



**Texas-New Mexico  
Power Company.**



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June 27, 1996

Via Federal Express Delivery

Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Arizona Corporation Commission  
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Attn: Docket Control

JUN 28 1996

Re: Docket No. U-0000-94-165

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Dear Docket Control Clerk:

Enclosed please find the original and eleven (11) copies of Texas-New Mexico Power Company's comments in connection with the above-referenced Docket No.

Please return a file-stamped copy to me in the enclosed self-addressed and stamped return envelope.

Thank you for your assistance with this matter.

Sincerely,

O. Brad Cox

OBC:kll  
Enclosures

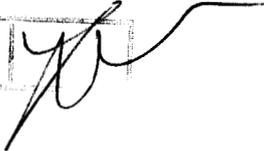
cc: Larry Gunderson  
Sheryl Cox

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission  
DOCKETED

IN THE MATTER OF )  
ELECTRIC INDUSTRY )  
RESTRUCTURING )

DOCKET NO. 11-0000-94-165 8 1996

DOCKETED BY 

COMMENTS OF TEXAS-NEW MEXICO POWER COMPANY

*Texas-New Mexico Power Company(TNMP) has provided comments on issues raised by the Arizona Commerce Commission in other venues. While TNMP herein provides its comments with respect to the questions posed these comments are followed by an attachment filed with the New Mexico Public Utility Commission concerning restructuring of regulation. TNMP appreciates the opportunity to contribute to this inquiry, it is hoped that these supplemental comments will serve the purposes of this commission while conserving resources required to contribute to this most important undertaking of the Arizona Corporation Commission.*

**A1. Affected Utilities. Which utilities should open their markets to competition?**

The trends in the electric industry are toward a more competitive market structure. It is hoped that implementing a competitive market framework will increase efficiency and innovation. In a competitive market model, market forces and consumer choice determine the prices and types of electric services. All utilities will need to open their markets to competition. The principles which should be adhered to during a transition to competition and beyond are as follows:

- 1) Customer prices should not be increased during a transition period to a more competitive marketplace.

- 2) Utilities should be given a reasonable opportunity to recover costs and investments deemed prudently incurred, after Commission approval of a utility authored plan.
- 3) Barriers to competition must be addressed, i.e. regional open transmission access and pricing must be pursued, separation of generation assets from transmission and distribution accomplished, customers allowed to aggregate their loads to shop for bulk power.
- 4) Deregulate the bulk electric energy market.
- 5) After a transition period, sellers of electric services should have direct access to all consumers of electric services.
- 6) To the extent that transmission and distribution services remain natural monopolies, the Commission should employ performance-based regulation to encourage efficiency and reward above average performance.

**A2. Scope of Restructuring.**

**a. How much of the utilities' markets should be opened to competition?**

The Commission's Policy regarding competition should be to create an electric services market structure that maximizes customer choice. TNMP's customers are demanding increased choices and customer choice of supplier is the logical goal. However, the nature of the electric services industry dictates that

customer choice is only practical in certain market segments. TNMP proposes to open its service territory up to customer choice for bulk power needs and other customer-related services upon the conclusion of a transition period which allow for the opportunity to reduce stranded costs.

As proposed by TNMP's Community Choice concept, all customer classes should be allowed to aggregate their loads at the community level for the purpose of shopping for bulk power. This will facilitate all customers enjoying the benefits of a deregulated bulk power market as well as more market buyers exerting price discipline in the market on a continual basis.

The electric services industry is composed of four market segments: Bulk Electric Energy, Transmission Service (including ancillary services), Distribution Service, and Energy Related Services. Customer choice should be available in the Bulk Electric Energy segment and the Energy Related Services segment since these segments are not natural monopolies, and can be restructured using a competitive market model. Therefore, in the Bulk Electric Energy and Energy Related Services segments, a competitive market with full customer choice should be the ultimate goal of the commission. On the other hand, Transmission and Distribution Services are natural monopolies currently in which

customer choice isn't practical because of the need for duplicative, customer specific facilities. In the Transmission Services and Distribution Services Segments, the Commission should employ performance based regulation in a regulated market.

**b. Which consumers should be allowed to shop around for power and energy? Consider both geographic areas and consumer classes.**

All consumer classes should enjoy the benefits of competition. The Commission and market participants must find efficient ways to aggregate electric service customers at the community level, for the purpose of purchasing bulk electric energy. This will provide residential and small commercial customers the purchasing power that large commercial and industrial customers will enjoy in a competitive market. Customers that reside outside the boundaries of a "community" may be able to participate in an aggregated load closest to their location. If such a customer chooses not to participate, they could continue to receive re-bundled electric service tariffs (similar to the service currently offered).

**c. Should utility customers served under existing contracts be eligible to participate in the competitive market prior to expiration of the existing contracts?**

Utility customers served under existing contracts should not be able to participate in the competitive market prior to the

expiration of the contract unless they pay an access fee designed to recover stranded costs during a finite transition period, unless those contracts address stranded cost obligations. After the transition period then all customers should be able to choose their bulk power supply unless explicitly contracted for under an existing unbundled contract subsequent to approval of a stranded cost recovery plan.

**d. If divestiture were undertaken, how should it be accomplished?**

If divestiture is determined to be necessary to implement competition, its objectives should be defined and unique industry proposals considered. That is, given the mix of public and private systems in Arizona, its unlikely that a generic plan can be applied equitably. The Commission should focus on objectives that enable a competitive market place and remove the impediments to retail transactions.

**A3. Term of Restructuring.**

**a. When should competition start?**

After a transition period that allows for the opportunity to cover stranded costs.

During the transition to a competitive market model, the Commission should ensure a sharing of the benefits by

implementing transition plans. These plans should create aggregated loads with sufficient purchasing power to reap a share of the benefits. After the transition period, the load aggregation functions, performed by market participants, should be developed enough to ensure that all customers have access to the competitive marketplace. During the transition phase the Commission may have to provide safeguards to ensure that present subsidies are gradually eliminated. Gradual elimination of cross-subsidies can be obtained by preserving tariffed service subject to performance based regulation.

Recovery of Stranded Investment is another key component of the transition to competition. During the transition, it will be necessary to have the opportunity to recover stranded costs. Further detail on this process under Recovery of Stranded Investment.

- b. If competition is in the form of a pilot or phase-in, how long should the pilot or phases run? Please describe the phases of a phase-in. Please consider that many larger customers of utilities are currently under contract and may not be able to shop around until those contracts expire.**

At the end of the transition period there should be no more bundled contracts outstanding. There should be no phase in of competition. At this point competition should be available to all consumers. If competition is in the form of a pilot, the pilot should

last no more than is necessary to accomplish the objectives of the experiment, i.e. the time it takes to gather the information sought. If competition were to be in the form of a pilot, it is not necessarily the case that long term contracts should be encouraged.

- c. **If competition is in the form of a pilot, how can the term of the pilot be set so as to avoid discouraging long term contracts signed under the pilot?**

See A3-b above.

**A4. Services Available on a Competitive Basis. Which services should be available in a competitive market?**

Market-based production-related services should be available upon resolution of the stranded cost issue, furthermore a regional transmission price/ terms and conditions standard would facilitate a competitive bulk power market.

Market-based customer-related services should be made available after any barriers to competition are considered and eliminated. Customer-related services may be disaggregated and offered at two different levels; 1) to the individual customer and 2) to the aggregated load or "community". The services chosen by the community would define the level of reliability and quality the community desires to pay for. For example a community could chose whether they wanted to be served by a local office, staffing requirements locally, loop feeds built to serve the area

as well as billing, collection, power quality monitoring and other value added services.

TNMP recommends performance-based regulation(PBR) for distribution services, therefore specific end-use pricing methods need not be uniform. The Commission likely will want to ensure cross-subsidies do not occur between functional businesses but otherwise PBR would be the regulatory measuring stick for reasonableness.

- Distributed energy services at market based rates (serving multiple consumers located in proximity, and not requiring transmission service from others); this is distinct from on-site self generation for just one consumer.
- Central station generation services at market based rates (generation serving one or more consumers located at a distance from consumers and requiring transmission service) .
- Other services described in Sections A5, A6, A7, and A8.
- Other services (please describe).

**A5. Necessary Services. Utilities and perhaps other parties will have to address the services listed below. Please indicate how these services should be offered, measured (metered), and priced on an unbundled basis.**

- distribution service
- transmission service
- supplemental generation service

- imbalance service<sup>1</sup> (including accounting for losses)
- back-up (standby) service
- voltage control
- other ancillary services necessary for maintaining system reliability
- scheduling of supplies and demands
- repairs/consumer complaints
- other necessary services -- please describe

**A6. Market Center Services. The market may benefit from the services listed below. Please indicate how these services should be offered and priced.**

- title transfer
- transaction confirmation
- establishing credit standards
- invoicing
- dispatching of transmission/generation
- exchanges/swaps
- interruption notification
- imbalance trades

**A7. Spot Market Services. The market may benefit from the services listed below. Please indicate how these services should be offered and priced.**

- electronic bulletin boards for spot transactions/prices
- power pooling services
- coordination with futures/options markets

**A8. Transmission Service. For a competitive market to work, utilities owning transmission facilities must provide transmission service. Please indicate how following objectives would be met:**

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<sup>1</sup> Imbalance service applies in cases where consumer takes more or less power or energy than scheduled.

- services must be provided consistent with FERC tariffs.
- utilities must accept power delivered to their transmission system by other suppliers and offer wheeling services comparable to services they provide to themselves.
- all sellers supplying consumers must have interconnection agreements with owners of necessary transmission facilities.

TNMP advocates a regional transmission approach to pricing and access coupled with an Independent System Operator to manage the transmission system of the region. The appropriate regional transmission pricing method is the postage stamp method which recognizes the highly interdependent nature of the transmission grid and that there are other economic, societal, environmental, and geographic variables relevant to proper development of the transmission grid. More specifically the prudent location of transmission facilities also depend on meteorological conditions for renewables resources, aesthetic concerns of citizens, environmental issues and regulations, landowner rights, water availability, cost of land, availability of land, as well as the location of customers to be served. The value of transmission access and pricing lies with its ability to simply facilitate a fully competitive generation resource marketplace for wholesale purchasers and others down the road. The

postage stamp method's simplicity minimizes litigation cost, affords efficiency in consummating transactions, economic decision making is not distorted by game playing with complex rules, "pancaking" is eliminated, all are treated on a comparable basis, peak shifting is encouraged to better use facilities, all transmission owners have a vested interest in developing the most efficient regional grid (via coordinated planning through an ISO) when costs are pooled, and its a stable pricing approach providing all regional consumers with access to the lowest bulk resource costs.

**A9. Recovery of Stranded Investment. Please indicate how the recovery (if any) of stranded investment should be accomplished. Address each of the following issues:**

**a. The definition of stranded investment.**

Stranded Investment is due to the costs a utility has incurred, pursuant to its obligation to serve all customers in its service territory, exceeding the costs that are expected to be obtained in a competitive market for electric services. The portion of costs in excess of what would be obtained in the competitive market, are considered stranded costs or stranded investment. These costs are stranded by the shift from regulation to competition.

**b. The fraction of stranded investment which should be recovered.**

A utility should be given a reasonable opportunity to recover these stranded costs. But full recovery of these costs is not guaranteed.

- c. **How the Commission will determine the amount of stranded investment, taking into account: revenues under traditional tariffed rates (or existing special contracts); actual utility revenues from customers who obtain discounted rates or obtain service from others; increases in net revenues from wholesale sales and additional retail sales, including the effects of price elasticity of demand; increases in the value of assets due to new pricing or competition; mitigation of stranded investment; and other relevant factors.**

TNP recommends that within a defined transition period that a utility be given the opportunity to generate costs savings that may be used to offset the write-down of fixed costs which exceed market. The utility should have the responsibility to file their own plan for stranded cost recovery. TNP's Community Choice filings incorporate all of the above with a straightforward proposal to take responsibility for generating needed savings to meet a target market value for fixed cost obligations previously found to be reasonable by regulators, without increasing customer bills from levels last authorized by the Commission.

- d. **Preliminary estimates of the magnitude of stranded investment (please provide supporting analyses).**

A comparison of existing contract prices or net book value of generation assets with prices currently available on the market can quantify costs which exceed market.

- e. **The proper ratemaking treatment of negative stranded investment.**
- f. **From whom stranded investment should be recovered.**

TNMP recommends recovery from customers as well as sharing of stockholder responsibility if the target write-down of fixed costs above market is not met.

- g. **The mechanism for recovery of stranded investment.**

Stranded Investment can be recovered during the transition period. It can be recovered through depreciation shifting, savings in purchased power and fuel costs, and other reductions in operating costs. Rates are held constant through the transition period. Through aggressive management, savings are expected to result from productivity gains and decreases in interest expense. An earnings cap restriction will make a portion of earnings, in excess of the cap, available to management to further reduce fixed costs in excess of market. The time period over which stranded investment is recovered is the transition period. This is the period of time the company has to become more efficient and find ways of writing down the

stranded investment. Basically it should be the responsibility of the utility to pursue cost containment measures and new revenue sources to off-set the write-down of above market fixed obligations.

**h. The time period over which stranded investment is to be recovered.**

A recovery period of 3 to 7 years would be reasonable.

**i. How utilities can mitigate stranded investment.**

**A10. Recovery of Costs of Commission-Mandated Utility Low Income, DSM, Environmental, Renewables, and Nuclear Power Plant Decommissioning Programs. ("Mandated Programs).**

**a. How shall costs of mandated programs be recovered from participants in the competitive market?**

Recovery of costs from commission-mandated low income programs should be paid for state-wide by an average surcharge to end-users. Demand-side management commission-mandated costs should be collected from customers choosing demand-side management, environmental, renewables and nuclear costs as their preferred (or required) power resource. Customer preferences have been solicited by TNMP for use in its evaluation of resource bids. A copy of that survey is attached.

**b. How shall the magnitude of the costs of mandated programs be determined?**

Each utility should be able to provide the magnitude of costs known to the regulatory authority.

**A11. Encouragement of Renewables.**

- a. How shall renewables be encouraged in a competitive environment? Please discuss such mechanisms as a requirement that x percent of energy sold in the competitive market must come from solar resources.**

In a competitive environment customers are provided information by the seller, coupled with their own value systems they make choices as to the services and prices which are preferable. Customers should be surveyed and such input factored into resource acquisition decisions.

Renewables can be encouraged by the use of a regional postage stamp transmission price paid by end-users. This method of pricing would ensure that a renewable resource, who's best location (i.e. where ever the wind conditions are best for instance) which may not be near a load center, is not penalized by a transmission price. Likewise more polluting generation facilities which could exacerbate air quality won't be encouraged to locate near load centers, with a regional postage stamp transmission price.

- b. How could progress in encouraging renewables be measured?**

By utilities offering the resource as an option to its customers.

- c. How could a renewables program be enforced by the Commission?**

**A12. Pooling of Generation and Centralized Dispatch of Generation or Transmission.**

- a. Should pooling of generation or centralized dispatch of generation or transmission be mandatory or voluntary?**

TNMP advocates a regional solution for transmission pricing and access. The Southwest Regional Transmission Group would be a good vehicle to establish a regional transmission rate with standard terms and conditions. An Independent System Operator could be formed to police the access of the regional transmission system. This likely will not happen without being mandatory. These concepts have been adopted for ERCOT. A multi-state commission collaboration may help accomplish this for the region including Arizona.

- b. What technical requirements will be necessary to ensure reliable and efficient use of generation and transmission resources? Please propose specific requirements, if possible.**

An ISO would be the vehicle to balance the market interests with maintenance of a reliable system pursuant to multi-state regulatory oversight. Recent outages in the southern parts of New Mexico effecting the customers of several utilities begs for a regional solution via an ISO to ensure a reliable efficient transmission grid.

**A13. Non-Public Service Corporations. How shall non-public service corporations such as municipal utilities be involved in a competitive**

market? For example, the service territories of Arizona utilities not regulated by the Commission may not be open to competition and Arizona utilities not regulated by the Commission may not be able to compete for sales in the service territories of the utilities identified in Section A1. Alternatively, an Arizona utility not regulated by the Commission may voluntarily participate in a competitive program if it makes its service territory available to competing sellers and if it agrees to all of the requirements of the Commission's competitive program.

Certainly the more choices a customer has the more effective is competition. The legislature may have to mandate participation if the absence of such would otherwise cause barriers to competition for other regulated entities and Arizona consumers.

- A14. Conditions for Returning to Utility Service After the Conclusion of a Pilot Program. If a pilot were adopted, please indicate what conditions are appropriate for returning to utility service after the conclusion of the pilot.**

The obligation to serve should reside with the distribution system provider.

- A15. Conditions for Returning to Utility Service. Please indicate what conditions (if any) are appropriate for returning to utility service if a competitive market is on-going.**

- A16. Active Requirements.**

- a. **A utility may require consumers obtaining generation from another entity to adhere to reasonable scheduling notification requirements, accept reasonable delivery points, adhere to reasonable metering requirements, and accept reasonable remote control requirements for interruptions or other purposes. Please specify what you consider to be reasonable.**

With the vision that the generation or bulk power market is deregulated, the relationship between the load aggregator and generator is negotiable. This deregulation assumes choices are available to customers and those choices will cause suppliers to offer reasonable requirements or the customer will go elsewhere.

- b. How should the utilities identified in Section A1 notify their customers of the adoption of a competitive program by the Commission?**

Utilities should take on the responsibility to educate customers. An opportune time to do so is during a transition period prior to competitive access.

- A17. Impacts on Other Utility Customers. Please indicate how adverse impacts on rates or service quality for utility customers not participating in the competitive market could be minimized.**

- A18. Reporting Requirements for All of Electricity to End Users. Please indicate what reporting requirements (to the Commission) are appropriate and who should file reports.**

Three principles must be adhered to; 1) inform consumers of their choices, 2) minimize costs, 3) be more responsive to consumers by streamlining the customer inquiry process.

- A19. Certificates of Convenience and Necessity. Please comment on whether competitive sellers who supply electricity to an end user must obtain a Certificate of Convenience and Necessity from the Commission (unless the seller already has an applicable**

**Certificate). Please describe whether any conditions on the certificate would be necessary.**

The commission could issue a blanket Certificate of Convenience and Necessity allowing all suppliers who have a certification of reliability (as to financial and operational reliability) to provide service to any end-user. (Upon the conclusion of a transition period wherein utilities are allowed the opportunity to recover stranded costs.)

TNMP's Community Choice proposals recommend that after a transition period that customers would be free to choose their bulk power supply resource, via load aggregation or separately. The incumbent utility would remain obligated to provide transmission and distribution services.

**ATTACHMENT TO**  
**TEXAS-NEW MEXICO POWER COMPANY'S**  
**COMMENTS FOR**  
**DOCKET NO. 11-0000-94-165**

**BEFORE THE NEW MEXICO PUBLIC UTILITY COMMISSION**

IN THE MATTER OF THE INVESTIGATION OF )  
RESTRUCTURING OF REGULATION OF THE )  
ELECTRIC UTILITY INDUSTRY OF NEW MEXICO )  
\_\_\_\_\_ )

CASE NO. 2681

**COMMENTS OF TEXAS-NEW MEXICO POWER COMPANY**

Texas-New Mexico Power Company ("TNMP") appreciates the opportunity to respond to the Commission's inquiry regarding restructuring of regulation of the electric utility industry of New Mexico. As part of its response, TNMP submits a set of policy level concepts and principles to guide the Commission in its efforts to restructure the electric utility industry for the benefit of the consumers in New Mexico. Included is a description of TNMP's proposal, called "Community Choice." Community Choice is TNMP's proposal to the Commission regarding how the Commission and the public utilities in New Mexico can embark on a transition to a competitive market model for the electric services industry in New Mexico. Community Choice is a voluntary program that public utilities can implement immediately, subject to approval by the Commission, without changes to the Public Utility Act.

TNMP also describes TNMP's Competitive Market Pilot Project, which is a proposal for conducting competitive market experiments in New Mexico. The Competitive Market Pilot Project is designed to augment TNMP's Community Choice

program. Through the Competitive Market Pilot Project, various stakeholders in the electric industry can gain experience regarding the results that may be obtained if the electric services industry is restructured using a competitive market model. The Competitive Market Pilot Project is designed to be implemented on a voluntary basis with the approval of the Commission. The Competitive Market Pilot Project can be implemented without amendments to the Public Utility Act.

In the interest of brevity, TNMP presents only a summary discussion of Community Choice and Competitive Market Pilot Project. At the Commission's pleasure, TNMP is prepared to make more detailed presentations of these proposals. TNMP's responses to the Commission's questions should be read in the context of these proposals.

#### Overview of TNMP's Operations

TNMP is a public utility that provides electric energy services in New Mexico and Texas. TNMP owns and operates electrically separate transmission and distribution systems in New Mexico and Texas. Although TNMP owns transmission facilities in both New Mexico and Texas, TNMP is a transmission dependent utility because it depends on Transmission Services from transmission owning utilities in Texas through the Electric Reliability Council of Texas and in New Mexico through the Western Systems Coordinating Council. In Texas, TNMP obtains bulk electric energy to serve its Texas customers from generation facilities owned and operated by TNMP and by purchasing bulk electric energy from wholesale suppliers. In New Mexico, TNMP purchases bulk electric energy from wholesale suppliers to provide all of its electric

service to its customers. TNMP purchases electric energy for its New Mexico service territories primarily from El Paso Electric Company, Public Service Company of New Mexico, Southwestern Public Service Company, and Tucson Electric Power Company.

### **Concepts & Principles for Restructuring**

TNMP supports restructuring the electric utility industry in a manner that relies to the greatest extent practicable upon a competitive market model. In a competitive market model, market forces and consumer choice determine the types and prices of electric services. Applied properly to the electric services industry, particularly the bulk electric energy and energy-related services sectors, the competitive market model can be a more effective means of controlling suppliers than traditional cost-of-service regulation. A competitive market model can ensure that consumers receive electric services in an economically efficient manner. In sectors of the electric services industry that remain natural monopolies (making the competitive market model impractical), TNMP supports performance-based regulation in lieu of cost-of-service regulation.

With regard to the Commission's investigation of restructuring, the Commission should establish at the outset general concepts and principles against which proposals to restructure the electric services industry may be evaluated. The concepts and principles adopted by the Commission should be consistent with an overarching policy of fostering competition in the electric services industry. TNMP proposes the following six concepts and principles as a frame of reference for the Commission's deliberations on electric industry restructuring:

- The bulk electric energy market should be deregulated completely to create a competitive market structure for supply of bulk electric energy.
- Ownership of generating assets should be separated from ownership of transmission and distribution facilities as necessary to mitigate the market power inherent in vertically integrated ownership structures.
- After a reasonable transition period, sellers of electric services should have direct access to all consumers of electric services.
- The Commission should allow mechanisms to evolve that facilitate the aggregation of small consumers (i.e., small businesses and residential customers) into effective purchasing units.
- Electric utilities should be given a reasonable opportunity to recover costs and investments that the Commission has deemed prudently incurred.
- To the extent that transmission and distribution services remain natural monopolies, the Commission should employ "performance-based" regulation to encourage efficiency and reward above average performance, and should employ appropriate means to ensure that transmission and distribution utilities cannot use the ownership of transmission and distribution facilities to thwart the evolution to a competitive market.

Simply stated, TNMP favors a transition in the structure of the electric service industry that ultimately will provide customer choice to all consumers. Customer choice means that all consumers of electric services have the choice of which electric services they purchase and from whom they purchase them. With respect to how the transition

to a customer choice industry structure can be accomplished, TNMP proposes that the Commission immediately begin the transition to a restructured electric services industry in New Mexico that is designed to benefit all consumers, whether large or small, urban or rural, commercial/industrial or residential. To this end, TNMP is pleased to present the Commission with a proposal called Community Choice.

### **TNMP's Community Choice Proposal**

Community Choice is an alternative to the manner by which electric utilities currently provide electric service to retail customers. Community Choice provides a framework for the Commission immediately to begin the transition to a restructured electric services industry that can provide benefits to all consumers. Community Choice will work to the benefit of all consumers in New Mexico and will provide the basis for an orderly transition to a customer choice oriented industry during a specified reasonable transition period. It is TNMP's vision of a workable, customer choice oriented electric service market.

Under Community Choice, electric utilities will functionally unbundle the electric services they currently provide into four unbundled products and services:

1. Bulk Electric Energy,
2. Transmission Service (including ancillary services),
3. Distribution Service, and
4. Energy-Related Services.

These four unbundled products and services will be separately priced so that consumers can identify the cost of each product and service on their monthly electric bills.

To implement Community Choice, electric utilities will enter into community service agreements with "communities," which are envisioned to be municipalities and other aggregated loads. Each community service agreement will be tailored to the unique needs of the particular aggregated load, as opposed to relying on traditional rates and services, which are set on a cost-of-service basis for the entire "service area."

Thus, each aggregated load within an electric utility's service area will have the right to choose the types and quality of electric services that will be available to individual consumers. These community service agreements will be made available to municipalities and other aggregated loads within TNMP's service territories and can be implemented when they are approved by the Commission.

After a reasonable transition period, during which TNMP urges the Commission to engage in pilot programs to gain experience with operation of a competitive electric services market, the local or "host" electric utility for a particular service area will broaden the choices available to each aggregated load within that service area to allow each aggregated load to select its own source(s) of Bulk Electric Energy and Energy-Related Services (as defined in response to Question 4, below). The local electric utility will continue to be the sole provider of Transmission and Distribution Services (as defined in the response to Question 4, below), which are expected to remain natural monopolies. Once an aggregated load selects a source(s) of Bulk Electric Energy, the

local utility will arrange to acquire such Bulk Electric Energy and deliver it to the individual consumers within the aggregated load as part of the Distribution Service provided by the local utility. The local utility will then pass the cost of this Bulk Electric Energy directly through to the consumers in the aggregated load as part of the overall cost of electric service. Provision of Energy-Related Services will be at the discretion of the individual consumers in each aggregated load. TNMP envisions that prior to operation of such a plan and delivery of such service(s), appropriate rate schedules will be filed with and approved by the Commission in accordance with the Public Utility Act.

Because Bulk Electric Energy accounts for more than half of the total current cost of electric service (e.g., roughly 60% of TNMP's current rates is attributable to the cost of wholesale purchased power), Community Choice will give the municipality or other aggregated load direct control over the majority of the cost of electric service to consumers in that aggregated load area. Perhaps more significantly, as the price for electric energy falls - as many believe that it will - due to increasing competitive pressures, aggregated loads served pursuant to Community Choice service agreements will have the opportunity to benefit directly in the form of lower overall costs for electric services.

With regard to Energy-Related Services, TNMP envisions a fully competitive market for these services. Energy-Related Services include, for example, energy management, conservation programs, and power quality monitoring. Providers of Energy-Related Services will have direct access to individual customers and individual customers will be able to choose among services and providers. Energy-Related

Services may be provided by public utilities pursuant to filed tariffs or by unregulated entities operating in a competitive marketplace.

Community Choice is a framework that New Mexico public utilities can adapt to fit its particular circumstances. The specific characteristics of Community Choice are as follows:

1. During the initial phase (between approval by the Commission and the end of a reasonable transition period), the public utility will voluntarily enter into community service agreements with each municipality or other aggregated load within its service area. These service agreements are to be negotiated with the individual aggregated loads and tailored to the unique needs of the particular aggregated load with respect to types and quality of electric service to be provided within the community. Through this transitional approach, the aggregated load can tailor the electric services in the way that best meets the needs of the consumers.

2. The negotiated service agreements will include an agreed to rate path that gives the public utility a reasonable opportunity to recover prudently incurred costs and investments that may become stranded in a competitive market for electric services. Community Choice does not guarantee recovery of these costs. Rather, the public utility gets a reasonable opportunity to recover stranded costs through improvements in productivity and cost saving measures.

3. After the transition period, the Community Choice service agreement will permit each community to select its own sources of Bulk Electric Energy and Energy-Related Services. At a minimum, the public utility will provide Distribution Service and

Transmission Service to the customers in the aggregated load. If the customers in the aggregated load desire individual choice of sources, i.e., if the customers in an aggregated load believe that they can do better with other sources of Bulk Electric Energy and Energy-Related Services, that will be available.

### **TNMP's Competitive Market Pilot Project**

During the transition period of Community Choice, TNMP urges the Commission to engage in pilot projects that can serve as laboratories to experiment with competitive market structures for the electric services industry. Accordingly, TNMP is pleased to present its Competitive Market Pilot Project. From pilot programs such as the Competitive Market Pilot Project, the Commission can gain insights into various issues involved in the transition to a customer-driven, competitive market place, including the following:

1. the factors that motivate different consumers to switch from one supplier to another,
2. the importance of price in the consumer's choice of supplier,
3. the perception that some electrical services are commodities,
4. the characteristics of electric services that may create opportunities for suppliers to differentiate their product and service offerings,
5. the technical and legal hurdles to aggregating small businesses and residential consumers into efficient groups of load,

6. the values that consumers place on the various products and services that electric utilities heretofore have provided, and

7. the need for government to step in to ensure that publicly desirable social programs are maintained in a competitive market place where interclass subsidies likely will not exist.

The Competitive Market Pilot Project will allow the Commission to test many of the assumptions currently being made about how a competitive market will function and the impact that deregulation may have on suppliers and consumers. In order to permit the Commission to begin immediately, TNMP has structured its Competitive Market Pilot Project so that New Mexico public utilities can implement it on a voluntary basis without amendment of the New Mexico Public Utilities Act. As part of the Pilot Project, TNMP is prepared to negotiate with other New Mexico public utilities in the Western Systems Coordinating Council on a voluntary basis to enter into service agreements pursuant to Section 62-9-7 NMSA 1978. Under such a service agreement, TNMP and the other New Mexico public utility with end-use customer territories would agree that each would have the reciprocal right to provide Bulk Electric Energy and Energy-Related Services to a portion of the consumers in the other's service area.

The service agreement would not alter TNMP's or the other public utility's obligation to provide traditional electric services under filed rate schedules. However, the consumer, through the voluntary agreement of the utility currently providing bundled electric service to its community, would be able to choose between TNMP and the other public utility as to which utility provides Bulk Electric Energy and Energy-Related

Services. As part of the service agreement, TNMP and the other public utility each would draft separate sets of rate schedules covering Bulk Electric Energy, Transmission Service, Distribution Service, and Energy-Related Services to be offered as part of the Pilot Project. The service agreement and each set of the rate schedules would be subject to approval by the Commission. Once the rate schedules and service agreement have been approved, TNMP and the other public utility would be free to market Bulk Electric Energy and Energy-Related Services to consumers within the geographic areas covered by the service agreement.

One of the unique aspects of TNMP's Pilot Project is that it will immediately allow aggregated customers to gain the benefits of choosing their supplier of Bulk Electric Energy and Energy-Related Services. Thus, the Competitive Market Pilot Project allows for controlled access to a competitive market, in that consumers will be able to make decisions about their own electric services, and the Commission will be able to understand the implications and impacts of customer choice as the industry makes the transition to customer choice in a competitive electric services market.

TNMP's Response to the Questions Posed by the Commission

**QUESTION 1.      WHAT SHOULD BE THE COMMISSION'S POLICY REGARDING CUSTOMER CHOICE? THAT IS, SHOULD CHOICE OF SUPPLIER BE AVAILABLE TO ALL CUSTOMER CLASSES? IF NOT, WHAT SHOULD THE COMMISSION POLICY BE WITH RESPECT TO THOSE CUSTOMER CLASSES WHICH MAY BE DENIED CHOICE OF SUPPLIER? IDENTIFY ANY BARRIERS TO PARTICIPATION.**

The Commission's policy regarding customer choice should be to create an electric services market structure that maximizes customer choice. TNMP's customers are demanding increased choices and, for a customer-oriented utility, customer choice of suppliers is the logical goal. However, the nature of the electric services industry dictates that customer choice is practical only in certain market segments.

The electric services industry is composed of four market segments: Bulk Electric Energy, Transmission Service (including ancillary services), Distribution Service, and Energy-Related Services. These segments are defined in TNMP's response to Question 4, below. Customer choice should be available in the Bulk Electric Energy segment and the Energy-Related Services segment because these segments are not natural monopolies and can be restructured using a competitive market model. Therefore, in the Bulk Electric Energy and Energy-Related Services segments, a competitive market with full customer choice should be the ultimate goal of the Commission. On the other hand, Transmission Service and Distribution Service are natural monopolies in which customer choice is not practical because of the need for duplicative, customer specific facilities. In the Transmission Services and Distribution

Services segments, the Commission should employ performance-based regulation in a regulated market.

With regard to barriers to customer choice, there are two basic barriers that need to be overcome. First, replacing the current regulated market with a market structure based on customer choice likely will lead to stranded investments for certain utilities. Fear of the financial impact of stranded investment has caused some utilities to resist the change to a policy favoring customer choice. Therefore, the Commission must move quickly and decisively to deal with utilities' so-called "stranded costs" that may result from movement to a competitive market for Bulk Electric Energy. Recognizing and addressing these costs will reduce resistance to a competitive market and expedite the transition. TNMP's Community Choice Plan provides a mechanism for recovering these "stranded costs" during a transition period that is fair to all stakeholders. As such, these costs should be viewed as "transition costs." With regard to the need for a reasonable transition period, in New Mexico little benefit is expected to be gained by immediately proceeding to retail wheeling (note the *Final Report--The Impacts of a Retail Wheeling Statute in New Mexico: An Evaluation*, dated November 9, 1995, submitted by NMSU and UNM to the Commission and to the Integrated Resource Planning Interim Legislative Committee).

Second, in order to make customer choice a reality, the Commission and market participants must find efficient ways to aggregate small consumers, i.e., residential and small businesses. Aggregation is necessary because (1) electric utilities do not have in place the equipment necessary to meter these loads on a real-time basis and (2) small

consumers likely will not possess adequate purchasing power unless they are aggregated into efficient purchasing groups. One of the key objectives of TNMP's Competitive Market Pilot Project is to allow the Commission and participating utilities to gain experience in efficient methods of aggregating loads in a competitive market. A workable means of aggregation also will address a principle concern of consumer groups that large (i.e., industrial) consumers will get the benefits of a competitive market and that the small consumer will be left with the stranded costs. As a starting point, Community Choice calls for aggregation at the community level. The community level may be a municipality, or the unincorporated portion of a county, or any other section of the electrical system that can be metered efficiently.

**QUESTION 2. TO WHAT EXTENT, AND HOW, SHOULD THE COMMISSION SEEK TO ASSURE A SHARING OF THE BENEFITS OF COMPETITION WITH ALL CUSTOMERS? HOW SHOULD POTENTIAL CROSS-CLASS SUBSIDIES BE TREATED BY THE COMMISSION?**

During the transition to a competitive market model, the Commission should ensure a sharing of the benefits of competition by implementing transition plans such as Community Choice and the Competitive Market Pilot Project that create aggregated loads with sufficient purchasing power to garner a share of the benefits of competition. After the transition period, the load aggregation functions performed by market participants should be sufficiently sophisticated to ensure that all customers have access to the competitive marketplace. During the transition phase, the Commission may have to provide safeguards to ensure that present subsidies are gradually

eliminated. In a program such as Community Choice, gradual elimination of cross-subsidies can be obtained by preserving traditional "tariffed" service subject to performance-based regulation.

After the transition phase, the market place will ensure that the benefits of competition accrue to all customers. In the Bulk Electric Energy market segment and the Energy-Related Services segment there will be very little need for regulatory oversight as the relationship will be between willing sellers and willing buyers. Regulation will be limited to those customers who elect to continue to receive bundled electric service under traditional tariffs and for natural monopoly services (Transmission Service and Distribution Service). However, until the transition is complete, the Commission through regulation must ensure that the benefits of an evolving competitive market place are not limited to a few large customers with economic clout.

To borrow from the *Final Report* referenced above, the market will, or regulation as its surrogate must, strive toward technical efficiency (i.e., the economically efficient combination of inputs that will result in the desired output level at the lowest possible cost) and allocative efficiency (i.e., when a firm is producing the goods and services desired the most by society in just the right amount). If the technology and economics of the industry are not yet developed to the point where the market will deliver the desired efficiencies, then regulation must play some role. During the transition, customer choice is not yet fully available to achieve the desired outcome, but comprehensive regulation is no longer appropriate to achieve those ends. Rather, the transition calls for an interim step which promotes some of the outcomes of the

competitive marketplace, yet does not leave some consumers without the opportunity to benefit from increased competition among electric service providers. TNMP has developed Community Choice with this in mind and to provide for a transition to a competitive marketplace.

With pooling of the transmission costs and supplying electric services pursuant to a community-chosen, customer-aggregated service agreement, the need to minimize or eliminate cross-class subsidies is no longer critical. By aggregating customer load at the community level, Community Choice will keep in place the rate design and relative rate structure among all customer classes, while providing net benefits and rate reductions (i.e., the performance goals of the market and competition, particularly in the generation sector of the industry), to all customer classes. Accordingly, there will be no net economic dislocations among end-use consumers that would occur under such a structure.

Furthermore, during the transition, cross-class subsidies within the aggregated community load can be identified. Cross-class subsidies can be minimized, if not eliminated. To the extent such subsidies are not eliminated during the transition period, funding mechanisms can be established by the time the competitive market is implemented.

Closely related to the cross-class subsidy issues is the issue of "cherry-picking," which is the common term for a supplier choosing only certain customers that have the most profitable loads to serve. One of the principle objectives of Community Choice is to eliminate the need and clamor for cherry-picking from the "pickee's" (i.e., the large

industrial or commercial consumer) perspective. The cherry-picking problem is eliminated by providing all customers with immediate rate reductions and the opportunity to have full choice of suppliers within the foreseeable future. During the transition, Community Choice treats the aggregated load of the community as an individual customer. Thus, individual consumers will not be making individual selection of suppliers, yet they will obtain some of the benefits available as if they were able to make individual choices. Decisions regarding the benefits to be derived from the electric system will be made at the "community" level, not at the state, regional or federal level. Again, this occurs without the economic dislocations that retail wheeling will visit on those customers without the economic power to individually make a meaningful choice.

During the Community Choice transition period, cross-class subsidy issues are limited to transmission wheeling services, ancillary services, and so-called "service of last resort," which is service provided by the local utility in a situation when no alternatives are available.

The Federal Energy Regulatory Commission ("FERC") can be relied upon to deal with transmission costs and pricing to eliminate any cross-class subsidies while the Commission and the distribution providers will have time to understand the true cost and fair price of Distribution Services. Nevertheless, the Commission must ensure that "transmission" regulation at FERC is not utilized by transmission owning utilities to thwart programs such as Community Choice and the Competitive Market Pilot Project.

The same holds true for ancillary services. To the extent ancillary services are provided by market participants on a comparable basis or are competitively available, the market place will resolve the issue rather than the FERC or this Commission.

The remaining cross-class subsidy issue will be for the provider of last resort. Within the transition period, the Commission and the Distribution Service providers will have time to identify the true need for a provider of last resort, the cost of such, and funding mechanisms which can replace the historic cross-class subsidy. Community Choice and the Competitive Market Pilot Project will provide laboratories in which to identify and resolve issues surrounding access and pricing of regulated services and provision of service by providers of "last resort."

**QUESTION 3.      WHAT ACTIONS SHOULD BE TAKEN TO ASSURE FULL AND FAIR COMPETITION IN GENERATION MARKETS? WHAT MAY BE THE IMPACT OF COMPETITION ON RURAL ELECTRIC COOPERATIVES AND THEIR CUSTOMERS?**

With respect to full and fair competition in generation markets, the Commission should set a time period for the implementation of transition plans and recoveries necessary to establish a level playing field in the Bulk Electric Energy market. To the maximum extent possible, public utilities should be allowed a reasonable time to balance the interests of their customers, employees, stockholders, and in the case of cooperatives, their member/owners. The Commission should entertain demonstrations, experiments and trials, such as TNMP's Competitive Market Pilot Project, designed to accelerate the transition to customer choice and to meet the needs of public utilities' specific proposals. While the benefits of a competitive wholesale market are desirable

to capture, simply focusing on promoting wholesale competition in Bulk Electric Energy is too narrow a focus, because the current surplus of generation capacity in the region leaves no room for competition in the market for incremental generating capacity. Accordingly, transition models like Community Choice and the Competitive Market Pilot Project promise some competition today and a transition to a competitive electric services market within the foreseeable future.

Rural electric cooperatives ("RECs") providing electric service to the public and their owner/members should embrace customer choice options as they, like TNMP, are mainly providers of Distribution Service and customer-requested services. Significant benefits are immediately available to the owner/members of these RECs from these options. Over time, REC member/owners stand to benefit from increased retail access as much or more than municipal and investor-owned electric utilities and their customers. In order to take advantage of Community Choice and the Competitive Market Pilot Project, RECs and municipal systems can functionally unbundle their systems to provide the services required to enhance customer choices and competition.

The key transition issue for RECs, and all municipalities and Distribution Service providers as well, will be how to unbundle and price the unbundled services. Under Community Choice, the Distribution Service providers will be able to unbundle and price their services with any necessary Commission oversight, during a controlled transition period. If Distribution Services are unbundled and priced appropriately, Distribution Service companies will be able to avoid "stranding", i.e. failing to recover, the cost of their distribution assets.

**QUESTION 4. SHOULD THE COMMISSION REQUIRE FUNCTIONALLY SEPARATED SERVICES? IF SO, HOW SHOULD SUCH SERVICES BE UNBUNDLED OR REBUNDLED?**

Yes. The electric services currently provided by electric utilities should be functionally disaggregated into four discrete services as follows:

A. Bulk Electric Energy. These products include electric capacity to meet reliability council criteria and electric energy to meet instantaneous consumer needs. A competitive market model can be employed to regulate the production and consumption of these products. Thus, large consumers and aggregated loads can choose their sources of Bulk Electric Energy products.

B. Transmission Service. This service includes open access to the bulk transmission system and ancillary services (as further defined in response to Question 15) necessary to the provision of comparable Transmission Service. As a natural monopoly, Transmission Service should remain subject to cost regulation by FERC. Any gaps in FERC and state jurisdiction over transmission facilities should be eliminated and pricing of services should not be allowed to preclude programs such as TNMP's Competitive Market Pilot Project and Community Choice.

C. Distribution Service. This service includes distribution of electric energy from the bulk transmission system, arranging for procurement of customer chosen Bulk Electric Energy supplies, and any other distribution related services necessary to ensure customer choice of Bulk Electric Energy and Energy-

Related Services. As a natural monopoly service, Distribution Service should be subject to performance-based regulation by the Commission. Initially, rates for, and access to, some Distribution Service can serve to promote or thwart demonstration projects. The Commission must protect against such an outcome through its regulatory oversight of Distribution Service providers.

D. Energy-Related Services. This is a set of services that are competitively chosen by the customer and may be provided pursuant to schedules approved by the Commission or by an unregulated entity. These services include energy management services, energy efficiency and conservation services, power quality monitoring, and other services that are discretionary and competitively chosen by the customer. Those Energy-Related Services that are not fully and freely chosen by a customer or a customer representative, should be subject to regulatory oversight, should meet standards of comparability, and should be tied to the provider that has the contractual or tariff relationship with the community and ultimately with the customer. This standard must ensure that providers of such services are required to offer the same services to others at comparable prices and conditions.

**QUESTION 5. HOW SHOULD THE COMMISSION ADDRESS ISSUES RELATED TO UNIVERSAL SERVICE?**

The Commission and all parties need to understand what constitutes universal service during the period of transition. Historically, universal service has not been an

issue; it was included in the so-called "regulatory compact". That is, a public utility granted certification by the state to serve a customer area, with protection from unbridled competition, would be afforded recovery of its prudently incurred costs and an opportunity to earn a reasonable return on its investment. In turn, the public utility would have an obligation to provide safe, adequate and reliable service to all customers in that area at fair, just and reasonable rates. As the regulatory compact has changed, the definition of universal service (what it is, who provides for it, and how is it funded) has become vital. Each utility should be asked to identify its definition of universal service, i.e., that service to which every New Mexico consumer is entitled. Under Community Choice, addressing the issues related to universal service will not pose a problem, the community will make its choice of universal service for its community, with current levels of electric service as a starting point. However, beyond the transition period, do we know what universal service is, what its cost is, and how it should be financed? During the transition to a competitive market for electric services, public utilities, the Commission, and other market participants can develop the information and tools to answer such questions. During this transition, all members of the community will receive the same level of universal service as defined by the community.

**QUESTION 6.           WHAT SHOULD COMMISSION POLICY BE WITH RESPECT TO  
A CUSTOMER WHO CHANGES GENERATION SUPPLIERS?**

Under a competitive market model for the Bulk Electric Energy segment of the market, sellers and buyers have the freedom to contract and price services taking into

account all relevant factors, including the costs of switching suppliers. However, during the transition to a competitive market, the overarching regulatory principle should be that the customers obtaining Bulk Electric Energy from new sources should be better off or at least no worse off than they were before the customer changed to such supplier. Under the Community Choice concept, after the first phase, communities as customers are allowed freely to change Bulk Electric Energy sources as each party to the transaction completes its obligations to the other. Should such a customer elect to return to bundled electric services from the Distribution Service provider there should be a mechanism to prevent existing tariff customers from subsidizing customers that return to bundled electric service. This customer's bundled electric service should be based on a rate which either provides a benefit or is neutral to other customers. Under the competitive market model, there should be an incentive for both the customer and the host utility to contract for the Bulk Electric Energy rather than allow the customer to rely on the host utility's obligation to serve.

**QUESTION 7. HOW SHOULD THE COMMISSION ADDRESS ISSUES RELATED TO ALTERNATIVE ENERGY SUPPLIES, INCLUDING RENEWABLE RESOURCES?**

The Commission should adopt the principle of customer choice to deal with the issue of alternative energy supplies, including renewable resources. Regulation serves as the surrogate for the market place. Customer choice is the hallmark of a competitive market place. Therefore, the Commission can remove itself from this decision process where utilities and providers engage in a process of meaningful customer choice. This

approach should prove to be a valuable transition step for utilities and providers to a more competitive environment. TNMP's approach to this in Texas has been to send a questionnaire to each customer seeking input as to their preferences and to determine whether they would be willing to pay extra for renewables or energy conservation services. Copies of TNMP's customer surveys are attached. These questionnaires were sent to TNMP's customers in Texas to obtain customer input with respect to integrated resource planning principles. TNMP will ask its New Mexico customers their preference before contracting for or building any new long-term resources.

Under Community Choice, the Commission should leave this issue to TNMP and the communities it serves. Any tilt in the resource assessment toward renewable resources in the economic evaluation should be supported by customer preference or an explicit equalization payment that has been agreed to between the supplier and the community. In approving this concept on a pilot basis, the Commission will be able to gain a first hand understanding of consumer preferences for alternative energy supplies. In sum, as part of the Community Choice program, TNMP will ask customers their preferences.

**QUESTION 8. TO WHAT EXTENT SHOULD OR WOULD COMPETITIVE POWER SUPPLIERS BE REQUIRED TO OBTAIN A CERTIFICATE OF CONVENIENCE AND NECESSITY?**

After the transition period, once a competitive market has been achieved, acquisition of Bulk Electric Energy supplies from competitive Bulk Electric Energy sources should not necessarily be obtained pursuant to a certificate of convenience

and necessity (CCN). Bulk Electric Energy supply should be governed by market demand and siting limitations. Under the current federal statutory framework, competitive power suppliers likely would be either power marketers, exempt wholesale generators, or qualifying facilities selling Bulk Electric Energy pursuant to FERC-approved market-based prices. Under current New Mexico law, these entities are not required to obtain a CCN. However, if one of these entities makes sales to New Mexico consumers, thereby becoming a public utility, then that entity should be required to comply with all statutory requirements under the Act, including certification requirements.

The proper role in the competitive market model for the CCN process is with respect to Transmission Service and Distribution Service. In this respect, the CCN process should ensure that there is no waste or duplication of facilities such as transmission structures, transformation, and distribution poles and wires. CCNs for the construction of transmission and distribution facilities should be conditioned on the public utility providing open access to Bulk Electric Energy suppliers and customer service providers. Because open access is vital to the competitive market model, the Commission should stand ready to revoke the CCN of a public utility that does not provide open access.

With respect to TNMP's proposed Competition Market Pilot Project, the basis of the Pilot Project is the voluntary service agreement between TNMP and another public utility, which will include a reciprocal agreement to serve customers in both service areas. Such a service agreement will be submitted to the Commission for approval

and in the process any required adjustments to existing CCNs can be made to reflect the Pilot Project and the voluntary service agreement.

**QUESTION 9.      WHAT OBLIGATIONS, IF ANY, SHOULD COMPETITIVE GENERATION SUPPLIERS HAVE TO PARTICIPATE IN SYSTEM RELIABILITY REQUIREMENTS AND TO CONTINUE SERVICE IN THE MARKETS THEY SERVE? CONVERSELY, UNDER WHAT CONDITIONS MAY COMPETITIVE GENERATION SUPPLIERS ABANDON MARKETS THEY SERVE?**

All Bulk Electric Energy suppliers tied to the regional transmission grid live and die by each others' contributions to system reliability. Criteria developed by the National Electricity Reliability Council and the Western Systems Coordinating Council are generally accepted by utility and non-utility producers of Bulk Electric Energy and should be followed to protect the integrity of the bulk power supply system. Each supplier of Bulk Electric Energy should be required to comply with these criteria either with its own resources or by purchasing ancillary services under FERC-approved tariffs offering comparable service. In order to ensure compliance with these criteria, the Commission should encourage development of independent system operators (ISOs) on a regional basis to eliminate redundancy in the local control areas and to enhance the competitiveness of the Bulk Electric Energy marketplace. The dispatch and control of the transmission system should be the responsibility of a single organization that has no vested interest in the sale of the electric energy being transmitted over that system

Adherence to these criteria should not, however, preclude Community Choice options for differing levels of reliability. Rather, the price charged to the end-use customer will reflect the reliability of service provided to that customer.

As opposed to the competitive generation supplier being required to provide ancillary, back-up or support services, a customer that requires any such services should be required to have a contract in place with a host utility for such services and the host utility should receive tariff rates sufficient to hold its other tariff customers neutral to the new or returning load. Once a customer leaves bundled electric service for unbundled services from the host or another supplier(s), its return should be treated as a new customer. Under Community Choice, this will not be an issue during the transition period. After that time, if for example the community chooses Bulk Electric Energy from a source other than TNMP, unless that source can otherwise provide "utility grade" services, the community would have to contract for such services from TNMP.

Competitive Bulk Electric Energy suppliers should be free to pursue any markets that they choose. In a competitive marketplace, the Bulk Electric Energy supplier's obligation to serve a particular portion of the Bulk Electric Energy market will be determined as a matter of contract. At the end of the term of a supply contract, the supplier and customers may elect to continue the contractual relationship or pursue other alternatives. In the unlikely situation that no Bulk Electric Energy supplier is interested in serving a particular market segment, then the Distribution Service provider shall be obligated to provide traditional, bundled electric service. The Distribution

Service provider in this instance may either contract for needed Bulk Electric Energy supplies or construct generation facilities pursuant to the grant of a CCN. Rates for such bundled electric service shall be set based on the Distribution Service provider's cost. Thus, even in the competitive market model, the Commission, pursuant to its authority over Distribution Service providers, will have a role to ensure that electric service is available to all consumers.

**QUESTION 10.      WHAT ROLE, IF ANY, SHOULD "AGGREGATORS" AND "REMARKETERS" OR OTHER FREE MARKET PLAYERS HAVE IN A RESTRUCTURED MARKET?      WHAT CERTIFICATION REQUIREMENTS WOULD APPLY TO SUCH ENTITIES?**

Load aggregators will be very important in the emerging marketplace as the cost to monitor and control individual loads may prohibit alternative ways of providing customer choice to residential customers. Marketers and brokers serve an important role in bringing purchasers and suppliers together. Their initiative to date has expanded the products available to customers. As the Bulk Electric Energy market becomes more competitive, aggregators, marketers and brokers will play an increasingly important role in the customer's choice of electric energy suppliers and supply to the community and to constituents of the community.

**QUESTION 11. IN WHAT RESPECT SHOULD ENVIRONMENTAL CONCERNS IMPACT THE RESTRUCTURING OF THE INDUSTRY, ESPECIALLY IN THE GENERATION AND TRANSMISSION AREAS?**

It is axiomatic that all participants in the electric energy market must comply with applicable environmental regulations. Further, the delivery of electric energy should be accomplished without unnecessary and wasteful duplication of facilities related to these monopoly services. Beyond the environmental regulations applicable to all suppliers, the choice of additional environmental safeguards and resulting costs and benefits should remain with the customer. If customers have preferences for renewables or other options that go beyond existing environmental regulations, they will be able to satisfy these preferences by their choice of Bulk Electric Energy sources. By analogy, in the financial services area, where consumer/investors have a choice where they invest their funds, "socially responsible" investment funds have carved out a niche in the mutual funds markets. Customers with a preference in favor of certain attributes of a particular company should be able to factor such a position into their decisions. The Commission will note that TNMP solicited that input from its Texas customers as part of its resource planning process and anticipates doing the same for New Mexico communities and consumers.

**QUESTION 12. TO WHAT EXTENT SHOULD THE COMMISSION UTILIZE INCENTIVE REGULATION WHERE FULLY COMPETITIVE MARKETS DO NOT EXIST?**

Incentive regulation is preferable to cost-of-service, return on rate base type of regulation for segments of the electric energy market that remain natural monopolies. Distribution Service providers should be rewarded for gains in productivity and improvements in customer satisfaction. To the extent that Distribution Service providers continue to own and operate generation facilities as necessary to fulfill their obligation to provide bundled electric service, the Distribution Service provider should be rewarded for better-than-market fuel costs and above average thermal efficiency and availability. To the extent that Distribution Service providers purchase Bulk Electric Energy to fulfill their obligation to provide bundled electric service, the Distribution Service provider should be rewarded for better-than-market Bulk Electric Energy costs.

TNMP's Community Choice Plan and community pricing and service decisions are an incentive or performance form of regulation and will serve as an effective regulatory transition to more competitive markets. We say "more" as opposed to "fully" competitive markets, because until there is a technological break through that renders the wires obsolete or unnecessary, there will never be a "fully" competitive market for all electric services.

**QUESTION 13. HOW SHOULD THE COMMISSION ADDRESS ISSUES RELATED TO LONG-TERM SUPPLY AVAILABILITY AND RELIABILITY? WHO SHOULD BE RESPONSIBLE FOR THESE ISSUES?**

Once a competitive market for Bulk Electric Energy has been established, the market will ensure long-term supply availability. In the unlikely event that no Bulk Electric Energy suppliers desire to serve a particular market segment, then the Distribution Service provider for that market segment retains the obligation as supplier of last resort, as discussed in TNMP's response to Question 9. An Independent System Operator should be responsible for operation of the bulk transmission system and ensuring long-term reliability by requiring each Bulk Electric Energy supplier to contribute to meeting NERC and WSCC reliability criteria. See TNMP's response to Question 9.

The market place should decide what products it wants from electric services providers and the value of these products. Some customers say that they do not want or need the level of reliability that is inherent in today's tariff service. As long as the Independent System Operator operates the bulk electric system in a manner that ensures the integrity of the delivery system, customers can choose whether they desire interruptible Bulk Electric Energy, time-of-use Bulk Electric Energy, on-peak or off-peak Bulk Electric Energy, firm or non-firm Transmission Service, etc. By giving customers a choice and by encouraging competition in these markets, customers are likely to have these options to chose from in the foreseeable future.

Traditional cost-of-service regulation provides few incentives for host utilities to be innovative in their product offerings. For example, it was only when industrial customers began to exercise their self-generation options that product diversity started to grow. As customers grow more accustomed to choice and the market place evolves, long term availability should not be compromised and long term reliability can be ensured by the Commission if it adopts the Community Choice plan.

**QUESTION 14. HOW SHOULD THE COMMISSION ADDRESS ISSUES RELATED TO GENERATION, TRANSMISSION AND DISTRIBUTION SYSTEM PLANNING?**

After the transition to a competitive Bulk Electric Energy market, competitive forces can be relied upon to provide incentives for efficient generation planning. As a competitive market for Bulk Electric Energy evolves, the need for regulatory involvement in generation planning will become more and more attenuated. During the transition period of Community Choice, while the competitive market is evolving, the Commission should rely upon integrated resource planning principles and require competitive solicitations as a condition to receiving a CCN for construction of new generation. Furthermore, the Commission should encourage the development of independent power projects as an alternative to traditional rate-based generation projects.

The regional transmission group ("RTG") concept is a mechanism to protect the integrity of the bulk transmission system by providing for access and transmission

system planning. Where bottlenecks arise in the bulk transmission system, either the RTGs planning procedures will identify the need for transmission additions or the Bulk Electric Energy supplier adversely affected by such bottleneck may seek an order from FERC for the necessary transmission addition. The Commission's role in this process is to assess the need for transmission system additions once additions have been proposed. In its evaluation, the Commission should ensure that adequate transmission capacity is available so that bottlenecks do not limit consumers' access to Bulk Electric Energy. Because Transmission Service is a monopoly, pricing signals cannot be relied upon to ensure an economically efficient level of transmission capacity. Therefore, the Commission should focus on the opportunity costs (i.e., constraints on consumer access to Bulk Electric Energy suppliers) of not approving expansions of the bulk transmission system. With regard to transmission pricing, so-called "postage stamp" rates that allow the same service throughout a specified area for the same price should be employed over as large an area as possible to facilitate the development of a competitive market for Bulk Electric Energy.

The bulk electric transmission system should be viewed as a regional highway system that is supported by and for the benefit of all customers. A postage stamp rate would ensure recovery of all bulk transmission system costs and prevent any one transmission owner from exploiting its ownership of transmission facilities or unique geographical position. A postage stamp rate encourages wholesale transactions, promotes a competitive wholesale marketplace, and is especially important to rural

systems striving to access the competitive wholesale marketplace on a level playing field.

Distribution system planning will be the responsibility of the Distribution Service provider. As such, distribution system additions will remain subject to regulatory oversight by the Commission. Distribution Service providers will be required to obtain a CCN for substantial system additions into new geographic areas. The Commission should implement performance-based regulation to provide Distribution Service providers incentives to plan and construct their distribution systems efficiently. Incentives should include rewards for improvements in productivity and asset utilization.

If the Commission proceeds with programs such as Community Choice and TNMP's Competitive Market Pilot Project, generation and distribution planning are the simplest components. Transmission is the key component to facilitate implementation of any such programs. The Commission needs to ensure, to the extent of its ability, that transmission-owning utilities do not have the power to effectively block innovative programs such as Community Choice and the Competitive Market Pilot Project. The Commission should consider opening a proceeding to develop a specific transmission rate, such as a postage stamp rate for all New Mexico entitlements and to promote pilot projects. During the transition, the Commission can evaluate the issues involved with transmission access, planning, and pricing, to determine how to deal with distribution access, planning and pricing in a competitive electric services market.

**QUESTION 15. WHAT GOODS OR SERVICES, IN ADDITION TO GENERATION, WOULD APPROPRIATELY BE TREATED AS COMPETITIVE SERVICES, IF ANY?**

There are a number of ancillary services that are required to safely and reliably deliver electric services to a consumer. These services include: reactive power/voltage control service, loss compensation service, scheduling and dispatching services, load following service, system protection service; and energy imbalance service. The Commission should consider requiring entities that provide these services to one customer to provide them to other utilities, marketers, or brokers on a comparable, cost-of-service basis with appropriate margins to the supplying utility. The services necessary to support programs such as such as Community Choice and the Competitive Market Pilot Project are currently subject to an inquiry by the FERC pursuant to its MEGA-NOPR. During the transition to a competitive market model for electric services, the Commission can study whether ancillary services should be provided as part of a bundled Bulk Electric Energy product or as part of a bundled Transmission Service or as an unbundled set of ancillary services provided as part of the competitive market for electric services.

In addition, many Energy-Related Services, such as are described in our response to Question 4 above, are provided competitively. To the extent that Energy-Related Services are not fully and freely chosen by a customer or a customer representative, they should be subject to regulatory oversight, should meet standards of comparability, and should be tied to the provider that has the contractual or tariff

relationship with the community and ultimately with the customer. This standard must ensure that providers of such services are required to offer the same services to others at comparable prices and conditions.

**QUESTION 16. WHAT STANDARDS SHOULD BE APPLIED TO DETERMINE THE APPROPRIATENESS OF RECOVERY OF COSTS ASSOCIATED WITH EXISTING GENERATING PLANT IN EXCESS OF THE AMOUNTS WHICH CAN BE SUPPORTED BY MARKET BASED PRICES (HEREAFTER "TRANSITION COSTS")?**

Public utilities should be given a reasonable opportunity to recover costs and investments that have been prudently incurred by the public utility pursuant to its obligation to serve New Mexico consumers. To the extent that these prudently incurred costs and investments cannot be supported by market-based prices, the Commission should provide reasonable mechanisms for recovery of these transition costs. These mechanisms should be tailored to the circumstances of the individual public utility and should employ performance-based incentive concepts. In other words, the Commission need not guarantee that a public utility will recover its transition costs. Rather, the Commission should give the public utility the reasonable opportunity to recover transition costs through transition charges and improvements in the efficiency of the public utility's operations. The Commission should allow each electric utility that provides Distribution Service in New Mexico to submit a transition plan that would minimize any adverse financial impacts of a transition to a competitive Bulk Electric Energy market. The Commission should recognize immediately the benefits of a fully competitive Bulk Electric Energy market and move to ensure there are no impediments

to the development of such a market. Community Choice and the Competitive Market Pilot Project provide a transition that minimizes the impact of transition costs while giving consumers the benefits of a more competitive electric services market.

**QUESTION 17. SHOULD THERE BE ANY RECOVERY OF TRANSITION COSTS? IF SO, SHOULD THERE BE ANY RISK ASSOCIATED WITH THE ABILITY TO RECOVER TRANSITION COSTS? IF NOT, WHY NOT? IF SO, WHY? WHAT ARE THE IMPACTS ON UTILITIES AND CUSTOMERS IF TRANSITION COSTS ARE OR ARE NOT RECOVERED?**

Yes. As discussed in response to Question 16, public utilities providing electric services to the public in New Mexico should have a reasonable opportunity to recover prudently incurred costs and investments. To the extent that the Commission implements utility proposed plans, the utility should bear the risk of the plan's success. Placing the risk on the public utility will give the utility an incentive to recover its transition costs in an expeditious manner while protecting New Mexico consumers from the chance that they might pay a portion of their public utility's transition costs but not reap the benefits of a competitive market. Furthermore, customer prices for electric services should not increase as the result of a utility's proposed transition plan; rather, recovery should be accomplished through increases in efficiency and other cost saving measures. TNMP's Community Choice Plan is consistent with the principles set forth above.

**QUESTION 18.      WHAT COULD THE CUSTOMERS OF NEW MEXICO'S ELECTRIC UTILITIES (WHETHER OR NOT PARTICIPANTS IN A COMPETITIVE MARKET) EXPECT IN TERMS OF RATES IN A RESTRUCTURED INDUSTRY AND WHAT TIMING IS ASSOCIATED WITH THOSE EXPECTATIONS?**

In a competitive market, Bulk Electric Energy will become a commodity product. As such, it is reasonable to assume that the spot market price for Bulk Electric Energy will approximate the short run marginal cost of electric energy. New Mexico is in a regional electric energy market in which there presently is excess capacity. Until the excess capacity is exhausted (either through generation plant shutdowns or growth in demand for electric energy) it is reasonable to expect short term prices for electric energy to be less than presently exist pursuant to cost-of-service regulation. Thus, at least in the short term, lower prices can be expected if Bulk Electric Energy evolves into a commodity market. In the longer term, once supply and demand have come into balance, Bulk Electric Energy prices can be expected to rise to the level necessary to support new investment in generation assets. This price level today is set by the cost of a modern combustion turbine.

The cost of Bulk Electric Energy comprises more than one-half of the total cost of electric services provided today. If the Commission adopts a transition strategy such as Community Choice, consumers in New Mexico can expect to receive lower rates as the downward pressure of a competitive market reduces the price of Bulk Electric Energy. The key element of transition strategies such as Community Choice is that all

consumers, not just large consumers with purchasing power, will receive lower rates as the result of moving the Bulk Electric Energy market to a competitive market model.

If, on the other hand, the Commission proceeds immediately to retail wheeling, only a few customers are likely to benefit. The costs of proceeding immediately to retail wheeling would be borne by the remainder of the utility's customers or the utility's shareholders. In the interim, as a transition strategy, the Commission should explore alternatives to immediate retail wheeling in order to obtain benefits for all New Mexico customers without penalizing the utility's shareholders. Beyond these interim measures, the Commission should monitor the workings of the market place during the transition period and, in that same period of time, move to a competitive market model for the electric services industry. TNMP expects Community Choice and the Competitive Market Pilot Project to result in lower overall prices for electric services, depending on the participants and the nature of the specific pilot program and service agreement.

**QUESTION 19.      WHAT IMPACT WOULD RESTRUCTURING OF THE ELECTRIC INDUSTRY HAVE ON INTEGRATED RESOURCE PLANNING, DEMAND-SIDE MANAGEMENT, RENEWABLE RESOURCES AND OTHER LEAST COST PLANNING TOOLS, AND PLANT DECOMMISSIONING COSTS?**

Restructuring the electric industry using a competitive market model, as TNMP proposes, would subject IRP, DSM, and renewable resources to the rigors of the

marketplace. If consumers find value in these concepts and services, then they will survive.

A competitive marketplace is compatible with the fundamental objectives and principles of integrated resource planning ("IRP"). Further, as competitors in the marketplace naturally seek out more and more efficient means of production, the truly valuable IRP principles will increase in importance from what some believe today is the subject of lip service, to sources of comparative advantage. For example, IRP principles dictate that all resource options - supply side and demand side - be considered on an equal basis. In a competitive market where electric products are priced based on value received, the benefit and risk of all resource decisions will accrue to the supplier. Should the wrong decision be made, the customer will not suffer.

A fundamental tenant of IRP is the importance of public input such that customer preference can be factored into resource decisions. In a competitive electric service market, customer surveys, attitudes, and choice will replace the "public participation" process endorsed by some state Commissions, which in practice substitutes the opinions of professional intervenors for the choices of the consuming public. Finally, the overarching goal of IRP is to ensure that the regulated utility chooses the resources which best meet the needs and wants of the utility's customers. Again, if the competitive supplier understands what the customers need and want, and understands the full array of resources which can be deployed to meet those needs and wants, the supplier will succeed. If not, the market's process of natural selection will eliminate the supplier, at no cost to the customer.

A customer-oriented electric services provider will seek to provide those services and products that the customers value at a price that the customer is willing to pay. There is a much more cost effective way to meet the objectives of integrated resource planning than having a process prescribed in great detail by a public utility commission.

When it came to TNMP's customers' needs and wants, TNMP asked its customers directly. An all source bidding process and a customer survey have replaced what took two and one-half years to accomplish in Colorado. TNMP's Community Choice Plan fully accounts for such public input and provides for a full evaluation of the many resources available to meet customer needs.

As the electric services industry moves to a more competitive structure, the key with respect to IRP will be to retain those IRP principles that are conducive to the transition to a competitive market place. If IRP adds value to the electric services that customers desire, then they will be preserved by the marketplace - with or without the encouragement of the Commission. As to the process that has come to be associated with IRP, the Commission may rest assured that competitors will find an efficient process through which the value-adding aspects of IRP may be captured. Contrast this view of the future of IRP with retaining the IRP process for which the professional intervenors and consultants clamor. Such an outcome should be avoided at all costs.

**QUESTION 20.      HOW COULD THE COMMISSION MINIMIZE THE TRANSITION PERIOD, SUCH THAT A FULLY COMPETITIVE MARKET COULD BE ACHIEVED IN A MORE TIMELY FASHION?**

TNMP is ready to work with the Commission and other New Mexico public utilities to implement its Competitive Market Pilot Project and Community Choice, its community-based program for transition to a competitive electric services market. These programs are designed to achieve a competitive market where communities and other aggregated loads can choose their source(s) of Bulk Electric Energy. Community Choice and the Competitive Market Pilot Program can be implemented immediately on a voluntary basis by New Mexico public utilities. Community Choice expedites the transition to a competitive market by providing the public utility with incentives to address expeditiously any stranded costs it may have. Under Community Choice, the utility takes the risk of not recovering any stranded costs it may have during a reasonable transition period. In addition, TNMP's Competitive Market Pilot Program provides a means of experimenting with competitive market structures and quickly identifying approaches that work. In the longer term, the lessons learned from implementation of Community Choice and the Competitive Market Pilot Project will serve as the basis to evaluate further the issues surrounding a competitive market for electric services and the transition to a fully competitive market.

**QUESTION 21.      WHAT CHANGES TO SYSTEM OPERATIONS WOULD BE REQUIRED TO IMPLEMENT RESTRUCTURING AND HOW WOULD THOSE CHANGES BE IMPLEMENTED?**

There is evidence that a sweeping review of system operations in New Mexico is necessary regardless of the transition to a more competitive marketplace. Three system blackouts in southern New Mexico and the resulting damage to customer equipment during restoration of the power system are unacceptable in any business environment. An independent system operator ("ISO") to operate the regional transmission system serving most of New Mexico is required to separate the regulated transportation system from the economic decision-making necessary for a competitive Bulk Electric Energy market. The Commission should allow interested parties to propose changes to regional transmission system operations. The Commission's oversight and participation in such regional approaches should ensure that the interests of transmission dependent utilities and non-utility market participants are equally represented and accommodated by the generation and transmission owners.

**QUESTION 22.      WHAT CORPORATE RESTRUCTURING WOULD BE APPROPRIATE IN A RESTRUCTURED MARKET? THAT IS, SHOULD THERE BE VERTICAL CORPORATE DISAGGREGATION OR OTHER REORGANIZATIONS?**

Corporate restructuring should be considered only to the extent necessary to mitigate market power in the Bulk Electric Energy market so that a competitive marketplace naturally evolves. Regardless of whether the Commission deems

restructuring necessary to mitigate market power, the Commission should require disclosure of market information so that all Bulk Electric Energy providers - utilities, exempt wholesale generators, and power marketers - compete on a level playing field.

With regard to the Transmission Services segment of the industry, again, the Commission should consider mandating corporate restructuring only as necessary to mitigate market power that otherwise may inhibit development of a competitive Bulk Electric Energy market. Alternatives to corporate restructuring are emerging. By coupling the independent system operator with a transmission planning organization, such as the recently developed regional transmission groups, there may be little need for the current vertically integrated structure of some utilities. This emerging non-utility controlled structure combined with a regional postage stamp transmission rate and open access may be sufficient to provide an effective interface between buyers and sellers of electric services. If, on the other hand, vertically integrated utilities oppose programs such as Community Choice and the Competitive Market Pilot Project, then the Commission may find it necessary to mandate the disaggregation of the vertically integrated utility structure to provide for more competition and mitigate market power.

**QUESTION 23.      WHAT MARKET POWER ISSUES WOULD BE PRESENT IN  
THE RESTRUCTURING OF THE ELECTRIC INDUSTRY AND  
HOW SHOULD THE COMMISSION ADDRESS THOSE  
ISSUES?**

First, the sheer size of some of the electric utilities raises legitimate issues of market power. The FERC, in its MEGA-NOPR, and the California Public Utilities

Commission have raised issues related to market power and the utility's ownership of generation capacity. As noted above, if transmission owning utilities do not have the ability to use transmission ownership to exercise market power, then market power issues should be minimized. If, however, transmission owning utilities act to favor their generation and hamstring programs such as Community Choice and the Competitive Market Pilot Project, then the Commission should step in and use its authority to mitigate the market power intrinsic in ownership of large portions of the transmission system or relatively large proportions of the available generation capacity.

Second, addressing issues of market power necessarily give rise to the need for comparability of service. If transmission owning utilities do not offer truly comparable service, then the Commission may find it necessary to consider corporate restructuring in order to reduce the market power inherent in the present vertically integrated utility structure. The Commission should have its analysis and plan to create such discipline, up to and including revoking the territorial certification of any transmission owning utility which abuses its market power on comparability bases. If vertically integrated utilities do not provide comparable service, they should not retain utility benefits.

**QUESTION 24.      WHAT FEDERAL-STATE JURISDICTIONAL ISSUES EXIST WITH RESPECT TO RESTRUCTURING AND HOW SHOULD THE COMMISSION ADDRESS THOSE ISSUES?**

The Commission's goal should be to authorize programs designed to foster competition in the delivery of electric services in a way that permits customer choice while retaining as much jurisdiction over the resulting process as possible, as compared

to yielding jurisdiction to the FERC. However, to the extent that certain of the rates, terms and conditions of Transmission Services in this competitive environment are set at FERC, the overall price to the consumer should be set pursuant to the comparable tariff concepts under consideration by the FERC and as discussed in the proposals TNMP has advanced herein. TNMP believes that once the type of direct access envisioned with Community Choice and the Competitive Market Pilot Project are in place, jurisdictional conflict will be avoided. However, there are some overlapping areas and gaps between the jurisdictions that are unclear with respect to the exact demarcation between state and federal jurisdiction, particularly when dealing with transmission of power in interstate commerce to retail or end-users. The Commission, FERC, public utilities, other suppliers and customers should be mindful of these issues. By working in a collaborative process toward a shared goal of a customer choice driven, competitive market, these issues should be resolved.

In Public Utilities Commission v. Attleboro Steam & Electric Company, 273 U.S. 83 (1927) the United States Supreme Court held that state regulation of electric rates for sales across state lines is not permitted because such regulation imposes a burden on interstate commerce, and because wholesale transactions are "national" in character and thus subject only to federal regulation under the Commerce Clause of the United States Constitution. In order to codify this demarcation between state and federal jurisdiction, Congress enacted the Federal Power Act of 1935. ("FPA"). The FPA provides that federal regulation applies "to the transmission of electric energy in

interstate commerce and to the sale of electric energy at wholesale in interstate commerce." Federal Power Act, Section 201(b), 16 U.S.C. sec. 791 et seq. (1992)

The Energy Policy Act of 1992 amended the Federal Power Act in part, and granted to FERC the authority to order the wholesale "wheeling" or transmission of electricity in interstate commerce. Accordingly, any wholesale generator may apply to FERC for an order requiring a transmitting utility to provide Transmission Services to the applicant. The Energy Policy Act also provides that FERC cannot require wheeling to ultimate or retail customers, and provides that "nothing . . . [in this Act] shall affect any authority of any state or local government under state law concerning the transmission of electric energy directly to an ultimate consumer". Federal Power Act section 212(g), as amended by EPAAct section 722(3)

Therefore, FERC's authority to order Transmission Service does not affect any authority that might exist under state law concerning transmission of electricity to ultimate customers. New Mexico retains authority over the existence and extent of the utility franchise or exclusive retail marketing area, through its power to set rates, site utility plant, and to certify public convenience and necessity with respect to suppliers. While there may be factual disputes with respect to unnecessary duplication of certain facilities and matters of economic waste, the Commission has the power to decide whether it wishes to allow jurisdictional public utilities with "franchise" or "certificate" areas to permit ultimate customers into the market for bulk electric services and how other unbundled services are to be offered to the ultimate consumer. It may be that

certain rates, terms and conditions of the overall unbundled service will be set by the FERC, others by the Commission, and others by the market place.

Recently, FERC approved a Notice of Proposed Rulemaking ("NOPR") on open access non-discriminatory Transmission Services by public utilities, recovery of stranded costs by public utilities and transmitting utilities, and other matters concerning open access Transmission Services, often referred to as the "FERC MEGA-NOPR". In the MEGA-NOPR, FERC relies on its authority to remedy undue discrimination under Sections 205 and 206 of the FPA as the legal foundation for requiring public utilities to file open access transmission tariffs. This invocation of power is in addition to the authority to order the wheeling or transmission of power pursuant to Section 211 and Section 212 of the FPA. Two of FERC's goals in issuing the MEGA-NOPR are to facilitate the development of competitive wholesale bulk power markets by ensuring that wholesale purchasers and sellers of electricity can reach each other by eliminating anticompetitive practices and other discrimination in Transmission Services, and secondly, to resolve the issue of transition costs while developing competitive wholesale markets. This is the federal backdrop to the pending Commission investigation.

As stated, the FPA does not preempt states from allowing wheeling or Transmission Service to ultimate consumers and the New Mexico Public Act authorizes the Commission to certify providers of electric service, and to regulate such service. It may be that due to the interstate nature of the transmission grid, certain of the prices, terms and conditions of such retail Transmission Service will be set by the FERC, to the

extent it involves unbundled Transmission Service in interstate commerce. In the Stranded Cost NOPR, 59 Fed. Reg. at 35,284, the FERC asserts exclusive authority over the rates, terms and conditions of any transmission in interstate commerce whether associated with wholesale or retail wheeling.

The exact demarcation between transmission in interstate commerce and local distribution may not be clear. The FERC states that it is a factual matter "to be decided in the first instance by the Commission" *Id.* In the final analysis, whether an exact line between state or federal jurisdiction must be drawn in order to move to customer choice is not the issue. Even if FERC is able to require open access on a comparable basis with respect to lines in interstate commerce or at wholesale and to set the rates, terms and conditions of such service, rather than the states, the states have the power to approve the wheeling of power that is not inconsistent with federal law, set other rates, terms and conditions in the restructured environment, certify the siting of utility plant, and certify providers of utility service to the public. If the Commission allows the programs proposed by TNMP, the prices that may be charged for such customer choice will likely include a mixture of rates, terms and conditions set by both this Commission and FERC, to the extent that transmission in interstate commerce is implicated in such service, and by the market place.

Rather than engage in a dispute over jurisdiction, TNMP's proposal is a collaborative approach under Commission supervision where it may be applicable and under FERC supervision where it may be applicable. For example, during the initial phase of Community Choice, to the extent that TNMP requires power to meet its

contractual obligations with the communities who have entered into service agreements, TNMP will be allowed to access it from a variety of suppliers in a competitive bulk power market. In the event a utility with transmission facilities interposed between TNMP and the supplier objects to Transmission Services, TNMP can obtain a wheeling order pursuant to Section 211 and 212 of the FPA, or will simply access the service pursuant to a comparable service tariff upon adoption of the tariffs that emerge from the pending MEGA-NOPR.

The same would be true under the Competitive Market Pilot Project. To the extent that Transmission Services are required, such can be obtained by application to FERC, use of a comparable service tariff, or by application to the Commission pursuant to Section 62-6-25 NMSA 1978. Even under full customer choice, the Commission has authority to find that public convenience and necessity require certain certification of suppliers. Thereafter, the issues of setting the rates, terms and conditions for the variety of unbundled services can be worked out in a collaborative effort between the customers, the electric services providers, the Commission and FERC.

As part of this collaborative effort, to the extent FERC has delegated transmission regulation to the regional transmission groups it is incumbent on the Commission to be involved with these groups to ensure that state objectives are not thwarted in the operations of the regional transmission groups. Under TNMP's Community Choice proposal, distribution regulation will remain under the purview of the Commission. The Commission should ensure that transmission owning utilities which are not subject to the jurisdiction of the FERC under the MEGA-NOPR do not fall

through the cracks in a way that they can hamstring pilot projects such as Community Choice.

**QUESTION 25.      WHAT CHANGES, IF ANY, ARE REQUIRED IN THE NEW MEXICO PUBLIC UTILITY ACT TO FACILITATE THE COMMENTOR'S PROPOSAL?**

TNMP does not believe any changes need to be made to the Public Utility Act (the "Act") to allow the transition period of the Community Choice Plan. During the transition period of Community Choice in TNMP's service area, communities, including municipalities and other aggregations of customers may enter into service agreements with TNMP which set forth a particular type of electric service and rate path for the transition period of Community Choice. Such an agreement could be filed with and approved by the Commission, together with any appropriate rate schedules that are applicable, pursuant to the Commission's existing authority. Depending on the direction communities choose to follow after the transition period, changes to the Act may be necessary. The transition plan proposed can be implemented immediately and any legislative activity that may be necessary for full customer choice can be resolved as further information and experience is garnered during the initial transition period.

Similarly, TNMP's proposed Competitive Market Pilot Project can be implemented without changes to the Act. A mutually acceptable reciprocal service agreement between TNMP and another public utility, which will provide that the customers in each other's respective service area may be served by either of these two

utilities, according to the same "community" or aggregated load basis as set forth in the Community Choice Plan, or on any other basis agreed to, could be presented to the Commission for approval, together with appropriate rate schedules and modifications to existing CCNs, as may be applicable.

The Commission's ability to set rates is plenary and is not dependent on any one methodology. So long as rates are fair, just and reasonable under the circumstances, and taking all factors into account, the Commission is empowered under the Act to approve agreements and rates that are the product of the Community Choice program and the Competitive Market Pilot Project. Nevertheless, in recognition of a customer selected, market driven and competitive environment, certain regulations of the Commission should be modified. For example, the requirements of Rule 350 dealing with treatment of public utility advertising expenses, among other things, with respect to setting rates, should be evaluated and modified. Rule 530 and 540, which set forth filing requirements in support of rate schedules in a full cost-of-service, return on rate base type rate case should be modified to reflect rates set pursuant to the Community Choice or Competitive Market Pilot Project. Such "light-handed" regulation is less costly and less subject to debate and litigation, and can produce savings that can be passed on to consumers in an environment where prices of electric services are set by the mutual decisions of many buyers and sellers in a competitive market.

**QUESTION 26.      WHAT INCENTIVE REGULATION PROPOSALS SHOULD BE CONSIDERED BY THE COMMISSION IN LIGHT OF ISSUES RAISED IN THIS PROCEEDING?**

TNP recognizes that performance-based rates or regulation ("PBR") can provide utilities with better incentives to reduce their costs than does cost-of-service regulation. The Commission can utilize incentive or performance regulation to bring about the ends it desires or it can create a market mechanism to allow utilities, communities, and customers to achieve the same ends. The Commission should use market mechanisms to the extent practical. Performance-based regulation should be implemented in those sectors of the electric services industry that the Commission deems not amenable to market mechanisms. To the extent, if any, that the Commission declines to use market mechanisms to discipline the Bulk Electric Energy market, the Commission should consider PBR incentives that reward superior generating plant performance (availability, heat rate, etc.) and fuel procurement (at or below market fuel costs). To the extent that the Commission requires Distribution Services providers to provide traditional tariff-based electric service (e.g., as providers of last resort), the Commission should consider PBR incentives based on least cost resource mix (at or below bulk electric market prices), productivity improvements, and customer services (continuous improvement in service and reliability). This is by necessity an incomplete and cursory list as it is premature to discuss detailed PBR structures until the Commission has determined the extent upon which market mechanisms are to be relied.

**QUESTION 27.      WHAT RECIPROCITY ISSUES APPLY TO RESTRUCTURING  
AS IT RELATES TO SUPPLIERS LOCATED BEYOND THE  
BORDERS OF NEW MEXICO?**

There are federal constitutional problems which limit a state's ability to restrict access to markets on the basis of in-state or out-of-state distinctions. Such constraints are prohibited by the Commerce Clause of the United States Constitution , as they may place a burden on interstate commerce, or may be prohibited by the Supremacy Clause of the Constitution to the extent federal law preempts state law. A better way to restructure regulation of the provision of electric service as it relates to suppliers located out of state and to avoid issues affected by the Commerce Clause and Supremacy Clause of the federal constitution, is to permit the type of programs that TNMP is proposing through its Community Choice and Competitive Market Pilot Project, which require the utilities to offer customer choice in their respective service territories (whether in-state or out-of-state). To the extent that a utility located out of state wishes to participate, it would voluntarily be able to do so under the programs TNMP proposes. Currently such out-of-state utility would be deemed a "public utility" under the New Mexico Public Utility Act, since they would then be serving the public in New Mexico.. By the same token, that out-of-state utility would have to have a program in place in its service territory that will permit the New Mexico public utility to serve the public in that territory, and this may result in such New Mexico utility becoming classified as a public utility pursuant to the public utility laws and regulations in that state.

Reciprocity tends to go with a level playing field and should be limited to a transition period. The Commission's goal should be to give consumers a full range of supply choices. However, reciprocity between in-state and out-of-state providers should be a prerequisite to allowing out-of-state providers to compete for native load, even under TNMP's Community Choice Plan.

**QUESTION 28.      WHAT OTHER ISSUES, IF ANY, RELATED TO CHANGES IN THE STRUCTURE AND REGULATION OF ELECTRIC UTILITY INDUSTRY SHOULD THE COMMISSION ADDRESS?**

TNMP's objective in this filing is to provide a comprehensive response to the Commission's inquiry that promotes the following goals:

1. The transition ultimately to a competitive retail market providing full customer choice for all consumers,
2. The implementation of a demonstration program for direct access in New Mexico that is available to all consumers,
3. A role for the Commission as a referee in the competitive market for electric services to ensure protection of consumer rates and service, and,
4. Retention by the Commission of primary jurisdiction over direct access retail electric services.

The Water and Integrated Resource Planning Interim Legislative Committee has investigated a variety of matters related to the electric utility industry. Pursuant to such investigation, Senate Joint Memorial 42 ("SJM 42") has been passed by the Legislature. TNMP believes that its recommendations, including its proposed Community Choice

Plan and Competitive Market Pilot Program, are responsive to the concerns expressed in SJM 42.

SJM 42, like TNMP's Community Choice Plan and Competitive Market Pilot Program, recognizes that alternative restructuring schemes affect all New Mexicans and many varied interests, including, among others, individual residents, small and large commercial interests, environmental concerns, renewable energy technologies, in-state utilities, rural electric cooperatives, existing and potential other power suppliers, utility shareholders and other investors in New Mexico, as well as the future of New Mexico. SJM 42 recognizes, as do the Comments of TNMP in this Case, that the infusion of competitive influences into the electric power industry may eventually prove valuable and beneficial to all New Mexicans and that the Commission should monitor and evaluate the electric power industry and applicable market influences and factors. SJM 42 directed the Commission to conduct monitoring and evaluation of potential restructuring of the electric power industry and consider the following "equivalent factors":

1. "All ratepayers in the state should benefit directly with lower rates from any proposed restructuring". TNMP's Community Choice Plan and Competitive Market Pilot Project can apply to all rate payers and will directly lower rates. TNMP is willing to promptly embark on these transitional plans and pilot programs to achieve these ends.

2. "Any proposed restructuring must maintain and possibly encourage the financial health and economic viability of each of the state's utilities." The Community Choice Plan involves a voluntary agreement between utilities and customers and

provides a reasonable transition phase to a customer choice driven, competitive market environment for delivery of unbundled electric services, which addresses the financial health and economic viability of the state's public utilities. The Competitive Market Pilot Project is also voluntary and allows for the same protections.

3. "Any proposed restructuring must provide for appropriate protection of the state's interest, including in-state utilities, from unfair or advantaged competition from utilities or from outside the state". The transitional phase of TNMP's Community Choice Plan between a utility and its customers and the voluntary aspects of the Competitive Market Pilot Project, together with the reciprocal aspects of these proposals allow for appropriate protection.

4. "The costs, including stranded asset costs, of any proposed restructuring must be shared and apportioned equitably among the varied interests benefited by the proposed restructuring". TNMP's proposals envision each utility serving the public to present a plan to deal with any costs it believes will be "stranded" as the utility industry changes to a competitive environment. An equitable opportunity to deal with any such costs is envisioned pursuant to both the Community Choice Plan and the Competitive Market Pilot Project.

Furthermore, TNMP does not believe that commencement of the proposals made in this Case will instigate any litigation, nor will the adoption of individual utility plans that may follow these proposals. TNMP's proposals are "transitional, phased-in, experimental or pilot projects" which are consistent with the concerns expressed in SJM 42. These proposals will allow the Commission "to further determine the potential

advisability of the restructuring of the electric power industry", and will allow the Commission to determine "the measures by which an evaluation of any proposed industry restructuring can be made", as set forth in SJM 42.

Community Choice and the Competitive Market Pilot Project are open to municipally-owned utilities on the same terms as to other public utilities. The Commission may want to address how competition should be addressed with regard to municipally owned utilities. At a minimum, municipal utilities should not be permitted to compete for other service territory unless they are willing to open their service territories to competition through intrastate reciprocity.

Finally, the Commission should address the procedural framework which will be used to address the foregoing issues and other changes in the structure and regulation of the electric utility industry. The commission's Notice of Inquiry in this Case is a beginning. As stated above, an investigation specifically addressed to transmission matters may be advisable. In the final analysis, a collaborative process that combines input through comment form, work groups, task forces, and a transitional approach to change are wise and should be pursued.

For the Commission to move aggressively with the assessment of the potential and benefits of restructuring, TNMP recommends that the Commission commence the following proceedings and require the utilities to file the following documents:

1. Filings within a reasonable time by the utilities with end-use customers of a "prototype" competitive market plan to accommodate competition at wholesale, and at retail, with a full implementation date of July 1, 2001;

2. Conduct a workshop within ninety (90) days to address transmission pricing in a competitive Bulk Electric Energy market by New Mexico utilities operating in the Southwest region of the Western Systems Coordinating Council,

3. Conduct a workshop within ninety (90) days for all interested parties to identify the benefits of a controlled or managed evolution to a competitive electric services market, including the implementation of transition plans, such as Community Choice, to equitably address issues of stranded cost,

4. Order jurisdictional utilities to file within a reasonable time a performance-based regulation plan, and

5. Filings within a reasonable time by each public utility owning transmission facilities of a proposal for the operation of the New Mexico bulk transmission system in a manner that ensures system reliability and facilitates a competitive market for Bulk Electric Energy.

Respectfully submitted,

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## PART ONE: How Can TNMP Help Save Energy?

Texas-New Mexico Power wants to help you and your community use energy more wisely. Tell us how important each of the following energy-saving programs is to you by marking the number that best matches your opinion.

	Not at all Important				Extremely Important
1. A home energy audit that tests your home's energy efficiency for \$10	1	2	3	4	5
2. The availability of compact fluorescent lighting to provide more energy-efficient lighting for your home	1	2	3	4	5
3. Sponsoring community housing such as energy-efficient homes for low-income citizens	1	2	3	4	5
4. Educational materials for local schools provided free by TNMP, covering topics of electricity, safety, and energy efficiency	1	2	3	4	5
5. A low-income weatherization program that helps low-income residents with insulation, weatherstripping, and energy education	1	2	3	4	5
6. An energy-efficient new home construction program that would combine information and financing	1	2	3	4	5
7. Optional green pricing electric rates that allow customers to choose to pay a little more for power generated by renewable energy sources like the wind or sun	1	2	3	4	5
8. The availability of solar technology such as solar water heaters or rooftop panels for a flat monthly fee	1	2	3	4	5
9. Reduced rates in exchange for TNMP's ability to manage energy use of major appliances in your home.	1	2	3	4	5

## PART TWO: Choose the Best Mix of Power

Power companies can provide you with electricity by using a number of different power sources. Some of these ways to get power include:

### TRADITIONAL POWER SOURCES

These sources of power make up the largest part of most utility companies' way of making electricity. These include natural gas, and burning coal or lignite.

### RENEWABLE RESOURCES

These are environmentally-friendly energy sources that derive from nature and do not run out, as do the fossil fuels like gas and coal. These include wind power and solar energy from the sun. Additionally, biomass, or the use of landfill gas, is considered a renewable resource.

### ENERGY EFFICIENCY PROGRAMS

Another way utility companies meet energy needs is to help customers use energy more wisely by offering items such as energy-efficient compact fluorescent lighting, insulation and weatherization, and ways to efficiently use heating and cooling systems.

These possible sources of power are further described in the table on the next page:

Power Sources	Advantages	Disadvantages	Cost Comparison
Coal or Lignite	⇒ Abundant supply ⇒ Stable prices	⇒ Costly emissions-control equipment is required ⇒ A resource that is not replaceable	158%
Natural Gas	⇒ Environmentally clean ⇒ Low equipment cost	⇒ Prices can change at any time ⇒ A resource that is not replaceable	100%
Wind Power	⇒ Environmentally clean ⇒ A resource that will not run out	⇒ Expensive to run wind farms ⇒ Energy available only when wind is blowing	169%
Landfill Gas/Biomass	⇒ Helps recycle waste products ⇒ Energy available when needed	⇒ Expensive to set up and run energy collection facilities ⇒ Only available in certain areas	140%
Energy Efficient Programs	⇒ Reduces customers' energy bill ⇒ Good for the environment ⇒ May enhance customers' property value	⇒ Less reliable and not there when needed ⇒ Some customers cannot participate in the programs ⇒ May cause rates to increase	186%

Using this information as a guide, please tell us how important it is to you that TNMP uses each source of energy described above. If you think the power source should not be used at all, mark the "zero" category.

	Should NOT Be Used	Not at all Important to Use				Extremely Important to Use	
Coal/Lignite	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Natural Gas	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Wind Power	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Landfill Gas/Biomass	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Energy Efficient Programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Now we would like you to design your own mix of power sources. Assume you have 10 pennies to share among the power sources described above. Let us know what portion of your electricity you would like to come from each power source by distributing your ten pennies across the power sources. You can give any power source from zero up to ten pennies, but the total pennies across all power sources must add up to ten. WRITE the number of pennies to the left of each power source, and also MARK the corresponding number of pennies at the right.

___ Coal/Lignite	<input type="radio"/>										
___ Natural Gas	<input type="radio"/>										
___ Wind Power	<input type="radio"/>										
___ Landfill Gas/Biomass	<input type="radio"/>										
___ Energy Efficient Programs	<input type="radio"/>										

10 Remember that your pennies must add up to ten!

### PART THREE: TNMP Alternatives

TNMP is considering a number of different energy packages to offer you. Help us decide which one is the best. Read the descriptions of the following four packages. Based on your knowledge of power sources (described in Part Two), tell us which is the best package.

**PACKAGE ONE: Traditional Power Sources**

This package would supply your energy needs by making use of coal or lignite and natural gas. This is most similar to what TNMP uses right now.

**PACKAGE TWO: Traditional Power Sources + Renewable Resources**

This package would supply most of your energy needs with the traditional power sources of Package 1, but a portion of your energy would be provided by the renewable resource of wind power. Package 2 increases costs by \$1,643,000, which is an average of \$9.66 per customer more than Package 1.

**PACKAGE THREE: Traditional Power Sources + Energy Efficiency Programs**

This package would supply most of your energy needs with the traditional power sources of Package 1, but a portion of your energy would be provided by energy savings due to high-efficiency lighting, weatherization, and utility programs. Package 3 increases costs by \$298,000, which is an average of \$1.76 per customer more than Package 1.

**PACKAGE FOUR: Traditional Power Sources + Renewable Resources + Energy Efficiency Programs**

This package would supply much of your energy needs with the traditional power sources of Package 1, but a portion of your energy would be provided by the renewable resource described in Package 2 and the energy savings programs in Package 3. Package 4 increases costs by \$1,949,000, which is an average of \$11.46 per customer more than Package 1.

		The Best						The Worst
<input type="checkbox"/> I think Package 1 is:	<input type="radio"/>							
<input type="checkbox"/> I think Package 2 is:	<input type="radio"/>							
<input type="checkbox"/> I think Package 3 is:	<input type="radio"/>							
<input type="checkbox"/> I think Package 4 is:	<input type="radio"/>							

### PART FOUR: A Little About You

You can help us classify groups of customers by answering a few questions about yourself. You do not have to answer these questions, but if you do, remember that all answers are completely confidential. No answer will be connected to you in any way. We appreciate your help in answering these questions.

I am:  Female  Male      I am:  A homeowner  Not a homeowner

How many people (including you) live in your home?  1  2  3  4  5  6  7+

My approximate yearly household income is:  Under \$25,000  \$25,000 to \$49,999  \$50,000 to \$74,999  
  \$75,000 to \$99,999  \$100,000 or more

My age is:  Under 25 years  25 to 34  35 to 44  45 to 54  55 to 64  65 or over

The first number in my zip code is  0  1  2  3  4  5  6  7  8  9

The second number in my zip code is  0  1  2  3  4  5  6  7  8  9

The third number in my zip code is  0  1  2  3  4  5  6  7  8  9

The fourth number in my zip code is  0  1  2  3  4  5  6  7  8  9

**Thank You** for your input. Remember to enter the drawing for up to \$100 off your TNMP electric bill by filling in your TNP account number on the front of this survey. Your account number will not be associated in any way with your responses; all your answers are completely confidential. We appreciate your helping us make a difference.



## PART ONE: How Can TNMP Help Save Energy?

Texas-New Mexico Power wants to help your firm and your community use energy more wisely. Tell us how important each of the following energy-saving programs is to you by marking the number that best matches your opinion.

	Not at all Important				Extremely Important
1. A business energy audit service that tests your firm's energy efficiency beginning at \$25	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. A compact fluorescent leased lighting program allowing a monthly bill for the lease of energy-efficient lighting	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Co-Sponsoring community housing with your firm, such as energy-efficient homes for low-income citizens	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. Optional green pricing electric rates that allow customers to choose to pay a little more for power generated by renewable energy sources like the wind or sun	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. The availability of solar technology such as solar water heaters or rooftop panels for a flat monthly fee	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. Reduced rates in exchange for TNMP's ability to manage energy use of major appliances in your firm	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## PART TWO: Choose the Best Mix of Power

Power companies can provide you with electricity by using a number of different power sources. Some of these ways to get power include:

### TRADITIONAL POWER SOURCES

These sources of power make up the largest part of most utility companies' method of making electricity. These include natural gas, and burning coal or lignite.

### RENEWABLE RESOURCES

These are environmentally-friendly energy sources that derive from nature and do not run out, as do the traditional petroleum-based fossil fuels. Renewable resources include wind power and solar energy. Additionally, biomass, or the use of landfill gas, is considered a renewable resource.

### ENERGY EFFICIENCY PROGRAMS

Another way utility companies meet energy needs is to help customers use energy wisely by offering items such as energy-efficient compact fluorescent lighting, insulation and weatherization programs, and ways to efficiently use heating and cooling systems.

These possible sources of power are further described in the table on the next page:

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Energy Efficient Programs	⇒ Reduces customers' energy bill ⇒ Good for the environment ⇒ Programs may increase local employment	⇒ Less reliable and not there when needed ⇒ Some customers cannot participate in the programs ⇒ May cause rates to increase	186%

Using this information as a guide, please tell us how important it is to you that TNMP uses each source of energy described above. If you think the power source should not be used at all, mark the "zero" category.

	Should NOT Be Used	Not at all Important					Extremely Important
Coal/Lignite	<input type="radio"/>						
Natural Gas	<input type="radio"/>						
Wind Power	<input type="radio"/>						
Landfill Gas/Biomass	<input type="radio"/>						
Energy Efficient Programs	<input type="radio"/>						

Now we would like you to design your own mix of power sources. Assume you have 10 pennies to share among the power sources described above. Let us know what portion of your firm's electricity should come from each power source by distributing your ten pennies across the power sources. You can give any power source from zero up to ten pennies, but the total pennies across all power sources must add up to ten. WRITE the number of pennies to the left of each power source, and also MARK the corresponding number of pennies at the right.

_____ Coal/Lignite	<input type="radio"/>										
_____ Natural Gas	<input type="radio"/>										
_____ Wind Power	<input type="radio"/>										
_____ Landfill Gas/Biomass	<input type="radio"/>										
_____ Energy Efficient Programs	<input type="radio"/>										

10 Remember that your pennies must add up to ten!

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		The Best						The Worst
■ Package 1 is:		<input type="radio"/>						
■ Package 2 is:		<input type="radio"/>						
■ Package 3 is:		<input type="radio"/>						
■ Package 4 is:		<input type="radio"/>						

### PART FOUR: Company Information

You can help us classify groups of customers by answering a few questions about your firm. You do not have to answer these questions, but if you do, remember that all answers are completely confidential. No answer will ever be identified to you or your firm in any way. We appreciate your help in answering these questions.

Approximately how many people does your firm employ?

- 1 to 9                       10 to 49
- 50 to 99                       100 to 199
- 200 to 499                       500 to 1,000
- Over 1,000

My approximate annual firm sales are:

- Under \$25,000     \$25,000 to \$99,999     \$100,000 to \$499,999
- \$500,000 to \$999,999     \$1,000,000 or more

Regarding your firm's zipcode:

■ The first zipcode number is		<input type="radio"/>							
■ The second zipcode number is		<input type="radio"/>							
■ The third zipcode number is		<input type="radio"/>							
■ The fourth zipcode number is		<input type="radio"/>							

Thank You for your input. Remember to enter the drawing for up to \$100 off your TNMP electric bill by filling in your TNP account number on the front of this survey. Your account number will not be associated in any way with your responses; all your answers are completely confidential. We appreciate your helping us make a difference.

## ENCUESTA RESIDENCIAL AL CLIENTE PARA 1996

A Nuestros Estimados Clientes:

Al empezar el nuevo año, Texas-New Mexico Power Company (TNMP) está empezando algunas nuevas iniciativas diseñadas para brindar, más que antes, más valor a nuestros clientes por el dinero que gastan en electricidad. Una manera en la que TNMP trata de aumentar valor para sus clientes es en proporcionar los recursos, que usted verdaderamente quiere, a precios razonables. Su respuesta a esta encuesta permitirá que identifiquemos los tipos de recursos que a usted le gustaría recibir de TNMP. Los resultados de esta encuesta le dará a TNMP las opciones que reflejan los deseos de nuestros clientes.

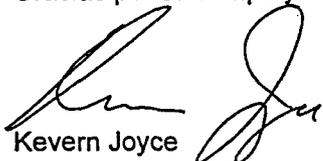
Aquí hay una manera fácil en la que usted puede darnos su opinión y calificar para recibir hasta \$100.00 de descuento en su factura. Al completar y enviar la encuesta adjunta, usted puede ayudar a diseñar la combinación de recursos que TNMP decida escoger. Usted puede enviar la encuesta con el pago de su factura, o la puede llevar a su oficina local antes del 15 de marzo de 1996.

En Tejas, diez (10) casas ganarán un descuento de \$100 en su factura de electricidad. Además, tres casas de cada oficina local de TNMP ganarán \$25, y una casa de cada oficina local de TNMP ganará \$50 de descuento de su factura de electricidad de TNMP. Por favor, solamente una participación por casa. Los empleados de TNMP, sus esposos y sus hijos que viven en la casa no pueden participar. Para más información, o si tiene alguna pregunta, por favor póngase en contacto con su oficina local de TNMP.

Sus respuestas se mantendrán estrictamente confidenciales y solo serán usadas para determinar la referencia de los clientes para la selección de los recursos. Tenga la seguridad de que sus respuestas no serán usadas en conjunto con ninguna campaña de mercadeo o de ventas.

Para que esta encuesta represente un cuadro realista de las preferencias de nuestros clientes, dependemos de su cooperación. Si tiene alguna pregunta sobre la encuesta o sobre el estudio, por favor llame a su oficina local de Texas-New Mexico Power Company.

Gracias por su tiempo y cooperación. Le deseamos un sano, feliz y próspero Año Nuevo.



Kevern Joyce  
Chairman, President, and Chief Executive Officer  
Texas New Mexico Power Company

**INSTRUCCIONES:** Por favor conteste a cada pregunta en las tres páginas siguientes. Por favor marque un círculo para sus respuestas a cada una de las preguntas, así como está demostrado en las instrucciones marcadas abajo.

Para participar en el concurso, marque el número de su cuenta en los espacios aquí abajo, Y marque con un círculo cada número que corresponda:

						-			
<b>ACCOUNT NUMBER</b>									
⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙

**CAJA DE DIRECCIONES**

1. Fill in the number in the top boxes with blue or black pen, or pencil.

120																				
<b>Count</b>																				
<table style="margin: 0 auto;"> <tr> <td>⊙</td><td>⊙</td><td>⊙</td><td>⊙</td><td>⊙</td> </tr> <tr> <td>⊙</td><td>⊙</td><td>⊙</td><td>⊙</td><td>⊙</td> </tr> <tr> <td>⊙</td><td>⊙</td><td>⊙</td><td>⊙</td><td>⊙</td> </tr> <tr> <td>⊙</td><td>⊙</td><td>⊙</td><td>⊙</td><td>⊙</td> </tr> </table>	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
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⊙	⊙	⊙	⊙	⊙																

2. Darken the corresponding oval under each digit.

El estudio en español estará a su disposición en su oficina local de TNMP. Si usted participa en el estudio, automáticamente participará en un sorteo de hasta \$100 que será aplicado a su cuenta con TNMP.

## PRIMERA PARTE: ¿Cómo Puede TNMP Ayudarle a Economizar Energía?

TNMP quiere ayudarle a usted y a su comunidad a usar la energía más sabiamente. Díganos que tan importante es para usted cada uno de los siguientes programas para economizar energía, marcando el número que más esté de acuerdo con su opinión.

	Nada Importante		Extremadamente Importante		
1. Una revisión de la energía de su casa que comprueba la eficiencia de energía en su casa. El costo de la revisión será de \$10.00.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. La disponibilidad de focos compactos fluorescentes para darle más luz a su hogar de una forma más eficiente en el consumo de energía.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Patrocinar viviendas en la comunidad, así como casas eficientes en el consumo de energía para ciudadanos de pocos recursos.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. Materiales educativos para las escuelas locales, proporcionados gratis por TNMP. Los materiales cubrirían temas de electricidad, seguridad y eficiencia de energía.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. Un programa económico de protección contra la intemperie que ayudaría a los residentes de bajos recursos, con aislamiento, protección contra la intemperie y educación sobre el uso de la energía.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. Un programa de energía eficiente para la construcción de casas nuevas que combine información y financiamiento.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. Cuotas opcionales de electricidad que dejarían que los clientes escojan pagar un poco más por la energía generada a través de recursos reusables, como el viento y el sol.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8. La disponibilidad de tecnología solar así como calentadores solares de agua, o paneles solares sobre el techo, por una cuota fija mensual.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9. Cuotas más bajas a cambio de que TNMP pueda administrar el uso de energía de los principales aparatos electrónicos en su casa.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## SEGUNDA PARTE: Escoja la Mejor Mezcla de Energía

Las compañías de fuerza eléctrica le pueden proporcionar a usted electricidad usando una variedad de diferentes recursos de energía. Algunas de estas formas de adquirir fuerza eléctrica incluyen:

### RECURSOS TRADICIONALES DE ENERGÍA

Estos recursos de energía forman la mayor parte de cómo la mayoría de las compañías producen la electricidad. Estas incluyen gas natural, quemar carbón o lignito.

### RECURSOS REUSABLES

Estos son recursos amigables al medio ambiente y son derivados de la naturaleza y no se terminan, como sucede con los combustibles fósiles como el gas y el carbón. Estos incluyen el poder del viento y la energía solar. Además, biomasa o el uso de gas de rellenos de basura es considerado como un recurso reusable.

### PROGRAMAS DE EFICIENCIA DE ENERGÍA

Otra forma de como las compañías satisfacen las necesidades de energía es ayudando a los clientes a usar la energía de una forma más eficiente y ofreciendo objetos como los focos compactos fluorescentes, aislamiento y protección contra la intemperie y formas más eficientes de usar la calefacción y el sistema de enfriamiento.

Estos posibles recursos de fuerza son descritos más adelante en el cuadro en la próxima página

Fuentes de energía	Ventajas	Desventajas	Comparación De Costo
Carbón o Lignito	⇒ Recursos abundantes ⇒ Precios estables	⇒ Se necesita equipo costoso de control de emisión ⇒ Un recurso que no se puede reemplazar	158%
Gas Natural	⇒ Ambientalmente limpio ⇒ Equipo de bajo costo	⇒ Los precios pueden cambiar en cualquier momento ⇒ Un recurso que no se puede reemplazar	100%
Poder del Viento	⇒ Ambientalmente limpio ⇒ Un recurso que no se terminará	⇒ Los campos de viento son caros de mantener ⇒ La energía existe solamente cuando hay viento	169%
Rellenos de basura Gas/Biomasa	⇒ Ayuda a reciclar los desperdicios ⇒ Energía disponible cuando se necesita	⇒ Los lugares de acumulación son caros de instalar y de mantener. ⇒ Solo están disponibles en ciertas áreas	140%
Programas de eficiencia de Energía	⇒ Reduce el costo de las cuentas de energía para los clientes ⇒ Es bueno para el medio ambiente ⇒ Puede dar más valor a las propiedades del cliente	⇒ Menos seguros y no están cuando se necesitan ⇒ Algunos clientes no pueden participar en los programas ⇒ Pueden subir el costo de las tarifas	186%

Usando esta información como guía, por favor díganos que tan importante es para usted que TNMP use cada fuente de energía descrita arriba. Si usted piensa que la fuente de energía no debe de ser utilizada, marque la categoría "cero".

	NO debe de ser usada	No es del todo importante para usar					Sumamente importante para usar
CarbónLignito	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="checkbox"/>
Gas Natural	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="checkbox"/>
Poder del Viento	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="checkbox"/>
Rellenos/Gas/Biomasa	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="checkbox"/>
Programas de eficiencia de energía	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="checkbox"/>

Ahora nos gustaría que usted diseñe su propia combinación de fuentes de energía. Suponga que usted tiene 10 centavos para compartirlos entre las fuentes de energía presentadas anteriormente. Déjenos saber que porción de su electricidad le gustaría que viniera de cada fuente de energía distribuyendo sus 10 centavos entre las fuentes de energía presentadas. Usted puede dar a cada fuente de energía desde cero hasta diez centavos, pero el total de centavos entre todas las fuentes de energía deben de sumar diez. ESCRIBA el número de centavos al lado de cada fuente de energía y también MARQUE el número correspondiente de centavos a la derecha.

_____ CarbónLignito	<input type="radio"/>	<input type="checkbox"/>										
_____ Gas Natural	<input type="radio"/>	<input type="checkbox"/>										
_____ Poder del Viento	<input type="radio"/>	<input type="checkbox"/>										
_____ Rellenos/Gas/Biomasa	<input type="radio"/>	<input type="checkbox"/>										
_____ Programas de eficiencia de energía	<input type="radio"/>	<input type="checkbox"/>										
<u>10</u> Recuerde que sus centavos deben de sumar diez!												

### TERCERA PARTE: Alternativas de TNMP

TNMP está considerando ofrecerle a usted un número de paquetes diferentes de energía. Ayúdenos a decidir cuál es el mejor. Lea las descripciones de los cuatro paquetes siguientes. Basado en su conocimiento de fuentes de energía (descritos en la Segunda Parte), díganos cuál es el mejor paquete.

**PAQUETE UNO:** Fuentes de Energía Tradicionales

Este paquete proveería sus necesidades de energía por medio del uso de carbón o lignito y gas natural. Esto es muy similar a lo que TNMP usa ahora.

**PAQUETE DOS:** Fuentes de Energía Tradicionales + Recursos Renovables

Este paquete proveería la mayor parte de su energía con las fuentes de energía tradicionales del Paquete 1, pero una porción de su energía sería proporcionada por recursos reusables del poder del viento. El costo del Paquete 2 sube por \$1,643,000 y eso es un promedio de \$9.66 más que el Paquete 1 por cliente.

**PAQUETE TRES:** Fuentes de Energía Tradicionales + Programas de Eficiencia de Energía

Este paquete proveería la mayor parte de sus necesidades de energía con las fuentes tradicionales de energía del Paquete 1, pero una porción de su energía sería obtenida a través de ahorros obtenidos por luz de alta eficiencia, aislamiento contra la intemperie y programas de utilidad. El Paquete 3 sube el costo por \$298.00 y eso es un promedio de \$1.76 más que el Paquete 1 por cliente.

**PAQUETE CUATRO:** Fuentes de Energía Tradicionales + Recursos Renovables + Programas de Eficiencia de Energía.

Este paquete proporcionaría la mayor parte de sus necesidades de energía con los recursos tradicionales de energía del Paquete 1, pero una porción de su energía sería proporcionada por recursos renovables del Paquete 2 y los ahorros de los programas de energía en el Paquete 3. El Paquete 4 sube el costo por \$1,949.000 más que el Paquete 1, lo que es un promedio de \$11.46 por cliente.

	El Mejor					El Peor	
Yo creo que el Paquete 1 es:	<input type="radio"/>						
Yo creo que el Paquete 2 es:	<input type="radio"/>						
Yo creo que el Paquete 3 es:	<input type="radio"/>						
Yo creo que el Paquete 4 es:	<input type="radio"/>						

### CUARTA PARTE: Un Poco Sobre Usted

Al contestar algunas preguntas sobre su persona, usted nos ayudará a clasificar los grupos de clientes. Usted no tiene que contestar a estas preguntas pero si lo hace, recuerde que todas las respuestas son tratadas de una manera confidencial. Ninguna de las respuestas será asociada con usted en ningún momento, ni en ninguna forma. Le agradecemos su ayuda al contestar estas preguntas.

Yo soy :  Mujer  Hombre      Yo soy:  Propietario  No soy propietario

Cuántas personas (incluyendo usted) viven en su hogar?  1  2  3  4  5  6  7+

Mi sueldo aproximado anual es de:  Menos de \$25,000  \$25,000 - \$49,999  \$50,000 - \$74,999  
 \$75,000 - \$99,999  \$100,000 o más

Mi edad es:  Menos de 25 años  25 - 34  34 - 44  45 - 54  55 - 64  65 o más

El primer número de mi código postal es:

El segundo número de mi código postal es:

El tercer número de mi código postal es:

El cuarto número de mi código postal es:

Gracias por su cooperación. Recuerde que para participar en el concurso de descuento de \$100.00 de su factura eléctrica de TNMP, necesita poner su número de cuenta al frente de esta encuesta. Su número de cuenta no será asociado en ninguna forma con sus respuestas; todas sus respuestas son tratadas de una forma confidencial. Le agradecemos su ayuda para que nosotros podamos hacer cambios positivos.

BEFORE THE NEW MEXICO PUBLIC UTILITY COMMISSION

IN THE MATTER OF THE INVESTIGATION )  
OF RESTRUCTURING OF REGULATION OF )  
THE ELECTRIC INDUSTRY IN NEW MEXICO.)  
\_\_\_\_\_)

Case No. 2681

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of Texas-New Mexico Power Company was served by first-class mail, postage prepaid and by hand-delivery, on this 15th day of February, 1996, to the following:

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Certificate of Service  
Case No. 2681

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**and hand delivered to:**

Bill R. Garcia  
Executive Director  
New Mexico Public Utility Commission  
224 E. Palace Avenue  
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DATED this 15th day of February, 1996.

RUBIN, KATZ, SALAZAR & ROUSE  
a Professional Corporation

by /s/ Donald M. Salazar  
Donald M. Salazar

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April 1, 1996

**VIA FACSIMILE AND U.S. MAIL**

Mr. O. Bradley Cox  
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P. O. Box 2943  
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**RE: NMPUC Case No. 2681**

Dear Brad:

Enclosed please find a copy of page 1 endorsed with the Commission's filing stamp of April 1, 1996 and the signature page of the Reply Comments of Texas-New Mexico Power Company for your records.

Please call if you have any questions.

Very truly yours,

**RUBIN, KATZ, SALAZAR, ALLEY & ROUSE**  
A Professional Corporation

By   
Donald M. Salazar

DMS:cad

Enclosure

cc: **Ralph Johnson**  
**Mike Blanchard**  
**Larry Gunderson**

S219421.401

BEFORE THE NEW MEXICO PUBLIC UTILITY COMMISSION

IN THE MATTER OF THE INVESTIGATION OF )  
RESTRUCTURING OF THE REGULATION OF THE )  
ELECTRIC UTILITY INDUSTRY OF NEW MEXICO )  
\_\_\_\_\_ )

CASE NO. 2681

REPLY COMMENTS OF TEXAS-NEW MEXICO POWER COMPANY

Texas-New Mexico Power Company ("TNMP") hereby files its reply comments to the Commission's inquiry regarding restructuring regulation of the electric utility industry in the State of New Mexico. As stated in its initial comments, TNMP urges the Commission to move forward as rapidly as practicable to embrace competitive market principles as the basis for restructuring the industry. TNMP's "Competitive Market Pilot Project" and "Community Choice" proposals provide the Commission a means to this end. In its decision-making regarding the structure of regulation of the utility industry, the Commission should remain focused on enabling customer choice in a competitive environment -- the central public interest at stake in this inquiry -- and not become distracted by problems and details that may be encountered in attempting to reach this goal. Such problems and details are secondary issues to the overall goal. Furthermore, the Commission should resist requests to shield special interests from the discipline that a more competitive market will bring. TNMP is ready to embrace the industry's evolution to a competitive market and assist the Commission in facilitating this transition. Under both Community Choice and the Competitive Market Pilot Project, aggregated loads

to move forward now with programs that provide a reasonable transition to a competitive market in the electric services industry.

Respectfully submitted,

TEXAS-NEW MEXICO POWER COMPANY

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