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September 5, 2001

Mr. Steve Olea
Acting Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85004

**RE: ACC Docket No. E-0000A-01-0630
In the matter of the Generic Proceeding Concerning
the Arizona Independent Scheduling Administrator**

Dear Mr. Olea:

In the matter of the Generic Proceeding Concerning the Arizona Independent Scheduling Administrator, ACC Docket No. E-0000A-01-0630, the Arizona Independent Scheduling Administrator Association, Inc. (Az ISA) respectfully submits the enclosed comments.

The comments reflect the views of and were prepared by the Az ISA staff. If you have any questions, please contact the undersigned.

Sincerely,

Patrick J. Sanderson
Acting Executive Director

Arizona Corporation Commission
DOCKETED

SEP 05 2001

Enclosures

E-Mail

cc: Az ISA Board of Directors
Az ISA Membership

DOCKETED BY

Regular Mail
Electric Competition Service List RE-000000C-94-00165

Ten copies submitted for Docket Control Center

1. State the purpose of the AISA.

The primary purpose of the Az ISA is to facilitate the development and functionality of competitive retail electric markets in Arizona. The Az ISA furthers the development and functionality of competition in Arizona by providing independent oversight for the state-wide Protocols Manual ("PM") in a uniform manner and providing an open forum for evolving toward greater retail access and eventually a Regional Transmission Organization ("RTO").

The consensus of the stakeholder groups involved in developing the Arizona Corporation Commission's Retail Electric Competition Rules (Competition Plan) was that in order to provide non-discriminatory retail transmission access, and to facilitate a robust and efficient competitive electric market in Arizona, an Independent Scheduling Administrator (ISA) should be implemented. The Commission agreed with this assessment by making the formation of an ISA part of Rule 1609 *"The Commission believes that an Independent Scheduling Administrator is necessary in order to provide non-discriminatory retail access and to facilitate a robust and efficient electricity market."* To meet the Competition Plan requirements the Az ISA was formed as a voluntary non-profit corporation, created under the laws of the State of Arizona.

To facilitate the Plan's retail competition initiative, the Az ISA's By-laws required the Az ISA Director, in cooperation with the Members, to create an administrative and operating manual (Protocols Manual --PM) to define the transmission oversight function of the Az ISA while also defining the duties to be performed and the procedures to be followed by the Az ISA, CAOs and TPs that become members of the Az ISA, as well as SCs.

The Az ISA By-laws also require the Director to *"Provide oversight and take action, as required, to ensure compliance with the Protocols Manual and FERC-recognized Standards of Conduct related to transmission access and operation of the Interconnected Transmission System; investigate and take action on complaints related to the application of the Protocols Manual and such Standards of Conduct and to resolve other issues related to discriminatory treatment in the provision of transmission service"*.

This directive empowers the Director with the authority to ensure that all users of the transmission system will have equal treatment in the reservation, scheduling, use and curtailment of transmission services. This provision is important given that oversight by an organization that does not have provisions for independent governance, in all probability would raise discrimination concerns by competitive suppliers as they evaluate whether to enter the Arizona electric market or look elsewhere for competitive market opportunities. Underlying the Competition Plan is the belief that competition in the generation market can be expected to lower the electric costs for Arizona consumers. If there are no competitors, however, these economic benefits cannot be realized.

Equally important to the users of the transmission system is the fast-track arbitration that will provide immediate decisions by the Az ISA Director, enabling market participants to resolve claims of discriminatory treatment in the reservation, scheduling,

use and curtailment of transmission services. This is a unique feature of the Az ISA PM and is intended to help insure the integrity of the Arizona electric market and is a feature not included in the FERC ADR process.

The Az ISA membership also recognized the PM as a dynamic document that will need to change as conditions warrant. For this reason, the Az ISA Board of Directors formed a standing Operating Committee with responsibility for continued development and refinement of the PM. To this end, any member may request the Operating Committee to consider revisions to the PM.

All meetings held to develop the PM were held under auspices of the Az ISA and were open to all interested parties. The Director now chairs work groups and the Operating Committee meetings. In the Fall of 2001, the Operating Committee will meet to consider extending the temporary ARNT allocation beyond December 31, 2001. See Protocol V, Section 4.3.4.2.

2. *State and discuss the necessity of the AISA and whether it contributes (or not) to the development of retail competition.*

As mentioned in the attached memo from Az ISA's FERC counsel, Barbara Jost, the Az ISA is unaware of any state that has a significant retail access program, yet does not have an Independent System Operator ("ISO") or other independent body to operate and/or provide oversight of transmission access. The reason for this is the need for uniformity of rules and regulations. Absent such uniformity, it could be argued that potential market participants will opt to engage their resources in more promising markets. In this sense, an independent organization with ties to no market participant is essential. Further, only a body such as the Az ISA has the ability to maintain a uniform PM on a statewide basis. Fragmenting the market by potentially allowing a PM differently interpreted and applied by the individual TPs would drive market participants out of Arizona and discourage new market participants from entering the state. Moreover, future efforts to restart a competitive market infrastructure may be hindered by market participants not willing to expend more time and money on renegotiating issues previously decided in the extended negotiations leading to the PM. Anyone would understandably question the wisdom of striking a bargain and then spending more time and money to only negotiate against yourself.

Furthermore, the current dynamic nature of the industry argues in favor of retaining the Az ISA as a necessary component of the competitive market. If wholesale electricity prices continue to trend downward, such that alternative suppliers' delivered rates can compete with the TPs' fixed or market-based back-out rates, then customers will begin to look at alternative suppliers and competitive markets could take off. Because price dynamics have precluded this migration to date is no reason to close down the competitive markets program altogether.

To further the purposes noted above in question 1, the continued presence of the Az ISA is essential. Lacking this presence, retail access markets in Arizona are unlikely to make any progress. The only other alternative would be to replace the Az ISA with an

alternative independent organization immediately capable of the oversight and management functions, and prepared to expand its capabilities substantially in the event that all or many of the Phase II (see attached Phase II definitions) functions are pursued. There is no other stakeholder organization that has demonstrated such a willingness.

3. *State and discuss the functions of the AISA*

The membership of the Az ISA recognize that the electric markets in Arizona are still evolving. The focus for initial implementation was on completing the protocols and devising a scheme that would permit retail access implementation in the near term at as low a cost as possible. Accordingly, an implementation plan was developed to phase in certain organizational functions that were included in the Competition Plan. The implementation plan utilizes an "open architecture" that allows phased implementation of features when the benefits to the marketplace of such features are viewed to be commensurate with the costs of implementation. Additionally, this phase in for additional enhancements occurs only if DSTAR or another RTO is slow in developing. As markets develop, the Az ISA Director, working in concert with the Members and the Board of Directors, will determine the appropriate Az ISA functions to implement. Guidance for the implementation is outlined in the Az ISA Implementation Plan that was filed with Commission by the jurisdiction utilities and is also reflected in the text of the PM itself.

The implementation plan was based on the Competition Rules (R14-2-1609.D) that describe five characteristics that the Az ISA would be required to include:

1. Calculation of Available Transfer Capability (ATC) for the Arizona transmission utilities of Affected Utilities and other Az ISA participants and develop and operate a statewide OASIS
2. Implement and oversee nondiscriminatory application of operating protocols to ensure transmission access
3. Provide dispute resolution processes to resolve claims of discriminatory treatment in the reservation, scheduling, use and curtailment of transmission services
4. Utilize a single standardized procedure for all requests (wholesale, Standard Offer retail, and competitive retail) for reservation and scheduling the use of the Arizona transmission facilities belong to the Affected Utilities and other Az ISA participants
5. Implement a transmission planning process to assure that future load requirements will be met.

The initial implementation of the five characteristics was subdivided into two Tasks. Task 1, which took effect upon FERC acceptance and Az ISA implementation of its Tariff, was the start up phase which involves limited oversight of all PM activities designated as Phase I PM activities (see attached "Phased Implementation of Az ISA PM Obligations" for a description of the precise activities), and the provision of ADR services, as required. After initial start up, and upon Board approval, the hiring of additional staff will enable the Az ISA to expand from limited oversight of Phase I PM activities to a more active administration of these same Phase I PM activities. The Az ISA will initially

implement Competition Plan items 2 and 3. As mentioned, implementation of any of the remaining Plan characteristics will require further approval of the Az ISA Board of Directors. The Commission staff concurred in a July 29, 1999 letter that monitoring compliance with Az ISA protocols and providing ADR should initially be the primary initial functions of the Az ISA.

4. State and discuss the costs of the AISA. (How many employees, what do they do on a daily basis)

The FERC-approved rates that the Az ISA will be charging were deemed to be just and reasonable under Section 205 of the FPA. The funding mechanism included in the FERC Tariff permits the Az ISA to recover its monthly operating costs, while also collecting monies to pay off loans that certain TPs advanced to the Az ISA during its developmental stage. To determine the charge for the recovery of operating costs each month, the Az ISA estimates its total operating costs during the current month and the TPs estimate their respective "Transmission Provider Retail Load." To the extent these estimations of costs and load turn out to be inaccurate, the funding mechanism includes a monthly "true up." Thus, the mechanism ensures that the Az ISA neither over-nor under-recovers its costs.

The level of ongoing operating costs is dependent on the Az ISA functions implemented. As discussed in response to question 3, above, the Az ISA has partially implemented Phase I of its Implementation Plan. Those functions include the provision of dispute resolution services and limited Protocols Manual oversight. The completion of Phase I implementation (effective after the Board's determination that additional staff should be hired) will permit the transition from limited Protocols Manual oversight to more active administration, including monitoring compliance with FERC-recognized standards of conduct related to transmission access and the operation of the Interconnected Transmission System

The estimated annual operating costs for the partial implementation of Phase I are: \$408,000. (Actual operating costs recorded for June 2001 were \$36,376.12. If annualized, this would result in a slightly higher level of costs at \$436,513.44 per year.). A more useful measure for the electric power consumer is cost per 1000 Kwh. The Az ISA operating costs for June for 1000 Kwh was 1.08 cents. Stated another way, a household using 1000 Kwh per month would see their bill for electric service increased by 1.08 cents.

Full implementation of Phase I would require additional staff and minor infrastructure additions, primarily computer and office equipment. The current leased office space has adequate space to accommodate additional staff. Therefore, no additional lease costs would be incurred with full implementation of Phase I. Three additional employees would be needed to fully implement Phase I. Estimate annual costs for full implementation of Phase I are \$259,000. Again using June as the example, full implementation costs of Phase I would be 1.71 cents per 1000 Kwh.

The current employees perform all remaining startup activities in addition to reoccurring activities such as monthly accounting, budgeting and billing, monitoring OSAIS and Direct Access web-sites, and updating the Az ISA web site.

The fixed amount of startup money has limited the use of outside contractors and technical consultants. As a result of these budget constraints, no outside technical other than legal support has been used in 18 months. As a result, a number of items are not fully implemented. For example, work is continuing on the Az ISA web site to accommodate transmission path ratings. Other startup activities have included procuring professional liability insurance, evaluating replacing Directors and Officers insurance, negotiating office lease terms, in-house web-site development, compiling information for reviewing employee benefits packages, developing billing and invoice procedures pursuant to the terms and conditions of the Az ISA FERC tariff. A significant amount of time was committed to the development the PM, transmission agreements and the ensuing FERC filing process. Most of the aforementioned activities have required Board involvement which augmented the time and funds required to complete each task.

The following is a breakdown of hours spent by task for the period January 1, 2001 through August 15 for the Az ISA: Note that this time period includes the initial start-up of the Az ISA and therefore a substantial amount of administrative time was devoted to non recurring start-up activities.

Office Manager:

Administrative	55%
Billing	13%
FERC/ACC	3%
Board	29%

Director:

Administrative	35%
Billing	15%
FERC/ACC	20%
Board	20%
Other	10%

As competitive suppliers enter the Arizona market, time spent on monitoring transmission schedules, must run generation, ARNT allocations and posting of committed uses on transmission paths will increase.

5. *State and discuss the need to continue the AISA. (If the AISA is terminated, how will independent transmission oversight be managed)*

As mentioned before, independent oversight of the PM and ADR function were considered essential by the stakeholder groups involved in developing the Competition Plan to ensure that non-discriminatory transmission access will be there for all transmission users and thus providing the benefits of competition to consumers. The primary reason for the formation of the Az ISA was to have an independent organization with this oversight as opposed to self-administration of the Az ISA functions by the transmission providers. Many believe that without an independent organization, implementation of protocols and ADR will be inherently suspect due to the perception of conflicts of interest.

The Az ISA protocols were approved by FERC on the understanding that an independent organization would be overseeing the day to day operations and providing ADR. Based on the attached memo from Barbara Jost, it is unlikely that the FERC would permit the functions of the Az ISA under the PM to be transferred to the FERC-jurisdictional TPs.

While the protocols are complete and have been accepted by FERC, changes to the protocols are inevitable as markets change. As stated before, the Az ISA membership recognized the protocols as a dynamic document that will need to change as conditions warrant. For example, the standing Az ISA Operating Committee that is chaired the Director, will have to revisit the temporary retail transmission allocation mechanism that is due to expire on December 15, 2001. The Az ISA is now the only independent organization currently available for dealing with such adjustments. Without the auspices of the Az ISA, those kinds of required updates may not occur.

6. *State and discuss the timing and procedures for terminating the AISA (If the AISA is terminated, how will independent transmission oversight be managed?)*

See attached memo from Barbara Jost.

7. *State and discuss the AISA relationship to and with DSTAR and (8) The AISA relationship to and with any regional (multi-state) ISO or RTO that will serve Arizona*

Rule 1609 states that each of the "*Affected Utilities shall make good faith efforts to develop a regional, multi-state Independent System Operator, to which the Arizona Independent Scheduling Administrator should transfer its relevant assets and functions as the Independent System Operator becomes able to carry out those functions.*".

The Az ISA implementation plan calls for the review of any plans by DSTAR for the formation of an RTO and a determination of whether to undertake the transition to

second stage implementation depending upon the schedule contemplated for implementation of an RTO by DSTAR. Accordingly, contingent on the time frame for the formation of an operating regional RTO, and the ability of the RTO to accommodate the State's retail competition plan, the Board will determine whether to expand the Az ISA's functions. Until that determination is made, Az ISA functions will be limited to oversight of the TPs' and SCs' compliance with the PM. Transition to more active administration of the PM, would be resolved after the Board considers whether to authorize additional staff, based in part on the ability of an RTO to assume Az ISA functions and related timing issues.

9. *Address the legal ramifications to the APS and TEP settlement agreements if those utilities are no longer required to support the AISA*

Az ISA was not a party to the settlement proceedings and defers on this issue to those parties that participated.

10. *State and discuss any other relevant/pertinent items/information that you believe the Commission should consider regarding the AISA*

First, the Az ISA is a valuable hedge against the uncertainty that surrounds the startup date of an RTO. The most recent proposed startup date for operations of DSTAR is late 2003. This date has previously slipped on several occasions. Moreover, FERC's mention of RTO West as a potential platform for a Western RTO, makes estimating when a RTO, inclusive of the Southwest, would begin actual operations not easy.

Second, the Phase I functions are more limited than many non-TP market participants wanted. Those market participants and the Commission, however, acknowledge that a phased implementation would satisfy current market needs. Equally important to the market participants, was approval of the Az ISA's PM by FERC. When market conditions become more favorable to alternative suppliers, as they are tending to do, market participants need the continued independence of the Az ISA and the ongoing support of the Commission of its Retail Competition Program when deciding whether to recommit resources to Arizona's markets.

Phased Implementation of Az ISA PM Obligations

PM Section	PM Obligation	Az ISA Impl
<u>Protocol I Introduction</u>		
3.	Monitor Compliance with Protocols Manual	Phase I
3.	Monitor operations of the Interconnected Transmission System (ITS); insure compliance with FERC-recognized standards of conduct related to transmission access and the operation of the ITS	Phase I
3.	Act on complaints related to application of the Protocols Manual and standards of conduct and resolve other issues related to discriminatory treatment in the provision of transmission service.	Phase I
3.	Upon implementation of the ARNT auction and energy imbalance trading mechanisms, monitor conditions indicating market anomalies or market inefficiencies and take action to remedy such conditions should they arise.	Phase II
4.	Conduct a survey of available SCs.	Phase I
<u>Protocol II Definitions</u>		
Definitions only -- no Az ISA functions or activities to be implemented.		
<u>Protocol III Total Transmission Capability Determination Principles</u>		
2.	Participate in TTC/Committed Use determinations for the ITS and chair Operating Committee efforts to achieve consistent application of same.	Phase I
2.	Oversee TP determinations of total retail Committed Use reservations.	Phase II
2.	Cause the Az ISA to become an affiliated member of the WSCC and attend specified meetings	Phase I
2.	Participate in SWRTA transmission and joint Az utility planning efforts.	Phase I
2.	Participate in coordination of transmission maintenance schedules among TPs.	Phase I
<u>Protocol IV Transmission Reservations and OASIS Management Principle</u>		
4.1	Exercise oversight of TPs' OASIS sites ("same-time view") so that it can be actively notified of all new transmission reservation requests and transmission reservation status changes.	Phase I
1.	Administer a single state-wide OASIS (retail and wholesale) until an RTO is functional.	Phase II
4.3, 4.4	Monitor release of ATC; begin development of system for ATC calculation.	Phase II
<u>Protocol V Allocated Retail Network Transmission Protocol</u>		
	Initiate dispute resolution procedures in cases of disputes related to ARNT Section 4.	Phase I

PM Section	PM Obligation	Az ISA Impl
	Ensure that systems are in place for ARNT auction/trading and exchange of ARNT for ATC.	Phase II
	Post lists on Az ISA website showing: Committed Uses reservations by path and congested interfaces.	Phase II
	Conduct ARNT auctions, post the results, render statements for monies due and owed.	Phase II
	Review SC forecasts of hourly Retail Network Load and insure release of any excess amounts of ARNT and reallocation to other capacity-deficient SCs in the Load Zone. Monitor SC activities and detect market anomalies suggesting "gaming" and take remedial action, as required.	Phase II
	Implement an ARNT trading mechanism, exchange of ARNT for ATC.	Phase II
	Instruct SCs to adjust designated Retail Network Resources to reduce transmission path reservations if they exceed TTC.	Phase II
4.3, 4.2	Reevaluate temporary ARNT mechanism if ARNT auction and trading not in place by 9/1/01 to see if extension is required.	Phase I
	<u>Protocol VI Scheduling Protocol</u>	
2.	Initiate dispute resolution procedures in cases of disputed scheduling decisions.	Phase I
2.	Upon Az ISA's request, receive from SCs, CAOs and TPs copies of all schedule and schedule changes.	Phase I
	<u>Protocol VII Ancillary Services Protocol</u>	
	Initiate dispute resolution procedures in cases of disputes regarding Ancillary Services.	Phase I
	<u>Protocol VIII Must-Run Generation Protocol</u>	
	Calculate and communicate each SC's share of Local Generation Requirement for each hour of the month and each SC's ARNT for each transmission path for each day of the month (once ARNT trading is implemented),	Phase II
	Initiate dispute resolution procedures in cases of disputes regarding Must-Run Generation.	Phase I
	<u>Protocol IX Energy Imbalance Protocol</u>	
	Oversee Trading Entity implementation of Energy Imbalance Procedures.	Phase II
	Initiate dispute resolution procedures in cases of disputed Energy Imbalance decisions	Phase I
	<u>Protocol X Congestion Management Principle</u>	
	Post lists on Az ISA website showing: Committed Uses reservations by path and congested interfaces.	Phase II

PM Section	PM Obligation	Az ISA Impl
	Initiate dispute resolution procedures in cases of disputes regarding Congestion Management principles.	Phase I
	<u>Protocol XI Emergency Operations Protocol</u>	
	Initiate dispute resolution procedures in cases of disputes related to Emergency Operations.	Phase I
	<u>Protocol XII After-The-Fact Checkout Protocol</u>	
	Initiate dispute resolution procedures in cases of disputes related to After-The-Fact Checkout procedures.	Phase I

September 4, 2001

Memorandum

TO: Pat Sanderson
FROM: Barbara S. Jost
RE: ACC Docket No. E-00000A-01-0630
Response to August 6, 2001 Procedural Order

In accordance with your request, the following memorandum addresses Issues Nos. 5 and 6, as set forth in the above-captioned Procedural Order.

5. *State and discuss the need to continue the AISA. (If the AISA is terminated, how will independent transmission oversight be managed?)*

The Az ISA is a Federal Energy Regulatory Commission (FERC) jurisdictional public utility with a tariff on file with the FERC. Under the Federal Power Act (FPA), the Az ISA cannot terminate tariff services absent FERC approval under Section 205 of the FPA. The question assumes that the functions of the Az ISA, e.g., providing statewide consistency and oversight responsibility for the terms and conditions under which Arizona retail consumers obtain access to competitive generation markets, should continue. Therefore, this response addresses whether the functions of the Az ISA, as set forth in its FERC Electric Tariff, could be transferred to the Transmission Providers (TPs) upon termination of the Az ISA. Since there are currently only two TPs participating in the Az ISA, Arizona Public Service Company (APS) and Tucson Electric Power Company (TEP), this response will be limited to addressing whether these two TPs, both subject to FERC jurisdiction under Section 201 of the FPA and required to provide transmission services consistent with Order No. 888, could obtain FERC approval to assume the retail access oversight responsibilities currently borne by the Az ISA.

As a preliminary matter, such a transfer of responsibility would require several FPA Section 205 filings with the FERC. First, a filing by the Az ISA to terminate its FERC Electric Tariff, including Rate Schedule No. 1 and Service Agreements with APS and TEP. More important, since the intent is to continue the retail access program now in place, APS and TEP would need to simultaneously submit FPA Section 205 filings to

modify the versions of the Protocols Manual included in each of their OATTs to allow the program to continue without the Az ISA.

Under the program now in effect, the Az ISA serves as an independent oversight body with the responsibility to maintain the integrity of the "rules of the road" that govern retail access. It is no secret that the TPs, as the owners and operators of the transmission system, in the absence of such rules, would have the ability to favor their own marketing or generation affiliates or otherwise discriminate against new market entrants. The most difficult hurdle to overcome, therefore, would be to explain to FERC why it would be in the public interest to turn over the responsibility for insuring open retail access to those market participants, the TPs, with the greatest ability, and economic incentive, to discriminate against new market entrants. How could the TPs monitor their own activities?

For this reason, in virtually all states in which significant levels of retail competition has been implemented, the states have crafted a program which entrusts an independent regional organization, e.g., an ISO or RTO, with the responsibility to oversee the operations of the retail system. A review of the Energy Information Administration's online document "Restructuring Activity as of August 2001" bears this out. In every instance where retail competition is up and running there exists an independent organization to oversee retail operations unless the state utility commission actively exercises a monitoring function.

Promoting consistency of retail access provisions to further competition is a driving force behind both Order No. 888 and Order No. 2000. For instance, in Order 888, FERC states: "The legal and policy cornerstone of these rules is to remedy undue discrimination in access to the monopoly owned transmission wires that control whether and to whom electricity can be transported in interstate commerce."¹ The push for ISOs, and now RTOs, is a concerted effort by FERC to promote region-wide consistency and independent operation of the regional electric grids.

As you may recall, both APS and TEP filed with the FERC to implement draft versions of the Protocols Manual before the Az ISA Board of Directors had approved a final version of the PM. In both cases, the FERC rejected the filings. FERC rejected inclusion of the draft PMs in both the APS and TEP OATT filings because of a concern that the versions then utilized by the two TPs would differ from each other, and from the version ultimately approved by the Az ISA Board. See *Arizona Public Service Company*, 89 FERC ¶ 61,226 (1999) and *Tucson Electric Power Company*, 90 FERC ¶ 61,108 (1999).

¹ FERC Statutes and Regulations, *Regulations Preambles January 1991-June 1996* ¶ 31,036, at 31,634. (1996)

As the attachment to this memorandum demonstrates, even before APS and TEP could each file to implement the PM on their own, they would each need to revise significant aspects of the PM to reassign all functions now performed by the Az ISA to, presumably, themselves. This would likely be just the first step down a road FERC strongly opposes: inconsistent drafting and application of the retail access rules, leading to potential discrimination and an absence of any oversight authority to monitor transmission provider actions. For instance, in performing such a rewrite, there is no guarantee that these two TPs (or additional TPs down the road who would also implement their own versions of the PM) would propose identical changes to their OATTs. Nor is it clear that they would thereafter enforce the PM in a similar manner. The end result would be a retail system in Arizona that reverts to entity-by-entity retail transmission rules because retail access protocols would again differ from one service territory to another. Not only would this development be antithetical to the goal of "statewide consistency" but it is also likely to cause confusion among market participants.

Furthermore, even if the two existing TPs committed to identical revisions to the PM at the outset, nothing prevents them, or other TPs joining later, from thereafter filing under Section 205 of the FPA to make company-specific changes.

In contrast, under the current Az ISA Tariff, each TP, through execution of their Service Agreements with the Az ISA, is legally bound to implement the version of the PM implemented by the Az ISA. See Az ISA FERC Electric Tariff, Original Volume No. 1, Original Service Agreements Nos. 1 (APS) and 3 (TEP), Section 3.02.

It is also unclear as to whether FERC would approve an APS PM or TEP PM in the absence of an Az ISA. Under Order No. 888, variations from the pro forma OATT are permitted where it can be demonstrated that unique practices in a geographic region require modifications to the Order 888 final rule pro forma tariff provisions. Such variations from the pro forma tariff are rare and it is highly unlikely that FERC would view a PM individually interpreted and applied by several TPs as a justifiable pro forma tariff variation.

In fact, the PM was initially justified, in large part, as an integral part of the overall retail access program established by the ACC's Electric Competition Rules. FERC's approval of the Az ISA Electric Tariff was largely based on its understanding that the entire scheme was developed with the active participation of the ACC and in accordance with ACC directives. In particular, any decision by the ACC to eliminate the Az ISA from this program would need to explain why one critical element of the program, the independent stakeholder association created to oversee the nondiscriminatory implementation of retail access, was no longer necessary.

Based on the foregoing discussion, we conclude that it is unlikely that the FERC would permit the functions of the Az ISA under the PM to be transferred to the TPs.

6. *State and discuss the timing and procedures for terminating the AISA (Discuss the legal ramifications of withdrawing funding.)*

The Articles of Incorporation of the Az ISA provide that this nonprofit corporation shall exist from the date of incorporation for a period of five years unless dissolved at an earlier date. The Az ISA was incorporated in 1998. However, as previously discussed, as a FERC jurisdictional public utility, the Az ISA must first obtain FERC approval before it can terminate the activities it undertakes pursuant to its FERC Electric Tariff. The Az ISA would have to demonstrate that termination is in the public interest. Many of the problems associated with making such a public interest showing, and the FERC's likely response, were discussed in response to Question 5, *supra*.

Any such filing would also have to demonstrate that termination is consistent with the terms of the Service Agreements on file with the FERC, each of which contain specific provisions governing termination. Pursuant to these service agreements, the termination provisions are binding on the Az ISA, APS, and TEP. The termination provisions of the SC Agreement are also binding on two SCs: Pinnacle West Marketing and Trading and TEP in its capacity as the standard offer SC. See Az ISA filings in FERC Docket Nos. ER01-2198-000 (June 1, 2001) and ER01-2652-000 (July 23, 2001)

Under Section 12 of the TP Agreements, the parties' obligations terminate if:

- ◆ the Az ISA is dissolved
- ◆ the Az ISA and the other party agree to terminate in writing
- ◆ Upon the withdrawal from this or any other TP agreement of three or more Participating Utilities (defined as APS, TEP, Citizens and AEPCO) having retail load greater than 60% of the aggregate retail load in Arizona served by the Participating Utilities, provided further, that the withdrawing Participating Utilities, if FERC jurisdictional, have joined an operating RTO and provided at least 90 days prior written notice of withdrawal to the Az ISA Board. [This would seem inapplicable because there are not three Participating Utilities at this time.]
- ◆ Upon the occurrence of all of the following circumstances: (i) the ACC modifies its Competition Rules such that the rules no longer require Participating Utilities to participate; (ii) all of the Participating Utilities agree, in writing, to terminate their respective TP Agreements and (iii) the Participating Utilities provide at least 90 days prior written notice of

termination to the Az ISA Board.

Section 12 of the SC Agreements provides that that termination may occur:

- ◆ Upon the dissolution of the Az ISA consistent with the terms and conditions of the Az ISA articles of incorporation, as amended from time to time.
- ◆ Upon the withdrawal of the TP consistent with Section 13 (Withdrawal)
- ◆ Upon written agreement of all the Parties
- ◆ Upon the withdrawal of the TP from or termination of the ISA-TP Agreement in accordance with its terms and conditions.

Section 14.03 of the TP Agreements provides that APS and TEP, upon termination of their respective TP Agreements, waive recovery of all debt remaining due to that TP from the Az ISA. The winding-up provision of the TP Agreements (Section 13), sets forth the procedures for orderly satisfaction of all Az ISA commitments entered into prior to the effective date of a termination. Any proposed date for termination of the Rate Schedule would need to be consistent with this provision.

Attachment

Memorandum to Patrick J. Sanderson Dated September 4, 2001
Attachment
Re: ACC Docket No. E-00000A-01-0630

Self-Administration By The TPs Of Protocols Manual Selected Unresolved Issues

1. **Dispute Resolution** – What entity will perform the Az ISA’s role of acting on complaints between and among TPs, CAOs and SCs with respect to the application of the Protocols Manual (PM)? See As ISA FERC *Electric Tariff*, Original Volume No. 1, Sheet No. 6.¹ What entity will perform the fast-track arbitration procedure set forth at Section 6.1 of the Az ISA Bylaws? This fast-track arbitration procedure provides for immediate decisions by the Az ISA Director when the dispute is between TPs and SCs concerning a the next-day/same-day schedule when such disputes involve a determination of TTC, ATC, committed uses, priorities for use of congested paths, or other similar disputes. If the Director's decision is disputed, the decision is assigned to a fast-track ADR process using a panel of three arbitrators. There is no similar fast-track arbitration procedure in the FERC Open Access Transmission Tariff (OATT) of the Participating TPs. Nor would there be such a procedure available to market participants if the TPs self-administered the PM since this fast track procedure is set forth only in the Az ISA Bylaws.

2. **Monitoring Functions** – ACC Rule 1609(D) requires the Az ISA to “implement and oversee the nondiscriminatory application of operating protocols to ensure statewide consistency for transmission access.” To do this, in addition to performing a dispute resolution function, the Az ISA performs a monitoring function. Under the PM, TPs, CAOs and SCs are obligated to maintain, and to provide to the Az ISA (if requested) records concerning load forecasts, schedule reservations and ARNT adjustments for a period of 13 months, except that voice recordings need only be retained for 30 days. Records related to matters in dispute must be retained indefinitely. Further, during Phase I, OASIS Management for RNITS is to be performed by the TPs, with Az ISA oversight. Specifically, the Az ISA is to have a “same-time” view into each TP’s OASIS so that it can be actively notified of all new transmission reservation requests and transmission reservation status changes for both wholesale transmission service and RNITS. Also in Phase I, the Az ISA is to monitor release of ATC on each TP’s OASIS and begin to develop systems to allow it to calculate and update ATC. Upon implementation of the ARNT auction and energy imbalance trading mechanisms (under Phase II), the Az ISA is to monitor conditions indicating market anomalies or

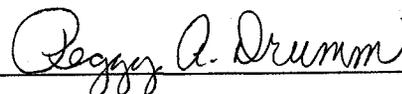
¹ Unless otherwise stated, all references are to the Az ISA FERC Electric Tariff, Original Volume No. 1 which includes the Protocols Manual (Sheets No. 1- 61); the Pro Forma ISA-TP Agreement (Sheet No. 62-97); the Pro Forma ISA-SC-TP Agreement (Sheet Nos. 98-130), Rate Schedule No. 1 (Sheet Nos. 131-137); the ISA-TP Agreement between the Az ISA and Arizona Public Service Company (APS) (Original Service Agreement No. 1); the ISA-SC-TP Agreement Between the Az ISA and APS (Original Service Agreement No. 2, Sheets 1-34); the ISA-TP Agreement Between the Az ISA and Tucson Electric Power Company (TEP) (Original Service Agreement No. 3); and the ISA-SC-TP Agreement Between the Az ISA and TEP (Original Service Agreement No. 4, Sheets 1-34).

market inefficiencies and take action to remedy such conditions should they arise. See PM, Sheet No. 6. Also effective with Phase II, the Az ISA is to implement a state-wide OASIS on which all ATC for the TPs' transmission systems, as well as ancillary services and transmission access rights traded in secondary markets, are to be posted. See PM, Sheet Nos. 17-18. What entity will perform all of these oversight functions in the absence of an Az ISA?

3. **Coordination Functions** – What entity will perform the Az ISA's role of seeking to coordinate Az ISA participants in a uniform transmission planning process by, among other things, presiding over efforts to achieve consistent application of Committed Use determinations? See PM, Sheet No. 16.
4. **Preserving Retail Customer Access To Usable (and Valuable) Transmission Rights** – What entity will perform the Az ISA's role of monitoring the Temporary ARNT allocation procedures now in effect? See PM, Sheet Nos. 24-26. Assuming Phase II implementation, what entity other than an Az ISA would develop the mechanisms and implement the ARNT auction trading/exchange of ARNT for ATC; conduct the ARNT auctions, post the results and render statements for monies due and owed; review SC forecasts of hourly Retail Network Load and insure release of any excess amounts of ARNT and reallocation to other capacity-deficient SCs in the Load Zone; monitor SC activities and detect market anomalies suggesting "gaming" and take remedial action, as required.

CERTIFICATE OF SERVICE

The original and ten copies of the foregoing document were filed with the Arizona Corporation Commission on this 5th day of September, 2001, and service was completed by mailing a copy of the foregoing document this 5th day of September, 2001 to all parties on the Electric Competition Service List (RE-00000C-94-0165)



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