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FORMAL COMPLAINT

BEFORE THE ARIZONA CORPORATION COMMISSION

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E-01933A-02-0375

IN THE MATTER OF THE COMPLAINT BY APS ENERGY SERVICES COMPANY, INC., AGAINST TUCSON ELECTRIC POWER COMPANY	DOCKET NO. **FORMAL COMPLAINT** **(Interim Relief Requested)**

FORMAL COMPLAINT BY APS ENERGY SERVICES COMPANY, INC. AGAINST TUCSON ELECTRIC POWER COMPANY

APS Energy Services Company, Inc. ("APSES") hereby files this formal complaint against Tucson Electric Power Company ("TEP") concerning TEP's refusal to provide service under the provisions of its lawfully approved and authorized tariffs governing service by TEP to so-called "Qualifying Facilities" or "QFs." In support of its complaint, APSES alleges the following:

1. The City of Tucson ("City") is currently served electricity by TEP at the City's central plant, which in turn supplies hot and chilled water to the Tucson Convention Center campus, Police Department Headquarters, and Fire Department Headquarters (collectively the "Thermal Hosts"), all of which are owned and operated by the City.

2. Through a successful Request for Proposal process for a Downtown District Heating and Cooling System ("DH&C"), the City contracted with Tucson District Energy LC ("TDE"), a wholly-owned subsidiary of APSES, to construct a cogeneration facility at the City's central plant as phase one of DH&C project.

3. The cogeneration plant has a rated capacity of 1600 kW and will be grid-connected in parallel with TEP. It will serve the vast majority of the electric loads of the central plant, Police Department Headquarters, and Fire Department Headquarters. The cogeneration facility is scheduled for a September 2002 start-up.

4. As of April 10, 2002, the cogeneration facility and its Thermal Hosts were designated as a single QF by the Federal Energy Regulatory Commission ("FERC"), under FERC Docket No. QF02-57.

5. Copies of the FERC Qualifying Facility applications were sent to the Arizona Corporation Commission ("Commission") and TEP. Neither the Commission nor TEP opposed the applications.

6. On September 28, 2001, TEP was provided written notification of the proposed QF's intent to request service under TEP's existing partial requirements tariffs on file with the Arizona Corporation Commission with an effective date of July 1, 2000 (the "QF Tariffs"). A copy of this letter is attached as Exhibit A.

7. The relevant QF Tariffs consist of: (a) Pricing Plan PRS-104, Optional Supplementary Service for Cogeneration and Small Power Production Qualifying Facilities over 100 kW; (b) Pricing Plan PRS-105, Optional Maintenance Service for Cogeneration and Small Power Production Qualifying Facilities over 100 kW; and (c) Pricing Plan PRS-106, Optional Backup Service for Cogeneration and Small Power Production Qualifying Facilities over 100 kW. Copies of the QF Tariffs are attached as Exhibit B.

8. In an October 11, 2001 letter, TEP attempted to unilaterally impose conditions and restrictions, the majority of which were unreasonable and unlawful, on the ability of the City to receive service under the above QF Tariffs, thus making the proposed QF project unviable. A copy of TEP's letter is attached as Exhibit C.

9. A response was provided by TDE to TEP on October 26, 2001, which presented a case for applicability of the QF tariffs without TEP's added restrictions, and highlighted conflicts with TEP restrictions and federal law mandates for utilities supplying power to QFs. A copy of TDE's response is attached as Exhibit D.

10. Subsequent to the TDE letter, meetings of the affected parties were held on November 16, 2001 and February 4, 2002. At such meetings TEP claimed the QF tariffs are not available to otherwise eligible customers because they were not in rate base at the time of the 1999 TEP Settlement Agreement, whereby all TEP's rates were established through December 2008. TEP said that the TDE's only option was to agree to a special

contract. TEP threatened to delay the project for years via litigation if TDE or the City proceeded in pursuing service under the QF tariffs.

11. TEP also agreed to waive the restrictions proposed by its October 11, 2001 letter if the TDE or the City agreed to use an unapproved tariff, PRS-13, and dropped its efforts to receive service under the QF Tariffs.

12. Proposed PRS-13 would result in higher rates to the City and TDE than would service under the applicable QF tariffs.

13. Although clearly entitled by law to service under an approved set of QF Tariffs, TDE negotiated in good faith with TEP in the hopes of negotiating an acceptable special contract for the project. Indeed, a draft Memorandum of Understanding had actually been circulated that would have resolved this dispute.

14. Without notice to either the City or TDE, TEP filed for elimination of the QF Tariffs on May 10, 2002. It also proposed approval of its higher PRS-13 rates.

15. In a separate filing this date, APSES has filed to intervene and protest TEP's May 10, 2002 filing.

16. Because this FERC-approved QF facility for the City has contracts in place and is coming on-line September 2002, it would suffer very significant and detrimental financial impacts if the cogeneration facility

were operational with no provision for back-up, supplemental or maintenance power as if provided under the QF Tariffs.

17. Because some of the Thermal Hosts are public safety agencies of the City, failure of TEP to provide back-up, supplemental and maintenance power to the QF facility would threaten the safety of the City's residents.

18. APSES, TDE and the City must know what rate they are eligible to receive service under and what, if any, conditions and restrictions TEP may impose on the QF facility in order to proceed with the final acquisition and installation of the co-generation plant and related equipment.

19. All communications, pleadings and correspondence should be served on:

Vicki G. Sandler, President
C/o: Stacy Aguayo
APS Energy Services Company, Inc.
One Arizona Center
400 E. Van Buren Street, Suite 750
Phoenix, AZ 85004
Phone: 602-744-5045
Fax: 602-744-5326
E-mail: Stacy.Aguayo@apses.com

WHEREFORE Complainant APSES requests that the Commission enter an order or orders:

A. Finding that TDE and/or the City is eligible to receive electric service under the QF Tariffs for the TDE project.

B. Ordering TEP to provide TDE and/or the City service under the QF Tariffs pending a final determination on the instant Complaint.

C. Ordering TEP not to increase rates under the QF Tariffs or otherwise change such QF Tariffs in a manner unfavorable to TDE or the City until the end of TEP's present rate freeze in 2008.

D. Granting APSES such other relief as is appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 22nd day of May 2002.

Vicki G. Sandler

Vicki G. Sandler, President
APS Energy Services Company, Inc.

Original and 10 copies of the foregoing
filed this 22nd day of May, 2002, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Copies of the foregoing hand delivered
this 22nd day of May, 2002 to:

Steve Olea
Assistant Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Tina Wolf
Hearing Officer
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Copies of the foregoing mailed, faxed
or transmitted electronically this 22nd day
of May, 2002 to:

Lyn A. Farmer, Esq.
Chief ALJ, Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Christopher Kempley, Esq.
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Steve Glaser
Senior Vice President and COO/UDC
Tucson Electric Power Company
PO Box 711
Mail Stop: OH203
Tucson, AZ 85702

TUCSON DISTRICT ENERGY LC

2120 W. INA ROAD, SUITE 203 G
TUCSON, AZ 85742

JOEL V. WAGNER, P.E., CEM
MANAGER

(520) 820-0801
FAX (520) 229-1593
JOEL.WAGNER@APSES.COM

September 28, 2001

Mr. Art Fregoso
Account Manager
4350 E. Irvington Road
Tucson, AZ 85714

Subject: City of Tucson District Energy Project Standby Rates

Dear Art,

As we discussed, cogeneration is being implemented at the City of Tucson's central plant, adjacent to the Tucson Convention Center.

The cogeneration unit will be connected in parallel with TEP and commence operation after the first quarter of 2002. The maximum kW output of the unit is 1860 kW.

Thermal energy from the cogeneration unit will be used to provide heating and cooling to its thermal hosts: Tucson Convention Center, Leo Rich Theater, Music Hall, Police and Fire Headquarters.

This project will utilize TEP's existing tariffs, whose current versions are on file with the Arizona Corporation Commission with an effective date of July 1, 2000, including: Pricing Plan PRS-104, Optional Supplementary Service for Cogeneration and Small Power Production Qualifying Facilities (QF) over 100 kW; Pricing Plan PRS-105, Optional Maintenance Service for Cogeneration and Small Power Production Qualifying Facilities (QF) over 100 kW; and Pricing Plan PRS-106, Optional Backup Service for Cogeneration and Small Power Production Qualifying Facilities (QF) over 100 kW.

Please let me know what additional information TEP needs before it can commence service for this project under these pricing plans. Completion of all the necessary documents with TEP is desired as soon as possible.

If you have any comments or questions, please call me at 520-820-0801. Thank you.

Sincerely,

Joel V. Wagner

Cc: J. McVay - City of Tucson
V. Hunt - City of Tucson

Exhibit B

Tucson Electric Power
The Energy People

Pricing Plan PRS-104
Optional Supplementary Service for Cogeneration and Small Power Production
Qualifying Facilities (QF) over 100 kW

AVAILABILITY

Available throughout Company's entire electric service area where the facilities of the Company are of adequate capacity and are adjacent to the premises.

APPLICABILITY

To any QF when all energy and capacity requirements in addition to that normally provided by the facility are supplied by Company at one point of delivery and through one metered service.

CHARACTER OF SERVICE

Single or three phase, 60 Hertz, and at one standard nominal voltage as mutually agreed and subject to availability at point of delivery. Primary metering may be used by mutual agreement.

RATE

If and when General Service Time-of-Use Rate No. 76 is approved by the Arizona Corporation Commission, the billing shall be in accordance with General Service Time-of-Use Rate No. 76, or Large General Service Time-of-Use Rate No. 85, or Large Light and Power Time-of-Use Rate No. 90. If General Service Time-of-Use Rate No. 76 is not available, the billing shall be in accordance with General Service Rate No. 10, or Large General Service Time-of-Use Rate No. 85, or Large Light and Power Time-of-Use Rate No. 90.

TERMS AND CONDITIONS

(1) The QF shall reimburse Company upon receipt of statement from Company for all interconnection costs in excess of the normal interconnection costs of a retail customer similarly served and situated.

(2) The QF shall operate its electric generating equipment in accordance with Company rules, regulations, and service requirements.

(3) The Company may require a written contract and a minimum term of contract.

(4) The standard Rules and Regulations of the Company as on file from time to time with the Arizona Corporation Commission shall apply where not inconsistent with this rate schedule.

(5) If a QF is served under this schedule and has also contracted for Optional QF Backup Service or Optional QF Maintenance Service, a second meter will be installed.

The Energy People

Pricing Plan PRS-105
Optional Maintenance Service for Cogeneration and Small Power Production Qualifying Facilities (QF) over 100 kW

AVAILABILITY

Available throughout Company's entire electric service area where the facilities of the Company are of adequate capacity and are adjacent to the premises.

APPLICABILITY

To any QF when all energy and capacity are supplied by Company at one point of delivery and through one metered service to replace generation from a facility when such facility is out of service for scheduled maintenance.

CHARACTER OF SERVICE

Single or three phase, 60 Hertz, and at one standard nominal voltage as mutually agreed and subject to availability at point of delivery. Primary metering may be used by mutual agreement.

RATE

*	Service Charge:	$18.20 per month.
	Energy Charge:	All kWh @ 5.228¢ per kWh.
*	Not applicable if billed under the Optional Backup QF Service schedule.	

TAX CLAUSE

To the charges computed under the above rate, including any adjustments, shall be added the applicable proportionate part of any taxes or governmental impositions which are or may in the future be assessed on the basis of gross revenues of the Company and/or the price or revenue from the electric energy or service sold and/or the volume of energy generated or purchased for sale and/or sold hereunder.

TERMS AND CONDITIONS

(1) The QF shall reimburse Company upon receipt of statement from Company for all interconnection costs in excess of the normal interconnection costs of a retail customer similarly served and situated.

(2) The QF shall operate its electric generating equipment in accordance with Company rules, regulations, and service requirements.

(3) The Company may require a written contract and a minimum term of contract.

(4) The standard Rules and Regulations of the Company as on file from time to time with the Arizona Corporation Commission shall apply where not inconsistent with this rate schedule.

(5) The requirement for service shall not exceed the nameplate capacity of the QF.

(6) The frequency and duration of service may be limited so that the rates remain compensatory by ensuring that usage retains the characteristics of partial requirements service.

(7) The performance of scheduled maintenance during certain peak hours or months shall be subject to prohibitions to avoid impairing the Company's ability to serve its full requirements customers.

Exhibit B

Pricing Plan PRS-106
Optional Backup Service for Cogeneration and Small Power Production Qualifying Facilities (QF) over 100 kW

Tucson Electric Power

The Energy People

AVAILABILITY

Available throughout Company's entire electric service area where the facilities of the Company are of adequate capacity and are adjacent to the premises.

APPLICABILITY

To any QF when all energy or capacity is supplied by Company at one point of delivery and through one metered service to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.

CHARACTER OF SERVICE

Single or three phase, 60 Hertz, and at one standard nominal voltage as mutually agreed and subject to availability at point of delivery. Primary metering may be used by mutual agreement.

RATE

* Service Charge: $18.20 per month.
Reservation Charge:

All contracted kW per month @ $ C per kW, where C is derived as follows:

$$\$22.00 \times \frac{A}{B} = C$$

A is the number of hours the facility's generation is inoperative in a contract year due to unscheduled maintenance. B is the number of hours in a contract year less the number of hours the facility's generation is inoperative in a contract year due to scheduled maintenance.

For billing purposes, during the first contract year the assumed value of A/B shall be 10% with a true-up based on actual data at the end of the first contract year. For the second and subsequent contract years, the value used for billing purposes shall be based on the actual value of A/B during the previous contract year.

* Not applicable if billed under the Optional Maintenance QF Service schedule.

Energy Charge: All kWh @ 2.214¢ per kWh.

Tucson Electric Power
The Energy People

Exhibit B

Pricing Plan PRS-107
Optional Backup Energy Service for Self-Generation Facilities over 3 MW

AVAILABILITY

Available throughout Company's entire electric service area where the facilities of the Company are of adequate capacity and are adjacent to the premises.

APPLICABILITY

To any self-generation facility when all energy or capacity is supplied by Company at one point of delivery and through one metered service to replace energy ordinarily generated by a facility's own self-generation equipment during an unscheduled outage of the facility.

CHARACTER OF SERVICE

Single or three phase, 60 Hertz, and at one standard nominal voltage as mutually agreed and subject to availability at point of delivery. Primary metering may be used by mutual agreement.

RATES

*Service Charge: To be charged to the customer depending on metering facilities required, per contract with TEP. (*Not applicable if billed under the Optional Maintenance Self-generation Service schedule.)

Reservation Charge:

1. For customers who take service at voltage levels greater than 46 kV, the monthly reservation charge shall be in accordance with sections a., b., c., and d. below:

   a. For customers with alternate supply resources demonstrating a capacity factor of 95 percent or greater during the billing month, $1.52 per kW of contract standby capacity.

   b. For customers with alternate supply resources demonstrating a capacity factor of between 90 percent and 94.9 percent during the billing month, $2.43 per kW of contract standby capacity.

   c. For customers with alternate supply resources demonstrating a capacity factor of between 80 percent and 89.9 percent during the billing month, $4.32 per kW of contract standby capacity.

   d. For customers with alternate supply resources demonstrating a capacity factor lower than 80 percent, $19.92 per kW of contract standby capacity.

The cost per kW in sections a, b, c, and d above reflect the likelihood that the Company will have to supply the customer's power needs due to a forced outage of the customer's self-generation facility during the billing month, and the Company's cost to supply such power. The customer's charge for reservation capacity during the billing month is the product of the customer's contract standby capacity and the applicable charge per kW. The cost per kW in sections a, b, c, and d above include firm transmission capacity reserved by the Company for the customer and charged consistent with the Company's FERC-approved Open Access Transmission Tariff.

Exhibit C

Tucson Electric Power Company

4350 E. Irvington Rd.
Mailing Address: PO Box 711
Mail Stop OH-123
Tucson, Arizona, 85702

Marketing & Regulatory Services
Telephone (520) 745-3425
Fax (520) 571-4106

10/11/01

Joel Wagner
Tucson District Energy LC
2120 W. Ina Rd.
Suite 203G
Tucson, Arizona 85742

Subject: City of Tucson District Energy Project Standby Rates

Dear Joel,

I am in receipt of your letter dated 9/28/01 regarding the above referenced subject, and I look forward to working with you on an Agreement to provide Backup, Supplemental, and Optional Maintenance Service for the City of Tucson's District Project. Per our previous discussions, the Qualifying Facility ("QF") tariffs that you are requesting are subject to certain contract terms and conditions. These include, but are not limited to, the following:

- QF Status: QF certification must be provided to TEP. The QF status must be continuously monitored (metered) at the facility. Failure to qualify as a QF will result in termination of Backup, Supplemental and Optional Maintenance Service.
- QF Revisions: Tucson Electric Power ("TEP") reserves the right to modify or replace the QF tariffs. If the Public Utility Regulatory Policies Act ("PURPA") is repealed or if Arizona's implementation of PURPA under retail access changes, TEP reserves the right to terminate service under the Agreement.
- Supplemental Service Conditions: Supplemental Service shall be provided only when the QF generator is at its maximum capacity (1860 kW).
- Backup Service: Energy and capacity provided by TEP when the QF generator is operating at less than maximum capacity shall be allocated towards "inoperative hours" (item A) of the Backup Service Tariff (106).
- Maximum hours: Supplemental, Backup, and Maintenance tariffs shall be subject to maximum hours of operation.
- Supplemental Rate: Selection of the supplemental rate is by mutual agreement.
- Maintenance Service: No maintenance service outages can be scheduled from May 15th through September 30th.
- Transformers: Existing transformers are not for sale.

Please remember, pursuant to our Rules & Regulations as approved by the Arizona Corporation Commission, TEP will provide service to one point of delivery for an entire group of buildings provided that all buildings are on a contiguous plot and are not separated by any public street. Buildings not on a contiguous plot with your QF generator and separated by public streets are considered separate customers and are required to meet the QF criteria as a stand-alone QF in order to be eligible for the QF tariffs.

Alternatively, should you decide the QF tariff does not meet the needs of this project, TEP is willing to negotiate a special contract based on TEP's draft Partial Requirements Service ("PRS") tariffs, specifically, the PRS-13 tariff. This draft tariff unbundles delivery charges and incorporates a market price for generation. TEP believes that its draft PRS tariffs are fair and equitable.

I will be glad to work with you to develop an Agreement for this project. Please let me know if you have any questions regarding the tariffs or the interconnection requirements.

Best regards,

Art Fregoso

Art Fregoso
Account Manager

TUCSON DISTRICT ENERGY LC

2120 W. INA ROAD, SUITE 203 G
TUCSON, AZ 85742

JOEL V. WAGNER, P.E., CEM
MANAGER

(520) 820-0801
FAX (520) 229-1593
JOEL.WAGNER@APSES.COM

October 26, 2001

Mr. Art Fregoso
Account Manager
4350 E. Irvington Road
Tucson, AZ 85714

Subject: City of Tucson District Energy Project Standby Rates

Dear Art,

Thank you for your 10/11/01 letter responding to our 9/28/01 letter regarding TEP's Qualifying Facility (QF) tariffs for the City of Tucson District Energy project. We appreciate TEP's cooperation on this important matter and look forward to finalizing the applicable terms and conditions for standby service for the project.

In your letter, one issue you raised is that "Buildings not on a contiguous plot with your QF generator and separated by public streets are considered separate customers and are required to meet the QF criteria as a stand-alone QF in order to be eligible for the QF tariffs," per TEP's Rules & Regulations.

As we discussed, the building you refer to as not being on a contiguous plot with the central plant is the Police/Fire facility. The Police/Fire facility is connected to the central plant, as the central plant is the sole source of its heating and cooling because the Police/Fire facility does not have its own heating and cooling plant, and as such, the Police/Fire facility is a thermal host for the central plant's cogeneration system. Police and Fire cannot operate if separated from the central plant.

Also as we discussed, a focus of this project is to provide full electrical backup to the Police and Fire in the event of a TEP outage; such a backup currently does not exist. Without this backup, Police and Fire are left without full operational capability during TEP outages. This is a potential public safety issue that this project will remedy.

Below we have itemized additional information to support our conviction that the issue you raised would not impact this project.

1. TEP's QF tariffs apply to QFs, which are "Qualifying Facilities," as defined by the Code of Federal Regulations (18 CFR Part 292). TEP's QF tariffs are in response to 18 CFR 292.305, which mandates that TEP interconnect with, and provide supplementary and backup electric service to, QFs. The CFR defines QFs <u>to include all transmission lines and other interconnection lines between the cogenerator and its thermal hosts.</u> TEP's QF tariffs are for the QF in its entirety, which comprise a cogeneration system and thermal hosts, consistent with federal law. One entity generates energy and the other entity consumes the energy, collectively making a whole QF. The FERC made this definition clear to avoid such issues with utilities so the highly efficient QFs could be more easily implemented throughout the country and thereby better utilize our natural resources. All such interconnection lines will be born by this project and be implemented on the City of Tucson (COT) side of the meter, on COT owned property and real estate, and on continuous COT owned land.

2. Even for a non-QF customer, TEP has a history of, and currently is, waiving this requirement.
3. For buildings to be separated by a public street, they would first have to be separate buildings, and the Police/Fire facility is not separate from the central plant, but connected to it by hot and chilled water pipes and communication lines. The central plant is a necessary support structure for the Police/Fire facility. The Police/Fire facility cannot operate separately from the central plant, as the central plant provides the heating and cooling to the Police/Fire facility. To actually separate the two would render Police/Fire inoperative due to the lack of heating and cooling. Article 7, Paragraph E of TEP's Rules and Regulations, wherein this provision is found, applies to buildings that are separate without dependence and connections to one another, not to buildings and their support structures which cannot be and are not separated.
4. TEP's Franchise Agreement with the City of Tucson:
   4.1. *Section 3 - TEP agreed that the City itself or others may use right-of-ways for usage's similar to* TEP's, e.g., it's a non-exclusive franchise and distribution of power by the City is contemplated and agreed to by TEP. Transmitting power from the City's generator to another City building in right-of-ways has therefore been expressly agreed to by TEP.
   4.2. Section 15 - TEP agreed to allow interconnection of all distributed generation systems to its distribution system.
   4.3. Section 22 - TEP expressly agreed to, without cost to the City, permit the use by the City of space in excess of TEP's requirements for Wires (defined to be inclusive of electrical wire) for Police.
   4.4. Section 26 - TEP agrees to regulation by the City to secure adequate, sufficient, and proper service, extensions and accommodations for the people, to ensure their comfort, safety, and convenience. This project as configured will provide continuos, backed-up power for Police and Fire.
5. TEP states that each building would need to qualify separately for the QF tariffs. This would mean that each facility would need a central plant to generate hot and chilled water in addition to a cogeneration system. If this were the case and TEP applied the QF tariffs to two separate, smaller locations rather than one larger location, the revenue to TEP would not change. This is not a case of load aggregation which could move a customer into a different rate class and thereby effect TEP's revenues. The QF tariffs are for any QF over 100 kW, as even two small plants would be over 100 kW for this project. Two separate QF accounts would more probably increase TEP's costs, as compared to one QF account. Therefore, this criterion would unjustifiably discriminate against QFs as it has no effect, or a negative effect, on TEP's revenue.

Additionally, in your 10/11/01 letter, you state that existing transformers are no longer for sale. TEP had offered and provided pricing to sell its transformers at Police and Fire and the offer was accepted. One outcome of not selling the transformers could be their required removal by TEP at its sole expense, per Section 24 of the franchise agreement, and as such, we request you please reconsider their sale.

Please let me know at your earliest convenience if you concur with our findings and if you will reconsider sale of the transformers. Thank you again.

Sincerely,

Joel V. Wagner

Cc: J. McVay - City of Tucson
V. Hunt - City of Tucson