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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION
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7
8 IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
9 APPROVAL OF NEW PARTIAL REQUIRE-
MENTS SERVICE TARIFFS; MODIFICATION OF
10 EXISTING PARTIAL REQUIREMENTS
SERVICE TARIFF 101; AND ELIMINATION OF
11 QUALIFYING FACILITY TARIFFS.

Docket No. E-01933A-02-0345

**OPPOSITION TO AMENDED
APPLICATION FOR LEAVE TO
INTERVENE BY SOUTHWESTERN
POWER GROUP II, L.L.C. AND
BOWIE POWER STATION, LLC.**

12
13 Tucson Electric Power ("TEP"), through undersigned counsel, hereby submits its
14 objection to the amended application for leave to intervene filed by Southwestern Power Group
15 II, L.L.C. ("SWPG") and Bowie Power Station, L.L.C. ("Bowie"; sometimes collectively referred
16 to as "SWPG/Bowie") as follows:

17 TEP does not routinely object to applications for intervention. However, in this instance,
18 there is no basis for SWPG/Bowie to interject irrelevant and speculative positions into this tariff
19 approval proceeding. A.A.C. R14-2-105 states in part:

20 Persons, other than the original parties to the proceedings, who are directly and
21 substantially affected by the proceedings, shall secure an order from the
22 Commission or presiding officer granting leave to intervene before being allowed
to participate...

23 No application for leave to intervene shall be granted where by so doing the
24 issues theretofore presented will be unduly broadened, except upon leave of the
Commission first had and received...

25 Any consumer or prospective consumer may appear at any proceeding and make
26 a statement on his own behalf, at a time designated by the Commission or
27 presiding officer. A person so appearing shall not be deemed a party to the
proceedings.

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In this case, SWPG/Bowie (a) are not directly and substantially affected by these proceedings; (b) would unduly broaden the relevant issues in the case; and (c) are neither a consumer nor prospective consumer of TEP. Consequently, there is no basis for SWPG/Bowie to participate as an intervenor in this case. TEP would request that the Commission deny SWPG/Bowie's amended application to intervene.

SWPG/Bowie's amended application for intervention is based upon an apparent misunderstanding of the tariffs that are the subject of this proceeding. SWPG will own and Bowie will operate the Bowie Power Station facility, which has not yet been constructed. When built, the Bowie Power Station facility will be located just outside the Town of Bowie in Cochise County, Arizona, which is outside of the TEP service territory. Notwithstanding the tenuous relationship between the proposed Bowie Power Station and TEP, SWPG/Bowie identified two potential interests in this proceeding:

1. SWPG/Bowie will need to purchase start-up and back-up/standby service for the Bowie Power Station from TEP under the tariffs at issue [Supplement at 2:15-21] ("SWPG/Bowie's service concern"); and
2. TEP apparently is adopting a corporate policy that may resist the purchase of power from Qualifying Facilities ("QFs") such as the Bowie Power Station and may be contrary to PURPA. [Supplement at 2:22 to 3:9] ("SWPG/Bowie's policy concern").

As set forth below, both of these concerns are without merit. The tariffs at issue in this case do not apply to SWPG/Bowie. Accordingly, SWPG/Bowie will not be substantially affected by the outcome of this proceeding. Moreover, if SWPG/Bowie's professed interests are addressed in this docket, they will unduly broaden the scope of this docket and detract from the real issues that need to be resolved.

With respect to the SWPG/Bowie service concern, these entities would not be able to purchase start-up and back-up/standby service for the Bowie Power Station from TEP pursuant to the tariffs at issue, under any circumstances, because the Bowie Power Station is located *outside*

1 of TEP's service area. The Bowie Power Station will be located within the service territory of
2 Sulphur Springs Valley Electric Cooperative (SSVEC), which is an electric cooperative whose
3 service area is not open to competition. Because the Bowie Power Station is located within
4 SSVEC's service territory TEP would not be permitted to sell power to SWPG/Bowie. Indeed,
5 both the existing tariffs and the proposed tariffs state that those tariffs are available only
6 throughout TEP's service area. Consequently, SWPG/Bowie have no direct interest in the
7 proposed rates or terms of the tariffs that are the subject of this proceeding. It may be that
8 SWPG/Bowie wish to use this proceeding to collaterally attack the Commission's exemption of
9 electrical co-operatives from participating in electric competition in their service territories.
10 Clearly such a matter is beyond the scope of this proceeding and would unduly broaden the
11 issues in this docket.

12 With respect SWPG/Bowie's policy concern, TEP's proposed PRS-101 tariff would
13 apply only to facilities that have a capacity of 100kW or less. However, SWPG/Bowie lack
14 standing to question TEP's policy because the outcome will not affect them at all. The Bowie
15 Power Station facility will have a capacity significantly greater than 100kW. According to its
16 Certificate of Environmental Compatibility, the Bowie Power Station will contain "up to two
17 power blocks, each rated up to 500MW nominal". Moreover, PRS-101 is the only proposed
18 tariff at issue that provides a rate for the *purchase* of power by TEP. Given the terms of that
19 tariff, SWPG/Bowie would not qualify to buy or sell power due to the capacity of the Bowie
20 Power Plant.

21 Additionally, the two existing tariffs that provide for purchase of QF power by TEP
22 (PRS-101 and PRS-102) also are limited to facilities with a capacity of 100kW or less.
23 SWPG/Bowie could not purchase or sell power under those tariffs for the Bowie Power Station,
24 either. Thus, no tariff at issue in this docket – neither the new PRS tariffs nor the existing PRS
25 and QF tariffs that TEP seeks to cancel – provide a rate or any other terms under which
26 SWPG/Bowie could sell power to TEP. SWPG/Bowie simply has no direct interest in those
27 tariffs. Thus, SWPG/Bowie's policy concern boils down to a theoretical suspicion that TEP does

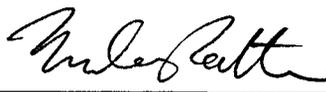
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1 not intend to comply with PURPA. However, TEP does intend to comply with PURPA.
2 Investigating TEP's compliance with PURPA in this docket – other than with respect to single
3 proposed tariff that does not apply to SWPG/Bowie – would unduly broaden the issues in this
4 docket. Commission Staff certainly can address whether the proposed PRS-101 tariff meets
5 PURPA. SWPG/Bowie's intervention is not needed.

6
7 WHEREFORE, for all of the foregoing reasons TEP requests that the Commission deny
8 SWPG/Bowie's Amended Application for Leave to Intervene.

9
10 RESPECTFULLY SUBMITTED this 18th day of September, 2002.

11 **ROSHKA HEYMAN & DEWULF, PLC**

12
13 By 

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20 **ORIGINAL and 10 COPIES** of the foregoing
21 filed September 18, 2002, with:

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