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BEFORE THE ARIZONA CORPORATION COMMISSION

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SEP 01 1999

TUCSON ELECTRIC POWER COMPANY, an  
Arizona corporation,

DOCKET NO. E-000001-99-0243

vs.

Complainant,

CYPRUS SIERRITA  
CORPORATION'S RESPONSES TO  
TUCSON ELECTRIC POWER  
COMPANY'S FIRST SET OF DATA  
REQUESTS

CYPRUS SIERRITA CORPORATION, a  
Delaware corporation,

Respondent.

Without waiving any of the objections set forth in Cyprus Sierrita Corporation's ("Cyprus") previously filed Objections to Tucson Electric Power Company's ("TEP") First Set of Data Requests, Cyprus hereby submits its responses to TEP's first set of data requests in the above-captioned docket.

1. Provide a copy of all documents, correspondence, computer disks, notes, spread sheets and studies (including but not limited to marginal cost studies) that were prepared by Cyprus Sierrita and any of its employees, representatives, experts, consultants or agents in connection with the negotiation of and agreement to the Second Amendment.

A diligent search has revealed the documents Bates labeled CYP 000001 through CYP 000020 as responsive to this data request.

See Objections, ¶ 1, at 1-2.

Without waiving any objection, Cyprus will make the self-generation report and analysis of Raytheon Engineers and Constructors dated October 1995 and

1 related documents, including (i) those submitted to the Commission during  
2 negotiation of the Second Amendment, (ii) an internal Cyprus memorandum and  
3 attached analysis from Mike McElrath to Bill Champion *et al.* dated November 30,  
4 1995, and (iii) an internal Cyprus memorandum and attached analysis from Mike  
5 McElrath to Alan Edwards *et al.* dated August 9, 1996, which Cyprus maintains are  
6 confidential and contain proprietary information, available for TEP's review upon  
7 TEP's execution of the proposed Protective Agreement, which is enclosed herewith.

8 Cyprus will supplement its response to this request if any additional  
9 documents responsive to this request are discovered.

10 Mike McElrath, Power Manager for Cyprus, assisted in the search for  
11 documents responsive to this request.

12 2. Provide a copy of all documents, correspondence, computer disks, notes, spread  
13 sheets and studies (including but not limited to marginal cost studies) that were received by  
14 Cyprus Sierrita and any of its employees, representatives, experts, consultants or agents in  
15 connection with the negotiation of and agreement to the Second Amendment.

16 A diligent search has revealed the documents Bates labeled CYP 000021  
17 through CYP 000157 as responsive to this data request.

18 See Objections, ¶ 2, at 2.

19 Without waiving any objection, Cyprus will make the self-generation report  
20 and analysis of Raytheon Engineers and Constructors dated October 1995 and  
21 related documents, including Barbara Keene's analysis of Cyprus' self-generation  
22 option, which Cyprus maintains are confidential and contain proprietary  
23 information, available for TEP's review upon TEP's execution of the proposed  
24 Protective Agreement, which is enclosed herewith.

25 Cyprus will supplement its response to this request if any additional  
26 documents responsive to this request are discovered.

1           **Mike McElrath, Power Manager for Cyprus, assisted in the search for**  
2           **documents responsive to this request.**

3           3.       Provide a copy of all documents, correspondence, computer disks, notes, spread  
4 sheets and studies (including but not limited to marginal cost studies) that were prepared in  
5 support of the Complaint filed by Cyprus Sierrita with the Arizona Superior Court in CV 99-  
6 04912.

7           See Cyprus' Objections to TEP's First Set of Data Requests ("Objections"), ¶  
8           3, at 2.

9           Without waiving any objection, a diligent search has revealed the non-  
10 privileged documents Bates labeled CYP 000158 through CYP 000165 as responsive  
11 to this data request.

12           Cyprus identifies the following documents as protected by the attorney-client  
13 and/or work product privileges:

14           1.       November 17, 1997 Analysis of TEP's FERC 501 Account and the  
15 Second Amendment by Kevin Higgins (work product).

16           2.       February 24, 1999 letter from Loren Molever to Mike McElrath with  
17 notations to counsel (work product).

18           3.       March 3, 1999 Memorandum from Mike McElrath to Webb Crockett,  
19 Esq., Paul Mooney, Esq. and Ruth Kern, Esq. regarding "TEP Demand Letter"  
20 (work product).

21           4.       March 9, 1999 Memorandum from Jay Shapiro, Esq. to Mike  
22 McElrath regarding "Contract Dispute With TEP Over Price of Power Under  
23 Amendment No. 2" (attorney-client).

24           Cyprus will supplement its response to this request if any additional non-  
25 privileged documents responsive to this request are discovered.

26

1                   **Mike McElrath, Power Manager for Cyprus, assisted in the search for**  
2                   **documents responsive to this request.**

3                   4.       Provide the name, address and resume of any consultant(s) that have been retained  
4 on behalf of Cyprus Sierrita to analyze the Second Amendment, TEP's Formal Complaint, or  
5 Cyprus Sierrita's Complaint with Arizona Superior Court in CV 99-04912.

6                   See Objections, ¶ 4, at 2-3.

7                   **Without waiving any objection, Cyprus responds to this data request as**  
8                   **follows:**

9                   **Gary Harpster, C.P.A.**  
10                   **Director of Energy Projects**  
11                   **Overland Consulting**  
12                   **8325 Lenexa Drive, Suite 450**  
13                   **Lenexa, KS 66214**

14                   **A copy of Mr. Harpster's resume is enclosed herewith under Bates label nos.**  
15                   **CYP 000166 through CYP 000170.**

16                   5.       Provide copies of all analyses performed by Cyprus Sierrita or its consultants,  
17 including any work papers, notes or correspondence, to determine the reasonableness or accuracy  
18 of TEP's contention that TEP had under-billed Cyprus Sierrita.

19                   See Objections, ¶ 5, at 3.

20                   **Without waiving any objection, a diligent search has revealed the non-**  
21                   **privileged documents Bates labeled CYP 000171 through CYP 000214 as responsive**  
22                   **to this data request.**

23                   **Cyprus identifies the following documents as protected by the work product**  
24                   **privilege:**

25                   1.       **November 17, 1997 Analysis of TEP's FERC 501 Account and the**  
26                   **Second Amendment by Kevin Higgins.**

**Cyprus will supplement its response to this request if any additional non-**  
                  **privileged documents responsive to this request are discovered.**

1           **Mike McElrath, Power Manager for Cyprus, assisted in the search for**  
2           **documents responsive to this request.**

3           6.     Provide a copy of any and all documents, including slides, overhead  
4     transparencies and hand-outs, notes and correspondence relating to presentations Cyprus Sierrita  
5     made to TEP since June 1, 1990 regarding Cyprus Sierrita's electricity costs and TEP's electric  
6     charges.

7           **A diligent search has revealed the documents Bates labeled CYP 000215**  
8           **through CYP 000222 as responsive to this data request.**

9           **Cyprus will supplement its response to this request if any additional**  
10          **documents responsive to this request are discovered.**

11          **Mike McElrath, Power Manager for Cyprus, assisted in the search for**  
12          **documents responsive to this request.**

13          7.     Please describe, in detail and with particularity, the purposes and reason why  
14     Cyprus Sierrita entered into the Second Amendment.

15           **Cyprus entered into the Second Amendment in order to reduce its overall**  
16           **costs for electrical power and energy service to the Sierrita Mine, its second highest**  
17           **expense after labor, which would result in commensurate reductions in the cost of**  
18           **producing copper. Of particular interest to Cyprus was: (i) linking the energy**  
19           **charge portion of the price of power TEP charged to Cyprus to a known, established**  
20           **third-party index of fuel-related costs that was easily measurable and independently**  
21           **verifiable; (ii) reducing the 3% annual escalator on the energy charge portion of the**  
22           **price of power TEP charged to Cyprus pursuant to the Agreement, as amended; (iii)**  
23           **sharing in TEP's cost savings; (iv) sharing in the proceeds of any tax refunds**  
24           **awarded to TEP; and (v) gaining access to the competitive electric utility service**  
25           **market to the extent afforded other Arizona electric utility customers.**

1                   **Mike McElrath, Power Manager for Cyprus, assisted in preparing this**  
2                   **response.**

3                   8.       Please explain, in detail and with particularity, when Cyprus Sierrita first became  
4 aware that TEP's FERC Account No. 501 did not include all Valencia-related fuel costs.

5                   **In or around early October 1997, Mike McElrath received a telephone call**  
6                   **from Steve Glaser of TEP in which Mr. Glaser informed Mr. McElrath of TEP's**  
7                   **purported discovery that it was "under-billing" Cyprus for the energy charge**  
8                   **portion of the price of power TEP charged to Cyprus under the Second Amendment**  
9                   **due to an accounting change resulting from the collapse and merger of the Valencia**  
10                   **Energy Corporation into TEP in June 1996. Mr. Glaser advised Mr. McElrath that**  
11                   **he would be sending a letter to Cyprus documenting the purported "under-billing."**

12                   **The information Mr. Glaser conveyed to Mr. McElrath during the telephone**  
13                   **conversation was explained at greater length and in more detail in the letter from**  
14                   **Steve Glaser to Mike McElrath dated October 9, 1997, produced herewith under**  
15                   **Bates label nos. CYP000223 through CYP000229.**

16                   **Mike McElrath, Power Manager for Cyprus, assisted in preparing this**  
17                   **response.**

18                   9.       Provide a copy of all analyses performed by Cyprus Sierrita with respect to the  
19 cost of self-generation and/or cogeneration at the Cyprus Sierrita mining site. The response  
20 should contain all assumptions including, but not limited to, projected O&M cost, cost of capital,  
21 depreciable life, etc.

22                   See Objections, ¶ 9, at 3-4.

23                   **Without waiving any objection, Cyprus will make the self-generation report**  
24                   **and analysis of Raytheon Engineers and Constructors dated October 1995 and**  
25                   **related documents, including (i) those submitted to the Commission during**  
26                   **negotiation of the Second Amendment, (ii) an internal Cyprus memorandum and**

1 attached analysis from Mike McElrath to Bill Champion *et al.* dated November 30,  
2 1995, and (iii) an internal Cyprus memorandum and attached analysis from Mike  
3 McElrath to Alan Edwards *et al.* dated August 9, 1996, which Cyprus maintains are  
4 confidential and contain proprietary information, available for TEP's review upon  
5 TEP's execution of the proposed Protective Agreement, which is enclosed herewith.

6 10. Provide a copy of all analyses performed by Mr. Kevin Higgins on behalf of  
7 Cyprus Sierrita with respect to the collapse of Valencia and the associated changes in expenses  
8 flowing to FERC Account 501.

9 See Objections, ¶ 10, at 4; Cyprus' Response as to Mr. Higgins' analysis,  
10 *supra*, at ¶ 5(1).

11 11. Explain in detail Cyprus Sierrita's understanding of the affect on TEP's FERC  
12 accounts resulting from the collapse of Valencia, including those accounting changes that were  
13 required by FERC subsequent to the collapse.

14 **Based entirely upon information TEP has conveyed, Cyprus understands**  
15 **that as a result of the collapse and merger of Valencia into TEP, pursuant to FERC**  
16 **accounting guidelines, the costs formerly associated with Valencia no longer can be**  
17 **properly characterized as FERC 501 costs and, therefore, are not included in TEP's**  
18 **FERC Account 501.**

19 **Mike McElrath, Power Manager for Cyprus, assisted in preparing this**  
20 **response.**

21 12. Did TEP provide to Cyprus Sierrita documentation that showed a detailed  
22 breakdown ("detailed breakdown") of the expenses associated with Valencia that were flowing  
23 through FERC Account 501: (a) prior to the collapse of Valencia; and (b) prior to the subsequent  
24 agreement to the Second Amendment? If so, please (a) explain when TEP provided the detailed  
25 breakdown; (b) what Cyprus Sierrita did in response to receiving the detailed breakdown; and (c)  
26

1 provide a copy of the detailed breakdown that Cyprus Sierrita received together with documents  
2 generated in analyzing the detailed breakdown.

3 See Objections ¶ 12, at 4.

4 Without waiving any objection, Cyprus responds to this data request as  
5 follows:

6 Cyprus cannot answer “yes” or “no” to this data request, as it is unclear  
7 what TEP means by “detailed breakdown.”

8 (a) On or about September 30 1996, before the parties’ entered into to the  
9 Second Amendment but almost four (4) months after Valencia was collapsed and  
10 merged into TEP, Cyprus received from TEP a document of unknown origin  
11 defining a FERC Account 501, a two-paged spreadsheet “Chart of Accounts” that  
12 was represented to include a listing of various cost components of TEP’s FERC  
13 Account 501 and an accounting spreadsheet entitled “Cyprus Interruptible Service  
14 Proposal For Last 12 Billing Months”. The “Chart of Accounts” was an internal  
15 TEP document that nowhere mentioned the Valencia Energy Corporation in terms  
16 that Cyprus could understand at the time. In addition, upon information and belief,  
17 the parties never discussed Valencia, or any other specific component of TEP’s  
18 FERC Account 501 as part of the negotiation of the Second Amendment.

19 (b) After receiving the aforementioned documents, Mike McElrath and  
20 Malcolm Spiller reviewed them to confirm that the FERC Account 501 tracked fuel-  
21 related costs. At that time, to the best of their knowledge, neither Mr. McElrath nor  
22 Mr. Spiller had any particularized knowledge about any of the individual  
23 components of TEP’s FERC Account 501, and neither of them verified the  
24 individual components of such account listed in the documents TEP provided to  
25 Cyprus, as they understood the regulation and verification of TEP’s FERC Account  
26 501 to be the province of FERC, not Cyprus.

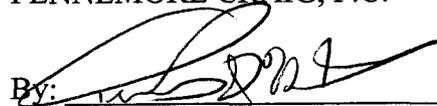
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(c) The documents Bates labeled CYP 000139 through CYP 000143 and produced in response to TEP's data request number 2 above also are responsive to this data request.

Mike McElrath, Power Manager for Cyprus, assisted in preparing the response to this data request.

DATED this 31<sup>st</sup> day of August, 1999.

FENNEMORE CRAIG, P.C.

By: 

Paul J. Mooney  
Jay L. Shapiro  
Thomas D. Ulreich  
3003 N. Central Avenue, Suite 2600  
Phoenix, Arizona 85012  
Attorneys for Cyprus Sierrita Corporation

COPY of the foregoing hand-delivered this 31<sup>st</sup> day of August, 1999, to:

Raymond S. Heyman  
ROSHKA HEYMAN & DEWULF, PLC  
Two Arizona Center  
400 North 5th Street, Suite 1000  
Phoenix, Arizona 85004  
Attorneys for Tucson Electric Power

COPY of the foregoing mailed this 31<sup>st</sup> day of August, 1999, to:

TUCSON ELECTRIC POWER COMPANY  
Bradley S. Carroll  
Tucson Electric Power Company  
220 West Sixth Street-DB203  
PO Box 711  
Tucson, Arizona 85702-0711

1 Jane L Rodda, Hearing Officer  
2 Arizona Corporation Commission  
3 400 W. Congress Street  
4 Tucson, Arizona 85701

5  
6 By: Jeanie Holbert

7 ORIGINAL and ten copies of the foregoing  
8 filed this 3/2<sup>nd</sup> day of August, 1999, with:

9 Docket Control  
10 Arizona Corporation Commission  
11 1200 West Washington Street  
12 Phoenix, Arizona 85007

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14 By: Jeanie Holbert  
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