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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman

2004 SEP 27 P 3: 09

WILLIAM A. MUNDELL
Commissioner

AZ CORP COMMISSION
DOCUMENT CONTROL

JEFF HATCH-MILLER
Commissioner

MIKE GLEASON
Commissioner

KRISTIN K. MAYES
Commissioner

IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR A
HEARING TO DETERMINE THE FAIR
VALUE OF THE UTILITY PROPERTY
OF THE COMPANY FOR
RATEMAKING PURPOSES, TO FIX A
JUST AND REASONABLE RATE OF
RETURN THEREON, TO APPROVE
RATE SCHEDULES DESIGNED TO
DEVELOP SUCH RETURN, AND FOR
APPROVAL OF PURCHASED POWER
CONTRACT

DOCKET NO. E-01345A-03-0437

NOTICE OF FILING DIRECT
TESTIMONY OF MONA TIERNEY

SACKS TIERNEY P.A., LAWYERS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

PLEASE TAKE NOTICE THAT Constellation NewEnergy, Inc. hereby files the
attached Direct Testimony of Mona Tierney in the above-captioned docket.

DATED this 27th day of September, 2004.

SACKS TIERNEY P.A.

Arizona Corporation Commission
DOCKETED

SEP 27 2004

DOCKETED BY *CR*

By *[Signature]*

Marvin S. Cohen
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Energy, L.L.C.

1 THE ORIGINAL AND 13 COPIES OF
2 THE FOREGOING FILED
3 this 27th day of September, 2004, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

5 COPIES OF THE FOREGOING
6 HAND-DELIVERED
7 this 27th day of September, 2004, to:

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Lisa O'Brien

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AZ CORP COMMISSION
DOCUMENT CONTROL

**BEFORE THE
ARIZONA CORPORATION COMMISSION**

DIRECT TESTIMONY OF MONA TIERNEY

On Behalf of Constellation NewEnergy, Inc.

Docket No. E-01345A-03-0437

Arizona Corporation Commission

DOCKETED

SEP 27 2004

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| DOCKETED BY | |
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September 27, 2004

1 **DIRECT TESTIMONY OF MONA TIERNEY**

2 **Q: Please state your name and business address.**

3 **A:** My name is Mona Tierney and my business address is 2175 North California
4 Boulevard, Suite 300, Walnut Creek, California 94596.

5 **Q: By whom are you employed?**

6 **A:** I am employed by Constellation NewEnergy, Inc., (“CNE” or “NewEnergy”), the
7 retail electricity services entity within Constellation Energy Group, Inc. (“Constellation
8 Energy”).

9 **Q: Please provide your title and responsibilities as an employee of CNE.**

10 **A:** I am the Director of Government Affairs for CNE in the West Region, with
11 responsibility for electricity regulatory matters in California and Arizona.

12 **Q: Please describe the activities of CNE and its relationship to Constellation
13 Energy.**

14 **A:** Constellation Energy is the parent company of Constellation NewEnergy. CNE
15 provides retail competitive supply service. NewEnergy was acquired by Constellation in
16 September 2002. At that time, NewEnergy had nearly 4,000 MW of peak commercial
17 and industrial retail demand. CNE currently serves approximately 10,000 MW of peak
18 commercial and industrial retail demand in 15 states and two Canadian provinces.¹ CNE
19 serves 50 of the top 100 companies on the Fortune 500 list. Some of the other
20 subsidiaries of Constellation Energy include wholesale generation companies, a
21 wholesale supply group and a regulated gas and electric utility, the Baltimore Gas and
22 Electric Company.

1 **Q: Please provide a brief description of your work history and education.**

2 **A:** I have been employed by CNE in my current capacity since October 2002. Prior to
3 that, I was employed by Commercial Energy of Montana from June through September
4 2002. I worked for Enron Corporation from April 1996 through December 2001 in
5 regulatory and government affairs on gas, electricity and telecommunications. Prior to
6 that, I was employed by SDG&E as a senior rate analyst for the gas division from
7 October 1994 until March 1996. Previous to that, I was employed by Elizabethtown Gas
8 Company from May 1987 until September 1994 as a senior rate analyst, and various
9 other positions. I have a Bachelors Degree in Petroleum and Natural Gas Engineering
10 from Pennsylvania State University.

11 **Q: What is the purpose of your testimony in this proceeding?**

12 **A:** My testimony in this proceeding is to support the Proposed Settlement of the APS
13 Rate Case in the referenced docket.

14 **Q: Please describe your participation in the docket.**

15 **A:** CNE and Strategic Energy, LLC ("SEL") jointly sponsored testimony proffered by
16 Witness Mark Fulmer. CNE/SEL have participated in the settlement conferences in this
17 docket and have determined that the settlement reflects the best negotiated outcome for
18 the issues raised by CNE/SEL and the other matters at issue in this proceeding.

19 **Q: What was CNE's interest in the referenced APS Rate Case.**

20 **A:** CNE is a national retail electricity supplier. CNE has had a keen interest in supplying
21 electricity in Arizona for several years. CNE, under a prior corporate name², obtained a

¹ CNE serves commercial and industrial customers in California, D.C., Delaware, Illinois, Maine, Massachusetts, Maryland, Michigan, Rhode Island, New Hampshire, New Jersey, New York, Ohio, Pennsylvania and Texas, as well as in Ontario and Alberta, Canada.

² NewEnergy Ventures Southwest, LLC

1 certificate of convenience and necessity ("CCN") to provide retail electricity service in
2 the state. As part of the APS transition docket on stranded cost recovery, a settlement
3 had been reached with parties that resulted in an energy credit that was not competitive
4 with current market prices. As such, NewEnergy had not developed a strong retail
5 presence in Arizona. As this docket was to end the transition period and establish post-
6 transition rates, CNE was hopeful that the new structure would permit customers to
7 economically access the competitive retail market. CNE has seen customers benefit from
8 access to retail markets in several states by providing customers with the ability to
9 manage their energy costs in highly competitive business sectors. We believe that a well-
10 constructed market can insulate utilities from revenue loss, provide for competitive
11 supply services to bundled customers and allow direct access customers to exercise their
12 ability to shop for the best products and services to meet their individual needs. We
13 believe that our participation in this proceeding has preserved the opportunity to realize
14 all of those objectives.

15 **Q: In particular, what issues did CNE raise in its participation in this proceeding?**

16 **A:** CNE had several primary concerns related to the proposals APS presented in its rate
17 case. First, CNE was concerned that the incorporation of the Pinnacle West Energy
18 Company ("PWEC") assets would diminish the development of the wholesale market,
19 which is necessary to provide the competitive supply utilized by retail suppliers to serve
20 retail customers.

21 Secondly, CNE was concerned that the incorporation of the PWEC assets would
22 diminish the ability for customers to shop for competitive supply from companies such as
23 CNE if additional costs, or exit fees, were attached with those decisions.

1 Third, CNE was concerned that the price signal sent to customers from the utility
2 would be “out-of-sync” with market pricing and cause a “boom/bust” cycle relative to
3 customers’ decisions to participate in competitive retail decisions. CNE was interested in
4 exploring a definition of the utility’s obligation to provide supply to bundled service
5 customers to reflect a difference in procurement and pricing for residential and small
6 commercial customers vis a vis the commercial and industrial customers.

7 Fourth, CNE was concerned that the rate design allow customers to shop and that
8 costs associated with receiving retail services from the utility were not recovered from
9 direct access customers who do not take that service from the utility.

10 Fifth, CNE was interested in assuring that utility provided metering and billing
11 services would not be discriminatory as between bundled and direct access customers.
12 Lastly, CNE was interested in assuring that direct access customers received comparable
13 access to transmission service as bundled customers on a non-discriminatory basis.

14 **Q: Please describe why you believe the settlement is an equitable outcome to the**
15 **issues and concerns raised in your testimony.**

16 **A:** CNE believes that the settlement reflects a balance of the various interests of its
17 supporters. A settlement reflects an element of compromise by all settling parties. CNE
18 believes that its issues have been given equal consideration relative to the various other
19 interests and that the settlement strikes a balance of those positions.

20 **Q: Specifically, how has the settlement accommodated your concerns as identified**
21 **above?**

22 **A:** Relative to the wholesale market concerns associated with the incorporation of the
23 PWEC assets into APS’s rate base, the settlement provides for a moratorium of utility-

1 built projects until 2015, unless specifically approved by the Arizona Corporation
2 Commission.³ The settlement provides for the utility to issue a request for proposal
3 (RFP) in 2005 for 1000 MW for deliveries to begin 2007.⁴ Both of these actions provide
4 an opportunity for wholesale purchases to be incorporated into the utility portfolio, thus
5 maintaining viability in the wholesale market and reducing the possibility of utility
6 domination of wholesale supplies.

7 Secondly, the settlement addresses CNE's second concern, which was that the
8 incorporation of the PWEC assets into APS's rate base would not result in a new claim
9 for stranded cost recovery if customers served by APS decide to shop in the retail
10 competitive supply market. The settlement expressly states that APS will not collect
11 present or future stranded costs related to the PWEC.⁵

12 Thirdly, while the settlement recognizes the utility's current obligation to plan for
13 and serve all customers in its certificated area, it also provides that such planning must
14 recognize the existence of the Commission's direct access program and the potential for
15 future direct access customers. The settlement does not prevent parties from seeking, in
16 the future, to amend the utility's obligation to serve.

17 Fourthly, CNE was concerned that cost recovery reflect cost causation to the
18 greatest extent possible. Therefore, it was important that the cost of the PWEC assets be
19 incorporated into the generation component of rates, with only ancillaries recovered in
20 the transmission component.⁶ It was important that the Power Supply Adjustor ("PSA")

³ Settlement at 16, paragraph 74.

⁴ Settlement at 17, paragraph 78.

⁵ Settlement at 2, paragraph 8.

⁶ Settlement at 2, paragraph 6.

1 be recovered only from bundled customers, and not direct access customers.⁷ It was also
2 important that the settlement rate design for the E-32, E-32R, E-34, E-35, E-53, E-54 rate
3 classes reflect a greater allocation of the increase in rates to the generation component, up
4 to the class cost of service.⁸ This reflects the nature of the increase as being largely
5 related to the PWEC assets and should encourage shopping for the customers.
6 Admittedly, the settlement rate design contains a substantial cross-subsidy, the subsidy
7 that commercial/industrial customers pay to minimize rate impacts to the
8 residential/small commercial customers. All of this cross-subsidy, both the generation
9 component and the delivery component, is being collected in the delivery charges to
10 direct access customers. We have accepted this rate design in the context of the overall
11 settlement and may look to address the cross-subsidy issue in future proceedings.
12 Additionally, any system benefits charges to support energy efficiency, energy
13 management or demand-side management charges collected from direct access
14 customers, must enable those direct access customers to participate in those programs for
15 which the funds will be directed.⁹ Therefore, the settlement provides that direct access
16 customers will be able to participate in any program for which they provide funding
17 through the system benefits charges.¹⁰ Along those lines, there will be a working group
18 to solicit stakeholder input and advise APS on program implementation. CNE is
19 interested in participating in any working groups of that sort. CNE/SEL will have access
20 to funds collected by APS from all customers for meeting the Environmental Portfolio

⁷ Settlement at 7, paragraph 27.

⁸ Settlement at 23, paragraph 119.

⁹ Settlement at 11, paragraph 53 and 54.

¹⁰ Settlement at 11, paragraph 53 and 54.

1 Standard (“EPS”) and shall make the funds collected from direct access customers
2 available to electric service providers for funding their EPS obligations.¹¹

3 Fifth, at issue in the proceeding was the provision of utility metering and billing
4 to direct access customers. CNE participates in many jurisdictions that have embraced
5 retail choice. In every case, the utility is one of several metering agents, meter-reading
6 agents and billing agents available to direct access customers. It is important that the
7 terms and conditions, including rates, which the utility offers for these services, will not
8 create a competitive disadvantage relative to other providers or relative to the utility’s
9 bundled customers. This issue has been directed to the Electric Competition Advisory
10 Group (“ECAG”), or other similar process.¹² CNE is satisfied with the resolution of this
11 issue in this settlement.

12 Lastly, CNE is a board member of the Arizona Independent Scheduling
13 Administrator. It is CNE’s experience that an independent entity who administers the
14 operation of the transmission system on a non-discriminatory basis for all shippers is
15 essential to developing, attracting and sustaining retail markets. It is essential that retail
16 customers have comparable access to transmission service that bundled customers have.
17 It is our opinion that the settlement preserves that tenet.¹³

18 **Q: Does that conclude your testimony?**

19 **A.** Yes.

20

21

¹¹ Settlement at 14, paragraph 65.

¹² Settlement at 18, paragraph 82.

¹³ Settlement at 21.