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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL
CHAIRMAN
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COMMISSIONER

Arizona Corporation Commission
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IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606	Docket No. E-01345A-01-0822
IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR	Docket No. E-00000A-01-0630
IN THE MATTER OF TUCSON ELECTRIC COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC POWER COMPETITION RULES COMPLIANCE DATES	Docket No. E-01933A-98-0471
ISSUES IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES	Docket No. E01933A-02-0069

TUCSON ELECTRIC POWER COMPANY'S

POST HEARING BRIEF ON

TRACK A ISSUES

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Tucson Electric Power Company ("TEP"), through undersigned counsel, hereby respectfully submits its Post Hearing Brief on the "Track A issues", as follows:

I. INTRODUCTION.

TEP has participated in the Track A hearing mindful that the Commission has the constitutional and statutory authority to supervise and regulate electric public service corporations. It is pursuant to this authority that the Commission has established the Electric Competition Rules and issued orders related thereto. Ariz. Const. Art. 15, Secs. 2; 3; A.R.S. Sec. 40-202. It is also pursuant to this authority that the Commission may modify or repeal the Electric Competition Rules and related orders. See also, A.R.S. Sec. 40-252. TEP further recognizes that the Commission, in exercising its regulatory authority, can not act arbitrarily and must base its decisions upon substantial evidence in the record. Simms v. Round Valley Light & Power Co., 80 Ariz. 145, 294 P.2d 378 (1956); ACC v. Citizens Utilities Company, 120 Ariz. 184, 584 P.2d 1175 (1978). TEP believes that there is substantial evidence in the record of these "generic proceedings concerning electric restructuring issues" to support all of TEP's Track A recommendations.

TEP presented the initial and rebuttal testimony of (1) Mr. James S. Pignatelli, TEP's Chairman and Chief Executive Officer; (2) Mr. Steven J Glaser, Senior Vice-President and Chief Operating Officer-UDC; and (3) Mr. Michael DeConcini, Sr. Vice-President –UniSource Energy Company (collectively the "TEP Witnesses") in support of its recommendations. Through their pre-filed testimony and live examination during the

hearing, these TEP Witnesses presented a detailed and compelling case for the Commission to adopt the TEP Track A recommendations.

TEP has consistently supported the Commission in its efforts to re-evaluate electric competition. TEP believes that a combination of unique circumstances make this an appropriate time to analyze the past, present and future of electric competition in Arizona. Those circumstances include at least six (6) years of actual experience with electric competition in Arizona, the cycle of electric competition in California and other states, especially in the western part of the country, and the mistakes of Enron and others.

TEP believes that it is important for the Commission to conduct its re-evaluation in a thorough and deliberate fashion. TEP also believes that the Commission must provide all interested parties with a clear and definitive answer to the seminal issue in electric competition, which is: "Is the timing right for retail electric competition to be implemented in Arizona or should the Commission first require that the wholesale generation market be further developed?" (the "Seminal Issue").

TEP believes that once this Seminal Issue is resolved the rest of the questions surrounding the implementation (or repeal) of electric competition will be clear and their answers more meaningful.

TEP also firmly believes that the overriding concern of the Commission in this matter must continue to be ensuring that the citizens of Arizona have safe, reliable and fairly priced electric power (the "electric industry's obligation") [Tr. at 619 (Ex. 1)]. TEP's Track A recommendations are designed to provide the Commission with proposals that will safeguard the integrity of the Arizona electric industry and preserve the ability of

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ratepayers to receive the benefits of the electric industry's obligation while the re-evaluation of electric competition takes place.

II. THE TEP TRACK A RECOMMENDATIONS.

The TEP Track A Recommendations were proposed in the initial testimony of the TEP witnesses as follows:

1. The Commission should issue findings of fact that detail the purported benefits of electric competition both on a retail and wholesale basis [TEP-1 at 17 (Ex. 2)];

2. Grant the TEP Request for a Variance (id.);

3. Adopt TEP's Track B procedural proposal (id.);

4. Amend the Electric Competition Rules in accordance with the proposals in TEP's Track A and Track B testimony (id.);

5. If retail electric competition is to proceed at this time, include only customers with a load of 3 MW or more for now [TEP-1 at 14 (Ex. 3)]; and

6. If retail electric competition is to proceed at this time, implement a purchase power and fuel adjustment clause [TEP-5 at 5-6 (Ex. 4)].

A. Issue Findings of Fact.

TEP has recommended that the Commission issue findings of fact that detail the purported benefits of electric competition, both on a retail and wholesale basis. This process will serve several important purposes. First, it will provide a venue for the Commission to weigh the evidence presented by all interested parties and reach a decision

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on the Seminal Issue. Second, it will allow the Commission to determine how electric competition impacts the electric industry's obligation. Third, it will afford the Commission with standards upon which to act in the near term regarding electric competition and the Electric Competition Rules. Fourth, it will provide all parties with notice of the factual premise upon which the Commission is acting. Fifth, it will preserve for this and future Commissions the perceived benefits and drawbacks of electric competition so that the integrity of the electric industry's obligation can be monitored pursuant to the framework and regime that the Commission enacts as a result of its re-evaluation. In his pre-filed testimony, Mr. Pignatelli stated:

> When I think of all of the time and money spent in implementing competition in this State compared to where we are, and when I look at the experience of other states such as California, Nevada and New Mexico, I have to question whether competition is, in fact, the most appropriate regime for the electric industry. And if it is, when is the best time to implement it? I believe that by requiring proponents of electric competition to come forward with credible evidence of the anticipated benefits of electric competition, the Commission will be in a position to affirm or reject what seems to be the presumption that Electric Competition is the best manner for providing electric service in Arizona. Findings of fact will also provide all participants (and future Commissions) with a tool for measuring the success of competition in the future. [TEP-1 at 17-18 (Ex. 5)]

No party to the Track A hearing disagreed with Mr. Pignatelli's recommendation. RUCO witness Dr. Rosen fully endorsed this TEP recommendation and encouraged the Commission to carefully consider the status of electric competition and whether it is in the best public interest at this time. [RUCO-2 at 19-20 (Ex. 6) Tr. at 1034-35 (Ex. 7)] Staff witness Mr. Rowell testified that circumstances now require that the Commission re-examine the benefits of electric competition. [S-16 at 1-3 (Ex. 8)]

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B. Grant the TEP Request for a Variance.

TEP has recommended that as part of the resolution of the Track A issues, the Commission should grant the TEP Request for a Variance. TEP filed its Request for a Variance in Docket No. E-01933A-98-0471 (the "TEP Variance Docket"), which has been consolidated with this "generic docket". In support thereof, TEP has filed testimony in both (a) the TEP Variance Docket; and (b) this "generic docket."[1] Mr. Pignatelli, in his pre-filed testimony in this docket, invited all interested parties to address the TEP Request for a Variance, in their rebuttal testimony [TEP-1 at 17 (Ex. 9)]. All of the Commissioners have submitted written statements in the form of letters filed with the Commission Docket Control indicating a willingness to consider the TEP Request for a Variance on an accelerated basis. In fact, the Commission has recently issued a procedural order scheduling a hearing, pursuant to A.R.S. Sec. 40-252, to be commenced on July 12, 2002 regarding the TEP Request for a Variance, and other matters within the scope of the consolidated dockets.

Mr. Pignatelli explained the need for filing the TEP Request for a Variance as follows:

> TEP was concerned that at the same time the Commission was going to be re-evaluating the Electric Competition Rules, those very same rules imposed upon TEP the obligation to divest its generating assets and to begin to competitively bid its power needs by December 31, 2002. These are monumental tasks and significant events with

[1] TEP incorporates by reference into this Post-Hearing Brief the TEP testimony filed in the TEP Request for a Variance Docket. Similarly, TEP reserves its right to utilize, by incorporation or otherwise, testimony and evidence from this proceeding in the TEP Request for a Variance Docket and in connection with the July 12, 2002 hearing.

> serious consequences for the future of TEP—and the Commission's jurisdiction over TEP's assets. TEP did not feel it was in the public interest to proceed with the divestiture and competitive bid process amid the uncertainty of what the Commission would do relative to the Electric Competition Rules, so we requested that the status quo remain until the re-evaluation was completed. This seemed to be the logical course to follow then and it still seems to be so now. [TEP-1 at 15 (Ex. 10)]

Mr. Pignatelli was examined by counsel for Sempra Energy regarding the potential impact of TEP's Request for a Variance on merchant power plant builders ("merchant builders"). Mr. Pignatelli, who was once the President of Mission Energy, which at that time was the largest independent power producer in the world, acknowledged that there would be some impact. However, he also indicated that the impact on the merchant builders should not be overemphasized because he believed that (a) merchant builders did not invest in Arizona in total reliance on the market in this state but were more interested in providing power into California; and (b) the potential for harm is greater with Arizona's incumbent utilities who have spent billions of dollars to build this State's electric industry. [Tr. at 628-633 (Ex. 11)]

There was widespread recognition by the parties that <u>some type</u> of a variance to, or modification of, the Electric Competition Rules was necessary. Mr. Pignatelli summarized the different parties' positions, as follows:

> Previously, APS sought a variance from certain provisions of A.A.C. R14-2-1606 and (in A.C.C. Docket No. E-01345A-01-0822) filed testimony specifically related to its request. Commission Staff has indicated that it does not support <u>requiring</u> utilities to transfer their assets, but would not object to allowing discretionary transfers contingent upon the completion of Commission's market power studies. RUCO recommends that if the Commission decides to keep the divestiture requirement that the deadline

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should be postponed until at least January 1, 2004. Panda Gila River L.P. recommends that the Commission prohibit the transfer of generation assets to affiliates until the affiliates face a competitive challenge and believes that the deadlines can be extended. Reliant Resources, Inc. proposes that the generation assets be transferred together with an auction for a portion of the output of the capacity represented by the transferred assets. [TEP-2 at 4-5 (Ex. 12)].

C. Adopt TEP's Track B Procedural Schedule.

TEP has recommended that the Commission, in connection with its resolution of the Track A issues, should adopt the Track B procedural schedule proposed by TEP in the Track B proposals submitted May 13, 2002. TEP believes that the Track B procedural schedule that is now being followed by the Commission is rushed and incomplete. For example, the present Track B procedural schedule contemplates workshops to be held on July 24 and 25, 2002, a Staff Report and then Commission action not later than October 21, 2002. [See Procedural Order dated June 20, 2002 (Ex. 13)]. This procedural schedule does not contemplate either hearings or a rulemaking proceeding. TEP believes that at least one hearing (or rulemaking proceeding) will be necessary in order to ensure that the competitive solicitation processes, policies, procedures and requirements that are developed are relevant to the specifics of TEP's service territory and system. TEP's proposed Track B procedural schedule would have the Track B issues resolved by February 20, 2003 [TEP-1 at 16 (Ex. 14)].

TEP has long maintained that neither the Track A issues, nor any issues involved in the re-evaluation of electric competition, should be determined in a vacuum. For example, Mr. Pignatelli stated that once the TEP Request for a Variance was granted the Commission could then proceed "at a measured pace, to analyze all aspects of Electric

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Competition and implement a comprehensive set of rules, policies and procedures to bring about real competition" [TEP-1 at 18 (Ex. 15)].

It is important that the Commission reaches decisions and issue orders in a logically progressive manner. This will provide all parties the notice and certainty that has been requested from the Commission. This will allow parties to efficiently operate and plan for the future without undue surprises. Indeed, it is important that parties know what the outcome of the TEP Request for a Variance will be and how the Commission will resolve the Seminal Issue before time and resources are expended in implementing Track A issues. It is equally important that if electric competition is to proceed in Arizona that Track A issues be resolved before the parties are required to implement a competitive solicitation process for procuring power. In short, TEP's Track B procedural schedule will help ensure that all participants in the Arizona electric industry will be able to compete on a "level playing field" [Tr. at 633-635 (Ex. 16)].

D. Amend the Electric Competition Rules Consistent with the Findings of Fact.

TEP has recommended that the Commission adopt TEP's recommendations and amend the Electric Competition Rules consistent with its findings and conclusions. The Commission's re-evaluation of electric competition and the Electric Competition Rules will be in vain, if the Commission does not make decisions and issue orders that are (a) consistent with the evidence it has gathered in the course of its analysis; and (b) in the public interest. TEP has full confidence that this Commission will resolve the Seminal Issue and take the appropriate action to ensure the integrity of the Arizona electric industry

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and the ability of public service corporations to meet the electric industry's obligation.

E. If Retail Electric Competition is to Proceed at this Time, Include Customers with a load of 3 MW or More For Now.

TEP has recommended that in the event that retail electric competition proceeds in Arizona, it should be offered only to customers with a load of 3 MW or more at this time. There was no dispute at the hearing that there is no meaningful retail competition in Arizona. Mr. Pignatelli testified that there are only two (2) Energy Service Providers ("ESPs") doing business in the TEP service territory--both of which are owned by incumbent Arizona utilities. [TEP-1 at 7-8 (Ex. 17)] Mr. Pignatelli testified that it is unlikely that any ESPs 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. [TEP-1 at 8-9; Ex. 18)]. Mr. DeConcini indicated that TEP sold its ESP. [TEP-3 at 10-11 (Ex. 19) Tr. at 668-669; (Ex. 20)] Mr. DeConcini also stated that there still would be benefits to customers with loads of 3 MW or less, such as allowing them to benefit from TEP's reduced and capped rates as Standard Offer customers. [TEP-3 at 11; (Ex. 21)] However, TEP does hold out hope for the future and as Mr. Pignatelli stated, if competition begins to take hold in Arizona, these customers can be phased in. 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. [TEP 1 at 14 (Ex. 22)

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see also Tr. at 662 (Ex. 23)]

AES New Energy, Inc. opposed TEP's 3 MW customer proposal claiming that it would be the "death knell" of retail competition in Arizona. However, on cross-examination AES' witness admitted that (a) AES and Strategic Energy does not have any plans to provide residential retail electric service in Arizona; (b) he was unaware of any ESP that did intend to provide residential retail electric service in the State; and (c) there is no lively retail competition in Arizona. Moreover, AES admitted that on June 6, 2002 its securities had been downgraded and that five (5) days later, AES sold its ESP affiliate because it no longer fit into AES' business plan. [TEP-7 (Ex. 24); Tr. at 881-901 (Ex. 25)]

AECC opposed TEP's 3 MW customer proposal as somehow violating the 1999 TEP Settlement Agreement. TEP Witness, Mr. Pignatelli testified that he did not believe that TEP's 3 MW proposal was inconsistent with the terms of the TEP Settlement Agreement. [Tr. at 596-598 (Ex. 26)] In fact, of the four (4) parties that executed the 1999 TEP Settlement Agreement only AECC claimed that TEP's 3 MW customer proposal was a violation thereof. Yet, AECC stipulated that its witness, Mr. Higgins, was not qualified to offer legal conclusions or opinions in this proceeding. [Tr. at 1171-1173; (Ex. 27)]. In fact, RUCO witness Dr. Rosen supported the TEP 3 MW customer proposal, as being reasonable [RUCO-2 at 5 (Ex. 28)]. Dr. Rosen further stated that he did not believe that the TEP proposal was a breach of the 1999 TEP Settlement Agreement. [Tr. at 1065 (Ex. 29)].

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F. If Retail Electric Competition is to Proceed at this Time, Implement a Purchase Power and Fuel Adjustment Clause.

TEP recommended that in the event that retail electric competition proceeds in Arizona, the Commission should allow the UDCs to have a purchase power and fuel adjustment ("PPFA") mechanism in place. Mr. Glaser testified:

> I believe that it will be important for the Commission and the UDCs to address the potential volatility of purchase power costs and how that will affect the rates paid by Standard Offer customers. I think that one of the best mechanisms for matching current electric power procurement costs with electric power use is through a Purchase Power and Fuel Adjustment ("PPFA") mechanism.
>
> ...
>
> As the competitive electric market matures, retail electric rates should reflect a market price rather than be set pursuant to a cost-based methodology. To me the concepts of a competitive market place and cost-based rates set by the Commission are not compatible. The potential volatility in electric power prices is one of the characteristics of a competitive market place that is different from a regulated ratemaking environment. Having said that, I do not think that it is in the best interest of retail electric customers to be subject to sudden swings in rates. I believe that electric customers want stability in their rates. I also believe that these aspects of the competitive market place are ones that the Commission must carefully examine as it re-evaluates the benefits and drawbacks of electric competition.
>
> ...
>
> I would propose that the PPFA mechanism be designed to minimize the effect of electric power price swings over time by "banking" purchase price deviations above and below a pre-determined base cost and then, once an established level has been attained in the account, recovering or returning the bank balance amounts over a specified period of time. [TEP-6 at 6-7 (Ex. 30)]

No party opposed TEP's PPFA mechanism proposal. In fact, Staff Witness Mr. Rowell acknowledged that an additional benefit of a PPFA mechanism is that it could be used to hold UDCs accountable for their power purchases. [Tr. at 1571-72 (Ex. 31)].

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G. Market Power.

Although TEP did not offer a recommendation regarding the market power issue, Mr. DeConcini did offer some observations regarding the analysis that parties had offered. It is interesting to note that there was no consensus among the parties as to how to determine and quantify market power. Mr. DeConcini defined market power as "the ability of a market participant, or group of participants, to directly (horizontal market power) or indirectly (vertical market power) influence the price of a good or service. In the context of the initial testimony, market power referred to electric power." [TEP-4 at 2 (Ex. 32)] Mr. DeConcini testified that the initial testimony of the parties contained a wide variety of market power indices and tests, which came to different conclusions and that if market power is something that is going to be monitored then there needs to be uniformity in its definition, determination and resolution. [TEP-4 at 2 (Ex. 33)].

Mr. DeConcini further testified regarding the market power issues that:

> Depending on how you define market power every utility could be expected to be deemed to have market power and that there will be times during a day at some time of the year that a utility's existing generation resources will be required to meet local must-run requirements for system reliability reasons ("RMR generation").
>
> However, I should point out that at the same time there will be existing utility generation resources that could not cause market power. For example, TEP owns small portions of other remote generation facilities that would not be able to exhibit market power due its (small) ownership percentages and the number of other participants at those sites [footnote omitted]
>
> ....
>
> Generally, RMR Market Power issues are addressed in the "must-run generation" protocol of the Arizona Independent Scheduling Administrator ("AISA"). I believe that if the Commission determines that the AISA protocol is inadequate protection from

> RMR Market Power, then another solution would be for the TEP generation affiliate to supply the RMR capacity and energy to TEP's UDC affiliate under a cost-based PPA approved by the Commission. This PPA would be in place until the Commission determines that Market Power is eliminated through other means (e.g. transmission and/or generation additions, RTO or other market protocols/ rules, etc.).
>
> TEP realizes that this solution may require the formation of more than one generation affiliate or subsidiary. In my initial testimony I mentioned that this was an option that TEP was considering. [TEP-4 at 2-4 (Ex. 34)]

TEP does not believe that there is a sufficient consensus in the record upon which the Commission can render a decision regarding how to quantify market power and how to solve any market power issues that may arise. TEP suggests that the issue of market power be one that is subject to further evaluation.

III. RESPONSE TO CHAIRMAN MUNDELL'S QUESTION REGARDING WESTCONNECT.

Chairman Mundell requested that the parties address jurisdictional issues related to the proposed regional transmission organization ("RTO"), "WestConnect RTO, L.L.C" ("WestConnect"). Chairman Mundell asked the parties to indicate whether WestConnect's status as a "not-for-profit" or "for-profit" limited liability company would impact the jurisdiction of the Commission over TEP's transmission assets. In his direct testimony Mr. Pignatelli testified that:

> Many parties are looking into how to develop a manageable wholesale power market. Consequently, there are many different opinions on the subject. Complicating matters even more is what action, if any, FERC will take to further regulate the wholesale

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> market. I believe that important components of a wholesale generation market are (a) a regional structure; (b) participants; (c) transmission access; and (d) an organization to operate the regional market. FERC has promoted the idea of Regional Transmission Organizations ("RTOs'") to standardize procedures and rules, ensure non-discriminatory access to transmission and to provide monitoring. TEP is one of the founding members of WestConnect, LLC, a proposed western region RTO.
>
> ...
>
> **The divestiture or transfer of transmission assets would result in FERC exercising jurisdiction over the rates, terms and conditions of any unbundled retail transmission service that occurs as a result. Under section 201 of the Federal Power Act, FERC has jurisdiction over interstate transmission of electric energy. FERC has asserted jurisdiction over unbundled retail transmission service, that occurs when "a retail transaction is broken into two products [one being energy and one being transmission] that are sold separately (perhaps by two different suppliers: an electric supplier and a transmission supplier)" in FERC Order No. 888.** [TEP-1 at 11-12 (Ex. 35); emphasis added; see also TEP's First Response to Commission Questions dated February 25, 2002 at 53-55 (Ex. 36)]

TEP is unaware of any jurisdictional impact attributable to the "for-profit" status of WestConnect. Attached hereto as Exhibit 37 is a copy of the WestConnect FERC transmittal letter and the request for declaratory order. In summary, over the past several years, stakeholders in the southwest collaborated in the formation of Desert STAR, a not-for-profit RTO. Desert Star would have provided control over transmission assets of the participants but would not have owned any facilities. In order to provide participants with added flexibility, a limited liability agreement was negotiated for a "for-profit" RTO together with a transmission control agreement. This new RTO is WestConnect. A WestConnect tariff has been filed with FERC which contains the rate formulas, terms and conditions under which WestConnect will provide non-discriminatory transmission service over the facilities it will control.

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WestConnect will be governed by an independent board of nine directors, which will have ultimate authority to manage the RTO. FERC requires that a RTO must (1) not have financial interests in any "market participant"; (2) have a decision-making process that is independent of control by any "market participant" or class of "market participants"; (3) have exclusive authority to propose rates, terms and conditions of transmission service provided over the facilities it operates; and (4) provide for the performance of certain compliance audits. WestConnect is designed to manage the operation of virtually all of the transmission assets in the southwestern portion of the United States. The WestConnect RTO structure is designed to offer flexibility to expand or enter into agreements with other RTOs. WestConnect, in addition to having a passive ownership interest in participants' transmission assets may invest in, construct and own new transmission facilities as well as purchase assets from participants.

To date, the FERC has not yet issued a ruling on the WestConnect filing.

IV. CONCLUSION.

TEP's main concern in this Track A hearing is that the electric industry's obligation be safeguarded as the Commission re-evaluates electric competition and the Electric Competition Rules. The TEP Track A Recommendations are designed to do that. TEP's request that the Commission resolve the Seminal Issue is key to laying the proper groundwork for the operation of the Arizona electric industry, whether it is in a competitive or regulated regime. TEP's Request for a Variance is intended to maintain the

status quo until the Commission makes the necessary findings upon which to act for the future of the Arizona electric industry. There is substantial evidence in the record of this proceeding to support the Commission's grant of the TEP Track A Recommendations. TEP has offered them because it is TEP's belief that they are prudent and in the best interests of the public. TEP renews its request that the TEP Track A Recommendations be granted, starting with approval of the TEP Request for a Variance.

Respectfully submitted this 10th day of July, 2002.

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BEFORE THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN
JIM IRVIN
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MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606	Docket No. E-01345A-01-0822
IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR	Docket No. E-00000A-01-0630
IN THE MATTER OF TUCSON ELECTRIC COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC POWER COMPETITION RULES COMPLIANCE DATES	Docket No. E-01933A-98-0471
ISSUES IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES	Docket No. E01933A-02-0069

TUCSON ELECTRIC POWER COMPANY'S

EXHIBITS TO POST-HEARING BRIEF

ON

TRACK A ISSUES

1

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	DOCKET NO. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. R14-2-1606.	DOCKET NO. E-01345A-01-0822
IN THE MATTER OF THE GENERIC PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR.	DOCKET NO. E-00000A-01-0630
IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES.	DOCKET NO. E-01933A-02-0069
IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST RECOVERY.	DOCKET NO. E-01933A-98-0471

At: Phoenix, Arizona

Date: June 19, 2002

Filed: JUN 21 2002

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME III
(Pages 563 through 867)

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Prepared for:

TEP

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1 safe, and fairly priced energy in Tucson, and as a
2 provider of last resort, I think that the primary
3 responsibility of the incumbent utilities and of this
4 Commission is to assure that there is an adequate
5 supply of safe, reliable, fairly priced energy to all
6 of the citizens, including corporations of the State
7 of Arizona.
8 Now, if a competitive generation marketplace
9 is consistent with that public policy, then I would
10 agree with this. But I think the overlying public
11 policy for this Commission and for the utilities, is
12 to ensure an adequate, safe, reliable, fairly priced
13 power.
14 Q. Let me tell you the purpose of my asking you
15 that question. I'm trying to get into the mindset of
16 James Pignatelli as he sits on the witness stand
17 today. And if the legislature or the Commission were
18 to be addressing the question of should that be the
19 public policy of this state at this point in time, and
20 you were asked to comment on it, what would your
21 response be?
22 A. The overriding -- please, don't take offense
23 when I say this again. The overriding concern of this
24 Commission, and as I sit in my seat, is that there is
25 safe, reliable, fairly priced energy always available

2

TEP-1

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
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JIM IRVIN
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IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
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INITIAL TESTIMONY OF JAMES S. PIGNATELLI

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

May 29, 2002

divestiture of its assets and complete the competitive solicitation process. I think these may be impossible undertakings within such a short time frame.

Although the parties may disagree as to whether competition is in the public interest, I think that everyone will agree that hastily and badly created competition can be worse than no competition. Consequently, I am renewing our request that the Commission provide us with some certainty and grant the variance until the re-evaluation of the Electric Competition Rules has been completed. I should note that TEP has already filed testimony to support the variance. If any party wishes to file additional testimony regarding TEP's Request for Variance, it can do so in its rebuttal testimony due in this docket. The Commission can then rule on the TEP's Request for Variance within a reasonable time frame.

V. TEP RECOMMENDATIONS REGARDING TRACK A ISSUES.

Q: Mr. Pignatelli, what are your recommendations for Commission action regarding the Track A issues?

A: Perhaps the best way for me to present my recommendations is to simply list them:

1. The Commission should issue findings of fact that detail the purported benefits of electric competition both on a retail and wholesale basis.

I believe that the Commission's re-evaluation of Electric Competition should include a review of the basic premise that competition is in the public interest. When I think of all of the time and money spent in implementing competition in

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TEP-1

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INITIAL TESTIMONY OF JAMES S. PIGNATELLI

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

May 29, 2002

Q: Do you believe that there should be any limitations on customers who are subject to Electric Competition?

A: Yes, I do. 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. These issues are addressed in more detail in the testimony of Messrs. Glaser and DeConcini.

Q: Mr. Pignatelli, do you believe that TEP's Settlement Agreement with parties as approved by the Commission should be amended?

A: If the Commission retains electric competition materially and substantially in the form that it exists today, then I do not think that the Settlement Agreement needs to be substantively amended. I do, however, urge the Commission to (a) accept the Motion for Clarification of Settlement Agreement dated March 14, 2002 (Exhibit 1 hereto); and (b) grant the TEP Request for Variance (Exhibit 2 hereto). Basically, I think that if the terms of competition remain the same, then TEP can operate under the terms of the Settlement Agreement. However, if the Electric Competition Rules are materially changed or repealed, then I want to make it clear that TEP will reserve its right to negotiate new terms in connection with the new form of competition.

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4

TEP-5

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606	Docket No. E-01345A-01-0822
IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR	Docket No. E-00000A-01-0630
IN THE MATTER OF TUCSON ELECTRIC COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC POWER COMPETITION RULES COMPLIANCE DATES	Docket No. E-01933A-98-0471
ISSUES IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES	Docket No. E01933A-02-0069

INITIAL TESTIMONY OF STEVEN J. GLASER

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

May 29, 2002

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III. THE POST-DIVESTITURE ROLE OF THE UDC.

Q. What will be the UDC's role after the divestiture of TEP's generation assets?

A. The UDC will obtain electric power from generators and marketers and provide electric services to retail customers. As Mr. Pignatelli explained in his initial testimony, TEP is proposing that retail customers with load requirements less than 3 MW be exempted from retail electric competition. To the extent that there are competitors for Arizona retail electric customers the UDC will compete for those customers. TEP envisions that the UDC will also be the "provider of last resort" for electric users that are within its currently designated service territory. I should point out that TEP believes that there should be rules in place that govern the terms and conditions for "provider of last resort" service for customers that choose direct access electric service.

Q: How will the UDC procure electric power pursuant to the Electric Competition Rules' competitive solicitation requirement?

A: A.A.C. R14-21606 (B) and our Settlement Agreement require that by January 1, 2003, electric power purchased by TEP for Standard Offer Service "shall be acquired from the competitive market through prudent, arm's length transactions, and with at least 50% through a competitive bid process." So, the UDC will need to look at procuring electric power through traditional means (such as contracts) as well as through a competitive bid process that, as of yet, has not been defined.

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Again, we have asked for a variance to this requirement until the Commission completes its re-evaluation of the Electric Competition Rules and can provide the necessary detail to inform the UDC what the competitive solicitation process is. However, until the TEP Request for Variance is granted or the Commission indicates that the Electric Competition Rules will be changed, we have been working under the assumption that the requirements and deadlines stated in the current version of the rules are still applicable. We are mindful of the Commission's Affiliate Interest Rules as well as our Code of Conduct and will procure electric power within the permissible parameters set in those documents.

We are also very interested in the outcome of the Track B portion of this docket. The policies and procedures that are established by the Commission as a result of that proceeding will have an obvious impact on how the UDC procures electric power. Of particular interest to me is whether the "50% requirement" will remain as it is or if it will be phased-in over time. Also, by the time that the "50% requirement" is in place TEP will have to be proficient in whatever competitive bid process the Commission imposes. It is important that there be ample time between the Commission's announcement of the approved competitive solicitation process and the implementation date for the process to be put in place and for the participants, such as the UDC to be familiar with its operation.

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TEP-1

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606	Docket No. E-01345A-01-0822
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ISSUES IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES	Docket No. E01933A-02-0069

INITIAL TESTIMONY OF JAMES S. PIGNATELLI

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

May 29, 2002

divestiture of its assets and complete the competitive solicitation process. I think these may be impossible undertakings within such a short time frame.

Although the parties may disagree as to whether competition is in the public interest, I think that everyone will agree that hastily and badly created competition can be worse than no competition. Consequently, I am renewing our request that the Commission provide us with some certainty and grant the variance until the re-evaluation of the Electric Competition Rules has been completed. I should note that TEP has already filed testimony to support the variance. If any party wishes to file additional testimony regarding TEP's Request for Variance, it can do so in its rebuttal testimony due in this docket. The Commission can then rule on the TEP's Request for Variance within a reasonable time frame.

V. TEP RECOMMENDATIONS REGARDING TRACK A ISSUES.

Q: Mr. Pignatelli, what are your recommendations for Commission action regarding the Track A issues?

A: Perhaps the best way for me to present my recommendations is to simply list them:

1. The Commission should issue findings of fact that detail the purported benefits of electric competition both on a retail and wholesale basis.

I believe that the Commission's re-evaluation of Electric Competition should include a review of the basic premise that competition is in the public interest. When I think of all of the time and money spent in implementing competition in

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this State compared to where we are, and when I look at the experience of other states such as California, Nevada and New Mexico, I have to question whether competition is, in fact, the most appropriate regime for the electric industry. And if it is, when is the best time to implement it? I believe that by requiring proponents of electric competition to come forward with credible evidence of the anticipated benefits of electric competition, the Commission will be in a position to affirm or reject what seems to be the presumption that Electric Competition is the best manner for providing electric service in Arizona. Findings of fact will also provide all participants (and future Commissions) with a tool for measuring the success of competition in the future.

2. Grant the TEP Request for Variance.

It is important for the Commission to preserve the status quo of the utilities and of its jurisdiction over them during the re-evaluation period.

3. Adopt TEP's Track B procedural proposal.

In connection with the grant of TEP's Request for Variance, the Commission should carefully proceed, at a measured pace, to analyze all aspects of Electric Competition and implement a comprehensive set of rules, policies and procedures to bring about real competition.

4. Amend the Electric Competition Rules in Accordance with the proposals in TEP's Track A and Track B testimony.

In our Track B Proposals filing, we indicated that Track A issues and Track B issues are related and should be considered together. In the testimony of Mr.

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6

RUCO-2

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES	))))	DOCKET NO. E-00000A-02-0051

REBUTTAL TESTIMONY

OF

DR. RICHARD A. ROSEN

On Behalf of the Arizona
Residential Utility Consumer Office

Tellus Institute
11 Arlington Street
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Tel: 617/266-5400

June 11, 2002

SECTION III – RESPONSE TO TUCSON ELECTRIC TESTIMONY

Q. WHAT WAS YOUR GENERAL REACTION TO MR. PIGNATELLI's DIRECT TESTIMONY?

A. My general reaction to Mr. Pignatelli's testimony was quite favorable with regard to many of the points that he raised. This was particularly true for recommendations #1 and #2 described on pages 17-18 of his direct testimony. I believe that the gist of recommendation #1 was to request that the ACC thoroughly review the likely pros and cons of electric industry restructuring in Arizona from scratch, which was exactly what I recommended in my direct testimony also. Thus, I totally agree with Mr. Pignatelli that the ACC should review the basic premise that many parties may still believe, which is that electric "competition," meaning restructuring and the deregulation of generation prices in Arizona, is in the public interest.

As I have indicated in my direct testimony, I believe there are a very limited set of conditions under which restructuring might be in the public interest, and these conditions would only apply if TEP and APS are still required to build new electric generation on a traditional, regulated, cost-of-service basis, if that proves to be the lowest-cost way of providing the new generation supplies required to meet load growth. If the ACC does not maintain cost-of-service pricing as an option under a restructured future for the electric industry in Arizona, then I believe the economic risks to ratepayers deriving from the

1 potential exercise of market power, and other lost economic efficiencies of
2 vertically integrated utilities, would be so great as to preclude restructuring from
3 being in the public interest. Thus, I share Mr. Pignatelli's skepticism as expressed
4 on page 18 of his testimony, when he says, "I have to question whether
5 competition is, in fact, the most appropriate regime for the electric industry."
6 Q. DO YOU AGREE WITH MR. PIGNATELLI THAT TEP SHOULD BE
7 GRANTED A VARIANCE TO POSTPONE COMPLIANCE WITH THE
8 ELECTRIC COMPETITION RULES?
9 A. Yes. I agree with Mr. Pignatelli about the need for a variance with respect to the
10 time period by when to comply with the Electric Competition Rules. However, as
11 I explained in my direct testimony, I believe that *all* utilities in Arizona subject to
12 the current competition rules should be given a variance for one full year, not six
13 months or so, as Mr. Pignatelli advocates, until the ACC decides how it wants to
14 either proceed to restructure the electric industry in Arizona, or, alternatively, if it
15 wants to return to traditional cost-of-service regulation for the foreseeable future.
16 A full year delay is especially needed now if the ACC accepts the Staff's
17 recommendations that a market power and system planning study be undertaken,
18 in addition to undertaking further hearings on other policy issues that require
19 further elucidation prior to the ACC deciding the future of restructuring in
20 Arizona.
21 Q. DO YOU ALSO AGREE WITH MR. PIGNATELLI's THIRD
22 RECOMMENDATION THAT THE ACC SHOULD ADOPT TEP's TRACK B

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC 4 RESTRUCTURING ISSUES.	DOCKET NO. E-00000A-02-0051
5 IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR 6 VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. R14-2-1606.	DOCKET NO. E-01345A-01-0822
7 IN THE MATTER OF THE GENERIC 8 PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING 9 ADMINISTRATOR.	DOCKET NO. E-00000A-01-0630
10 IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A 11 VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES.	DOCKET NO. E-01933A-02-0069
12 IN THE MATTER OF THE APPLICATION 13 OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST 14 RECOVERY.	DOCKET NO. E-01933A-98-0471

15 At: Phoenix, Arizona

16 Date: June 20, 2002

17 Filed: JUN 24 2002

18 REPORTER'S TRANSCRIPT OF PROCEEDINGS

19 VOLUME IV
(Pages 868 through 1153)

20

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Certified Court Reporter
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Prepared for:

25 TEP

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A. Well, in terms of what consumers directly pay in their electric rates, yes, they would be no better off. They would pay what they've basically been paying recently. But No. 1, the rates would be very stable for a very long time to come.

No. 2, it would allow time for further study. And, again, my proposal is not to rush out tomorrow and sign APS' PPA or anything TEP would propose. It's for further study, primarily. It's to give more time to look at the issues.

So during a period of study and analysis and reconsideration, I think it's very reasonable to just let consumers pay the rates that they're paying. And as other people have acknowledged, APS' rates are capped anyway until July 1st, 2004, and TEP's are capped until I believe 2008. So I certainly see no harm to ratepayers to let that continue while further analysis is performed so that bigger mistakes in the future can hopefully be avoided.

Q. Just to wrap up, Dr. Rosen, and to clarify you're at, you want to start over here in Arizona?

A. I think my testimony is very clear that I am recommending additional analysis and study. I'm agreeing with several of Tucson Electric's proposals in that regard. I think Mr. Pignatelli really showed

1 courage, frankly. Knowing the environment in this
2 country these days, I think the CEO of a utility
3 showed a lot of courage to say, we should really
4 reconsider the basic issues affecting competition.
5 And I hope he gets credit for showing the courage he
6 did.
7 MR. HEYMAN: I don't think so. Not likely.
8 Q. (BY MR. ENGLEMAN) Just to follow on with
9 that, in your opinion, nobody in America today has
10 done the right studies?
11 A. I don't think there have been many very good
12 market power analyses that have been done in the
13 United States. I think that there was the one done
14 about a year ago by the Wisconsin Public Service
15 Commission for that region, and there may be others
16 done privately that haven't quite surfaced publicly
17 yet or that I'm not aware of. But that doesn't mean
18 that they shouldn't be done or that can't be used as
19 an excuse to not do one more because other people
20 haven't done them. It's precisely because other
21 people haven't done them that it needs to be done
22 here. That they can learn a lot from doing the right
23 kind of analysis.
24 Q. Is it your opinion that nobody in America has
25 done deregulation or gone to a competitive market

8

S-16

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	DOCKET NO. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR A VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. R14-2-1606.	DOCKET NO. E-01345A-01-0822
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IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST RECOVERY.	DOCKET NO. E-01933A-98-0471

REBUTTAL

TESTIMONY

OF

MATTHEW ROWELL

CHIEF: TELECOMMUNICATIONS AND ENERGY SECTION

UTILITIES DIVISION

JUNE 11, 2002

INTRODUCTION

Q. Please state your name and business address for the record.

A. My name is Matthew Rowell. My business address is Arizona Corporation Commission, 1200 West Washington Street, Phoenix, AZ 85007.

Q. Are you the same Matthew Rowell who filed direct testimony in this proceeding on May 29, 2002?

A. Yes.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to discuss some of the points raised in the initial testimonies of Jack E. Davis, for APS and Michael J. DeConcini, for TEP. Specifically, Mr. Davis' testimony starting at page 3, line 20 addresses several issues regarding the transfer of APS' generation assets to PWEC and Mr. DeConcini's testimony starting at page 4, line 11 discusses several issues regarding the wholesale electric market place.

TRANSFER AND SEPARATION OF GENERATION ASSETS

Q. On page four line fifteen of his testimony Mr. Davis states that, "...divestiture was fully subject to the review and comment process of Arizona rulemaking ... not once but on at least four separate occasions." Can you comment on Mr. Davis' assertion that the Commission has already approved the divestiture of APS' assets four times?

A. Yes. Mr. Davis cites four Commission decisions in his discussion, 61071 (August 10, 1998), 61272 (December 11, 1998), 61969 (September 9, 1999), and 61973 (October 6, 1999). Mr. Davis implies that transfer and separation of assets *as currently*

planned by APS was approved by the Commission in each of those four decisions. I would like to clarify that at the time of the earlier two decisions (61071 and 61272) the Commission was still contemplating a divestiture of generation assets to unaffiliated entities.

Q. Are there any other Commission decisions that may be of interest regarding the transfer of separation of assets?

A. Yes, in decision number 61677 dated April 27, 1999, the Commission established that divestiture of assets to unaffiliated entities was one method to determine stranded cost. Thus, even at that late date the Commission was still contemplating a divestiture of generation assets to unaffiliated entities.

Q. Given that the Commission did approve the transfer of assets to an affiliate in decisions 61969 and 61973 why does Staff believe that it is appropriate to reexamine that issue now?

A. Those decisions were entered into in September and October of 1999 respectively. A lot has happened since then that should and has given us reason to pause. The disaster in California that unfolded over 2000 and 2001 has already been discussed at length and I will not explain it in detail here. However, it would be unwise for this Commission to move forward without even considering this dramatic event. While Staff recognizes that there are significant differences between the California and Arizona restructuring plans, Staff still believes that it is appropriate to learn from the mistakes of our neighbors. The California crisis highlighted the fact that flawed regulatory policy can have dramatic negative effects; thus, it would be difficult for Staff to recommend moving forward without a careful assessment of Arizona's restructuring plan. In addition to California, restructuring efforts across the country

have had decidedly mixed results. (See the rebuttal testimony of Neil Talbot and the Staff report filed in this docket on March 22, 2002 for discussion.) Given the difficulties encountered by many states since 1999, Staff believes that it is appropriate to reexamine Arizona's restructuring plan.

Q. In your previous answer you cited problems in other states, but are there any issues directly related to Arizona that Staff believes warrant a reexamination of the transfer and separation of assets?

A. Yes. There have been two developments since 1999 that have influenced Staff's thinking on this matter. First, there has been virtually no retail competition in Arizona. Currently, Staff is unaware of *any* customers who are taking service from a competitive electric service provider ("ESP") in Arizona. Retail competition was the cornerstone of this Commission's restructuring efforts. Countless hours were spent by the parties involved in workshops and other meetings to develop the necessary underpinnings for retail electric competition. At this point, it all seems to have been for naught. Also, one of the principal arguments in favor of the transfer of assets is that it would help to prevent cross subsidization of the utilities' competitive retail affiliate. The utter lack of retail competition makes this argument essentially irrelevant.

The second development that has influenced Staff's thinking on these matters is the October 18, 2001, filing by APS that requested a variance to A.A.C. R14-2-1606(B) and requested that the Commission approve a long term Purchase Power Agreement ("PPA"). In that filing, APS asserts that complying with the competitive power procurement requirements of Rule 1606(B) would be impossible. In other words, APS claimed that the competitive wholesale market would not be able to provide

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TEP-1

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606	Docket No. E-01345A-01-0822
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ISSUES IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES	Docket No. E01933A-02-0069

INITIAL TESTIMONY OF JAMES S. PIGNATELLI

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

May 29, 2002

divestiture of its assets and complete the competitive solicitation process. I think these may be impossible undertakings within such a short time frame.

Although the parties may disagree as to whether competition is in the public interest, I think that everyone will agree that hastily and badly created competition can be worse than no competition. Consequently, I am renewing our request that the Commission provide us with some certainty and grant the variance until the re-evaluation of the Electric Competition Rules has been completed. I should note that TEP has already filed testimony to support the variance. If any party wishes to file additional testimony regarding TEP's Request for Variance, it can do so in its rebuttal testimony due in this docket. The Commission can then rule on the TEP's Request for Variance within a reasonable time frame.

V. TEP RECOMMENDATIONS REGARDING TRACK A ISSUES.

Q: Mr. Pignatelli, what are your recommendations for Commission action regarding the Track A issues?

A: Perhaps the best way for me to present my recommendations is to simply list them:

1. The Commission should issue findings of fact that detail the purported benefits of electric competition both on a retail and wholesale basis.

I believe that the Commission's re-evaluation of Electric Competition should include a review of the basic premise that competition is in the public interest. When I think of all of the time and money spent in implementing competition in

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10

TEP-1

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
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COMMISSIONER

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
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INITIAL TESTIMONY OF JAMES S. PIGNATELLI

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

May 29, 2002

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IV. THE NEED FOR THE COMMISSION TO GRANT A VARIANCE TO A.A.C. R14-2-1606 and A.A.C. R14-2-1615 PENDING THE RE-EVALUATION OF THE ELECTRIC COMPETITION RULES.

Q: Mr. Pignatelli, why did TEP request a variance to A.A.C. R14-2-1606 and A.A.C. R14-2-1615?

A: TEP requested a variance after the Commission made it clear that it was going to re-evaluate the Electric Competition Rules. On December 5, 2001, both Chairman Mundell and Commissioner Spitzer filed letters indicating that they wanted to revisit the Electric Competition Rules. These were followed up by additional correspondence from all of the Commissioners regarding the re-evaluation. TEP was concerned that at the same time the Commission was going to be re-evaluating the Electric Competition Rules, those very same rules imposed upon TEP the obligation to divest its generating assets and to begin to competitively bid its power needs by December 31, 2002. These are monumental tasks and significant events with serious consequences for the future of TEP—and the Commission's jurisdiction over TEP's assests. TEP did not feel it was in the public interest to proceed with the divestiture and competitive bid process amid the uncertainty of what the Commission would do relative to the Electric Competition Rules, so we requested that the status quo remain until the re-evaluation was completed. This seemed to be the logical course to follow then and it still seems to be so now.

Q: Do you believe that a variance still is needed?

A: Yes, I do.

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	DOCKET NO. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. R14-2-1606.	DOCKET NO. E-01345A-01-0822
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IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES.	DOCKET NO. E-01933A-02-0069
IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST RECOVERY.	DOCKET NO. E-01933A-98-0471

At: Phoenix, Arizona

Date: June 19, 2002

Filed: JUN 21 2002

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME III
(Pages 563 through 867)

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ARIZONA REPORTING SERVICE, INC.
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Prepared for:

TEP

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1 purpose of our proposal for the variance.
2 I think that we create a more vibrant
3 wholesale market by giving it thoughtful rules which
4 are in place for a long period of time.
5 Q. Since 1999, when the Arizona Public Service
6 Company and the Tucson Electric Power Company
7 settlement agreement were approved by this Commission,
8 the playing field, if you will, was set in such a
9 manner that competitive procurement was to begin as of
10 January 1, 2003.
11 Against that background, in the ensuing three
12 years, we have had a number of merchant power plant
13 applicants come into this state and receive approval
14 from the Siting Committee and from the Commission to
15 construct merchant plants, and several of those are
16 substantially underway, and have either already come
17 on line or are scheduled to come on line by the end of
18 the year 2003.
19 With regard to those that say by January 1 of
20 2003 would be ready to provide service and compete, if
21 the Commission should push back the effective date of
22 the competitive power procurement rule another year or
23 two, what would be the effect on those merchant
24 generators who have come to this state and invested
25 substantial, real, hard cash for steel and concrete,

1 as people were using that metaphor yesterday, during
2 that interim period, when the competitive power
3 procurement rule is suspended?
4 A. The impact of delay is going to be injurious
5 on the wholesale providers. But I take exception that
6 they invested that in total reliance on this market.
7 I'm almost feeling like we're in a dumping situation.
8 We have people who made significant
9 investments. There is no reason, from a business
10 standpoint, for somebody to have committed to build a
11 2,000 or a 4,000 megawatt plant, seeing the others
12 which are in planning or had started, in a marketplace
13 that is only 12,000 megawatt marketplace, which has an
14 adequate supply of coal and nuclear power. I can't
15 subscribe that the rules which open the market in 2003
16 was the sole reason or justification for their
17 investment. In fact, I think the opening of our
18 marketplace in 2003 was minor in the consideration as
19 compared to the then extant California market, which
20 is a 40,000, 50,000 megawatt in Southern California,
21 marketplace.
22 Q. To clarify, in my question, as far as to you,
23 I did not suggest the existence of a prospective
24 competitive market in Arizona was the sole reason
25 these people made the investment.

1 But more specifically, where I have personal
2 knowledge, in the case of Sempra, whose Mesquite plant
3 will come on line next year, both power blocks, and
4 that's on the order of 1,000 megawatts nominal rating,
5 their testimony before the Siting Committee, which was
6 part of the record before this Commission, was that
7 Arizona was their primary intended market.
8 Let me ask you: Do you think that financial
9 impact, whatever it might be, on these various
10 merchant plants, if the start date on the competitive
11 procurement rule were to be pushed back to a later
12 point in time, is a factor the Commission should take
13 into account in considering whether or not to extend
14 that date further?
15 A. I think that it's a fact that it should be
16 given small weight. These plants are there to make
17 returns which are hopefully in excess of the regulated
18 market. They have risk and reward. One of the risks
19 is the removal of the market or the oversupply in the
20 markets, for lack of a better term, or the delay in
21 the market. That's a risk that you take when you
22 build these plants.
23 I say it should be given some consideration.
24 But equally, I think the Commission has to weigh also
25 the impact on the incumbent utilities which invested

1 billions of dollars, and we have to maintain the
2 viability of our base distribution utilities. And if
3 you force upon the utilities to buy from others when
4 they have the generation, that can have negative
5 impacts on the viability of the distribution entity.
6 So there are a lot of things that have to be
7 weighed in this. I think that you should take into
8 consideration the impact on the wholesale generation
9 market of delay, and the impact on the electrical
10 plants, but I think that has to be balanced against
11 the impact on the utilities also.
12 Q. You mentioned one of the burdens for the
13 incumbent utilities would be a possibility of buying
14 power from competitive suppliers when they currently
15 have their own generation assets?
16 A. Could you speak up?
17 Q. I'm sorry. As a part of your last response,
18 you mentioned that one of the burdens on the incumbent
19 utilities would be that they already have their own
20 generating assets, and yet under the rules they would
21 be required to buy power from competitors; is that
22 correct?
23 A. Well, required to bid.
24 Q. Required to bid. The company has known that
25 circumstance for three years now and you've made no

1 request for a variance from that requirement of the
2 rules, have you?
3 A. Requirement to bid?
4 Q. No, requirement to divest yourself of your
5 assets or requirement to bid, either one.
6 A. We have to realize what has affected us is
7 the same market conditions that is affecting the
8 wholesale generators. Three years ago, if we had --
9 even 18 months ago, if we were to purchase from a
10 wholesale generator and we had excess generation, we
11 had a marketplace we could sell to. In fact, with
12 California, and perhaps Las Vegas, we had situations
13 where if we bought from the wholesale generator, we
14 could sell or the wholesale generator could sell to
15 those markets.
16 Now, with what's happened with the California
17 market closing, with the Nevada market somewhat closed
18 because of financial condition of the incumbent
19 utility, the whole dynamics of the market is changed.
20 And what we're all about right now is we're fighting
21 over a very small -- fighting is the wrong term.
22 We're discussing over how a limited existing pie is
23 cut up, and that limited existing pie is adequately
24 served by existing generation. To create another
25 group of generation that cuts that pie up, it's just

1 going to make all of us less viable.

2 Q. But is the reality, Mr. Pignatelli, that that

3 new group of generators is already well underway in

4 the process of being created and some have been

5 created, and they are as affected by these changed

6 dynamics as are the incumbent utilities?

7 A. Yes. In fact, that's why we asked for this

8 whole -- we're at a point in time where everything has

9 changed, which was the foundation of what these rules

10 were set up, and there have been certain expectations

11 created on the part of all the parties, and I'm not

12 here to say that -- I'm here to say that everybody

13 should be heard on this, and we have to rationally

14 figure out how to take care of this, because we're

15 ultimately, if it just continues to go the way it is,

16 we could ultimately end up with everybody weak, and

17 nobody -- everything on life support.

18 We don't need 15,000 megawatts of new

19 generation in this state.

20 Q. Would you agree that the circumstances of all

21 of the parties that you and I have been discussing in

22 our dialogue these last few minutes, the incumbent

23 utilities, the merchant generators, and the customers

24 need to be considered by the Commission?

25 A. Oh, yes.

12

TEP-2

BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606	Docket No. E-01345A-01-0822
IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR	Docket No. E-00000A-01-0630
IN THE MATTER OF TUCSON ELECTRIC COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC POWER COMPETITION RULES COMPLIANCE DATES	Docket No. E-01933A-98-0471
ISSUES IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES	Docket No. E01933A-02-0069

REBUTTAL TESTIMOMY OF JAMES S. PIGNATELLI

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

June 11, 2002

there is a realistic and meaningful benefit to Arizona ratepayers. My recommendation that the Commission analyze whether electric competition, as it is being discussed today, is in the public interest and that the anticipated benefits be memorialized is wholly consistent with TEP's prior involvement in the electric competition process. In fact, in my initial testimony I also suggest that if the Commission proceeds with electric competition, then it should include not only wholesale generators but retail customers with loads of 3 MW or greater.

III. DIVESTITURE AND COMPETITIVE SOLICITATION.

Q: Mr. Pignatelli, please summarize your understanding of the parties' positions on the divestiture and competitive solicitation requirements of the Electric Competition Rules?

A: In my initial testimony I addressed the TEP Request for Variance, which seeks to temporarily suspend the deadlines for divestiture and procurement of electric power through a competitive solicitation process pending the resolution of the Commission's re-evaluation of the Electric Competition Rules. I should note that Commissioner Spitzer has requested that an Open Meeting be scheduled to consider the TEP Request for Variance. TEP hopes that the matter is resolved prior to the hearing scheduled on the Track A issues.

Previously, APS sought a variance from certain provisions of A.A.C. R14-2-1606 and (in A.C.C. Docket No. E-01345A-01-0822) filed testimony specifically related

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to its request. Commission Staff has indicated that it does not support requiring utilities to transfer their assets, but would not object to allowing discretionary transfers contingent upon the completion of Commission's market power studies. RUCO recommends that if the Commission decides to keep the divestiture requirement that the deadline should be postponed until at least January 1, 2004. Panda Gila River L.P. recommends that the Commission prohibit the transfer of generation assets to affiliates until the affiliates face a competitive challenge and believes that the deadlines can be extended. Reliant Resources, Inc. proposes that the generation assets be transferred together with an auction for a portion of the output of the capacity represented by the transferred assets.

Q: What does TEP believe the Commission should do with the divestiture and competitive solicitation requirements of the Electric Competition Rules?

A: Other than to grant the TEP Request for Variance, I do not believe that I can answer this question in a definitive manner at this point in the proceedings. The various options are obvious. The Commission can abandon the requirements, postpone the requirements, modify the requirements or keep the requirements intact. My difficulty in selecting an appropriate option to recommend is that I do not know the context in which the Arizona electric industry will be operating in the future.

While TEP has applauded the Commission for undertaking its re-evaluation of electric competition, the inherent uncertainty of where this process will ultimately

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13

BEFORE THE ARIZONA CORPORATION COMMISSION

JUN 2002
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WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE GENERIC PROCEEDING CONCERNING ELECTRIC RESTRUCTURING ISSUES.	DOCKET NO. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR A VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. R14-2-1606.	DOCKET NO. E-01345A-01-0822
IN THE MATTER OF THE GENERIC PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR.	DOCKET NO. E-00000A-01-0630
IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES.	DOCKET NO. E-01933A-02-0069
IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST RECOVERY.	DOCKET NO. E-01933A-98-0471 **FIRST PROCEDURAL ORDER ON TRACK B ISSUES**

BY THE COMMISSION:

A Procedural Order issued in these matters on May 2, 2002 set a hearing schedule for those issues delineated as Track A issues, and established a preliminary procedural framework for meeting the October 21, 2002 completion date for Commission consideration of Competitive Solicitation issues, delineated as "Track B" issues. That Procedural Order instructed interested parties to file by May 13, 2002, a list of proposed issues for consideration as well as a procedural timetable (including comment periods) for the Track B issues. The May 2, 2002 Procedural Order also ordered the parties to submit to the Commission's Utilities Division Staff ("Staff") a list of qualified persons to act as an

independent consultant/evaluator.

On May 13, 2002, Tucson Electric Power Company ("TEP"), Arizona Public Service Company ("APS"), the Arizona Competitive Power Alliance ("Alliance"), the Residential Utility Consumer Office ("RUCO") and Staff filed Track B proposals in compliance with the May 2, 2002 Procedural Order.

The Alliance submitted a list of five issues, each with several sub-issues, and proposed that the Commission hold either meetings or hearings during the August 22-30, 2002 timeframe, with a Commission Decision by September 10, 2002. The Alliance's proposed schedule calls for: 1) comments of all parties on the provisions of a Staff Report by May 31, 2002; 2) the selection of an Independent Evaluator by June 14, 2002; 3) reply comments to the May 31, 2002 comments by July 1, 2002; 4) workshops to be scheduled during the period of July 8-31, 2002; 5) submissions to the Commission by August 1, 2002 on the proposed process and resolution of the issues, with replies due by August 15, 2002; and 6) Commission meetings or hearings on remaining issues during August 22-30, 2002, with a Commission Order by September 10, 2002. The Alliance's filing also included proposals regarding an RFP process.

APS submitted a list of six issues, and proposed the issuance of a Recommended Order on either a consensus proposal or, in the absence of consensus, on an APS proposal. APS stated its belief that competitive procurement issues cannot be resolved independently of the APS generation asset divestiture issue, because the divestiture is the legal and economic predicate of competitive procurement. APS proposed: 1) that the parties should meet and attempt to come to a consensus for presentation to the Commission no later than August 1, 2002, for implementation by September 1, 2002; 2) that if the meetings result in no consensus or only a partial consensus, that APS would file a competitive power procurement proposal adopting whatever consensus is reached, but which would effectively be APS' proposal. Affected parties would then have 15 days to comment on APS' proposal and APS would have 10 days to respond; and 3) that a Recommended Order should be issued on the APS proposal by August 16, 2002, with exceptions due by August 25, 2002, and Commission consideration as soon as practical.

TEP proposed four major issues, each with several sub-issues, and proposed a schedule for a

generic hearing on the Track B issues. TEP stated its belief that Track B proposals should be considered in context with Track A testimony, as the solution to many Track B issues is dependent upon the Commission's resolution of the Track A issues. TEP believes that the parties should file Track B testimony after the Track A hearing has concluded, so that they can respond to the evidence presented on the Track A issues. TEP further proposed a TEP-specific hearing on the Track B issues to follow its proposed generic hearing, with a Commission Decision on the TEP-specific Track B issues by February 20, 2002. TEP stated that the timetable it proposed for a TEP-specific Track B hearing could be adapted for a rulemaking proceeding, if necessary.

RUCO filed a list of thirteen proposed issues to be considered in Track B, and made no specific procedural schedule recommendations.

Staff filed its Track B proposal in the form of a Request for Procedural Order. Staff outlined a proposed schedule that included Staff filing a list of issues for comment by May 31, 2002, with comments from the parties on those issues and any other issues to be filed by June 28, 2002. Staff indicated that it anticipates awarding a contract to an independent evaluator on or around July 8, 2002. Staff proposed that it and the independent evaluator would issue, by July 17, 2002, a list of issues to be addressed at workshops that would be held on July 24 and 25, 2002. Staff's proposal includes a Draft Staff Report on August 28, 2002, parties' comments thereon due by September 9, 2002, and a Final Staff Report by September 23, 2002 for consideration at a Special Open Meeting on October 21, 2002.

In its May 13, 2002 Request for Procedural Order, Staff requested that the parties file comments on four topics by May 20, 2002. On May 20 and 21, 2002, Harquahala Generating Company ("Harquahala"), Panda Gila River L.P. ("Panda"), the Alliance, APS, TEP, and RUCO filed the comments solicited by Staff.

On May 31, 2002, Staff filed the list of issues referred to in its Request for Procedural Order. No parties have filed objections.

At the pre-hearing conference held on June 14, 2002, the parties discussed Staff's Request for Procedural Order.

After reviewing the various Track B procedural schedule proposals, it appears that Staff's

proposed procedural schedule, at least through the workshops it proposed for July 24 and 25, 2002, will generally accommodate the schedules proposed by the other parties, with the exception of TEP's proposal that a hearing be scheduled at this time. We are not convinced at this time that a hearing will be necessary on any or all of the Track B issues. We will therefore at this time generally adopt Staff's proposed schedule through July 24 and 25, 2002. The balance of the procedural schedule will be dependent upon the Commission's Decision on the Track A issues, the consensus reached by the parties during the workshops or otherwise, and whether a hearing on any Track B issues is necessary. Until a further procedural schedule is issued, however, after the July 24 and 25 workshops, Staff should continue preparation of the Draft Staff Report by the August 28, 2002 deadline referred to in Staff's May 13, 2002 Request for Procedural Order.

We also encourage the parties to meet and attempt to achieve a consensus Competitive Solicitation proposal for presentation to the Commission as outlined by APS in its filing.

IT IS THEREFORE ORDERED that the parties shall file, on or before July 1, 2002, their comments on the list of issues Staff filed on May 31, 2002.

IT IS FURTHER ORDERED that the parties shall file, on or before July 1, 2002, their comments on any Competitive Solicitation issues on which the parties wish to comment that were not included in the list of issues Staff filed on May 31, 2002.

IT IS FURTHER ORDERED that Staff and the independent evaluator shall file, on or before July 17, 2002, a list of issues to be addressed at workshops to be held on July 24 and 25, 2002.

IT IS FURTHER ORDERED that the time periods specified herein shall not be extended pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order by subsequent Procedural Order.

DATED this 20th day of June, 2002.

TEENA WOLFE
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 20th day of June, 2002 to:

Service list for E-00000A-02-0051
(If you need a copy of the service list, please e-mail me at mjohnson@cc.state.az.us)

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By: Molly Johnson
Secretary to Teena Wolfe

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TEP-1

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606	Docket No. E-01345A-01-0822
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ISSUES IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES	Docket No. E01933A-02-0069

INITIAL TESTIMONY OF JAMES S. PIGNATELLI

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

May 29, 2002

Q: Why?

A: Because we are now in late May and we still do not know what the final outcome will be of the Commission's re-evaluation of the Electric Competition Rules.

Q: Is the variance needed if the Commission completes its review of the Track A and Track B issues by October 21, 2002?

A: Yes, it is. I believe that it is extremely optimistic to think that the Commission can complete its review of the Track A and Track B issues by October 21, 2002. I am not sure it is wise to put such a fast track on the resolution of these important issues. There are many differing views among the parties regarding the Track A and Track B issues that need to be carefully analyzed and then decided. After the matters are resolved generically, TEP believes that the Commission must determine how issues such as competitive solicitation will be specifically applied to the unique characteristics of TEP, its system and its customers. On May 13, 2002, TEP submitted its Track B Proposals which recommended a procedure that would resolve the Track A and Track B issues by February 20, 2003. TEP's variance would be needed to postpone the compliance deadlines until the Track A and Track B issues were decided by the Commission.

Even if the October 21, 2002 deadline is met, that would leave TEP with a little over two (2) months to interpret the final Commission rulings, and implement the

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15

TEP-1

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606	Docket No. E-01345A-01-0822
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ISSUES IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES	Docket No. E01933A-02-0069

INITIAL TESTIMONY OF JAMES S. PIGNATELLI

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

May 29, 2002

this State compared to where we are, and when I look at the experience of other states such as California, Nevada and New Mexico, I have to question whether competition is, in fact, the most appropriate regime for the electric industry. And if it is, when is the best time to implement it? I believe that by requiring proponents of electric competition to come forward with credible evidence of the anticipated benefits of electric competition, the Commission will be in a position to affirm or reject what seems to be the presumption that Electric Competition is the best manner for providing electric service in Arizona. Findings of fact will also provide all participants (and future Commissions) with a tool for measuring the success of competition in the future.

2. Grant the TEP Request for Variance.

It is important for the Commission to preserve the status quo of the utilities and of its jurisdiction over them during the re-evaluation period.

3. Adopt TEP's Track B procedural proposal.

In connection with the grant of TEP's Request for Variance, the Commission should carefully proceed, at a measured pace, to analyze all aspects of Electric Competition and implement a comprehensive set of rules, policies and procedures to bring about real competition.

4. Amend the Electric Competition Rules in Accordance with the proposals in TEP's Track A and Track B testimony.

In our Track B Proposals filing, we indicated that Track A issues and Track B issues are related and should be considered together. In the testimony of Mr.

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC 4 RESTRUCTURING ISSUES.	DOCKET NO. E-00000A-02-0051
5 IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR 6 VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. R14-2-1606.	DOCKET NO. E-01345A-01-0822
7 IN THE MATTER OF THE GENERIC 8 PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING 9 ADMINISTRATOR.	DOCKET NO. E-00000A-01-0630
10 IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A 11 VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES.	DOCKET NO. E-01933A-02-0069
12 IN THE MATTER OF THE APPLICATION 13 OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST 14 RECOVERY.	DOCKET NO. E-01933A-98-0471

15 At: Phoenix, Arizona

16 Date: June 19, 2002

17 Filed: JUN 21 2002

18 REPORTER'S TRANSCRIPT OF PROCEEDINGS

19 VOLUME III
(Pages 563 through 867)

20

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TEP

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1 going to make all of us less viable.
2 Q. But is the reality, Mr. Pignatelli, that that
3 new group of generators is already well underway in
4 the process of being created and some have been
5 created, and they are as affected by these changed
6 dynamics as are the incumbent utilities?
7 A. Yes. In fact, that's why we asked for this
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15 ultimately, if it just continues to go the way it is,
16 we could ultimately end up with everybody weak, and
17 nobody -- everything on life support.
18 We don't need 15,000 megawatts of new
19 generation in this state.
20 Q. Would you agree that the circumstances of all
21 of the parties that you and I have been discussing in
22 our dialogue these last few minutes, the incumbent
23 utilities, the merchant generators, and the customers
24 need to be considered by the Commission?
25 A. Oh, yes.

1 Q. In determining what course of action from
2 this point forward?
3 A. Yes.
4 Q. Mr. Pignatelli, would you describe what you
5 believe are the essential ingredients in that level
6 playing field that you believe should exist for
7 wholesale electric competition?
8 A. I believe contractually, all parties should
9 be, have the same opportunity to bid under the same
10 terms and conditions as any other party; that the
11 evaluation process within the utility, within the
12 Commission should give no -- I shouldn't say. It
13 should be transparent and open and assured that there
14 is no favoritism being given to any -- no undue
15 favoritism being given to any party. When I say
16 undue, there are factors which distinguish between
17 plants, whether it be fuel diversity, et cetera.
18 Everybody operate under consistent rules.
19 We have to do something with transmission,
20 which Mr. Glaser speaks to more eloquently than I,
21 because we have to realize that in this state we have
22 limited transmission, and it generally was constructed
23 point to point, and that gives some inherent advantage
24 to existing incumbent generation.
25 We all should just be treated under the same

1 rules.

2 Q. At that point in time when Tucson Electric
3 Power Company does go forward with a competitive bid
4 solicitation for part of its power requirements, has
5 the company made any tentative decisions at this point
6 in time as to the nature of the mix between long-term
7 contracts, intermediate contracts, spot purchase,
8 whatever the different types of sources of supply
9 might be?

10 A. No, we had not. And I tell you, it's
11 somewhat dependent upon the risk profile that this
12 Commission determines is appropriate for the standard
13 offer customer, how much risk they want to expose a
14 customer group to variability in pricing. That will
15 determine how much we would buy spot versus how much
16 we would buy forward.

17 The other thing is because we have frozen
18 rates through 2008, we do have to -- we're going to
19 have to work some of that out. If we are required to
20 buy 100 percent -- let me submit at the one end, if we
21 were required to buy 100 percent or even if we were
22 required to buy 50, and we could not bid on it
23 ourself, then I would have to in good faith negotiate
24 something on that fixed rate, because I cannot take
25 the market risk through 2008. Or I would have to

17

TEP-1

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606	Docket No. E-01345A-01-0822
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INITIAL TESTIMONY OF JAMES S. PIGNATELLI

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

May 29, 2002

include entities such as ESPs that previously did not do business in Arizona.

Q: Can you provide an example of what you mean?

A: Yes, let me refer to several examples. The Commission still requires that public service corporations and ESPs receive certificates of convenience and necessity from the Commission in order to provide retail electric service. Potential power plant builders still must obtain certificates of environmental compatibility from the Commission. The Commission requires that the incumbent utilities still must act as providers of last resort for customers, even those who choose to receive electric service from ESPs. The rates that can be charged to customers, including those who leave a public service corporation and then return, are still subject to the Commission's rate regulation under the Electric Competition Rules. Additionally, if generation assets are divested, those assets will still be regulated, not by the Commission, but by the FERC.

Q: What do you mean that there is not actual retail electric competition in Arizona?

A: My observation is that, for all intents and purposes, there is no real retail electric competition in Arizona. It does not appear to me that ESPs are dedicating significant resources to provide a broad range of retail electric

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service in Arizona. Again, by way of example, I am only aware of two ESPs that are doing business in the TEP service territory—and both of those ESPs are owned by other incumbent utilities. I believe that at least one ESP, PG&E Energy Services, has actually requested, and been granted, de-certification in the State. Another ESP, Enron, years ago withdrew from residential retail electric competition in California and is not active in Arizona. To my knowledge no ESP is actively marketing its services to residential retail customers in TEP's service territory. I am aware of very few retail electric customers who have selected direct access service under the Electric Competition Rules. And, I am not aware of any concerted effort among a significant number of residential retail electric customers to support retail electric competition.

Q: Why do you believe that ESPs are not more active in retail electric competition in Arizona?

A: I am not sure I know all of the reasons. However, I do believe that it is almost impossible to build a viable ESP business plan based upon the demographics of the Arizona electric market alone. If you look at how each of the states in the western United States is dealing with the issue of electric competition, you will find a wide range of approaches. But it is safe to say that electric competition is the

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TEP-1

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
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MARC SPITZER
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exception rather than the rule. I also think it is fair to say that ESPs must develop a business plan that will allow them to compete and be profitable. In light of the fact that Arizona is virtually alone in the Southwest in its ongoing development of electric competition, an ESP looking to serve in this area will be limited, to a large degree, to Arizona. I do not believe that, at this point in time, the Arizona retail electric market in general, and residential retail customers specifically, can sustain an aggressive ESP business plan.

Q: Why do you believe that there is not more of an interest in retail electric competition among electric service customers?

A: Simply because there is little choice. Without ESPs actively marketing customer choice, I believe that the majority of customers do not feel there is much of a choice—and they are probably correct. I realize that there is some aggressive marketing for Large Commercial and Industrial customers but traditionally, these customers have always negotiated the best deal that they could for electric service through special contracts. I believe they will continue to do so. I also believe that Residential and Small Commercial and Industrial customers are more interested in price stability and reliability than choice of suppliers.

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TEP-3

BEFORE THE ARIZONA CORPORATION COMMISSION

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INITIAL TESTIMONY OF MICHAEL J. DECONCINI

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

May 29, 2002

I also believe that there should be well designed and tested market policies, procedures and rules and mechanisms in place for monitoring compliance therewith.

IV. KEY MARKET POWER ISSUES RELATED TO COMPETITION AND THE WHOLESALE MARKETS.

Q: Do you believe that retail electric competition can flourish in Arizona?

A: I agree with Mr. Pignatelli that factors such as an ESP's acquisition costs for Small Commercial and Residential customers being relatively high compared with the potential profit margin from these customers makes it very difficult for an ESP to establish a business plan in Arizona. And, with no other states in the Southwest having a firm plan in place to implement retail electric competition, it seems highly unlikely that ESPs will find retail electric competition in Arizona to be a viable business in the foreseeable future. Without entities willing to compete in Arizona, competition will not be a reality.

Q: Do you think that retail competition at any customer level is viable in the foreseeable future?

A: I believe that customers with energy requirements of three megawatts (3 MW) or greater could benefit in a competitive retail electric market. These Large Commercial and Industrial customers have the load characteristics

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and risk mitigation expertise that would attract suppliers at the wholesale level to serve their load. I believe that customers below the 3 MW threshold would be better off continuing to receive service from their incumbent utility under the existing tariffs or contracts. For example, if TEP's current customers under 3 MW remain on its system, this would insure that Residential and Small Commercial customers can receive the benefit of TEP's long term, low cost energy supply through 2008.

Q: Have any other states adopted similar limited provisions to retail competition?

A: Yes. It is my understanding that in April 2001, the State of Nevada repealed its electric restructuring legislation and is permitting large customers to procure electric power directly from generators, subject to Nevada Public Service Commission approval.

Q: In your opinion, what effects have recent events in the electric industry had on the wholesale electric power markets?

A: There is quite a list of events that have had an impact on wholesale electric power markets and electric competition. I think we are all still trying to determine the full scope of the lessons to be learned from California's attempt at electric restructuring. There has been a ripple effect throughout the electric industry from Enron's implosion. In addition, the numerous

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At: Phoenix, Arizona

Date: June 19, 2002

Filed: JUN 21 2002

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME III
(Pages 563 through 867)

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ARIZONA REPORTING SERVICE, INC.
2627 North Third Street
Phoenix, Arizona 85004-1103

By: CECELIA BROOKMAN, RPR
Certified Court Reporter
Certificate No. 50154

Prepared for:

TEP

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1 advantage.

2 On the other hand, you could structure it

3 differently, but I would probably prefer to change the

4 amount we bid out in the near term, at least, such

5 that we couldn't bid on it. If we were required today

6 to bid out 50 percent, and we couldn't bid on it, that

7 would put us in a very difficult position.

8 Q. Let me just ask kind of an overarching

9 question. I presume, from TEP's presentation in this

10 proceeding, that these are subsidiary issues that TEP

11 believes ought to be a part of an overall review of

12 the entire move towards a competitive market; is that

13 a fair statement?

14 A. I guess I'll ask you to define what you mean

15 by subsidiary issues.

16 Q. Just that TEP is really seeking to have the

17 Commission reexamine the entirety of the move to

18 competition, and that along the way the questions of

19 amount of competitive solicitation and manner of

20 competitive solicitation would be issues that you

21 would have us examine?

22 A. Well, I agree to some, I think what we see

23 kind of sitting back and being part of this, but

24 watching things going on that are beyond our control

25 and soon will be beyond all of our control is that

there are questions being asked by other parties that we think may have an impact on where this goes over time, and this transfer of assets and this bidding requirement are very important issues, but they also have a long-term impact on both the utility, its subsidiaries, and potentially the competitive suppliers as well.

So we are looking, I think, for as much definition as possible before we move into that, because the world has done a couple of flip flops over the last 18 to 24 months, and there are questions in the air. We want to be as sure as possible about where those things are going to come down over time before we make these significant moves.

MR. KEMPLEY: That's all the questions I have for Mr. DeConcini.

CALJ FARMER: Any redirect?

MR. HEYMAN: Yes, just one or two.

REDIRECT EXAMINATION

Q. (BY MR. HEYMAN) Mr. DeConcini, TEP once had an affiliate that was an energy service provider; is that correct?

A. Yes.

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TEP-3

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TEP-1

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TRACK A ISSUES

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Q: Do you believe that there should be any limitations on customers who are subject to Electric Competition?

A: Yes, I do. 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. These issues are addressed in more detail in the testimony of Messrs. Glaser and DeConcini.

Q: Mr. Pignatelli, do you believe that TEP's Settlement Agreement with parties as approved by the Commission should be amended?

A: If the Commission retains electric competition materially and substantially in the form that it exists today, then I do not think that the Settlement Agreement needs to be substantively amended. I do, however, urge the Commission to (a) accept the Motion for Clarification of Settlement Agreement dated March 14, 2002 (Exhibit 1 hereto); and (b) grant the TEP Request for Variance (Exhibit 2 hereto). Basically, I think that if the terms of competition remain the same, then TEP can operate under the terms of the Settlement Agreement. However, if the Electric Competition Rules are materially changed or repealed, then I want to make it clear that TEP will reserve its right to negotiate new terms in connection with the new form of competition.

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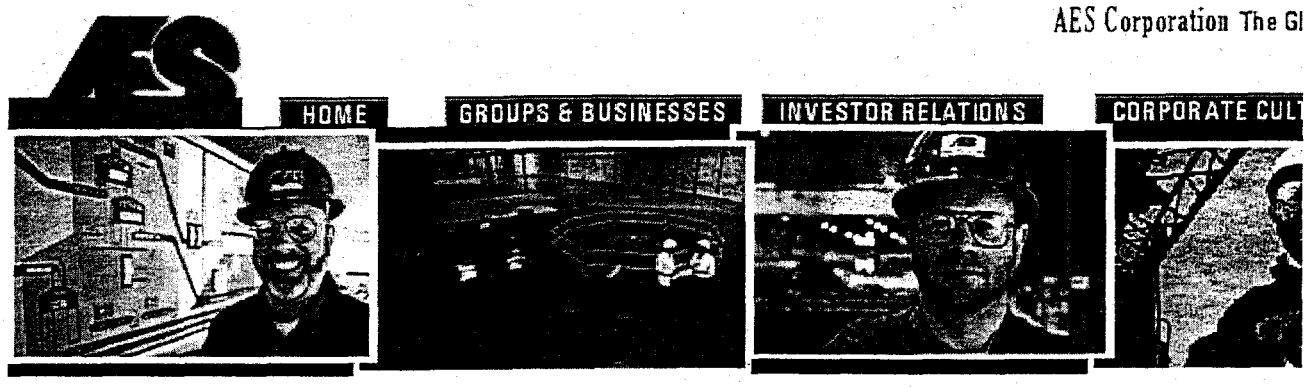
1 to a size definition of what that means. Small and
2 large are somewhat relative.
3 Q. You state that customers with energy
4 requirements of three megawatts or greater could
5 benefit in competitive retail collective bargaining;
6 is that correct?
7 A. Yes.
8 Q. Do you believe that customers that demand
9 less than three megawatts could also benefit from
10 retail competition?
11 A. I think they could benefit from retail
12 competition. In our view, it just hasn't existed
13 significantly for most of those customers, so I think
14 one of the threshold questions is you keep competition
15 for those customers out there, whether or not there is
16 significant competition for them, or do you put it on
17 hold until such time as there might be. And I think
18 it's very debatable as to whether that's occurring now
19 and when it may be able to happen in the future.
20 Q. You state that if TEP's current customers
21 under three megawatts remain on your system, that this
22 would ensure that residential and small commercial
23 customers can receive the benefits of your long-term
24 low-cost supply. Do you recall that statement?
25 A. Yes. That's the question a moment ago,

24



Investor Relations

BROWSE: Corporate Overview

AES Corporation (ticker: AES, exchange: New York Stock Exchange) News Release - 11-Jun-2002

AES to Sell NewEnergy to Constellation Energy for $240 Million in Cash; Transaction Further Strengthens AES's Liquidity and Improves Financial Strength

ARLINGTON, Va.--(BUSINESS WIRE)--June 11, 2002--The AES Corporation (NYSE:AES) today announced that it has reached agreement with the Constellation Energy Group (NYSE:CEG) to sell 100 percent of its ownership interest in AES NewEnergy (www.newenergy.com), a commercial and industrial (C&I) energy services company, for $240 million in cash.

The sales price approximates AES's total current investment in the business. Completion of the sale will also provide for the release of credit support currently being provided by AES to support AES NewEnergy's operations, in the form of parent guarantees and letters of credit. AES NewEnergy's United Kingdom operations are not included in the sale.

The transaction is subject to regulatory approval of the Federal Energy Regulatory Commission (FERC), the Securities and Exchange Commission (SEC) and expiration of the waiting period under the Hart-Scott-Rodino Anti-trust Improvement Act.

AES expects the sale of NewEnergy to close by year-end 2002 and result in net cash proceeds in excess of $240 million, which is subject to purchase price adjustments.

J. Stuart Ryan, Executive Vice President and COO, commented, "Recent changes in wholesale electricity markets have created a situation where a national retail energy supply business no longer fits within AES's business strategy. Over the last few months, AES conducted a comprehensive and deliberate sale process, dealing with several interested parties and we are pleased with the result. The transaction is good for AES shareholders, the customers of NewEnergy and the people of NewEnergy who have brought the company to where it is today. This sale will allow NewEnergy to have access to the credit support it needs, and continue its terrific growth and profitability."

Barry J. Sharp, Chief Financial Officer, commented, "This sale is another example of how AES is executing on its business plan. This transaction will significantly contribute to improving the strength and flexibility of AES's balance sheet in keeping with our commitment to improve liquidity. In addition to the cash proceeds, AES benefits through the elimination of our credit support obligations. Over the past several months, we have successfully reduced 2002 discretionary capital expenditures by approximately $500 million while preserving a substantial amount of the long-term value of our construction program, while also identifying over $200 million in annual operating cost savings. Also, with the addition of the sale of NewEnergy, we have signed agreements that represent over $1 billion of additional cash proceeds to AES. These transactions include the announced sale of Cilco, and the completion of non-recourse financings at our contract generation businesses in Puerto Rico and Northern Ireland."

NewEnergy, a retail electricity company, serves commercial and industrial electricity customers in Maine,

Massachusetts, New York, New Jersey, Pennsylvania, Ohio, Illinois, Texas, Delaware, Maryland, Rhode Island New Hampshire and California.

"Safe Harbor" Statement under the Private Securities Litigation Reform Act of 1995: Statements in this press release regarding AES Corporation's business, which are not historical facts are "forward-looking statements" that involve risks and uncertainties. For a discussion of such risks and uncertainties, which could cause actual results to differ from those contained in the forward-looking statements, see "Risk Factors" in the Company's Annual Report or Form 10-K for the most recently ended fiscal year.

Morgan Stanley & Co. Incorporated advised AES in connection with this transaction.

AES is a leading global power company comprised of contract generation, distribution and competitive supply businesses in 33 countries.

The company's generating assets include interests in 177 facilities totaling over 59 gigawatts of capacity. AES's electricity distribution network sells over 108,000 gigawatt hours per year to over 16 million end-use customers.

For more general information visit our web site at www.aes.com or contact investor relations at investing@aes.com.

--30--RM/ph*

CONTACT: AES Corporation
Kenneth R. Woodcock, 703/522-1315

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Prepared for:

TEP

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CALJ FARMER: TEP?

MR. HEYMAN: I do have some questions.

CROSS-EXAMINATION

Q. (BY MR. HEYMAN) Good morning, Mr. Monsen.

A. Good morning.

Q. I noticed in the foundational questions that your attorney asked you, he asked you if your testimony contains your best professional opinion. You indicated that it did, correct?

A. Yes.

Q. And I take it by your answer that you were careful in the preparation of your testimony to make sure that the statements that you make there were accurate and timely?

A. Yes.

Q. Not touching the errata, which is standard course of business around here.

Did you do any due diligence with regard to your client? By due diligence I mean did you talk to the clients to learn what their business was, what they were thinking, what their opinions were, before you filed your testimony?

A. Could you elaborate on what you mean

1 opinions.

2 Q. Right. You indicate that you're representing

3 AES NewEnergy, Inc., and Strategic Energy LLC. My

4 question is: Did you have any conversations with

5 representatives of those actual companies to find out

6 what their position is with regard to retail electric

7 competition in Arizona?

8 A. We had some brief conversations, yes.

9 Q. With representatives of each of those

10 companies?

11 A. Yes.

12 Q. And did they inform you of their business

13 plans or anything that was going on with regard to

14 their corporations that might impact your testimony as

15 it relates to retail competition in Arizona?

16 A. No, they didn't.

17 Q. Did anybody from AES NewEnergy, Inc., or

18 Strategic Energy LLC review your testimony before it

19 was finalized and submitted with this Commission?

20 A. I believe they did.

21 Q. And did anybody tell you that there was any

22 information contained in your testimony that was

23 inaccurate or as of June 11th would be inaccurate?

24 A. No.

25 Q. Who was it at AES NewEnergy, Inc., and

1 Strategic Energy LLC that you spoke with or that
2 reviewed your testimony?
3 A. William Chen, C-h-e-n, Theresa Meade, Andrea
4 Weller. Those are the only names I can think of.
5 Q. Are any of those people present here today?
6 A. I believe one is.
7 Q. Who is that?
8 A. Theresa Meade.
9 Q. And Ms. Meade did not indicate to you that
10 there was anything in your testimony that might be
11 inaccurate or that might not accurately reflect AES
12 NewEnergy, Inc.'s business plans in Arizona?
13 A. That's correct.
14 Q. Thank you.
15 You filed your rebuttal testimony on June
16 11th of this year; is that correct?
17 A. Yes.
18 Q. Are you aware that on June 6th, Standard &
19 Poor's downrated AES' corporate credit and senior
20 unsecured debt payments?
21 A. I wasn't aware -- well, let me back up. I
22 wasn't aware that that was that specific date, but I
23 was generally aware that there was a downgrade made.
24 Q. Are you aware that five days later, AES
25 Corporation announced that it had sold AES NewEnergy

1 to Constellation Energy Group?
2 A. Yes.
3 Q. And are you aware that that included the
4 business operations that AES NewEnergy was conducting
5 throughout the United States?
6 A. I haven't read the specifics associated with
7 that transaction.
8 Q. Did you think that there might be anything in
9 connection with AES Corporation divesting itself of
10 AES NewEnergy, Inc., that might impact your testimony?
11 A. No.
12 Q. And I take it that none of the people that
13 you identified also indicated to you that the
14 divestiture of AES NewEnergy, Inc., would impact your
15 testimony?
16 A. That's correct.
17 MR. HEYMAN: What I'd like to do is have
18 marked as Exhibit TEP 7 a copy of a press release from
19 AES entitled AES to sell NewEnergy to Constellation
20 Energy for $240 Million in Cash; Transaction Further
21 Strengthens AES's Liquidity and Improves Financial
22 Strength. If I could have that marked.
23 CALJ FARMER: Yes.
24 Q. (BY MR. HEYMAN) Mr. Monsen, do you have in
25 front of you now what's been marked as Exhibit TEP 7?

1 A. Yes.

2 Q. And I direct your attention to the bottom,
3 which has the I guess Internet address and the date
4 that this was taken off from AES Corporate Investor
5 Relations.

6 MR. HEYMAN: And I'd ask that the
7 administrative law judge take official notice of this
8 document. It could be verified by anybody going on to
9 that AES official home page.

10 CALJ FARMER: Do you want it admitted into
11 the record?

12 MR. HEYMAN: Not yet. That you take official
13 notice of it, yes.

14 CALJ FARMER: Is there any objection to that?

15 MR. DOUGLASS: I have no objection, Your
16 Honor, other than to suggest that with regard to
17 relevance, it's kind of questionable where this is
18 headed because the purpose of Mr. Monsen's testimony
19 was to deal with the three megawatt threshold proposed
20 by Tucson Electric Power. So far we've seen
21 absolutely no questioning on that issue, and we are
22 instead dealing with the corporate ownership of one
23 member of the parties who sponsored that testimony. I
24 do not find the relevance of this and suggest that it
25 would be more appropriate if counsel was to direct

1 questions actually related to the testimony of the
2 witness.
3 MR. HEYMAN: Thank you. If I could respond.
4 This is directly related to portions of his testimony
5 that I'll get to as soon as the foundation is laid.
6 And I think impeachment is always relevant. And he
7 indicated that this was his best product. And I just
8 wanted to indicate that as of June 11th, there were
9 also inaccuracies in his testimony, which I'll bring
10 out later.
11 CALJ FARMER: You may continue.
12 Q. (BY MR. HEYMAN) Mr. Monsen, if you could
13 direct your attention to the first paragraph, which
14 says as of June 11th, which again was the date that
15 you filed your rebuttal testimony: "The AES
16 Corporation today announced that it has reached
17 agreement with the Constellation Energy Group to sell
18 100 percent of its ownership interest in AES
19 NewEnergy, a commercial and industrial (C&I) energy
20 services company, for $240 million in cash."
21 As of June 11th, were you aware of that
22 information?
23 A. No, I wasn't.
24 Q. And it was not brought to your attention the
25 details of this transaction subsequent thereto?

1 A. Could you repeat that.
2 Q. The details of the transaction were not
3 brought to your attention subsequent to June 11th?
4 A. Not by AES, but I was certainly aware of it,
5 as I indicated before.
6 Q. If you'll go down now to the fifth paragraph
7 that starts with J. Stuart Ryan. Let me read that.
8 "J. Stuart Ryan, Executive Vice President and COO,
9 commented, 'Recent changes in wholesale electricity
10 markets have created a situation where a national
11 retail energy supply business no longer fits within
12 AES's business strategy. Over the last few months,
13 AES conducted a comprehensive and deliberate sale
14 process, dealing with several interested parties and
15 we are pleased with the result. The transaction is
16 good for AES shareholders, the customers of NewEnergy
17 and the people of NewEnergy who have brought the
18 company to where it is today. This sale will allow
19 NewEnergy to have access to the credit support it
20 needs, and continue its terrific growth and
21 profitability.'"
22 Do you know Mr. Ryan?
23 A. No, I don't.
24 Q. Have you ever spoken with Mr. Ryan?
25 A. No, I haven't.

1 Q. Were you aware of Mr. Ryan's statement prior
2 to me just reading it to you?
3 A. I hadn't seen this particular press release,
4 no.
5 Q. Were you aware that AES believed that recent
6 changes in the wholesale electricity markets have
7 created a situation where a national retail energy
8 supply business no longer fits with AES's business
9 strategy?
10 A. Could you -- I got the quote. What was the
11 question?
12 Q. The question was: Were you aware that that
13 was Mr. Ryan or AES's position?
14 A. Once I read the -- once I read it, it was.
15 Q. Nobody from AES indicated that to you
16 previous to my bringing it to your attention?
17 A. No.
18 Q. If you'll look at the very bottom of the page
19 here, it says: "NewEnergy, a retail electricity
20 company, serves commercial and industrial electricity
21 customers in Maine, Massachusetts, New York, New
22 Jersey, Pennsylvania, Ohio, Illinois, Texas, Delaware,
23 Maryland, Rhode Island, New Hampshire and California."
24 Does NewEnergy, whether it's a part of AES or
25 Constellation Energy Group, serve residential retail

1 customers in any state in the United States?
2 A. I don't believe they do.
3 Q. Let's look at your testimony now for a little
4 bit. If you could turn with me to page 1 of your
5 testimony. Let's look at line 19. We're going to
6 switch a little bit now to Strategic Energy. It says:
7 Strategic Energy is currently providing retail energy
8 services throughout North America and is a potential
9 energy service provider in Arizona.
10 Correct?
11 A. Yes.
12 Q. And then you indicate that Strategic Energy
13 was founded in 1986; is that correct?
14 A. Yes.
15 Q. What's taken Strategic Energy so long to
16 decide if it's going to be an electric service
17 provider in Arizona?
18 A. I'm not aware of AES -- or of Strategic
19 Energy's business plans in that regard.
20 Q. Is it your testimony that Strategic Energy is
21 in fact going to file an application to provide retail
22 electric service in Arizona?
23 A. I'm not aware of that.
24 Q. You say that they're a potential energy
25 service provider. Doesn't that indicate that there is

1 a plan for them to file an application in Arizona to
2 receive a Certificate of Convenience and Necessity to
3 provide retail electric service?
4 A. I don't think it indicates that at all.
5 Q. So how would they provide energy services in
6 Arizona on a retail basis if they didn't file an
7 application and receive a Certificate of Convenience
8 and Necessity?
9 A. Could you repeat that. I think I missed what
10 you were getting at.
11 Q. The question is: How would Strategic Energy
12 provide retail electric service in Arizona if they
13 don't first obtain a CC&N from the Commission?
14 A. They couldn't.
15 Q. Has anybody from Strategic Energy told you
16 that there is a timetable for filing an application
17 for a CC&N to be an ESP in Arizona?
18 A. No.
19 Q. If we could turn now to -- let's ask the same
20 questions for AES.
21 In your testimony, you indicate that AES
22 serves in a number of states, one of which is not
23 Arizona, correct? You don't list Arizona.
24 A. That's correct.
25 Q. And then in a footnote, interestingly, that's

1 found on line 13, you indicate that the Commission
2 granted NEV Southwest an application for a CC&N,
3 correct? Do you see that on line 13?
4 A. I'm looking at the footnote now.
5 Q. Let's look at the note foot because it says
6 the initial filing was made under New Energy Ventures
7 Southwest with subsequent company name changes to NEV
8 Southwest and New West Energy Southwest, LLC. And
9 this is what I was interested in. The company is in
10 the process of having the CC&N updated once more to
11 reflect the current company name, AES NewEnergy Inc.
12 Now, we know that AES NewEnergy, Inc., is no
13 longer going to be a part of AES, correct. Isn't it
14 being sold to Constellation?
15 A. The press release seems to imply that. I
16 don't think I could guarantee that to be the case. I
17 think there's certain regulatory things that have to
18 happen before that could occur.
19 Q. You had indicated, though, that you had heard
20 that it was being sold, independent of the press
21 release?
22 A. Yes.
23 MR. DOUGLASS: Your Honor, I would also note
24 for the record that the press release clearly shows
25 that the transaction is scheduled to close at the end

1 of 2002. So I think that should be noted. It is in
2 the first line of the fourth paragraph of the press
3 release. So the transaction has not yet closed.
4 CALJ FARMER: Thank you.
5 MR. HEYMAN: That might be a better question
6 for redirect rather than testimony from the attorney,
7 but it wasn't the first time and -- not with you. It
8 wasn't the first time in this proceeding. I'm sure it
9 won't be the last time, either.
10 Q. (BY MR. HEYMAN) Getting back to that, do you
11 know whether or not the CC&N that NEV Southwest had
12 was part of the sale?
13 A. I'm not aware of that.
14 Q. Let's assume for a second that it's not part
15 of the sale. That would indicate, then, that AES
16 acquired NEV, divested itself of NEV, and kept the
17 CC&N. Would it be your assumption, then, that AES
18 would use that CC&N and try and have it transferred
19 over to itself to provide service in Arizona?
20 A. If you could break that down into a couple of
21 smaller questions, that would be helpful.
22 Q. Okay. You don't know whether or not the CC&N
23 is going to be transferred to Constellation or not as
24 a part of the transaction, correct?
25 A. The CC&N with --

1 Q. NEV Southwest.

2 A. NEV Southwest, LLC. That's right, I'm not

3 aware of that.

4 MR. DOUGLASS: Your Honor, I'd like to object

5 again to this line of questioning on relevance. The

6 witness has already indicated that he is not familiar

7 with this transaction. This line of questioning is

8 not relevant to the issue incident in his testimony,

9 which is the three megawatt threshold for retail

10 competition proposed by Mr. Heyman's client. And I

11 object to the continuation of this line of

12 questioning.

13 MR. HEYMAN: Your Honor, it's very relevant.

14 What I'm showing here is that neither of Mr. Monsen's

15 clients are going to be serving residential retail

16 customers in Arizona in the short term or the near

17 term nor are they willing to commit that they will be

18 doing so in Arizona, which thereby undermines his

19 concern that TEP's recommendation is the death knell

20 of retail competition in Arizona. The fact of the

21 matter is, there is no residential retail competition

22 in Arizona, and his questions are verifying that in

23 the record, the answers to my questions.

24 MR. DOUGLASS: And the testimony of

25 Mr. Monsen clearly deals not solely with residential

1 competition and, in fact, Mr. Monsen's testimony
2 suggests that a different threshold in than three
3 megawatts may be appropriate. The testimony clearly
4 deals with competition for commercial and small
5 industrial as well customers whose demand is less than
6 the three megawatt threshold.
7 MR. HEYMAN: Your Honor, that's my point.
8 They don't want to serve retail residential customers,
9 and that's what Mr. Monsen's verified. We've had at
10 least one Commissioner and TEP indicate that we think
11 that's important.
12 CALJ FARMER: I will allow that line of
13 questioning to continue, but this witness does not
14 seem to have much knowledge about what filings have
15 been made at the Commission. So if we could get
16 through that part more quickly, that would be helpful.
17 MR. HEYMAN: Thank you.
18 Q. (BY MR. HEYMAN) Let me ask the questions,
19 then, this way: Is AES currently serving residential
20 retail customers in Arizona?
21 A. I don't believe so.
22 Q. Is AES currently serving commercial and
23 industrial customers in Arizona?
24 A. AES NewEnergy? Is that what you're referring
25 to?

1 Q. Yes.
2 A. I don't believe so, but I'm not aware of
3 whether they are or not.
4 Q. Describe for me a business plan for an ESP
5 that would provide retail electric service solely in
6 Arizona. How would that business plan look in your
7 mind?
8 A. That's beyond the scope of my testimony. I'm
9 not testifying to business plans for ESPs.
10 Q. I understand that. But my question to you
11 is: What would a business plan look like that would
12 be able to take AES or Strategic Energy and allow them
13 to serve retail competition solely in Arizona? Do you
14 have in your mind any business plan that could be
15 developed?
16 A. That's not an area I'm testifying to.
17 Q. I understand that, but I'm asking you if you
18 have any ideas or if, in your preparation or in your
19 professional opinion in preparation for it, if you
20 thought about that.
21 A. It wasn't an issue that I was considering.
22 Q. Let's go to the statement you made on page 1,
23 line 26, about if TEP's recommendation or proposal was
24 adopted by the Commission, it would be the death knell
25 to retail competition in Arizona. Do you see that

1 statement that you make? The sentence starts on line
2 24 of page 1.
3 A. I see. I'm reviewing it.
4 Yes, I see that.
5 Q. Would you agree with me that in order for
6 something to die, it first has to be alive?
7 A. Yes, I'd agree with that.
8 Q. And do you believe that there is lively
9 retail competition in Arizona?
10 A. It doesn't appear that way right now.
11 Q. As a matter of fact, let's look at that chart
12 that you presented. And of the numerous states that
13 AES and Strategic Energy serves in, you present four
14 states. What I thought was interesting is the state
15 of Arizona is not included in this chart, is it?
16 A. That's correct.
17 Q. And to the best of your knowledge, if Arizona
18 were to be included, at least with regard to the
19 percentages and the numbers attributable to customers,
20 that would all be zeros?
21 A. I'm not aware of that.
22 Q. Mr. Monsen, who, as an ESP, is serving
23 residential retail customers in Arizona currently?
24 A. I don't know.
25 Q. Who will in 2003?

A. That depends on the rules of the game, I believe.

Q. But you don't know any names that come to mind? Nobody has indicated to you that they're going to be looking after that load in 2003?

A. No one's indicated that to me.

Q. 2004? We could go on.

A. Could you repeat the question.

Q. I said, are you aware of anybody that has indicated any plans to serve residential retail electric competition in 2004? And then my comment was, we could go on, but I'll stop there.

A. Okay.

Q. Are you aware?

A. No.

Q. As your attorney indicated, you have offered an alternative proposal to the three megawatt threshold, correct?

A. That's correct.

Q. And your threshold is 20 megawatts?

A. I believe it's 20 kilowatts.

Q. I'm sorry, 20 kilowatts. But you indicate that there could be aggregation involved with that to make up the 20 kilowatts; is that correct?

A. I believe my proposal says that customers

1 could aggregate to reach the 20 kilowatt threshold,
2 yes.
3 Q. So your debate with TEP is not the fact that
4 you could exclude some customers from electric
5 competition, it's really where the cut-off is, because
6 we say three megawatts, and you say 20 kilowatts.
7 A. I don't believe that's my testimony.
8 Q. You do have a substitute proposal, correct?
9 A. That's correct.
10 Q. And it has a different breakpoint than TEP's
11 proposal?
12 A. It does. My proposal I think indicated that
13 there shouldn't be a breakpoint. But if there was
14 going to be a breakpoint that a 20 kilowatt breakpoint
15 might be a reasonable one to institute as long as
16 customers could aggregate their load together to reach
17 that 20 kilowatt threshold. And given that 20
18 kilowatts is not even a particularly large air
19 conditioning load for a commercial establishment, that
20 would tend to be fairly inclusive.
21 Q. Were you aware that yesterday Mr. DeConcini
22 testified that he did not believe that an energy
23 service provider could provide service solely in
24 Arizona?
25 A. I didn't see Mr. DeConcini's testimony.

1 Q. Did anyone inform you that Mr. DeConcini also
2 indicated that he did not believe that a national
3 retail electric competition plan for an ESP would be
4 profitable? Did you hear that relayed to you at all?
5 A. Could I have a second.
6 Q. Sure.
7 A. I believe that's in his direct testimony.
8 Q. He also said it on the witness stand as well.
9 A. I wasn't here, so I didn't hear him say that.
10 Q. Will you agree that Mr. DeConcini's opinion
11 about a national business plan for retail electric
12 energy and Mr. Ryan's view of a business plan for
13 retail electric energy are the same?
14 A. No, not at all. I think that Mr. -- what
15 Mr. Ryan seems to be indicating is that for AES
16 Corporation, a national retail electric supply
17 business is not consistent with their business plan.
18 It doesn't say anything at all about a business plan
19 for Arizona.
20 Q. Right. And that's the last point that I want
21 to get to because you were also not here when
22 Mr. DeConcini said that at one point in time, TEP had
23 owned NEV. Were you aware of that?
24 A. They didn't own all of NEV. I believe they
25 were a minority shareholder.

1 Q. Actually, they were one of the founders.
2 Were you aware of that?
3 A. I believe that they were one of the initial
4 founders.
5 Q. Of NEV?
6 A. Yes.
7 Q. And the reason that they sold NEV was because
8 a national business plan was not profitable?
9 A. I wasn't aware of that.
10 Q. And then here we are in June of 2002, and on
11 the heels of their securities being downgraded, AES is
12 selling NEV because the business plan doesn't fit
13 anymore; is that right?
14 A. The business plan doesn't fit with what?
15 Q. With AES, as you indicated.
16 A. It's not consistent with AES's business plan.
17 It doesn't mean that it's infeasible to imagine that
18 an energy service provider could not be profitable.
19 Q. Did anybody relay to you or are you otherwise
20 aware that Mr. Pignatelli indicated that the three
21 megawatt proposal could be phased out as retail
22 electric competition matured in Arizona?
23 A. That was not relayed to me, no. It would be
24 hard to imagine how that would actually work, though.
25 Q. But you weren't aware that that was part of

1 the proposal, that it wasn't necessarily to be a
2 permanent exclusion of three megawatt and under
3 customers?
4 A. I don't think that was in his direct
5 testimony.
6 Q. It actually is. Give me one second.
7 (Discussion off the record.)
8 Q. (BY MR. HEYMAN) If you could turn to
9 Mr. Pignatelli's direct testimony at page 14.
10 A. I see that.
11 Q. And do you see at line 7 where it says: As
12 time passes and electric competition matures, some or
13 all of these customers may eventually be included
14 within the scope of competition.
15 A. Yes.
16 Q. Were you aware of that at the time that you
17 wrote your rebuttal testimony?
18 A. Yes, I was.
19 Q. And it just skipped your mind here on the
20 stand?
21 A. Yes.
22 MR. HEYMAN: I have no further questions.
23 I would move for official notice of TEP 7.
24 CALJ FARMER: Is there any objection to TEP
25 7?

26

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC 4 RESTRUCTURING ISSUES.	DOCKET NO. E-00000A-02-0051
5 IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR 6 VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. R14-2-1606.	DOCKET NO. E-01345A-01-0822
7 IN THE MATTER OF THE GENERIC 8 PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING 9 ADMINISTRATOR.	DOCKET NO. E-00000A-01-0630
10 IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A 11 VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES.	DOCKET NO. E-01933A-02-0069
12 IN THE MATTER OF THE APPLICATION 13 OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST 14 RECOVERY.	DOCKET NO. E-01933A-98-0471

15 At: Phoenix, Arizona

16 Date: June 19, 2002

17 Filed: JUN 21 2002

18 REPORTER'S TRANSCRIPT OF PROCEEDINGS

19 VOLUME III
(Pages 563 through 867)

20

21 DISK ENCLOSED

ARIZONA REPORTING SERVICE, INC.
22 2627 North Third Street
Phoenix, Arizona 85004-1103

23 By: CECELIA BROOKMAN, RPR
Certified Court Reporter
24 Certificate No. 50154

Prepared for:

TEP

25

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(When in red)

1 below three megawatts, if your proposal is accepted by
2 this Commission. It would eliminate, let's try that
3 word, it would eliminate the right of customers below
4 three megawatts to have competitive retail access as
5 contemplated by the settlement agreement?
6 A. By the year 2001, as contemplated by the
7 settlement agreement, yes.
8 Q. Or in 2003 as now amended; correct?
9 A. Correct.
10 Q. And you view that as not inconsistent with
11 your contractual obligations under the settlement
12 agreement, to recommend that abrogation or elimination
13 of rights to customers below three megawatts?
14 A. No, I do not.
15 Q. Let's read further in 13.2. It says:
16 Accordingly, the parties agree that it may become
17 necessary to modify the terms of retail access to
18 account for such factors beyond TEP's ability to
19 offer, and they further agree to address such matters
20 if good faith in an effort to propose joint
21 resolutions for any such matters.
22 How has TEP addressed the request to
23 eliminate the ability of customers below three
24 megawatts for competitive access, how has TEP complied
25 with its contractual obligations to address that in

1 good faith and to cooperate to propose joint
2 resolutions?
3 A. TEP intends that whatever the outcome of this
4 hearing is, if it changes the rules and regulations,
5 which are fundamental to this agreement, that TEP will
6 negotiate in good faith to modify the settlement
7 agreement.
8 Q. But you asked the Commission to modify the
9 three megawatt part of the settlement agreement by
10 fiat, by Commission order.
11 A. We have asked the Commission to consider if
12 it's appropriate at this time to change the timing of
13 retail competition.
14 Q. To eliminate currently the right of those
15 under three megawatts to have access to retail
16 competition.
17 A. To change the timing of retail competition.
18 Q. And that just proposing it in testimony
19 before the decision maker, without ever talking to the
20 customer representatives who negotiated that to be in
21 compliance with your obligation to address it in good
22 faith and to propose joint resolutions.
23 A. Yes, I do. I do not think it's a breach of
24 it.
25 Q. Let's look also at Section 14.2 of the

1 settlement agreement. The parties agree that they
2 shall make all reasonable and good faith efforts
3 necessary to obtain final approval of this settlement
4 agreement by the Commission, and ensure full
5 implementation and enforcement of all the terms and
6 conditions set forth in this agreement.
7 Has TEP complied with its obligation to use
8 all reasonable and good faith efforts to ensure full
9 implementation and enforcement of all parties under
10 the settlement, including the rights to have customers
11 with less than three megawatts of power?
12 A. Yes.
13 Q. You believe asking the Commission to abrogate
14 a guaranteed right in an agreement without ever
15 talking to them is a good faith effort, to use good
16 faith and reasonable efforts to ensure full
17 implementation of that and all rights?
18 A. I think I already answered I don't think it
19 was a breach of good faith to ask this Commission to
20 reconsider the timing of the implementation of
21 competition.
22 Q. But again, you like to say it that way.
23 You're proposing that as to those under three
24 megawatts, it be eliminated completely, with no
25 guarantee of ever being reimplemented?

27

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC 4 RESTRUCTURING ISSUES.	DOCKET NO. E-00000A-02-0051
5 IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR 6 VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. R14-2-1606.	DOCKET NO. E-01345A-01-0822
7 IN THE MATTER OF THE GENERIC 8 PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING 9 ADMINISTRATOR.	DOCKET NO. E-00000A-01-0630
10 IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A 11 VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES.	DOCKET NO. E-01933A-02-0069
12 IN THE MATTER OF THE APPLICATION 13 OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST 14 RECOVERY.	DOCKET NO. E-01933A-98-0471

15 At: Phoenix, Arizona

16 Date: June 21, 2002

17 Filed: JUN 25 2002

18 REPORTER'S TRANSCRIPT OF PROCEEDINGS

19 VOLUME V
(Pages 1154 through 1280)

20

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21 ARIZONA REPORTING SERVICE, INC.
2627 North Third Street
22 Phoenix, Arizona 85004-1103

23 By: CECELIA BROOKMAN, RPR
Certified Court Reporter
24 Certificate No. 50154

Prepared for:

TEP

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A. Yes. I have three words that I omitted by accident. On Page 12 of my direct testimony, Line 7, after the word year, comma, please insert the ratio of. So the line would read year, the ratio of the residual supply.

Q. And is that your only change?

A. Yes.

Q. With that change, do AECC Exhibits No. 2 and No. 3 represent your testimony in this case?

A. Yes.

MR. DODGE: Your Honor, I move for the admission of Exhibits AECC-2 and 3.

ALJ WOLFE: AECC-2 and 3 are admitted.

MR. HEYMAN: Excuse me, Your Honor. I do have objection to AECC-3.

Your Honor, in four separate instances in Mr. Higgins' rebuttal testimony he makes legal conclusions, and what I would like to do is object to those legal conclusions in that Mr. Higgins is not qualified nor has he offered himself as a legal expert in this case.

I can give you those cites and then explain to you the reasons why I'm making the objection.

ALJ WOLFE: Mr. Heyman, the deadline for objections to testimony was the date of the procedural

1 conference. You're welcome to make those objections
2 for the record, but I can tell you now that they will
3 be admitted.
4 MR. HEYMAN: I'm aware of that. My
5 alternative request would be that Mr. Higgins be
6 limited -- so this would be in the form of a motion in
7 limine -- to rendering his observations or his
8 expertise and opinions within the context of his
9 qualifications. And if I need to, I'd like to maybe
10 voir dire him so it's on the record that he's not
11 offering himself up as a legal expert in this
12 proceeding.
13 ALJ WOLFE: Mr. Dodge, response.
14 MR. DODGE: As much as lawyers like to think
15 they're the only ones who know how to read a contract
16 and tell whether something is inconsistent with a
17 contract, that's not the case. Mr. Higgins has
18 offered no legal conclusions as the primary negotiator
19 and participant on behalf of AECC in the settlement
20 agreement. He's observed that TEP's conduct is
21 inconsistent with a repudiation of provisions of the
22 agreement. He's not offered a legal conclusion. So I
23 submit that it's absolutely proper and admissible.
24 MR. HEYMAN: If I might, Mr. Higgins'
25 observations that he believes TEP is acting

1 inconsistently with the settlement agreement are not
2 objectionable to TEP. When he does use the term such
3 as repudiation, which has a legal meaning in Arizona
4 law, which has been litigated, and which there is case
5 law defining, when he uses the term bad faith, which
6 also is a legal term which has been litigated in
7 Arizona, when he uses the term, abrogation of rights,
8 and he uses those in a conclusory fashion, that's what
9 is objectionable, and that's what we want to limit his
10 testimony.
11 If it's going to be admitted, which we
12 understand it will be, I just want to make clear for
13 the record that it is given the proper weight, and
14 that it is the weight of a nonlegal expert using those
15 terms, and that it's not used as is used in the
16 various cases such as the Wagenseller case and the
17 Sparks case -- I am prepared to present those cases to
18 you -- where the courts have in Arizona defined those
19 and given specific legal meaning opinion.
20 Let me make it clear, what I'm asking is that
21 the testimony be admitted with the understanding that
22 it is Mr. Higgins' nonlegal expert opinions or
23 observations that are being given as opposed to the
24 legal meaning given by the courts of Arizona to those
25 terms.

28

RUCO-2

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES	))))	DOCKET NO. E-00000A-02-0051

REBUTTAL TESTIMONY

OF

DR. RICHARD A. ROSEN

On Behalf of the Arizona
Residential Utility Consumer Office

Tellus Institute
11 Arlington Street
Boston, MA 02116-3411
Tel: 617/266-5400

June 11, 2002

that "competition" in this industry can ever be made to work in a way that would benefit any significant group of electricity ratepayers. Thus, in parallel with a market power study as recommended by Staff, I recommend that the ACC do what Mr. Pignatelli urges in his direct testimony, namely to require "proponents of electric competition to come forward with credible evidence of the anticipated benefits of electric competition ...to affirm or reject what seems to be the presumption that Electric Competition is the best manner for providing electric service in Arizona." (Page 18) A second set of hearings should be used for this purpose.

8. Several witnesses for independent power producers do not appear to understand how pervasive the exercise of market power is likely to be within Arizona, even if many of their recommendations are adopted by the ACC. This is a further reason why the Staff's recommended market power study should be carried out, if the ACC decides to proceed with restructuring at this time.

9. Mr. Pignatelli's recommendation that only customers with loads of 3 MW or greater be allowed to participate in retail competition within Arizona is a reasonable option for the ACC to consider, *if* traditional cost-of-service bundled retail rates are maintained for all other customers, and if divestiture is not carried out.

29

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC 4 RESTRUCTURING ISSUES.	DOCKET NO. E-00000A-02-0051
5 IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR 6 VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. R14-2-1606.	DOCKET NO. E-01345A-01-0822
7 IN THE MATTER OF THE GENERIC 8 PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING 9 ADMINISTRATOR.	DOCKET NO. E-00000A-01-0630
10 IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A 11 VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES.	DOCKET NO. E-01933A-02-0069
12 IN THE MATTER OF THE APPLICATION 13 OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST 14 RECOVERY.	DOCKET NO. E-01933A-98-0471

15 At: Phoenix, Arizona

16 Date: June 20, 2002

17 Filed: JUN 24 2002

18 REPORTER'S TRANSCRIPT OF PROCEEDINGS

19 VOLUME IV
(Pages 868 through 1153)

20

21 DISK ENCLOSED

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Prepared for:

25 TEP

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(When in red)

1 MR. HEYMAN: Thank you.

2

3 CROSS-EXAMINATION

4

5 Q. (BY MR. HEYMAN) Dr. Rosen, Mr. Dodge touched
6 on the area that I was going to discuss with you,
7 although probably in a different tone and from a
8 different angle.
9 RUCO is a party to the TEP settlement
10 agreement regarding stranded costs; is that correct?
11 A. Yes.
12 Q. And are you familiar with TEP's proposal in
13 its testimony in this case to offer retail competition
14 to customers with loads of three megawatts or greater?
15 A. Yes.
16 Q. In fact, in your rebuttal testimony, you do
17 mention Mr. Pignatelli's testimony, and I'd like to
18 refer you to page 5 and line 17. And if it's okay
19 with you, I'll go ahead and read it into the record.
20 It says: "Mr. Pignatelli's recommendation
21 that only customers with loads of three megawatts or
22 greater be allowed to participate in retail commission
23 within Arizona is a reasonable option for the ACC to
24 consider if traditional cost of service unbundled
25 retail rates are maintained for all other customers

30

TEP-6

BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606	Docket No. E-01345A-01-0822
IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR	Docket No. E-00000A-01-0630
IN THE MATTER OF TUCSON ELECTRIC COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC POWER COMPETITION RULES COMPLIANCE DATES	Docket No. E-01933A-98-0471
ISSUES IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES	Docket No. E01933A-02-0069

REBUTTAL TESTIMONY OF STEVEN J. GLASER

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

June 11, 2002

I believe that it will be important for the Commission and the UDCs to address the potential volatility of purchase power costs and how that will affect the rates paid by Standard Offer customers. I think that one of the best mechanisms for matching current electric power procurement costs with electric power use is through a Purchase Power and Fuel Adjustment ("PPFA") mechanism.

Q: Why would a PPFA mechanism be appropriate for UDCs to use in connection with their Standard Offer customers?

A: I concur with Mr. Pignatelli that as the competitive electric market matures, retail electric rates should reflect a market price rather than be set pursuant to a cost-based methodology. To me the concepts of a competitive market place and cost-based rates set by the Commission are not compatible. The potential volatility in electric power prices is one of the characteristics of a competitive market place that is different from a regulated ratemaking environment. Having said that, I do not think that it is in the best interest of retail electric customers to be subject to sudden swings in rates. I believe that electric customers want stability in their rates. I also believe that these aspects of the competitive market place are ones that the Commission must carefully examine as it re-evaluates the benefits and drawbacks of electric competition. In that regard, I join with Mr. Pignatelli in asking the Commission to look at the threshold issue of whether electric competition is, at this time, in the best interest of Arizona and, if so, then to make specific findings as to the expected benefits. This will help all of the participants in the electric industry

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have a common understanding and goals to work towards in connection with a competitive market place.

I do believe that properly designed wholesale competition is the appropriate starting point for electric competition, whether it is implemented now or in the future. I think that if the Commission determines that it is going to proceed and implement electric competition then it should approve an appropriately designed PPFA mechanism to help mitigate the potential negative impact of significant price volatility to UDCs' Standard Offer customers. I would propose that the PPFA mechanism be designed to minimize the effect of electric power price swings over time by "banking" purchase price deviations above and below a pre-determined base cost and then, once an established level has been attained in the account, recovering or returning the bank balance amounts over a specified period of time.

As TEP witnesses have previously testified, TEP desires that if electric competition is implemented in the State, it be designed to meet the public's best interests and not jeopardize TEP's ability to provide safe, reliable and fairly priced electric service.

Q: Does that conclude your rebuttal testimony?

A: Yes it does.

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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. R14-2-1606.	)	DOCKET NO. E-01345A-01-0822
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IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST RECOVERY.	)	DOCKET NO. E-01933A-98-0471

At: Phoenix, Arizona
Date: June 28, 2002
Filed:

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VOLUME VII
(Pages 1456 through 1633)

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2627 North Third Street
Phoenix, Arizona 85004-1103
By: CECELIA BROOKMAN, RPR
Certified Court Reporter
Certificate No. 50154

Prepared for:

Page 1569

1 recommendations. Are you with me?
2 A. I'm there.
3 Q. I guess my question is, in looking at the
4 recommendations, it seems to be recommendations that
5 are, except for No. 3, prerequisites or preconditions
6 before a utility is permitted to transfer its
7 generation assets; is that correct?
8 A. I would say besides 2 and 3.
9 Q. So just to be clear, before a utility would
10 be permitted to transfer its generation assets, it
11 would have to submit either a mitigation plan or a
12 market power plan that the Commission would need to
13 approve?
14 A. The recommendation is a market power study
15 identifies the market power problems and a mitigation
16 plan, which defines how the market power problems
17 identified in the study can be alleviated.
18 Q. The thing that I'm questioning is it says
19 that the Commission would need to approve that;
20 correct?
21 A. That's correct.
22 Q. What type of a proceeding does Staff have in
23 mind that would be required for that approval to take
24 place?
25 A. Staff hasn't taken a position on that.

Page 1570

1 Conceivably it can be done without a hearing, and
2 honestly, hopefully, it could be done without a
3 hearing. But given that may be an unrealistic hope.
4 Q. So there may need to be a hearing, is a fair
5 assessment?
6 A. Yes.
7 Q. With regard to Recommendation No. 2 that you
8 indicate the determination of whether something is a
9 reliability must-run generation unit, would there have
10 to be any Commission approval of a utility's
11 determination whether or not a unit is RMR or not?
12 A. Before that unit is transferred to an
13 affiliate or sold on the open market, yes, the
14 Commission should make some determination as to its
15 status.
16 Q. So just so that we're clear, so item or
17 Recommendation No. 2 would also be a prerequisite to
18 the transfer of generation, in a sense?
19 A. It's a prerequisite to the transfer of the
20 assets in question. It's not a prerequisite to the
21 transfer of other assets that are clearly not RMR.
22 Q. Fair enough. And what type of proceeding
23 would Staff envision would be required for that type
24 of approval process by the Commission, would that also
25 require a hearing or not?

Page 1571

1 A. I would give you the same answer I gave you
2 to your previous similar question.
3 Q. Then let's go down to Item No. 4, which is
4 revisions of the code of conduct. Would you
5 anticipate that there would have to be some Commission
6 approval of codes of conduct before assets were
7 transferred by the utility?
8 A. Commission approval would be appropriate,
9 yes.
10 Q. And has Staff developed a procedure that it
11 would recommend with regard to how the code of
12 conducts would be -- or codes of conduct, I should
13 say, would be revised and approved by the Commission?
14 A. At this time we have not.
15 Q. If you could turn with me for a second to
16 Page 4, Lines 19 through 21 of your direct testimony.
17 Let me just summarize the testimony and you tell me if
18 that's right. Basically, you indicate that UDCs
19 should be held accountable for decisions they make
20 concerning procurement and for production of power?
21 A. That is the testimony, yes.
22 Q. And would you agree that one way in which the
23 UDCs could be held accountable for those type of
24 decisions would be through the implementation of a
25 purchased power and fuel adjustment clause mechanism?

Page 1572

1 A. One way in which they could be held
2 accountable?
3 Q. Right.
4 A. Yes, that is an option.
5 MR. HEYMAN: Thank you. Those are all the
6 questions I had.
7 CALJ FARMER: APS next.
8
9 CROSS-EXAMINATION
10
11 Q. (BY MR. MUMAW) Good afternoon, Mr. Rowell.
12 A. Good afternoon.
13 Q. For lack of a better term, Mr. Rowell, would
14 you describe yourself as Staff's chief policy witness
15 in this proceeding?
16 A. For lack of a better term, yes.
17 Q. Have you been here during the testimony of
18 other Staff witnesses?
19 A. Yes, I was.
20 Q. Specifically, you were here during
21 Mr. Talbot's and Mr. Schlissel's testimony?
22 A. Yes, I was.
23 Q. Do you recall here on the stand that they
24 stated anything that you disagreed with with reference
25 to being a Staff recommendation or a Staff policy?

32

TEP-4

BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
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ISSUES IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES	Docket No. E01933A-02-0069

REBUTTAL TESTIMONY OF MICHAEL J. DECONCINI

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

June 11, 2002

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II. MARKET POWER.

Q: Mr. DeConcini did you review the discussions in the initial testimony regarding Market Power?

A: Yes, I believe that every participant had at least one witness that discussed market power.

Q: Please define Market Power as you use that term.

A: I define Market Power as the ability of a market participant, or group of participants, to directly (horizontal market power) or indirectly (vertical market power) influence the price of a good or service. In the context of the initial testimony, market power referred to electric power.

Q: Did all the participants share the same view as to whether (post-divestiture) utility generation affiliates would have market power?

A: No, they did not. The initial testimony contained a wide variety of market power indices and tests, which came to different conclusions. It seems to me that the manner by which to determine market power must be more clearly defined. Obviously, if market power is something that is going to be monitored then there needs to be uniformity in its definition, determination and resolution.

33

TEP-4

BEFORE THE ARIZONA CORPORATION COMMISSION

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TEP-4

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Q: Did all the participants share the same view as to whether (post-divestiture) utility generation affiliates would have market power?

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Q: What is your opinion on the Market Power issue?

A: I believe that depending on how you define market power every utility could be expected to be deemed to have market power and that there will be times during a day at some time of the year that a utility's existing generation resources will be required to meet local must-run requirements for system reliability reasons ("RMR generation").

However, I should point out that at the same time there will be existing utility generation resources that could not cause market power. For example, TEP owns small portions of other remote generation facilities that would not be able to exhibit market power due its (small) ownership percentages and the number of other participants at those sites[1].

Q: Are there ways to mitigate the perceived risks of RMR Market Power?

A: Yes, this is not a new concept. Generally, RMR Market Power issues are addressed in the "must-run generation" protocol of the Arizona Independent Scheduling Administrator ("AISA"). I believe that if the Commission determines that the AISA protocol is inadequate protection from RMR Market Power, then another solution would be for the TEP generation affiliate to supply the RMR capacity and energy to TEP's UDC affiliate

[1] TEP owns 7.5% of the Navajo Generating Station and 11.7% of Generation in the Four Corners/San Juan area.

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under a cost-based PPA approved by the Commission. This PPA would be in place until the Commission determines that Market Power is eliminated through other means (e.g. transmission and/or generation additions, RTO or other market protocols/ rules, etc.).

TEP realizes that this solution may require the formation of more than one generation affiliate or subsidiary. In my initial testimony I mentioned that this was an option that TEP was considering.

III. WHOLESALE COMPETITION.

Q: What did the participants say about competition and the wholesale electric power market?

A: It seems that all of the parties agreed that there must be real competition in the wholesale electric power market before there can be meaningful retail electric competition.

Q: Did all of the participants agree about the current state of the wholesale electric power market?

A: No. There were differing views as to the current functionality and competitiveness of the wholesale markets; however, most participants agreed that the current state was not sufficient to support retail competition.

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35

TEP-1

BEFORE THE ARIZONA CORPORATION COMMISSION

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MARC SPITZER
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IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES.	Docket No. E-00000A-02-0051
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INITIAL TESTIMONY OF JAMES S. PIGNATELLI

TUCSON ELECTRIC POWER COMPANY

TRACK A ISSUES

May 29, 2002

Q: Mr. Pignatelli, the Commission has asked the parties to provide testimony regarding its jurisdiction of generation assets that are transferred to a third party entity. What is TEP's position on that issue?

A: TEP has provided an explanation of its view of FERC jurisdiction over divested generation and transmission assets in "Tucson Electric Power Company's First Response to Commission Questions" dated February 25, 2002 at 53-57. To briefly summarize, TEP believes that this issue must be analyzed separately for the divestiture or transfer of generating assets and for the divestiture or transfer of transmission assets.

The divestiture of generation assets by TEP would not affect FERC's jurisdiction. Under the Federal Power Act, FERC has exclusive jurisdiction to determine the "justness" of wholesale rates for electric power. To the extent that the divested or transferred generating assets are used to make retail sales of power in Arizona, the Commission would have jurisdiction over the inclusion of those sales in rates in accordance with Arizona law. To the extent that wholesale sales of energy are made from the divested or transferred generating assets, FERC would have exclusive jurisdiction under the Federal Power Act to determine the just and reasonable rate at which such sales may occur.

The divestiture or transfer of transmission assets would result in FERC exercising jurisdiction over the rates, terms and conditions of any unbundled retail

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transmission service that occurs as a result. Under section 201 of the Federal Power Act, FERC has jurisdiction over interstate transmission of electric energy. FERC has asserted jurisdiction over unbundled retail transmission service, that occurs when "a retail transaction is broken into two products [one being energy and one being transmission] that are sold separately (perhaps by two different suppliers: an electric supplier and a transmission supplier)" in FERC Order No. 888.

III. TEP'S PROPOSAL FOR ELECTRIC COMPETITION.

Q: What is TEP's proposal for Electric Competition in Arizona?

A: Again, let me begin my answer by putting TEP's position in proper context. I believe that one of the most critical components that will influence retail electric competition is generation price volatility in the wholesale market. Before a robust competitive retail market can exist in Arizona the art of balancing regional supply and demand without a regulatory mandate and delivery infrastructure issues must be addressed. For its part, the Commission can encourage the development of (a) additional generating resources and/or load management, which will be required to maintain a regional supply and demand balance; and (b) additional transmission infrastructure and new gas pipeline or railroad infrastructure that will be necessary to ensure adequate delivery capability to customers and fuel supply to generators.

Incumbent utilities, such as TEP, should be allowed the flexibility to develop a portfolio approach to serving the needs of their Standard Offer customers, which

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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

Docket No. E-00000A-02-0051

TUCSON ELECTRIC POWER COMPANY'S FIRST RESPONSE TO COMMISSION QUESTIONS

February 25, 2002

II. Divestiture or Corporate Separation

QUESTION:

14. How would the divestiture or transfer of assets of vertically integrated utilities now serving Arizona affect the Commission's regulatory authority over the divested entities? What controls or limitations might the Commission place on divestiture or transfer of assets to limit any loss of authority over the divested assets?

RESPONSE:

TEP's Settlement Agreement provides that the divestiture of generation assets will take place as prescribed by the Commission. During the TEP Settlement Agreement process, consideration was given to the role the Commission would play concerning oversight of the entity holding the newly divested generation assets. Subsequent to the divestiture of generation assets the Commission would no longer retain jurisdiction over the newly formed generation subsidiary to the extent the subsidiary provided wholesale energy offerings.

QUESTION:

15. How would the divestiture or transfer of assets of vertically integrated utilities now serving Arizona affect federal jurisdiction under the FERC and the SEC over the divested entities?

RESPONSE:

With respect to FERC jurisdiction, this question must be analyzed separately for the divestiture or transfer of generating assets and for the divestiture or transfer of transmission assets. A separate analysis is also appropriate for the jurisdiction of the SEC jurisdiction under the PUHCA.

The divestiture of generation assets by vertically integrated utilities would not affect FERC's jurisdiction. Under the Federal Power Act, FERC has exclusive jurisdiction to determine the "justness" of wholesale rates for electric power. *See, e.g., Mississippi Power & Light v. Mississippi*, 487 U.S. 354 (1988). To the extent that the divested or transferred generating assets are used to make retail sales of power in Arizona, the Commission would have jurisdiction in accordance with Arizona law and the divestiture or transfer of such assets would not affect the extent of the Commission's jurisdiction. To the extent that wholesale sales of energy are made from the divested or transferred generating assets, FERC would have exclusive jurisdiction under

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the Federal Power Act to determine the just and reasonable rate at which such sales may occur.

There may be concerns that there would be some erosion of the Commission's jurisdiction if a vertically integrated utility transfers its generating assets to a "genco subsidiary." In such a scenario, the vertically integrated utility could enter into a wholesale power supply arrangement with the subsidiary, and the FERC would exercise jurisdiction over the rates, terms and conditions of such power supply arrangement. Based on U.S. Supreme Court rulings, a state commission could not take any action that contradicts or countermands a lawful FERC determination regarding the reasonableness of the wholesale rate in the power supply arrangement. *See Mississippi Power*, 487 U.S. 354 (finding that FERC's decision regarding the allocation of wholesale power costs among holding company affiliates preempted the Mississippi Public Service Commission's disallowance of those same costs); *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986) (hereinafter "*Nantahala*") (finding that "when FERC sets a rate between a seller of power and a wholesaler-as-buyer, a state may not exercise jurisdiction over retail sales to prevent the wholesaler-as-seller from recovering the costs of paying the FERC-approved rate").

These cases do not, however, preclude the exercise of oversight by a state commission over the costs incurred under such a wholesale power supply arrangement. FERC has recognized that wholesale ratemaking does not, as a general matter, determine whether a purchaser has prudently chosen from among available supply options. FERC reserves that determination for the state commission in some circumstances. *See Philadelphia Electric Co.*, 15 FERC ¶ 61,264 at 61,601 (1981); *Pennsylvania Power & Light Co.*, 23 FERC ¶ 61,006, *order on reh'g*, 23 FERC ¶ 61,325 at 61,716 (1983) ("We do not view our responsibilities under the Federal Power Act as including a determination that the purchaser has purchased wisely or has made the best deal available."); *Southern Company Services*, 26 FERC ¶ 61,360 at 61,795 (1984); *Pacific Power & Light Co.*, 27 FERC ¶ 61,080 at 61,148 (1984); *Minnesota Power & Light Co. and Northern States Power Co.*, 43 FERC ¶ 61,104 at 61,342-43, *reh'g denied*, 43 FERC ¶ 61,502, *order denying reconsideration*, 44 FERC P61,302 (1988); *Palisades Generating Co.*, 48 FERC ¶ 61,144 at 61,574 and n.10 (1989).

While the FERC determines whether it is against the public interest for [the wholesale supplier] to charge a particular rate in light of its costs, the state commission determines whether it is against the public interest for [the buyer] to pay a purchase price in light of alternatives. *Pike County Light & Power Co. v. Pennsylvania Public Utility Comm'n*, 465 A.2d 735, 738 (Pa. Commw. Ct. 1983) (*Pike County*).

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The divestiture or transfer of transmission assets would result in FERC exercising jurisdiction over the rates, terms and conditions of any unbundled retail transmission service that occurs as a result. Under section 201 of the Federal Power Act, FERC has jurisdiction over interstate transmission of electric energy. FERC has asserted jurisdiction over unbundled retail transmission service, that occurs when "a retail transaction is broken into two products [one being energy and one being transmission] that are sold separately (perhaps by two different suppliers: an electric supplier and a transmission supplier)" Order No. 888.

Even without the completed divestiture or transfer of transmission assets, FERC has asserted jurisdiction over unbundled retail transmission service under the present Arizona competition plan. Although TEP and APS have not divested or transferred their transmission facilities, FERC has asserted jurisdiction over the rates, terms and conditions of transmission service provided to both retail choice customers and standard offer customers under the Arizona competition program. *See Arizona Independent Scheduling Administrator Assoc., et al.*, 94 FERC ¶ 61,302 (2001). This issue is now pending before the Ninth Circuit Court of Appeals.

PUHCA charges the SEC with regulating public utility holding companies – any company owning ten percent (10%) or more of the outstanding stock of a public utility company. Under PUHCA, a public utility company is defined to include any company that "owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale..." Thus, because the divestiture or transfer of assets by vertically integrated utilities may result in the formation of a new public utility company under PUHCA, such transactions may require that filings be made with the SEC, and/or that the SEC pre-approve particular transactions. A definitive assessment of the impact of the divestiture or transfer of assets of the vertically integrated utilities under PUCHA can only be undertaken based on the facts of a specifically proposed transaction.

QUESTION:

16. How would the potential effects of divestiture or transfer of assets on Commission authority differ under a competitive retail regime than under a monopoly regime?

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October 15, 2001

Hon. David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

RE: *Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Tucson Electric Power Company, WestConnect RTO, LLC*, Docket No. RT02-___-000

Order No. 2000 Compliance Filing and Declaratory Order Petition

Dear Mr. Boergers:

Enclosed are the original and fourteen copies of the Joint Petition for Declaratory Order to form WestConnect RTO, LLC as a Regional Transmission Organization Pursuant to Order No. 2000 ("Petition"). This filing is being submitted jointly by Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Tucson Electric Power Company (collectively, "WestConnect Applicants"). This filing is also supported by certain non-jurisdictional utilities, including Western Area Power Administration, Salt River Project Agricultural Improvement and Power District, and Southwest Transmission Cooperative, Inc.

In addition to the paper copies of the Petition that are being filed, an electronic version of the filing is included on the enclosed CD-ROM.

In compliance with 18 C.F.R. § 381.302(a), a filing fee check in the amount of $15,760.00 is attached to the original Petition.

Request for Waiver of Service Requirement

The WestConnect Applicants hereby requests a waiver of the service requirements of Rule 2010 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"). 18 C.F.R. § 385.2010 (2001). This filing is voluminous. Because numerous entities have participated in the stakeholder process that has led to this filing, the cost to the WestConnect Applicants of serving all of those entities would be significant. The complete filing

will be posted on the WestConnect website at www.westconnectrto.com. In addition, subscribers to the email exploder used in the stakeholder process will automatically receive either an electronic copy of the filing or notification of the posting of the filing on the web.

If you have any questions, or if any parties have difficulties obtaining this filing from the web, please do not hesitate to contact the undersigned at (202) 274-2950.

Sincerely

Antoine P. Cobb

Attorney for Tucson Electric Power Company

cc: Chairman Pat Wood III
Commissioner Linda Key Breathitt
Commissioner Nora Mead Brownell
Commissioner William L. Massey

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing request for extension of time upon the parties designated on the official service list compiled by the Secretary in this proceeding.

Dated on Monday, July 3, 2000, in Washington, D.C.

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Arizona Public Service Company	)	
El Paso Electric Company	)	
Public Service Company of New Mexico	)	**Docket No. RT02-____-000**
Tucson Electric Power Company	)	
	)	
WestConnect RTO, LLC	)	

JOINT PETITION FOR DECLARATORY ORDER TO FORM WESTCONNECT RTO, LLC AS A REGIONAL TRANSMISSION ORGANIZATION PURSUANT TO ORDER NO. 2000

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October 15, 2001

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Notice of Filing
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Petition Attachment 2 -- Executive Summary of WestConnect Tariff
WestConnect LLC Agreement
WestConnect Transmission Control Agreement
WestConnect Generator Agreement
WestConnect Scheduling Coordinator Agreement (Non-Federal)
WestConnect Scheduling Coordinator Agreement (Federal)

Volume II

WestConnect Tariff, including Attachments 1 and 2, and Appendices A through R

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Arizona Public Service Company	)	
El Paso Electric Company	)	
Public Service Company of New Mexico	)	**Docket No. RT02-____-000**
Tucson Electric Power Company	)	
	)	
WestConnect RTO, LLC	)	

JOINT PETITION FOR DECLARATORY ORDER
TO FORM WESTCONNECT RTO, LLC
AS A REGIONAL TRANSMISSION ORGANIZATION
PURSUANT TO ORDER NO. 2000

Pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. § 385.207, and the Commission's Regional Transmission Organization ("RTO") rules at 18 C.F.R. § 35.34(d)(3) and (4), Arizona Public Service Company ("APS"), El Paso Electric Company ("EPE"), Public Service Company of New Mexico ("PNM"), and Tucson Electric Power Company ("TEP") (hereinafter collectively referred to as "WestConnect Applicants") jointly file this Petition for Declaratory Order seeking confirmation from the Commission that their joint proposal to form WestConnect RTO, LLC ("WestConnect"), as detailed in this filing and the materials attached hereto, satisfies the Commission's requirements for the formation of RTOs under Order No. 2000.[1]

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[1] Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. and Regs. ¶ 31,089 (1999), order on reh'g., Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. and Regs. ¶ 31,092 (2000).

The WestConnect Applicants include only the FERC-jurisdictional public utilities that have participated in the development of WestConnect. Also participating in this effort were the Salt River Project Agricultural Improvement and Power District ("SRP"), the Western Area Power Administration ("Western"), and Southwest Transmission Cooperative, Inc. ("SWTC") (hereinafter collectively referred to as "Non-Jurisdictional Participants"). Each of the Non-Jurisdictional Participants has been and continues to be actively involved in the development of WestConnect, and supports the WestConnect Applicants' request that the Commission find that the proposed WestConnect RTO, LLC meets or exceeds the Commission's Order No. 2000 RTO requirements. The Non-Jurisdictional Participants have concluded, however, that it would not be appropriate at this time to participate as petitioners on this RTO filing until further legal and regulatory issues are resolved.

I. EXECUTIVE SUMMARY

This Declaratory Order filing represents the culmination of almost five years of effort to form an RTO for the Southwestern United States. During this period, stakeholders in the Southwest engaged in an extensive collaborative process, known generally as the Desert STAR process, to reach agreement on the market rules and transmission tariff terms and conditions for an RTO. The Desert STAR process originally envisioned the formation of a not-for-profit independent system operator. Recently, however, the WestConnect Applicants entered into negotiations to form a "for profit" RTO that would have the flexibility to become, upon acquiring existing transmission assets or building transmission assets of its own, a regional transmission company or transco. Over the past three months, the WestConnect Applicants have successfully negotiated a Limited Liability Company Agreement ("LLC Agreement") and a

Transmission Control Agreement ("WestConnect TCA")[2] to form such an RTO, which will be known as WestConnect RTO, LLC. A summary of the LLC Agreement is attached to this Petition as Attachment 1.

WestConnect will use the fruits of the Desert STAR stakeholder process. Included with this filing is the WestConnect Tariff (including several Attachments and Appendices thereto), which contains the rate formulas,[3] terms and conditions under which WestConnect will provide non-discriminatory transmission service over the facilities under its Functional Authority.[4] The WestConnect Tariff also specifies the market rules for a restructured wholesale electric marketplace in the Western region, including a market-based congestion management proposal and consolidation of the existing control areas. The WestConnect Tariff is the product of the Desert STAR stakeholder process, which took place with the assistance of an independent board and consultants, and which was filed with the Commission for informational purposes on June 14, 2001.[5] The WestConnect Applicants are including in this filing two previously unfiled Tariff Appendices setting forth the rules for generator interconnections (Appendix Q) and for regional transmission expansion planning (Appendix P). The WestConnect Applicants made drafts of these two Appendices available to stakeholders for review and comment. A summary of the

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[2] In the future, and before executing the WestConnect TCA, one or more transmission owners may request additional provisions in their particular WestConnect TCA relating to tax matters. This will be determined by future tax analysis, and possibly by advice requested from the Internal Revenue Service ("IRS"). Any anticipated tax language is not expected to alter the basic operating provisions of the WestConnect TCA.

[3] Subsequent filings pursuant to section 205 of the Federal Power Act ("FPA") will seek Commission acceptance of the actual WestConnect rates.

[4] Capitalized terms used throughout this petition are intended to have the meaning as indicated in the WestConnect RTO, LLC Master Definitions List ("Master Definitions"), which is Attachment 1 to the WestConnect Tariff. For convenience, the Master Definitions are also attached as and Schedule A to the LLC Agreement. Functional Authority is defined in the Master Definitions to be Operational Authority, Pricing Authority, Access Authority and Planning Authority, which collectively are all of the authorities that WestConnect will need to function as an Order No. 2000-compliant RTO.

[5] Docket No. RT01-44-000.

Tariff, including all Attachments and Appendices thereto, is attached to this Petition as Attachment 2.

The WestConnect proposal is intended to satisfy the requirements of Order No. 2000. The WestConnect Applicants do not request any exceptions or exemptions from those requirements. Specifically:

- WestConnect will satisfy the independence requirements of Order No. 2000. It will be governed by an independent board chosen through a stakeholder process similar to the one employed in the GridSouth proposals approved by the Commission. The management and employees of WestConnect will also be independent of all Market Participants and will operate pursuant to a code of conduct that will ensure independent decision-making. The WestConnect Applicants and other Market Participants will be permitted to hold only "passive" equity interests in WestConnect.[6] The terms and conditions for such passive ownership are based on RTO proposals approved by the Commission in other proceedings.
- WestConnect is designed to manage the operation of virtually all of the transmission assets in the Southwestern portion of the United States. These include, in addition to the transmission facilities of the investor-owned utility applicants, the regional transmission facilities owned by non-jurisdictional federal, public power and cooperative entities. The WestConnect Applicants have worked carefully with such entities, including Western, SRP, and SWTC to structure the LLC Agreement and the WestConnect TCA to permit federal, public

[6] Certain potential WestConnect participants will not have any equity interest in WestConnect, and will limit their participation to a contractual management relationship and/or "debt holder" status with WestConnect due to other statutory and regulatory restrictions.

power and cooperatively owned entities to participate without violating their unique legal requirements.[7] While additional effort will be required to ensure that other agencies, such as the Rural Utilities Service ("RUS") and the IRS, are comfortable with the WestConnect structure, the WestConnect Applicants have worked diligently to create a favorable environment for federal, public power and cooperative participation in this RTO, as evidenced by SRP's, Western's and SWTC's participation in the development of the WestConnect Tariff documents.

- The WestConnect Applicants have created an RTO structure that offers flexible participation options for transmission owners with different strategic visions, and that are subject to differing legal obligations or that are in different stages of restructuring. WestConnect is readily expandable and can be the platform for a West-wide RTO. The WestConnect Applicants have already engaged in serious and positive discussions, and plan to continue such discussions, with the TransConnect transmission owners (currently part of RTO West), who share a common RTO vision with the WestConnect Applicants. The WestConnect Applicants have also had discussions with TRANSLink.
- WestConnect will have Functional Authority over the transmission assets of the WestConnect Applicants. Functional Authority includes responsibility for administering the WestConnect Tariff, including Section 205 rights; responsibility for regional transmission planning; responsibility for short-term system operations and short-term reliability; responsibility for managing congestion on the transmission system; responsibility for calculation of total transfer capability

[7] Participation in WestConnect by federal, public power and cooperatively owned transmission systems is restricted or may be limited by statutory, legal or regulatory constraints. These entities may be able to participate in WestConnect through a properly structured transmission control agreement.

("TTC") and available transfer capability ("ATC") and operation of a regional OASIS; and responsibility for generator interconnections.

- WestConnect's Tariff includes license plate transmission rates for a seven-year transition period. WestConnect's Grid Charge includes two components: the Grid Management Component ("GMC"), which recovers all of WestConnect's costs and expenses of operations, and the Transmission Adjustment Charge ("TAC"), which is a negotiated component of the Grid Charge that permits full recovery of Western's transmission revenue requirement. The TAC has been structured to mitigate massive cost shifting that might otherwise result if other rate schemes were implemented. There will be no pancaking of transmission rates under the WestConnect Tariff. WestConnect will also have an Order No. 2000 compliant market monitoring function.

The WestConnect Applicants are requesting a declaratory order from the Commission by early 2002, confirming that the instant proposal satisfies the requirements of Order No. 2000. With that Order in hand, the WestConnect Applicants will seek any necessary state commission (or other governing authority) approvals for the transfer of transmission operations to an RTO and will submit any necessary Section 203/205 applications to the Commission. In the meantime, the WestConnect Applicants intend to continue their discussions with the TransConnect utilities, and to initiate serious discussions with the other members of RTO West and with TRANSLink.

II. GENERAL INFORMATION

A. The WestConnect Applicants

(1) Arizona Public Service Company

APS is a public service corporation organized under the laws of the State of Arizona. APS is engaged in the business of generating, transmitting, and distributing electricity in all or part of eleven of Arizona's fifteen counties. APS is a direct, wholly owned subsidiary of Pinnacle West Capital Corporation ("PWCC"), a public-utility holding company exempt from the provisions of the Public Utility Holding Company Act of 1935 ("PUHCA"), 15 U.S.C. § 79a, *et seq.*, (except for Section 9(a)(2)) and a public utility under the FPA. APS's retail operations are regulated by the Arizona Corporation Commission ("ACC").

(2) El Paso Electric Company

EPE is a vertically-integrated electric public utility engaged in the generation, transmission, and sale of electric energy at retail, primarily in El Paso, Texas, and the adjacent areas of south central New Mexico. EPE also purchases and sells wholesale power in the western interconnection. EPE's rates and services are regulated by the Commission, the New Mexico Public Regulatory Commission ("NMPRC") and the Public Utility Commission of Texas.

(3) Public Service Company of New Mexico

PNM is a New Mexico corporation formed in 1917 with its principal offices in Albuquerque, New Mexico. PNM is a public utility primarily engaged in the generation, transmission, distribution, and sale of electricity and the transmission, distribution, and sale of natural gas. PNM's retail operations are regulated by the NMPRC, and its electric sales at wholesale and transmission services in interstate commerce are regulated by the FERC.

(4) Tucson Electric Power Company

TEP is a public service corporation organized under the laws of the State of Arizona. TEP is an investor-owned electric utility engaged in the business of generating, transmitting, and distributing electricity to retail and wholesale customers. Its retail service area encompasses 1,155 square miles in Pima and Cochise counties in Southern Arizona and includes a population of approximately 750,000 people. TEP's retail operations are regulated by the ACC.

B. Documents Submitted with this Filing

In addition to the transmittal cover letter and this Declaratory Order Petition, the following documents are included in this filing:

- Notice of Filing
- Attachment 1 to Petition – LLC Agreement Summary
- Attachment 2 to Petition – Tariff Executive Summary
- WestConnect LLC Agreement
- WestConnect Tariff
- Tariff Attachment 1 – Master Definitions
- Tariff Attachment 2 – Relationship Among Documents
- Tariff Attachment 3 – Transmission Control Agreement
- Tariff Appendix A – Congestion Management
- Tariff Appendix B – Scheduling
- Tariff Appendix C – Dispatch and Emergency Operations
- Tariff Appendix D – Ancillary Services
- Tariff Appendix E – Existing Contracts
- Tariff Appendix F – Outage Coordination
- Tariff Appendix G – Settlements and Billing
- Tariff Appendix H – Market Monitoring
- Tariff Appendix I – WestConnect Website
- Tariff Appendix J – Scheduling Coordinator Application and Certification
- Tariff Appendix K – Transmission and Distribution Losses
- Tariff Appendix L – Load Profiling
- Tariff Appendix M – Metering
- Tariff Appendix N – Application to Become a Participating Transmission Owner
- Tariff Appendix O – Transmission Service Pricing and Revenue Distribution
- Tariff Appendix P – Planning and Expansion Process
- Tariff Appendix Q – Interconnection Process
- Tariff Appendix R – WestConnect Code of Conduct

WestConnect is also submitting an electronic copy of its filing on a CD-ROM. WestConnect will also post a copy of its filing on its website: www.westconnectrto.com. Historical documents regarding the Desert Star process will continue to be available at the Desert Star website: www.dstarnet.com.

C. Correspondence

WestConnect Applicants request that the following persons be placed on the official service list compiled by the Secretary for this proceeding:

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III. NON-JURISDICTIONAL WESTCONNECT PARTICIPANTS

Non-jurisdictional transmission owners that have participated in the WestConnect Tariff development process include entities such as:

(1) Salt River Project Agricultural Improvement and Power District

SRP is a political subdivision of the State of Arizona that owns and operates electric, irrigation and water supply systems. SRP currently provides retail electric service to more than 700,000 residential, commercial, industrial, agricultural and mining customers in Arizona. SRP also provides open access transmission and power sales services to wholesale customers.

(2) Southwest Transmission Cooperative, Inc.

SWTC is a nonprofit Arizona generation and transmission rural electric cooperative based in Benson, Arizona. SWTC owns and operates approximately 582 miles of 100 kV and above transmission facilities, and through distribution cooperatives, supplies electricity to approximately 115,000 retail customers. SWTC currently has outstanding debt financed by the RUS, and thus is not regulated as a public utility by the Commission.

[8] WestConnect Applicants request waiver of 18 C.F.R. § 385.203(b)(3) so as to permit inclusion on the service list of their technical consultants.

(3) Western Area Power Administration

Western is a Federal Power Marketing Administration that markets and transmits power from hydropower plants in the West. Western also markets the United States' entitlement from the coal-fired Navajo Generating Station in Arizona. The three Western offices that have participated in the development of WestConnect proposal sell power to customers across the West in the States of Arizona, Colorado, Wyoming, and New Mexico.

IV. DESCRIPTION OF RTO PROPOSAL AND HOW IT MEETS RTO REQUIREMENTS

REQUIRED CHARACTERISTICS

A. Characteristic 1 – RTO Independence

Introduction: The WestConnect RTO model is based on the model approved by the Commission in the GridSouth proceeding (Docket No. RT01-74-000). In light of the current status of electric industry restructuring in the Southwest, none of the WestConnect Applicants are in a position to divest their transmission assets to WestConnect at this time. Even if state policies permit such divestiture in the future, some of the WestConnect Applicants may choose to retain ownership of their transmission assets for legal reasons or as a strategic business matter. In these circumstances, the realistic option available under Order No. 2000 to public utilities and non-jurisdictional transmission owners that prefer the "Transco" model is to transfer Functional Authority over their transmission assets to an RTO in which the WestConnect Applicants have a "passive ownership" interest, with the right to later transfer ownership of those assets to the RTO, either for cash or for equity in the RTO. Even before it acquires ownership of any of the WestConnect Applicants' transmission assets, WestConnect may invest in, construct and own new transmission facilities. The WestConnect Applicants are hopeful that WestConnect will be a stimulus for, and participate in, the new transmission investment that has long been identified

as needed in the western United States. It may thus become a transco long before any of the WestConnect Applicants divest assets to it.

Passive and Active Membership Interests: WestConnect will be governed by an independent Board of nine directors, which will have ultimate authority to manage WestConnect. Under the LLC Agreement, the WestConnect Applicants' member interests (Class C Interests) do not include the right to participate in the operations of WestConnect, because the WestConnect Applicants are all currently Market Participants; in fact, the WestConnect Applicants have not even attempted to retain the five percent/fifteen percent active ownership interests permitted by Order No. 2000 The Class C Members (applicable to all members that are Market Participants) will have rights to profit/loss distributions, but will have the right to vote solely on a limited class of fundamental business decisions that are integral to the preservation of their financial interests (discussed below). The voting rights associated with these passive ownership interests (Class B Interests) will be assigned to a Trustee who will be obligated to vote these interests in accordance with the will of the governing majority of the independent Board. This ownership structure was approved in the GridSouth proceeding as satisfying the Commission's passive ownership requirements.

The LLC Agreement also provides for the future equity participation in WestConnect by entities that are not Market Participants. Class A Members (who cannot be Market Participants) will have active rights to participate in the management of the LLC and to elect their own Board members. Class A Members will have the right to select a Board member for each 12.5% equity interest they acquire in the LLC. Thus, 62.5% of the equity in the LLC will convey a controlling interest to a Class A Member.

To guard against any entity extracting a control premium when divesting its interest in the LLC to a non-Market Participant proposing to acquire control of the LLC in the transaction,

the LLC Agreement allows for minority shareholders to sell their interests in the LLC to an entity proposing to acquire control of the LLC.

Initial Board Selection: The initial Board selection component of the WestConnect governance proposal is based on the selection processes used in GridSouth. A Board Selection Committee will be established, consisting of representatives of the Participating Transmission Owners and other stakeholders. An independent, nationally-recognized search firm will identify a slate of 24 potential candidates for the Board. The candidates will include the previous members of the Desert STAR Board, if such members wish to be considered for the Board of WestConnect. To be eligible for inclusion on the slate chosen by the search firm, potential Board candidates may not have any financial interest in or business relationship with the WestConnect Applicants or other Market Participants. A majority of the Board candidates must also have senior executive level experience.

The Selection Committee will meet to choose eight Board members from among the 24 candidates designated by the search firm. The ninth Board member will be hired by the eight stakeholder-selected Board members, and will be the President of WestConnect. At least one of the Board members chosen by the Committee must have experience in the non-profit sector of the electric industry. If the Selection Committee does not reach agreement on the eight stakeholder-selected Board seats, the Selection Committee will first identify the candidates on which the Participating Transmission Owners' and stakeholders' representatives agree. The Participating Transmission Owners' representatives and stakeholders' representatives will then exercise rotating peremptory strikes of candidates from the slate of remaining potential candidates. This process will continue for up to eight strikes by each of the two sides until the Selection Committee has reduced the slate of candidates to eight candidates that are acceptable to both sides of the Selection Committee. This aspect of the WestConnect proposal ensures

stakeholder involvement in Board selection while providing the WestConnect Applicants reasonable assurance that the individuals to whom they must entrust the responsibility to manage (and later own) billions of dollars of transmission assets will have the ability, experience and business judgment to protect both the WestConnect Applicants' transmission investment (before and after assets are sold to WestConnect) and the public's interest in reliable and efficient transmission operations.

Other Independence Requirements: To satisfy the requirement for RTO independence, the Commission requires that an RTO must: (1) not have financial interests in any Market Participant; (2) have a decision-making process that is independent of control by any Market Participant or class of Market Participants; (3) have exclusive authority to propose rates, terms, and conditions of transmission service provided over the facilities it operates; and (4) provide for the performance of certain compliance audits. WestConnect's governance structure is designed to comply fully with these requirements.

To address the concern that an RTO be independent of any Market Participant, the LLC Agreement prevents any WestConnect Board members, officers, and employees from having any affiliation with or financial interest in any Market Participant. WestConnect Board members, officers, and employees also must comply with WestConnect's Code of Conduct (Appendix R to the WestConnect Tariff) that, among other things, prohibit them from having any financial interest in any Market Participant. Consistent with Order No. 2000, WestConnect may hire former employees of one or more Market Participants (including any of the WestConnect Applicants), but these employees must divest any stock ownership, and all other financial ties (except approved pension plans and initial funds) with their former employers within six months of employment with WestConnect. In addition, when it commences operations as an independent RTO, WestConnect will be fully self-funding, recovering all of its costs and

expenses from its customers pursuant to the GMC that will be collected under Appendix O of the WestConnect Tariff.

As to WestConnect's decision making process, the LLC Agreement requires that all decisional rights, except on certain fundamental business matters, be held by the independent Board. No Market Participant will have any right to vote on the day-to-day operations of WestConnect. While the WestConnect Board owes fiduciary duties to WestConnect's members, the LLC Agreement expressly excludes from the scope of those fiduciary duties any duty to consider the interests of the passive owners outside WestConnect's transmission business. The limited voting rights reserved for the passive owners, set forth in §6.13(b) of the LLC Agreement, are narrow and limited rights that are designed to protect the integrity of the capital investment and investment in transmission assets of the passive owners. These limited voting rights include two rights that are unique to this LLC Agreement. First, 85% of the passive owners may veto mergers and acquisitions ***except*** for mergers with any other FERC-approved RTO in the western interconnection. (LLC Agreement, §6.13(b)(2).) This provision thus accords with the Commission's previous statements that the retained fundamental rights should not include the ability to block the expansion of the RTO through merger with other RTOs. Second, the limited voting rights also include the right of the passive owners to prevent the Board from granting equity compensation to itself or to senior management ***that exceeds what is customary for companies of this type.*** (LLC Agreement, §6.13(b)(6).) The italicized proviso differentiates this provision from provisions previously disapproved by the Commission. Moreover, and perhaps more importantly, if the Board disagrees with the passive owners actions under this or any of the other fundamental voting rights provisions in §6.13(b), it has the right to bring the matter before the Commission, thus preventing the passive owners from using the provision to improperly exercise control over the Board.

The Commission has also ruled that an RTO must have exclusive and independent authority under FPA Section 205 to propose rates, terms and conditions of transmission service provided over the facilities it operates. Under the WestConnect TCA and the LLC Agreement, WestConnect will have the exclusive right under Section 205 to propose changes to rates and terms of the WestConnect Tariff, subject only to the requirement in the WestConnect TCA that WestConnect design rates that will enable it to pay each participating Transmission Owner its transmission revenue requirement as established with the Commission pursuant to Section 205 (or the appropriate governing authority for non-jurisdictional participants).

The existence of a stakeholder advisory committee and an independent market monitor, both established under the LLC Agreement, provide additional assurance that no Market Participant or class of Market Participants could exercise any decisional control over WestConnect's management and operations. Order No. 2000 requires an RTO to conduct audits of ownership interests for Market Participants to ensure that they do not cause the RTO to violate the independence principle. To address this requirement, the Market Monitoring Protocol (Appendix H to the Tariff) provides that an audit of the Participants' ownership interests be prepared by the independent market monitor. The market monitor will prepare a report two years after the approval date and thereafter as required by the Commission's regulations.

WestConnect will possess Characteristic 1.

B. Characteristic 2 – Geographic Scope

WestConnect is designed to have Functional Authority over virtually all of the transmission assets in the States of Arizona and New Mexico, and over substantial transmission assets in West Texas, Nevada, Wyoming and Colorado. This is a very large region of the country and encompasses what has historically been a market area for wholesale trading.

Nonetheless, the WestConnect Applicants do not intend that WestConnect consist solely of this region. They have designed an RTO structure that offers extremely flexible participation options, and that is readily expandable to include other transmission systems in the west. The WestConnect Applicants have worked extremely hard to create a structure that is hospitable to participation by federal, public power and cooperatively owned entities. The WestConnect Applicants also would prefer to reduce the per-customer costs of creating an RTO. That objective would be achieved by creating an RTO with a broader geographic scope than that of the current WestConnect Applicants.

The WestConnect Applicants have commenced serious discussions with the transmission owners that comprise the TransConnect group within RTO West, and have initiated discussions with TransLINK. The WestConnect Applicants and TransConnect participants share a common vision for a successful RTO: that it be a "for profit" transmission entity that will ultimately own and invest in transmission facilities and look for opportunities to create shareholder value in the transmission business. But, also one where individual transmission owners have the flexibility to participate by divesting their transmission to the RTO or by retaining ownership and transferring only Functional Authority. Our discussions to date with the TransConnect participants leave us hopeful that the two groups will be able to combine their efforts.

The WestConnect Applicants would also like to pursue serious discussions with the remaining participants in RTO West. We note that, while RTO West has an approved governance structure, its members have not resolved many critical issues, including the development of an open access transmission tariff ("OATT"), wholesale market structure and rules, congestion management, or regional transmission planning protocols. We, therefore, offer RTO West a platform for completing their efforts to form an RTO. WestConnect is the most complete RTO proposal that has been developed in the western United States. The WestConnect

Applicants know of no reason why the model they are proposing would not be applicable to or highly successful in a larger geographic region. Again, WestConnect Applicants are willing to work with the RTO West participants and others to permit their involvement in WestConnect.

WestConnect will possess Characteristic 2.

C. Characteristic 3 - Operational Authority

An RTO "must have operational authority for all of the transmission facilities under its control."[9] Moreover, if "any operational functions are delegated to, or shared with, entities other than" the RTO, then the RTO must "ensure that this sharing of operational authority will not adversely affect reliability or provide any Market Participant with an unfair competitive advantage."[10] Within two years of commencing operations, an RTO must submit a report assessing whether "any division of operational authority hinders the [RTO] in providing reliable, non-discriminatory and efficiently priced transmission service."[11] An RTO must be the security coordinator for the transmission facilities that it controls.[12]

WestConnect will have the operational authority the Commission expects an RTO to have.[13] WestConnect will assume Control Area Operator responsibilities for most or all of the region. The Participating Transmission Owners will physically execute Control Area operations through their Area Operations Centers ("AOCs") under the direction of WestConnect. As described in Appendix C (Dispatch and Emergency Operations) to the WestConnect Tariff, the

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[9] 18 C.F.R. § 35.34(j)(3).

[10] 18 C.F.R. § 35.34(j)(3)(i).

[11] *Id.*

[12] 18 C.F.R. § 35.34(j)(3)(ii).

[13] As referenced in footnote 2, certain transmission owners may require specific revisions in their respective transmission control agreements to deal with tax issues. The rights reserved in the WestConnect TCA and elsewhere to permit Federal agencies, transmission owners financed with tax-exempt debt, transmission owners having RUS mortgages, or other transmission owners to participate in WestConnect should have no greater an impact on WestConnect's exercise of Functional Authority than is necessary for those entities to participate in WestConnect.

AOCs will be the primary interface through which WestConnect will implement its operational authority over the transmission facilities of the Participating Transmission Owners.

WestConnect presently covers the area which is the responsibility of the existing Rocky Mountain Desert Southwest Security Center within the Western Systems Coordinating Council ("WSCC"). WestConnect is investigating whether to utilize the security coordinator already established for the region or to develop a new security coordination function within WestConnect.

Consistent with 18 C.F.R. § 35.34(j)(3)(i), within two years after initial operation, WestConnect will prepare a public report that assesses whether any division of operational authority hinders WestConnect in providing reliable, non-discriminatory and efficiently priced transmission service.

WestConnect will possess Characteristic 3.

D. Characteristic 4 – Short-Term Reliability

An RTO "must have exclusive authority for maintaining the short-term reliability of the grid that it operates."[14] Specifically, the RTO must: (i) have exclusive authority for receiving, confirming and implementing all interchange schedules;[15] (ii) have the right to order redispatch of any generator connected to transmission facilities it operates, if necessary, for the reliable operation of these facilities;[16] (iii) to the extent that it operates transmission facilities owned by other entities, have authority to approve or disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established

[14] 18 C.F.R. § 35.34(j)(4).

[15] 18 C.F.R. § 35.34(j)(4)(i).

[16] 18 C.F.R. § 35.34(j)(4)(ii).

reliability standards;[17] and (iv) to the extent that it operates under reliability standards established by another entity (*e.g.*, a regional reliability council), report to the Commission if those standards hinder it from providing reliable, non-discriminatory and efficiently priced transmission service.[18]

All uses of the WestConnect Grid will be scheduled through WestConnect utilizing the provisions of Appendix B (Scheduling) to the WestConnect Tariff. These schedules can be for energy, for capacity associated with ancillary services, or for capacity associated with on-demand firm energy. Schedules must be submitted to WestConnect whether they are for transmission service under the WestConnect Tariff or utilizing rights under non-converted existing contracts. Through the provisions of Appendix C (Dispatch and Emergency Operations) to the WestConnect Tariff, WestConnect will have the authority to curtail schedules and issue dispatch instructions as necessary to preserve short-term reliability. In addition, all maintenance scheduling must be coordinated through WestConnect in accordance with the provisions of Appendix F (Outage Coordination) to the WestConnect Tariff.

As a result, WestConnect expects to have: (i) exclusive authority for receiving, confirming and implementing all interchange schedules; (ii) authority to order redispatch of any generator connected to the WestConnect Grid, if necessary, for reliable operations; and (iii) authority to approve or disapprove all requests for scheduled outages of transmission facilities and the generating units providing Local Generation Resource services to ensure that the outages can be accommodated within established reliability criteria.

WestConnect will operate in accordance with the standards of the North American Electric Reliability Council and the WSCC and any successor organizations (such as the Western

[17] 18 C.F.R. § 35.34(j)(4)(iii).

[18] 18 C.F.R. § 35.34(j)(4)(iv).

Electricity Coordinating Council ("WECC")). WestConnect will report to the Commission if those standards hinder it from providing reliable, non-discriminatory and efficiently priced transmission service.

WestConnect will possess Characteristic 4.

REQUIRED FUNCTIONS

E. Function 1 - Tariff Administration and Design

Order No. 2000 requires that an RTO must be "the sole provider of transmission service and sole administrator of its own open access tariff" and have "the sole authority for the evaluation and approval of all requests for transmission service including requests for new interconnection."[19] Order No. 2000-A clarifies that RTOs must provide "one stop shopping" for merchant generators that seek to interconnect to the grid without separately obtaining transmission service.[20] Order No. 2000 also specifies that an "RTO tariff must not result in transmission customers paying multiple access charges to recover capital costs."[21]

Under the WestConnect Tariff, WestConnect will be the sole provider of transmission service for those transmission owners who transfer operational authority of their transmission facilities to WestConnect and become Participating Transmission Owners. Similarly, WestConnect will be the sole administrator of its own tariff. Moreover, under Appendix Q (Interconnection Process) to the WestConnect Tariff, WestConnect will provide one-stop shopping for merchant generators or transmission owners seeking to interconnect to the WestConnect Grid.

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[19] Order No. 2000 at 31,089.

[20] Order No. 2000-A at 31,376 ("We also agree with Dynegy that new generators should not have to negotiate separately with the RTO and individual transmission owners. We expect one-stop shopping under any RTO.")

[21] Order No. 2000 at 31,174; Order No. 2000 at 31,108.

The initial pricing structure is designed to minimize cost shifting and consists of: (i) Access Area Rates; (ii) Wheeling Out Rates; and (iii) the WestConnect Grid Charge. Under the initial pricing structure, WestConnect will charge a single access charge (*i.e.*, either an Access Area Rate or a Wheeling Out Rate) for transmission service over the transmission facilities that it controls. The transmission system of a Participating Transmission Owner may form a separate Access Area or two or more Participating Transmission Owners may form a Multi-Party Access Area. A Scheduling Coordinator delivering energy or capacity for ancillary services to a Resident Load located within a particular Access Area will pay a "license plate" rate, with a single access charge under the WestConnect Tariff. However, to minimize cost shifting under the initial pricing structure, until such time as the Resident Load takes all of its transmission services under the WestConnect Tariff, if such Resident Load is also served under an existing contract with a Participating Transmission Owner whose transmission assets are in a different Access Area than the Access Area in which the Resident Load is located, then such Resident Load will pay the Access Area Rate and also continue to make payments under the non-converted existing contract to the Participating Transmission Owner.

WestConnect will employ an Access Area pricing structure for Resident Loads. For such Resident Loads, WestConnect charges the Scheduling Coordinators serving the Resident Loads the applicable Access Area Rate based upon the Access Area in which the Resident Loads are located. The Access Area Rate is applied to the Scheduling Coordinator's Resident Loads within the Access Area at the hour of the Access Area's monthly peak. Subject to congestion management, Scheduling Coordinators paying the Access Area fee on behalf of Resident Loads are permitted to obtain energy and ancillary services anywhere within the WestConnect Grid or import into the WestConnect Grid and transmit such energy and ancillary services to the Resident Loads. The Access Area Rate and the Access Area fee are determined in accordance

with Schedule A of Appendix O (Transmission Service Pricing and Revenue Distribution) to the WestConnect Tariff.

The initial Access Area Rate for each Access Area will be the then-effective OATT point-to-point rate of each Participating Transmission Owner on file with the Commission, or appropriate regulatory authority, as of each Participating Transmission Owners' Operations Date. The rate will be modified, if necessary, to a twelve (12) month coincident peak equivalent of the existing transmission rate, based on the historical test year for each Participating Transmission Owner.

When a Participating Transmission Owner subsequently proposes changes to its Annual Transmission Revenue Requirement ("ATRR") or its rate, if the regulatory authority or applicable law requires the establishment of a rate,[22] and receives an approved or accepted ATRR or rate from the appropriate regulatory authority, the Participating Transmission Owner will provide WestConnect its revised ATRR, its Coincident Peak Divisor and, if applicable, its rate. WestConnect will use the formula in Schedule A of Appendix O to the WestConnect Tariff to calculate the Access Area Rate and will post the Access Area Rate on the WestConnect Website. WestConnect or any Market Participant may separately intervene or protest any part of the Participating Transmission Owner's filing to adjust the Participating Transmission Owner's ATRR.

Scheduling Coordinators serving load outside the WestConnect Grid are charged the higher of the load weighted average of the Access Area Rates or the Access Area Rate at the Scheduling Point associated with the wheeling transactions to deliver energy or capacity for ancillary services to an electric system outside the WestConnect Grid. The Wheeling Out Rate

[22] The regulatory authorities of several of the potential Participating Transmission Owners are required to approve a rate and not simply a revenue requirement.

and the charge for Wheeling Out Service are determined in accordance with Schedule B of Appendix O to the WestConnect Tariff. The WestConnect Applicants are attempting to negotiate reciprocity agreements with adjacent RTOs as part of ongoing discussions concerning seams issues. If agreed, these reciprocity agreements would replace the transaction-based rates and charges with inter-RTO transfer payments that compensate for use of the RTOs' grids for inter-RTO wheeling.

The proposed Access Area Rates and Wheeling Out Rates that will be charged are not included in this filing. These rates will be developed in the future and will be filed no later than 90 days prior to the commencement of WestConnect's operations. Each Participating Transmission Owner will have responsibility for its ATRR or its rate, if the regulatory authority or applicable law requires the establishment of a rate, associated with its transmission facilities.

The WestConnect Grid Charge consists of two components: (i) the GMC; and (ii) the TAC. Both components are usage based charges.

The GMC recovers: (i) WestConnect costs associated with the operation of the WestConnect Grid by WestConnect and administration of the WestConnect Tariff by WestConnect that are not recovered through the charge for the Scheduling and Dispatch service under Appendix D (Ancillary Services); (ii) costs associated with the start-up and formation of WestConnect (including costs associated with the Desert Star process that led to WestConnect); and (iii) other charges and credits that cannot be identified with a specific Scheduling Coordinator. The GMC will include a return component on any of the above items where appropriate. The GMC is charged to Scheduling Coordinators responsible for Resident Loads. The GMC is also charged to Scheduling Coordinators responsible for Wheeling Out transactions unless the GMC is included in the inter-RTO transfer payments described above. In such case, there will be no additional charges for the GMC for Wheeling Out transactions. These costs are

listed in Schedule C of Appendix O to the WestConnect Tariff. The Commission's policy is to allow the recovery of start-up costs. *See Midwest Independent System Operator, Inc.*, 87 FERC ¶ 61,085 (1999) and *PJM Interconnection, L.L.C.*, 93 FERC ¶61,056 (2000). Departure from such policy would impede the development of RTOs on a timely basis. The WestConnect Applicants will request that the Commission approve the proposal for the recovery of start-up costs through the GMC, subject to review of the actual cost. WestConnect will submit the actual costs no later than ninety (90) days before operations commence.

The TAC provides compensation to Western for revenues otherwise lost under the initial pricing structure. This component was included in the WestConnect rate design to address Western's loss of revenues which prior to Western's Operations Date were collected from non-firm transmission sales and short-term firm transmission sales and contracts with entities that serve loads in other Access Areas that would be terminated as a result of conversion to WestConnect service. This component is similar to the New York Power Authority Transmission Adjustment Charge included in the New York Independent System Operator OATT. The TAC is calculated in accordance with Schedule D of Appendix O to the WestConnect Tariff. The TAC is charged to Scheduling Coordinators responsible for Resident Loads. The TAC is also charged to Scheduling Coordinators responsible for Wheeling Out transactions unless the TAC is included in the inter-RTO transfer payments described above. In such case, there will be no additional charges for the TAC for Wheeling Out transactions.

The WestConnect Tariff also includes a provision under which an Eligible Customer that owns existing transmission facilities that are integrated with the WestConnect Grid may be eligible to receive consideration through a payment from the applicable Participating Transmission Owner. In order to receive such consideration, the Eligible Customer must demonstrate that its transmission facilities are integrated into the planning and operations of

WestConnect to serve WestConnect customers and that such facilities will provide benefits to the WestConnect Grid in terms of capability and reliability and may be relied upon for the coordinated operation of the WestConnect Grid. This is the same test that the Commission utilizes under its *pro forma* tariff.

Customers taking service under existing contracts will continue to make payments under the terms and conditions of the existing contracts. Upon conversion or termination of the existing contracts, transmission service will be provided in accordance with the WestConnect Tariff. Negotiated transfer payments from the rights holder under an existing contract to the Participating Transmission Owner providing transmission service under the existing contract will be required upon conversion of certain types of existing contracts to transmission service under the WestConnect Tariff in accordance with Appendix E (Existing Contracts). These negotiated transfer payments are required in order to minimize cost shifting.

The WestConnect Tariff also addresses the process and timeline for developing and filing with the Commission an end-state pricing structure that will be based on a highway/zonal pricing structure. The end-state pricing structure will avoid rate pancaking. The end-state pricing structure will go into effect January 1, 2009 for all Participating Transmission Owners, except for any individual Participating Transmission Owner that is still subject to a state mandated retail rate moratorium that was in effect as of the Independence Date. Individual Participating Transmission Owners subject to such state mandated retail rate moratoriums will migrate to the end-state pricing structure as the applicable state mandated retail rate moratorium ends.

WestConnect will perform Function 1.

F. Function 2 – Congestion Management

RTOs "must ensure the development and operation of market mechanisms to manage transmission congestion."[23] These "market mechanisms" must "accommodate broad participation by all Market Participants, and must provide all transmission customers with efficient price signals that show the consequences of their transmission usage decisions."[24] RTOs must perform this function themselves, or, at a minimum, ensure that it is performed by an entity that is not affiliated with any Market Participant. In Order No. 2000, the Commission emphasized "that congestion pricing proposals should seek to ensure that: (1) the generators that are dispatched in the presence of transmission constraints are those that can serve load at least-cost, and (2) limited transmission capacity is used by Market Participants that value that use most highly."[25]

Appendix A (Congestion Management) to the WestConnect Tariff has been developed to provide market mechanisms to manage transmission congestion in a way that accommodates broad participation by all participants and provides efficient price signals through the implementation of a physical rights model. Appendix A provides the details on how Eligible Customers and their Scheduling Coordinators gain scheduling rights on potentially constrained internal transmission interfaces (known as FTR Interfaces) and on interfaces (known as Scheduling Points) with adjoining facilities that are outside WestConnect's operational authority. The FTR Interfaces and Scheduling Points define the boundaries of the WestConnect Congestion Zones. Appendix A also provides details on the management of Congestion within a Congestion Zone (Intra-Zonal Congestion).

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[23] 18 C.F.R. § 35.34(k)(2).

[24] 18 C.F.R. § 35.34(k)(2)(i).

[25] Order No. 2000 at 31,126; *see also* Order No. 2000-A at 31,376.

Appendix A provides details of Firm Transmission Rights ("FTRs"), Recallable Transmission Rights ("RTRs"), Non-firm Transmission Rights ("NTRs") and Non-Converted Rights ("NCRs"), together called Transmission Rights. WestConnect will periodically auction off FTRs on FTR Interfaces and on Scheduling Points. The Board will have the authority, with proper notification, to create new and eliminate existing FTR Interfaces and Scheduling Points. A Transmission Right is the right to schedule the delivery of one (1) MW of energy or capacity for ancillary services or on-demand firm energy in a specific direction across an FTR Interface or Scheduling Point for one (1) hour (Settlement Period).

All FTRs will be auctioned. The amounts of FTRs to be auctioned are based on the Operating Transfer Capability ("OTC") of the FTR Interface or Scheduling Point, less any amount of transfer capacity that must be reserved to allow WestConnect to honor existing contracts that have not been converted to transmission service under the WestConnect Tariff (*i.e.*, to honor NCRs). Any FTRs or NCRs that are not scheduled will be made available in an auction for RTRs. To the extent available, NTRs will also be made available on a first come, first serve basis.

Participating Transmission Owners will have a priority over other bidders to receive FTR allocations needed for providing service to bundled native load and wholesale requirements customers. In order to receive this priority, however, the Participating Transmission Owner must bid the Maximum Allowable Bid for all required FTRs. In addition, in order to ensure that a Participating Transmission Owner is able to secure sufficient FTRs to meet its load growth, WestConnect will update its FTR allocation matrix at least annually to account for any growth projections in a Participating Transmission Owner's native and wholesale requirements loads.

WestConnect will perform Function 2.

G. Function 3 – Parallel Path Flow

Order No. 2000 specifies that an RTO "must develop and implement procedures to address parallel path flow issues within its region and with other regions."[26] It adds further that, with respect to coordination with other regions, an RTO must satisfy this requirement no later than three years after it commences initial operations.[27]

The effects of parallel path flows within the WestConnect region will be handled as a result of the implementation of the congestion management system described above in Appendix A (Congestion Management) to the WestConnect Tariff, both for inter-zonal and intra-zonal congestion.

Major loop flows within the Western Interconnection currently are managed through the use of the Commission-approved WSCC Unscheduled Flow Mitigation Plan ("UFMP"). The UFMP, which has been in operation since April 1995, utilizes a number of phase shifting transformers in the Western Interconnection to mitigate the effects of loop flow. The UFMP consists of three distinct components: accommodate, control and curtail. The first component requires that the owners of qualified paths accommodate loop flows up to a percentage of the path rating. This percentage has changed over time, but historically has been between five to ten percent of the path rating. The second component requires the coordinated operation of phase shifting transformers to reduce the flows on an overloaded qualified path to the scheduled flows. If these actions are not sufficient, the third component requires that schedules on other paths be curtailed if they are contributing to loop flows on the qualified path. As part of the Commission-approved plan, the owners of the phase shifting transformers receive payments from the WSCC as compensation for the use of their phase shifting transformers. Any additional mitigation

[26] 18 C.F.R. § 35.34(k)(3) (2000).

[27] *Id.*

which might be required in the future will be one of the responsibilities of the WSCC and any successor organization (such as WECC). Recognition of the UFMP is an integral part of Appendix C (Dispatch and Emergency Operations) to the WestConnect Tariff and, together with congestion management under Appendix A, will address any parallel path flows in the WestConnect region.

WestConnect will perform Function 3.

H. Function 4 – Ancillary Services

Order No. 2000 generally requires that an RTO "must serve as the provider of last resort of all ancillary services required by Order No. 888 and subsequent orders."[28] The regulations promulgated under Order No. 2000 also specify that: (i) "all market participants must have the option of self-supplying or acquiring ancillary services from third parties," subject to any restrictions imposed in Order No. 888 or subsequent orders;[29] (ii) the RTO must have the authority to decide the minimum required amounts and locations of each ancillary service, and must promote the development of competitive markets for ancillary services whenever feasible; and (iii) the RTO must ensure that its customers have access to a real-time balancing market.

Appendix D (Ancillary Services) to the WestConnect Tariff provides details on the ancillary services that all users of the WestConnect Grid will have the ability and/or obligation to provide, self-provide or purchase from WestConnect. These details include: (i) the determination of WestConnect's requirements in each category of ancillary services; (ii) the technical requirements of each ancillary service; (iii) the assignment of obligations for portions of the total WestConnect requirements to Scheduling Coordinators; (iv) the provision for a Scheduling Coordinator to self-provide to meet its obligations for certain ancillary services; and

[28] Order No. 2000 at 31,140. *See also* 18 C.F.R. § 35.34(k)(4) (2000).

[29] 18 C.F.R. § 35.34(k)(i) (2000).

(v) the market provisions for the ancillary services that WestConnect will acquire on behalf of either all Scheduling Coordinators (for those ancillary services that a Scheduling Coordinator cannot self-provide) or those Scheduling Coordinators that are not self-providing to meet their own obligations. As necessary, ancillary services requirements, obligations and acquisition will be location specific.

As required by the Commission, WestConnect will serve as the provider of last resort of the ancillary services of Regulation, Load Following Up, Load Following Down, Spinning Reserve, and Non-spinning Reserve. Market participants will have the option of self-supplying ancillary services, with the exception of Balancing Energy, Voltage Support, Scheduling and Dispatch, Black Start, Congestion Redispatch, and Local Generation Resource services. WestConnect will establish the minimum required amounts of each ancillary service. Ancillary services, whether self-provided or procured by WestConnect, will be subject to dispatch by WestConnect. Furthermore, WestConnect will provide transmission customers with access to a real-time balancing energy market.

WestConnect will perform Function 4.

I. Function 5 – OASIS and Total Transmission Capability (TTC) and Available Transmission Capability (ATC)

Order No. 2000 requires that a RTO "must be the single OASIS site administrator for all transmission facilities under its control and independently calculate TTC and ATC."

Through operation of the WestConnect Website described in Appendix I (WestConnect Website) to the WestConnect Tariff, WestConnect will be the single OASIS site administrator for all transmission facilities under its operational authority. Within the Western Interconnection, the concept of Operating Transfer Capability ("OTC") is used interchangeably with TTC. OTC reflects the seasonal capacity of congested interfaces and of interconnections to

non-WestConnect Control Areas, and is similar to TTC. The process by which WestConnect determines and makes available Transmission Rights for the scheduled use of FTR Interfaces and Scheduling Points, as described in Appendix A (Congestion Management) to the WestConnect Tariff, is similar to the Commission's concept of ATC.

WestConnect will perform Function 5.

J. Function 6 – Market Monitoring

Order No. 2000 requires RTOs to ensure that they provide "reliable, efficient and not unduly discriminatory transmission service" by providing for "objective monitoring of markets it operates or administers to identify market design flaws, market power abuses and opportunities for efficiency improvement, and propose appropriate actions."[30] Such market monitoring must include: (i) monitoring the behavior of Market Participants in the region, including transmission owners other than those participating in WestConnect, to determine if their actions hinder the RTO in providing reliable, efficient and not unduly discriminatory transmission service; (ii) periodically assessing how behavior in markets operated by others (*e.g.*, bilateral power sales markets and power markets operated by unaffiliated power exchanges) affects RTO operations and how RTO operations affect the efficiency of power markets operated by others; and (iii) filing reports with the Commission and other affected regulatory authorities concerning opportunities for efficiency improvement, market power abuses and market design flaws.[31]

Appendix H (Market Monitoring) to the WestConnect Tariff is designed to ensure that WestConnect provides reliable, efficient and not unduly discriminatory transmission service. Toward that end, the Market Monitoring and Tariff Compliance Unit will observe, track, collect and report data; assess transactions, conduct and performance; propose and recommend

[30] 18 C.F.R. § 35.34(k)(6) (2000).

[31] 18 C.F.R. § 35.34(k)(6)(i)-(iii) (2000).

appropriate actions; and investigate complaints and comments. Those activities will take place with respect to: (i) transactions taking place on the facilities operated or administered by WestConnect; (ii) the conduct of users and owners of, and the performance and use of those facilities; (iii) WestConnect's operation of those facilities and markets administered by WestConnect; (iv) conduct in and the performance of markets and transmission systems operated by others, insofar as they would impact WestConnect operations and markets administered by WestConnect; and (v) the conduct in and the performance of such facilities and markets administered by WestConnect on the operations of markets operated by others. WestConnect will not operate an energy market except to the extent necessary to provide ancillary services, in general, and Balancing Energy, in particular.

The Market Monitoring and Tariff Compliance Unit will report periodically on opportunities for efficiency improvements, abuses of market power, and market design flaws and misuse of market rules or procedures. The Market Monitoring and Tariff Compliance Unit will report directly to the Chief Executive Officer of WestConnect, provided, however, that the compensation for the head of the Market Monitoring and Tariff Compliance Unit and the budget for the Market Monitoring and Tariff Compliance Unit will be determined by the Board. The head of the unit will provide reports directly to the Board.

As is indicated in Appendix H, WestConnect will continue the development of Appendix H soon after its initial board meeting and will make a further filing no later than six months prior to the commencement of operations. That additional time will allow WestConnect to retain a Market Advisor, whose responsibilities, among others, will include the development of criteria, procedures, standards and specifications for identification of an exercise of market power or anti-competitive conduct or conditions, or misuse of market rules or procedures and the

development of measures, if any, for the mitigation of market power or other anticompetitive conduct or misuse of market rules or procedures.

WestConnect expects to have its procedures for market monitoring in place by the time it commences operation. Therefore, WestConnect does not expect that it will need the additional three years permitted by Order No. 2000 to implement this function. The provisions already included in Appendix H will permit WestConnect to satisfy all of the required components of a market monitoring plan.

The Commission has specifically required that the "monitoring plan should indicate whether the RTO will only identify problems and/or abuses or whether it will propose solutions to such problems."[32] The additional process described in Appendix H will permit WestConnect to notify the Commission no later than six months before WestConnect commences operations whether, and to what extent, WestConnect will become involved in mitigation in addition to the monitoring it will perform.

The WestConnect Applicants are discussing consolidating market monitoring functions as part of the ongoing seams discussions with other Western transmission owners.

WestConnect will perform Function 6.

K. Function 7 – Planning and Expansion

Order No. 2000 states that RTOs must, no later than December 15, 2004, have "ultimate responsibility" for "planning, and for directing or arranging, necessary transmission expansions, additions and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities."[33] RTOs should also: (i) "encourage market-driven operating and investment actions for preventing and

[32] Order No. 2000 at 31,156.

[33] Order No. 2000 at 31,163-64; 18 C.F.R. § 34.34(k)(7) (2000).

relieving congestion;" (ii) "accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities;" and (iii) "file a plan with the Commission with specified milestones that will ensure that it meets the overall planning and expansion requirement no later than three years after initial operation."[34]

The Planning Protocol attached as Appendix P to the WestConnect Tariff sets forth an open and transparent planning process under the direction and control of WestConnect. Appendix P provides the framework for the efficient expansion and upgrade of the WestConnect Grid. WestConnect will have the final responsibility for the regional transmission plan, subject to approval by regulatory and other entities with approval authority. WestConnect's planning and system expansion process will enable it to provide efficient, reliable and non-discriminatory transmission service, and should encourage market-driven operating and investment actions for preventing and relieving congestion.

Order No. 2000 also requires that the RTO's planning and expansion process accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities. WestConnect will accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities.

WestConnect will perform Function 7.

L. Function 8 – Interregional Coordination

Order No. 2000 requires RTOs "to develop mechanisms to coordinate its activities with other regions . . ."[35] and to explain how they will "ensure the integration of reliability practices within an interconnection [in WestConnect's case, the Western Interconnection] and market

[34] *Id.*

[35] Order No. 2000 at 31,167.

interface practices among regions."[36] The integration of reliability practices "involves procedures for coordination of reliability practices and sharing of reliability data among regions in an interconnection, including procedures that address parallel path flows, ancillary service standards, transmission loading relief procedures, among other reliability-related coordination requirements . . . ."[37] The integration of market interface practices "involves developing some level of standardization of inter-regional market standards and practices, including the coordination and sharing of data necessary for calculation of TTC and ATC, transmission reservation practices, scheduling practices, and congestion management procedures, as well as other market coordination requirements . . . ."[38]

Order No. 2000 emphasized that the inter-regional coordination requirement does not mean "that all RTOs necessarily must have a uniform practice, but that RTO reliability and market interface practices must be compatible with each other, especially at the seams. RTOs must coordinate their practices with neighboring regions to ensure that market activity is not limited because of different regional practices."[39] Order No. 2000 also specifies that if it "is not possible to set forth the coordination mechanisms at the time an RTO application is filed," an RTO applicant "must propose reporting requirements, including a schedule, for itself to provide follow-up details as to how it is meeting the coordination requirements . . . ."[40]

As indicated above, WestConnect will become a member of the WSCC and any successor organization, such as WECC. WECC is expected to provide a comprehensive forum

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[36] 18 C.F.R. § 35.34(k)(8).

[37] Order No. 2000 at 31,168.

[38] *Id.*

[39] *Id.*

[40] *Id.* at 31,167.

for addressing reliability issues and other interface issues currently being addressed by the WSCC.[41] The WECC's functions are described above under Characteristic 2.

An RTO Seams Task Force has been formed by WMIC, which is a committee within WSCC. The WestConnect Applicants have participated in these seams discussions to date through the Desert STAR process, and are now continuing their participation under the WestConnect model. In addition, the RTO Seams Task Force has representatives from the California Independent System Operator Corporation ("California ISO"), RTO West, Market Participants, Canada, state regulators in the West and others. The purpose of the RTO Seams Task Force is to address seams issues and other coordination issues among the three RTOs being created in the Western Interconnection. The RTO Seams Task Force has been meeting monthly since December 2000. The RTO Seams Task Force has established a number of subgroups to address specific issues, such as scheduling timelines, coordinated operation of phase shifters, outage coordination, congestion management, ancillary services, reciprocity pricing, market monitoring and market rules alignment. Additional information on the RTO Seams Task Force, its members and activities can be found at www.wrta.net/seams.htm.

In addition to the RTO Seams Task Force, the WestConnect Applicants through the Desert STAR process have participated, and plan to continue to participate, in meetings of the Seams Steering Group – Western Interconnection with RTO West and the California ISO. WestConnect will continue to explore other mechanisms to deal with other interregional issues and will satisfy this function.

WestConnect will perform Function 8.

[41] The WSCC is the only reliability council in the Western Interconnection.

V. OPEN ARCHITECTURE

Section 35.35(l) of the Commission's regulations provides that any RTO proposal "must not contain any provision that would limit the capability of the [RTO] to evolve in ways that would improve its efficiency."[42] Neither the LLC Agreement, the TCA, nor any provision of the WestConnect Tariff contains any such limitations. The documents were prepared with the recognition of the continuing changes in the electric industry and to enable WestConnect to be responsive those changes. The WestConnect Applicants expect that WestConnect will work with all Stakeholders to ensure that WestConnect may continue to evolve with changes in the marketplace.

In addition, and as evidenced by the participation of SRP, Western, and SWTC in developing the WestConnect model, WestConnect has an open door policy for any federal, public power or cooperatively owned transmission system that wants to participate in WestConnect. The WestConnect Applicants are working diligently with these entities to develop properly structured Transmission Control Agreements to permit their participation by satisfying their unique statutory, legal or regulatory restrictions. Section 3.2(b) of the LLC Agreement provides an open window running until the Independence Date, during which time a transmission-owning utility in the Western Interconnection may execute a TCA and thereby become a Participating TO. After the Open Window Period, transmission-owning utilities may negotiate the terms and conditions of participation with WestConnect. As a Participating TO, such transmission owner will receive a contractual commitment from WestConnect: (i) to collect that utility's rates for transmission and ancillary services; (ii) to pay that utility its TCA Fees; and (iii) to have WestConnect assume Functional Authority over the transmission assets specified by the transmission-owning public power utility.

[42] 18 C.F.R. § 35.34(l).

VI. CONCLUSION

For the reasons discussed in this Petition, the WestConnect Applicants submit that the Commission should find that the proposed WestConnect RTO meets or exceeds the requirements of Order No. 2000, and that WestConnect LLC will be a fully compliant RTO.

Respectfully submitted,

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Dated: October 15, 2001

Notice of Filing

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Arizona Public Service Company	)	
El Paso Electric Company	)	
Public Service Company of New Mexico	)	**Docket No. RT02-____-000**
Tucson Electric Power Company	)	
	)	
WestConnect RTO, LLC	)	

NOTICE OF FILING

Take notice that on October 15, 2001, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Tucson Electric Power Company filed pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR § 385.207, and the Commission's Regional Transmission Organization ("RTO") rules at 18 CFR § 35.34(d)(3) and (4), a petition for Declaratory Order seeking confirmation that their joint proposal to form WestConnect RTO, LLC ("WestConnect") meets or exceeds the Commission's requirements for the formation of RTOs under Order No. 2000.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). All such motions or protests must be filed in accordance with § 35.8 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

Attachment 1

Executive Summary of LLC Agreement

Executive Summary[1]

Limited Liability Company Agreement of WestConnect RTO, LLC

(Summary Date: October 15, 2001)

I. *General*

A. WestConnect will be a Delaware limited liability company. (Section 1.6)[2]

B. WestConnect will operate as a for-profit Regional Transmission Organization ("RTO") in accordance with FERC Order No. 2000. (Article II)

C. As discussed in more detail in Parts II and III below, WestConnect's flexible organizational structure permits a transmission owner (whether an investor-owned utility, public power entity, or another transmission organization) to participate in the WestConnect RTO in a variety of ways, consistent with the transmission owner's regulatory requirements and strategic objectives.

1. Consistent with FERC Order No. 2000, WestConnect's organizational structure encourages broad participation of transmission owners.

2. The WestConnect organizational structure facilitates the voluntary divestiture of transmission assets for transmission owners who desire to contribute their assets to WestConnect in exchange for membership interests and allows transmission owners to sell their transmission assets to WestConnect for cash under certain circumstances. (*See* Parts II(C) and (D) below)

3. Consistent with the for-profit nature of WestConnect and the desire to provide WestConnect broad access to capital markets to better facilitate needed investment in and expansion of the regional transmission system:

a. Both "Market Participants"[3] and non-Market Participants may participate in WestConnect through the ownership of WestConnect equity "Interests" (see Part III below); and

b. The LLC Agreement provides various liquidity alternatives for holders of WestConnect Interests, including "tag-along rights,"

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[1]This Executive Summary summarizes certain provisions of the Limited Liability Company Agreement (the "LLC Agreement") of WestConnect RTO, LLC filed with FERC on October 15, 2001.

[2] Section, Article, Schedule, and Definitional references are to the LLC Agreement.

[3] Generally, a "Market Participant" includes any entity, or affiliate of an entity, that sells or brokers electric energy or provides ancillary services to WestConnect. (Definition of Market Participant)

"exchange rights," "put rights," and registration rights. (See Part IV(F) below)

D. Capital Structure

1. A person who holds a WestConnect equity Interest is called a "Member". (Definition of Member)

2. WestConnect's capital structure consists of three "classes" of Interests: Class A Interests (held by non-Market Participants), Class C Interests (held by Market Participants), and a Class B Interest.

   a. The Class A Interests and the Class C Interests collectively represent all of WestConnect's economic attributes. (Sections 4.1(a)(i) and 4.1(c)(i))

   b. The Class B Interest has voting rights, but no economic rights in WestConnect. (Section 4.1(a)(i)) As described in greater detail in Part IV(A)(2) below, the Class B Interest is held by an independent trustee or similar party that votes the Class C Interests at the direction of WestConnect's Board of Directors, except on certain voting matters reserved to the holders of Class C Interests. (Section 4.1(c))

3. Each "unit" of Class A Interests and Class C Interests is associated with one of two "Series": the "First Series" or the "Second Series". (Section 4.1(a)(i)) All Interests (whether Class A, Class B, or Class C, and regardless of Series) vote on a one unit of Interest/one vote basis. (Sections 4.1(b)(i) and 4.1(d)(i))

   a. Generally, the assets and liabilities of the First Series (whether associated with a Class A Interest or a Class C Interest) consist of WestConnect's "Start-Up Costs"[4] and related assets and liabilities. (Sections 4.1(a)(ii), 4.1(b)(ii), and 4.1(d)(ii))

      (i) Before the "Independence Date" (the date that WestConnect commences performance of "Functional Authority"[5] over transmission assets), all Members will hold First Series Interests.

      (ii) If an entity's corporate charter or applicable regulatory requirements prohibit the entity from becoming a WestConnect Member (such an entity is defined in the LLC

[4] Generally, "Start-Up Costs" are the costs and expenses incurred in connection with the formation, development, and implementation of WestConnect as an RTO. (Definition of Start-Up Costs)

[5] "Functional Authority" means operational authority, pricing authority, access authority, and planning authority, as such terms are defined in the form of the Transmission Control Agreement that will be attached to the LLC Agreement as an exhibit.

Agreement as a "Public Power Participant"), the entity can participate in funding WestConnect's Start-Up Costs by becoming a "Debt Holder" and lending funds to WestConnect. (Definition of Public Power Participant; Definition of Debt Holder; Article IV)

(iii) WestConnect may also accept contributions of property and services from a transmission owner that is neither a Member nor a Debt Holder (such as a public power entity) in order to defray WestConnect's Start-Up Costs if the transmission owner is legally constrained from being a Member or Debt Holder or WestConnect otherwise determines that such an approach is appropriate. (Section 4.3)[6]

b. Generally, the assets and liabilities of the Second Series (whether associated with a Class A Interest or a Class C Interest) consist of all assets and liabilities that are not First Series assets and liabilities, such as transmission assets acquired or constructed by WestConnect and other WestConnect assets and liabilities acquired or incurred after WestConnect issues Second Series Interests. (Sections 4.1(a)(ii), 4.1(b)(ii)(D), and 4.1(d)(ii)(D))

c. The First Series is separate from the Second Series for legal, financial, tax reporting, and other purposes. The purpose of segregating First Series assets and liabilities from Second Series assets and liabilities is to allow persons who hold First Series Interests (whether Class A or Class C) to segregate their investment in the First Series (including the return on such investment) from any investment such persons and others may elect to make in Second Series Interests (whether Class A or Class C). (Section 4.1(a)(ii)) This structure allows WestConnect's Members to choose the extent and nature of their financial participation in WestConnect. In particular, it permits parties to support the start-up of WestConnect without committing to participation in WestConnect's potential ownership of transmission assets.

II. *Participation Alternatives for Market Participants*

A. Transfer of Functional Authority Over Transmission Assets to WestConnect With Ongoing Participation as a Member

[6] Participation in WestConnect by federal, public power and cooperatively-owned transmission systems is restricted or may be limited by statutory, legal or regulatory constraints. These entities may be able to participate in WestConnect through a properly-structured Transmission Control Agreement.

1. On or before the Independence Date, each of WestConnect's "Initial Members" (i.e., each party that becomes a WestConnect Member upon the effective date of the LLC Agreement) and initial Debt Holders will sign a Transmission Control Agreement ("TCA") with WestConnect under which WestConnect will exercise Functional Authority over their transmission assets. (Section 3.1).

2. In order to further the goals of FERC Order No. 2000, the WestConnect model requires WestConnect to exercise Functional Authority over transmission assets if a transmission owner so requests during the "Open Window Period" (the period before the Independence Date). This obligation is subject to the satisfaction of certain conditions, such as the transmission owner's agreement to enter into a TCA with WestConnect and the transmission assets being located in a service territory within the Western Interconnection. (Section 3.2(b))

3. The WestConnect model permits - but does not require - a transmission owner to transfer ownership of its transmission assets to WestConnect in order for the transmission owner to participate in WestConnect.

4. Each Initial Member of WestConnect and each party that becomes a WestConnect Member during the Open Window Period will receive First Series Interests (if, as expected, all of these Members are Market Participants, these Members would hold Class C, First Series Interests).

    a. Each Initial Member and each Initial Debt Holder will fund its pro rata share of WestConnect's Start-Up Costs based on the value of its transmission assets compared to the value of all transmission assets owned by Members and Debt Holders. The funding obligation of each Initial Member and initial Debt Holder is capped based upon a Start-Up Costs budget attached to the LLC Agreement at the time of signing. (Section 4.2(a))

    b. A party that becomes a Member during the Open Window Period (i.e., a party that is not an Initial Member) is responsible for (i) its pro rata share of WestConnect's Start-Up Costs (see the preceding subparagraph), (ii) any marginal costs that WestConnect may incur in connection with integrating the party's transmission assets into the WestConnect system, and (iii) if applicable, a premium payment for a return on Start-Up Costs (representing any increase in the fair market value of WestConnect's assets resulting from WestConnect's previous Start-Up Costs expenditures). (Sections 4.2(a) and 4.4(b)(i))

    c. A party that enters into a TCA with WestConnect before the second anniversary of the Independence Date must become a WestConnect Member or Debt Holder (and "share" in

WestConnect's Start-Up Costs) if the party (i) has a minimum original cost of "pricing authority facilities" of $25 million, (ii) has a minimum effective transmission rate of $1.00/kw-month, as calculated in accordance with the LLC Agreement, and (iii) has a minimum of 100 circuit miles of transmission lines rated at 115 kV or above. (Section 4.4(b)(iii))

5. Each party that acquires First Series Interests (including each Initial Member) has significant flexibility with respect to its ongoing financial participation in WestConnect.

   a. Each First Series Member may, for example, elect to (i) increase the amount of its First Series Interests by converting a portion of its Start-Up Costs payments from debt to equity (Section 4.2(b)), (ii) convert its First Series Interests to Second Series Interests (Section 4.8), (iii) exercise a "call right" to purchase Second Series Interests equal to its ownership percentage of First Series Interests (Section 4.6(j)), and (iv) exercise a right of first refusal over WestConnect's issuance of Second Series Interests, subject to certain conditions (Section 4.6(f)).

      (i) Essentially, this allows each First Series Member to limit both its financial risk and financial upside by limiting its financial involvement to First Series Interests and debt, which WestConnect is obligated to retire with specific WestConnect revenues. (Section 4.9) Alternatively, each First Series Member can expand its financial involvement in WestConnect's RTO business by investing in the Second Series through conversion, the call right, the right of first refusal, the contribution of transmission assets to WestConnect (see Part II(C) below), or the negotiated purchase of Second Series Interests from WestConnect.

B. Transfer of Functional Authority Over Transmission Assets to WestConnect With Ongoing Participation as a Debt Holder

1. A transmission owner that is a Public Power Participant, i.e., a transmission owner that cannot legally become a WestConnect Member (see Part I(D)(4)(a)(ii) above), may become a Debt Holder and allow WestConnect to exercise Functional Authority over its transmission assets pursuant to a TCA between WestConnect and the transmission owner.

2. A Public Power Participant participates in funding WestConnect's Start-Up Costs by lending funds to WestConnect. (Definition of Public Power Participant; Definition of Debt Holder; Article IV)[7]

   a. WestConnect is obligated to retire the Public Power Participant's debt with specific WestConnect revenues. (Section 4.9)

3. If a Public Power Participant later determines that it can acquire Interests in WestConnect and become a WestConnect Member, a portion of the Public Power Participant's Start-Up Costs payments are converted into First Series Interests. (Section 4.2(a)(ii)(B)) If that occurs, the Public Power Participant would have the financial alternatives described under Part (II)(A)(5) above.

C. Transfer Ownership of Transmission Assets to WestConnect In Exchange for Second Series Interests

1. In order to further the goals of FERC Order No. 2000, the WestConnect model requires WestConnect to acquire ownership of transmission assets if a transmission owner so requests before the first anniversary of the Independence Date (this period can be extended up to 45 days under certain circumstances). (Section 3.2(b))

   a. The purchase price for the assets would be the net book value of the assets. WestConnect would pay the purchase by issuing Second Series Interests to the transmission owner (WestConnect is not required to pay cash in this situation). WestConnect's obligation to acquire transmission assets is subject to the satisfaction of certain conditions, such as the transmission assets being located in a service territory within the Western Interconnection and the acquisition not affecting WestConnect's ability to obtain or maintain an investment grade rating. (Section 3.2(c))

2. In addition to the "put right" described in the preceding subparagraph, a transmission owner can negotiate with WestConnect to sell its transmission assets to WestConnect in exchange for Second Series Interests on mutually agreeable terms at any time after the Independence Date. (Section 3.2(a))

D. Transfer Ownership of Transmission Assets to WestConnect In Exchange for Cash and/or Debt

[7] As noted above, the LLC Agreement also permits WestConnect to accept contributions of property and services from a transmission owner that is neither a Member nor a Debt Holder in order to defray Start-Up Costs. (Section 4.3) See footnote 6 regarding the ability of certain federal, public power and cooperatively-owned transmission systems to participate in WestConnect through a properly-structured TCA.

1. A transmission owner can negotiate with WestConnect to sell its transmission assets to WestConnect in exchange for cash and/or WestConnect debt obligations on mutually agreeable terms at any time after the Independence Date. (Section 3.2(a))

2. WestConnect could raise the necessary cash for the purchase of transmission assets through the issuance of Second Series Interests (subject to a right of first refusal in favor of existing Members) or the incurrence of additional debt. (Sections 4.6(e), (f), and (g))

III. *Participation Alternatives for Non-Market Participants*

A. WestConnect's for-profit organizational structure allows non-Market Participants to acquire and hold Class A Interests. These Class A Interests may either be First Series or Second Series Interests. (Section 4.1(b))

1. Holders of Class A Interests have full voting rights (see Part IV(A)(2) below), including the right to replace and elect Directors (see Part (IV)(C)(2) below).

B. If a holder of Class C Interests becomes a non-Market Participant or assigns its Class C Interests to a non-Market Participant, the Class C Interests automatically convert into Class A Interests. (Section 4.1(d)(i))

C. Class C Members and Class A Members have "tag along rights" and "put rights" to protect their WestConnect investments in the event of a change of control transaction. (See Part (IV)(F) below)

IV. *Other LLC Agreement Provisions*

A. Certain Attributes of Interests and Series

1. Class A Interests (whether First Series or Second Series) are held by non-Market Participants, while Class C Interests (whether First Series or Second Series) are held by Market Participants. (Sections 4.1(b)(i) and 4.1(d)(i))

2. Except for voting rights, the Class A Interests and the Class C Interests in the same Series have the same rights and privileges. The Class B Interest has certain voting rights, but no economic interest in WestConnect. (Section 4.1(a)(i))

a. Class A Interests have full voting rights. (Section 4.1(b)(i))

b. Consistent with FERC's requirement that Market Participants have a passive ownership interest in Regional Transmission Organizations, Class C Interests have no voting rights, except on certain matters, such as the approval of WestConnect's dissolution

or WestConnect engaging in a business not related to the transmission of electric power (see Part IV(C)(6) below). (Sections 4.1(d)(i), 4.1(d)(iv), 6.10(b), and 6.13(b)).

c. The Class B Interest is held by an independent trustee or similar party, which has all of the voting rights of the Class C Interests, except for those matters specifically reserved to Class C members (see the preceding subparagraph). The independent trustee votes the Class C Interests at the direction of the independent Board of Directors. (Section 4.1(c)) The independent trustee, as the holder of the Class B Interest, will possess all member voting rights (except on reserved matters) until (i) WestConnect issues Class A Interests or (ii) Class C Interests are converted into Class A Interests (Section 4.1(d)(i)); at that time, the Class B Interest's voting rights will be reduced by the Class A Interests' voting rights. (Section 4.1(c)(i))

3. To the fullest extent permitted by Delaware law, the debts and obligations of one Series cannot be enforced against the assets of the other Series. (Section 1.7)

4. See Part I(D) above for additional information about the First and Second Series.

5. As noted above, all Interests (whether Class A, Class B, or Class C, and regardless of Series) vote on a one unit of Interest/one vote basis.

B. Allocations and Distributions

1. Allocations of profits and losses of each Series are allocated to the holders of Class A and Class C Interests in each Series. (Section 5.1)

2. Special allocations required under the federal tax laws are contemplated. (Section 5.1(b), (e) and (f))

3. WestConnect is required to make certain distributions to Members who pay income taxes on any undistributed WestConnect profits. (Section 5.3(c))

4. WestConnect is required to make certain federal income tax elections. (Section 5.5)

C. Management

1. WestConnect will be governed by an independent Board selected in accordance with a FERC-approved process. (Sections 6.1(a) and (b); Schedule D)

2. Class A Members have a right to elect a number of Directors based on their ownership percentage of Interests. (Section 6.1(c))

3. WestConnect will have nine Directors. The Directors and officers must be "Independent Persons," which means that they cannot have a financial interest in, or stand to be financially benefited from a transaction involving, a Market Participant. (Section 6.2; Article XI)

4. The Board will establish a "Stakeholder Advisory Committee" consisting of Market Participants and other stakeholders conducting business in WestConnect's service territory. (Section 6.7) WestConnect will also have a "Market Monitor." The company will have a Market Monitoring and Tariff Compliance Unit and may also have a Market Advisor. (Section 6.8)

5. WestConnect is not permitted to do certain things, such as pledge its assets for the benefit of any Member, violate the LLC Agreement or any applicable law, or require a Member or Debt Holder to make additional capital contributions or loans beyond specified limits. (Section 6.13)

6. Without the approval of a "Super Majority of the Members,"[8] the Board may not cause WestConnect to take certain actions, including dissolving WestConnect, instituting bankruptcy proceedings, or engaging in any business not relating to the transmission of electric power. (Section 6.13(b))

7. WestConnect will have specified officers with specified duties. (Sections 6.15-6.19)

8. WestConnect may not enter into any agreement with a Member or Market Participant unless the agreement contains substantially similar terms and conditions as would be contained in a similar agreement entered into as the result of arm's-length negotiations. (Section 6.21)

D. Books and Records

1. WestConnect is required to keep accurate books and records and provide specified information to Members and Debt Holders. (Sections 7.1 and 7.2)

E. Indemnification and Duties

1. WestConnect must indemnify "Covered Persons," including WestConnect's directors and officers, for any act or omission performed

[8] Generally, a "Super Majority of the Members" means any combination of Members holding Class A or Class C Interests owning more than 85% of WestConnect's outstanding units of Interests. (Definition of Super Majority of Members)

or omitted by the Covered Persons in good faith on behalf of WestConnect, subject to specified terms and conditions. (Section 8.1)

2. WestConnect will indemnify various parties in connection with any registration of WestConnect's securities under Section 9.4 (see below), subject to specified terms and conditions. (Section 8.2)

F. Assignments, Transfers, and Registration Rights

1. Members may assign their Interests, subject to the "tag-along rights," "exchange rights," "put rights" and WestConnect Sale Agreement described in this Part IV(F). (Section 9.1)

2. Class C Members have the right to participate, on a pro rata basis, in any transaction in which a person acquires voting control of WestConnect through the acquisition of Interests. This is referred to in the LLC Agreement as a "tag-along right." (Section 9.2)

3. If all of the Members and Debt Holders enter into a "WestConnect Sale Agreement" on or before the Independence Date, then each subsequent Member must sign the WestConnect Sale Agreement as a condition to becoming a Member. A WestConnect Sale Agreement is an agreement under which all Members agree to sell their Interests to a third party if, at some point in the future, a third party offers to purchase all of the Members' Interests and a Super Majority of Members determines to accept the offer. (Section 9.3)

4. WestConnect grants Members holding Class C Interests "piggy-back" registration rights, subject to customary terms and conditions. (Section 9.4)

5. WestConnect grants specified categories of Members the right to exchange transmission assets subject to TCAs for Class A or Class C Interests (or equity securities into which such Interests are converted), subject to specified terms and conditions. (Section 9.5)

6. WestConnect grants "demand registration" rights to holders of at least 15% of WestConnect's voting rights. The demand registration rights are exercisable on and after the tenth anniversary of the Independence Date, subject to specified terms and conditions. (Section 9.6)

7. Each Member has the right to "put" all of its Interests to any person that acquires voting control of WestConnect, subject to specified terms and conditions. This is referred to in the LLC Agreement as a "put right." (Section 9.7)

G. Dissolution; Termination; Withdrawal

1. WestConnect (and each Series) is dissolved upon the occurrence of certain events. (Section 10.1)

2. Following dissolution, WestConnect's assets are liquidated and distributed based on certain priorities. (Section 10.2)

H. Before the Independence Date, each Member and Debt Holder may withdraw its participation in WestConnect, subject to specified terms and conditions. (Section 10.3)

I. Miscellaneous

1. The LLC Agreement may be amended with the consent of all of the Members and Debt Holders. (Section 12.5)

2. Controversies or claims arising out of the LLC Agreement are subject to alternative dispute resolution procedures. (Section 12.8)

3. The LLC Agreement is governed by Delaware law. (Section 12.10)

Attachment 2

Executive Summary of WestConnect Tariff

WestConnect RTO, LLC

Summary of WestConnect Tariff and Attachments and Appendices Thereto

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WestConnect Tariff

A. Purpose of Document

The purpose of the WestConnect Tariff is to provide for the transmission access regime and Ancillary Services markets to be administered by WestConnect RTO, LLC. ("WestConnect"). While the actual details are contained in the WestConnect Tariff's Attachments, Appendices, and associated Protocols and Operating Procedures to be developed, the WestConnect Tariff itself provides the overall administrative framework.

B. Document Summary

The WestConnect Tariff provides many of the administrative details expected in any tariff, such as effective dates, rules of interpretation, and assignment provisions. It also provides information on the duties and responsibilities of the various categories of players, including WestConnect itself, Scheduling Coordinators ("SCs"), Participating Transmission Owners ("TOs"), Area Operations Centers ("AOCs"), Resource Operations Centers ("ROCs") and Generators.

The WestConnect Tariff provides the details on how WestConnect will provide Transmission Service, although the details of transmission pricing are contained in Appendix O (Transmission Service Pricing and Revenue Distribution). References are also included to the Appendix P (Planning and Expansion Process) and the Appendix Q (Interconnection Process) that will be developed.

In addition, the WestConnect Tariff describes the WestConnect Alternate Dispute Resolution ("ADR") process that will be utilized to address most disputes within WestConnect's areas of responsibility. Finally, the WestConnect Tariff includes creditworthiness criteria, liability and indemnification provisions, confidentiality provisions and provisions for Force Majeure.

Any changes to the WestConnect Tariff, including its Attachments and Appendices, must be approved by the WestConnect Board and the Federal Energy Regulatory Commission ("FERC" or the "Commission").

Attachment 1: Master Definitions

A. Purpose of Document

The purpose of Attachment 1 is to provide the common definitions for the capitalized terms used in all other WestConnect documents.

B. Document Summary

Attachment 1 contains an alphabetical listing of all of the definitions, including, under the term "Acronyms," a listing of all the Acronyms for the defined terms with acronyms.

Attachment 2: Relationship Among Documents

A. Purpose of Document

Attachment 2 provides a brief summary of the contents of all the various WestConnect documents. This document provides a roadmap to understanding how all the documents fit and work together to provide the foundation for WestConnect and the transmission access regime and Ancillary Services markets that WestConnect will administer.

B. Document Summary

Attachment 2 provides a simple listing and brief description of the WestConnect Tariff and each of the Attachments and Appendices. Also described are the agreements that WestConnect will enter into with other entities: a Scheduling Coordinator Agreement ("SCA" - both Western Area Power Administration and non-Western Area Power Administration versions) with each Scheduling Coordinator ("SC"); a Generator Agreement ("GA") with Generators; and a to be completed Transmission Control Agreement ("TCA") with each Participating Transmission Owner ("TO").

Appendix A: Congestion Management

A. Purpose of Document

Appendix A provides the details on how Eligible Customers and their Scheduling Coordinators ("SCs") gain scheduling rights on potentially constrained internal transmission interfaces (known as FTR Interfaces) and on interfaces (known as Scheduling Points) with adjoining facilities that are outside WestConnect's Operational Authority. This is a physical transmission rights model, with the FTR Interfaces and Scheduling Points defining the boundaries of WestConnect Congestion Zones. Appendix A also provides details on the management of Congestion within a Congestion Zone (Intra-Zonal Congestion).

B. Document Summary

Appendix A provides details of Firm Transmission Rights ("FTRs"), Recallable Transmission Rights ("RTRs"), Non-firm Transmission Rights ("NTRs") and Non-Converted Rights ("NCRs"), together called Transmission Rights. WestConnect will periodically auction off FTRs on transmission interfaces (FTR Interfaces) that experience, or are expected to experience, commercially-significant amounts of Congestion and on connections (Scheduling Points) to adjoining facilities that are outside WestConnect's Operational Authority. The WestConnect Board will have the authority, with proper notification, to create new and eliminate existing FTR Interfaces and Scheduling Points. A Transmission Right is the right to schedule the delivery of one (1) MW of Energy or capacity for Ancillary Services or on-demand Firm Energy in a specific direction across an FTR Interface or Scheduling Point for one (1) hour (Settlement Period).

All FTRs will be auctioned. The amounts of FTRs to be auctioned are based on the Operating Transfer Capability ("OTC") of the FTR Interface or Scheduling Point, less any amount of transfer capacity that must be reserved to allow WestConnect to honor Existing Contracts ("ECs") that have not been converted to Transmission Service under the WestConnect Tariff (i.e., to honor NCRs). The FTR auctions are single round clearing price auctions. In the event of tie bids at an FTR Clearing Price equal to the Maximum Allowable Bid, the tiebreaker goes to the rights holders of ECs who converted the ECs to Transmission Service under the WestConnect Tariff and to the suppliers of FTR Requirements Load (i.e., the SCs serving Load that historically used the FTR Interface or Scheduling Point).

FTRs can be traded in secondary markets. While WestConnect does not require notification of each FTR transfer in the secondary markets, the final owner of each FTR must be reported to WestConnect so that WestConnect can validate Schedules that utilize FTR Interfaces and/or Scheduling Points.

If the current owner of record of an FTR or an NCR with compatible scheduling requirements does not inform WestConnect early on the Calendar Day before a Trading Day that it intends to actually use the FTR, WestConnect will conduct an auction to sell the FTR as an RTR. The RTR auctions are single round and the price paid is the price bid. Such an RTR can be recalled by WestConnect if the owner of the underlying FTR submits a Balanced

Schedule utilizing such FTR at any time up to two (2) hours prior to the start of a particular Settlement Period (clock hour). RTRs are recalled on the basis of price paid, with those paying the lowest price being recalled first. If not recalled by two (2) hours prior to the start of a Settlement Period, RTRs are treated like the underlying FTRs. If recalled, the SC losing the RTRs has until one (1) hour prior to the start of the Settlement Period to submit a new Balanced Schedule that does not use the RTRs that were recalled. Unsold FTRs and RTRs will be made available on a first come, first serve basis during the Schedule Adjustment Process.

Once the Day-Ahead Schedules have been submitted and validated, WestConnect will determine if it can make available NTRs based on counterflow schedules and transmission capacity that has been used to schedule delivery of Ancillary Services. NTRs will be made available on a first come, first serve basis and will be interruptible upon cancellation of the counterflow, activation of the Ancillary Service or Curtailment of Transmission Rights on the applicable FTR Interface or Scheduling Point.

Details on the treatment of non-converted ECs, and the resulting NCRs, are covered in Appendix E (Existing Contracts). Appendix E requires the submission of NCR Instructions for WestConnect to utilize in honoring the terms of the non-converted EC.

Appendix A also addresses the responsibilities of WestConnect and the SCs in the event that the transfer capability of and rights over an FTR Interface or Scheduling Point must be curtailed. The responsibilities vary with the time remaining before the close of the Day-Ahead Scheduling Process and the close of the Schedule Adjustment Process, and in Real-Time.

The revenues from the FTR auctions for each FTR Interface or Scheduling Point will be distributed in a combination of three (3) ways for each FTR Interface or Scheduling Point. Part of the auction revenues will go to the holders of ECs, where the EC provides for the use of the applicable FTR Interface or Scheduling Point, that have been converted to Transmission Service under the WestConnect Tariff. Part of the auction revenues will go to the providers of service to the FTR Requirements Load that uses the applicable FTR Interface or Scheduling Point. The rest of the auction revenues will go to the Participating Transmission Owners ("TOs") owning or holding Entitlements in the FTR Interfaces and Scheduling Points and shall be a credit in the determination of the applicable Access Area Rates. Appendix O (Transmission Service Pricing and Revenue Distribution) contains additional detail on the transmission pricing regime.

Revenues from the RTR auctions will be utilized to reduce the Grid Management Component ("GMC") of the WestConnect Grid Charge. Again, additional details are provided in Appendix O.

Intra-Zonal Congestion during the Day-Ahead Scheduling Process of Appendix B (Scheduling) is managed through the use of Congestion Redispatch bids, with the costs shared by the load in the Congestion Zone. WestConnect will not accept changes to Schedules through the Schedule Adjustment Process that cause Intra-Zonal Congestion unless:

a) there are Congestion Bids available to manage the Intra-Zonal Congestion;

b) the SC submitting the Schedule change that would cause the Intra-Zonal Congestion agrees to pay the cost; and

c) there is sufficient time for WestConnect to carry out steps a) and b).

If Intra-Zonal Congestion occurs in Real-Time, it will be managed in accordance with the provisions of Appendix C (Dispatch and Emergency Operations).

The costs of managing Real-Time Inter-Zonal Congestion will be allocated to the SC's using the constrained FTR Interface or Scheduling Point when the Inter-Zonal Congestion is caused by a reduction in FTR Interface or Scheduling Point capacity. The costs of managing Real-Time Inter-Zonal Congestion will be recovered through the Grid Management Component ("GMC") of the WestConnect Grid Charge when the Inter-Zonal Congestion is not caused by a reduction in FTR Interface or Scheduling Point capacity. The costs of managing Real-Time Intra-Zonal Congestion will be allocated to the SC's serving Demand in the Congestion Zone experiencing the Intra-Zonal Congestion.

Finally, Appendix A includes reference to WestConnect's development, at least six (6) months prior to the WestConnect Operations Date, of an FTR Requirements Matrix that indicates the degree to which FTR Interfaces and Scheduling Points are used for various transactions between Congestion Zones. This FTR Requirements Matrix will be based on a methodology to be developed within one hundred and eighty (180) Calendar Days of the Commission's initial acceptance of the WestConnect Regional Transmission Organization ("RTO") filing. This methodology will determine the FTR Requirements Matrix on the basis of:

a) Flow Distribution Factors ("FDFs"); or

b) historical usage and contract rights; or

c) a combination of the FDF and historical usage/contract rights approaches; or

d) a new hybrid approach.

Through its use the FTR Requirements Matrix will indicate to SCs the Transmission Rights required to implement their Schedules. The FTR Requirements Matrix will also be utilized in the determination of the NCRs that must be allocated to the SCs scheduling non-converted ECs in order to allow WestConnect to honor such non-converted ECs. The FTR Requirements Matrix will also be used to determine the distribution of the FTR auction revenues to:

a) holders of ECs converted to Transmission Service under the WestConnect Tariff;

b) providers of service to FTR Requirements Load; and

c) the Participating TOs.

Appendix B: Scheduling

A. Purpose of Document

Appendix B provides details on how Scheduling Coordinators ("SCs") will submit Balanced Schedules to WestConnect as part of the Day-Ahead Scheduling Process and adjust those Balanced Schedules during the Schedule Adjustment Process. This includes the information SCs will provide in order to self-provide their shares of WestConnect's Ancillary Services requirements and to offer Resources into WestConnect's Ancillary Services markets. Appendix B also provides details on the validation process WestConnect will apply to the Balanced Schedules and Ancillary Services Schedules and bids submitted by SCs.

B. Document Summary

The Day-Ahead Scheduling Process covers all Settlement Periods of the Trading Day and starts late in the Calendar Day two Calendar Days prior to the Trading Day with WestConnect providing a forecast of system conditions for the Trading Day and conducting an auction for any remaining Firm Transmission Rights ("FTRs") for the Trading Day. On the Calendar Day prior to the Trading Day WestConnect:

a) updates its system forecasts;

b) identifies any Load Pocket Conditions and, if necessary, conducts an auction for Local Generation Resource ("LGR") service[1];

c) seeks notification of intended use of FTRs and Non-Converted Rights ("NCRs") and auctions off any unused FTRs and NCRs (if the NCR has compatible scheduling rights) as Recallable Transmission Rights ("RTRs");

d) accepts and validates the Balanced Schedules, self-provided Ancillary Services Schedules and Ancillary Services bids submitted by SCs (including any inter-SC trades of Energy or Ancillary Services);

e) runs an Ancillary Services procurement process and, later, receives Resource-specific information for Ancillary Services procured from Portfolio Resources;

f) manages any Intra-Zonal Congestion;

g) posts the availability of Non-firm Transmission Rights ("NTRs");

h) performs Control Area checkout with neighboring Control Areas; and

i) develops an Operating Plan for the Trading Day, provides the Operating Plan to the

[1] In other regions, the Generating Units providing such service are often referred to as Reliability Must-Run ("RMR") units. WestConnect commits, in Appendix D (Ancillary Services), to further development or replacement of the LGR service approach prior to the WestConnect Operations Date.

appropriate Operating Entities, and posts the non-confidential details of the Operating Plan on the WestConnect Website.

The Schedule Adjustment Process applies to each Settlement Period of the Trading Day independently, starts at the close of the Day-Ahead Scheduling Process and normally ends one (1) hour prior to the start of the Settlement Period. During this process WestConnect:

a) accepts and validates changes in the Balanced Schedules of SCs, as long as such changes do not cause WestConnect Grid security problems or cause Intra-Zonal Congestion;

b) accepts and validates changes in the Balanced Schedules of SCs if the change would cause Intra-Zonal Congestion, but only if there are Congestion Redispatch bids still available and sufficient time for WestConnect to provide the SC with the estimated cost of using the Congestion Redispatch bids to allow the Schedule change to take place and the SC accepts such cost;

c) procures additional Ancillary Services to either replace previously committed Ancillary Services that are no longer available or to meet increased WestConnect Ancillary Services requirements;

d) recalls, up until two (2) hours prior to the start of the Settlement Period, RTRs for use by the original FTR or NCR holders in submitting revised Balanced Schedules;

e) accepts and validates revised Balanced Schedules from SCs that have had RTRs recalled;

f) performs Control Area checkout with neighboring Control Areas; and

g) updates the Operating Plan for the Settlement Period and, if applicable, the rest of the Trading Day, provides the revised Operating Plan to the appropriate Operating Entities, and posts the non-confidential details of the Operating Plan on the WestConnect Website.

Appendix C: Dispatch and Emergency Operations

A. Purpose of Document

Appendix C provides details on WestConnect's normal operation of the system after the close of the Schedule Adjustment Process (see Appendix B, Scheduling), normally at one (1) hour prior to the start of any particular Settlement Period. This includes the relationships between WestConnect and the various Operating Entities, including the Area Operations Centers ("AOCs") of Participating Transmission Owners ("TOs") and the Resource Operations Centers ("ROCs") of Scheduling Coordinators ("SCs") representing Dispatchable Demands and Generating Units. Appendix C also covers operation during times of System Insufficiency (lack of Ancillary Services) and System Emergencies (danger of instability, voltage collapse or uncontrolled cascading Outages).

B. Document Summary

Under the terms of the Transmission Control Agreements ("TCAs") with the Participating TOs, WestConnect will have Operational Authority over the Operational Authority Facilities that constitute the WestConnect Grid. WestConnect also has dispatch authority over the Ancillary Services that SCs are either self-providing to WestConnect for its use or committing to provide as a result of WestConnect's Ancillary Services procurement process. This includes the use of Supplemental Energy offers that may be submitted as late as thirty (30) minutes prior to the start of the Settlement Period.

WestConnect and the ROCs are responsible for the dispatch of Ancillary Services in order to maintain load-frequency control within the WestConnect Control Area. WestConnect and the AOCs of the Participating TOs are responsible for the physical operation of the WestConnect Grid, including operation by the AOCs, under the direction or delegation of WestConnect, of voltage control devices. All Dispatch Instructions are issued by WestConnect and for Dispatchable Demands and Generating Units are given to the ROCs of the SCs representing those Resources. Appendix C includes details on the contents of Dispatch Instructions, the procedures for their issuance, compliance requirements and the routine duties of all Operating Entities.

Appendix C does allow, under extremely limited circumstances, for SCs to change their Schedules after the close of the Schedule Adjustment Process. This is only allowed for an unplanned Outage of a Generating Unit or an unplanned reduction in Transmission Rights, and WestConnect has the right to request documentation of Generating Unit Outages. SCs, and their ROCs, have an obligation to keep WestConnect informed as to changes in the status of their Resources, including changes in their ability to deliver committed Ancillary Services. Participating TOs, and their AOCs, have an obligation to keep WestConnect informed as to changes in the status of their Operational Authority Facilities.

WestConnect will create a Balancing Energy Stack for use in Real-Time operations to manage deviations between scheduled and actual Generation and Demand. This stack consists of an ordered listing of the incremental and decremental Energy available to

WestConnect under the various Ancillary Services. Incremental Resources will be returned to their scheduled operating points prior to the use of decremental Resources, and decremental Resources will be returned to their scheduled operating points prior to the use of incremental Resources. In the absence of a contingency of greater than one hundred (100) MW, the Balancing Energy Stack will not allow use of Resources providing Operating Reserves.

WestConnect is also responsible for managing both Inter-Zonal Congestion and Intra-Zonal Congestion in Real-Time. In both cases, WestConnect will also use the Balancing Energy Stack.

Under conditions of System Insufficiency, WestConnect has the authority to seek additional Ancillary Services bids. Should a System Emergency develop, WestConnect has the authority to take whatever actions are necessary, in accordance with Good Utility Practice and Western Systems Coordinating Council ("WSCC") procedures, to prevent the imminent loss of, or to restore, stable operations to the WestConnect Grid. This includes suspension of normal procedures and the issuance of such Dispatch Instructions as WestConnect deems necessary.

Appendix D: Ancillary Services

A. Purpose of Document

Appendix D provides details on the Ancillary Services that all users of the WestConnect Grid will have the ability and/or obligation to provide, self-provide or purchase from WestConnect. These details include:

a) the determination of WestConnect's requirements in each category of Ancillary Services;

b) the technical requirements of each Ancillary Service;

c) the assignment of obligations for portions of the total WestConnect requirements to Scheduling Coordinators ("SCs");

d) the provisions for an SC to self-provide to meet its obligations for certain Ancillary Services; and

e) the market provisions for the Ancillary Services that WestConnect will acquire on behalf of either all SCs (for those Ancillary Services that an SC cannot self-provide) or those SCs that are not self-providing to meet their own obligations.

As necessary, Ancillary Services requirements, obligations and acquisition will be location specific.

B. Document Summary

The WestConnect Ancillary Services market consists of twelve (12) separate Ancillary Services. These can be broken down into three (3) broad categories.

The Ancillary Services for which WestConnect is the sole provider (i.e., those that SCs cannot self-provide, even though SCs may sell such services to WestConnect) include:

a) Balancing Energy service; correction for mismatches between scheduled and actual Generation and Demand;

b) Voltage Support service; voltage control;

c) Scheduling and Dispatch service; management of the scheduling process and actual dispatch;

d) Black Start service; restarting the system after a collapse;

e) Congestion Redispatch service; management of Intra-Zonal Congestion; and

f) Local Generation Resource ("LGR") service; management of Load Pocket Conditions.

The Ancillary Services that SCs are allowed to self-provide to meet their obligations to cover a share of the total WestConnect requirement, and are required to self-provide to meet any additional Ancillary Services obligations they have as a result of net inter-SC sales of

Ancillary Services (and any additional obligations as a result of Non-Firm Energy imports and on-demand Firm Energy exports in the case of Non-spinning Reserves) include:

a) Regulation service; Automatic Generation Control ("AGC") for load-frequency control;

b) Load Following Up service; matching Generation to Demand (i.e., during ramp up);

c) Load Following Down service; matching Generation to Demand (i.e., during ramp down);

d) Spinning Reserve service; on-line Resources capable of responding in ten (10) minutes, or such other time as approved by the WestConnect Board and consistent with Western Systems Coordinating Council ("WSCC") and North American Electric Reliability Council ("NERC") requirements; and

e) Non-spinning Reserve service, on- or off-line Resources capable of responding in ten (10) minutes, or such other time as approved by the WestConnect Board and consistent with WSCC and NERC requirements.

The twelfth (12th) Ancillary Service is Supplemental Energy service, for which there is no specific WestConnect requirement or SC obligation. Rather, Supplemental Energy can be offered to WestConnect up to thirty (30) minutes prior to the start of a Settlement Period and can be withdrawn at any time up to when WestConnect actually calls for it to be provided. It is utilized by WestConnect, in conjunction with other Ancillary Services, to meet Balancing Energy requirements. Balancing Energy is settled on a 10-minute interval basis for each SC by comparing the actual or calculated 10-minute output of its Resources, plus imports, to its actual or calculated 10-minute consumption, plus exports, as adjusted for Transmission and Distribution Losses and inter SC trades of Energy.

The Ancillary Services that WestConnect acquires through the operation of an Ancillary Services market (i.e., a) though e) immediately above) will be procured on the basis of capacity bid prices. WestConnect will accept bids in each category of Ancillary Service starting with the lowest bid and increasing the price selected until WestConnect's requirements are met. WestConnect's requirements in the Ancillary Services markets are its total requirements less the portion of those requirements that is being met by SCs that are self-providing to meet their own obligations. The highest price selected in each category in the Day-Ahead Scheduling Process sets the clearing price and is the price paid for that capacity in that category of Ancillary Service. The SCs buying their Ancillary Services from WestConnect will pay their pro-rata share of WestConnect's cost of acquisition. Appendix D also includes provisions for an SC that elects to operate its aggregate Resources to match its aggregate Demand on a second-to-second basis to operate a Self-Tracking System and, as a result, reduce or eliminate its need to support, and reduce WestConnect's requirements for, the Regulation, Load Following Up and Load Following Down Ancillary Services.

To the extent that WestConnect must acquire additional Ancillary Services during the Schedule Adjustment Process or in Real-Time to meet an SC's failure to deliver previously committed Ancillary Services, that SC will be responsible for the replacement costs. WestConnect may also acquire additional Ancillary Services during the Schedule Adjustment

Process or in Real-Time to meet increased WestConnect requirements. In either case, WestConnect shall acquire such Ancillary Services at the minimal cost, based on bid prices, and the suppliers will be paid their bid prices, not a clearing price. The actual dispatch of the Ancillary Services is based on each Resource's Energy bid price curve, not its capacity price bid.

Local Generation Resource service is settled by paying the SCs for the Generating Units providing LGR service the higher of an index price based on the Balancing Energy Clearing Price in an adjacent Congestion Zone that is not experiencing Load Pocket Conditions or the Resource's Demonstrable Costs. WestConnect will be developing a detailed Protocol for the determination of Demonstrable Costs under various scenarios. These costs are recovered from the SCs who submitted Energy requirement requests to WestConnect for procurement through the LGR service auction. WestConnect makes a commitment in Appendix D to further investigate alternatives to the LGR service approach to Load Pocket Conditions, including development and analysis of a recourse contract approach. A pro-forma LGR recourse contract and an analysis of such an approach will be presented to the WestConnect Board and the WestConnect Board will decide whether to proceed with filing such an approach with the Commission for its approval.

Appendix D also includes provisions for assigning penalties to SCs that under-schedule or over-schedule Demand in the Day-Ahead Scheduling Process. Under this methodology, the actual Demand of an SC is compared to its day-ahead scheduled Demand and any deviations above five percent (5%), as adjusted for errors in WestConnect's own Demand forecast, are subject to penalties. The level of penalties increases with increases in the percentage deviation, but there are allowances granted for first X number of deviations of each percentage magnitude. The magnitude of the penalties and the number of allowances for Demand deviations have not been determined. In a similar manner, penalties may be assigned for placing excess Balancing Energy burdens on WestConnect. As in the case of Demand deviations, the level of penalties increases with increases in the amount of an SC's final Balancing Energy obligation as a percentage of the SC's actual Demand, but there are also allowances granted for first X number of deviations of each percentage magnitude. In Appendix D WestConnect commits to development of a mechanism for SCs to trade Balancing Energy obligations prior to the determination of Balancing Energy penalties. The magnitude of the penalties and the number of allowances for excess uninstructed Balancing Energy have not been determined. Once the penalties and allowances related to both scheduled Demand deviations and Balancing Energy obligations have been determined and approved by the WestConnect Board they will be filed with the Commission for approval.

Appendix E: Existing Contracts

A. Purpose of Document

Appendix E provides details on how WestConnect will "honor" Existing Contracts ("ECs"), including statutory obligations. There are two (2) broad categories of ECs, those that are converted to Transmission Service under the WestConnect Tariff and those that are not. Appendix E provides details on both categories. Appendix E also provides details on how claims of rights under ECs that are not converted to Transmission Service under the WestConnect Tariff will be reviewed by WestConnect and interested Market Participants before being honored.

B. Document Summary

WestConnect will recognize and honor ECs that are written agreements to provide transmission service. These written agreements can be in the form of written contracts and agreements, including bundled power purchase agreements, or in the form of written statutory obligations. Lists of ECs will be created as part of the process of identifying any Encumbrances associated with transferring to WestConnect the Operational Authority over the Operational Authority Facilities of Participating Transmission Owners ("TOs"). Such lists will be filed with the Commission, posted on the WestConnect Website and updated as ECs are modified or converted to Transmission Service under the WestConnect Tariff.

Appendix E describes the details of treatment for four (4) separate categories of ECs:

a) Type 1 ECs: ECs between Participating TOs that are only for transmission service;

b) Type 2 ECs: ECs between Participating TOs that cover more than transmission service;

c) Type 3 ECs: ECs between a Participating TO and a Load Serving Entity; and

d) Type 4 ECs: ECs between a Participating TO and a Generator/Power Marketer.

There is a mandatory duty on the Participating TOs to convert Type 1 ECs to Transmission Service under the WestConnect Tariff. Type 2 ECs only require a best effort to negotiate conversion. In the case of both Type 1 and Type 2 converted ECs, there will be a negotiated transfer payment to be made by the Participating TO rights holder to the Participating TO that provided the transmission service under the Type 1 or Type 2 EC, and the rights holder under the converted EC will receive rights to FTR auction revenues as long as the transfer payments continue to be made.

There is no conversion obligation for Type 3 and Type 4 ECs. The Scheduling Coordinators ("SCs") that represent Type 3 ECs that are converted to Transmission Service under the WestConnect Tariff will be entitled to a share of the revenues produced from the auction of Firm Transmission Rights ('FTRs") for use of the FTR Interfaces and Scheduling Points over which transmission service would be provided under the EC. These rights to auction revenues will continue for the longer of the specified term of the EC or five (5) years if the

rights holder gives notice of termination no later than sixty (60) Calendar Days after the WestConnect Operations Date. Additional details of these auctions and the allocation of the auction revenues is covered in Appendix A (Congestion Management). In the case of a Type 4 EC converted to Transmission Service under the WestConnect Tariff, there will be a negotiated transfer payment to be made by the Generator/Power Marketer rights holder to the Participating TO that provided the transmission service under the Type 4 EC. The transfer payment is mandatory. The rights holders under converted Type 4 ECs are entitled to FTR auction revenues as long as negotiated transfer payments continue to be made.

Existing Contracts that are not converted to Transmission Service under the WestConnect Tariff will be honored by granting Non-Converted Rights ("NCRs") to the SCs for such ECs. In order for WestConnect to manage the rights under these non-converted ECs, the Participating TO that is providing transmission service under the EC has the primary responsibility for providing WestConnect with a set of NCR Instructions that, if followed by WestConnect, would honor the non-converted EC. NCR Instructions are all the rules and instructions that are pertinent to transmission service allocation, including scheduling and curtailment of the transmission service in compliance with the non-converted EC. WestConnect or any other party whose Transmission Service rights may be impacted by the NCR Instructions may challenge the NCR Instructions, with disputes ultimately settled through the WestConnect Alternate Dispute Resolution ("ADR") process. All NCR Instructions will be posted on the WestConnect Website.

Appendix E places an obligation on each Participating TO to attempt to modify its non-converted ECs so that their scheduling and dispatch procedures are consistent with the WestConnect scheduling and dispatch procedures. In addition, Participating TOs that have the right to refuse to renew or refuse to extend the term of an EC are obligated to so refuse.

Appendix F: Outage Coordination

A. Purpose of Document

Appendix F provides details on the coordination of Maintenance for both Operational Authority Facilities and Generating Units, including Maintenance related to the installation of new, rebuilt, expanded or relocated equipment.

B. Document Summary

Operational Authority Facilities are those facilities that will be turned over by Participating Transmission Owners ("TOs") to WestConnect's Operational Authority under the terms of the Transmission Control Agreements ("TCAs") and over which WestConnect will have Maintenance approval rights. This includes any Critical Protective Systems.

There are two (2) categories for the Maintenance of Generating Units:

a) the Maintenance of Generating Units that have Local Generation Resource ("LGR") service obligations and are subject to WestConnect approval; and

b) the Maintenance of other Generating Units (non-LGR service Generating Units) that are not subject to WestConnect approval, but that must submit their Maintenance plans to WestConnect so that WestConnect can assure coordination with the Maintenance of Generating Units with LGR service obligations and Operational Authority Facilities.

Participating TOs are responsible for submitting Maintenance requests for their Operational Authority Facilities, including any changes to previously approved Maintenance requests. The Scheduling Coordinator ("SC") representing each Generating Unit, whether or not the Generating Unit has LGR service obligations, is responsible for submitting Maintenance requests/plans for such Generating Units, including any changes to previously approved/scheduled Maintenance requests/plans.

Every month WestConnect will perform and post on the WestConnect Website its own Demand forecast for the next twelve (12) months for each Congestion Zone. WestConnect will use these Demand forecasts and the latest approved, requested and scheduled Maintenance Outages to perform a Generating Unit adequacy analysis. This analysis will be posted on the WestConnect Website. In a similar manner, WestConnect will analyze all requests for Operational Authority Facility Maintenance Outages with respect to whether they may cause WestConnect to violate Applicable Reliability Criteria.

WestConnect will approve requested Maintenance Outages for Generating Units with LGR service obligations and for Operational Authority Facilities when such Maintenance Outages do not cause WestConnect to violate Applicable Reliability Criteria. If there is a conflict between a requested Operational Authority Facility Maintenance Outage and a requested LGR Maintenance Outage, WestConnect will work with the Participating TO for the Operational Authority Facility and the SC for the Generating Unit with LGR service obligations to facilitate mutually acceptable Maintenance Outage schedules.

A Participating TO or an SC may not actually initiate an approved Maintenance Outage for an Operational Authority Facility or a Generating Unit with LGR service obligations without receiving final approval from WestConnect. WestConnect will only withhold such final approval if the Outage would threaten public heath or safety or jeopardize WestConnect's ability to meet the Applicable Reliability Criteria. In a similar manner, WestConnect has the right, consistent with the physical status of the facility, to terminate an Outage in order to preserve reliability. A Participating TO or SC that is denied final approval to proceed with an approved Maintenance Outage or has a Maintenance Outage terminated may be entitled to compensation for Demonstrable Costs incurred.

Forced Outages will be managed in accordance with the time available.

The provisions of Appendix F apply equally to Outages requested for existing facilities and to Outages requested to interconnect new, rebuilt, expanded or relocated facilities. In addition, for new, rebuilt, expanded or relocated facilities where the work to be performed is more complicated, due to its interaction with existing facilities, a more detailed work program must be provided.

Appendix G: Settlements and Billings

A. Purpose of Document

Appendix G provides details on the settlement and billing process, but not the details of the charges and payments for each service. The details for charges and payments are primarily contained in the other WestConnect documents, such as:

a) Appendix A (Congestion Management) for Firm Transmission Rights ("FTRs") and Recallable Transmission Rights ("RTRs") billing;

b) Appendix C (Dispatch and Emergency Operations) for charges and credits related to emergency response;

c) Appendix D (Ancillary Services) for Ancillary Services billing; and

d) Appendix O (Transmission Service Pricing and Revenue Distribution) for Transmission Service and the components of the WestConnect Grid Charge, including payments to Participating Transmission Owners ("TOs").

B. Document Summary

The settlement and billing schedule covers both the details associated with the settlement of specific Trading Days (including each Settlement Period in the Trading Day) and the details associated with whole Billing Months (including each Trading Day in the Billing Month). The schedule to produce a final bill is relatively long due to the need to allow time for the Load Profiling of End-Use Customers without interval metering to be accomplished. Therefore, the billing and settlement process includes issuance of a Preliminary Invoice approximately twenty (20) Calendar Days after the end of the Billing Month, with the Final Invoice, adjusted to reflect billing under the Preliminary Invoice, approximately sixty (60) Calendar Days after the end of the Billing Month. The timeline is as follows:

BUSINESS DAY	EVENT	
0	Trading Day	}
1	Preliminary Schedule Check-out Report Issued	} Billing Month 1
4	Preliminary Schedule Check-out Dispute Deadline	}
5	Final Schedule Check-out Report Issued	}

CALENDAR DAY	
33	End of Cycle Read Month
46	Settlement Ready Information for End-Use Customer Loads Available for Trading Day Zero (0)
	Settlement Ready Information for Scheduling Points, Generating Units and Dispatchable Demands Available for Billing Month One (1)
	Preliminary Daily Settlement Statement Issued
51	Preliminary Monthly Invoice Issued for Billing Month 1

52	Preliminary Daily Settlement Statement Dispute Deadline
56	Preliminary Monthly Invoice for Billing Month 1 Due and Payable
57	Participating TOs Receive Preliminary Payments for Billing Month 1
58	Data for Trading Day 0 Made Final
	Final Daily Settlement Statement Issued
91	Final Invoice Issued for Billing Month 1
96	Final Invoice for Billing Month 1 Due and Payable
97	Participating TOs Receive Final Payments for Billing Month 1

The execution of the above process depends on the collection by WestConnect of Settlement Ready Information from a variety of sources, including its own operations. WestConnect and/or the Area Operations Centers ("AOCs") are responsible for data associated with Scheduling Points. WestConnect is responsible for data associated with the validated Schedules of each Scheduling Coordinator ("SC"). WestConnect-certified Settlement Data Management Agents ("SDMAs") are responsible for data associated with Generating Units, Dispatchable Demands and the Demand of End-Use Customers. All of this data must meet the requirements of Appendix L (Load Profiling) and Appendix M (Metering).

One of the issues that has to be addressed in the settlement process for WestConnect is the treatment of Unaccounted for Energy ("UFE"). UFE results from inaccuracies in the Transmission Loss Factors ("TLFs") and Distribution Loss Factors ("DLFs") used in the scheduling and dispatch of the system, inaccuracies in the Load Profiles, metering errors, inaccuracies in the estimates for Unmetered Authorized Uses, and related factors. WestConnect will calculate and allocate UFE on an area by area basis, taking advantage of the existing Revenue Quality Meters between the former Control Areas that now are part of the WestConnect Control Area. For each such former Control Area, UFE is the difference between:

a) the sum of the outputs of the Generating Units in the former Control Area plus the net flow on the interfaces to other former Control Areas within the WestConnect Control Area or to non-WestConnect Control Areas, in MWh; and

b) the Known and Measurable Uses of Energy in the former Control Area, including scheduled Transmission and Distribution Losses, in MWh.

The UFE calculated for each such former Control Area will be allocated on a pro-rata basis to the SCs serving Demand in such area.

A separate account will be created to handle inadvertent accounting with neighboring non-WestConnect Control Areas. Any net amount in this account at the end of a Billing Month will be credited or charged as part of the Grid Management Component ("GMC") of the WestConnect Grid Charge.

WestConnect will issue net bills approximately twenty (20) Calendar Days (preliminary) and two (2) months (final) after the end of a particular Billing Month. Payments are due by 1:00 pm five (5) Calendar Days after the issuance of each preliminary or final monthly invoice. Late payments are charged interest at the Prime Interest Rate plus two percent (2%). In addition, payments that are more than twenty-four (24) hours late may result in the initiation

of enforcement actions against the defaulting party. Payments from WestConnect will be made to Participating TOs on the following Business Day.

Disputes are handled by WestConnect's Alternate Dispute Resolution ("ADR") process. In addition, there will be a periodic review and audit of the WestConnect settlement systems and WestConnect's operation of those systems.

Appendix H: Market Monitoring

A. Purpose of Document

Appendix H provides details on how WestConnect will monitor the performance and activities of both the Market Participants and WestConnect itself. Eventually Appendix H will also contain details on the Commission approved Market Monitoring Standards, that are the criteria, procedures, standards, specifications, mitigation measures, and procedural requirements that WestConnect will be allowed or required to apply. No later than one hundred and twenty (120) Calendar Days after WestConnect's Regional Transmission Organization ("RTO") filing with the Commission, WestConnect shall initiate development of the Market Monitoring Standards. WestConnect will file these Market Monitoring Standards with the Commission no later than six (6) months prior to the anticipated WestConnect Operations Date. WestConnect's responsibilities under Appendix H will be assigned to an independent Market Monitoring and Tariff Compliance Unit under the management oversight of the WestConnect Chief Executive Officer but reporting directly to and under the budgetary control of the independent WestConnect Board. The WestConnect Board may also retain the services of a Market Advisor.

B. Document Summary

Market monitoring includes a variety of actions such as observing, tracking and assessing over time the transactions, activities, behaviors and performances of the Market Participants and WestConnect. As a result of these actions, the Market Monitoring and Tariff Compliance Unit will identify possible abuses, situations of non-compliance, opportunities for improvement, flaws in the structure, or operation of the WestConnect system and whether any Class or group of Classes of Market Participants is able to gain an undue competitive advantage through its voting or other rights to participate in WestConnect decisions or other actions. The Market Monitoring and Tariff Compliance Unit is expected to develop and recommend appropriate actions to address identified problems. The Market Monitoring and Tariff Compliance Unit will also accept and investigate complaints filed by the Market Participants, against other Market Participants and/or WestConnect. Periodic reports will be issued.

More specifically, the Market Monitoring and Tariff Compliance Unit will monitor on an ongoing basis:

a) the scheduling, use and operation of the WestConnect Grid;

b) the markets for and transactions involving the provision of Ancillary Services;

c) the markets for and transactions involving Firm Transmission Rights ("FTRs"), Non-firm Transmission Rights ("NTRs"), Recallable Transmission Rights ("RTRs"), and Non-Converted Rights ("NCRs"), including, as necessary, trades of FTRs in the secondary markets;

d) the operation of Real-Time Energy markets;

e) Markets and transmission systems operated by others;

f) compliance with the WestConnect Tariff and its associated Protocols and Operating Procedures, regulations and procedures; and

g) compliance with the terms and conditions of the contracts, agreements, tariffs, laws or regulations that govern use of the WestConnect Grid.

Any party that is the subject of an investigation by the Market Monitoring and Tariff Compliance Unit will be informed of such investigation and given the opportunity to provide an explanation or justification of the situation. Any disputes will be addressed by the WestConnect Alternate Dispute Resolution ("ADR") process.

Appendix I: WestConnect Website

A. Purpose of Document

Appendix I provides summary details on the use of the WestConnect Website to provide all Market Participants with the non-confidential information they may need to manage their participation in the electricity markets administered by WestConnect. The WestConnect Website will also satisfy the Open Access Same-time Information System ("OASIS") requirements of the Commission. While the WestConnect Website will also be used in the scheduling process and the voluntary recording of transfers of Firm Transmission Rights ("FTRs") in the secondary markets, the details of those processes are covered in Appendix B (Scheduling) and Appendix A (Congestion Management).

B. Document Summary

The WestConnect Website will be used to post, at a minimum, the following general types of information (see Appendix I and the other Appendices for additional details):

a) information related to FTRs in general, including the FTR Requirements Matrix, and to the auctions of FTRs and Recallable Transmission Rights ("RTRs");

b) availability of FTRs and RTRs not sold at auction and of Non-firm Transmission Rights ("NTRs");

c) lists of both converted and non-converted Existing Contracts ("ECs");

d) information on the Non-Converted Rights ("NCRs") associated with non-converted ECs, including the NCR Instructions used to honor such NCRs;

e) descriptions of FTR Interfaces and Scheduling Points, including the Operating Transfer Capability ("OTC") and the projected or actual Curtailment frequency of each;

f) a WestConnect Grid Registry of all Operational Authority Facilities that are under WestConnect's Operational Authority;

g) the WestConnect Planning Objectives, WestConnect Planning Standards and draft and final versions of the Regional Expansion Plan (Appendix P, Planning and Expansion Process, is being developed);

h) the WestConnect Interconnection Standards (Appendix Q, Interconnection Process, is being developed), the interconnection standards of Participating Transmission Owners ("TOs") and information on the operation of the WestConnect queue for Interconnection Service studies;

i) the WestConnect Access Area Rate for each Access Area, the Wheeling Out Rate for each Scheduling Point, and information on any discounting of the Wheeling Out Rate;

j) information needed as part of the Day-Ahead Scheduling Process, the Schedule Adjustment Process and Real-Time operations;

k) information on WestConnect's Ancillary Services requirements and the operation of the Ancillary Services markets, including declarations of Load Pocket Conditions and the use of Generating Units with Local Generation Resource ("LGR") service obligations;

l) Transmission Loss Factors ("TLFs") and the nodes that make up each Generation loss region and Load loss region;

m) Distribution Loss factors ("DLFs");

n) documentation of actions taken to respond to Inter-Zonal Congestion and Intra-Zonal Congestion;

o) declarations of System Insufficiencies and System Emergencies;

p) long-term forecasts of system conditions;

q) WestConnect's Applicable Reliability Standards;

r) a list of WestConnect-certified Scheduling Coordinators (SCs"), WestConnect Certified Inspectors (for metering), and certified Revenue Quality Meters;

s) information related to Maintenance Outage coordination, Outages of Operational Authority Facilities and projections of Resource adequacy;

t) market monitoring information in accordance with the requirements of Appendix H (Market Monitoring); and

u) administrative documents such as copies of the current versions of the WestConnect Tariff and all Appendices, Attachments and associated Protocols, and WestConnect-related Commission filings and orders.

Appendix J: Scheduling Coordinator Application and Certification

A. Purpose of Document

Appendix J provides details on how an entity applies for and is certified as a WestConnect Scheduling Coordinator ("SC").

B. Document Summary

Appendix J provides details on the duties and responsibilities that apply to all SCs and those duties and responsibilities that only apply to SCs providing certain services and functions. In general, each SC participating broadly in the markets administered by WestConnect will have to fulfill the following duties and responsibilities:

a) maintain certification by WestConnect, including the specified financial capability and security;

b) meet the requirements of the WestConnect Tariff and all Attachments, Appendices and associated Protocols and Operating Procedures, including those associated with record retention;

c) meet the requirements of Appendix G (Settlements and Billings), Appendix L (Load Profiling), and Appendix M (Metering) with respect to the provision of Settlement Ready Information for the Loads and Resources that the SC represents and with respect to performing wire transfers to pay invoices;

d) participate in the WestConnect Day-Ahead Scheduling Process, Schedule Adjustment Process and, to the extent that the SC represents Dispatchable Demand and/or Resources, Real-Time operations in accordance with the provisions of Appendix B (Scheduling) and Appendix C (Dispatch and Emergency Operations);

e) coordinate the Maintenance Outages of the Resources that the SC represents in accordance with the provisions of Appendix F (Outage Coordination);

f) certify that each of the entities that the SC represents meets all of the applicable WestConnect requirements and/or the requirements of Local Regulatory Authorities;

g) maintain or contract for the services of a twenty-four (24) hours per day, seven (7) days per week scheduling office, unless the SC does not represent any Resources (i.e., Dispatchable Demands, Generating Units, imports or exports); and

h) sign a Scheduling Coordinator Agreement ("SCA") with WestConnect.

In meeting the above responsibilities and duties, SCs will provide WestConnect with the information required on three attachments to Appendix J:

a) Attachment J-1 (Scheduling Coordinator Certification Application Form);

b) Attachment J-2 (Scheduling Coordinator Service Filing Form); and

c) Attachment J-3 (Notice of Change to Scheduling Coordinator Information Form).

Appendix J provides additional details on the administration of the SC application process. In addition, details are provided on the circumstances under which an SC can have its SC certification terminated or suspended. Termination or suspension of SC rights may occur if the SC fails to:

a) provide timely or accurate information;

b) comply with the requirements of the various WestConnect documents;

c) meet its financial obligation, including maintaining required security; or

d) report material changes to its situation.

Disputes are handled by the WestConnect Alternate Dispute Resolution ("ADR") process.

WestConnect shall provide for SC services in the event that such services are not readily available through the operation of an open market. In order to accomplish this, WestConnect will issue a request for proposal from SCs or conduct an auction for SCs willing to serve Eligible Customers who otherwise are not represented. In the event that WestConnect is not successful in obtaining the required SC services, such services shall be provided by the provider of last resort established by the applicable regulatory authority, upon petition from WestConnect if necessary.

Appendix K: Transmission and Distribution Losses

A. Purpose of Document

Appendix K provides details on the treatment of both Transmission and Distribution Losses in the WestConnect scheduling process. There is no specific treatment of actual Transmission or Distribution Losses in the settlement system.

B. Document Summary

Separate mechanisms are presented for the treatment of Transmission Losses and Distribution Losses.

The mechanism is designed to reflect the impact on Transmission Losses on the WestConnect Grid caused by both the location of the Resources and the locations of the consumption (Demand). Therefore, marginal sensitivity factors are calculated, by nodes (separately for nodes with Generation and all other nodes) for seasonal (summer, winter and spring/fall) on-peak and off-peak periods. These marginal loss sensitivity factors are then adjusted so that, when applied to scheduled Generation and Demand, the total assigned Transmission Losses will approximate the total calculated Transmission Losses on the WestConnect Grid. These scaled marginal sensitivity factors are called the Transmission Loss Factors ("TLFs").

Each Scheduling Coordinator ("SC"), when submitting its Balanced Schedules, will need to ensure that its Schedule is balanced after the applicable TLFs are applied to its scheduled Generation, Demand, imports and exports. The amount of losses accounted for by such scaling, when totaled over all SCs, constitutes the Transmission Losses on the WestConnect Grid that are being "paid" for by the SCs. The difference between these accounted for Transmission Losses and the actual Transmission Losses will be part of the Unaccounted for Energy ("UFE") to be allocated in accordance with the provisions of Appendix G (Settlements and Billings).

Loss factors will also be used to account for Distribution Losses on the Distribution Systems of the Utility Distribution Companies ("UDCs"). These Distribution Loss Factors ("DLFs"), however, will be set in accordance with the requirements of the Local Regulatory Authority. As in the case of the TLFs, SCs will be required to factor these DLFs into the Balanced Schedules they submit to WestConnect. Also, again in a manner similar to Transmission Losses, any difference between this accounted for Distribution Losses and the actual Distribution Losses will be part of the UFE to be allocated in accordance with the provisions of Appendix G.

Appendix L: Load Profiling

A. Purpose of Document

Appendix L provides details on how End-Use Customers without time-interval metering (e.g., an End-Use Customer whose meter is only read once a month to produce a total Energy consumption value) will have their actual consumption for each Settlement Period estimated.

B. Document Summary

Appendix L relies heavily on the Load Profiling methodologies developed, or being developed, by the appropriate regulatory authorities. To the extent that an appropriate regulatory authority does not develop a methodology for the entities operating within its jurisdiction, WestConnect will develop a methodology similar to that used by other appropriate regulatory authorities. The Load Profiling methodology will include details on the standards for statistical sampling, including the definition of market segments and the statistical analysis method.

WestConnect will certify the Settlement Data Management Agents ("SDMAs") that will collect and analyze the data. The SDMAs will then apply the methodologies of the appropriate regulatory authorities or WestConnect, as appropriate, to this data. The Scheduling Coordinators ("SCs") representing the End-Use Customers may only use WestConnect-certified SDMAs and meter readers who meet the requirements of the appropriate regulatory authorities or WestConnect, as appropriate.

WestConnect may perform the responsibilities of any SC that fails to meet its responsibilities and will charge the SC for the costs incurred. Such SC failure may also result in financial penalties and/or termination or suspension of the SC's certification as a Scheduling Coordinator.

In the absence of a threshold established by a Local Regulatory Authority, WestConnect may establish the kW Demand threshold above which time-interval metering of End-Use Customer Loads in a Utility Distribution Company ("UDC") service territory shall be required, provided that such requirement is otherwise consistent with applicable laws, tariffs, or appropriate regulatory authorities. WestConnect shall accept time-interval metering below the threshold established by applicable laws, tariffs, and appropriate regulatory authorities.

Appendix M: Metering

A. Purpose of Document

Appendix M provides details on the metering necessary to allow WestConnect to settle and bill for the activities that it administers. Appendix M does not cover the telemetry requirements for Real-Time operations.

B. Document Summary

Appendix M defines two (2) broad categories of metered entities; WestConnect Metered Entities and Eligible Customer Metered Entities. WestConnect Metered Entities are the Generating Units, Dispatchable Demands, Scheduling Points, connections between Participating Transmission Owners ("TOs") and any additional points so designated by WestConnect. Eligible Customer Metered Entities are any metered entities within the WestConnect Grid that are not WestConnect Metered Entities.

Responsibilities with respect to WestConnect Metered Entities are assigned to Participating TOs and/or Scheduling Coordinators ("SCs"). SCs alone are responsible for Eligible Customer Metered Entities. WestConnect Metered Entities must comply with WestConnect requirements, while Eligible Customer Metered Entities must comply with the requirements of the appropriate regulatory authorities (in the event that there are no appropriate regulatory authority requirements, WestConnect shall petition the appropriate regulatory authority to develop such requirements for Eligible Customer Metered Entities).

These Participating TO and SC requirements include responsibilities with respect to certification of the relevant Metering Facilities of WestConnect Metered Entities by WestConnect Certified Inspectors. For Eligible Customer Metered Entities, the SC is responsible for demonstrating that its Metering Facilities meet the requirements of the appropriate regulatory authority. Appendix M describes the certification processes.

WestConnect will maintain on the WestConnect Website a list of WestConnect Certified Inspectors who are authorized to inspect and seek a Certificate of Meter Compliance with respect to the Metering Facilities of WestConnect Metered Entities. WestConnect will remedy any certification deficiencies and charge the deficient party twice the cost of the remedy. WestConnect has the right to audit the performance and certification of all Metering Facilities. WestConnect also has the right to require the installation of additional Metering Facilities by WestConnect Metered Entities.

WestConnect will develop and maintain a Meter Data Management System ("MDMS") for the collection of Settlement Ready Information from both WestConnect Metered Entities and Eligible Customer Metered Entities. Appendix M provides details on the processes to be followed to validate, edit, estimate and enter data into the MDMS. In the case of Eligible Customer Metered Entities, the data will be aggregated by SC by Access Area and/or Congestion Zone and/or Control Area. Parties will only be granted authorized access to the data in the MDMS for WestConnect Metered Entities and/or Eligible Customer Metered

Entities that they represent, and Appendix M establishes security requirements for meter data. MDMS data will be maintained for a minimum of three (3) years.

Appendix M establishes the standards required for Metering Facilities and the standards for their maintenance and repair. These standards will be contained in a Protocol that has not been developed. WestConnect will establish meter identifiers for the Metering Facilities (Revenue Quality Meters) of WestConnect Metered Entities, while similar identifiers for Eligible Customer Metered Entities will be established by the appropriate Utility Distribution Company ("UDC") or the appropriate regulatory authority.

Appendix M provides a process for seeking exemption from compliance with certain requirements of Appendix M, except for those requirements established by the appropriate regulatory authorities. The guidelines WestConnect will follow in considering such requests will be published on the WestConnect Website, as will WestConnect's actions with respect to any such requests.

Appendix N: Application to Become a Participating Transmission Owner

A. Purpose of Document

Appendix N provides details on how a Transmission Owner ("TO") applies to become a Participating TO and transfers to WestConnect the Operational Authority over its transmission facilities. If approved, the TO would then sign a to be developed Transmission Control Agreement ("TCA") to become a Participating TO and for its transmission facilities to become Operational Authority Facilities and part of the WestConnect Grid.

B. Document Summary

Appendix N provides the details of the application. The TO must submit a variety of information to WestConnect, including the following:

a) a description of its transmission facilities and Entitlements;

b) information on all Encumbrances associated with its transmission facilities;

c) information on any applicable Local Reliability Criteria;

d) a description of the TO's maintenance practices;

e) a description of any short-term waivers the TO would request under the TCA;

f) information on any pending requests for transmission service or interconnections;

g) information on the TO's current Annual Transmission Revenue Requirements ("ATRR") or rate; and

h) various administrative details.

WestConnect reserves the right to reject transmission facilities that do not meet Applicable Reliability Criteria, that are subject to undue Encumbrances, or that are located in a Control Area that would be outside the WestConnect Control Area. In addition, other parties are allowed to challenge the eligibility of the TO to become a Participating TO. Appendix N describes the circumstances, relative to transfer to WestConnect of Operational Authority with Encumbrances or over only a portion of the applicant's facilities, under which WestConnect is authorized to reject the application of a TO.

Appendix O: Transmission Service Pricing and Revenue Distribution

A. Purpose of Document

Appendix O to the WestConnect Tariff sets forth the rates, terms and conditions for the provision of Transmission Service within, into, out of and through the WestConnect Grid. Included in Appendix O are the rates and charges for access to the WestConnect Grid and the distribution of the revenues WestConnect receives for provision of Transmission Service for purposes of paying each individual Participating Transmission Owner ("TO") for use of its Pricing Authority Facilities.

B. Document Summary

Transmission Service over the WestConnect Grid will be provided to Eligible Customers. However, Energy and Ancillary Services may be transmitted for an Eligible Customer within, into, out of and through the WestConnect Grid only if scheduled with WestConnect by a Scheduling Coordinator ("SC"), certified by WestConnect, on behalf of such Eligible Customer. The SC will be responsible for confirming the eligibility of each entity it represents. The SC will also be solely responsible for paying the Access Area fees, the charges for Wheeling Out Service, and the WestConnect Grid Charge. WestConnect will maintain a business relationship only with the SC.

Appendix O sets forth the initial pricing structure for Transmission Service within, into, out of and through the WestConnect Grid. The initial pricing structure is designed to minimize cost shifts and consists of:

a) Access Area Rates;

b) Wheeling Out Rates; and

c) the WestConnect Grid Charge.

Under the initial pricing structure, WestConnect will charge single access charges (i.e., either an Access Area Rate or a Wheeling Out Rate) for Transmission Service over the Pricing Authority Facilities under the WestConnect Tariff. Pursuant to Appendix O, the transmission system of a Participating TO may form a separate Access Area or two or more Participating TOs may form a Multi-Party Access Area within WestConnect. An SC delivering Energy or Ancillary Services to a Resident Load located within a particular Access Area will pay a "license plate" rate, with a single access charge under the WestConnect Tariff. However, under the initial pricing structure, if such Resident Load is also served under an EC with a Participating TO whose transmission assets are in a different Access Area than the Access Area in which the Resident Load is located and the EC has not been converted to provide Transmission Service under the WestConnect Tariff, then such Resident Load will also continue to make payments under the non-converted EC to the Participating TO providing the Transmission Service under the terms and conditions of the non-converted EC. An SC who takes service through or out of WestConnect to serve Loads outside of WestConnect will pay a single rate, the higher of the WestConnect-Wide Average Rate or the Access Area

Rate at the Scheduling Point associated with a single access charge under the WestConnect Tariff.

WestConnect will employ an Access Area pricing structure for Resident Loads. For such Resident Loads, WestConnect will charge the SCs serving the Resident Loads the applicable Access Area Rate based upon the Access Area in which the Resident Loads are located. The Access Area Rate will be applied to the SC's Resident Loads within the Access Area at the hour of the Access Area's monthly peak. Subject to the requirements of Congestion Management, SC's paying the Access Area fee on behalf of Resident Loads will be permitted to source Energy and Ancillary Services anywhere within or outside of the WestConnect Grid and transmit such Energy and Ancillary Services to the Resident Loads. The Access Area Rate and the Access Area fee are determined in accordance with Schedule A of Appendix O.

Scheduling Coordinator's serving Load outside the WestConnect Grid are charged the higher of the WestConnect-Wide Average Rate or the Access Area Rate at the Scheduling Point associated with the Wheeling Out transaction to deliver Energy or Ancillary Services to an Electric System outside the WestConnect Grid. The Wheeling Out Rate and the charge for Wheeling Out Service are determined in accordance with Schedule B of Appendix O. WestConnect will attempt to negotiate reciprocity agreements with adjacent Regional Transmission Organizations ("RTOs"). Such reciprocity agreements would replace the transaction-based rates and charges with inter-RTO transfer payments that compensate for use of the RTOs' grids for inter-RTO Wheeling.

The WestConnect Grid Charge consists of two components:

a) the Grid Management Component ("GMC") and

b) the Transmission Adjustment Component ("TAC").

Both components are usage based charges and will be charged to SCs responsible for Resident Loads or Wheeling Out transactions, unless the GMC and the TAC are included in the inter-RTO transfer payments described above. In such case, there will be no additional charges for the GMC and the TAC for Wheeling Out transactions.

The GMC recovers WestConnect costs specified in Schedule C of Appendix O to the WestConnect Tariff. Such costs include:

a) costs associated with the operation of the WestConnect Grid by WestConnect and administration of the WestConnect Tariff by WestConnect that are not recovered through the charge for Scheduling and Dispatch service under Appendix D (Ancillary Services);

b) costs associated with facilities build and/or owned by WestConnect;

c) costs associated with the start-up and formation of WestConnect; and

d) other charges and credits that cannot be identified with a specific SC.

The TAC provides compensation to the Western Area Power Administration ("Western") for otherwise lost revenues under the initial pricing structure. This component is included in the WestConnect rate design to address Western's loss of revenues which, prior to the WestConnect Operations Date, were collected from non-firm transmission sales and short-term firm transmission sales and contracts that serve Loads in other Access Areas. A prospective Participating TO, joining WestConnect after the WestConnect Operations Date, may request TAC treatment in their application to become a Participating TO in WestConnect subject to the provisions of Appendix O.

Customers taking service under Existing Contracts ("ECs") will continue to make payments under the terms and conditions of the non-converted ECs. Upon conversion or termination of the ECs, Transmission Service will be provided in accordance with the WestConnect Tariff. Negotiated transfer payments from the EC's rights holder to the Participating TO providing transmission service under the EC will be required upon conversion of certain types of ECs to Transmission Service under the WestConnect Tariff in accordance with Appendix E (Existing Contracts). These negotiated transfer payments are required in order to minimize cost shifting.

WestConnect will also provide separate scheduling rights for the transfer of Energy or Ancillary Services into, out of and through the WestConnect Grid. As described in Appendix A (Congestion Management) WestConnect will conduct auctions of Firm Transmission Rights ("FTRs") that will guarantee the purchaser firm transmission rights across designated FTR Interfaces and Scheduling Points. All interfaces with Control Areas external to the WestConnect Control Area are considered Scheduling Points in both directions. Eligible Customers seeking to transmit Energy or Ancillary Services into, out of or through the WestConnect Grid will have to purchase FTRs through the FTR auction or in the secondary market.

In addition to paying for Transmission Service under Appendix O, Eligible Customers must also pay whatever charges are set forth in Appendix A of the WestConnect Tariff for purchase of Transmission Rights through FTR Interfaces and/or Scheduling Points.

Appendix O also addresses the process and timeline for developing and filing with the Commission an end-state pricing structure that will be based on a highway/zonal pricing structure and will avoid rate pancaking. The end-state pricing structure will go into effect January 1, 2009 for all Participating TOs, except for any individual Participating TO that is still subject to a state mandated retail rate moratorium that was in effect as of the WestConnect Operations Date. Individual Participating TOs subject to such state mandated retail rate moratoriums will migrate to the end-state pricing structure as the applicable state mandated retail rate moratorium ends. The Participating TOs shall collect appropriate data and refine the highway/zonal pricing structure between the time of the initial WestConnect filing with the Commission and the signing of the TCA. WestConnect, in coordination with the Participating TOs, shall further refine the end-state pricing structure, and then, WestConnect shall submit the end-state pricing structure to the Commission for approval. It is anticipated that this first filing concerning the end-state pricing structure shall be made with the Commission in 2002.

Appendix P: Planning and Expansion Process

A. Purpose of Document

Appendix P to the WestConnect Tariff sets forth the process under which WestConnect will plan for the expansion of the Planning Authority Facilities.

B. Document Summary

WestConnect will be responsible for the planning of Planning Authority Facilities, and for directing or arranging any necessary expansions, addition, and upgrades of the Planning Authority Facilities. While coordinating its efforts with the Western Systems Coordinating Council ("WSCC"), and its successors (including the Western Electricity Coordinating Council ("WECC")). WestConnect shall establish a Regional Transmission Expansion Plan on at least an annual basis, with input from the WestConnect Transmission Planning Working Group ("WTPWG").

The WTPWG shall be open to all WestConnect Stakeholders, and shall have a chair and a secretary, each of which shall be WestConnect employees. The WTPWG shall be responsible for providing input for the development of the Regional Transmission Expansion Plan, the WestConnect Planning Objectives, the WestConnect Planning Standards, and the Interconnection Standards to be developed by WestConnect in accordance with Appendix P and Appendix Q, Interconnection Process.

WestConnect shall be responsible for:

a) developing and amending, as necessary, the WestConnect Planning Objectives;

b) developing and amending, as necessary, the WestConnect Planning Standards;

c) developing the Regional Transmission Expansion Plan;

d) preparing and submitting transmission related informational filings, including regulatory filings, and coordinating the submission of information as requires to the WSCC; and

e) coordinating transmission planning activities with WSCC, neighboring RTOs, and neighboring Control Areas.

WestConnect's Regional Transmission Expansion Plan shall be posted on the WestConnect Website. In formulating the plan, WestConnect shall consider the proposed expansion plans of Market Participants, as well as the WestConnect Grid reliability, any legal obligations to service Resident Load, economic and environmental considerations, and the development of a robust competitive wholesale marketplace. The Regional Transmission Expansion Plan shall address at least ten years of Demand and Resource forecasts, proposed Electric

Transmission Upgrades and Interconnection-Related Network Upgrades, and any other proposed expansions or upgrades that are determined to be appropriate at the time of issuance of the plan ("WestConnect Upgrades"). WestConnect Upgrades will consider other economic alternatives, such as additions or expansions of Generating Units, and other alternatives, such as potential replacements, additions, or expansions of Planning Authority Facilities.

Any Participating TO or Market Participant may propose a project ("Project Proponent") to be included in the Regional Transmission Expansion Plan. On at least an annual basis, each Participating TO is required to propose a minimum ten (10) year expansion plan for its service territory. Each Project Proponent is responsible for the costs of developing its plan for expanding the system. A Participating TO is responsible for all aspects of siting, permitting and other aspects related to the construction of the facilities on its system that must be modified or expanded to support a WestConnect Upgrade, and the Participating TO shall have a right of first refusal to own such facilities. Costs associated with WestConnect Upgrades shall be recovered through the applicable Access Area Rate if owned by the Participating TO, and through the WestConnect Grid Charge if owned by WestConnect or by a third party.

WestConnect shall calculate Operating Transfer Capability, Total Transfer Capability, and Available Transfer Capability in accordance with the provisions of Appendix A, Congestion Management, and in a manner consistent with the WestConnect Transmission Control Agreement.

Appendix Q: Interconnection Process

A. Purpose of Document

Appendix Q to the WestConnect Tariff sets forth the process under which WestConnect will process requests for Interconnection Service from Interconnection Service Customers. WestConnect will process all requests for Interconnection Service to the Access Authority Facilities.

B. Document Summary

WestConnect is responsible for providing Interconnection Service to All Access Authority Facilities. In this regard, WestConnect will: (i) receive and process all Interconnection Service requests; (ii) process and execute interconnection study agreements; (iii) and ensure that interconnections to the Access Authority Facilities are completed in a timely manner. In conjunction with the Participating TOs, WestConnect shall: (i) define all technical interconnection standards; (ii) define the scope, methodologies, and assumptions in all interconnection studies, perform or outsource interconnection studies, and (iv) execute Interconnection Agreements.

All entities seeking Interconnection Service to Access Authority Facilities shall submit a written request to WestConnect electronically, via fax, or otherwise. The Interconnection Customer's queue priority date is established based on the chronological sequence in which the request is received. Upon receipt of the request and a refundable study deposit of $20,000, WestConnect will commence processing the request. WestConnect will conduct both a System Impact Study and a Facilities Study. However, the Interconnection Customer may request that a System Impact Study not be completed, and instead proceed directly to the Facilities Study stage.

The System Impact Study will include the following three components:

- a short-circuit analysis that evaluates the impact of the proposed Interconnecting Project on the Electric System's short circuit ratings;
- a power flow study that evaluates the impact on the WestConnect Grid of injecting power at the point of interconnection; and
- a stability study that assesses the ability of the proposed Interconnecting Project to satisfy Applicable Reliability Criteria.

The System Impact Study will produce the following deliverables:

- the Interconnection-Related Network Upgrades and Interconnection Facilities that are likely to be needed to interconnect the Interconnecting Project and the Access Authority Facilities;

- the reason that such Interconnection-Related Network Upgrades and Interconnection Facilities are likely to be required; and
- an estimate of the cost of such facilities.

The Facilities Study will include the following deliverables:

- the Interconnection-Related Network Upgrades and Interconnection Facilities that are needed to interconnect the Interconnecting Project and the WestConnect Access Authority Facilities;
- the associated cost of the Interconnection-Related Network Upgrades, Interconnection Facilities, and any other equipment or facilities identified in the Facilities Study;
- the Interconnection Service Customer's responsibility for such costs; and
- the time that will be required to construct such Interconnection-Related Network Upgrades and Interconnection Facilities.

Costs of studies are the responsibility of the Interconnection Customer.

In conducting a System Impact Study or Facilities Study, WestConnect shall coordinate the analysis with the affected Participating TO and any other affected parties. WestConnect, any Participating TO whose system is impacted, and the Interconnection Service Customer shall enter into an Interconnection Agreement prior to the actual, physical interconnection of the Interconnection Service Customer's Interconnection Project into the Access Authority Facilities.

Appendix R: Code of Conduct

A. Purpose of Document

Appendix R provides details of the Code of Conduct that will apply to WestConnect officers and employees (collectively, "WestConnect Employees") and provides policies, rules and procedures to be followed in carrying out WestConnect's responsibilities. Appendix R also contains provisions relating to covered contractors and consultants.

B. Document Summary

Appendix R sets forth a policy for WestConnect Employees in order for WestConnect to offer open-access Transmission Service under the WestConnect Tariff in a non-discriminatory manner to all Market Participants. In compliance with this policy, all WestConnect Employees will be required to administer the WestConnect Tariff, WestConnect Grid Agreements, and related WestConnect contracts with impartiality toward all Market Participants.

Appendix R describes the details of the reasonable actions that WestConnect Employees are required to take in order to comply with Appendix R. These actions consist of:

a) complying with the applicable laws and regulations;

b) providing Transmission Service in accordance with the WestConnect Tariff;

c) refraining from Energy, Ancillary Service or Transmission Rights transactions consistent with Appendix R;

d) treating commercially sensitive, proprietary, or regulated information as Confidential Information in accordance with the WestConnect Tariff;

e) protecting the integrity of WestConnect records;

f) avoiding contact with Market Participants which could cause or appear to cause a conflict of interest;

g) avoiding financial conflicts of interest in reference to ownership of the securities of Market Participants and their Affiliates; and

h) protecting WestConnect's assets including property, facilities, equipment and supplies.

WestConnect will develop procedures to train WestConnect Employees on Appendix R. All WestConnect Employees will receive such training promptly following their engagement and will receive annual training thereafter. All personnel receiving such training will annually sign a compliance certificate, of the form in Attachment R-1 to Appendix R, stating that they attended the training, understand Appendix R, and will not violate Appendix R.