BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
MARC SPITZER – Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH – MILLER
MIKE GLEASON

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.

Docket No. E-00000A-02-0051

TUCSON ELECTRIC POWER COMPANY'S COMMENTS TO THE MARCH 19, 2003 ISSUES LIST

Tucson Electric Power Company ("TEP"), through undersigned counsel, hereby provides its comments in response to the Memorandum to the Electric Competition Advisory Group titled "Issues List for the Electric Competition Advisory Group" from Ernest G. Johnson dated March 19, 2003 (the "Issues List").[1]

I. INTRODUCTION.

It has been almost seven (7) years since the Commission issued Decision No. 59943, which approved the Retail Electric Competition Rules (A.C.C. R14-1601 et. seq.). TEP believes that since then the Commission has taken significant steps to implement electric competition. However, the plan for electric competition that is in place today is substantially different than the one anticipated in 1996.

Initially the focus of electric competition was to provide additional benefits to the retail electric consumer. Indeed, A.A.C. Article 16 is entitled, "Retail Electric

[1] These comments are informally filed in the "Generic Restructuring Docket" in anticipation of a new rulemaking proceeding being opened in the future.

Competition." Nevertheless, as the Commission continued to monitor the development of electric competition in Arizona and neighboring states, the focus shifted to establishing electric competition in the wholesale generation market. TEP concurs that there must be a viable competitive wholesale market before there can be meaningful retail electric competition. Thus, certain terms and conditions of Retail Electric Competition Rules that promote competition in the retail electric market are premature at this stage. Perhaps, even the title to Article 16 is a misnomer that should be revised to be simply "Electric Competition."

One of the hallmarks of Arizona's implementation of electric competition has been the willingness of the Commission to review and, when necessary, modify provisions of the Retail Electric Competition Rules. The Commission has already amended, stayed or waived provisions of the Retail Electric Competition Rules several times. See e.g. Decision No. 61071 (August 10, 1998); Decision No. 61969 (September 29, 1999); Decision No. 62924 (October 10, 2000,) and Decision No. 65154 (September 10, 2002). The Commission has made it clear that the Retail Electric Competition Rules will continue to undergo scrutiny and refinement. In Decision No. 65154, the Commission ordered that:

> Staff shall open a rulemaking to review the Retail Electric Competition Rules in light of our decisions herein and to address issues resolved in Track B, and to amend A.A.C. R14-2-1615 (A), A.A.C. R14-2-1606 (B) and A.A.C.R14-2-1611 (A)." (id. at 33)

TEP believes that the Commission's active oversight of the Retail Electric Competition Rules has served the public well. TEP supports the Commission-ordered

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rulemaking proceeding and believes that emphasis should be placed on (1) conforming the Retail Electric Competition Rules to the orders that have been issued by the Commission; and (2) simplifying the provisions governing conduct and communications between utilities and their consumers.

II. RESPONSE TO ISSUES LIST.

a. Please indicate what sections of the Retail Electric Competition Rules should be revised.

b. Please briefly summarize why the sections listed in part (a) above, require revisions.

c. Please identify market issues related to the provisions in the Retail Electric Competition Rules that generally impede or discourage competition.

d. Please provide information on issues that the Retail Electric Competition Rules do not currently address but should.

1. A.A.C. R14-2-1604.

TEP believes that it is appropriate to revise A.A.C. R14-2-1604 in this rulemaking proceeding to reflect the scaled-back performance and expectations for retail electric competition. Accordingly, the Commission could either (1) rescind the provisions that provide for retail electric competition until such time as there are more participants who are prepared to serve retail electric customers; or (b) adopt TEP's proposal to only offer retail electric competition to customers with a load of 3 MW or more at this time. In Decision No. 65154, the Commission noted:

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> Although TEP made a recommendation concerning changing the availability of Retail Competition, this was not an issue the Commissioners agreed to be decided in Track A, and there is insufficient evidence in the record to make a determination on this issue. Accordingly, we will not modify the direct access provisions of the Retail Electric Competition Rules at this time.

TEP's recommendation was that if the Commission determined to retain provisions in the Electric Competition Rules for retail electric competition, then it should be offered only to customers with a load of 3 MW or greater. TEP Chairman Mr. Jim Pignatelli testified in the Track A proceeding that it is unlikely that any Electric Service Providers would commence residential retail electric service in the State because (a) retail electric competition is not functioning in the western states; and (b) it would be virtually impossible to base a profitable ESP business plan on Arizona alone. Mr. Pignatelli testified:

> Because there is no real competition for Residential customers, and customers (Commercial and Industrial) with loads under 3 MW, I would propose that these two classifications of customers be excluded from electric competition. As time passes and electric competition matures, some or all of these customers may eventually be included within the scope of competition.

RUCO witness Dr. Rosen supported the TEP 3 MW customer proposal, as being reasonable. TEP renews its recommendation and believes that this rulemaking proceeding is a proper forum to reconsider the 3 MW customer proposal. This will ensure reliable and economic power for residential consumers and avoid potential problems resulting from residential consumers' lack of sufficient individual negotiating power.

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2. A.A.C. R14-2-1615 (A).

The Commission has already granted a waiver for A.A.C. R14-2-1615 (A) which required the separation of generation assets and competitive services from Affected Utilities by January 1, 2001.[2] See: Decision No. 65154. TEP does not believe that there is a need for the required separation of generation assets and competitive services from Affected Utilities. If an Affected Utility desires to separate generation assets and competitive services, it should have the flexibility, not the requirement to do so. Indeed, there has been no showing in any Electric Competition related proceedings that customers will be better served as a result of the separation of generation and competitive services from Affected Utilities. TEP believes that A.A.C. R14-2-1615 (A) should be rescinded, thereby providing Affected Utilities with the discretion to separate generation assets and competitive services. TEP believes that such action would be consistent with the rationale of the Commission waiver granted in Decision No. 65154.

3. A.A.C. R14-2-1606 (B).

The Commission stayed A.A.C. R14-2-1606 (B) which required that 100 percent of power purchased for Standard Offer Service be acquired from the competitive market with at least 50 percent through a competitive bid process. See: Decision No. 65154. This provision was further modified by the "Track B Order." See: Decision No. 65743 (March 14, 2003). The language of this section should be modified to conform with the Commission's revision of the competitive bid requirements.

[2] This deadline was amended by the TEP and APS Settlement Agreements to be December 31, 2002.

4. **A.A.C. R14-2-1611(A)**.

The Commission stayed the provisions of A.A.C. R14-2-1611(A) as they applied to APS' and TEP's captive customers. See: Decision No. 65154. A.A.C. R14-2-1611(A) provided that market determined rates for Competitive Services, as defined in R14-2-1601, shall be deemed to be just and reasonable. TEP believes that in light of the current status of the electric competition in Arizona, as discussed herein, the stay of this provision should be made permanent in the Electric Competition Rules.

5. **A.A.C. R14-2-1606 (C) (6)**.

TEP believes that it is important that it have flexibility to meet the needs of its customers, especially in a competitive environment. A.A.C. R14-2-1606 (C) (6), which precludes tariffs for Standard Offer Service that have special discounts or contracts with terms, or any tariff which prevents the customer from accessing a competitive option, other than in certain limited circumstances, is too restrictive. TEP and other Affected Utilities should be permitted to provide discounts or offer special terms to customers for any reason.

6. **A.A.C. R14-2-1612 (O)**.

TEP is concerned that the requirements of A.A.C. R-14-2-1612 (O) to specify unbundled billing costs elements for "competitive services", non-competitive services", "regulatory assessments" and "applicable taxes" in each customer bill is burdensome and confusing to customers. TEP believes that customers better understand a simplified bill rather than one that contains multiple line items.

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Also, A.A.C. R14-2-210 (B) 2; and R14-2-1612 (N) require that certain elements of "rates and charges" be itemized on a customer's bill. A.A.C. R14-2-210- (B) 2 essentially refers to A.A.C. R-14-2-1612 (N), which prescribes those items that must be included on a customer's bill. TEP believes that if these itemized bills are going to be the standard then all entities regardless of status (i.e., Affected Utilities, Energy Service Providers, Meter Service Providers, etc.), should be required to provide the specific line items.

7. <u>A. A.C. R14-2-1609</u>.

A.C.C. R14-2-1609 addresses, among other things, the Arizona Independent Scheduling Administrator ("AISA"). TEP believes that the AISA has served a useful purpose. Protocols have been adopted and incorporated into the TEP Open Access Transmission Tariff filed with the Federal Energy Regulatory Commission. Also, the Track B Order has established many of the procedures necessary to implement and monitor the development of a robust and efficient electric market. TEP believes that the Commission is going to consider the future of the AISA later this year and recommends (a) that the Commission consider the dissolution of the AISA; and (b) that the Retail Electric Competition Rules be modified to reflect the fact that the AISA has already served the purpose for which it was originally established.

8. <u>A.A.C. R-14-2-1617 (A)(B)</u>.

A.A.C. R-14-2-1617 (A) and (B) deal with information that Affected Utilities must provide to consumers. Subsection A provides for the use of consumer information labels. Subsection B identifies information that must be provided, upon request, relative to the resource portfolio of the utility. TEP believes that the requirement that these types of

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information sources be used or made available should apply either to all providers of electric service or to none of them. If it is important that consumer information labels be used by Affected Utilities, then it should be important that other ESPs use the labels. The same is true for resource portfolio information that is requested by consumers.

9. Metering Issues.

The Commission has, in the past, granted several waivers related to electric meters and metering services. See e.g.: Decision No. 64180 (October 30, 2001) TEP believes that these waivers should be made permanent and that the Retail Electric Competition Rules should be amended to remove the requirements waived by the Commission.

10. The Retail Electric Competition Rules Do Not Address The Rates To Be Charged To Customers Who Leave An Affected Utility And Then Return.

TEP believes that it is important that the Retail Electric Competition Rules address the appropriate rates to be charged to customers who leave an Affected Utility and then later return to the same Affected Utility ("returning customers"). Affected Utilities must plan to acquire electricity (through generation, long term contracts or in the market) for customers based upon projected load. Generally, returning customers cannot be factored into the resource plan. Consequently, Affected Utilities must obtain electric power for such returning customers on the margin, i.e. at market rates. TEP believes that it is not appropriate for such returning customers to be able to obtain electric service at the same tariff rates as other standard offer service customers. Accordingly, TEP recommends that the Retail Electric Competition Rules be amended to provide appropriate remedies for the economic issues involved with returning customers. TEP believes that the Commission should consider mechanisms such as (a) an adjuster clause; and (b) the requirement that returning customers enter into service agreements for periods of not less than one year.

RESPECTFULLY SUBMITTED, this 14th day of April 2003.

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