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

Docket No. E-00000A-02-0051

**TUCSON ELECTRIC POWER  
COMPANY'S COMMENTS TO THE  
MARCH 19, 2003 ISSUES LIST**

Tucson Electric Power Company ("TEP"), through undersigned counsel, hereby provides its comments in response to the Memorandum to the Electric Competition Advisory Group titled "Issues List for the Electric Competition Advisory Group" from Ernest G. Johnson dated March 19, 2003 (the "Issues List").<sup>1</sup>

**I. INTRODUCTION.**

It has been almost seven (7) years since the Commission issued Decision No. 59943, which approved the Retail Electric Competition Rules (A.C.C. R14-1601 et. seq.). TEP believes that since then the Commission has taken significant steps to implement electric competition. However, the plan for electric competition that is in place today is substantially different than the one anticipated in 1996.

Initially the focus of electric competition was to provide additional benefits to the retail electric consumer. Indeed, A.A.C. Article 16 is entitled, "Retail Electric

<sup>1</sup> These comments are informally filed in the "Generic Restructuring Docket" in anticipation of a new rulemaking proceeding being opened in the future.

1 Competition.” Nevertheless, as the Commission continued to monitor the development of  
2 electric competition in Arizona and neighboring states, the focus shifted to establishing  
3 electric competition in the wholesale generation market. TEP concurs that there must be a  
4 viable competitive wholesale market before there can be meaningful retail electric  
5 competition. Thus, certain terms and conditions of Retail Electric Competition Rules that  
6 promote competition in the retail electric market are premature at this stage. Perhaps, even  
7 the title to Article 16 is a misnomer that should be revised to be simply “Electric  
8 Competition.”  
9

10  
11 One of the hallmarks of Arizona’s implementation of electric competition has been  
12 the willingness of the Commission to review and, when necessary, modify provisions of  
13 the Retail Electric Competition Rules. The Commission has already amended, stayed or  
14 waived provisions of the Retail Electric Competition Rules several times. See e.g.  
15 Decision No. 61071 (August 10, 1998); Decision No. 61969 (September 29, 1999);  
16 Decision No. 62924 (October 10, 2000,) and Decision No. 65154 (September 10, 2002).  
17 The Commission has made it clear that the Retail Electric Competition Rules will continue  
18 to undergo scrutiny and refinement. In Decision No. 65154, the Commission ordered that:  
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20  
21 Staff shall open a rulemaking to review the Retail Electric  
22 Competition Rules in light of our decisions herein and to  
23 address issues resolved in Track B, and to amend A.A.C. R14-  
24 2-1615 (A), A.A.C. R14-2-1606 (B) and A.A.C.R14-2-1611  
25 (A).” (id. at 33)

26 TEP believes that the Commission’s active oversight of the Retail Electric  
27 Competition Rules has served the public well. TEP supports the Commission-ordered

1 rulemaking proceeding and believes that emphasis should be placed on (1) conforming the  
2 Retail Electric Competition Rules to the orders that have been issued by the Commission;  
3 and (2) simplifying the provisions governing conduct and communications between  
4 utilities and their consumers.

5  
6 **II. RESPONSE TO ISSUES LIST.**

- 7 a. Please indicate what sections of the Retail Electric Competition Rules should  
8 be revised.
- 9 b. Please briefly summarize why the sections listed in part (a) above, require  
10 revisions.
- 11 c. Please identify market issues related to the provisions in the Retail Electric  
12 Competition Rules that generally impede or discourage competition.
- 13 d. Please provide information on issues that the Retail Electric Competition  
14 Rules do not currently address but should.
- 15 1. **A.A.C. R14-2-1604.**

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18 TEP believes that it is appropriate to revise A.A.C. R14-2-1604 in this rulemaking  
19 proceeding to reflect the scaled-back performance and expectations for retail electric  
20 competition. Accordingly, the Commission could either (1) rescind the provisions that  
21 provide for retail electric competition until such time as there are more participants who  
22 are prepared to serve retail electric customers; or (b) adopt TEP's proposal to only offer  
23 retail electric competition to customers with a load of 3 MW or more at this time. In  
24 Decision No. 65154, the Commission noted:  
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Although TEP made a recommendation concerning changing the availability of Retail Competition, this was not an issue the Commissioners agreed to be decided in Track A, and there is insufficient evidence in the record to make a determination on this issue. Accordingly, we will not modify the direct access provisions of the Retail Electric Competition Rules at this time.

TEP's recommendation was that if the Commission determined to retain provisions in the Electric Competition Rules for retail electric competition, then it should be offered only to customers with a load of 3 MW or greater. TEP Chairman Mr. Jim Pignatelli testified in the Track A proceeding that it is unlikely that any Electric Service Providers would commence residential retail electric service in the State because (a) retail electric competition is not functioning in the western states; and (b) it would be virtually impossible to base a profitable ESP business plan on Arizona alone. Mr. Pignatelli testified:

Because there is no real competition for Residential customers, and customers (Commercial and Industrial) with loads under 3 MW, I would propose that these two classifications of customers be excluded from electric competition. As time passes and electric competition matures, some or all of these customers may eventually be included within the scope of competition.

RUCO witness Dr. Rosen supported the TEP 3 MW customer proposal, as being reasonable. TEP renews its recommendation and believes that this rulemaking proceeding is a proper forum to reconsider the 3 MW customer proposal. This will ensure reliable and economic power for residential consumers and avoid potential problems resulting from residential consumers' lack of sufficient individual negotiating power.

1                   2.       A.A.C. R14-2-1615 (A).

2                   The Commission has already granted a waiver for A.A.C. R14-2-1615 (A) which  
3 required the separation of generation assets and competitive services from Affected  
4 Utilities by January 1, 2001.<sup>2</sup> See: Decision No. 65154. TEP does not believe that there  
5 is a need for the required separation of generation assets and competitive services from  
6 Affected Utilities. If an Affected Utility desires to separate generation assets and  
7 competitive services, it should have the flexibility, not the requirement to do so. Indeed,  
8 there has been no showing in any Electric Competition related proceedings that customers  
9 will be better served as a result of the separation of generation and competitive services  
10 from Affected Utilities. TEP believes that A.A.C. R14-2-1615 (A) should be rescinded,  
11 thereby providing Affected Utilities with the discretion to separate generation assets and  
12 competitive services. TEP believes that such action would be consistent with the rationale  
13 of the Commission waiver granted in Decision No. 65154.  
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16                   3.       A.A.C. R14-2-1606 (B).

17                   The Commission stayed A.A.C. R14-2-1606 (B) which required that 100 percent of  
18 power purchased for Standard Offer Service be acquired from the competitive market with  
19 at least 50 percent through a competitive bid process. See: Decision No. 65154. This  
20 provision was further modified by the "Track B Order." See: Decision No. 65743 (March  
21 14, 2003). The language of this section should be modified to conform with the  
22 Commission's revision of the competitive bid requirements.  
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<sup>2</sup> This deadline was amended by the TEP and APS Settlement Agreements to be December 31,  
2002.

1                   4.     **A.A.C. R14-2-1611(A).**

2                   The Commission stayed the provisions of A.A.C. R14-2-1611(A) as they applied to  
3                   APS' and TEP's captive customers. See: Decision No. 65154. A.A.C. R14-2-1611(A)  
4                   provided that market determined rates for Competitive Services, as defined in R14-2-1601,  
5                   shall be deemed to be just and reasonable. TEP believes that in light of the current status  
6                   of the electric competition in Arizona, as discussed herein, the stay of this provision should  
7                   be made permanent in the Electric Competition Rules.

8                   9                   5.     **A.A.C. R14-2-1606 (C) (6).**

10                  TEP believes that it is important that it have flexibility to meet the needs of its  
11                  customers, especially in a competitive environment. A.A.C. R14-2-1606 (C) (6), which  
12                  precludes tariffs for Standard Offer Service that have special discounts or contracts with  
13                  terms, or any tariff which prevents the customer from accessing a competitive option, other  
14                  than in certain limited circumstances, is too restrictive. TEP and other Affected Utilities  
15                  should be permitted to provide discounts or offer special terms to customers for any  
16                  reason.

17                  18                  19                  6.     **A.A.C. R14-2-1612 (O).**

20                  TEP is concerned that the requirements of A.A.C. R-14-2-1612 (O) to specify  
21                  unbundled billing costs elements for "competitive services", non-competitive services",  
22                  "regulatory assessments" and "applicable taxes" in each customer bill is burdensome and  
23                  confusing to customers. TEP believes that customers better understand a simplified bill  
24                  rather than one that contains multiple line items.

1 Also, A.A.C. R14-2-210 (B) 2; and R14-2-1612 (N) require that certain elements of  
2 “rates and charges” be itemized on a customer’s bill. A.A.C. R14-2-210- (B) 2 essentially  
3 refers to A.A.C. R-14-2-1612 (N), which prescribes those items that must be included on a  
4 customer’s bill. TEP believes that if these itemized bills are going to be the standard then  
5 all entities regardless of status (i.e., Affected Utilities, Energy Service Providers, Meter  
6 Service Providers, etc.), should be required to provide the specific line items.  
7

8 **7. A.A.C. R14-2-1609.**

9 A.A.C. R14-2-1609 addresses, among other things, the Arizona Independent  
10 Scheduling Administrator (“AISA”). TEP believes that the AISA has served a useful  
11 purpose. Protocols have been adopted and incorporated into the TEP Open Access  
12 Transmission Tariff filed with the Federal Energy Regulatory Commission. Also, the  
13 Track B Order has established many of the procedures necessary to implement and  
14 monitor the development of a robust and efficient electric market. TEP believes that the  
15 Commission is going to consider the future of the AISA later this year and recommends (a)  
16 that the Commission consider the dissolution of the AISA; and (b) that the Retail Electric  
17 Competition Rules be modified to reflect the fact that the AISA has already served the  
18 purpose for which it was originally established.  
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22 **8. A.A.C. R-14-2-1617 (A)(B).**

23 A.A.C. R-14-2-1617 (A) and (B) deal with information that Affected Utilities must  
24 provide to consumers. Subsection A provides for the use of consumer information labels.  
25 Subsection B identifies information that must be provided, upon request, relative to the  
26 resource portfolio of the utility. TEP believes that the requirement that these types of  
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1 information sources be used or made available should apply either to all providers of  
2 electric service or to none of them. If it is important that consumer information labels be  
3 used by Affected Utilities, then it should be important that other ESPs use the labels. The  
4 same is true for resource portfolio information that is requested by consumers.

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6 **9. Metering Issues.**

7 The Commission has, in the past, granted several waivers related to electric meters  
8 and metering services. See e.g.: Decision No. 64180 (October 30, 2001) TEP believes that  
9 these waivers should be made permanent and that the Retail Electric Competition Rules  
10 should be amended to remove the requirements waived by the Commission.

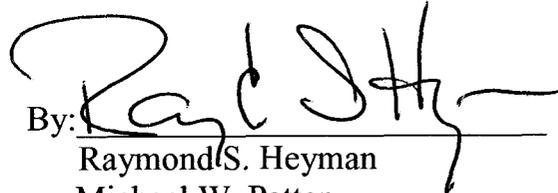
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12 **10. The Retail Electric Competition Rules Do Not Address The Rates To Be**  
13 **Charged To Customers Who Leave An Affected Utility And Then**  
14 **Return.**

15 TEP believes that it is important that the Retail Electric Competition Rules address  
16 the appropriate rates to be charged to customers who leave an Affected Utility and then  
17 later return to the same Affected Utility (“returning customers”). Affected Utilities must  
18 plan to acquire electricity (through generation, long term contracts or in the market) for  
19 customers based upon projected load. Generally, returning customers cannot be factored  
20 into the resource plan. Consequently, Affected Utilities must obtain electric power for  
21 such returning customers on the margin, i.e. at market rates. TEP believes that it is not  
22 appropriate for such returning customers to be able to obtain electric service at the same  
23 tariff rates as other standard offer service customers. Accordingly, TEP recommends that  
24 the Retail Electric Competition Rules be amended to provide appropriate remedies for the  
25 economic issues involved with returning customers. TEP believes that the Commission  
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1 should consider mechanisms such as (a) an adjuster clause; and (b) the requirement that  
2 returning customers enter into service agreements for periods of not less than one year.

3  
4 RESPECTFULLY SUBMITTED, this 14<sup>th</sup> day of April 2003.

5 **ROSHKA HEYMAN & DEWULF, PLC**

6  
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