BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
CHAIRMAN
JIM IRVIN
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COMMISSIONER
JEFF HATCH-MILLER
COMMISSIONER
MIKE GLEASON
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. R14-2-1606	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
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
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 Mark Fulmer

On behalf of Constellation NewEnergy, Inc. and Strategic Energy L.L.C.

AISA AND DIRECT ACCESS ISSUES

July 28, 2002

Constellation NewEnergy, Inc. and Strategic Energy L.L.C., by and through their attorneys, hereby file the Testimony of Mark Fulmer of MRW & Associates.

Respectfully submitted this 28th day of July 2003.

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I. INTRODUCTION

The primary purpose of this rebuttal testimony is to respond on behalf of Constellation NewEnergy, Inc. ("Constellation NE") and Strategic Energy L.L.C. ("Strategic Energy") to the May 30, 2003, Staff Report for the Generic Proceeding Concerning the Arizona Independent Scheduling Administrator - Docket No. E-00000A-01-0630 ("Staff Report"). In this testimony, I will focus on the need to adopt the Staff Report recommendation that the AISA be retained until an RTO is operational in Arizona, as it is essential for retail direct access to develop and flourish in Arizona. My Statement of Qualifications is provided in Attachment 1.

Constellation NE is America's leading retail electric provider, serving commercial and industrial customers in California, Texas, Illinois, Ohio, Pennsylvania, Maryland, Delaware, New Jersey, New York, Massachusetts, Rhode Island, New Hampshire and Maine. On April 21, 1999, the Arizona Corporation Commission ("Commission") granted NEV Southwest, L.L.C.'s[1] application for a Certificate of Convenience and Necessity ("CCN") to supply competitive services as an electric service provider. Constellation NE is a wholly-owned subsidiary of the Constellation Energy Group (NYSE: CEG), a leading global power company comprised of competitive generation, distribution and retail businesses around the world.

Strategic Energy is a trusted and objective energy management company that provides electric load aggregation and power supply coordination services. Founded in 1986, Strategic Energy has transformed itself from an energy consulting firm into one of the largest competitive retail energy providers in the United States. The company

[1] The initial filing was made under New Energy Ventures Southwest, L.L.C. with subsequent company name changes to NEV Southwest, L.L.C. and then NewEnergy Southwest, L.L.C. The company is in the process of having the CCN updated once more to reflect the current company name, Constellation NewEnergy, Inc.

now has more than 42,000 commercial and industrial customers in states that have enacted retail choice, including Pennsylvania, Ohio, New York, Massachusetts, Texas and California – with many more states expected to come online in the next few years. More than 170 full-time energy professionals at its headquarters in Pittsburgh, Pa. and in offices across the country are devoted to objective electricity and natural gas management and consulting. Strategic Energy procures and manages more than $2 billion of electricity and natural gas per year and has never had a customer interrupted.

II. SUMMARY OF COMMENTS

Constellation NE and Strategic Energy concur with the fundamental conclusion at page 4 of the Staff Report that in order for retail competition to be a viable option, "Arizona will need the AISA or some substitute organization to perform the functions that were originally intended to be performed by an ISA." The Staff report also makes a number of points that should be carefully considered by the Commission.

First, at page 7 of the Staff Report it is noted that the parties who advocate that the AISA is not needed are precisely those organizations who believe that they will be adversely impacted by competition. Constellation NE and Strategic question the accuracy of the utility conclusion that retail competition will be harmful to utilities and believe that this attitude is inaccurate and causes needless harm to Arizona consumers. Nevertheless, as the transition period ends and the utilities have collected their stranded costs, it is time for the Commission to provide consumers access to the competitive markets that they have paid for. There must be a quid pro quo, competitive market structure, in exchange for paying transition costs. The utilities have been on notice and

therefore should not place roadblocks in the path of consumers who want competitive options.

Second, the Staff Report also notes at page 7 that various proposals to abandon the AISA now in favor of an RTO are not justified by the facts. The Staff Report accurately notes that it is highly doubtful that WestConnect will be operational anytime soon and that its start date could be delayed until 2007-2008. Moreover, it may well not be fully operational until 2011. Given this delay, it makes no sense to abandon AISA now, when it has already competed all of the necessary start-up work, obtained FERC approval and would serve as a convenient vehicle for moving ahead with retail choice in the future.

Third, the Staff Report also notes at page 7 that the AISA is a necessary element to encourage retail competition in Arizona. The Commission should ratify Staff's proposal to maintain the down-sized AISA, as open and equitable transmission access is a fundamental element of any successful retail competition program. Until such time as an RTO is established, the AISA is essential to ensure non-discriminatory access to transmission for retail service. Closing down the AISA would frustrate the development of retail competition and effectively act to deny customer choice to all of Arizona's residential, commercial and industrial customers. Closure of the AISA would be tantamount to acting to repeal the Retail Electric Competition Rules adopted in September 1999.

Finally, Constellation NE and Strategic Energy wish to alert the Commission that energy service providers have not "written off" Arizona. We and other ESPs continue to watch and evaluate the potential for participating in this market. One of the

aspects that we will evaluate is the regulatory climate relative to competition. If the climate appears to be adverse to the development or support of markets, it is difficult to justify investment in that market. Removal of an independent transmission administrator, such as the AISA, may appear to be hostile to competitive market development.

In addition, as the recovery period for stranded costs for the utilities approaches and resulting rate designs will be determined, we will also evaluate the ability to participate in the Arizona market economically and whether we can bring value to the customers in the state. The current rate structure in APS, for example, did not provide an opportunity to compete with APS, provide value to customers (savings) and earn a profit. That situation may change as a result of the transition period ending and new rate structures being put into place and ESPs are very interested in the outcomes of the post-transition proceedings.

III. THE COMMISSION NEEDS TO ENCOURAGE, RATHER THAN DISCOURAGE, RETAIL COMPETITION

Constellation NE and Strategic Energy are both strongly interested in seeing that retail competition moves forward in Arizona and pushes past the current status quo, where retail competition is essentially non-existent in the state. Closure of the AISA at this point would send precisely the wrong message to energy service providers ("ESPs") interested in expanding their national operations into Arizona. Rather than having an open access transmission system – an essential element for retail competition to occur – Arizona would be viewed by prospective ESPs as being hostile to the development of retail competition. The Commission needs to encourage competition, rather than discourage it, particularly when the cost of doing so is so *de minimus*.

As noted in the Staff Report at page 3, the AISA has been significantly downsized with a 54% reduction in its already small budget, due to reductions in personnel, office space, insurance and accounting costs. With a new annual budget of $154,270, AISA represents a very low cost for maintaining the option for retail competition to develop effectively in Arizona. Dissolution of the AISA would waste all of the hard work that went into stakeholder negotiations, developing its protocols[2] and earning FERC approval.[3] Having to start over would be wasteful and duplicative, take more years to negotiate and likely cost multiple millions of dollars (after the $1.4 million that has already been spent). It would simply be wasteful and poor public policy to scrap the AISA now and hope to replicate it in the future.

The Commission should not disable or handicap retail competition before it has been given a fair opportunity to get off the ground. Rather, it should do everything in its power to ensure the establishment of a healthy retail market to allow all Arizona consumers to realize the benefits of electricity industry restructuring and to protect themselves against incumbent retail market power. Providing all customers with the freedom to choose their own electricity service provider is the very first step that must be taken down the road towards creating a healthy retail market.

Additionally, without AISA, ESPs would have to interface directly with the utilities for scheduling and balancing load to serve direct access customers. While that may not sound difficult, the problem is that each utility may have a different protocol

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[2] Existing AISA protocols include the allocation of retail network transmission, transmission scheduling, ancillary services, must-run generation, energy imbalances, emergency operations, and after-the-fact checkout.

[3] FERC approval has been obtained for Phase I of the AISA tariff. Phase I will continue until direct access load in Arizona exceeds 300 MW and the Board adopts a business plan to implement more extensive Phase II activities. Implementation of Phase II would also require FERC approval.

and system for performing similar functions. For example, the systems that we may need to interface with in providing our schedules and receiving balancing information may differ for each utility. That may require ESPs to purchase software to interface with each utility. The rules for submitting schedules may differ. The manner in which imbalances are treated for differences in schedules and deliveries may vary significantly. This creates additional costs for ESPs to operate, especially if the ESP plans on pursuing customers throughout the state. The efficiency and convenience of the AISA arises from the fact that it standardizes those issues across the utility systems.

The AISA provides ESPs with assurances that their load/schedules will be handled in a competitively neutral manner, since the AISA has no vested interest in whose power moves, only in maintaining the integrity of the system. However, many IOUs still view competition and ESPs as eroding their revenues and customer base and therefore may be discriminatory in their handling of requests to serve customers. It is possible that ESPs would receive inferior access to transmission capacity, for example, relative to the utilities' load. We may not receive proper notification of system maintenance or outages that would interfere with our supplies flowing on the system. While I am sure that is not the intent of the operator, the AISA's neutrality in the administration of the grid provides shippers confidence of their supplies will receive comparable treatment to those of the utilities. Maintenance of the AISA as a viable entity will be an additional attraction for ESPs to enter the Arizona market.

In the movie "Field of Dreams," movie fans first heard the memorable line "If you build it, they will come." The converse is also true: if you do not build it, they will not come. In this case the "they" are ESPs, who wish to provide Arizona customers

with options for their electric supply but who have so far been unable to do so, at least not on an economic basis. If the Commission wishes to build a market that is attractive to ESPs and conducive to the development of a retail competition market that provides the benefits of retail choice to Arizona electricity consumers, it must not dismantle the AISA.

IV. BARRIERS TO RETAIL COMPETITION ARE RECEDING

The reasons for the lack of retail competition success in Arizona are well-known and we will not reiterate them in any significant detail in this testimony. It should suffice to note that direct access has been uneconomic in Arizona because of the previous uncertainty with regard to the amount of wholesale generation that would be available to supply power to ESPs, the stranded cost charges imposed on direct access customers and the major regulatory roadblocks to competition that were erected by the incumbent utilities. However, as noted in the Staff Report, we are moving past these issues. The barriers are receding and the prospect exists for retail competition to become a functioning and beneficial reality for Arizona electricity consumers.

First, the results of the Track B competitive wholesale solicitations are now known. Those parties whose generation capacity was not wholly committed under that process will now be eager to locate new markets for their uncommitted generation capacity. ESPs and retail customers make a very logical market for that power, especially due to the limited amount of retail transmission capacity which connects to other states, as is also noted in the Staff Report. Moreover, the stranded cost charges in APS and SRP service territories are nearing their scheduled expiration dates and the

TEP "adder" is to be revised (presumably downward) in the coming year.[4] All of these developments should have a buoying effect on the prospects for retail competition, which is precisely why the Commission should take not take action now, such as dissolving the AISA, which would run counter to those positive trends. Moreover, it is clear from data in other states that retail competition continues to be attractive to and desired by consumers.

In its June 11, 2002, testimony on Track A issues, Constellation NE and Strategic Energy included the following table, demonstrating that there is ample evidence from other markets already open to competition that, presented with choice, residential customers and C&I customers of **all sizes** will exercise their choice to switch to a competitive retail provider:

State	Residential Load	Residential % of Load	Residential Customers	Residential % of Customers	C&I Load	C&I % of Load	C&I Customers	C&I % of Customers
OH[5]	411,908 MWh	14%	621,716	18%	882,365 MWh	14%	25,960	5%
TX[6]	755 MW	4%	150,929	3%	8,942MW	20%	51,715	5%
PA[7]	1,154 MW	10%	512,380	8%	1,290 MW	7%	22,001	4%
CA[8]	440,201 MWh	.8%	53,692	.6%	22,034,078 MWh	13%	29,430	7%

[4] The APS stranded cost charge, which is scheduled to expire at the end of 2004, adds about 0.3 cents per kWh to the cost of a direct access transaction for a commercial or industrial customer, assuming a 65 percent load factor. On January 1, 2004, this cost will drop to about 0.2 cents per kWh. The SRP stranded cost charge, which is scheduled to expire on May 31, 2004, adds approximately 0.67 cents per kWh to the cost of a direct access transaction for a customer with a load under 1000 kW, and 0.43 to 0.47 cents per kWh for a customer with a load that is 1000 kW or greater. Using a different approach, the TEP stranded cost charge, which does not expire until the end of 2008, is designed differently from APS or SRP, in that it moves inversely with the wholesale market price of power. Additionally, the "adder" component of the TEP stranded cost calculation is subject to revision in the coming year. The sunset of the APS and SRP charges and the potential reduction of the TEP adder are harbingers of a more economic market for retail competition.

[5] Source: Public Utilities Commission of Ohio

[6] Source: Electric Reliability Council of Texas

[7] Source: Pennsylvania Office of Consumer Advocate

[8] Source: California Public Utilities Commission (CPUC). The CPUC suspended direct access as of September 20, 2001. At the peak of direct access in May 2000, residential and C&I load were 2.2% and 17.7% respectively.

The data presented in the table above demonstrates that both residential and C&I customers will find value when given a choice with regard to their electricity suppliers. As noted in our earlier testimony, *voting with their feet is the best signal of consumers'* assessment of value. Moreover, evidence that consumers are finding value in retail electricity competition is not limited to the United States alone. According to the United Kingdom's Electricity Association, in England and Wales between 90-95% of customers and load have switched to a competitive provider.

IV. CONCLUSION

Constellation NE and Strategic Energy support the continued extension of choice to all Arizona electric customers. The Commission can encourage the development of customer choice by endorsing the recommendations of the Staff Report and maintaining the down-sized AISA. Acting now to disband the AISA would be wasteful and poor public policy. Most importantly, it would deter ESPs from moving into the Arizona retail market and therefore effectively eliminate choice for the vast majority of customers in Arizona. This concludes my testimony.

ATTACHMENT 1

STATEMENT OF QUALIFICATIONS FOR MARK E. FULMER

Q: Please state your name and business address.

A: My name is Mark E. Fulmer. I am a Senior Project Manager at MRW & Associates, Inc. (MRW). MRW is an energy consulting firm that was founded in 1986 that specializes in power and gas market assessments, regulatory matters, litigation support, expert witness testimony, contract review, and negotiations. My business address is MRW & Associates, Inc., 1999 Harrison Street, Suite 1440, Oakland California.

Q: Please summarize your professional and educational background.

A: I have been an energy consultant with MRW since 1999. During that time, I have worked with energy service providers, independent power producers, municipalities, end-use customers, trade organizations and financial institutions on a variety of issues related to industry restructuring, ratemaking, price forecasting, demand-side management and asset valuation. Previously, I worked at Daniel, Mann, Johnson, & Mendenhall (DMJM) in San Francisco, where I consulted to utilities and others on energy-efficiency. Prior to DMJM, I worked at Tellus Institute in Boston, Massachusetts, where I consulted to numerous state agencies and non-governmental organizations on integrated resource planning and natural gas and electric industry restructuring. I hold a Bachelor of Science degree in engineering from the University of California at Irvine and a Master of Science in Engineering from Princeton University. See Appendix A for additional information about my qualifications.

Q: Have you ever testified before this Commission?

A: No, I have not. I have however submitted testimony before the FERC and state utility commissions in California, Hawaii, Pennsylvania and Rhode Island, as well as supporting testimony in eleven other states and Canadian provinces.

Q: Was this material prepared by you or under your supervision?

A: Yes.

Q: Insofar as this material is factual in nature, do you believe it to be correct?

A: Yes, I do.

Q: Insofar as this material is in the nature of opinion or judgment, does it represent your best judgment?

A: Yes, it does.

Q: Does this conclude your qualifications and prepared testimony?

A: Yes, it does.

ATTACHMENT 1

STATEMENT OF QUALIFICATIONS FOR MARK E. FULMER

MARK E. FULMER

PROFESSIONAL EXPERIENCE

Senior Project Manager
MRW & Associates, Inc.
(1999 - Present)
Conducts economic and technical studies in support of clients involved in regulatory and legislative proceedings, power project development and end-user energy option assessment. Work includes review of air emissions regulations and their impact on power costs; pro forma analysis of cogeneration and distributed generation facilities; economic analysis of end-use energy-efficiency projects.

Project Engineer
Daniel, Mann, Johnson & Mendenhall
(1996 - 1999)
Acted as project manager and technical advisor on energy efficiency projects. Work included management of PG&E program to promote innovative energy efficient technologies for large electricity users. Coordinated the implementation of an intranet-based energy efficiency library. Directed technical and market analyses of small commercial and residential emerging technologies.

Associate
Tellus Institute
(1990-1996)
Advised public utility commissions in five states on electric and gas industry deregulation issues. Submitted testimony on the rate design of a natural gas utility to the Pennsylvania Public Utilities Commission. Testified before the Hawaii PUC on behalf of a gas distribution utility concerning a competing electric utility's demand-side management plan. Analyzed national energy policies for a set of non-governmental agencies, including critiquing the DOE's national energy forecasting model. Developed model to track transportation energy use and emissions and used the model to evaluate state-level transportation policies. Developed model to track greenhouse gas emission reductions resulting from state-level carbon taxes.

Research Assistant
Center for Energy and Environmental Studies, Princeton University
(1988-1990)
Researched the technical and economic viability of gas turbine cogeneration using biomass in the cane sugar and alcohol industries. First researcher to apply "pinch" analysis and a mixed-integer linear programming model to minimize energy use in cane sugar refineries and alcohol distilleries.

EDUCATION

M.S.E., Mechanical and Aerospace Engineering, Princeton University, 1991
B.S., Mechanical Engineering, University of California, Irvine, 1986

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STATEMENT OF QUALIFICATIONS FOR MARK E. FULMER

TESTIMONY

1. California Public Utilities Commission Rulemaking 01-10-024
   Prepared Testimony on Behalf of the Alliance for Retail Energy Markets (June 23, 2003)

2. California Public Utilities Commission Rulemaking 01-10-024
   Rebuttal Testimony on Behalf of the Alliance for Retail Energy Markets (July 14, 2003)

3. Federal Energy Regulatory Commission Docket EL00-95-075 et al
   Rebuttal Testimony on Behalf of Duke Energy Trading and Marketing (March 25, 2003)

4. Hawaii Public Utilities Commission Docket 94-0206
   Direct Testimony on Behalf of the Gas Company (February 27, 1995)

5. Pennsylvania Public Utilities Commission Docket R-00943029
   Direct Testimony on Behalf of the Pennsylvania Office of Consumer Advocate (May 17, 1994)

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STATEMENT OF QUALIFICATIONS FOR MARK E. FULMER

SELECTED PUBLICATIONS

"Market Transformation Effect Indicators for Government, Utilities, Retailers and Manufacturers," invited panelist in a roundtable discussion at the American Council for an Energy Efficient Economy (ACEEE) 1998 Summer Study.

"Evaluation of Food Processing Effluent Treatment Alternatives," paper presented at the American Chemical Society meeting, Las Vegas, Nevada. December 1997. Co-Author.

"A Social Cost Analysis of Alternative Fuels for Light Vehicles," in Energy Strategies for a Sustainable Transportation System, ACEEE, Washington, DC. 1995.

"Strategies for Reducing Energy Consumption in the Texas Transportation Sector," project for the Texas Sustainable Energy Development Council, Austin, Texas. June 1995. Co-author.

"Mistakes, Misconceptions, and Misnomers in DSM Cost-Effectiveness Analysis," peer reviewed paper at the ACEEE 1994 Summer Study. Principal author and presenter.

"The Role of Gas Heat Pumps in Electric DSM," presented at the 6th National Demand-Side Management Conference, Miami Beach, Florida. March 1993. Principal author and presenter.

"Applying an Integrated Energy/Environmental Framework to the Analysis of Alternative Transportation Fuels," invited paper at the European Council for an Energy Efficient Economy (ECEEE) 1993 Summer Study. Principal author.

"The Environmental Impacts of Demand-Side Management," Electric Power Research Institute report TR-101673. 1992. Co-author.

"Cogeneration Applications of Biomass Gasifier/Gas Turbine Technologies in the Cane Sugar and Alcohol Industries," proceedings, Energy and Environment in the 21st Century, MIT Press, Cambridge, Massachusetts. 1991. Co-author.

"A Technical and Economic Assessment of the Co-Production of Electricity and Alcohol From Sugar Cane," presented at the International Engineering Conference on Energy Conversion (IECEC-90), American Institute of Chemical Engineers, New York, NY. August 1990. Principal author and presenter.