustments”
33 on Page 35, line 14 and Page 37, line 17.

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