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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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Arizona Corporation Commission

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GARY PIERCE - Chairman
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PAUL NEWMAN
BRENDA BURNS

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ARIZONA CORP COMMISSION
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DOCKETED BY

IN THE MATTER OF THE FORMAL
COMPLAINT OF RATTLESNAKE PASS, LLC,

DOCKET NO. E-01933A-10-0125

COMPLAINANT,

vs.

TUCSON ELECTRIC POWER COMPANY,

RESPONDENT.

PROCEDURAL ORDER

BY THE COMMISSION:

On April 5, 2010, Rattlesnake Pass, LLC ("Complainant" or "RP") filed with the Arizona Corporation Commission ("Commission") a complaint ("Complaint") against Tucson Electric Power Company ("Respondent" or "TEP").

On April 28, 2010, the Respondent filed its Answer to Formal Complaint and Motion to Dismiss.

Pursuant to a Procedural Order filed on July 27, 2010, a procedural conference was held on September 15, 2010, during which the parties indicated that they had not settled the matter and wanted to set oral arguments on the Respondent's Motion to Dismiss. Oral arguments were held on the Respondent's Motion to Dismiss on November 9, 2010.

On January 6, 2012, a Procedural Order was filed concluding that the Complainant had raised a question of fact concerning public safety over which the Commission has jurisdiction and a hearing was set for March 23, 2012. The parties were advised that the purpose of the hearing would be solely to take testimony, argument and evidence surrounding the public safety issue, and that no testimony, argument or evidence would be taken regarding any alleged violations of civil or criminal law.

The Complainant filed its Testimony and Evidence for Hearing on February 17, 2012 ("Pre-Filed Testimony").

1 On February 29, 2012, the Respondent filed a Motion to Dismiss or, in the Alternative,
2 Motion for Summary Judgment (“Motion”). In its Motion, TEP argues that there is no public safety
3 issue and the matter should be dismissed. Alternatively, the Respondent argues that a hearing is not
4 necessary or warranted because none of the relevant facts are in dispute.

5 As stated in the Procedural Order, in spite of TEP’s assertion that there is no present public
6 safety issue, we believe the Complainant has raised a question of fact concerning public safety and it
7 is in the public interest to ensure that the public is not at risk. Additionally, we believe there are
8 relevant facts in dispute.

9 Accordingly, the Respondent’s Motion should be denied.

10 However, as noted in the Motion, contrary to the limitations set in the Procedural Order, RP
11 testified about violations of criminal law in its Pre-Filed Testimony.

12 Accordingly, any portions of the Respondent’s Pre-Filed Testimony relating to or referencing
13 A.R.S. § 13-1502—or any other criminal statute—are stricken.

14 The parties are reminded that the Procedural Order directed that “the sole question to be
15 addressed by the parties at hearing will be the issue of public safety.”

16 **IT IS THEREFORE ORDERED that Tucson Electric Power Company’s Motion to**
17 **Dismiss or, in the Alternative, Motion for Summary Judgment is denied.**

18 **IT IS FURTHER ORDERED that any portions of the Complainant’s Testimony and**
19 **Evidence for Hearing relating to violations of Arizona criminal statutes are stricken.**

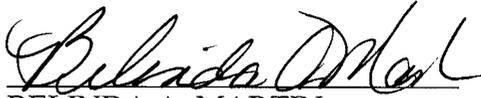
20 **IT IS FURTHER ORDERED that the sole question to be addressed by the parties at**
21 **hearing will be the issue of public safety and no testimony, argument or evidence would be**
22 **taken regarding any alleged violations of civil or criminal law.**

23 **IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules**
24 **of the Arizona Supreme Court and A.R.S. §40-243 with respect to practice of law and admission** *pro*
25 *hac vice*.

26 **IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized**
27 **Communications) applies to this proceeding and shall remain in effect until the Commission's**
28 **Decision in this matter is final and non-appealable.**

1 IT IS FURTHER ORDERED that that the Presiding Officer may rescind, alter, amend, or
2 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
3 hearing.

4 DATED this 9th day of March, 2012.

5 
6 BELINDA A. MARTIN
7 ADMINISTRATIVE LAW JUDGE

8 Copies of the foregoing mailed
9 this 9th day of March, 2012 to:

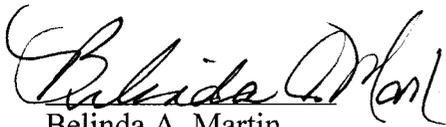
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