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9 IN THE MATTER OF THE GENERIC
10 PROCEEDING CONCERNING ELECTRIC
11 RESTRUCTURING ISSUES

DOCKET NOS. E-00000A-02-0051
E-00000A-01-630

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER
DISTRICT'S AND NEW WEST
ENERGY'S NOTICE OF FILING THEIR
UPDATED COMMENTS REGARDING
ELECTRIC RESTRUCTURING ISSUES**

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15 At the request of the Arizona Corporation Commission Staff, Salt River Project
16 Agricultural Improvement and Power District and New West Energy Corporation
17 submit their joint comments regarding the electric industry issues.

INTRODUCTION

18
19 There is no question that the electric industry is undergoing fundamental
20 change. It is pervasive. It affects the way that we look at electricity, the way we
21 produce electricity and the way we use electricity. All participants, electricity users,
22 electricity producers and those who oversee them, are working hard to understand,
23 implement and keep pace with the changes.

24 The driver of new developments, in the thirteen months since the position
25 papers were filed, is the focus on fundamental issues. A scheme of "competition" in
26 the retail market, conceived in the 1970s and implemented in the 1990s, has little or
27 nothing to do with current thinking and developments. It is an anachronism from a

1 bygone era. Other than a unique political deal in California, which is a story in and
2 of itself, these days very little attention is paid to the discredited "restructuring"
3 ideas of yesteryear.

4 We particularly draw your attention to the newly published book by New West
5 Energy's witness Peter Fox Penner of the Brattle Group. Entitled "Smart Power", this
6 work highlights the current direction of electric market change worldwide. It is not
7 that "restructuring" is dead, far from it. Rather, the concept from the 1990s has
8 been proven as a failure. Here is an excerpt from Chapter two of the book:

9 Originally promised to reduce electric bills by up to 43%,
10 the deregulation of the electric industry in the 1990's is
11 seen as something between a disappointment and an
12 outright failure. The California Crisis of 2000-2001 and the
13 unmet expectations of large price reductions have greatly
14 diminished policymakers' enthusiasm for reducing
15 regulation further. However, in the wake of the smart grid
16 and new policy imperatives, the role of competition in the
17 energy industry will be redefined and new forms of
18 deregulation will emerge.

19 <http://www.smartpowerbook.com/summaries.html>

20 Dr. Fox Penner envisions a new industry structure worlds apart from that
21 envisioned in the 1990s. SRP and New West Energy do not take a position either
22 endorsing or opposing the Dr. Fox Penner vision. But, the point is quite clear that
23 the entire industry must embrace the new paradigm: one that integrates into the
24 historic goals of reliability and affordability and new goals, carbon reduction and
25 conservation, and the application of technology to achieve these goals. As stated in
26 Chapter 2 of his book:

27 Most importantly, however, the nature and urgency of the
problems facing the industry are not seen as problems that
can be solved by less control over electric rates. Had the
legacy of deregulation been different, policymakers might
look to even greater scope for market forces. As we shall
see, competition will unquestionably play a big role in the
future power industry - but it will be in a form very
different from Enron's vision of an electron market free-
for-all.

1 Peter Fox-Penner (Island Press 2009) *Smart Power, Climate Change, the Smart Grid,*
2 *and the Future of Electric Utilities*, P. 10

3 Today, we do not know the direction that refined objectives and new
4 technology will drive the industry (although we see glimpses of what is possible).
5 We do know that the smart grid will deliver clearer price signals to customers, which
6 could be advantaged through storage opportunities. We know that distributed
7 generation feeding into the grid, perhaps in the form of grid directed electric cars,
8 will change the structure of transmission. We know that usage and resources will be
9 driven by climate change concerns. We know that fuel saving and avoided capital
10 outlays will be key. We know that the industry will be adopting a myriad of new and
11 expensive technologies. Of course, the traditional concerns of reliability and stable
12 prices will still prevail. Most importantly, we know that these objectives cannot be
13 achieved without significant centralized planning, the antithesis of "deregulation".

14 Discussed below are new developments over the past thirteen months. These
15 developments underscore the theme of the SRP and New West Energy comments
16 from 2009: there is nothing to be gained by revisiting the failed programs of the
17 1990s, and much to be lost.

18 SRP and New West Energy strongly encourage the Commission to move
19 forward to understand and act on the new paradigm. The idea of turning back the
20 clock to a time when the cry of the day was "deregulation" is foolish.

21 **UPDATE ON THE SIX SUBJECTS**

22 **1. Potential Risks and Benefits of Retail Electric Competition**

23 As time passes it becomes clearer that allowing direct access for a few results
24 in significant risks for the whole. Basically Sempra and others are asking to serve a
25 few large customers for a potential short term economic benefit. But the risk profile
26 of this proposal is unacceptable.

1 We should ask those "marketers" to mitigate the risk to the rest of the
2 customers. Otherwise they are getting a free ride. These risks include:

3 Market stability

4 Long term resource planning

5 Integrated resource planning

6 Renewable and demand side management programs

7 *System reliability*

8 Of course power marketers cannot make these guarantees, hence their
9 proposal fails. These are not theoretical risks, but risks that were demonstrated
10 dramatically in the failure of "unregulated" markets ten years ago.

11 Since the comments filed in January 2009, states that have experimented are
12 continuing to retreat from the 1990s model. The January 2009 position paper
13 pointed out how various states have tried different schemes to try and address these
14 inherent issues. What follows is an update of events in some of the high profile
15 examples.

16 California

17 *Updated Status:*

18 As mentioned in the January 2009 position paper, a petition was filed with the
19 CPUC in December 2006 by the Alliance for Retail Energy Markets and over two
20 hundred other co-petitioners and supporters, asking they open an investigation into
21 the continued suspension of the right to direct access and choice in energy suppliers.

22 In a political deal that only Californians could love, on October 11, 2009,
23 Senate Bill (SB) 695 was signed into law as an urgency statute. Called the
24 "Ratepayer Protection Act" SB 695 enacted an array of measures designed to redress
25 the damage caused by California's "deregulation" fiasco. These included a strict limit
26 on base rate increases, additional limitations on changes to low income rates, higher
27 funding for low-income programs, priority energy saving assistance for high-energy

1 users, and strict limits on the utilities' ability to force Time Of Use rates on
2 customers.

3 In response to intense pressure from large energy companies and industrial
4 and commercial customers, the Ratepayer Protection Act permits a phased-in
5 reopening of direct access under strictly limited circumstances and with stronger
6 regulatory oversight, including renewable energy requirements and protections
7 against the cost-shifting that occurred during the deregulation disaster.

8 Texas

9 *Updated Status:*

10 The major change in Texas since the January 2009 position paper is that
11 electricity deregulation in northeast Texas was stopped.

12 Northeast Texas enjoys some of the lowest electric rates in the state -- current
13 rates in the Southwestern Electric Power Company (SWEPCO) service region are up
14 to 40 percent lower than rates in competitive ERCOT markets. If competition were
15 introduced prematurely, residential and commercial customers could be expected to
16 see their electric rates increase substantially.

17 Northeast Texas communities are in a unique situation because they are
18 located in the Southwest Power Pool (SPP), a multi-state power grid outside of
19 ERCOT. For this reason, Northeast Texas must compete economically with cities
20 across the state border in other SPP states such as Arkansas and Louisiana. Many of
21 the chief competitors to cities like Texarkana, Marshall, and Longview are in the
22 SWEPCO service region and also enjoy low rates. In addition, neither Arkansas nor
23 Louisiana has deregulated its electric markets. With the increased electric rates that
24 Northeast Texas would see under competition, Northeast Texas cities would be at a
25 competitive disadvantage with communities across the state line, potentially harming
26 local economies and costing jobs.

1 In April 2009, Senate Bill 547 and House Bill 870 were introduced into the
2 Texas Legislature to halt electricity deregulation in SWEPCO's service area in
3 Northeastern Texas in 2011. In May 2009, the Texas House of Representatives
4 unanimously approved Senate Bill 547 and House Bill 870. These bills establish five
5 stages to be followed to introduce retail competition into this service area. Each of
6 the stages would need to be completed before full retail competition could begin. The
7 two bills effectively delay deregulation of electric utilities in Northeast Texas
8 indefinitely.

9 **Pennsylvania**

10 *Updated Status:*

11 As mentioned in the January 2009 position paper, the majority of Pennsylvania
12 electricity customers were protected with an artificial rate freeze for a minimum of a
13 ten year period. Since then, the rate cap for one of the largest utilities in the state,
14 PPL Electric Utilities, expired on December 31, 2009. The result – the utility's 2010
15 default rate increased about 30 percent.

16 **Maryland**

17 *Updated Status:*

18 As mentioned in the January 2009 position paper, Maryland consumers have
19 an option to change electric service providers but few have actually switched from
20 their default service provider to competitive suppliers as the market-based cost of
21 electricity has increased significantly in the wholesale electricity auctions.

22 The latest attempt to re-regulate electricity markets in Maryland came in early
23 2009 when the Maryland State Finance Committee introduced Senate Bill 795, titled
24 "the Maryland Electricity Reregulation and Energy Independence Act of 2009." The
25 bill stated that competitive retail electric markets have not developed as envisioned
26 by the state's nearly 10-year old electricity industry restructuring law. Furthermore,
27 Governor Martin O'Malley issued a media release stating that deregulation had failed

1 in the state of Maryland and that the Governor and his administration would support
2 reregulating Maryland's electricity markets. The re-regulation bill stalled in the
3 Maryland House of Representatives so the governor decided against resubmitting
4 legislation and instead will rely on the Maryland Public Service Commission to use
5 existing authority to build new power generation as needed.

6 Maryland remains deregulated and has retail choice however only five percent
7 of residential customers have switched to alternative energy suppliers. Though
8 recent efforts to re-regulate the electricity market have not been successful, there
9 remains concern that the deregulation of the Maryland market will lead to a shortage
10 of generation and higher rates in the future.

11 **New York**

12 *Updated Status:*

13 The January 2009 position paper highlighted that cost of electricity in the
14 deregulated market of New York is significantly higher than in regulated states due in
15 large part to the inefficiencies of the wholesale electricity market as run by the New
16 York Independent System Operator (NYISO).

17 A February 2009 report published by the American Public Power Association
18 (APPA) found that wholesale electricity markets, such as those run by the NYISO,
19 have not produced the low prices that were promised under electricity industry
20 deregulation. The APPA criticizes the secret manner in which the NYISO operates and
21 the *inefficient, arcane rules that drive prices higher.*

22 A March 2009 report by McCullough Research entitled "New York Independent
23 System Operators Market Clearing Price Auction is Too Expensive for New York"
24 reveals \$2.2 billion in excessive electric bills for New Yorkers, caused by a system
25 that sets artificially high prices for electricity through its "Market-Clearing Price"
26 auctions. These auctions, designed by the New York Independent System Operator
27 (NYISO), a private, not-for-profit entity that operates the market for electricity in

1 New York State, require all buyers of electricity to pay the highest price available in
2 the market on any given day, rather than the lowest price.

3 And, finally, an audit released by FERC shows that NYISO has major flaws in
4 the way it operates. FERC found that the NYISO's independent market monitor is not
5 as independent as it should be and the internal monitoring structure has the
6 potential for conflicts of interest. These monitoring mechanisms are supposed to
7 keep any market manipulation in check. FERC also found that the NYISO was slow to
8 notify FERC and utilities that participate in the market when it uncovered problems
9 with its tariff. The tariff sets how the NYISO's pricing and regulation systems will
10 work. The NYISO is required to notify FERC and market participants when there are
11 problems with the tariff but the NYISO failed to do so. In the audit FERC
12 recommends that the NYISO change its organizational structure and review its
13 internal monitoring resources.

14 New York remains deregulated, however, State Assemblyman Richard L.
15 Brodsky has introduced legislation (A. 1563) which would abolish the use of a market
16 clearing price relating to the buying of electricity at an auction held by the
17 independent systems operator. This assemblyman, and other co-sponsors of this
18 legislation, is seeking to return New York to a cost-based regulatory system that
19 they feel would be more beneficial to consumers.

20 Virginia

21 *Updated Status:*

22 No change in Virginia from the January 2009 position paper which pointed out
23 that the Virginia Electric Utility Regulation Act, which gives the State more control
24 over utility rates and shields Virginians from the kind of power bill spikes seen in
25 states that have opened their retail electric markets to residents, signaled the end of
26 deregulation in Virginia.

27

1 **2. Whether or not Retail Electric Competition is in the Public**
2 **Interest**

3 When retail competition was begun in the 1990s, the promise to customers
4 was lower prices. Ken Lay of Enron analogized competition to "the largest tax cut in
5 history". Industry-backed groups published projections of saving from deregulation
6 as high as 43%.

7 We of course learned that the promises were false. There are many studies
8 showing that the effect of "deregulation" is to increase, not decrease prices.
9 Attached as Exhibit "A" is a 2009 study by the American Public Power Association
10 that demonstrates, based upon U.S. Department of Energy, Energy Information
11 Administration (EIA) data, that between 1997 and 2009 increases in retail electric
12 prices were significantly greater in states with deregulated electric markets than in
13 regulated states.

14 Today the focus of customers and the industry is much more diverse. Of
15 course price is still important. But, we have a heightened concern for reliability,
16 using "smart" technology, reducing carbon emissions, and conservation.

17 Other than empty words, the "deregulation" from the 1990s at best addressed
18 prices (and failed at that). In the thirteen months following the initial submissions
19 changes in the industry have moved forward. The industry has not yet formed a
20 clear direction. But, it is not the "deregulation" of the 1990s.

21 Here in Arizona electric customers enjoy award winning electric service at
22 reasonable prices. The original position paper of SRP and New West Energy detailed
23 the many awards received by SRP for excellent service. The position paper outlined
24 that SRP has been rated number one for residential service customer satisfaction in
25 the West or in the Nation in nine out of the past ten years (it came in second to TEP
26 one year).

1 Since the filing of the position paper SRP has received two more JD Power
2 awards for customer satisfaction:

3 *2009 - First in the West and first in the Nation among large utilities

4 And for satisfaction among business customers:

5 *2009 - SRP second in the West, seventh in the US

6 *2010 - SRP first in the West Large (fourth in the nation among Large
 Utilities)

7 Additionally, not mentioned in the original position paper, SRP's residential and
8 business call centers have been certified by JD Power for the past four years:

9 *2006 - Residential Call Center Certification

10 *2006 - Business Call Center Certification

11 *2007 - Residential Call Center Certification

12 *2007 - Business Call Center Certification

13 *2008 - Residential Call Center Certification

14 *2008 - Business Call Center Certification

15 *2009 - Residential Call Center Certification

16 *2009 - Business Call Center Certification

17 Also in the initial position paper SRP and New West Energy demonstrated that
18 customers in SRP service area have a tremendous choice of programs and options.

19 The paper details approximately 50 separate optional programs available to
20 customers. Since the position paper was submitted, these additional programs have
21 been introduced to SRP customers:

22 **E-66:** An optional instantaneously interruptible TOU plan
23 for accounts with a monthly maximum billing demand in
24 excess of 5,000 kW that have dedicated or customer-
25 owned substations.

26 **Renewable Energy Services Pilot Rider:** This rider
27 allows customers to subscribe to capacity from renewable
energy facilities such as solar, wind, geothermal, or others.
The customers will pay a fixed price for the pro-rata share
of energy produced from designated renewable facilities for
the term specified by the programs. Initial program
capacity will be 20 MW.

New Construction Solutions: Provides assistance in
developing whole-building, performance-based strategy
from design phase through construction for building larger

1 than 100,000sq ft and monthly demand greater than
2 400kW (*FY11 – Sq footage drops to 75,000).

3 **Retrocommissioning Solutions:** Evaluates commercial
4 and industrial facilities at least 5 years old and 150,000 sq.
5 ft of conditioned space and the implementation by the
6 customer of cost-effective measures targeted to improve
7 facility operations. (*FY11 – Sq footage drops to 75,000)

8 **PowerWise Homes:** SRP provides builders incentives to
9 build to an energy-efficiency standard:

10 *FY10: Tier Rating

11 One HERS index of 84 to 81 \$290/home

12 Two HERS index of 80 or less \$580/home

13 *FY11:

14 One HERS index of 84–81 \$480/home

15 SEER 14 \$100

16 Two HERS index of 80 or less \$680/home

17 SEER 15 \$200

18 SEER 16 \$300

19 Air change per hour .20 \$80

20 Window U-value .35 or less \$100

21 **Cool Cash:** Rebates up to \$400 for the purchase and
22 installation of qualified energy-efficient heat pumps and
23 package units

24 **Shade Screens:** Per square foot discounts with
25 participating contractors

26 **Duct Test & Repair:** Up to \$75 for duct testing and up to
27 \$175 for qualified repairs

Low Income Weatherization: Per home allocations for
assessments and installation of identified measures in
qualifying low income homes

PowerWise Home Checkup Pilot: \$250 towards the
cost of a comprehensive home energy assessment (regular
cost for the assessment is \$500 for homes with two ac
units)

Home Performance with ENERGY STAR ®: Starting in
May, 2010, a comprehensive, whole-house approach to
improving energy efficiency and comfort at home (\$500
assessment will be discounted \$325)

Home Characterization Retrofit: Starting in May 2010,
installation of predetermined list of energy savings
measures for specific home styles in existing communities

1 Finally, electricity prices in Arizona continue to compare favorably to the rest
2 of the West:

3 **RATE COMPARISON BY REGION, cents/kWh**

4	<u>RES.</u>	<u>TOTAL</u>
5	<u>AVE</u>	<u>AVE</u>
6	SO. CALIFORNIA	14.06
7	NEVADA	11.18
8	ARIZONA (w/o SRP)	10.12
9	NEW MEXICO	8.74
10	COLORADO	8.14
11	UTAH	6.57

12
13 **3. Provider of Last Resort**

14 This subject is addressed extensively in the testimonies of New West Energy
15 witnesses Frank Graves and Peter Fox Penner, filed in the Sempra, Docket No.
16 E-03964A-06-0168, and in the joint statement of SRP and New West Energy filed on
17 January 30, 2009.

18 The comments of the other participants in the docket underscore the obvious:
19 Arizona has not developed an adequate provider of last resort protocol. This is not a
20 theoretical problem. There is no system to insure that customers who decide to buy
21 generation on a short term basis from a power marketer will have any resource
22 planning to address their future needs. Arizona will not let an important business
23 that makes the wrong energy choice close because of a lack of available generation
24 resources, or even impose very high default generation prices. This is another risk
25 that will be borne by the non-departing customers.

1 When the appropriate time comes to reconsider [and restructure]should this
2 say "restructuring" instead?, first on the Commission's list should be to consider the
3 latest thinking, and properly address, the provider of last resort problem.

4 **4. Whether the Commission's Current Electric Competition Rules
5 are Adequate**

6 This question begs the question: adequate for what? Even if the entire
7 restructured industry envisioned in the 1990s were completed and intact (not even
8 close), it is a system that is proven to be a failure. It does not address:

9 Wholesale market issues

10 System reliability

11 Price stability

12 Provider of last resort

13 Carbon reduction goals

14 Conservation goals

15 The use of new technologies to achieve the new objectives

16 Other than the few companies looking for a short term advantage, all of the
17 commentators, including those who are "pro-direct-access" recognize that much
18 work would have to be done, even if it were decided that the current direct access
19 proposal were in the public interest.

20 Those commenters in this proceeding who embrace a more policy oriented
21 view, including some of the proponents of "deregulation", recognize that it would be
22 nonsense to use the dated rules without changes. A new look is essential:

23 *RUCO*: "Indeed, it is immediately clear that other prerogatives are gaining
24 ascendance, themselves potentially presenting Arizona with an accompany set
25 of different problems to solve or avoid, such as whether and how to construct
26 a 'national highway system" for renewable resources and the degree to which
27 the Nation should be encouraging and relying on energy efficiency as a
primary resource. *RUCO* suggests that these new realities militate against a
near-term need for Arizona to implement a retail-friendly regime"(page
6)

1 *Western Resource Advocates:* "In recent years the Commission has made
2 great advances with its renewable energy standard and with expanded energy
3 efficiency programs. In addition, the Commission is considering adoption of
4 new resource planning rules. Experience suggests that these programs and
5 policies could be put in jeopardy if retail electric competition is pursued. The
6 volume of work required to set up and monitor retail electric markets is so
7 large that other Commission activities will, of necessity, have to be reduced or
8 prolonged. Moreover, during Arizona's previous attempt at retail electric
9 competition, it was argued that regulatory intervention in market outcomes,
10 such as through resource planning, would be unnecessary, and the
11 Commission's resource planning process was suspended. Retreating on
12 renewable energy policy, energy efficiency programs, environmental progress,
13 and long term planning objectives in the false hope that markets will
14 adequately address environmental, resource supply, and energy efficiency
15 issues is misguided." (page 3)

9 *Western Resource Advocates:* "Arizona's experience with retail electric
10 competition in the 1990s revealed the enormous complexity of setting up a
11 functioning framework for competition. Many issues must be addressed,
12 including: the scope of the legal authority of the Commission, stranded costs
13 (if any remain), rate setting, determination of which services are to be
14 competitively provided, which entities may provide competitive services, the
15 roll of incumbent utilities, providers of last resort, transmission and
16 distribution access, maintenance of service quality, and consumer protection."
17 (page 1).

14 *Arizona Retailers Association:* "The transition to competition includes a certain
15 amount of risk that the process will not result in short term public benefits.
16 Therefore, the ARA urges the Commission to consider a measured approach
17 that can allow for a manageable introduction of retail choice. The ARA
18 believes that a working group to decide how, not if, retail choice will be offered
19 [sic]." (page 2)

17 *Arizona Retailers Association:* "The association believes that this concern
18 [transition issues] is one that has been managed through a variety of ways
19 across the nation while keeping the serving utility whole and resulting in a
20 successful transition to competition. This matter is just one of many that a
21 working group of participants committed to a successful market transition
22 would be assigned to resolve." (page 3)

21 *National Energy Marketers Association:* "A utility should not be permitted to
22 compete as a monopoly in its own exclusive franchise territory." (page 8),
23 "[t]he commodity component of the "price to beat" should start with a
24 monthly-adjusted market-based rate to which should be added a utility's fully
25 allocated embedded and projected stranded costs. . . ."; (page 8); "the costs
26 of providing POLR service vary by customer class and service prices should be
27 structured to reflect those differences. Additionally, it is vital that the full
28 costs and risk associated with each class of service be included in the POLR
29 commodity price" (page 9)

1 *National Energy Marketers Association: "As the Commission continues its*
2 *inquiry into retail electric competition, there are additional best practices and*
3 *programs that should be considered, in addition to the fundamentals of market*
4 *structure and default service pricing, that can enhance the success of a retail*
5 *choice program. These include utility purchase of receivables, programs,*
6 *marketer referral programs and the institution of a Commission market*
7 *ombudsperson." (page 11)*

5. **Costs of Competition**

6 In California, during one year (June 2000 to June 2001) "deregulation"
7 caused retail electric prices to increase by over \$33 billion (not to mention the
8 significant collateral damage). The direct cost to electric customers in the
9 neighboring states, occasioned by the California failure, is estimated to be an
10 additional \$9 billion. There is no theoretical benefit for a few customers that justify
11 risks of this magnitude.

12 A coalition of consumer protection groups on behalf of the Campaign for Fair
13 Electric Rates said in a statement to a House committee which oversees FERC that
14 while deregulation came with promises of more competition and savings, "the move
15 to 'competitive' energy markets has actually raised costs for consumers". They want
16 to see reforms to the wholesale electricity market since they say that these markets
17 run by RTOs have "not produced rates that meet the just and reasonable standard,
18 these markets have also not improved the stability and reliability of supply,
19 transmission congestion, data transparency, market power, governance and
20 accountability, and other critical outcomes". <http://www.naylornetwork.com/app-ppd/newsletter.asp?projID=43798&year=2010>
21

22 But, these are old arguments. Western Resource Advocates makes the right
23 point. The "costs" are the costs of the missed opportunities while the state focuses
24 on trying to resurrect "deregulation".

6. **Other Issues Related to Retail Electric Competition.**

26 SRP and New West Energy have discussed the major issues in response to the first
27 five subjects.

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RESPECTFULLY SUBMITTED this 2 day of April, 2010.

JENNINGS, STROUSS & SALMON, P.L.C.

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