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BEFORE THE ARIZONA CORPORATION

CARL J. KUNASEK

Chairman

AZ CORP COMMISSION  
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JIM IRVIN

Commissioner

JUN 09 2000

WILLIAM A. MUNDELL

Commissioner

ARIZONA CORPORATION COMMISSION  
HEARING DIVISION

IN THE MATTER OF THE APPLICATION OF ) DOCKET NO. E-01933A-98-0471  
TUCSON ELECTRIC POWER COMPANY FOR )  
APPROVAL OF ITS STRANDED COST )  
RECOVERY AND FOR RELATED APPROVALS, )  
AUTHORIZATIONS AND WAIVERS. )

IN THE MATTER OF THE FILING OF TUCSON ) DOCKET NO. E-01933A-97-0772  
ELECTRIC POWER COMPANY OF )  
UNBUNDLED TARIFFS PURSUANT TO A.A.C. )  
R14-2-1602 *et seq.* )

TUCSON ELECTRIC POWER COMPANY ) DOCKET NO. E-01933A-99-0729  
APPLICATION FOR APPROVAL OF ITS )  
PROPOSED DIRECT ACCESS SERVICE FEES )  
AND ITS PROPOSED AMENDMENTS TO ITS )  
RULES AND REGULATIONS )

IN THE MATTER OF THE COMPETITION IN ) DOCKET NO. RE-00000C-94-0165  
THE PROVISION OF ELECTRIC SERVICES )  
THROUGHOUT THE STATE OF ARIZONA. ) RESPONSE TO PETITION FOR  
DECLARATORY ORDER OR  
WAIVER

Tucson Electric Power Company ("TEP" or "Company"), through undersigned counsel,  
hereby responds to the "Petition for Declaratory Order or Waiver" ("Petition") filed by APS Energy  
Services Corporation, Inc. ("APSES"), in the dockets captioned above, as follows:

The Petition is a thinly-masked attempt by APSES to circumvent true competition by asking  
the Commission to, in this singular instance, interpret or modify its rules in favor of APSES' own  
marketing plans and schedules.<sup>1</sup> APSES does not (nor in good faith could it) claim that TEP has

<sup>1</sup> In reality, APSES lacks standing to assert claims that are actually tariff issues between TEP and its  
customer, the University of Arizona. APSES' newly assumed role as surrogate petitioner for the

1 violated any Commission rule or regulation. Indeed, the Petition is not a formal complaint. See  
 2 A.A.C. R14-3-106.A; R14-3-106.L. The Petition is not a request that a rule-making proceeding be  
 3 conducted to modify the existing competition rules applicable to all electric utilities in the state.  
 4 Instead, APSES has crafted a pleading of its own devise, the Petition, that is targeted at TEP and is  
 5 intended to change the operation of the Commission's Competition Rules, only as they would apply  
 6 to APSES servicing portions of the load at the University of Arizona.  
 7  
 8

9 APSES does not want to engage in competition by the Commission's Competition Rules, it  
 10 wants to do so by its own rules. Suspiciously, the Petition does not request that the Commission  
 11 hold any type of evidentiary hearing or rulemaking proceeding to resolve the issues raised in the  
 12 Petition. Instead, APSES would have the Commission rule solely based upon the Petition.  
 13

14 However, TEP has a different view of how it must operate in connection with the two issues  
 15 raised in the Petition: (1) totalization of meters (TEP believes that absent a tariff for metering or  
 16 billing totalization, totalization is prohibited. Contrary to APS, TEP does not have a totalization  
 17 tariff); and (2) direct access metering (TEP believes that each premises should be metered  
 18 separately). The time and place for submitting the evidence in support of the parties' differing  
 19 views, and to resolve them, is in a formal complaint proceeding or, alternatively, a rule-making  
 20 proceeding.  
 21 *standards*  
 22

23 The Commission should be wary of the Petition, and any other attempt by APSES or  
 24 another Energy Service Provider ("ESP"), to manipulate the Competition Rules on a piecemeal  
 25 basis under the color of "enhancing competition". The precedent that the Commission sets in this  
 26  
 27  
 28

29 University of Arizona is further evidence that APSES is trying to manipulate the Competition Rules  
 30 to its own marketing advantage, in contradiction to the benefits of market-place competition.

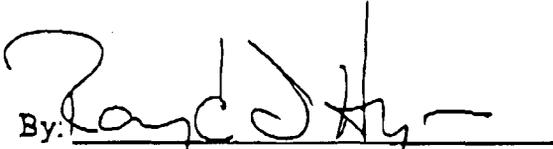
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case will have a very real impact on a myriad of Competition Rules and established Direct Access Service Request ("DASR") procedures.

TEP has met, and will continue to meet, with APSES to attempt to resolve the issues in the Petition. However, in the event that the parties can not resolve the issues raised in the Petition among themselves, then TEP respectfully requests that the Commission set an evidentiary hearing (in the form of a formal complaint proceeding) and establish a procedural schedule for discovery and the filing of testimony in connection therewith; or, in the alternative, initiate rule-making proceedings to change the Competition Rules for all utilities doing business in this state. However, under no circumstances should the Commission set the dangerous precedent of changing the Competition Rules based upon the mere filing of a "Petition" by an ESP.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of June, 2000.

ROSHKA HEYMAN & DEWULF, PLC

By: 

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2 filed this 9<sup>th</sup> day of June, 2000, with:

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