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BEFORE THE ARIZONA CORPORATION COMMISSION

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JUN 13 2002

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AZ CORP COMMISSION  
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THE UNIVERSITY OF ARIZONA'S  
PETITION FOR DECLARATORY ORDER  
DIRECTING TUCSON ELECTRIC POWER  
COMPANY TO MAKE AVAILABLE ALL  
ELECTRIC RATES FOR WHICH THE  
UNIVERSITY QUALIFIES.

Docket No. E-01933A-02-0388

**TUCSON ELECTRIC POWER COMPANY'S  
ANSWER TO THE UNIVERSITY OF ARIZONA'S  
PETITION FOR DECLARATORY ORDER AND INTERIM RELIEF**

Tucson Electric Power Company ("TEP"), through undersigned counsel, hereby answers the "Petition for Declaratory Order and Interim Relief" ("Petition") filed by the University of Arizona ("University") and requests that the Arizona Corporation Commission ("Commission") (a) deny the University's request for a declaratory order; (b) reject the University's request for interim relief; and (c) dismiss the petition with prejudice.

**1. Introduction.**

The Petition asks the Commission to order TEP to provide electric service to the University pursuant to Qualifying Facility ("QF") tariffs. However, TEP cannot provide electric service to the University under the QF tariffs because: (i) those tariffs are not applicable under their terms and conditions to the University; and (ii) such service would be contrary to the terms of the Settlement Agreement between TEP and APSES dated September 8, 2000 ("2000 Settlement Agreement"), which was agreed to (in writing) by the University. A copy of the University's letter agreeing to and accepting the 2000 Settlement Agreement ("University's Agreement letter") is attached hereto as *Exhibit 1*.

1           **2.       Response to Petition**

2           Upon information and belief, when the University initiated its investigation into options for  
3 the “self-generation” of electricity, its primary focus was to be self-reliant and independent from  
4 incumbent utilities and energy service providers. This is quite different than the University’s  
5 portrayal that it “undertook to build these facilities to take advantage of lower electric rates  
6 available to entities using cogeneration regulations and TEP’s Commission-approved QF Tariff  
7 rates”. [Petition at 2] In fact, on or about 1999, the University retained the consulting firm of  
8 GLHN Architects and Engineers, Inc. (“GLHN”) to evaluate its self-generation options. GLHN  
9 originally concluded that the University’s facilities did not meet the federal standards to be  
10 classified as a QF. GLHN’s reports (dated September 22, 1999; March 31, 2000; and April 4,  
11 2000) do not use TEP’s QF tariffs. Instead, GLHN’s analyses are based upon (a) TEP Tariff No.  
12 107 (“Optional Backup Service for Self-Generation Facilities over 3 MW”); (b) TEP Tariff No.  
13 108 (“Optional Maintenance Energy Service for Self-Generation Facilities over 3 MW”); and (c)  
14 TEP’s Large Light & Power Schedule No. 14. TEP subsequently informed the University that  
15 TEP’s Large Light & Power Schedule No. 14 applied only to full requirements service and could  
16 not be used for supplemental energy. Neither GLHN nor the University has contested the  
17 inapplicability of TEP’s Large Light & Power Schedule No. 14.

18           The University retained APSES to serve as its “energy services manager.” APSES and  
19 TEP disagreed on how metering and other services would be served in the event that the  
20 University became a direct access customer of APSES. As a result of the dispute, TEP and  
21 APSES discussed numerous energy service issues and agreed to resolve them pursuant to the  
22 terms of the 2000 Settlement Agreement.

23           The Petition erroneously argues that the 2000 Settlement Agreement is inapplicable by  
24 alleging that TEP and APSES only resolved how to meter power purchased by the University. In  
25 fact, paragraphs 6, 7 and 8 of the 2000 Settlement Agreement specifically address terms by which  
26 the University will purchase power from TEP in the event that the University elects to self-  
27 generate a portion of its load (which would include any cogeneration).

1           Indeed, one of the issues related to the service TEP would provide the University dealt  
2 with supplemental power. Although TEP could provide backup and maintenance power under  
3 Tariff Nos. 107 and 108, it did not, at the time, have a tariff to provide supplemental power to  
4 self-generation facilities. TEP offered to prepare a tariff to provide supplemental power to self-  
5 generation facilities but the University declined and insisted that it be able to purchase  
6 supplemental power out of TEP's Rate No. 14 (which, as indicated previously, is a full  
7 requirements tariff).

8           In an effort to meet the University's needs, TEP agreed to sell supplemental power under  
9 Rate No. 14 to the University if it would take supplemental power in a manner similar to taking  
10 full requirements power. Consequently, the 2000 Settlement Agreement provides that the  
11 University must purchase that power "at an equivalent monthly load factor, monthly load shape  
12 (with regards to Time-of Use time periods) and annual demand profile." [2000 Settlement  
13 Agreement, at para. 7] (the "load following requirement"). Again, the University expressly agreed  
14 to and approved the 2000 Settlement Agreement.

15           In August 2001, the University, for the first time, orally requested service under TEP's QF  
16 tariffs. The University confirmed this in writing on October 24, 2001. As is obvious, the  
17 University's request is directly contrary to the terms of the 2000 Settlement Agreement.  
18 Surprisingly, the University did not even acknowledge the 2000 Settlement Agreement in its  
19 request for service pursuant to TEP's QF tariffs.

20           The University apparently has misinterpreted the provision in the 2000 Settlement  
21 Agreement concerning its ability to take service under "any available tariff for which it qualifies."  
22 That provision, contained in Paragraph 1 of the 2000 Settlement Agreement expressly applies only  
23 to the Health Science Center ("HSC"). The University has no basis to claim that this provision  
24 applies to *all* service. In fact, there are no self-generation facilities connected to the HSC. The  
25 HSC is presently being served under TEP's Large Light and Power Schedule No. 14 – a full  
26 requirements tariff.

27 ...

1 Even if the University was able to take power under TEP's QF tariffs, it would still have to  
2 comply with the "load following" provisions of the Settlement Agreement. That may be  
3 problematic for the University. Although the University asserts that its self-generation facility  
4 was designated a QF by the Federal Energy Regulatory Commission ("FERC") as of December  
5 10, 2001, that date is simply the date that the University's self-certification filing was received by  
6 FERC. FERC has not taken any formal action and self-certification filings may be challenged at  
7 any time in the future. In fact, the University's obligation to "load follow" may affect the QF  
8 status of its facilities.

9 The University's demand for service under TEP's QF tariffs not only is a breach of the  
10 University's Agreement letter, but also would undermine the terms and conditions, and benefits  
11 and obligations that served as the consideration for the 2000 Settlement Agreement. Indeed, there  
12 were numerous provisions in the 2000 Settlement Agreement that, if abrogated, could call into  
13 question the appropriate rate schedules that would apply to the entire load for all of the University.

14 Finally, there should be no mistake, the University is doing exactly what it claims it is not  
15 doing: it is seeking to evade a contractual obligation in the 2000 Settlement Agreement and it is  
16 seeking to have the Commission order TEP to provide service pursuant to tariffs for which it the  
17 University not qualify.

18 TEP recognizes that in reliance upon information provided to it by APSES or some other  
19 source, the University may have committed substantial resources in building its cogeneration  
20 facilities. However, TEP should not be obligated to subsidize the University's business decisions.

21 **3. Affirmative Defenses.**

22 TEP states the following affirmative defenses and reserves its right to amend this list  
23 dependent upon the outcome of discovery in this case:

- 24 A. The University has failed to state a claim upon which relief can be granted.  
25 B. The University is estopped by the terms of the 2000 Settlement Agreement  
26 and the University Agreement letter from asserting the claims in the  
27 Petition.

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- C. The University does not qualify for service under the terms and conditions of the QF tariffs.
- D. Any other affirmative defense that TEP may presently be entitled to or, through the discovery process, may be entitled to in the future.

WHEREFORE TEP requests that the Commission deny the University's requests for relief and enter an order dismissing the petition with prejudice.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of June 2002.

**ROSHKA HEYMAN & DEWULF, P.L.C.**

By   
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**ORIGINAL + TEN (10) COPIES** of the foregoing filed June 13, 2002, with:

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**COPIES** of the foregoing hand-delivered June 13, 2002, to:

Lyn A. Farmer, Esq.  
Chief ALJ, Hearing Division  
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**EXHIBIT 1**

Senior Vice President  
for Business Affairs

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September 19, 2000

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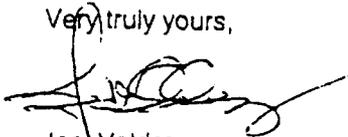
Re: TEP/APSES Settlement

Dear Mr. Pignatelli and Ms. Sandler:

This letter will commit the University to abide by the terms of the Settlement Agreement between TEP and APSES which is enclosed herewith. Although the University is not a party to the matter pending before the Arizona Corporation Commission out of which this settlement arose, substantial University interests were at stake. Hence the University's willingness to abide by the terms of the attached agreement, contingent upon TEP also abiding by its terms. This commitment is premised on the University and TEP entering into mutually satisfactory agreements to effectuate the terms of the settlement which pertain to the University.

I look forward to working with each of you in the future.

Very truly yours,



Joel Valdez  
Sr. Vice President for Business Affairs

TMT/tjd

Enclosures

cc Peter Likins  
Judith Leonard  
Thomas L. Mumaw  
Herbert I. Zinn

