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BEFORE THE ARIZONA C

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Arizona Corporation Commission

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COMMISSIONER

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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. 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

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Summary of Testimony of
Mark Fulmer

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

AISA AND DIRECT ACCESS ISSUES

September 9, 2003

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

3 Respectfully submitted this 9th day of September 2003.
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17 and Strategic Energy L.L.C.

18 **Original and 21 copies filed**
19 **this 9th day of September 9, 2003, with:**

20 Docket Control
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, Arizona 85007

24 **Copies of the foregoing hand-delivered**
25 **this 9th day of September, 2003 to:**

26 Commissioners and Commissioners' Aids

27 Copies of the foregoing mailed and/or sent via electronic mail
without a copy of the service list this 9th day of September, 2003 to:

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Summary of Testimony of Mark Fulmer

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

AISA AND DIRECT ACCESS ISSUES

I. SUMMARY OF COMMENTS

Constellation NewEnergy, Inc. (“Constellation NE”)¹ and Strategic Energy L.L.C. (“Strategic Energy”)² respond to the May 30, 2003, Staff Report for the Generic Proceeding Concerning the Arizona Independent Scheduling Administrator (“Staff Report”). Their joint testimony focuses 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. 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.” Constellation NE and Strategic question the accuracy of the utility conclusion that retail competition will be harmful to utilities and

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.’s¹ 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.

² 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 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.

1 believe that this attitude is inaccurate and causes needless harm to Arizona consumers.
2 As the transition period ends and the utilities have collected their stranded costs, it is
3 time for the Commission to provide consumers access to the competitive markets that
4 they have paid for. There must be a quid pro quo, competitive market structure, in
5 exchange for paying transition costs. The utilities have been on notice and therefore
6 should not place roadblocks in the path of consumers who want competitive options.
7

8 Second, the Staff Report also notes at page 7 that various proposals to abandon
9 the AISA now in favor of an RTO are not justified by the facts. The Staff Report
10 accurately notes that it is highly doubtful that WestConnect will be operational anytime
11 soon and that its start date could be delayed until 2007-2008 and may well not be fully
12 operational until 2011. Given this delay, it makes no sense to abandon AISA, when it
13 has already completed all of the necessary start-up work, obtained FERC approval and
14 would serve as a convenient vehicle for moving ahead with retail choice in the future.
15

16 Third, the Staff Report also notes at page 7 that the AISA is a necessary element
17 to encourage retail competition in Arizona. The Commission should ratify Staff's
18 proposal to maintain the down-sized AISA, as open and equitable transmission access is
19 a fundamental element of any successful retail competition program. Until such time as
20 an RTO is established, the AISA is essential to ensure non-discriminatory access to
21 transmission for retail service. Closing down the AISA would frustrate the development
22 of retail competition and effectively act to deny customer choice to all of Arizona's
23 residential, commercial and industrial customers.
24

25 Constellation NE and Strategic Energy wish to alert the Commission that energy
26 service providers have not "written off" Arizona. We and other ESPs continue to watch
27

1 and evaluate the potential for participating in this market. One of the aspects that we
2 will evaluate is the regulatory climate relative to competition. If the climate appears to
3 be adverse to the development or support of markets, it is difficult to justify investment
4 in that market. Removal of an independent transmission administrator, such as the
5 AISA, may appear to be hostile to competitive market development.

6 It has been suggested that the FERC's "Enforcement Hotline" would be sufficient
7 to address dispute resolution. While this hotline undoubtedly has a place in FERC's
8 overall regulatory framework, it is not a reasonable substitute for the dispute resolution
9 framework set up in Section 6 the AISA bylaws. It also should be noted that barely one-
10 third of the calls received by the Hotline in 2002 involved any electric issues, let alone let
11 alone those involving the interpretation of Open Access Transmission Tariffs ("OATTs")
12 or energy service provider ("ESP") dispute resolutions. The AISA's method provides
13 greater flexibility, including a fast-track procedure, peer mediation as well as formal
14 arbitration.
15

16 It also has been suggested that the AISA should be funded on a volunteer basis by
17 "large consumers, ESP's, merchant plant operators or other interested stakeholders."
18 Constellation NE and Strategic Energy believe that in the long run, a grid manager or
19 scheduling facilitator such as the AISA should be funded through an access charge paid
20 on a non-discriminatory basis by all grid users. However, during the transition to a more
21 market-oriented paradigm, such funding is impractical. It is not sound policy to fund the
22 AISA on a voluntary basis. Among other things, such a funding mechanism could in at
23 least appearance tarnish the "independence" of the AISA
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