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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER

Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

JEFF HATCH-MILLER

Commissioner

MIKE GLEASON

Commissioner

IN THE MATTER OF THE
GENERIC PROCEEDINGS
CONCERNING ELECTRIC

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF ARIZONA
PUBLIC SERVICE COMPANY'S
REQUEST FOR VARIANCE OF
CERTAIN REQUIREMENTS OF
A.A.C. 4-14-2-1606

DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE
GENERIC PROCEEDINGS
CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING

DOCKET NO. E-00000A-01-0630

IN THE MATTER OF TUCSON
ELECTRIC COMPANY'S
APPLICATION FOR A VARIANCE
OF CERTAIN ELECTRIC POWER
COMPETITION RULES

DOCKET NO. E-01933A-98-0471

ISSUES IN THE MATTER OF
TUCSON ELECTRIC POWER
COMPANY'S APPLICATION FOR
A VARIANCE OF CERTAIN
ELECTRIC COMPETITION RULES

DOCKET NO. E-01933A-02-0069

TESTIMONY OF KEVIN C. HIGGINS

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1 A. Yes. I have testified in a number of proceedings before this Commission,
2 including the generic proceeding on retail electric competition (1998),¹ the
3 hearings on the APS and TEP settlement agreements (1999),² the AEPCO
4 transition charge hearings (1999),³ the Commission's Track A proceeding
5 (2002),⁴ and the APS adjustment mechanism proceeding (2003).⁵

6 **Q. Please describe your qualifications.**

7 A. My academic background is in economics, and I have completed all
8 course work and examinations toward the Ph.D. in Economics at the University of
9 Utah, and have served on the adjunct faculties of both the University of Utah and
10 Westminster College, teaching undergraduate and graduate courses in economics.
11 I joined Energy Strategies in 1995, where I assist private and public sector clients
12 in the areas of energy-related economic and policy analysis, including evaluation
13 of electric and gas utility rate matters. In addition to my prior testimony before the
14 Arizona Corporation Commission, I have testified numerous times on the subjects
15 of electric utility cost-of-service, rate design, and industry restructuring before
16 state utility regulators in Colorado, Georgia, Michigan, Nevada, New York,
17 Oregon, South Carolina, Utah, Washington, and Wyoming.

18 I have had considerable involvement in transmission access issues in the
19 southwest. On behalf of retail customers, I participated in each phase of the
20 Desert STAR RTO formation effort, which preceded, and in many ways provided

¹ Docket No. RE-00000C-94-0165.

² Docket Nos. RE-00000C-94-0165, E-01345A-98-0473, E-01933A-97-0773, E-01345A-98-0471, and E-01933A-97-0772.

³ Docket No. E-01773A-98-0470.

⁴ Docket Nos. E-00000A-02-0051; E-01345A-01-0822; E-00000A-01-0630; E-01933A-02-0069; E-01933A-98-0471.

⁵ Docket No. E-01345A-02-0403.

1 the blueprint for, the WestConnect RTO filing at FERC. As part of that effort I
2 served as an ex-officio member of the Desert STAR Board and was elected
3 chairman of the stakeholder advisory committee, which advised the Board. I also
4 serve on the Board of Directors of the AISA, representing retail customers. My
5 involvement with the AISA dates back to its inception in September 1998. As part
6 of that involvement, I participated actively in the lengthy negotiations among the
7 stakeholders that resulted in the AISA Protocols Manual, which was submitted to
8 FERC on September 1, 2000.

9 Prior to joining Energy Strategies, I held policy positions in state and local
10 government. From 1983 to 1990, I was economist, then assistant director, for the
11 Utah Energy Office, where I testified regularly before the Utah Public Service
12 Commission on utility policy matters. From 1991 to 1994, I was chief of staff to
13 the chairman of the Salt Lake County Commission, where I was responsible for
14 development and implementation of a broad spectrum of public policy.

15 A more detailed description of my qualifications is contained in Exhibit
16 KCH-1, attached to this testimony.

17 **Q. In providing your testimony in this proceeding, are you speaking on behalf of**
18 **the AISA Board or the organization generally?**

19 A. No, I am not. The opinions I express are my own, based on my twenty
20 years of experience as an economist in the fields of energy and public policy. The
21 policy recommendations I make in this proceeding are offered only on behalf of
22 AECC.

1 **Q. Do you receive any compensation from the AISA for your participation on**
2 **the Board of Directors?**

3 A. No, I do not. The AISA is a non-profit corporation that is governed by a
4 stakeholder board. The only Board member who receives compensation from the
5 AISA is the Director, who is paid for his services as an employee.

6 **Q. Have you ever performed any services for the AISA as a consultant?**

7 A. No, I have not. As a Board member, I would view such activity as a
8 conflict of interest. Consequently, I have never sought, nor have I ever been
9 offered, any consulting work with the AISA.

10 **Overview of conclusions**

11 **Q. What general conclusions have you reached concerning the future role of the**
12 **AISA in supporting retail direct access in Arizona?**

13 A. The AISA is essential for retail direct access and should be retained until
14 an RTO is operational in Arizona. The AISA Board has responded to the current
15 lack of retail direct access activity in Arizona by downsizing the AISA to the
16 minimum size practicable that still retains the critical mass needed to keep the
17 entity intact. This approach keeps the important option of direct access available
18 to Arizona customers, to be utilized as the opportunity to shop improves.

19 Retail direct access is an important and hard-won right held by Arizona
20 electric customers. Even though, in recent years, the underlying economics have
21 not supported using direct access service in Arizona, it remains a valuable option
22 going forward. Significant proposed increases in APS' standard offer rates, the
23 scheduled phase-out of stranded cost charges, the commitment to a retail

1 competition business model demonstrated by a number of national retail
2 suppliers, and the substantial increase in the supply of regional generation will
3 combine to make direct access service a more economically-viable choice going
4 forward.

5 Direct access service cannot work without a transmission rights regime
6 that addresses the unique characteristics of retail service. Mere reliance on a
7 transmission provider's Open Access Transmission Tariff (OATT), which is
8 designed for wholesale service, does not accomplish the objective of ensuring
9 non-discriminatory access in a state direct access program. Retail service can be
10 accommodated in a properly-designed Regional Transmission Organization
11 (RTO), but such an entity is years away from operation in Arizona.

12 Absent an RTO, the AISA is essential to ensure non-discriminatory access
13 to transmission for retail service in Arizona. Its protocols are balanced, its scope
14 is modest, its costs are low, and it has completed the hard work of successful
15 stakeholder negotiation and the earning of FERC approval. If the AISA were
16 scrapped today, reconstructing something like it in the future would take years of
17 negotiations and cost millions of dollars. I say this as someone with first-hand
18 experience in negotiating each of the protocols in the AISA tariff.

19 In sum, the valuable retail direct access rights of Arizona customers
20 should remain intact, and the AISA should be retained until an RTO is operational
21 in the state.

22 **Retail direct access**

23 **Q. When was retail direct access first available in Arizona?**

1 A. The Electric Competition Rules adopted by the Commission established a
2 schedule for phasing in direct access service starting in 1999. However, prior to
3 implementation, a host of contested issues needed to be resolved, including the
4 utility claim that direct access violated the “regulatory compact,” as well as the
5 companion claim from each utility that it was entitled to hundreds of millions of
6 dollars in “stranded cost.” These contested issues were resolved with the
7 approvals of the APS and TEP settlement agreements, which occurred on October
8 6, 1999 and November 30, 1999, respectively. The APS Settlement Agreement
9 provided that direct access service would be phased in starting July 1, 1999 and
10 would be available to all APS customers on January 1, 2001. The TEP Settlement
11 Agreement provided that direct access service would be phased in starting sixty
12 days after Commission approval of the settlement (i.e., January 29, 2000) and
13 would be available to all TEP customers on January 1, 2001. Consequently, both
14 the APS and TEP territories have been entirely open to direct access service for
15 any retail customer (excluding those on special contracts) for the past two-and-a-
16 half years.

17 **Q. Have any Arizona customers used direct access service?**

18 A. Yes. I am aware that a number of customers have taken direct access
19 service in the APS, TEP, and Salt River Project (SRP) territories. However, with
20 the run-up in wholesale energy prices associated with the California energy crisis
21 of 2000-01, the direct access customers in the APS and SRP territories returned to
22 standard offer service. The direct access customers in the TEP territory have also
23 returned to standard offer service, although in my opinion their return had more to

1 do with problems associated with TEP's inconsistent interpretation of the stranded
2 cost charge calculation. Those problems have since been resolved, but TEP
3 customers have not returned to direct access service.

4 Although Arizona customers are not currently utilizing direct retail access
5 service, APS and SRP customers have benefited from its availability, as the
6 anticipation of its competitive threat provided the impetus for retail rate
7 reductions in those territories when direct access service was introduced. Today,
8 the implicit threat from this option provides an incentive for utilities to control
9 costs and temper requested rate increases.

10 **Q. Is retail direct access proceeding in other states?**

11 A. Yes. Retail direct access is proceeding in a number of other states.
12 Significant competitive retail market penetration is occurring in the Northeast, as
13 well as in Michigan, Illinois, Ohio, and Texas. Published reports indicate that 33
14 percent of total retail energy in Maine⁶, 25 percent of total retail energy in
15 Massachusetts⁷, and 21 percent of total retail energy in New York⁸ is being
16 provided by retail direct access service. In Commonwealth Edison's territory in
17 Illinois, about 10,000 customers are reported to be participating in direct access
18 service in order to save money relative to the standard offer tariff.⁹ And in
19 Michigan, Detroit Edison estimates that 2003 direct access load will be 5.3

⁶ Maine Public Utility Commission, Maine Market Migration to Competitive Electricity Providers as of June 1, 2003, <http://www.state.me.us/mpuc/electric%20restructuring/migrationrates.htm>.

⁷ Massachusetts Division of Energy Resources (DOER), January 2003 Electric Power Customer Migration Report, http://www.state.ma.us/doer/pub_info/migrate.htm.

⁸ New York State Public Service Commission, January, 2003 NYS Electric Retail Access Migration Reports http://www.dps.state.ny.us/Electric_RA_Migration_01_03.htm.

⁹ *Chicago Tribune*, July 1, 2003.

1 million MWH, about 11 percent of its retail load.¹⁰ One published report
2 estimates that Texas customers saved \$900 million in the first year of direct
3 access service.¹¹

4 These results indicate to me that when the conditions are conducive to it,
5 retail direct access can move forward successfully.

6 **Q. What is your assessment of the prospects of retail direct access in Arizona?**

7 A. There is a convergence of developments that should make retail direct
8 access service more attractive in Arizona in the relatively near future. These
9 include: (1) a proposed rate increase in the APS territory of 9.8 percent, which, to
10 the extent approved, would make competitive power relatively more attractive;
11 (2) the scheduled termination of the stranded cost charges in the SRP territory on
12 May 31, 2004 and in the APS territory on December 31, 2004, which will remove
13 an artificial economic impediment to shopping; (3) the commitment to a retail
14 competition business model demonstrated by a number of national retail
15 suppliers, which has shown an impressive resiliency in the aftermath of the
16 California energy crisis; and (4) the development of significant new generation in
17 Arizona and the surrounding region, which should improve the competitive
18 prospects in the local wholesale market.

19 **Q. How do stranded cost charges impede retail direct access in Arizona?**

¹⁰ Michigan Public Service Commission, Case No.U-13808, Detroit Edison Exhibit A-27, Schedule MEC-4.

¹¹ Comments of Rebecca Klein, Chairman of the Public Utilities Commission of Texas, on Page 2 of the Spring 2003 *Texas Power Pages*, <http://www.powertochoose.org/publications/powerpagesvol3.pdf>. Also, as reported in the February 2003 edition of "Report Card on Competition" published by the PUCT, <http://www.puc.state.tx.us/electric/projects/25645/rptcrd/feb03rptcrd.pdf>.

1 A. Arizona customers who wish to purchase power from a competitive
2 supplier must pay an extra charge to their local utility that compensates the utility
3 for “stranded costs,” which are the net costs of generation incurred under
4 traditional regulation that are believed to be otherwise unrecoverable in a
5 competitive market.¹² This charge adds to the cost of the competitive transaction,
6 making it more difficult for competitors to compete with the utilities’ standard
7 offer service.

8 The assurance of stranded cost recovery is addressed in the Electric
9 Competition Rules.¹³ Provisions establishing specific stranded cost charges
10 (typically referred to as a “Competitive Transition Charge” or CTC) were
11 included in both the APS and TEP settlement agreements, as well as in a
12 settlement agreement negotiated between customers and SRP in 1998.

13 Currently, the SRP stranded cost charge adds about 0.67 cents per kwh to
14 the cost of a direct access transaction for a customer with a load under 1000 kw,
15 and 0.43 to 0.47 cents per kwh for a customer with a load that is 1000 kw or
16 greater. This charge is scheduled to expire on May 31, 2004.

17 In the APS territory, the stranded cost charge currently adds about 0.3
18 cents per kwh to the cost of a direct access transaction for a commercial or
19 industrial customer.¹⁴ On January 1, 2004, this cost will drop to about 0.2 cents
20 per kwh. The APS stranded cost charges are scheduled to expire on December 31,
21 2004.

¹² The Electric Competition Rules limits this recovery to prudent assets and obligations incurred prior to December 26, 1996. It also includes certain costs associated with generation divestiture, employee severance and re-training, and other approved transition and restructuring costs. R14-2-1601.39.

¹³ R14-2-1607.

1 The prospects for retail direct access should improve when these artificial
2 economic barriers to shopping expire.

3 **Q. Does TEP have a stranded cost charge?**

4 A. Yes, although TEP's stranded cost charge has a fundamentally different
5 design than APS or SRP, in that the TEP charge moves inversely with the
6 wholesale market price of power. TEP's stranded cost charge will also be in place
7 a longer time, as it does not expire until December 31, 2008. However, an
8 important component of the TEP stranded cost calculation known as the "Adder"
9 is subject to revision in 2004 pursuant to the terms of the TEP Settlement
10 Agreement. In my opinion, the TEP adders are currently set too low. Properly
11 adjusting them can provide more opportunity for retail direct access to proceed in
12 the TEP territory.

13 **Q. What is the current situation regarding the construction of new generation in**
14 **Arizona and the surrounding region?**

15 A. In the last two years, 6775 megawatts of new generation has come on line
16 in Arizona. Another 2690 megawatts are under construction in and near Arizona
17 that are scheduled to come on line before the end of 2004. This is an impressive
18 growth in supply. While this generation is being built with the wholesale market
19 in mind, not all of it is likely to be successfully subscribed to wholesale contracts.
20 Consequently, I expect that a significant amount of these resources will be
21 available for competitive retail suppliers to sell to retail access customers.

¹⁴ This calculation assumes a 65 percent load factor. The exact charge is \$1.30 per kw-month for General Service and \$1.51 per kw-month for Extra-Large General Service.

1 **Q. There is occasional discussion about limiting or eliminating the right of**
2 **Arizona customers to take retail direct access service. Do you believe that**
3 **would be a wise course of action?**

4 A. Absolutely not. The right to retail direct access is important and was hard-
5 won. It has been in place for most Arizonans since January 1, 2001, and it
6 constitutes a valuable option going forward. There is no reason for these rights to
7 be expropriated or diminished.

8 **Q. What kinds of obstacles did customers overcome in gaining retail direct**
9 **access rights?**

10 A. There were numerous obstacles to gaining the right to retail direct access
11 service in Arizona. Among the major roadblocks were: (1) utility contentions that
12 direct access service violated the utilities' rights as monopolists pursuant to their
13 certificates of convenience and necessity; (2) utility claims for stranded cost
14 recovery totaling over a billion dollars; and (3) utility claims that implementation
15 would be onerous, thereby necessitating the development of phase-in plans. The
16 litigation, workshops, and rulemaking processes devoted to these and other issues
17 consumed several years. Yet, in the end, each of these major obstacles was
18 addressed and/or removed through the implementation of the settlement
19 agreements. If these hard-won rights were taken away from customers now, it
20 would wipe out that considerable effort and expense – without good cause. The
21 right to shop for power should remain in the portfolio of choices available to
22 customers.

23

1 **The role of the AISA in supporting retail direct access**

2 **Q. What is the basic function of the AISA?**

3 A. The basic function of the AISA is to support the provision of non-
4 discriminatory retail access to the transmission system in Arizona to facilitate
5 retail direct access service.

6 **Q. Why is this function necessary?**

7 A. For retail direct access to succeed, competitive suppliers must be able to
8 deliver power to retail customers fairly and efficiently. To do so, suppliers must
9 use the transmission system to bring power from generation facilities to the local
10 distribution systems in which their retail customers reside. In carrying out this
11 objective, there are three primary challenges to overcome: (1) the transmission
12 system is often owned by the incumbent utility with which the supplier is
13 competing, raising the possibility that the competitive suppliers and their
14 customers may not be treated fairly; (2) there are numerous instances, such as
15 existence of congested transmission paths, in which technical and/or commercial
16 considerations require that a policy or protocol be in place to treat competing
17 transmission users equitably; and (3) the standard OATT-based transmission
18 regime was developed with wholesale transactions in mind, and does not address
19 the unique circumstances that arise when implementing a state retail direct access
20 program.

21 For these reasons, if retail access is to succeed, it is necessary that there be
22 an independent entity that has the responsibility to adequately address these
23 primary challenges. It is widely recognized that this can be accomplished through

1 a properly-designed RTO. However, an RTO is not yet in place in Arizona, and it
2 will be years before one is operational in the state. In fact, it has been reported
3 that WestConnect, the RTO proposed for Arizona, may not be fully operational
4 until 2011.¹⁵ Arizona developed the AISA for the specific purpose of facilitating
5 direct access by addressing these primary challenges for the period that is prior to
6 the establishment of an operational RTO.

7 **Q. By what means does the AISA address these three “primary challenges”?**

8 A. The AISA provides a series of protocols in its FERC-approved tariff that
9 are designed to treat competing retail users fairly and which are specifically
10 intended to address the unique characteristics of a state retail access program. The
11 AISA also provides a forum for resolving disputes efficiently as well as for
12 modifying the protocols, if necessary, to respond to changed circumstances. With
13 this structure, the primary forum for resolving disputes and debating the response
14 to changed circumstances is in Phoenix, not Washington. This means greater local
15 control and less-expensive, timelier resolution of issues.

16 The AISA has approval from FERC for Phase I of its tariff. The AISA will
17 remain in Phase I until the direct access load in Arizona exceeds 300 MW and the
18 Board adopts a business plan to implement more extensive Phase II activities.
19 Moving beyond Phase I to Phase II would also require FERC approval.

20 Phase I was designed to address the key issues associated with facilitating
21 retail direct access without incurring significant operating costs. The emphasis in

¹⁵ “Staff Report for the Generic Proceeding Concerning the Arizona Independent Scheduling Administrator,” May 30, 2003. p. 7.

1 Phase I is on dispute resolution and ensuring compliance with the Protocols
2 Manual.

3 **Q. What protocols are contained in the AISA tariff?**

4 A. The AISA tariff contains protocols that address allocation of retail
5 network transmission, transmission scheduling, ancillary services, must-run
6 generation, energy imbalances, emergency operations, and after-the-fact
7 checkout.

8 **Q. Please illustrate how the AISA protocols address problems that are unique to**
9 **retail direct access.**

10 A. We can use the Allocated Retail Network Transmission Protocol to
11 illustrate how the AISA tariff addresses the special circumstances of retail direct
12 access.

13 When Arizona was developing its Electric Competition Rules, APS
14 initially advanced the position that retail access customers would be offered non-
15 discriminatory access to transmission pursuant to the APS OATT. While on the
16 surface, such a position may seem reasonable, what it really meant was that when
17 a customer chose a competitive supplier, the customer's supplier was free to apply
18 for transmission service under the terms of the OATT, and the requested
19 transmission could be procured *to the extent it was available*. However, in
20 Arizona, the most desirable transmission paths tended to be already fully
21 reserved, and APS indicated up-front that it would not relinquish any share of the
22 transmission over such paths that were being used for APS bundled service
23 customers. In other words, any APS customer that wanted to shop for competitive

1 generation needed to forfeit the use of the most desirable transmission paths and
2 go to the “back” of the transmission line, where they would apply to use the paths
3 they had forfeited, only to be told that the forfeited paths were fully reserved by
4 others. Clearly, such an approach would have made retail access unworkable out
5 of the gate. The approach was particularly troubling in light of the fact that those
6 same desirable transmission paths were being used – and would continue to be
7 used – to bring utility bundled service to that same customer, so long as the
8 customer eschewed competitive service. This problem illustrates the folly of
9 simple reliance on the utility’s OATT to implement retail direct access.

10 **Q. So where does the AISA Allocated Retail Network Transmission Protocol**
11 **come into play?**

12 A. Wisely, the Commission recognized that the OATT was inadequate to
13 resolve the problem of retail transmission allocation, and in the Electric
14 Competition Rules directed that transmission was to be allocated to retail direct
15 access customers on a pro-rata basis. In other words, retail customers would not
16 be required to forfeit the more desirable transmission paths when they purchased
17 competitive power; instead, transmission rights would “follow the load.” The
18 responsibility for developing the transmission allocation protocol and securing its
19 approval at FERC was assigned to the AISA.

20 The Allocated Retail Network Transmission Protocol resulted from the
21 AISA stakeholder negotiations to develop a protocol that would ensure
22 transmission rights “followed the load.” In so doing, the AISA stakeholders, with
23 the particular cooperation of APS, TEP, and AEPCO, developed an approach that

1 will be especially useful to facilitating direct access service in its initial stages.
2 This approach provides a simple mechanism that allows competitive suppliers to
3 consolidate their transmission requirements onto paths that connect loads to liquid
4 trading hubs (e.g., Palo Verde) up to certain pre-specified limits,¹⁶ during the
5 AISA Phase I operation. This mechanism is critical to the future success of retail
6 direct access in Arizona. It is highly unlikely that it could have been developed
7 except under the auspices of an independent entity such as the AISA.

8 **Q. Is the Allocated Retail Network Transmission Protocol the only example of**
9 **how the AISA protocols address problems that are unique to retail direct**
10 **access?**

11 A. No. While it is, perhaps, the most fundamental example of addressing the
12 special characteristics of retail direct access, it is not the only important example
13 in the Protocols Manual. Other important examples include protocols to address
14 reliability must-run generation, energy imbalances, and transmission scheduling.

15 **Q. Why should the AISA be retained in light of the fact that there are no**
16 **customers in Arizona currently taking retail direct access service?**

17 A. The AISA Board has responded to the current lack of retail direct access
18 activity in Arizona by downsizing the AISA to the minimum size practicable that
19 still retains the critical mass needed to keep the entity intact. The staffing has been
20 reduced from 2.0 FTEs to 0.75 FTE, and the operating budget cut 54 percent to
21 \$154,000 per year. As I indicated in the overview to my testimony, proposed
22 increases in standard offer rates, the scheduled phase-out of stranded cost charges,

¹⁶ The terms of this mechanism are described in the AISA Protocols Manual, section V.4 See specially V.4.3.4.

1 the survival of national suppliers committed to competitive retail service, and the
2 substantial increase in the supply of regional generation will combine to make
3 direct access service a more economically-viable choice going forward.

4 Exercising this choice will not be viable without the AISA.

5 The hard work of establishing workable transmission access protocols and
6 a forum for overseeing them is accomplished. If the AISA is terminated,
7 replicating these protocols (and re-gaining FERC approval for the entity) would
8 be time-consuming and expensive.

9 To put the matter into perspective, APS has just proposed raising rates
10 \$175,000,000 per year. Clearly, spending \$154,000 per year to ensure that there is
11 fair transmission access for competitive retail supply options is money well spent.

12 **Staff Report on the AISA**

13 **Q. Have you reviewed the Staff Report on the AISA issued May 30, 2003?**

14 A. Yes, I have.

15 **Q. Do you concur with the conclusions in that report?**

16 A. In large part, yes. In particular, I agree with the conclusion that if retail
17 access is to be a viable option for Arizona customers, then “Arizona will need the
18 AISA or some substitute organization to perform the functions that were
19 originally intended to be performed by an ISA.”¹⁷ I also believe that the following
20 points in the report are worth emphasizing:

- 21 • The primary opponents of the AISA are those organizations that will be adversely
22 impacted by competition.¹⁸
23

¹⁷ “Staff Report for the Generic Proceeding Concerning the Arizona Independent Scheduling Administrator,” May 30, 2003. p. 4.

¹⁸ Ibid., p. 7.

- 1 • Proposals to abandon the AISA now in favor of an RTO are not well founded, as
2 an RTO will not commence operation before 2007, and may well not be fully
3 operational until 2011.¹⁹
4
- 5 • The AISA is a necessary, but not a sufficient condition needed to encourage retail
6 competition in Arizona. If the AISA is closed, it would provide another barrier to
7 Arizona's attempt to attract competitive Electric Service Providers.²⁰
8

9 These points are well taken.

10 **Supposed alternatives to the AISA**

11 **Q. Are you aware of alternatives to the AISA that have been proposed from**
12 **time to time?**

13 A. Yes. In my experience with transmission access issues in the southwest, I
14 have heard advocated a number of alternatives to the AISA. Among them are: (1)
15 Abandon the AISA, because an RTO will soon be in place; and (2) Now that the
16 protocols are developed and referenced in the APS and TEP OATTs, disband the
17 AISA and rely on the utility's OATT provisions.

18 **Q. What is your assessment of these alternatives?**

19 A. The argument to abandon the AISA because an RTO will soon be in place
20 was a theme advocated by SRP several years ago. Of course, it is now 2003 and
21 an operational RTO is still several years off. In fact, the Staff report states that
22 some indications are that an RTO may not be fully operational in Arizona until
23 2011. Adopting this abandonment alternative would ensure that incumbent
24 utilities could raise their prices significantly without fear of losing customers to
25 retail suppliers. It would be far wiser to ensure that the RTO is operational before

¹⁹ Ibid., p. 7.

²⁰ Ibid., p. 8.

1 disbanding the AISA, so that the RTO would be in a position to assume
2 responsibility for overseeing transmission access for competitive retail service.

3 **Q. What about the alternative of relying on the AISA protocols as now included**
4 **in the APS and TEP OATTs?**

5 A. This alternative is also highly flawed. The first problem is credibility.
6 FERC was willing to accept the terms of the AISA tariff in part because it was the
7 product of a stakeholder effort. Eliminating the role of the stakeholders going
8 forward (by eliminating the AISA) would create a policy vacuum that would
9 severely impair the ability of Arizona stakeholders to jointly develop transmission
10 access solutions that are responsive to changing conditions. Second, and as
11 important, once the authority over the protocols was abandoned by the AISA and
12 ceded to the individual utilities, as required by this alternative, nothing would
13 prevent any of the utilities from unilaterally proposing onerous new terms in the
14 protocols and re-filing them at FERC. Stakeholders who objected to the changes
15 would then have to take up the fight in Washington. This alternative is a recipe for
16 extensive and expensive litigation, and for shifting the forum for issue resolution
17 from Phoenix to the District of Columbia.

18 **Summary of recommendations**

19 **Q. Please briefly summarize your recommendations to the Commission.**

20 A. Retail direct access is an important and hard-won right held by Arizona
21 electric customers. This right should not be expropriated or diminished. Even
22 though, in recent years, the underlying economics have not supported using direct
23 access service in Arizona, it remains a valuable option going forward. The AISA

1 is essential for retail direct access, and it should be retained until an RTO is
2 operational in Arizona. At its current downsized level, costs are kept to a
3 minimum while still retaining the critical mass needed to keep the entity intact.

4 **Q. Does this conclude your direct testimony?**

5 A. Yes, it does.

6

7 1444112/23040.041

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Vitae

PROFESSIONAL EXPERIENCE

Principal, Energy Strategies, L.L.C., Salt Lake City, Utah, January 2000 to present. Responsible for energy-related economic and policy analysis, regulatory intervention, and strategic negotiation on behalf of industrial, commercial, and public sector interests. Previously Senior Associate, February 1995 to December 1999.

Adjunct Instructor in Economics, Westminster College, Salt Lake City, Utah, September 1981 to May 1982; September 1987 to May 1995. Taught in the economics and M.B.A. programs. Awarded Adjunct Professor of the Year, Gore School of Business, 1990-91.

Chief of Staff to the Chairman, Salt Lake County Board of Commissioners, Salt Lake City, Utah, January 1991 to January 1995. Senior executive responsibility for all matters of county government, including formulation and execution of public policy, delivery of approximately 140 government services, budget adoption and fiscal management (over \$300 million), strategic planning, coordination with elected officials, and communication with consultants and media.

Assistant Director, Utah Energy Office, Utah Department of Natural Resources, Salt Lake City, Utah, August 1985 to January 1991. Directed the agency's resource development section, which provided energy policy analysis to the Governor, implemented state energy development policy, coordinated state energy data collection and dissemination, and managed energy technology demonstration programs. Position responsibilities included policy formulation and implementation, design and administration of energy technology demonstration programs, strategic management of the agency's interventions before the Utah Public Service Commission, budget preparation, and staff development. Supervised a staff of economists, engineers, and policy analysts, and served as lead economist on selected projects.

Utility Economist, Utah Energy Office, January 1985 to August 1985. Provided policy and economic analysis pertaining to energy conservation and resource development, with an emphasis on utility issues. Testified before the state Public Service Commission as an expert witness in cases related to the above.

Acting Assistant Director, Utah Energy Office, June 1984 to January 1985. Same responsibilities as Assistant Director identified above.

Research Economist, Utah Energy Office, October 1983 to June 1984. Provided economic analysis pertaining to renewable energy resource development and utility issues. Experience includes preparation of testimony, development of strategy, and appearance as an expert witness for the Energy Office before the Utah PSC.

Operations Research Assistant, Corporate Modeling and Operations Research Department, Utah Power and Light Company, Salt Lake City, Utah, May 1983 to September 1983. Primary area of responsibility: designing and conducting energy load forecasts.

Instructor in Economics, University of Utah, Salt Lake City, Utah, January 1982 to April 1983. Taught intermediate microeconomics, principles of macroeconomics, and economics as a social science.

Teacher, Vernon-Verona-Sherrill School District, Verona, New York, September 1976 to June 1978.

EDUCATION

Ph.D. Candidate, Economics, University of Utah (coursework and exams completed, 1981).

Fields of Specialization: Public Finance, Urban and Regional Economics, Economic Development, International Economics, History of Economic Doctrines.

Bachelor of Science, Education, State University of New York at Plattsburgh, 1976 (cum laude).

Danish International Studies Program, University of Copenhagen, 1975.

SCHOLARSHIPS AND FELLOWSHIPS

University Research Fellow, University of Utah, Salt Lake City, Utah 1982 to 1983.

Research Fellow, Institute of Human Resources Management, University of Utah, 1980 to 1982.

Teaching Fellow, Economics Department, University of Utah, 1978 to 1980.

New York State Regents Scholar, 1972 to 1976.

EXPERT TESTIMONY

“In the matter of the application of Consumers Energy Company for a financing order approving the securitization of certain of its qualified cost,” **Michigan** Public Service Commission, Case No. U-13715. Direct testimony submitted April 8, 2003. Cross examined April 23, 2003.

“In the Matter of the Application of Arizona Public Service Company for Approval of Adjustment Mechanisms,” **Arizona** Corporation Commission, Docket No. E-01345A-02-0403. Direct testimony submitted February 13, 2003. Surrebuttal testimony submitted March 20, 2003. Cross examined April 8, 2003.

“Re: The Investigation and Suspension of Tariff Sheets Filed by Public Service Company of Colorado, Advice Letter No. 1373 – Electric, Advice Letter No. 593 – Gas, Advice Letter No. 80 – Steam,” **Colorado** Public Utilities Commission, Docket No. 02S-315 EG. Direct testimony submitted November 22, 2002. Cross-answer testimony submitted January 24, 2003.

“In the matter of the application of The Detroit Edison Company to implement the Commission’s stranded cost recovery procedure and for approval of net stranded cost recovery charges,” **Michigan** Public Service Commission, Case No. U-13350. Direct testimony submitted November 12, 2002.

“Application of South Carolina Electric & Gas Company: Adjustments in the Company’s Electric Rate Schedules and Tariffs,” Public Service Commission of **South Carolina**, Docket No. 2002-223-E. Direct testimony submitted November 8, 2002. Surrebuttal testimony submitted November 18, 2002. Cross examined November 21, 2002.

“In the Matter of the Application of Questar Gas Company for a General Increase in Rates and Charges,” **Utah** Public Service Commission, Docket No. 02-057-02. Direct testimony submitted August 30, 2002. Rebuttal testimony submitted October 4, 2002.

“The Kroger Co. v. Dynege Power Marketing, Inc.,” **Federal Energy Regulatory Commission**, EL02-119-000. Affidavit filed August 13, 2002.

“In the matter of the application of Consumers Energy Company for determination of net stranded costs and for approval of net stranded cost recovery charges,” **Michigan** Public Service Commission, Case No. U-13380. Direct testimony submitted August 9, 2002. Rebuttal testimony submitted August 30, 2002. Cross examined September 10, 2002.

“In the Matter of the Application of Public Service Company of Colorado for an Order to Revise Its Incentive Cost Adjustment,” **Colorado** Public Utilities Commission, Docket 02A-158E. Direct testimony submitted April 18, 2002.

“In the Matter of the Generic Proceedings Concerning Electric Restructuring Issues,” **Arizona** Corporation Commission, Docket No. E-00000A-02-0051, “In the Matter of Arizona Public Service Company’s Request for Variance of Certain Requirements of A.A.C. R14-2-1606,” Docket No. E-01345A-01-0822, “In the Matter of the Generic Proceeding Concerning the Arizona Independent Scheduling Administrator,” Docket No. E-00000A-01-0630, “In the Matter of Tucson Electric Power Company’s Application for a Variance of Certain Electric Competition

Rules Compliance Dates,” Docket No. E-01933A-02-0069, “In the Matter of the Application of Tucson Electric Power Company for Approval of its Stranded Cost Recovery,” Docket No. E-01933A-98-0471. Direct testimony submitted March 29, 2002 (APS variance request) and May 29, 2002 (market power). Cross examined June 21, 2002.

“In the Matter of Savannah Electric & Power Company’s 2001 Rate Case,” **Georgia** Public Service Commission, Docket No. 14618-U. Direct testimony submitted March 15, 2002. Cross examined March 28, 2002.

“Nevada Power Company’s 2001 Deferred Energy Case,” Public Utilities Commission of **Nevada**, PUCN 01-11029. Direct testimony submitted February 7, 2002. Cross examined February 21, 2002.

“2001 Puget Sound Energy Interim Rate Case,” **Washington** Utilities and Transportation Commission, Docket Nos. UE-011570 and UE-011571. Direct testimony submitted January 30, 2002. Cross examined February 20, 2002.

“In the Matter of Georgia Power Company’s 2001 Rate Case,” **Georgia** Public Service Commission, Docket No. 1400-U. Direct testimony submitted October 12, 2001. Cross examined October 24, 2001.

“In the Matter of the Application of PacifiCorp for Approval of Its Proposed Electric Rate Schedules and Electric Service Regulations,” **Utah** Public Service Commission, Docket No. 01-35-01. Direct testimony submitted June 15, 2001. Rebuttal testimony submitted August 31, 2001.

“In the Matter of Portland General Electric Company’s Proposal to Restructure and Reprice Its Services in Accordance with the Provisions of SB 1149,” Public Utility Commission of **Oregon**, Docket No. UE-115. Direct testimony submitted February 20, 2001. Rebuttal testimony submitted May 4, 2001. Joint testimony regarding stipulation submitted July 27, 2001.

“In the Matter of the Application of APS Energy Services, Inc. for Declaratory Order or Waiver of the Electric Competition Rules,” **Arizona** Corporation Commission, Docket No. E-01933A-00-0486. Direct testimony submitted July 24, 2000.

“In the Matter of the Application of Questar Gas Company for an Increase in Rates and Charges,” **Utah** Public Service Commission, Docket No. 99-057-20. Direct testimony submitted April 19, 2000. Rebuttal testimony submitted May 24, 2000. Surrebuttal testimony submitted May 31, 2000. Cross examined June 6 & 8, 2000.

“In the Matter of the Application of Columbus Southern Power Company for Approval of Electric Transition Plan and Application for Receipt of Transition Revenues,” Public Utility Commission of **Ohio**, Case No. 99-1729-EL-ETP; “In the Matter of the Application of Ohio

Power Company for Approval of Electric Transition Plan and Application for Receipt of Transition Revenues,” Public Utility Commission of **Ohio**, Case No. 99-1730-EL-ETP. Direct testimony prepared, but not submitted pursuant to settlement agreement effected May 2, 2000.

“In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues,” Public Utility Commission of **Ohio**, Case No. 99-1212-EL-ETP. Direct testimony prepared, but not submitted pursuant to settlement agreement effected April 11, 2000.

“2000 Pricing Process,” **Salt River Project** Board of Directors, oral comments provided March 6, 2000 and April 10, 2000.

“Tucson Electric Power Company vs. Cyprus Sierrita Corporation,” **Arizona** Corporation Commission, Docket No. E-000001-99-0243. Direct testimony submitted October 25, 1999. Cross examined November 4, 1999.

“Application of Hildale City and Intermountain Municipal Gas Association for an Order Granting Access for Transportation of Interstate Natural Gas over the Pipelines of Questar Gas Company for Hildale, Utah,” **Utah** Public Service Commission, Docket No. 98-057-01. Rebuttal testimony submitted August 30, 1999.

“In the Matter of the Application by Arizona Electric Power Cooperative, Inc. for Approval of Its Filing as to Regulatory Assets and Transition Revenues,” **Arizona** Corporation Commission, Docket No. E-01773A-98-0470. Direct testimony submitted July 30, 1999. Cross examined February 28, 2000.

“In the Matter of the Application of Tucson Electric Power Company for Approval of its Plan for Stranded Cost Recovery,” **Arizona** Corporation Commission, Docket No. E-01933A-98-0471; “In the Matter of the Filing of Tucson Electric Power Company of Unbundled Tariffs Pursuant to A.A.C. R14-2-1601 et seq.,” Docket No. E-01933A-97-0772; “In the Matter of the Competition in the Provision of Electric Service Throughout the State of Arizona,” Docket No. RE-00000C-94-0165. Direct testimony submitted June 30, 1999. Rebuttal testimony submitted August 6, 1999. Cross examined August 11-13, 1999.

“In the Matter of the Application of Arizona Public Service Company for Approval of its Plan for Stranded Cost Recovery,” **Arizona** Corporation Commission, Docket No. E-01345A-98-0473; “In the Matter of the Filing of Arizona Public Service Company of Unbundled Tariffs Pursuant to A.A.C. R14-2-1601 et seq.,” Docket No. E-01345A-97-0773; “In the Matter of the Competition in the Provision of Electric Service Throughout the State of Arizona,” Docket No. RE-00000C-94-0165. Direct testimony submitted June 4, 1999. Rebuttal testimony submitted July 12, 1999. Cross examined July 14, 1999.

“In the Matter of the Application of Tucson Electric Power Company for Approval of its Plan for Stranded Cost Recovery,” **Arizona** Corporation Commission, Docket No. E-01933A-98-0471; “In the Matter of the Filing of Tucson Electric Power Company of Unbundled Tariffs Pursuant to A.A.C. R14-2-1601 et seq.,” Docket No. E-01933A-97-0772; “In the Matter of the Application of Arizona Public Service Company for Approval of its Plan for Stranded Cost Recovery,” Docket No. E-01345A-98-0473; “In the Matter of the Filing of Arizona Public Service Company of Unbundled Tariffs Pursuant to A.A.C. R14-2-1601 et seq.,” Docket No. E-01345A-97-0773; “In the Matter of the Competition in the Provision of Electric Service Throughout the State of Arizona,” Docket No. RE-00000C-94-0165. Direct testimony submitted November 30, 1998.

“Hearings on Pricing,” **Salt River Project** Board of Directors, written and oral comments provided November 9, 1998.

“Hearings on Customer Choice,” **Salt River Project** Board of Directors, written and oral comments provided June 22, 1998; June 29, 1998; July 9, 1998; August 7, 1998; and August 14, 1998.

“In the Matter of the Competition in the Provision of Electric Service Throughout the State of Arizona,” **Arizona** Corporation Commission, Docket No. U-0000-94-165. Direct and rebuttal testimony filed January 21, 1998. Second rebuttal testimony filed February 4, 1998. Cross examined February 25, 1998.

“In the Matter of Consolidated Edison Company of New York, Inc.’s Plans for (1) Electric Rate/Restructuring Pursuant to Opinion No. 96-12; and (2) the Formation of a Holding Company Pursuant to PSL, Sections 70, 108, and 110, and Certain Related Transactions,” **New York** Public Service Commission, Case 96-E-0897. Direct testimony filed April 9, 1997. Cross examined May 5, 1997.

“In the Matter of the Petition of Sunnyside Cogeneration Associates for Enforcement of Contract Provisions,” **Utah** Public Service Commission, Docket No. 96-2018-01. Direct testimony submitted July 8, 1996.

“Questar Pipeline Company,” **Federal Energy Regulatory Commission**, Docket No. RP95-407. Direct testimony prepared, but withheld subject to settlement. Settlement approved July 1, 1996.

“In the Matter of Arizona Public Service Company’s Rate Reduction Agreement,” **Arizona** Corporation Commission, Docket No. U-1345-95-491. Direct testimony prepared, but withheld consequent to issue resolution. Agreement approved April 18, 1996.

“In the Matter of the Application of PacifiCorp, dba Pacific Power & Light Company, for Approval of Revised Tariff Schedules and an Alternative Form of Regulation Plan,” **Wyoming**

Public Service Commission, Docket No. 2000-ER-95-99. Direct testimony submitted April 8, 1996.

“In the Matter of the Application of Mountain Fuel Supply Company for an Increase in Rates and Charges,” **Utah** Public Service Commission, Case No. 95-057-02. Direct testimony submitted June 19, 1995. Rebuttal testimony submitted July 25, 1995. Surrebuttal testimony submitted August 7, 1995.

“In the Matter of the Investigation of the Reasonableness of the Rates and Tariffs of Mountain Fuel Supply Company,” **Utah** Public Service Commission, Case No. 89-057-15. Direct testimony submitted July 1990. Surrebuttal testimony submitted August 1990.

“In the Matter of the Review of the Rates of Utah Power and Light Company pursuant to The Order in Case No. 87-035-27,” **Utah** Public Service Commission, Case No. 89-035-10. Rebuttal testimony submitted November 15, 1989. Cross examined December 1, 1989 (rate schedule changes for state facilities).

“In the Matter of the Application of Utah Power & Light Company and PC/UP&L Merging Corp. (to be renamed PacifiCorp) for an Order Authorizing the Merger of Utah Power & Light Company and PacifiCorp into PC/UP&L Merging Corp. and Authorizing the Issuance of Securities, Adoption of Tariffs, and Transfer of Certificates of Public Convenience and Necessity and Authorities in Connection Therewith,” **Utah** Public Service Commission, Case No. 87-035-27; Direct testimony submitted April 11, 1988. Cross examined May 12, 1988 (economic impact of UP&L merger with PacifiCorp).

“In the Matter of the Application of Mountain Fuel Supply Company for Approval of Interruptible Industrial Transportation Rates,” **Utah** Public Service Commission, Case No. 86-057-07. Direct testimony submitted January 15, 1988. Cross examined March 30, 1988.

“In the Matter of the Application of Utah Power and Light Company for an Order Approving a Power Purchase Agreement,” **Utah** Public Service Commission, Case No. 87-035-18. Oral testimony delivered July 8, 1987.

“Cogeneration: Small Power Production,” **Federal Energy Regulatory Commission**, Docket No. RM87-12-000. Statement delivered March 27, 1987, on behalf of State of Utah, in San Francisco.

“In the Matter of the Investigation of Rates for Backup, Maintenance, Supplementary, and Standby Power for Utah Power and Light Company,” **Utah** Public Service Commission, Case No. 86-035-13. Direct testimony submitted January 5, 1987. Case settled by stipulation approved August 1987.

“In the Matter of the Application of Sunnyside Cogeneration Associates for Approval of the Cogeneration Power Purchase Agreement,” **Utah** Public Service Commission, Case No. 86-2018-01. Rebuttal testimony submitted July 16, 1986. Cross examined July 17, 1986.

“In the Matter of the Investigation of Demand-Side Alternatives to Capacity Expansion for Electric Utilities,” **Utah** Public Service Commission, Case No. 84-999-20. Direct testimony submitted June 17, 1985. Rebuttal testimony submitted July 29, 1985. Cross examined August 19, 1985.

“In the Matter of the Implementation of Rules Governing Cogeneration and Small Power Production in Utah,” **Utah** Public Service Commission, Case No. 80-999-06, pp. 1293-1318. Direct testimony submitted January 13, 1984 (avoided costs), May 9, 1986 (security for leveled contracts) and November 17, 1986 (avoided costs); cross-examined February 29, 1984 (avoided costs), April 11, 1985 (standard form contracts), May 22-23, 1986 (security for leveled contracts) and December 16-17, 1986 (avoided costs).

OTHER RELATED ACTIVITY

Participant, Oregon Direct Access Task Force (UM 1081), May 2003 to present.

Participant, Michigan Stranded Cost Collaborative, March 2003 to present.

Board of Directors, ex-officio, Desert STAR RTO, September 1999 to February 2002.

Advisory Committee, Desert STAR RTO, September 1999 to February 2002. Acting Chairman, October 2000 to February 2002.

Board of Directors, Arizona Independent Scheduling Administrator Association, October 1998 to present.

Acting Chairman, Operating Committee, Arizona Independent Scheduling Administrator Association, October 1998 to June 1999.

Member, Desert Star ISO Investigation Working Groups: Operations, Pricing, and Governance, April 1997 to present. Legal & Negotiating Committee, April 1999 to December 1999.

Participant, Independent System Operator and Spot Market Working Group, Arizona Corporation Commission, April 1997 to September 1997.

Participant, Unbundled Services and Standard Offer Working Group, Arizona Corporation Commission, April 1997 to October 1997.

Participant, Customer Selection Working Group, Arizona Corporation Commission, March 1997 to September 1997.

Member, Stranded Cost Working Group, Arizona Corporation Commission, March 1997 to September 1997.

Member, Electric System Reliability & Safety Working Group, Arizona Corporation Commission, November 1996 to present.

Chairman, Salt Palace Renovation and Expansion Committee, Salt Lake County/State of Utah/Salt Lake City, multi-government entity responsible for implementation of planning, design, finance, and construction of an \$85 million renovation of the Salt Palace Convention Center, Salt Lake City, Utah, May 1991 to December 1994.

State of Utah Representative, Committee on Regional Electric Power Cooperation, a joint effort of the Western Interstate Energy Board and the Western Conference of Public Service Commissioners, January 1987 to December 1990.

Member, Utah Governor's Economic Coordinating Committee, January 1987 to December 1990.

Chairman, Standard Contract Task Force, established by Utah Public Service Commission to address contractual problems relating to qualifying facility sales under PURPA, March 1986 to December 1990.

Chairman, Load Management and Energy Conservation Task Force, Utah Public Service Commission, August 1985 to December 1990.

Alternate delegate for Utah, Western Interstate Energy Board, Denver, Colorado, August 1985 to December 1990.

Articles Editor, Economic Forum, September 1980 to August 1981.

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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner

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

REBUTTAL TESTIMONY OF KEVIN C. HIGGINS

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1 **REBUTTAL TESTIMONY OF KEVIN C. HIGGINS**

2

3 **Introduction**

4 **Q. Please state your name and business address.**

5 A. Kevin C. Higgins, 39 Market Street, Suite 200, Salt Lake City, Utah,
6 84101.

7 **Q. By whom are you employed and in what capacity?**

8 A. I am a Principal in the firm of Energy Strategies, LLC. Energy Strategies
9 is a private consulting firm specializing in economic and policy analysis
10 applicable to energy production, transportation, and consumption.

11 **Q. On whose behalf are you testifying in this proceeding?**

12 A. My testimony is being sponsored by Arizonans for Electric Choice and
13 Competition (“AECC”), a coalition of Arizona business customers in support of
14 retail electric competition.

15 **Q. Have you previously filed direct testimony in this proceeding?**

16 A. Yes, I have.

17 **Q. What is the purpose of your rebuttal testimony?**

18 A. I will be rebutting the direct testimony of AEPCO witness Larry D. Huff.

19 **Q. What aspects of Mr. Huff’s testimony are you rebutting?**

20 A. First, I will address Mr. Huff’s general policy recommendation that the
21 Commission issue a finding that the Affected Utilities have met their obligations
22 to the Arizona Independent Scheduling Administrator (AISA) pursuant to the
23 Electric Competition Rules. Next, I will address specific aspects of Mr. Huff’s

1 testimony as it relates to the AISA's performance (or non-performance) of certain
2 transmission-related functions.

3 **The question of whether the Affected Utilities have met their obligations to the**

4 **AISA**

5 **Q. Do you believe that the Affected Utilities have met their obligations to the**
6 **AISA?**

7 A. To this date, I believe they generally have. But irrespective of whether the
8 Affected Utilities have met their obligations to date, I believe their obligations are
9 continuing, insofar as the AISA continues to have an important function in
10 support of direct access service.

11 **Q. Please comment on Mr. Huff's suggestion that such a finding by the**
12 **Commission will simultaneously free the Affected Utilities of their obligations**
13 **to the AISA while allowing the AISA to be "free to fashion its own future as**
14 **it sees fit."**

15 A. In my opinion, this recommendation is specifically tailored toward
16 AEPCO's particular regulatory status. The AISA pays for its operating expenses
17 by levying a small FERC-approved charge on the scheduling of transmission
18 service for retail delivery in Arizona. This charge was designed to recover costs
19 from both standard offer and direct access customers (through their respective
20 schedulers) on a non-discriminatory basis. This charge is enforceable through
21 FERC on the FERC-jurisdictional utilities, APS and TEP, as well as on
22 competitive retail suppliers scheduling in those territories. My understanding is
23 that AEPCO is not a FERC-jurisdictional utility, and its participation in the AISA

1 is due solely to compliance with state requirements. The implication of Mr. Huff's
2 suggestion is that a finding by the Commission of "compliance" would free
3 AEPCO to drop out of the AISA, leaving the ongoing funding to APS, TEP, and
4 any competitive providers that may enter the market.

5 **Q. At the AISA's current budget, what is AEPCO's total monthly charge in**
6 **support of AISA costs?**

7 A. At the AISA's current budget of \$154,000 per year, the total monthly
8 charge to AEPCO is about \$650 per month.

9 **Q. Do you agree with Mr. Huff's proposition to allow AEPCO to cease**
10 **contributing to the AISA?**

11 A. No. Although, AEPCO's monthly contribution is a very small cost by
12 utility standards, it is important as a matter of principle that AEPCO participate in
13 the AISA, so that retail customers in its territory can someday benefit from the
14 AISA when shopping for power. Currently, retail customers in AEPCO's territory
15 are precluded from shopping due to the absence of unbundled tariffs among
16 AEPCO's member distribution cooperatives, despite the requirements in the Rules
17 that direct access service is supposed to be available to customers in the
18 cooperatives' distribution territories.¹ The lack of unbundled service in AEPCO's
19 territory is inconsistent with the requirements in the APS, TEP, and SRP
20 territories, and in my opinion, should be rectified. When this barrier to shopping is

¹ The Electric Competition Rules require electric cooperatives to comply with the Rules, although an electric cooperative may request to modify the retail competition implementation schedule. [See R14-2-1601.1, R14-2-1602.A, and R14-2-1604.F.]

1 removed, the AISA will be in a better position to be of service to retail customers
2 in AEPCO's territory.

3 **AISA performance of certain transmission-related functions**

4 **Q. Mr. Huff states that the AISA is not needed to implement and oversee**
5 **operating protocols to ensure fair transmission access. Do you agree?**

6 A. No. While Mr. Huff is correct in pointing out that the work of developing
7 the protocols has been accomplished, his representation that future adjustments to
8 the protocols can be best handled via unilateral OATT filings by the individual
9 utilities is precisely the kind of scenario that Arizona has taken great care to
10 avoid. If the role of the stakeholders going forward was eliminated (by
11 eliminating the AISA), it would create a policy vacuum that would severely
12 impair the ability of Arizona stakeholders to jointly develop transmission access
13 solutions that are responsive to changing conditions. Moreover, once the authority
14 over the protocols was abandoned by the AISA and ceded to the individual
15 utilities, as proposed by Mr. Huff, nothing would prevent any of the utilities from
16 unilaterally proposing onerous new terms in the protocols and re-filing them at
17 FERC. Stakeholders who objected to the changes would then have to take up the
18 fight in Washington.

19 **Q. Mr. Huff also states that he does not believe the AISA is needed for dispute**
20 **resolution. Do you agree?**

21 A. No. Mr. Huff states that the AISA would duplicate the dispute resolution
22 process in each utility's respective OATT. I disagree. The dispute resolution
23 procedures in the utility OATTs were intended to address disputes concerning

1 wholesale service. The AISA dispute resolution process is intended to address the
2 *retail* service aspects of the AISA protocols. Further, Mr. Huff disparages the
3 AISA dispute resolution process as “non-binding,” as its decisions can be
4 appealed to FERC. However, Mr. Huff ignores a key aspect of AISA dispute
5 resolution, which is that it provides a “fast-track” process in which the AISA
6 Director shall make an *immediate* decision to address disputes that concern the
7 implementation of the AISA protocols manual. If the Director’s decision is
8 disputed, then the fast-track dispute resolution procedure is required to render a
9 decision by the next business day. Contrary to Mr. Huff’s assertions, this decision
10 will stand unless it is overturned later by FERC or a court.² This provision for
11 speedy resolution by a locally-based third party is a distinct advantage of the
12 AISA’s dispute resolution process. The fact that parties may still pursue due
13 process through the FERC or courts does not detract from the merit of the AISA’s
14 dispute resolution mechanism, as Mr. Huff maintains.

15 **Q. Mr. Huff states that it would be duplicative for the AISA to operate a**
16 **statewide OASIS. Do you agree?**

17 A. Yes, and I hasten to add that the AISA Board has refrained from spending
18 any money on developing an AISA statewide OASIS precisely because it would
19 have been duplicative of other efforts underway. In my view, this is an example of
20 the AISA Board making a very responsible decision to stay focused on activities
21 where it could add value – e.g., implementing and overseeing retail access

² AISA Bylaws, Section 6.1.

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER

Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

JEFF HATCH-MILLER

Commissioner

MIKE GLEASON

Commissioner

IN THE MATTER OF THE
GENERIC PROCEEDINGS
CONCERNING ELECTRIC

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF ARIZONA
PUBLIC SERVICE COMPANY'S
REQUEST FOR VARIANCE OF
CERTAIN REQUIREMENTS OF
A.A.C. 4-14-2-1606

DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE
GENERIC PROCEEDINGS
CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING

DOCKET NO. E-00000A-01-0630

IN THE MATTER OF TUCSON
ELECTRIC COMPANY'S
APPLICATION FOR A
VARIANCE OF CERTAIN
ELECTRIC POWER

DOCKET NO. E-01933A-98-0471

ISSUES IN THE MATTER OF
TUCSON ELECTRIC POWER
COMPANY'S APPLICATION
FOR A VARIANCE OF
CERTAIN ELECTRIC

DOCKET NO. E-01933A-02-0069

TESTIMONY OF MICHAEL D. McELRATH

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1 **DIRECT TESTIMONY OF MICHAEL D. McELRATH**

2 **Q. Please state your name and business address.**

3 A. Michael D. McElrath, One North Central Avenue, Phoenix, Arizona 85004.

4 **Q. By whom are you employed and in what capacity?**

5 A. Phelps Dodge Mining Company. I am currently serving in the position of Energy
6 Manager. My duties include the planning, acquisition, and delivery of energy
7 commodities for Phelps Dodge mines in North and South America. My duties
8 also include coordinating the interests of Phelps Dodge Corporation and Phelps
9 Dodge Mining Company (collectively hereafter "Phelps Dodge") in wholesale
10 and retail regulatory proceedings at the state and national levels.

11 **Q. On whose behalf are you providing testimony in this proceeding?**

12 A. I am testifying as a witness for Arizonans for Electric Choice and Competition
13 ("AECC") in support of retaining the Arizona Independent Scheduling
14 Administrator ("AISA").

15 I am also testifying in this proceeding because of Phelps Dodge's concern about
16 the impact the elimination of AISA would have on open, non-discriminatory
17 transmission access to the transmission system.

18 **Q. Why does Phelps Dodge have a concern with reference to having access to
19 the transmission system?**

20 A. Phelps Dodge has six mining operations located in Arizona. In 2002, Phelps
21 Dodge spent in excess of \$120 million to supply electric power to those mining
22 operations. Electric power is one of the largest variable costs of copper
23 production. In order for Phelps Dodge to have access to as many sources of

1 electric power as possible there must be open, non-discriminatory transmission
2 access to the transmission system. The purpose of the AISA is to facilitate such
3 access until a regional transmission organization becomes operational.

4 **Q. Have you been involved in proceedings before the Arizona Corporation**
5 **Commission ("Commission") relating to retail electric competition?**

6 A. Yes. I have been active in the deregulation arena since 1994 when the
7 Commission held its first workshop.

8 **Q. Have you also been involved with Commission proceedings related to the**
9 **AISA?**

10 A. Yes.

11 **Q. What has been that involvement?**

12 A. I have participated in many workshops, meetings, hearings and negotiations in
13 connection with the formation and operation of the organization. I presently serve
14 on the Board of Directors of the AISA as an unpaid volunteer representing the
15 Aggregation Class.

16 **Q. Has Phelps Dodge taken any action in anticipation and in support of retail**
17 **electric competition in Arizona?**

18 A. Yes.

19 **Q. What has been the nature of that action?**

20 A. In anticipation of the commencement of retail electric competition, Phelps Dodge
21 organized Phelps Dodge Energy Services, L.L.C. ("PDES") and obtained Federal
22 Energy Regulatory Commission ("FERC") approval to engage in power
23 marketing activities including the ability to charge market rates for sales of

1 wholesale power. In addition, PDES also obtained a FERC order that it is an
2 exempt wholesale generator ("EWG") by reason of its leasehold interest in certain
3 generation facilities from which PDES sells excess power when the Phelps Dodge
4 mines do not need the power. In 2001, the Commission approved the application
5 of Morenci Water and Electric, L.L.C., a wholly owned subsidiary of Phelps
6 Dodge, for an Energy Services Provider ("PDM"). PDM facilitates the
7 movement of wholesale electricity to retail industrial customers in Arizona.
8 Phelps Dodge also constructed a 50 MW combined cycle power plant near Silver
9 City, New Mexico in 2001 to augment its power generation base.

10 **Q. Has PDM been able to engage in the marketing of its services and power?**

11 A. Since PDM's organization, market conditions have not been such to warrant
12 engagement in such activities. However, with the phase out of stranded cost
13 charges, the addition of significant new generating capacity, and the proposed
14 increase in rates of some utilities, conditions are changing that will make retail
15 electric competition economical and viable.

16 **Q. Would the elimination of the AISA affect PDM's ability to market its services
17 and power?**

18 A. Yes. AECC witness Kevin Higgins has discussed in some detail the impact the
19 elimination of AISA would have on direct access and stated very eloquently the
20 reasons for the continuation of the AISA.

21 **Q. Does Phelps Dodge have a recommendation with reference to whether the
22 AISA should be retained?**

23 A. Yes.

1 **Q. What is that recommendation?**

2 A. Phelps Dodge recommends that the AISA be retained until such time as there is a
3 regional organization in place and operational.

4 **Q. Does this conclude your direct testimony?**

5 A. Yes.

6

7 1443729/23040.041

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner

IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING
ELECTRIC RESTRUCTURING

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR
VARIANCE OF CERTAIN
REQUIREMENTS OF A.A.C. 4-14-2-1606

DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING THE
ARIZONA INDEPENDENT
SCHEDULING ADMINISTRATOR

DOCKET NO. E-00000A-01-0630

IN THE MATTER OF TUCSON
ELECTRIC COMPANY'S APPLICATION
FOR A VARIANCE OF CERTAIN
ELECTRIC POWER COMPETITION
RULES COMPLIANCE DATES

DOCKET NO. E-01933A-98-0471

ISSUES IN THE MATTER OF TUCSON
ELECTRIC POWER COMPANY'S
APPLICATION FOR A VARIANCE OF
CERTAIN ELECTRIC COMPETITION
RULES

DOCKET NO. E-01933A-02-0069

REBUTTAL TESTIMONY OF MICHAEL D. McELRATH

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Rebuttal Testimony of Michael D. McElrath

Q. Please state your name and business address.

A. Michael D. McElrath, One North Central Avenue, Phoenix, Arizona 85004

Q. Are you the same Michael D. McElrath who prefiled direct testimony in this proceeding on July 28, 2003?

A. Yes.

Q. What is the purpose of your rebuttal testimony?

A. I will be responding to parts of the direct testimony of Larry D. Huff, the witness for Arizona Electric Power Cooperative, Inc. ("AEPCO").

Q. What has been your association with Mr. Huff?

A. My involvement with Mr. Huff has been in connection with the formation and operation of the Arizona Independent Scheduling Administrator ("AISA"). We both were involved in the initial organization of the AISA, and both presently serve on the AISA Board of Directors.

Q. In his summary on page 4 Mr. Huff states that "AEPCO and SWTC [Southwest Transmission Cooperative, Inc. ("SWTC") is AEPCO's transmission subsidiary] strongly believe that the AISA is not needed now and will not be necessary in the future to facilitate retail competition". Do you agree with that statement?

A. No, I do not. The AISA is essential for retail direct access. Conditions are changing to make retail direct access more attractive to customers than at any time in the past. Significant new generation capacity is currently coming on line, the

Competition Transition Charge ("CTC") is about to expire in Arizona Public Service Company's ("APS") territory and rate increases are being sought by at least one of the Affected Utilities, APS. All of these factors will encourage the development of retail electric competition. Until such time as a Regional Transmission Organization ("RTO") is operational and functioning, the AISA is necessary to ensure open, equitable and non discriminatory access to transmission for retail service.

Q. Also on page 4 of his testimony Mr. Huff recommends ". . . that the Commission simply issue its order that AEPCO has fulfilled its responsibilities under A.A.C. R14-2-1609 in relation to the AISA". Do you agree that AEPCO has fulfilled its responsibilities in relation to the AISA?

A. No. AEPCO hasn't begun to fulfill its responsibility in relation to the AISA. The member owners of AEPCO have yet to unbundle their tariffs in order to provide customers of those member owners with the opportunity of taking advantage of direct access. Until customers of the member owners have the option of direct access AEPCO will not have fulfilled its responsibility in relation to the AISA.

Q. On page 5 of Mr. Huff's testimony, he states "AEPCO will not continue its participation in the AISA because participation simply imposes costs on our members and their member owners without providing benefits." Do you agree with that statement?

A. No. The member owners must first unbundle their tariffs as they are required to do under the provisions of A.A.C. R14-2-1606.C. before the customers of the

member owners will have the opportunity to take advantage of competition and thereby benefit from the AISA.

Q. On page 7 of his testimony Mr. Huff states that one of the functions of the AISA, the filing of operating protocols, has already been accomplished. He points out that these protocols have been incorporated into APS' and TEP's OATT's and further states that SWTC will incorporate the protocols in its OATT when the member owners' service territories are opened for competition. Do you have any comments concerning those statements?

A. Yes. First Mr. Huff mentions that the service territories of the member owners are not open to competition. It's when the territories are open to competition that the functions of the AISA will be required. Mr. Huff acknowledges there may need be some adjustments of the protocols ". . . as different or unanticipated circumstances arise." He suggests that those adjustments can be made either directly by the provider or ". . . through some action at the FERC." What Mr. Huff is suggesting is that a federal agency in Washington, D.C. be used to address disputes that may arise concerning the provision of transmission services in Arizona rather than having those disputes addressed locally by utilizing the procedures of AISA. Phelps Dodge's experience with FERC involving the El Paso Natural Gas Company case has indicated that this can be a lengthy, time-consuming and costly process. FERC is just now ruling on a complaint that was filed with FERC in December of 1999. The AISA protocols are intended to provide a process to resolve such disputes on a more timely local basis. In addition, as Mr.

Huff points out in his testimony, the client he is testifying on behalf of, is not even subject to FERC jurisdiction.

Q. On page 8 of his testimony Mr. Huff supports his argument of a lack of need for AISA by pointing out that only a few hundred customers took competitive services on the APS, TEP and SRP systems throughout the year 2000 and that he was not aware of a single instance when the AISA was called upon to resolve any dispute concerning any of the transactions or other startup issues. Do you have any comment concerning that statement?

A. Yes. As I pointed out previously, with the increase in generation capacity, the elimination of the CTC and the increase in rates anticipated by the APS rate application filing there undoubtedly will be more customers who will be opting for direct access service. With the increase in customer activity, there will be a much greater need for AISA until such time as an RTO is operational and effectively functioning.

Q. Does this conclude your rebuttal testimony?

A. Yes.

1452711/12539.003

EXHIBIT
Admitted
AECC-5

**Arizona Public Service Company's
Report to the Arizona Corporation Commission**

June 13, 2003

E. Transmission and Wholesale Market Activities

Although most of the Electric Competition Rules are focused on retail activities, some specifically apply to transmission or wholesale electric markets. APS has been significantly involved in these areas and in many cases has gone beyond the minimum requirements of the rules to adopt policies or practices that will help wholesale markets or provide transmission access for retail suppliers. Examples are discussed below.

AISA Protocols

Rule 1609(D) directs the formation of an Arizona Independent Scheduling Administrator ("AISA"). This organization was to help provide nondiscriminatory transmission access on an interim basis until a Regional Transmission Organization ("RTO") became functional. The AISA was designed to calculate the Available Transmission Capability of transmission paths, develop an Open Access Same-Time Information System ("OASIS"), implement and oversee the nondiscriminatory application of operating protocols to ensure statewide consistency for transmission access, provide a dispute resolution process, standardize scheduling procedures, and implement a transmission planning process. Essentially, the AISA was the first step in moving toward an RTO for Arizona.

APS provided much of the AISA's initial funding and spent thousands of employee hours to comply with the requirements in Rule 1609(D). More importantly, however, the process resulted in innovative protocols to facilitate retail direct access.

Specifically, retail transmission rights were to be allocated on a pro rata basis until auction and trading mechanisms were in place for these rights. This placed a significant burden on scheduling coordinators that are serving retail direct access customers, because a pro rata allocation on APS' transmission system would require some generation to come across each of APS' four key transmission delivery paths. For example, a scheduling coordinator might have purchased generation at Palo Verde, but would have to schedule on a pro rata basis from Four Corners, Navajo and Mead as well as Palo Verde. To mitigate this burden and facilitate the ability of ESPs to serve their customers, APS agreed to exchange up to 200 MW of its Palo Verde to APS transmission capacity with scheduling coordinators serving direct access customers in APS' service territory. Thus, ESPs could obtain all of their generation from the most liquid trading hub connected to APS' system and not be forced to schedule pro rata over all of APS' delivery paths.

To achieve regulatory acceptance of this approach, APS worked a great deal directly with FERC and Staff. The resulting protocols are now incorporated into APS' FERC-approved Open Access Transmission Tariff ("OATT").

Desert STAR and WestConnect

Rule 1609(F) requires each Affected Utility to "make good faith efforts to develop a regional, multi-state Independent System Operator or Regional Transmission Organization." The



BY-LAWS

ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR ASSOCIATION

October 29, 1998

(Revised: October 2001)

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BY-LAWS

ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR ASSOCIATION

1. Preamble:

The Arizona Independent Scheduling Administrator Association (AISA) is a voluntary, non-profit Arizona corporation intended to become operational by January 1, 1999, as an interim electric transmission scheduling administrator to facilitate the operation of Arizona's competitive electric retail market until a regional independent system operator, currently known as Desert STAR, becomes operational. AISA will initially administer and oversee all activities on the OASIS of the CAOs.

AISA initially intends to serve as the scheduling administrator on behalf of the providers and users of the Interconnected Transmission System within the State of Arizona.

The character of the affairs which AISA intends to conduct is to facilitate open, non-discriminatory transmission access on the Interconnected Transmission System.

It is presumed that once a customer receives transmission access, distribution access will not be a problem. However, if there is distribution congestion, there may be a role for AISA in overseeing distribution congestion management and distribution access, which would require an amendment to these By-laws.

2. Definitions:

2.1. **ADR:** The alternative dispute resolution procedures established in Section 6.

2.2. **Affiliate:** Another person which controls, is controlled by, or under common control with, a person. Control (including the terms "controlling," "controlled by" and "under common control with") includes but is not limited to, the possession directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of ten percent or more creates a rebuttable presumption of control. Notwithstanding the foregoing definition, electric distribution cooperatives that are member-owners of a generation and transmission cooperative are not Affiliates of the generation and transmission cooperative or of each other for purposes of these By-laws. Furthermore, an entity controlled by or operating as a unit, agency, or subdivision of a local, state, or federal government shall not be considered an Affiliate of

any other entity controlled by or operating as a unit, agency, or subdivision of the local, state, or federal government.

- 2.3. **ATC:** That amount of transfer capability, which has not been committed for use, and therefore is available to provide transmission service over the Interconnected Transmission System.
- 2.4. **Board:** AISA's Board of Directors, individually and collectively, as described in Section 4.
- 2.5. **CAOs:** Control Area Operators who are Members of AISA.
- 2.6. **FERC:** The Federal Energy Regulatory Commission or its regulatory successor.
- 2.7. **Interconnected Transmission System:** That portion of each Member CAO's and TO's transmission system which is utilized for bulk power transactions within the State of Arizona.
- 2.8. **Member:** Any entity which is eligible for membership as provided in Section 3.2.1 and is current in the payment of dues as provided in Section 3.2.2.
- 2.9. **Member Class(es):** Those Member Classes established in Section 3.2.3.
- 2.10. **OASIS:** Open Access Same-Time Information System(s) for the Interconnected Transmission System.
- 2.11. **Protocols Manual:** A manual to be created at the earliest practicable date by the Director in cooperation with the Members and approved by the Board, which, while recognizing contractual commitments, shall lend greater precision to the procedures used for the calculation of TTC, committed uses, and ATC, to reservation procedures, and to the determination of priorities for the use of constrained paths on the Interconnected Transmission System.
- 2.12. **SWRTA:** Southwest Regional Transmission Association.
- 2.13. **TOs:** Transmission Owners who are Members of AISA.
- 2.14. **TTC:** The total transfer capability of a transmission path at any point in time is its reliability limit, an amount which cannot exceed the path rating.

3. **Members:**

3.1. **Powers:**

The Members will have the powers specified in these By-laws, including the power to amend those portions of these Bylaws providing for Member Class composition and Member powers and providing for the nomination and election of members of the Board.

3.2. **Member Qualifications and Classes:**

3.2.1. General Qualifications for Membership: To be eligible to become a Member of AISA an entity or individual must satisfy one of the following standards:

3.2.1.1. Make transmission facilities available for the delivery of power and energy to consumers within the State of Arizona;

3.2.1.2. Be qualified to use the transmission system pursuant to FERC Order 888-A; or

3.2.1.3. Be a retail customer or an organization representing retail customers within Arizona.

3.2.2. Dues: By December 15 of each year, beginning in 1999, AISA shall mail to each Member an annual statement for dues for the following year in the amount of Two Hundred Fifty Dollars (\$250), payable on or before January 2 of the following year. Initial dues of a Member shall be submitted with a completed application for membership and shall be for the full annual amount, which shall cover membership through the end of the calendar year, except that dues of those joining on or before December 31, 1998, shall cover their dues requirements through December 31, 1999. In order to be eligible to vote in any election or on any issue that comes before the Members or to participate in any activities of AISA, a Member shall be current in the payment of its dues. The Board shall have the power to waive the annual dues of an organization upon a showing of financial hardship.

3.2.3. Member Classes: A Member may choose one Member Class to which it will belong. There shall be five voting classes of Members and one non-voting or *ex-officio* class. The five Member Classes are:

- **Transmission facilities providers:** Entities that own or control an interest in the Interconnected Transmission System and

provide transmission service within the State of Arizona using AISA's OASIS.

- **Local load serving entities:** Entities that schedule to or serve loads, including municipally-owned utilities, distribution co-operatives, and other local distribution service providers providing services within Arizona.
- **Aggregators:** Entities that aggregate end-use loads and/or generating resources to serve end-use customers within Arizona.
- **Independent generators and wholesale power marketers:** Entities, including independent power producers and exempt wholesale generators, that own generating facilities but generally do not own any other utility facilities or perform any other utility functions, except for transmission facilities needed to deliver to the Interconnected Transmission System; or entities which are wholesale power marketers as defined by FERC, or state agencies which sell electric energy as defined by the Federal Power Act.
- **End users:** Retail customers or an organization representing retail customers within Arizona.

The *ex officio* class shall consist of representatives from Arizona state regulatory agencies that have an interest in the operations of AISA. Representatives of this class shall not be required to pay annual dues.

- 3.2.4. Choosing a Member Class and Minimum Number of Class Members:** While an entity may choose the Member Class to which it belongs, it may not belong to more than one such class. It may terminate its participation in such Member Class and choose another Member Class within the first twelve months of becoming a Member, but shall thereafter remain with its last chosen Member Class.

All Member Classes, except the transmission facilities providers class, must have at least five Members, excluding Affiliates, to be qualified to nominate and elect representatives to the Board.

- 3.2.5. Affiliate Rules:** An Affiliate of a Member which satisfies the membership qualifications may also become a Member provided:

3.2.5.1. The Member must disclose all of its Affiliates which hold AISA membership and the classes to which the affiliates belong.

3.2.5.2. Only one Affiliate from a group of related Affiliates may elect to associate itself with a particular Member Class, and only one representative of a group of related Affiliates shall be qualified to serve on the Board.

3.3. First and Second Special Meetings of Members:

3.3.1 **First Special Meeting:** At a special meeting called for such purposes by the initial Board, the Member Classes shall organize themselves and elect their respective Chairs and shall nominate Board candidates within thirty (30) days after AISA is established as a non-profit corporation. Such Chairs shall serve until the next annual meeting.

3.3.2 **Second Special Meeting:** The first elected Board shall be elected at a second special meeting of the Members to be held within thirty (30) days after slates of candidates have been established by the Member Classes and shall serve until the first annual meeting. Class Chairs shall also elect a Members Chair. A Member who cannot be present shall be able to vote for the Board positions to be filled by that Member's Class by sending written instructions to the Class Chair, which must be received at least one day in advance of the second special meeting.

3.4. Meetings of Members:

3.4.1 The annual meeting of Members for the election of Class Chairs, Members Chair, and class representatives to the Board shall be held on the second Tuesday in September of each year. The failure to conduct such a meeting shall not work a forfeiture of the Articles of Incorporation.

3.4.2 Special member meetings may be held at the call of a majority of the Class Chairs or any three (3) Member representatives from each of three (3) Member Classes upon thirty (30) days advance written notice to all Members.

3.5. Member Class Organization:

3.5.1. **Class Chairs;** At the annual meeting of Members, each Member Class by majority vote shall select its Class Chair. The Class Chair or his/her designated alternate will attend and preside at all Class meetings and all Class committee meetings.

- 3.5.2. Members Chair:** The Class Chairs, by majority vote, shall elect annually one of their number as the Members Chair for the year. The Members Chair will preside at the annual meeting of Members and all other joint meetings of the Member Classes.
- 3.5.3. Member Class *Ad Hoc* Committees:** The Class Chairs may constitute, empower, and dissolve *ad hoc* committees from time to time to perform specific tasks within specified times. Upon completion of their assigned tasks, such committees shall dissolve.
- 3.5.4. Member Meeting Notices:** The Director of the AISA will provide thirty (30) days' advance notice of the annual meeting of the Members. Special joint meetings of all the Member Classes, and all special Member Class meetings and *ad hoc* committee meetings shall be held on such notice as each of those bodies shall determine. The form of such notice may be determined by each body and may be accomplished by U.S. mail, facsimile, or electronic mail as each body directs. The Members Chair will provide for keeping the minutes of Members, Member Class and *ad hoc* committee meetings and all other official records of the Members. Within five (5) business days after any vote taken by all Members, a Member Class, or a Member committee, the Director will notify all Members of the results.
- 3.5.5. Quorum:** All business of the Members, by all Member Classes jointly, Class Chairs, each Member Class separately and by all Member Class committees, shall be conducted at meetings called by advance notice to all Class Members. No business shall be conducted at any meeting unless a quorum is present.
- 3.5.5.1.** A majority of all Members that are part of any body which is making a decision shall constitute a quorum. A quorum, once established, shall be deemed to continue for the balance of the meeting. Members may designate alternate representatives by written notice to the chair before or during the meeting.
- 3.5.5.2.** A majority of the Classes must have a Class quorum present in order to constitute a quorum for the annual meetings or special meetings of Members.
- 3.5.6. Member Class Voting:** The Member Class and Member Class committee decisions shall be by voting in accord with the following rules:

3.5.6.1. In the selection of Class Chairs and voting on other Class business, with the exception of certain decisions described in Section 3.5.6.2, the decisions shall be by a majority vote. The voting Members in each Member Class shall elect two Board members by a majority vote.

3.5.6.2. Votes on amendments to the Bylaws, as provided in Section 3.1, shall be conducted by a two-tier voting process. The Members in each Class shall cast their votes. Following this vote, each of the Class Chairs shall cast his/her vote for or against the proposed amendment as determined by his/her Member Class. Both votes in the two-tier system must be affirmatively supported by two-thirds majority vote in order for a proposed amendment to become effective.

3.6 Resignation, Suspension, or Termination of Membership:

3.6.1. Resignation: A Member may resign at any time by giving fifteen (15) days' written notice to the Director.

3.6.2. Suspension, or Termination: Any time that the Board by resolution finds that a Member has (i) intentionally or repeatedly violated any By-law, or (ii) materially breached or intentionally violated any FERC order or arbitration decision issued pursuant to these By-laws, or (iii) willfully obstructed any lawful purpose or activity of AISA, the Board, at its sole discretion, may suspend or terminate that membership. The affected Member shall be given sixty (60) days' advance written notice of any Board meeting at which suspension or termination action against that Member is anticipated and such Member shall have the right to be present and to present information concerning the suspension or termination action to the Board. Upon suspension or termination of membership, the Member's voting rights and all other rights and privileges of membership shall automatically cease. Notice of suspension or termination shall not change the Member's ability to use the services of AISA available to non-Members or the Member's obligation under any contract, FERC order, decision of arbitration, or request for transmission service made to or by the suspended or terminated Member in effect or pending as of the effective date of suspension or termination, unless otherwise agreed by any affected Member. A Member subjected to a suspension or termination notice may elect to arbitrate such action pursuant to Section 6.3.

3.7. Restrictions on Resumption of Membership:

A Member which has withdrawn or been suspended from membership may not apply for reinstatement for a period of one (1) year unless otherwise determined by action of the Board. A Member which has been terminated from membership may not apply for reinstatement to membership for a period of time stated in the Board resolution of termination, not to exceed two (2) years, except for good cause.

4. The Board:

4.1. Powers:

4.1.1. The Board will have the power to govern the business and affairs of AISA, establish its policy and direction, hire the Director and an Assistant Director designated to act in the absence of the Director, terminate the employment of such persons with or without cause, and amend the Bylaws. Amendments of the Bylaws with respect to the Member Classes, Members powers, or compensation for Board members shall require approval as provided in Section 3.5.6.2..

4.1.2. The initial Board, named in the Articles of Incorporation, shall have no powers other than to call the special meetings of the Members for the purposes described in Section 3.3.

4.2. Qualifications:

All candidates for the Board shall be (i) knowledgeable in transmission system operations and (ii) knowledgeable in one or more areas of business, finance, organization, government regulation, or other matters particularly affecting the activities of AISA.

4.3. Composition:

The Board will consist of not more than eleven voting Members, including two representatives from each of the five Member Classes, and the Director.

4.4. Election Process and Term of Office:

4.4.1. Election Process: Each Member Class shall be represented by two Board members. At the second special meeting and at each annual meeting, voting Members for each Member Class shall elect candidates for Board positions to be filled by that Member Class.

4.4.2. Term of Office: Board members elected to the Board at the second special meeting pursuant to Section 3.3.2, shall hold office until

the first annual meeting. Thereafter Board members' term of office shall be two years, except that at the first annual meeting, each Member Class shall elect one of its Board members to a one-year term.

4.5. Organization, Meetings, and Decision Process:

4.5.1 Organization: The Board shall select the Director and Assistant Director prescribed by the Bylaws and shall appoint such Board committees as it deems necessary to carry out its business affairs. The Director shall serve as the Chair of the Board and shall be available for all Board committee meetings. The Board shall elect an Assistant Chair from among its members to serve in the absence of the Director.

4.5.2 Meetings and Quorum:

4.5.2.1 All business of the Board, election of the Board's officers, and appointment of Board committees shall occur at the Board meetings, notice of which has been provided by the Director to all of the Board and all Members. Regular meetings of the Board shall be held on the second Wednesday in January and May, and the second Tuesday in September. Special meetings may be held at the call of the Director or any three (3) Board members upon fifteen (15) days advance written notice to each Board member and all Members. Notice may be waived by written waiver signed by all Board members.

4.5.2.2 No business shall be conducted by the Board and any committee thereof unless two-thirds of the duly elected and/or appointed, members of the Board or any committee thereof is present. However, business may be conducted with absent directors participating, and deemed present in person, through any means of communication by which all directors participating in the Board Meeting may simultaneously hear, reasonably and verifiably identify themselves, and simultaneously and approximately instantaneously communicate with each other during the Board meeting.

4.5.2.3 Any meeting of the Board or any committee thereof may be held by conference telephone or similar communications equipment as permitted by law in which case any required notice of such meeting may generally describe the arrangements (rather than the place) for the holding thereof,

and all other provisions herein contained or referred to will apply to such meeting as though it were physically held at a single place.

4.5.3 Board and Board Committee Decisions: A decision of the Board or a Board committee shall require an affirmative vote of two-thirds of the duly elected and/or appointed Board members present or Board committee members present at the meeting, whichever is applicable. No proxy voting shall be allowed.

4.6. Resignations and Vacancies:

4.6.1. Resignation: Any Board member, Board committee member, officer, or employee may resign from his or her office or position at any time by written notice in accordance with Arizona Revised Statutes Sections 10-807 and 10-843. The acceptance of a resignation will not be required to make it effective.

4.6.2. Vacancies: If the office or position of any Board member or Board committee member becomes vacant by reason of his or her death, resignation, disqualification, removal or otherwise, the Board may choose a successor to hold office until a successor is duly elected by his or her Member Class.

5. The Director and Assistant Director:

The Director will be the chief executive officer of AISA. The Director shall be a member and Chair of the Board.

5.1. Eligibility:

To be eligible for employment and to continue in employment as Director or Assistant Director a person must have experience in transmission operations or scheduling and must have managerial experience. All AISA employees, including the Director and Assistant Director, shall be subject to the application of the disqualification criteria stated below.

5.1.1. Except as otherwise stated in Sections 5.1.2 through 5.1.3, a candidate will be disqualified if within fifteen (15) days before the date of employment (i) the candidate, or any related person to the candidate, or (ii) an entity, or an Affiliate of any entity, to which the candidate, or any related person is connected as an owner, director, trustee, commissioner, officer, partner, principal, representative, consultant, contractor, agent or in any similar capacity:

5.1.1.1. Is a member of the AISA; or

5.1.1.2. Receives any amount in any calendar year from the AISA, or from any Member of the AISA Transmission Provider class or any Affiliate of any such Member or any Member public utility, Member power seller or Affiliate thereof, as rent or payments for materials, products or services, other than services performed as the Director, Assistant Director, or employee of the AISA.

For purpose of this Section 5.1.1, “related person” shall mean a person who is a spouse, or minor child of the candidate.

5.1.2. A candidate for Director, Assistant Director, or employee of AISA will not be disqualified for owning shares in a mutual fund, other than a mutual fund for the utility sector, because the mutual fund owns interest in a Member or an Affiliate of a Member.

5.1.3. The qualification standards described in Section 5.1 will not apply to disqualify a candidate who is receiving payments from a pension plan of a Member or Affiliate of a Member in a form other than securities of the Member or Affiliate and the pension plan payments bear no relationship to the economic performance of the Member or Affiliate.

5.2. Employment:

The Director and Assistant Director shall be employed by the Board and shall serve at the Board’s pleasure. Any contract of employment with the Director or Assistant Director shall permit the Board to dismiss the Director or Assistant Director with or without cause.

5.3. Duties:

The Director, and in his/her absence the Assistant Director, shall be responsible for execution of the polices and direction of the Board and for the day to day operations of AISA. Subject to the Board’s directions, the Director and Assistant Director shall have the following duties, among others:

5.3.1. Prepare, file with FERC, and implement contracts with transmission facilities providers and scheduling coordinators, and a tariff with users of the Interconnected Transmission System;

5.3.2. Participate in (i) operating studies used to determine TTC, (ii) coordination of transmission maintenance schedules, (iii) Member control area operators’ and transmission owners’

determination of TTC, and (iv) determination of committed uses on the Interconnected Transmission System;

- 5.3.3. Develop with interested representatives of the Member Classes the Protocols Manual for the approval of the Board;
- 5.3.4. Calculate ATC;
- 5.3.5. Monitor the OASIS with the ultimate objective of developing and operating one state-wide OASIS on which (i) all ATC is posted, (ii) all transmission reservation requests are received, and (iii) ancillary services and secondary transmission are posted;
- 5.3.6. Receive transmission reservation requests and energy schedules concurrently with receipt by Member control area operators and transmission owners;
- 5.3.7. Update ATC after receipt of accepted transmission reservations and confirmed energy schedules;
- 5.3.8. Monitor releases of ATC to ensure compliance with the Protocols Manual;
- 5.3.9. Implement the dispute resolution procedures provided in Section 6 as appropriate;
- 5.3.10. Provide oversight and take action, as required, to ensure compliance with the Protocols Manual and FERC-recognized Standards of Conduct related to transmission access and operation of the Interconnected Transmission System; investigate and take action on complaints related to the application of the Protocols Manual and such Standards of Conduct and to resolve other issues related to discriminatory treatment in the provision of transmission service;
- 5.3.11. Make immediate decisions, based on the Protocols Manual, with respect to irregularities discovered during the performance of his/her duties described in Section 5.3.10 and with respect to disputes between transmission providers and transmission users; and
- 5.3.12. Perform administrative duties, such as preparing annual budgets for the approval of the Board, hiring/firing personnel, ensuring conformance with regulatory requirements.

The Director shall preside at all Board meetings and shall be available for all Board committee meetings, as provided in Section 4.5.1. If the Director is unable or fails to perform the duties of the office or exercise the rights,

for any reason, the Assistant Director will perform the duties and exercise the rights, except the duties of serving or voting on the Board.

6. Dispute Resolution:

There shall be two separate alternative dispute resolution (ADR) procedures—(i) a fast-track arbitration procedure to resolve near-term issues and (ii) a more typical mediation and/or arbitration procedure to resolve disputes that are more complex.

6.1. Fast-Track ADR:

The Director or the Assistant Director shall make immediate decisions, based on the Protocols Manual with respect to irregularities discovered during the performance of the duties described in Section 5.3.10 and with respect to disputes between transmission providers and transmission users concerning the next-day/same-day schedule when such disputes involve a determination of TTC, ATC, committed uses, priorities for use of congested paths, or other similar disputes. If the decision of the Director or Assistant Director is disputed, the decision will be referred to the fast-track ADR process by the Director or Assistant Director. A panel of three (3) arbitrators shall be available at the call of the Director or Assistant Director for a decision on the next business day--one panel member and an alternate from the transmitting utility and one and an alternate from the transmission user involved in the dispute, all of whom shall have been designated at the time they become Members. The third member shall be selected by the Director or Assistant Director on a rotating basis from an independent standing panel of transmission experts, all of whom shall meet the disqualification criteria contained in Section 5.1.1. The fast-track ADR panel's decision shall be submitted by the independent arbitrator, along with a statement for his/her fee and costs to be paid by the losing Party, to the Director by facsimile or electronic mail and the decision shall stand pending an appeal, which must be taken, if at all, within thirty (30) days after the date of the decision either to the courts or FERC, whichever is appropriate. A final decision of the panel, the court, or FERC shall establish a precedent to guide future decisions of the Director, Assistant Director, and future fast-track panels; provided, however, that all appeals to FERC or the courts shall be *de novo*.

6.2. Alternative Dispute Resolution Procedures:

For more complicated disputes among transmission providers and transmission users requiring additional time to prepare legal positions and proof of facts or use of witnesses and documentary evidence, the Parties to the dispute may initiate the peer review or mediation process provided in Section 6.2.1 or the Director shall cause the arbitration procedures

provided in Section 6.2.2 to be initiated, unless both Parties choose to take the dispute directly to FERC or the courts, whichever is appropriate.

6.2.1. Peer Review or Mediation:

- 6.2.1.1. All disputing Parties may jointly submit a written request for peer review or mediation, including a written description of the matter under dispute, to the AISA.
- 6.2.1.2. Within two (2) working days of the receipt of the request, the Director or Assistant Director shall appoint one (1) or more persons selected from the list maintained by SWRTA to act as facilitators to provide peer review or mediation.
- 6.2.1.3. Generally, a mediation process will be followed for disputes regarding non-fast-track ADR. The Director or Assistant Director shall appoint one or more facilitators from SWRTA's list of qualified individuals who have received mediation training, or, if mutually requested by the disputing Parties, any professional mediator, to facilitate a resolution of the issue by the disputing Parties.
- 6.2.1.4. The facilitator(s) appointed pursuant to Section 6.2.1.2 hereof shall serve on an ad hoc basis to aid the disputing Parties in reaching a mutually acceptable resolution of the dispute. The facilitator(s) shall have no authority to impose a resolution upon the disputing Parties.
- 6.2.1.5. Within ten (10) working days of the appointment by the AISA, the facilitator(s) and disputing Parties shall meet and attempt to negotiate a resolution of the dispute, following a timetable set out by the facilitator. The cost of the peer review or mediation, including the facilitator's reasonable fees and expenses, shall be borne equally by the disputing Parties.
- 6.2.1.6. Settlement positions taken by the disputing Parties during the course of the negotiations under this Section 6.2.1 shall be maintained as confidential to the extent permitted by law and shall not be introduced as evidence by an opposing Party in any subsequent arbitration, FERC proceeding, or litigation concerning the same or a related dispute.
- 6.2.1.7. If all issues involved in the dispute are not resolved pursuant to this Section 6.2.1 within thirty (30) calendar days, or other mutually agreed-to period, after

appointment of the facilitator, then any unresolved issues shall be resolved as follows: (i) at the direction of the Director, the disputing Parties will follow the arbitration process set forth in Section 6.2.2; or (ii) the complaining Party shall file the dispute with FERC under the FPA for resolution.

6.2.1.8. The facilitator shall report the outcome of the peer review or mediation process to the Director upon the successful conclusion of the mediation process or at the end of the thirty-day period, whichever event shall first occur.

6.2.1.9. The facilitator shall bill and each Party shall pay one-half of the facilitator's fees and costs.

6.2.2. Arbitration:

6.2.2.1 Within two (2) business days after the dispute has been referred to arbitration by the Director pursuant to Section 6.2, each disputing Party shall submit a statement in writing to the other disputing Party and the Director, which statement shall set forth in adequate detail the nature of the dispute, the issues to be arbitrated, and the remedy sought through such arbitration proceedings.

6.2.2.2 The day following the submission of their statements, authorized representatives of the disputing Parties shall meet in person or by telephone for the purpose of selecting an Arbitrator.

6.2.2.3 Arbitration shall be conducted by a qualified Arbitrator selected from the list maintained by SWRTA or from a mutually agreed list. If the disputing Parties cannot agree upon an Arbitrator, each disputing Party shall take turns striking names from a list of ten (10) qualified and available individuals, with one of the disputing Parties, chosen by lot, first striking a name. The last-remaining name not stricken shall be designated as the Arbitrator. If that individual is unable, unwilling or ineligible to serve, the individual last stricken from the list shall be designated and the process repeated until an individual is selected who is eligible and willing to serve. No person shall be eligible for appointment as an Arbitrator who meets the disqualification criteria established in Section 5.1.1, and any individual designated as a potential Arbitrator who is ineligible to serve pursuant to those criteria shall disclose

the circumstances affecting his or her impartiality and shall disqualify himself or herself from serving as Arbitrator.

6.2.2.4 The Arbitrator shall establish a fourteen-day procedural schedule, beginning two (2) business days after his/her appointment. This schedule shall establish procedures for discovery and intervention, how evidence shall be taken, what written submittals may be made, and other such procedural matters, including setting the date, time and place of the hearing, taking into account the complexity of the issues involved, the extent to which factual matters are disputed and the extent to which the credibility of witnesses is relevant to a resolution of the issues. Such procedures shall ensure, to the extent the fourteen-day schedule permits, time for (i) reasonable discovery of the facts, (ii) taking testimony under oath, (iii) transcribing testimony, (iv) maintaining a docket that identifies each document received, and (v) maintaining a file of the documents.

6.2.2.5 The Arbitrator shall accept relevant and material evidence and hear testimony presented by the disputing Parties and may request additional information and testimony. Such additional information shall be furnished by the Party or Parties and may be requested from other entities having such information. Other interested entities may move to intervene and request in writing that the Arbitrator consider additional information, and the Arbitrator shall decide, in view of the fourteen-day schedule for reaching his decisions, whether to permit such intervention and whether to consider such additional information.

6.2.2.6 Each disputing Party shall submit its proposed remedy to the Arbitrator immediately after both Parties have rested at the hearing. Within and as a part of the fourteen-day procedural schedule, the Arbitrator shall determine which proposal best meets the terms and intent of AISA's Bylaws, the Protocols Manual, and conforms with the FPA and FERC's published decisions, policies, and regulations, and shall state his or her decision in writing. If the Arbitrator finds both proposed remedies to be inadequate, the Arbitrator may call for new proposals from the disputing Parties, if time permits. If time does not permit second proposals, the arbitrator shall terminate the proceeding and leave the Parties to their remedies at law. The Arbitrator's decision shall stand pending an appeal, which must be taken, if at all, within, thirty (30) days after the date of the decision either to the courts or FERC, whichever is

appropriate. All appeals to FERC or the courts shall be *de novo*.

6.2.2.7 Immediately upon their receipt of the written decision of the Arbitrator, the disputing Parties shall take whatever action is required to comply with the decision. To the extent the decision requires local, state, or federal approval, regulatory action, or a FERC filing by a Party, the affected Party(ies) shall submit and fully support that portion of the decision before the appropriate regulatory authority, if such regulatory authority has jurisdiction over that Party. Each disputing Party shall bear its own attorneys' fees and costs associated with the arbitration. The Arbitrator's fees and expenses and other costs of proof incurred at the request of the Arbitrator shall be borne by the losing Party(ies). In the event of termination of the proceeding by the Arbitrator pursuant to Section 6.2.2.6, the Parties shall share the Arbitrator's fees and expenses equally.

6.2.3. Review:

6.2.3.1 Any arbitration decision issued pursuant to the AISA Tariff that affects matters subject to the jurisdiction of FERC under the Federal Power Act shall be filed with FERC.

6.2.3.2 On the basis of a protest by an affected state agency or on FERC's own motion, FERC may investigate any arbitration decision made under the AISA Bylaws with respect to matters within its jurisdiction, and after giving substantial deference to such decision, may set it aside if the decision is determined to be inconsistent with the basis upon which the Bylaws were approved by FERC or with applicable federal law or regulation.

6.3. Disputes Involving Government Agencies:

If a party to a dispute is a Federal agency, the procedures herein which provide for the resolution of claims and arbitration of disputes are subject to any limitations imposed on the agency by law, including but not limited to the authority of the agency to effect a remedy. With respect to such Federal Agencies, the procedures in this Section 6 shall not apply to disputes involving issues arising under the United States Constitution.

7. Indemnity, Insurance, and Releases:

7.1. In order to induce qualified persons to serve AISA as directors and officers, AISA will indemnify such persons to the fullest extent permitted by law or by the Articles, if applicable. Insofar as applicable law requires

a determination as to the standard of conduct followed by a person seeking indemnification, the Board or the disinterested members thereof will consider the relevant facts, or cause them to be submitted for consideration, as soon as practicable, but such consideration of any facts in issue in pending legal proceedings will not be required before the final adjudication thereof. A determination, whether favorable or adverse to the party seeking indemnification, pursuant to any such consideration (which determination, if the same is to be made by a court pursuant to law, will be deemed made when contained in a final unappealed or unappealable decision) will be binding on all parties concerned.

- 7.2. In order to protect itself and its employees from liability to third parties with whom it has no agreements or tariff, the AISA will obtain liability and personal injury insurance and Directors' and Officers' protection in appropriate amounts.
- 7.3. The remedies for non-performance established in Sections 3.2.2, 3.6, and 6 shall be the sole and exclusive remedies available under these By-laws for any nonperformance of obligations under these By-laws. Subject to any applicable state or Federal law which may specifically limit a Member's ability to limit its liability, no Member, its directors, members of its governing body, officers or employees, nor AISA, its directors, officers, or employees shall be liable to any other Member or to AISA for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury which may occur or result from the performance or nonperformance of these By-laws, including any negligent act or omission arising hereunder.

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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

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

IN THE MATTER OF ARIZONA PUBLIC) DOCKET NO. E-01345A-01-0822
SERVICE COMPANY'S REQUEST FOR A)
VARIANCE OF CERTAIN REQUIREMENTS)
OF A.A.C. R14-2-1606.)

IN THE MATTER OF THE GENERIC) DOCKET NO. E-00000A-01-0630
PROCEEDING CONCERNING THE)
ARIZONA INDEPENDENT SCHEDULING)
ADMINISTRATOR.)

IN THE MATTER OF TUCSON ELECTRIC) DOCKET NO. E-01933A-02-0069
POWER COMPANY'S APPLICATION FOR)
A VARIANCE OF CERTAIN ELECTRIC)
COMPETITION RULES COMPLIANCE)
DATES.)

IN THE MATTER OF THE APPLICATION) DOCKET NO. E-01933A-98-0471
OF TUCSON ELECTRIC POWER COMPANY))
FOR APPROVAL OF ITS STRANDED COST)
RECOVERY.)

Direct Testimony of
LARRY D. HUFF

On Behalf of
Arizona Electric Power Cooperative, Inc.

July 28, 2003

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1 **Q. Please briefly describe your background, educational qualifications and**
2 **experience as it pertains to this matter.**

3
4 A. I have a degree in Electrical Technology from the North Dakota College of
5 Science and have been associated with cooperatives in the area of Power
6 Production and Delivery for over 27 years. For 12 years, I served as a power plant
7 manager for combustion turbines as well as a large coal plant in the upper Great
8 Plains states. I have been with AEPCO/SWTC for more than fifteen years.
9 During this time, I have served as Manager of Production, which involved Power
10 Generation, Transmission, Engineering, System Planning and
11 Telecommunications. About five years ago, the power delivery function was split
12 out from the production group and became its own division of AEPCO. I retained
13 the responsibility for Transmission, Engineering, System Planning and
14 Telecommunications. At the time of AEPCO's restructuring in July of 2001, I
15 became Senior Vice President and Chief Operating Officer for SWTC. SWTC's
16 primary responsibility is to provide adequate, reliable and efficient wholesale
17 electric transmission for the delivery of AEPCO generation to the Class A
18 distribution cooperative members. This responsibility includes system planning,
19 design and construction, maintenance and operations.
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1 **Q. With respect to the Arizona Independent Scheduling Administrator**
2 **(“AISA”), please describe your, AEPCO and SWTC’s background and**
3 **involvement in the AISA.**

4
5 **A.** AEPCO and/or SWTC have been involved in the AISA since its inception.
6 AEPCO together with other Arizona utilities and stakeholders devoted resources
7 to form the AISA including the development of its Articles and Bylaws. I
8 personally was involved in these formative stages of the AISA and have served on
9 its Board of Directors as the transmission provider member group representative
10 since September, 1998. We estimate that we have directly expended
11 approximately \$100,000 in forming and supporting the AISA. Those direct
12 expenditures, of course, do not include amounts expended on countless hours of
13 staff time and related expenses the cooperatives have incurred on the AISA effort.
14 A more detailed discussion of the evolution of the AISA is set forth in the
15 comments AEPCO filed in this Docket (No. E-00000A-01-0630) on September 5,
16 2001.
17

18
19 **II. Summary of Testimony.**

20
21
22 **Q. What is the purpose of your testimony?**
23
24

1 A. I will address issues raised in the May 30, 2003 Staff Report ("Staff Report") and
2 other issues associated with the AISA. AEPCO and SWTC strongly believe that
3 the AISA is not needed now and will not be necessary in the future to facilitate
4 retail competition. I'll also discuss the fact that continued involvement and
5 funding by the Affected Utilities is not necessary to the continuation of the AISA.
6 Particularly in light of the recent reduction in the AISA budget, if large
7 consumers, ESP's, merchant plant operators or other interested stakeholders wish
8 to continue the AISA they are free to do so.
9

10

11 **Q. What is your recommendation for the Commission?**

12

13 A. We suggest that the Commission simply issue its order that AEPCO has fulfilled
14 its responsibilities under A.A.C. R14-2-1609 in relation to the AISA. The AISA
15 has been formed as required by R14-1609.D and the utilities long ago filed the
16 implementation plan as required by R14-2-1609.G. As Chairman Spitzer stated in
17 his July 12, 2001 letter to Commissioners Mundell and Irvin:

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AEPCO, APS and TEP have participated in the governance,
incorporation, financing and staffing of the AISA and have spent
hundreds of thousands of dollars funding the AISA. TEP and APS
have agreed to the AISA protocols and incorporated them in their
FERC filings; AEPCO stands prepared to do so upon the opening of

1 its market. I believe a reasonable reading of the rules would indicate
2 that compliance has occurred.

3
4 I agree with Chairman Spitzer that Affected Utilities' compliance with the Rules
5 has been accomplished and believe that this constitutes a fifth option which was
6 not discussed in the Staff Report. The Commission can simply state in its
7 Decision that the Affected Utilities Rules' obligations to the AISA have been met.
8 At that point, the AISA will be free to fashion its own future as it sees fit.
9

10
11 **III. Response to Staff Report.**

12
13 **Q. Mr. Huff, I'll ask you to respond to several issues raised in the Staff Report in**
14 **just a moment. But first, if this Commission is to conclude that the Affected**
15 **Utilities have complied with their Rules' responsibilities in relation to the**
16 **AISA will that necessarily mean the discontinuance of the AISA?**
17

18
19 **A. No. First, Affected Utilities may not necessarily discontinue their involvement,**
20 **financial or otherwise, if the Commission issues such an order. I do not mean to**
21 **be disingenuous here. AEPCO will not continue its participation because**
22 **participation simply imposes costs on our members and their member/owners**
23 **without providing benefits. But, that does not necessarily mean that other utilities**
24

1 will follow suit. Second, and more importantly, there certainly is nothing which
2 prohibits the AISA from broadening its base of financial support. It is an
3 organization independent of this Commission or the Affected Utilities. To the
4 extent that its other members such as Electric Service Providers, large commercial
5 or industrial consumers, merchant power plants or other interested stakeholders
6 feel the AISA is either in their short or long term best interests, they will be free to
7 and should step forward to finance the organization. That financing arrangement
8 would be far more just, reasonable, equitable and fair than the current one where
9 the vast majority of ratepayers who have received, and can expect to receive, no
10 benefits from the AISA provide its support.
11

12
13 **Q. Is your suggestion of different funding feasible?**

14
15 **A.** Yes. As is noted at page 3 of the Staff Report, the AISA recently downsized its
16 operations and reduced the annual AISA budget to just over \$150,000. To the
17 extent that its other market participants think the AISA can provide a valuable
18 service for them sometime in the future, only 15 of them would have to provide
19 \$10,000 each year to assure its continued existence.
20

21
22 **Q.** Staff's basic position is that Arizona may need the AISA sometime in the next
23 two to five years to perform the following functions: (1) implementation and
24 oversight of operating protocols for fair and equitable transmission access, (2)

1 **conduct of a dispute resolution process, (3) calculation of Available**
2 **Transmission Capacity and development and operation of a statewide OASIS,**
3 **(4) utilization of a single standardized procedure for transmission use**
4 **reservation and scheduling and (5) implementation of a transmission**
5 **planning process to assure that future load requirements are met. First, is**
6 **the AISA needed to implement and oversee operating protocols?**

7
8
9 A. No. The operating protocols were formulated and filed with the Commission
10 more than four years ago. Since that time, APS and TEP have incorporated those
11 protocols in their OATT's and SWTC will incorporate those protocols in its OATT
12 at such time as its member distribution cooperative service territories are opened
13 for competition. Thus, that function has been accomplished. As for oversight, if,
14 as and when the retail market develops, there may be some need for adjustment of
15 the protocols as different or unanticipated circumstances arise. But, that is no
16 different than the normal situation for many tariffs or operating procedures that
17 must be re-visited and adjusted as conditions warrant. That possible function
18 certainly does not require the additional bureaucracy, costs and expense associated
19 with the AISA. Each transmission provider is responsible for keeping its OATT
20 current. Transmission customers can suggest adjustments either directly to the
21 provider or through some action at the FERC.

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24 **Q. Is the AISA needed to resolve disputes?**

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A. I don't believe so. First, a few hundred customers took competitive service in Arizona on the APS, TEP and SRP systems throughout the year 2000 as the retail market first started and prior to its collapse. It's important to note that this start-up phase, of course, would have been the time when disputes over transmission access and protocol interpretation were most likely to occur. Despite that, as an AISA Board Member, I am not aware of a single instance when the AISA was called upon to resolve any dispute concerning any of these transactions or other start up issues. Second, consistent with Section 12 of the pro forma Open Access Transmission Tariff ("OATT") prescribed by FERC, SWTC's OATT and, I believe, the OATT's of the Affected Utilities contain provisions that require mediation and arbitration of disputes as they arise. Thus, the AISA would only be duplicating a process required by those tariffs in any event. Third, I'd stress that the AISA dispute resolution process is not binding. It has no power to enforce its decisions. If any party is dissatisfied with the result, it will still have to turn to the FERC for resolution. Finally, the FERC has set up a complete dispute resolution process, from a telephone hotline procedure to a full complaint and evidentiary hearing system.

Q. But, Staff states at page 10 of its report that having FERC resolve disputes especially for relatively small ESPs on thin profit margins is not an economically viable alternative.

1

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A. I'm not sure why Staff makes that statement--particularly in light of the informal dispute resolution process the FERC provides. The Enforcement Hotline is part of that Commission's Office of Market Oversight and Investigations and can be reached by toll free phone, email or regular mail. According to information on the FERC's website, it's available to market participants and the general public to complain about or report "market activities or transactions that may be an abuse of market power, an abuse of an affiliate relationship, a tariff violation, or another possible violation by a FERC regulated entity." The FERC states that Hotline staff mediators have been very effective in resolving disputes "in matters within the Commission's jurisdiction without litigation or other formal, lengthy proceedings." Obviously, there is no guarantee that the FERC Hotline is going to resolve a dispute short of more formal proceedings. There is also no guarantee that the mediation and arbitration techniques built into OATT's will resolve complaints to everyone's satisfaction. But, there's also no guarantee that the AISA's process will fare any better and it certainly does not have a vital role to fill given all of these other options. At most, AISA involvement is duplicative of institutions and/or procedures already present and those other institutions have expertise and experience the AISA lacks. Further, to the extent you're concerned about providing a dispute resolution process for those with limited resources, inserting a duplicative, non-binding arbiter like the AISA will likely make the process more, not less, expensive.

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Q. Is the AISA needed to calculate Available Transmission Capacity?

A. No. FERC-jurisdictional transmission providers are required to operate an OASIS (“Open-Access Same-Time Information System”) and the information required to be posted on the OASIS includes the amount of available transmission capability. While SWTC is not FERC-jurisdictional, SWTC has established an OATT and an OASIS (on which available transmission capability is posted) that meets FERC’s comparability standards.

Q. Another anticipated function for the AISA is development and operation of a statewide OASIS. Is the AISA necessary to perform that role?

A. No. As an initial matter, very early the SRP and WAPA withdrew from AISA membership and no longer participate in its activities. Therefore, it would not be possible for AISA to develop and operate a statewide OASIS in any event, absent the voluntary participation of those entities. APS, TEP and SWTC own and operate only about 40% of the state's transmission capacity (although their OASIS sites are available through a common address). I'd also point again to the historic experience of the year 2000. The AISA never moved to its Phase II operations which were to have included OASIS development and operation. Despite that, several hundred retail transactions were successfully scheduled and completed

1 using the individual OASIS sites then and now in place. Finally, this is another
2 area where regional developments have simply rendered this AISA anticipated
3 function unnecessary. As an outgrowth of developments of the Western Public
4 Power Initiative and West Connect, approximately 15 utilities throughout the west
5 including WAPA, SRP, APS, TEP and SWTC are joining together to form a
6 single, regional OASIS. This single regional OASIS is currently expected to be
7 operational by early next year. A July 22, 2003 news release concerning this
8 regional OASIS is attached to my testimony as Exhibit LDH-1.
9

10
11 **Q. Please comment on the AISA functions for a single standardized procedure**
12 **for reservation and scheduling as well as implementation of a transmission**
13 **planning process.**

14
15 A. The AISA is not necessary for either function and its involvement would likely
16 prove duplicative and counterproductive. Procedures for reservation and
17 scheduling are adequately covered in the OATT's of the Affected Utilities and,
18 once again, I'm aware of no problems with them nor the need for AISA
19 involvement in that area. As for transmission planning, the AISA would simply
20 duplicate a vast number of other processes which are better positioned to assess
21 and analyze Arizona's transmission needs. Those include this Commission's
22 biennial transmission assessment process, the activities of the CATS and WATS
23
24

1 groups, individual utilities' transmission planning functions and the activities of
2 the WECC.

3
4 **Q. Mr. Huff, let me ask you to comment on a few other issues raised in the Staff**
5 **Report. At page 4, Staff states that there would be a “substantial cost in the**
6 **future to establish a new organization” if the AISA is shut down. Do you**
7 **agree?**

8
9
10 **A.** No. First, Staff's statement assumes that if the Commission concludes that the
11 Affected Utilities have discharged their Rules' obligations concerning the AISA
12 that will automatically lead to the AISA's termination. As I've mentioned
13 previously, that is not necessarily the case and it would be a simple, inexpensive
14 matter for other stakeholders to carry on and fund its existence. But, even if the
15 AISA ceases operations and then sometime in the future is thought to be needed,
16 all of the work, protocols (including the Reliability Must Run Protocols), FERC
17 filings, corporate documents and other tasks that have been developed and
18 accomplished will continue to exist and could be used again. Staff's statement
19 implies that more than \$1 million expended to date will be lost if the AISA has to
20 resume activities sometime in the future. That simply is not the case, regardless of
21 whether the FERC allows or encourages West Connect to perform the retail
22 functions that are the focus of the AISA protocols manual. Moreover, the
23 Reliability Must Run Protocols are likely to be revisited in conjunction with West
24

1 Connect as the units that are needed to be dispatched for reliability purposes are
2 likely to be needed with or without retail open access. Finally, the AISA is
3 unlikely to play any significant role, especially as compared to this Commission,
4 in the resolution of the issue of whether native load is to receive any priority in the
5 allocation of transmission along constrained transmission paths. FERC's recent
6 standard market design "white paper" indicates that it will afford more deference
7 to the states in such matters.
8

9
10 **Q. Finally, please comment on Staff's assertion that the AISA is a necessary**
11 **condition to encourage retail competition in Arizona and closing the AISA**
12 **could cause Arizona to lose potential competitors.**

13
14 **A.** I suppose my crystal ball is no better than anyone else's when it comes to the
15 subject of what forces will shape retail competition and the decisions of those who
16 want to compete. I do know this, however. The AISA was only in its formative
17 stages when more than a dozen ESP's nonetheless made application to this
18 Commission for certificates to compete. The AISA never moved beyond Phase I
19 of its efforts in the year 2000 and, as I've mentioned previously, several hundred
20 competitive transactions still occurred before the market collapsed. I just don't see
21 any evidence that the AISA was, in the past, or will be, in the future, a critical
22 decision element for any potential competitor to decide to enter the market. The
23 more critical fact is that Arizona has now become literally a "retail" island in this
24

1 area as California, New Mexico and Nevada among others have either completely
2 abandoned or effectively shutdown retail competition. I certainly agree with Staff
3 that the Commission should undertake a wholesale review of its Electric
4 Competition Rules and we have suggested that in our comments supplied to Staff
5 in conjunction with the efforts of the Electric Competition Advisory Group. I just
6 do not agree that the decision on whether to continue the AISA or conclude that
7 the Affected Utilities like AEPCO have discharged their duties in relation to the
8 Rules needs to be tied to that process.
9

10
11 **IV. Conclusion.**

12
13 **Q. What is your recommendation for the Commission?**

14
15 **A.** There is no evidence that the AISA is necessary now or in the near future and it is
16 very doubtful that the AISA will ever be needed even should a competitive retail
17 market develop. Most of its functions are unnecessary, duplicate processes
18 performed by others or have been overtaken by other entities or developments. If,
19 in the future, there proves to be some need for an entity like the AISA it could be
20 re-started and build on the efforts already accomplished or if the Affected Utilities
21 are allowed to withdraw it can be sustained by those stakeholders which consider
22 it an asset. Right now and for the foreseeable future, it simply is not needed and is
23 a waste of ratepayer money. We would ask that the Commission enter its order
24

1 concluding that AEPCO has fulfilled its Rule 1609 obligations in relation to the
2 AISA.

3
4 **Q. Does that conclude your testimony?**

5
6 **A. Yes, it does.**
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EXHIBIT LDH-1

IMPERIAL IRRIGATION DISTRICT – WESTCONNECT RTO

News Release

July 22, 2003

Western Utilities Launch Effort to Build A Common Transmission Market Interface

A diverse group of Western utilities has launched a voluntary cooperative effort to establish a common platform for the posting of available electric transmission capacity on the Internet. This independently operated common transmission platform, or Open Access Same-Time Information System (OASIS), will allow for path-based reservations of transmission, regardless of ownership. Sophisticated tools will also be available on the OASIS to establish a robust secondary market for transmission within the Western Interconnection. An added feature will be an energy bulletin board, which will be available to facilitate bilateral energy transactions.

This independently operated common transmission market interface will replace the participating transmission owners' present individual OASIS sites with a single Internet site utilizing a common user interface. Challenges posed by individual sites, which users have found burdensome to master, will be eliminated. The interface is a cost-effective means for streamlining non-discriminatory access to transmission and promoting bilateral energy markets throughout the West. The anticipated increased effectiveness and ease of use provided by the common OASIS, OASIS tools for access to the secondary transmission market, and the energy bulletin board that comprise the common transmission market interface will provide economic benefits to consumers. At the same time, participating transmission owners will continue to operate their individual systems.

The initial participants in this voluntary effort come from the Western Public Power Initiative (WPPI) and WestConnect RTO. They own and operate significant high-voltage transmission assets across nine states, including Arizona, California, Colorado, Western Nebraska, New Mexico, Nevada, West Texas, Utah and Wyoming.

WPPI is a group of governmental utilities and cooperatives which, while not subject to Federal Energy Regulatory Commission (the Commission) jurisdiction, have met on a regular basis over the last eighteen months to consider various options for enhancing the use of their transmission systems and energy related services for the benefit of their customers.

WestConnect RTO, a proposed regional transmission organization in the southwestern United States, has been considering a similar concept. It was created in response to the Commission's Order No. 2000. The WestConnect proponents received preliminary approval of their planned organization by the Commission on October 9, 2002.

Participants in WestConnect and WPPI have joined together to coordinate the development of the common interface. This joint initiative will eliminate duplication while allowing the two groups to pursue additional goals, both separately and in common. They are now finalizing the scope of work that will be used by an independent OASIS operator and are confident that operation of the common transmission market interface will be initiated in early 2004.

Transmission owners and operators launching the effort to build the common transmission market interface include Arizona Public Service Company, El Paso Electric Company, Imperial Irrigation District, Los Angeles Department of Water and Power, Public Service Company of New Mexico, Sacramento Municipal Utility District, Salt River Project, Southwest Transmission Cooperative, Tri-State Generation and Transmission Association, Tucson Electric Power Company, and Western Area Power Administration. Other utility entities, including Southern California Public Power Authority, have expressed interest in this effort and are considering participation in the initial construction of the common transmission market interface.

Jeffry Sterba, Chairman, President and Chief Executive Officer of Public Service Company of New Mexico, stated "We believe that the common transmission market interface will be a significant step forward in market development in the West by simplifying the grid user's ability to complete transactions. It will also be the first step in WestConnect's phased implementation plan that will provide immediate benefit to consumers."

"We are especially pleased with the response and willingness of transmission owners throughout the Western Interconnection, both public and private, to share their expertise and work cooperatively in this effort to improve reliability and reduce costs to customers," said David H. Wiggs, General Manager of Los Angeles Department of Water and Power.

FOR further information, contact:

WPPI Media Contact:	Frank M. Barbera, Imperial Irrigation District - (760) 339-0852 e-mail fmbarbera@iid.com
WestConnect Media Contact: Website:	Charles Reinhold, (208) 253-6916 www.westconnectrto.com



Open
Access
Technology
International, Inc.

INNOVATIVE SOLUTIONS FOR THE DEREGULATED ENERGY INDUSTRY

OATI's Common Western OASIS Service Provides New OASIS Site for the Western Power Grid

(Minneapolis, Minn.- August 25, 2003)--- Open Access Technology International, inc. (OATI) has entered into contracts to provide a common western OASIS service to multiple electric utilities throughout the western North American power grid in order to provide a common site for support of their Open Access Same-Time Information System (OASIS). *[The OASIS is used by electric system transmission grid operators to publish the availability of transmission line capacity for usage by power generators to deliver energy to consumers]* OATI has developed the FERC mandated OASIS to provide a value-added alternative for transmission system operators to ensure the reliable performance of the power system and increase revenues from the operations of their transmission grid.

OATI will implement a common western OASIS combining FERC OASIS requirements with functional enhancements requested by a coalition of western entities. The common western OASIS service provides each transmission system owner with complete automation services to support the processing of reservation requests for transmission system usage, an automated validation of electronic tags that document power transactions, and a comprehensive calculator to determine the remaining available transfer capability (ATC) of the power grid that is offered for sale. Other sophisticated tools will also be available on the common western OASIS to establish a robust secondary market for transmission capacity; an energy product bulletin board to facilitate energy transactions; and a mechanism to obtain multiple OASIS reservations simultaneously to provide efficiency to the reservation process.

Each transmission system provider will maintain their own transmission tariff independently while providing transmission system customers an easy and efficient method to obtain transmission rights across the Western Interconnection of the North American power grid. Coordination among the transmission system owners will enhance consistency of ATC calculations and accuracy of the ATC offerings.

Transmission owners involved and contracting for this effort include Arizona Public Service Company, Imperial Irrigation District, Public Service Company of New Mexico, Sacramento Municipal Utility District, Salt River Project, Southwest Transmission Cooperative, Tri-State Generation and Transmission Association, Tucson Electric Power Company, and Western Area Power Administration. Many other utility entities are also pursuing joining this common OASIS. The common OASIS is open to all transmission owners in the western electrical grid.

OATI, an application service provider (ASP), currently provides transaction management services to nearly every transmission system operator in the North American wholesale electrical energy market. OATI provides wholesale energy market participant organizations its Internet based software tool, OATI webTagSM, that generator owners and energy marketers use to arrange the delivery of energy to distribution companies and other wholesale market participants.

Kevin Sarkinen, OATI Market Systems Manager explained, "The common western OASIS service will provide a secure, robust transmission market for the Western Interconnection from a single site. This effort, in combination with other OATI products, will enable the markets within the West to join efforts and make significant progress towards 'one-stop-shopping'."

The OATI common western OASIS service meets all FERC OASIS requirements in addition to providing integrated access to NERC reliability related software solutions provided by OATI for use throughout the Western Interconnection.

For additional information, please visit <http://www.oatiinc.com/products> or send an e-mail to sales@oatiinc.com.

Open Access Technology International, Inc.
2300 Berkshire Lane North
Minneapolis, MN 55441
Phone: 763.201.2000 Fax: 763.553.2813



Federal Energy Regulatory Commission

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Customer Protection

Enforcement Hotline

How We Can Help You

The Enforcement Hotline invites market participants and the general public to informally call, email or write the Hotline to complain or report market activities or transactions that may be an abuse of market power, an abuse of an affiliate relationship, a tariff violation, or another possible violation by a FERC regulated entity. The Enforcement Hotline provides an overview [PDF] of the kinds and numbers of complaints received.

Past Hotline calls have included complaints about:

- Bidding anomalies;
- Price spikes;
- Inappropriate use of certain financial instruments;
- Fluctuations in available capacity on electric transmission lines and natural gas pipelines;
- Interconnection discrimination; and
- Improper market affiliate transactions

The Enforcement Hotline also is widely used by the public to informally resolve disputes in matters within the Commission's jurisdiction without litigation or other formal, lengthy proceedings. Hotline staff mediators have been very effective in resolving disputes, including landowner/pipeline disputes, tariff disputes, market disputes and disputes over procedural questions. The Hotline, however, will not intercede in disputes involving:

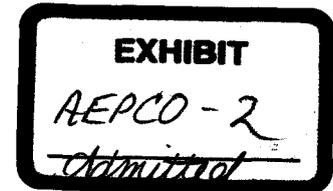
1. Compensation between landowners and natural gas pipelines;
2. Matters before the Commission in docketed proceedings; or
3. Matters purely involving retail sales and service

Market participants, jurisdictional entities

Contact Information:

Steven A. Rothman,
 Enforcement Hotline
 Telephone:
 202-502-8390
 Toll-free:
 1-888-889-8030
 Email: hotline@ferc.gov

Address:
 888 First Street, N.E.
 Washington, D.C.
 20426



Related Topics

- > State Commissions
- > Department of Transportation's Office of Pipeline Safety
- > Enforcement Status Report [PDF]
- > Department of Energy's Energy Information Administration
- > Department of Agriculture's Rural Electric Utilities Service
- > Small Business Administration's Office of Regulatory Fairness

and members of the public also may ask the Hotline for help or information about any matters within the Commission's jurisdiction.

The Enforcement Hotline has resolved hundreds of disputes informally and answered hundreds of public inquiries. Matters that cannot be addressed and closed informally and expeditiously may be referred for a formal investigation. Also, complainants are always free to terminate a Hotline action at any time and file a formal action with the Commission.

When We Cannot Help

The public should not contact the Enforcement Hotline regarding issues in docketed or contested Commission proceedings. Such communications violate the Commission's rule at 18 C.F.R. § 385.2201 prohibiting off-the-record communications, and are not confidential. They must be noticed in the Federal Register and placed in a public file associated with the docket.

Also, retail problems involving gas or electric service or billing are not within the Commission's jurisdiction. Such problems should be directed to your state commission whose website can be found through the National Association of Regulatory Utility Commissioners (NARUC). California retail issues may be addressed through CPUC. If you have a pipeline safety problem, you should contact the Department of Transportation's Office of Pipeline Safety

Updated: August 4, 2003

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Enforcement Hotline Statistics



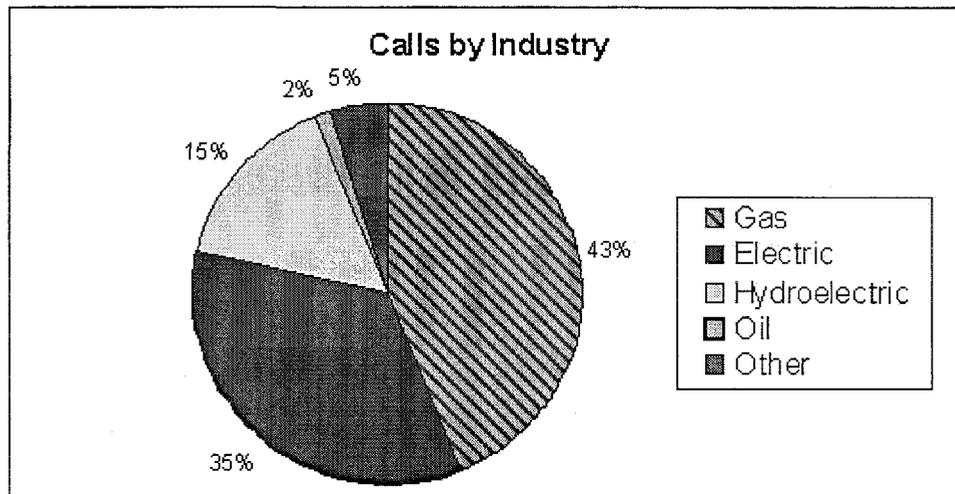
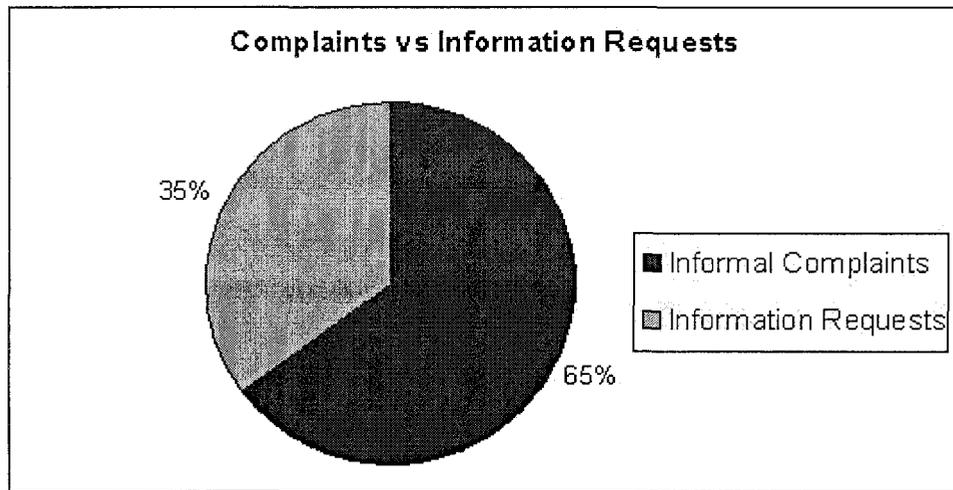
Office of
Market Oversight
And Investigations

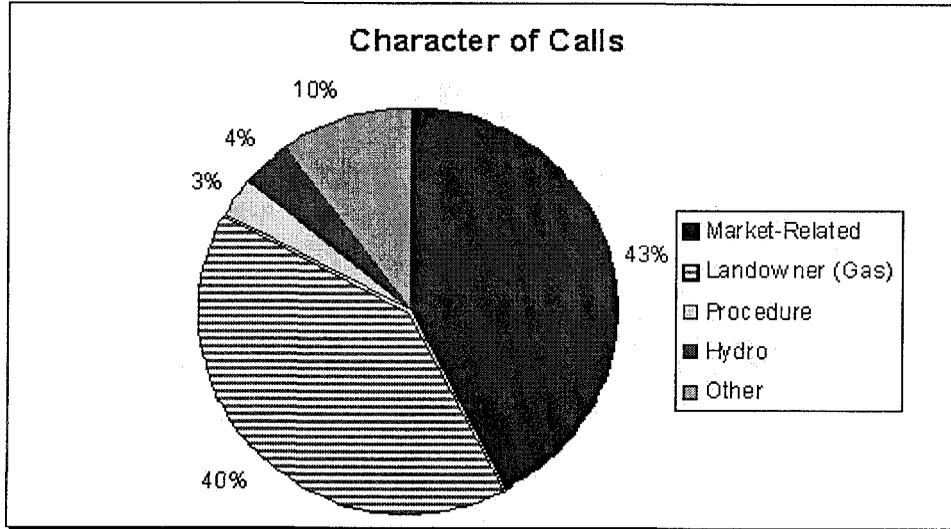
Phone: Toll Free: (888) 889-8030
Local: (202) 502-8390

E-Mail hotline@ferc.gov

Steven A. Rothman, Hotline Director

In 2002, the Hotline handled 584 informal complaints and inquiries compared to 508 cases in 2001.





EXHIBIT

APS-1

~~*Admitted*~~

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DIRECT TESTIMONY OF CARY DEISE

On Behalf of Arizona Public Service Company
Docket No. E-00000A-02-0051, et al. (AISA Hearing)

July 28, 2003

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Direct Testimony of Cary Deise
Arizona Public Service Company
Docket No. E-00000A-02-0051, et al. (AISA Hearing)

I. **INTRODUCTION AND WITNESS QUALIFICATIONS**

Q. **PLEASE STATE YOUR NAME, ADDRESS AND OCCUPATION.**

A. My name is Cary Deise. My business address is 502 South Second Avenue, Phoenix, Arizona 85003. I am Director of Transmission Operations and Planning for Arizona Public Service Company (“APS” or “Company”).

Q. **PLEASE SUMMARIZE YOUR QUALIFICATIONS, PROFESSIONAL BACKGROUND, AND YOUR RESPONSIBILITIES AT APS.**

A. I have a Bachelor’s Degree in Engineering from California State University–Long Beach, and I am a registered Professional Engineer in the state of Arizona. I have over 32 years of experience in transmission planning and operations, and I have worked for APS in numerous different positions relating to transmission and system planning and operations continuously for the last 30 years. I am Chair of the WestConnect Interim Committee, a WestConnect representative on the Seams Steering Group-Western Interconnection (“SSG-WI”), and I serve on the Western Electricity Coordinating Council’s Reliability Compliance Committee, Planning Coordination Committee and Operation Transfer Capacity Policy Group.

In my current capacity as Director of Transmission Planning and Operations, I am responsible for 10-year and general transmission system planning for APS, as well as the overall operation of APS’ transmission system. Among other

1 activities, I oversee all technical study work on APS' transmission system, all
2 scheduling over that system, the operation of APS' Open Access Same-Time
3 Information System ("OASIS"), merchant generator APS interconnections, and
4 the preparation of the Company's Ten-Year Transmission Plans.

5
6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

7 A. In her June 18, 2003 Procedural Order, the assigned Administrative Law Judge
8 requested that parties file testimony to address the Arizona Corporation
9 Commission ("Commission") Utilities Division Staff's May 30, 2003 Staff
10 Report ("Staff Report") and other issues of interest to such parties associated
11 with the continuation of the Arizona Independent Scheduling Administrator
12 ("AISA"). My direct testimony sets forth APS' position on the AISA and the
13 Staff Report in this proceeding.

14
15 **II. SUMMARY OF TESTIMONY**

16 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

17 A. APS has complied with its obligation under the 1999 APS Settlement
18 Agreement to actively support the AISA. APS has incorporated the AISA
19 protocols to support direct access into its Federal Energy Regulatory
20 Commission ("FERC") approved Open Access Transmission Tariff ("OATT").
21 Thus, in large part, at least one key goal of the AISA already has been
22 accomplished. A second goal, informal dispute resolution between transmission-
23 owning incumbent utilities and competitive retail electric service providers, has
24 proven as of yet unnecessary. Other goals underlying the formation of the AISA
25
26

1 will be met when a Regional Transmission Organization ("RTO") is
2 implemented.

3 APS does not oppose Staff's recommendation in the Staff Report. The
4 Commission has directed Staff to review the Retail Electric Competition Rules
5 in a rulemaking proceeding, which could include a review of the role of the
6 AISA. Under that Staff Recommendation, a downsized AISA would continue
7 while the review is undertaken.
8

9 **III. APS' POSITION REGARDING THE AISA**

10 **Q. WHAT IS APS' POSITION REGARDING THE AISA?**

11 **A.** APS has supported and continues to support the AISA, and has complied with
12 its obligations under the 1999 Settlement Agreement approved in Decision No.
13 61973 (October 6, 1999). APS has provided the bulk of the AISA's initial
14 funding, is the largest ongoing contributor of funding to the AISA in Arizona,
15 and has worked extensively with the AISA to develop Direct Access Protocols.
16 APS has also incorporated these Protocols into its FERC-approved OATT.
17

18 The AISA was always anticipated to be a transitional body that would ultimately
19 be superceded by an RTO. Today, the important functions of the AISA,
20 including the adoption of Direct Access Protocols I mentioned earlier, have been
21 accomplished and are currently in force. In the near future, I believe that an
22 RTO or similar entity will be formed in Arizona and other Western states as
23 expressly anticipated in A.A.C. R14-2-1609(C). At that point, the functions of
24 the AISA would be transitioned to the RTO, as provided in A.A.C. R14-2-
25 1609(E).
26

1 Additionally, APS and other electric utilities are already phasing in certain
2 functions anticipated for an RTO. For example, APS and other electric utilities
3 in the Western United States recently agreed to implement a common OASIS to
4 streamline nondiscriminatory access to transmission, establish a robust
5 secondary market for transmission, and provide a common energy bulletin board
6 to facilitate bilateral transactions, ancillary services, and congestion
7 management.

8
9 **III. APS' POSITION REGARDING THE STAFF REPORT AND**
10 **RECOMMENDATION**

11 **Q. WHAT IS APS' POSITION REGARDING THE STAFF REPORT AND**
12 **STAFF'S RECOMMENDATION IN THAT REPORT?**

13 A. APS does not oppose Staff's recommendation in the Staff Report, which is to
14 combine consideration of the AISA with the forthcoming review of the Retail
15 Electric Competition Rules. Although a review of the AISA could take place
16 independently from a generic reconsideration of the Retail Electric Competition
17 Rules, APS acknowledges that there are certain synergies that would result from
18 reviewing both the Retail Electric Competition Rules and the AISA together
19 since Staff and the Commission intend to reconsider the rules in any event.

20 **Q. DOES APS OBJECT TO THE DOWNSIZED AISA REMAINING IN**
21 **PLACE WHILE THE REVIEW OF THE RULES IS CONDUCTED?**

22 A. The AISA has taken steps to materially reduce its ongoing costs of operation,
23 which are funded in significant part by APS. If the Commission decides to
24 consolidate the review of the AISA with the general review of the Retail Electric
25 Competition Rules, APS would not oppose Staff's recommendation that the
26 downsized AISA continue during that review.

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Q. DOES APS INTEND TO MAKE OTHER COMMENTS TO THE STAFF REPORT?

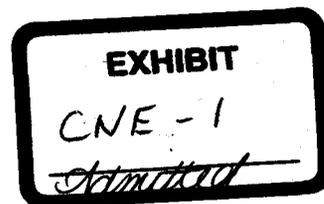
A. Given the very narrow scope of this proceeding—the status of the AISA—APS has not addressed other issues or statements in the Staff Report that do not directly relate to continuance of the AISA during this interim period, and I do not intend to cover those in my direct testimony. However, by not commenting on a specific statement or assertion in the Staff Report, I do not intend to indicate either the Company’s agreement or disagreement with such Staff statements, assertions, or conclusions.

Q. DOES THAT CONCLUDE YOUR WRITTEN DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

1377561.3

BEFORE THE ARIZONA CORPORATION COMMISSION



MARC SPITZER
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER
JEFF HATCH-MILLER
COMMISSIONER
MIKE GLEASON
COMMISSIONER

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

Docket No. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR
VARIANCE OF CERTAIN REQUIREMENTS
OF A.A.C. R14-2-1606

Docket No. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING THE
ARIZONA INDEPENDENT SCHEDULING
ADMINISTRATOR

Docket No. E-00000A-01-0630

ISSUES IN THE MATTER OF TUCSON
ELECTRIC POWER COMPANY'S
APPLICATION FOR A VARIANCE OF
CERTAIN ELECTRIC COMPETITION RULES
COMPLIANCE DATES

Docket No. E01933A-02-0069

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
APPROVAL OF ITS STRANDED COST
RECOVERY

Docket No. E-01933A-98-0471

**Rebuttal Testimony of
Mark Fulmer**

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

AISA AND DIRECT ACCESS ISSUES

July 28, 2002

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

3 Respectfully submitted this 28th day of July 2003.

4
5 **LAW OFFICES OF DANIEL W. DOUGLASS, APC**

6
7
8 By _____

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10 Gregory S.G. Klatt
11 Law Offices of Daniel W. Douglass
12 6303 Owensmouth Avenue, Tenth Floor
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14 Telephone (818) 936-2466
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16 Attorneys for Constellation NewEnergy, Inc.
17 and Strategic Energy L.L.C.

18 **ORIGINAL and 21 COPIES** filed
19 July 28, 2003, with:

20 ARIZONA CORPORATION COMMISSION
21 400 West Congress
22 Tucson, AZ 85701-1347

23 **COPIES** mailed and/or sent via electronic mail without a copy of the service list on July 28, 2003
24 to:

25 (See Attached Service List)
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I. INTRODUCTION

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

Constellation NE is America’s leading retail electric provider, serving commercial and industrial customers in California, Texas, Illinois, Ohio, Pennsylvania, Maryland, Delaware, New Jersey, New York, Massachusetts, Rhode Island, New Hampshire and Maine. On April 21, 1999, the Arizona Corporation Commission (“Commission”) granted NEV Southwest, L.L.C.’s¹ application for a Certificate of Convenience and Necessity (“CCN”) to supply competitive services as an electric service provider. Constellation NE is a wholly-owned subsidiary of the Constellation Energy Group (NYSE: CEG), a leading global power company comprised of competitive generation, distribution and retail businesses around the world.

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

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

1 now has more than 42,000 commercial and industrial customers in states that have
2 enacted retail choice, including Pennsylvania, Ohio, New York, Massachusetts, Texas
3 and California – with many more states expected to come online in the next few years.
4 More than 170 full-time energy professionals at its headquarters in Pittsburgh, Pa. and
5 in offices across the country are devoted to objective electricity and natural gas
6 management and consulting. Strategic Energy procures and manages more than \$2
7 billion of electricity and natural gas per year and has never had a customer interrupted.
8

9 10 **II. SUMMARY OF COMMENTS**

11 Constellation NE and Strategic Energy concur with the fundamental conclusion
12 at page 4 of the Staff Report that in order for retail competition to be a viable option,
13 “Arizona will need the AISA or some substitute organization to perform the functions
14 that were originally intended to be performed by an ISA.” The Staff report also makes a
15 number of points that should be carefully considered by the Commission.
16

17 First, at page 7 of the Staff Report it is noted that the parties who advocate that
18 the AISA is not needed are precisely those organizations who believe that they will be
19 adversely impacted by competition. Constellation NE and Strategic question the
20 accuracy of the utility conclusion that retail competition will be harmful to utilities and
21 believe that this attitude is inaccurate and causes needless harm to Arizona consumers.
22 Nevertheless, as the transition period ends and the utilities have collected their stranded
23 costs, it is time for the Commission to provide consumers access to the competitive
24 markets that they have paid for. There must be a quid pro quo, competitive market
25 structure, in exchange for paying transition costs. The utilities have been on notice and
26
27

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

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

11
12 Third, the Staff Report also notes at page 7 that the AISA is a necessary element
13 to encourage retail competition in Arizona. The Commission should ratify Staff's
14 proposal to maintain the down-sized AISA, as open and equitable transmission access is
15 a fundamental element of any successful retail competition program. Until such time as
16 an RTO is established, the AISA is essential to ensure non-discriminatory access to
17 transmission for retail service. Closing down the AISA would frustrate the development
18 of retail competition and effectively act to deny customer choice to all of Arizona's
19 residential, commercial and industrial customers. Closure of the AISA would be
20 tantamount to acting to repeal the Retail Electric Competition Rules adopted in
21 September 1999.

22
23 Finally, Constellation NE and Strategic Energy wish to alert the Commission
24 that energy service providers have not "written off" Arizona. We and other ESPs
25 continue to watch and evaluate the potential for participating in this market. One of the
26

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

6 In addition, as the recovery period for stranded costs for the utilities approaches
7 and resulting rate designs will be determined, we will also evaluate the ability to
8 participate in the Arizona market economically and whether we can bring value to the
9 customers in the state. The current rate structure in APS, for example, did not provide
10 an opportunity to compete with APS, provide value to customers (savings) and earn a
11 profit. That situation may change as a result of the transition period ending and new
12 rate structures being put into place and ESPs are very interested in the outcomes of the
13 post-transition proceedings.
14
15

16 **III. THE COMMISSION NEEDS TO ENCOURAGE, RATHER THAN** 17 **DISCOURAGE, RETAIL COMPETITION**

18 Constellation NE and Strategic Energy are both strongly interested in seeing that
19 retail competition moves forward in Arizona and pushes past the current status quo,
20 where retail competition is essentially non-existent in the state. Closure of the AISA at
21 this point would send precisely the wrong message to energy service providers (“ESPs”)
22 interested in expanding their national operations into Arizona. Rather than having an
23 open access transmission system – an essential element for retail competition to occur –
24 Arizona would be viewed by prospective ESPs as being hostile to the development of
25 retail competition. The Commission needs to encourage competition, rather than
26 discourage it, particularly when the cost of doing so is so *de minimus*.
27

1 As noted in the Staff Report at page 3, the AISA has been significantly
2 downsized with a 54% reduction in its already small budget, due to reductions in
3 personnel, office space, insurance and accounting costs. With a new annual budget of
4 \$154,270, AISA represents a very low cost for maintaining the option for retail
5 competition to develop effectively in Arizona. Dissolution of the AISA would waste all
6 of the hard work that went into stakeholder negotiations, developing its protocols² and
7 earning FERC approval.³ Having to start over would be wasteful and duplicative, take
8 more years to negotiate and likely cost multiple millions of dollars (after the \$1.4
9 million that has already been spent). It would simply be wasteful and poor public
10 policy to scrap the AISA now and hope to replicate it in the future.
11

12 The Commission should not disable or handicap retail competition before it has
13 been given a fair opportunity to get off the ground. Rather, it should do everything in
14 its power to ensure the establishment of a healthy retail market to allow all Arizona
15 consumers to realize the benefits of electricity industry restructuring and to protect
16 themselves against incumbent retail market power. Providing all customers with the
17 freedom to choose their own electricity service provider is the very first step that must
18 be taken down the road towards creating a healthy retail market.
19

20 Additionally, without AISA, ESPs would have to interface directly with the
21 utilities for scheduling and balancing load to serve direct access customers. While that
22 may not sound difficult, the problem is that each utility may have a different protocol
23

24
25 ² Existing AISA protocols include the allocation of retail network transmission, transmission scheduling,
ancillary services, must-run generation, energy imbalances, emergency operations, and after-the-fact checkout.

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

1 and system for performing similar functions. For example, the systems that we may
2 need to interface with in providing our schedules and receiving balancing information
3 may differ for each utility. That may require ESPs to purchase software to interface
4 with each utility. The rules for submitting schedules may differ. The manner in which
5 imbalances are treated for differences in schedules and deliveries may vary
6 significantly. This creates additional costs for ESPs to operate, especially if the ESP
7 plans on pursuing customers throughout the state. The efficiency and convenience of
8 the AISA arises from the fact that it standardizes those issues across the utility systems.
9

10 The AISA provides ESPs with assurances that their load/schedules will be
11 handled in a competitively neutral manner, since the AISA has no vested interest in
12 whose power moves, only in maintaining the integrity of the system. However, many
13 IOUs still view competition and ESPs as eroding their revenues and customer base and
14 therefore may be discriminatory in their handling of requests to serve customers. It is
15 possible that ESPs would receive inferior access to transmission capacity, for example,
16 relative to the utilities' load. We may not receive proper notification of system
17 maintenance or outages that would interfere with our supplies flowing on the system.
18 While I am sure that is not the intent of the operator, the AISA's neutrality in the
19 administration of the grid provides shippers confidence of their supplies will receive
20 comparable treatment to those of the utilities. Maintenance of the AISA as a viable
21 entity will be an additional attraction for ESPs to enter the Arizona market.
22
23

24 In the movie "Field of Dreams," movie fans first heard the memorable line "If
25 you build it, they will come." The converse is also true: if you do not build it, they will
26 not come. In this case the "they" are ESPs, who wish to provide Arizona customers
27

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

6
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8 **IV. BARRIERS TO RETAIL COMPETITION ARE RECEDING**

9 The reasons for the lack of retail competition success in Arizona are well-known
10 and we will not reiterate them in any significant detail in this testimony. It should
11 suffice to note that direct access has been uneconomic in Arizona because of the
12 previous uncertainty with regard to the amount of wholesale generation that would be
13 available to supply power to ESPs, the stranded cost charges imposed on direct access
14 customers and the major regulatory roadblocks to competition that were erected by the
15 incumbent utilities. However, as noted in the Staff Report, we are moving past these
16 issues. The barriers are receding and the prospect exists for retail competition to
17 become a functioning and beneficial reality for Arizona electricity consumers.
18

19 First, the results of the Track B competitive wholesale solicitations are now
20 known. Those parties whose generation capacity was not wholly committed under that
21 process will now be eager to locate new markets for their uncommitted generation
22 capacity. ESPs and retail customers make a very logical market for that power,
23 especially due to the limited amount of retail transmission capacity which connects to
24 other states, as is also noted in the Staff Report. Moreover, the stranded cost charges in
25 APS and SRP service territories are nearing their scheduled expiration dates and the
26
27

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

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

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

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

⁵ Source: Public Utilities Commission of Ohio

⁶ Source: Electric Reliability Council of Texas

⁷ Source: Pennsylvania Office of Consumer Advocate

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

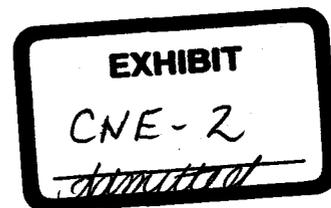
1 The data presented in the table above demonstrates that both residential and C&I
2 customers will find value when given a choice with regard to their electricity suppliers.
3 As noted in our earlier testimony, voting with their feet is the best signal of consumers'
4 assessment of value. Moreover, evidence that consumers are finding value in retail
5 electricity competition is not limited to the United States alone. According to the
6 United Kingdom's Electricity Association, in England and Wales between 90-95% of
7 customers and load have switched to a competitive provider.
8

9
10 **IV. CONCLUSION**

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

1
2
3 MARC SPITZER
CHAIRMAN
4 JIM IRVIN
COMMISSIONER
5 WILLIAM A. MUNDELL
COMMISSIONER
6 JEFF HATCH-MILLER
COMMISSIONER
7 MIKE GLEASON
COMMISSIONER



8
9 IN THE MATTER OF THE GENERIC
10 PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

Docket No. E-00000A-02-0051

11 IN THE MATTER OF ARIZONA PUBLIC
12 SERVICE COMPANY'S REQUEST FOR
13 VARIANCE OF CERTAIN REQUIREMENTS
OF A.A.C. R14-2-1606

Docket No. E-01345A-01-0822

14 IN THE MATTER OF THE GENERIC
15 PROCEEDINGS CONCERNING THE
16 ARIZONA INDEPENDENT SCHEDULING
ADMINISTRATOR

Docket No. E-00000A-01-0630

17 ISSUES IN THE MATTER OF TUCSON
18 ELECTRIC POWER COMPANY'S
19 APPLICATION FOR A VARIANCE OF
CERTAIN ELECTRIC COMPETITION RULES
COMPLIANCE DATES

Docket No. E01933A-02-0069

20 IN THE MATTER OF THE APPLICATION OF
21 TUCSON ELECTRIC POWER COMPANY FOR
22 APPROVAL OF ITS STRANDED COST
RECOVERY

Docket No. E-01933A-98-0471

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27
**Rebuttal Testimony of
Mark Fulmer**

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

AISA AND DIRECT ACCESS ISSUES

August 29, 2003

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

3 Respectfully submitted this 29th day of August 2003.

4
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I. Introduction

This reply testimony is submitted on behalf of the Constellation NewEnergy, Inc. (“Constellation NE”) and Strategic Energy L.L.C. (“Strategic Energy”) in response to testimony submitted by several parties on July 28, 2003, regarding the future of the Arizona Independent Scheduling Administrator (“AISA”). I have not attempted to reply to all direct testimony with which I disagree. Rather, this reply testimony addresses a limited number of issues of particular importance. In particular, I respond to assertions that the AISA is not needed for dispute resolution and that the AISA could be funded on a voluntary basis. These suggestions move Arizona away from the benefits offered by retail choice by making the state less attractive to energy service providers such as Constellation NE and Strategic Energy.

II. The AISA Is Needed for Dispute Resolution

On page 9 of the testimony of Arizona Electric Power Cooperative, Inc. witness Mr. Huff, it is suggested that the FERC’s “Enforcement Hotline” would be sufficient to address dispute resolution. While this hotline undoubtedly has a place in FERC’s overall regulatory framework, it is not a reasonable substitute for the dispute resolution framework set up in Section 6 the AISA bylaws. First, it must be noted that the FERC Enforcement Hotline has a very broad mandate: it gathers information on bidding anomalies, price spikes, inappropriate use of certain financial instruments, fluctuations in available capacity on electric transmission lines and natural gas pipelines, interconnection discrimination, and improper market affiliate transactions.¹

¹ See, <http://www.ferc.gov/cust-protect/enforce-hot.asp>

1 Furthermore, its main function is gathering information in response to complaints.
2 Dispute resolution, while mentioned, is not listed as one of its main functions. It also
3 should be noted that barely one-third of the calls received by the Hotline in 2002
4 involved any electric issues, let alone let alone those involving the interpretation of
5 Open Access Transmission Tariffs (“OATTs”) or energy service provider (“ESP”)
6 dispute resolutions.²

7
8 Furthermore, Mr. Huff (page 10) and with some reservations, Tucson Electric
9 Power (“TEP”) witness Mr. Beck (page 15), suggest that the dispute resolution
10 provisions in the utilities’ OATT are sufficient for resolving more complex disputes.
11 I believe that market participants and the Commission should be more comfortable
12 with the protocols provided in section 6 of the AISA’s bylaws than with the dispute
13 resolution procedures found in TEP’s and APS’s Open Access Transmission Tariffs
14 (Section 12 of either OATT). The AISA’s method provides greater flexibility,
15 including a fast-track procedure, peer mediation as well as formal arbitration. The
16 OATT’s dispute resolution focuses almost exclusively on arbitration.
17

18 Overall, I believe that keeping dispute resolution responsibilities, even
19 informal ones, with a local Arizona agency that is intimately familiar with the AISA’s
20 Protocol Manual and the specific Arizona market is far preferable to ceding the
21 responsibility to a distant bureaucracy or relying on OATT mechanisms that were
22 designed to resolve issues arising in connection with point-to-point wholesale
23 transactions. Such local resolution will likely best serve all parties involved.
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27 ² Enforcements Hotline Statistics, FERC Office of Market Oversight and Investigations.

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Mr. Huff also suggests that since the AISA’s dispute resolution mechanism was not used during the brief time that there were active retail direct access transactions, that it is not needed now. While this fact speaks well of the protocols set up by the AISA, the utilities and other parties active in the market at that time, it is not relevant to the continued need for dispute resolution to be maintained by the AISA. Dispute resolution is much like insurance: we hope that we will not need it, but do not doubt it is wise to maintain. The fact that a driver has not been in an accident is not a demonstration that she does not need insurance. Similarly, the fact that the AISA’s dispute resolution mechanisms were not called upon during the brief time of market activity does not mean that they are not needed. Although dispute resolution should be the method of last resort for addressing disagreements between ESPs and transmission providers, it must be maintained to provide either party entering into such an agreement with the assurance that any unforeseen difference between it and the counterparty will be addressed swiftly and fairly.

III. AISA Funding Should Continue to Come from the Affected Utilities

On page 4 and elsewhere in his testimony, Mr. Huff suggests the AISA should be funded on a volunteer basis by “large consumers, ESP’s, merchant plant operators or other interested stakeholders” (page 4). Constellation NE and Strategic Energy believe that in the long run, a grid manager or scheduling facilitator such as the AISA should be funded through an access charge paid on a non-discriminatory basis by all grid users. However, during the transition to a more market-oriented paradigm, such funding is impractical. So as a public policy decision, the ACC chose to have the

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AISA funded by the affected utilities. While this transition period is lasting longer than anyone could have anticipated when the AISA was formed, the retail electric market in Arizona is not yet mature or vibrant enough to fund the AISA via grid access charges. On this, I believe Mr. Huff and I can agree.

Where I strongly differ is with the suggestion that it is sound policy to fund the AISA on a voluntary basis. First, like any agency with an ongoing mission, the AISA needs more assurance that it will continue to exist than is afforded by the whims of voluntary funding. While it faces the budget issues confronted by any agency that is dependent upon state policymakers, this is much different than that of a non-profit, constantly scrounging for funds.

Furthermore, such a funding mechanism could in at least appearance tarnish the “independence” of the AISA. If, for example, only a few donors stepped up to provide the money to run the AISA, the appearance that the AISA’s decisions could be influenced by the fact that its existence depended upon the continuation of those donations would make it a far less credible institution. This is not to remotely call into question the integrity of anyone at the AISA, past or present. Rather, it is only to point out that the appearance of undue influence could not be avoided if it were funded in the way suggested by Mr. Huff.

This concludes my rebuttal testimony.

Legal

MEMORANDUM

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Director
Utilities Division

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MAY 30 2003

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ARIZ CORPORATION COMMISSION

DATE: May 30, 2003

RE: STAFF REPORT FOR THE GENERIC PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR (DOCKET NO. E-00000A-01-0630)

Attached is the Staff Report for the generic proceeding concerning the Arizona Independent Scheduling Administrator.

EGJ:RTW:lhm

Originator: Ray T. Williamson

Attachment: Original and Thirteen Copies

Service List for: Generic Proceeding Concerning the Arizona Independent Scheduling
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Docket No. E-00000A-01-0630

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**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

**GENERIC PROCEEDING CONCERNING THE
ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR**

DOCKET NO. E-00000A-01-0630

MAY 2003

STAFF ACKNOWLEDGMENT

The Staff Report for the generic proceeding concerning the Arizona Independent Scheduling Administrator (Docket No. E-00000A-01-0630) was the responsibility of the Staff member listed below.

Ray T. Williamson

Ray T. Williamson
Utilities Engineer

EXECUTIVE SUMMARY
ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR
DOCKET NO. E-00000A-01-0630

In the Track B Decision (Decision No. 65743, issued on March 14, 2003), the Commission required that Staff update its November 2001 AISA Staff Report, consider the Commission's recent decisions and make recommendations in the generic AISA docket.

Prior to answering the question about the need for the AISA, Staff believes that a much more fundamental question needs to be asked and answered. That question is:

Does the Commission want to have retail electric competition available to customers in Arizona over the next two to five years?

Staff believes that there are numerous options that the Commission could consider in relation to the continuation or closure of the AISA. The following four options could be considered by the Commission:

- Option 1: End the retail electric competition effort in Arizona, close down the AISA and return to a traditional regulated monopoly structure.
- Option 2: Retain the existing Retail Electric Competition Rules and close down the AISA.
- Option 3: Retain the existing Retail Electric Competition Rules and downsize AISA.
- Option 4: Combine the consideration of the AISA with the Commission requirement in the Track A Decision that Staff open a rulemaking to review the Retail Electric Competition Rules. The downsized AISA would remain in place while the review is undertaken.

Staff recommends that the Commission select Option 4 as the best alternative.

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BACKGROUND

As part of the development of Arizona's Retail Electric Competition Rules, it was determined that, in order to have non-discriminatory retail access, Arizona should establish an independent scheduling administrator until such time as a Regional Transmission Organization was in place. This requirement was included in Section 1609 of the Competition Rules.

In 1999, steps were taken to establish the Arizona Independent Scheduling Administrator ("AISA"). The AISA continues to be in existence today.

The service territories of APS and TEP were opened to competition in 1999 and a modest amount of competitive service was available in Arizona in the 1999-2001 timeframe. However, all competitors withdrew from offering competitive electricity service in Arizona by the middle of 2001.

In 2001, the Commission established a new docket, "Generic Proceeding Concerning the Arizona Independent Scheduling Administrator" (Docket No. E-00000A-01-0630). In this docket, a number of questions regarding the continued viability of AISA were asked and stakeholders were asked to respond to the questions.

In November 2001, Staff filed a Staff Report that summarized the stakeholder comments and responses to the questions. In addition, the Staff Report included a Staff Legal Analysis, a Staff Analysis, and Staff Recommendations.

On January 22, 2002, the Commission approved a generic docket on electric restructuring (Docket No. E-00000A-02-0051). In February 2002, the generic docket was consolidated with a number of other related dockets. Eventually, the effort was bifurcated into Track A and Track B.

The Track A decision (Decision No. 65154) was issued on September 10, 2002. The Track B decision (Decision No. 65743) was issued on March 14, 2003.

Included in the Track B decision was a requirement that Staff update its November 2001 Staff Report and consider the Commission's recent decisions and make recommendations in the generic AISA docket.

THE MISSION OF THE AISA

The original intent in forming the AISA was to provide a temporary organization that would perform certain functions until such time as an Independent System Operator, or as they are now known, a Regional Transmission Organization was in place. The responsibilities of the AISA were described in the Retail Electric Competition Rules (R14-2-1609 D). The AISA was to:

- Implement and oversee the nondiscriminatory application of operating protocols to ensure fair and equitable transmission access.
- Provide a dispute resolution process to resolve any claims of discriminatory treatment in the reservation, scheduling, use and curtailment of transmission services.
- Calculate Available Transmission Capacity ("ATC") for the Arizona transmission providing utilities and other AISA participants and develop and operate a statewide Open Access Same Time Information System ("OASIS").
- Utilize a single standardized procedure for all requests (wholesale, Standard Offer retail, and competitive retail) for reservation and scheduling the use of the Arizona transmission facilities belonging to the Affected Utilities and other AISA participants.
- Implement a transmission planning process to assure that future load requirements will be met.

The Retail Electric Competition Rules (R14-2-1609.E) also require that the Affected Utilities that own or operate Arizona transmission facilities shall file an AISA implementation plan that addresses:

- AISA governance, incorporation, financing and staffing.
- Acquisition of physical facilities and staff by the AISA.
- Schedule for the phased development of the AISA functionality and proposed transition to a regional Independent System Operator ("ISO") or Regional Transmission Organization ("RTO").
- Contingency plans to ensure that critical functionality is in place no later than three months following the adoption of the Retail Electric Competition Rules by the Commission.
- Any other significant issues related to the timely and successful implementation of the AISA.

The AISA Board of Directors determined that the implementation of the AISA Protocols Manual should be in a phased approach. Stage 1 of Phase I began upon the acceptance and approval by the Federal Energy Regulatory Commission ("FERC") of the AISA tariff filing. Stage 2 of Phase I will become effective upon Board determination that more staff is needed to move from a limited Protocols Manual oversight to a more active administration which would include the monitoring by the AISA of compliance with FERC's standards of conduct related to access to transmission and the operation of the transmission system. The Phase II functions will be implemented after action by the AISA Board of Directors.

Phase I, Stage 1 Functions

The Transmission Providers ("TP") and Control Area Operators ("CAO") will implement the AISA protocols, except those specifically granted waivers.

The AISA will implement:

- Alternative Dispute Resolution ("ADR") and limited Protocol Manual oversight,
- Monitoring of OASIS and Allocated Retail Network Transmission ("ARNT").

Phase I, Stage 2 Functions

Fully administer Protocols Manual functions with the exception of Phase II functions.

Phase II Functions

- Monitoring of ATC releases and responsibility for OASIS/ATC calculations,
- Utilization of standardized procedures for transmission reservation and scheduling,
- Implementing a statewide transmission planning process,
- Administering a statewide OASIS,
- Overseeing Transmission Provider determinations of total retail Committed Use reservations; and
- ARNT and Energy Imbalance ("EI") trading and ARNT auction settlement

CURRENT STATUS OF AISA

At the April 25, 2003 Board Meeting of AISA, the Board of Directors voted to downsize the operations of the AISA. The downsizing included the reduction of 1.25 full time employees, a reduction in office space, and reductions in insurance and accounting costs. This action resulted in a 54% reduction in the annual AISA budget from \$332,650 to \$154,270.

The downsizing will take place effective June 1, 2003. It will include the reduction of one full-time employee position and the reduction of the Acting Executive Secretary position from a full-time position to that of a ¾ time position.

At the May 14, 2003 Board Meeting of AISA, the Board of Directors took action to modify Article I of the AISA Articles of Incorporation to remove a sunset clause which

previously indicated that the corporation would cease to exist on September 15, 2003. The new wording, approved by the Board of Directors, states that "The Corporation shall exist until a Federal Energy Regulatory Commission approved Regional Transmission Organization is operational serving Arizona."

KEY ISSUE DECISION

Prior to answering the question about the need for the AISA, Staff believes that a much more fundamental question needs to be asked and answered. That question is:

Does the Commission want to allow retail electric competition as a consumer choice to customers in Arizona over the next two to five years?

Until this question is decided, the issue of whether there should be an AISA can not be fully decided. If the Commission wishes to reconsider the usefulness of the ASIA, the question should be asked again. Staff suggests that if the answer is "no", the retail electric competition rules should either be abolished, or, if retail competition is to be postponed, the rules should be suspended until needed. If competition is delayed, there is no immediate need for the AISA and it could be closed down. However, there would be a substantial cost in the future to establish a new organization to perform similar functions as the AISA. According to AISA sources, it cost over \$1.4 million to establish the AISA, develop and receive FERC approval of the AISA Protocols Manual.

Staff suggests that if the answer to the question is "yes", then Arizona will need the AISA or some substitute organization to perform the functions that were originally intended to be performed by an ISA. Although some would argue that the new Regional Transmission Organization would fulfill these functions, the establishment and operation of that new RTO (West Connect) would probably not occur until 2007 or 2008.

CHANGES SINCE THE NOVEMBER 2001 STAFF REPORT

Although it was hoped in 2001 that the Arizona Independent System Operator called DesertSTAR would become operational in the 2003/2004 time frame, progress toward establishing DesertSTAR stalled.

In DesertSTAR's place, Arizona stakeholders proposed to establish WestConnect as a Regional Transmission Organization. The development of WestConnect is progressing, but at a very slow pace.

Over 10,000 MW of new generation capacity has either commenced operation, commenced construction, or been approved for construction in Arizona. These new plants, in addition to the 1,830 MW that came on line in 2001, will offer a large pool of resources for competitors in the retail electricity market.

In the past few months, both Arizona Public Service Company ("APS") and Tucson Electric Power Company ("TEP") have issued competitive wholesale solicitations, as required by the Track B decision. Now that the results of those solicitations are known, the new wholesale plants which were not winners in the solicitation will be anxious to find customers for their idle or unused generation capacity. If these plants are able to offer low cost electricity contracts to Electric Service Providers in Arizona, there could be a new wave of retail electric competition in the state.

IMPACTS OF THE TRACK A AND TRACK B DECISIONS

What has changed as a result of Track A and Track B decisions?

The Track A and Track B decisions primarily address enhanced wholesale competition. However, by enhancing wholesale competition, the two decisions set the stage for potential renewed interest in retail electric competition. In fact, now that the winners and losers have been identified in the current Arizona competitive wholesale solicitations, there will be significant amounts of new generation capacity searching for customers. *If the price they offer is low enough*, it could encourage a resurgence of interest in retail competition in Arizona. Because there is a limited amount of transmission capacity which connects to other states, many of the new power plants would need to sell their electricity in Arizona.

TRIGGERING EVENTS FOR RENEWED INTEREST IN RETAIL ELECTRICITY COMPETITION

There are a number of "triggering events" that could spur an increased interest in retail electricity competition in Arizona:

- **Competitive wholesale power producers offering extremely low electricity price contracts to "hungry" Electric Service Providers in Arizona.** Now that APS' and TEP's initial wholesale competitive solicitations have produced contract winners, those not selected will have plenty of electricity to offer for sale. Since there is limited transmission capacity available to other states, the market conditions in Arizona will be ideal for ESPs to obtain low-cost electricity contracts.
- **The rates for APS will change in 2004 as a result of the rate case filed in 2003.** The reduction in electricity rates for APS customers over the past few years has acted as a deterrent for customers to switch to competitive suppliers. If the rates approved for APS in 2004 increase and if the competitive "shopping credit" increases, the APS customers may suddenly find that competitive suppliers can offer savings, resulting in a renewed interest in retail competition in the APS service territory.
- **TEP is required to file a report with the Commission by June 1, 2004, on the need for modifications to the Fixed or Floating Competitive Transition Charge**

(“CTC”), TEP’s distribution tariffs, and other unbundled components. Any changes to TEP’s rates would be implemented no later than January 1, 2005.

- **FERC rules on Standard Market Design will probably be finalized in 2003.** It is too soon to say what, if any, impacts the SMD rules will have on retail competition in Arizona and the nation.
- **Potential new ESPs emerging in Arizona.** New Electric Service Providers could choose to select Arizona as a new market for their products. Arizona is one of only a limited number of states that currently offer retail access for electricity customers.
- **Completion of Arizona’s review of its Retail Electric Competition Rules.** One reason the ESPs may not have chosen to come to Arizona is that this state, like many other states, has chosen to review its rules and procedures for competition. Potential competitive ESPs will likely “sit on the sidelines” until that review process is over before committing the time and significant resources that it will take to enter the Arizona market.

OPTIONS

Staff believes that there are numerous options that the Commission could consider in relation to the continuation or closure of the AISA. The following four options could be considered by the Commission:

- Option 1: End the retail electric competition effort in Arizona, close down the AISA and return to a traditional regulated monopoly structure.
- Option 2: Retain the existing Retail Electric Competition Rules and close down the AISA.
- Option 3: Retain the existing Retail Electric Competition Rules and the downsized AISA.
- Option 4: Combine the consideration of the AISA with the Commission requirement in the Track A Decision that Staff open a rulemaking to review Retail Electric Competition Rules. This could include a review of all aspects of competition in Arizona and would specifically invite participation by potential national competitors that may be interested in becoming Electric Service Providers in Arizona. The review would include a full discussion of the role of AISA in Arizona’s marketplace, to include an evaluation of the AISA structure, functions, and organization. The downsized AISA would remain in place while the review is undertaken.

STAFF COMMENTS ON OPTIONS

General Comments

As previously mentioned in the November 2001 Staff Report, there still remain two basic viewpoints concerning the AISA:

- Organizations in favor of retail electricity competition and which potentially can profit from the competition. These organizations insist that the AISA, or some similar organization is necessary for viable retail electric competition.
- Organizations that will be adversely impacted by competition. These organizations say that AISA is not needed.

There really have been no major changes in these positions since the Retail Electric competition rules were adopted.

Although some would claim that the new Regional Transmission Organization, WestConnect, can fulfill the functions that are reserved for the AISA, such is not the case. First of all, it is doubtful that WestConnect will be operational any time soon and may not actually commence operation until 2007 or 2008. In fact, recent presentations by WestConnect officials indicate that WestConnect will probably not be fully operational until 2011.

Second, the focus of RTOs and WestConnect, in particular, will be on wholesale transactions, not on the provision of retail service, though scheduling of energy transactions for direct access retail customers has to be planned by Scheduling Administrators on the transmission systems under the RTO's jurisdictional control. It is uncertain whether FERC will allow its approved Regional Transmission Organizations, such as WestConnect, to perform the retail functions that are included in the AISA Protocols Manual.

Staff Comments on Option 1 (End Retail Competition Rules/Close AISA):

The choice of this option is determined by the answer to the question: "Should there be retail electricity competition in Arizona?" Staff believes that the Commission has already answered this question in the Track A and Track B decisions. However, the question could always be revisited. If the answer is no, the Commission could choose to abolish, amend, or stay the Retail Electric Competition Rules. The stay would be an appropriate option if the Commission chooses to institute retail competition at a later date.

However, one of the pitfalls of this option is that it would result in the abandonment of the Reliability Must Run Protocols and the associated retail transmission rights established as part of the AISA implementation effort. These retail transmission provisions are critical for preserving Arizona's native load transmission service via constrained transmission paths. FERC has approved these provisions even though it argues against native load rights in other venues.

Staff Comments on Option 2 (Retain Retail Competition Rules/Close AISA):

Since there is no current retail competition, it could be argued that the AISA should be closed as it is not needed at the current time. Staff is concerned that if the AISA is closed, this action will provide another barrier to Arizona's attempt to attract competitive Electric Service Providers. Staff believes that the AISA is a necessary but not sufficient condition needed to encourage retail competition in Arizona. If we close down the AISA, we could lose potential competitors that we do not even know are considering entering our market. Staff also believes that there may be some other, more fundamental changes to Arizona's retail competition effort that could reinvigorate Arizona's competitive marketplace. It would be a shame if we discovered those changes after we had already closed the AISA. Also, the new Standard Market Design rules, expected to be issued by FERC by the end of 2003, could have a significant impact on retail competition in Arizona. We do not know what kind of an impact that will be.

One of the pitfalls of this option, as in Option 1, is that it would result in the abandonment of the Reliability Must Run Protocols and the associated retail transmission rights established as part of the AISA implementation effort.

Staff Comments on Option 3 (Retain Retail Competition Rules and Downsized AISA):

This really is a status quo approach. The competition rules would continue unchanged and the downsized AISA organization would continue. Although this is a viable alternative while we await renewed interest in retail competition, the downsized AISA (with only one part-time staff person) might find it difficult to expand its services if the renewed interest in retail competition came quickly. The primary efforts of the part-time staff member would be on dispute resolution, limited protocols oversight, and monitoring of the OASIS and ARNT.

Staff Comments on Option 4 (Consider AISA as part of Electric Competition Rules review):

Staff believes that the decision of whether to continue the AISA or close it down should not be made without full consideration of how the decision might affect future retail electric competition in Arizona. A number of parties participated in the Track A and Track B processes. With the possible exception of one competitor, APS Energy Services, there was no participation by the Electric Service Providers who are absolutely necessary if Arizona wants to have any robust retail electric competition in the future. Somehow, we need to search out and request participation by national retail electricity competitors in the process to gauge their level of concern about having an independent organization that will ensure their fair and equitable access to the transmission system.

Now that the AISA Board of Directors has approved a major reduction of the AISA budget to a "bare minimum" level of operation, Staff believes that this option is preferable. The Staff-led Retail Electric Competition Rules review can consider any appropriate changes to the Rules, while, at the same time, consider how the AISA will fit in Arizona's future competitive

market and how the AISA structure, functions, or organization could be changed to enhance Arizona's future competitive market. Keeping AISA at this bare minimum level would allow Arizona to be prepared to respond quickly if renewed retail competition were to commence in the state.

STAFF RECOMMENDATIONS

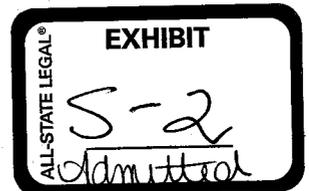
Staff Recommendation:

1. The Commission should approve Option 4:
 - Combine the consideration of the AISA with the Commission requirement in the Track A Decision that Staff open a rulemaking to review Retail Electric Competition Rules. This could include a review of all aspects of competition in Arizona and would specifically invite participation by potential national competitors that may be interested in becoming Electric Service Providers in Arizona. The review would include a full discussion of the role of AISA in Arizona's marketplace, to include an evaluation of the AISA structure, functions, and organization. The downsized AISA would remain in place while the review is undertaken.

Staff recommends that the Commission select Option 4 as the best alternative. This option serves as insurance for the possibility that interest in retail competition can be renewed. Electric Service Providers will want to know that they will have fair access to the Arizona transmission system.

They will want to know that if problems do arise in procuring transmission service that they will have an independent organization upon which they can rely for dispute resolution. The only other alternative would be to take the dispute to FERC, which can be an expensive and time consuming process. In particular, the time delays of such a process can make or break the success of these new competitors. If an ESP were to expend substantial funds to acquire new customers, but then be unable to deliver the promised electricity, it could damage the company and ruin its reputation. The key in dispute resolution is impartiality and prompt resolution at a

minimum expense. For relatively small ESPs working on thin profit margins, the option of having FERC resolve disputes over transmission is not an economically viable alternative.



BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER - Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

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AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR A
VARIANCE OF CERTAIN REQUIREMENTS
OF A.A.C. R14-2-1606

DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE
ARIZONA INDEPENDENT SCHEDULING
ADMINISTRATOR

DOCKET NO. E-00000A-01-0630

IN THE MATTER OF TUCSON ELECTRIC
POWER COMPANY'S APPLICATION FOR
A VARIANCE OF CERTAIN ELECTRIC
COMPETITION RULES COMPLIANCE
DATES

DOCKET NO. E-1933A-02-0069

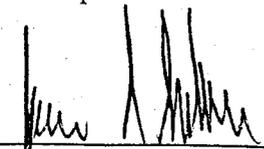
IN THE MATTER OF THE APPLICATION
OF TUCSON ELECTRIC POWER
COMPANY FOR APPROVAL OF ITS
STRANDED COST RECOVERY

DOCKET NO. E-01933A-98-0471

**NOTICE OF FILING SUMMARY
OF TESTIMONY/STAFF REPORT**

Staff hereby provides notice of filing Summary of Testimony/Staff Report in this docket. An original and twenty-one copies are submitted of the Summary of Testimony of Ray T. Williamson submitted as Staff Report for the Generic Proceeding Concerning the Arizona Independent Scheduling Administrator, dated May 30, 2003.

RESPECTFULLY SUBMITTED this 9th day of September 2003.



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AN ORIGINAL and fifteen (15)
copies were filed this 9th day
of September, 2003 with:

1 Docket Control
1200 West Washington Street
2 Phoenix, Arizona 85007

3 Copy of the foregoing emailed to
all parties of record this 9th day
4 of September, 2003.

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7 Angela L. Bennett secretary to Jason D. Gellman

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SUMMARY
STAFF TESTIMONY/STAFF REPORT
RAY T. WILLIAMSON
ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR PROCEEDING
DOCKET NO. E-00000A-02-0051, ET AL
(E-00000A-01-0630)

In the Track B Decision (Decision No. 65743, issued on March 14, 2003), the Commission required that Staff update its November 2001 AISA Staff Report, consider the Commission's recent decisions and make recommendations in the generic AISA docket.

Prior to answering the question about the need for the AISA, Staff believes that a much more fundamental question needs to be asked and answered. That question is:

Does the Commission want to have retail electric competition available to customers in Arizona over the next two to five years?

Staff believes that there are numerous options that the Commission could consider in relation to the continuation or closure of the AISA. The following four options could be considered by the Commission:

- Option 1: End the retail electric competition effort in Arizona, close down the AISA and return to a traditional regulated monopoly structure.
- Option 2: Retain the existing Retail Electric Competition Rules and close down the AISA.
- Option 3: Retain the existing Retail Electric Competition Rules and downsize AISA.
- Option 4: Combine the consideration of the AISA with the Commission requirement in the Track A Decision that Staff open a rulemaking to review the Retail Electric Competition Rules. The downsized AISA would remain in place while the review is undertaken.

Staff recommends that the Commission select Option 4 as the best alternative.

EXHIBIT
TEP-1
Admitted

31EX

BEFORE THE ARIZONA CORPORATION COMMISSION

2003 SEP 30 P 11: 22

ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

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COMMISSIONERS
MARC SPITZER, CHAIRMAN
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

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

Docket No. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR A VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. R14-2-1606.

Docket No. E-01345A-01-0822

IN THE MATTER OF THE GENERIC PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR.

Docket No. E-00000A-01-0630

IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES.

Docket No. E-01933A-02-0069

IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST RECOVERY

DIRECT TESTIMONY OF EDMOND A. BECK

ON BEHALF OF

TUCSON ELECTRIC POWER COMPANY

Arizona Corporation Commission

DOCKETED

RE: AISA ISSUES

SEP 30 2003

JULY 28, 2003

DOCKETED BY *CA*

DIRECT TESTIMONY OF EDMOND A. BECK

I. INTRODUCTION.

Q: Please state your name and address.

A: My name is Edmond A. Beck. My business address is Tucson Electric Power Company ("TEP"), P.O. Box 711, Tucson, Arizona 85702.

Q: What is your position with TEP?

A: I am the Supervisor of Transmission Planning and Administration. In that capacity, I am responsible for TEP's transmission system planning and transmission system service requests, including requests for interconnection and transmission-related contract matters.

Q: Please describe your educational background.

A: I received a Bachelor of Science degree in Civil Engineering and a Masters Degree in Business Administration from the University of Arizona. I am a Registered Professional Engineer in the State of Arizona and a member of the American Society of Civil Engineers.

Q: Please summarize your work experience.

A: I have worked in the electric utility industry for 24 years. Currently, in addition to my role as Supervisor of Transmission Planning and Administration, I am TEP's representative in the WestConnect development process, a Member of the Board of Directors of the Arizona Independent System Administrator ("AISA"), a member of the Western Electric Coordinating Council ("WECC") Market Interface Committee, a member of the Seams Steering Group – Western Interconnection ("SSG-WI") Planning Work Group, and one of WestConnect's representatives on the SSG-WI Steering Group. I am also involved in other various transmission-related committees in the region.

1 Prior to assuming my present position, I was Project Engineer and Project Manager for
2 various transmission line and substation projects, Contract Negotiator for Contracts and
3 Wholesale Marketing, Contract Negotiator for System Operations for the implementation of
4 the Federal Energy Regulatory Commission's ("FERC") OASIS requirements, and
5 Supervisor of Resource Planning. In connection with these assignments, I have designed
6 and managed the construction of various 138kV, 345kV and 500kV transmission projects.
7 I also have negotiated agreements related to transmission in the region, including
8 development of TEP's Open Access Transmission Tariff ("OATT"), and TEP's FERC
9 rates. I was TEP's lead negotiator in the creation of the Southwest Reserve Sharing Group.

10

11 Q: Have you previously testified in transmission-related regulatory proceedings?

12 A: Yes, I have testified in FERC proceedings regarding TEP's OATT. I have also testified in
13 proceedings before the Arizona Power Plant and Transmission Line Siting Committee
14 ("Committee") and the Arizona Corporation Commission ("Commission") regarding TEP
15 transmission issues. For example, I testified in the support of TEP's 345kV transmission
16 project to Nogales, TEP's 500kV transmission project between Saguaro and Tortolita and
17 TEP's 345kV Winchester Substation project. I also have testified in an arbitration case
18 involving the TEP transmission system. And, before the FERC, I have testified regarding
19 Capacity Benefit Margin issues and AISA issues.

20

21 Q: What is the purpose of your direct testimony?

22 A: The purpose of my testimony is to respond, on behalf of TEP¹, to the AISA Hearing
23 Procedural Order dated June 18, 2003 ("AISA Procedural Order"). Specifically, I am filing
24 my testimony in response to the instruction in the AISA Procedural Order that direct

25

26 ¹ This direct testimony is being filed on July 28, 2003. It is contemplated that UniSource Energy
27 Corporation, the parent company of TEP will acquire Citizens Communications' Arizona Electric and Gas
properties prior to the hearing scheduled in this matter. Accordingly, representatives of UniSource, TEP and
Citizens have agreed that my testimony will be sponsored by each of those entities through TEP.

1 testimony "shall address, in addition to those issues raised in the May 30, 2003 Staff
2 Report, all other issues associated with the continuation of the AISA that a party wishes to
3 raise in this proceeding." Accordingly, my testimony discusses: (1) a general history of the
4 AISA; (2) a review of TEP's involvement with the AISA; (3) an update of the activity of
5 the AISA; and (4) TEP's response to the recommendations of the Staff Report concerning
6 the AISA filed on June 2, 2003 ("Staff Report").

7
8 Q: Mr. Beck, do you have any preliminary comments that you wish to make?
9 A: Yes, I do. I want to make sure that my testimony is received in its proper context. I
10 recognize that for testimony to be valuable to the Commission it must be, among other
11 things, candid. For example, I note that the Staff Report addressed both successes and
12 failures of the AISA process. In fact, I think it would be difficult to properly analyze the
13 AISA without acknowledging both the accomplishments that have been achieved and the
14 problems that have been encountered. It should not be a surprise then that in my testimony
15 I, too, discuss both successes and failures of the AISA.

16
17 However, nothing in my testimony should be construed to be contrary to TEP's obligation
18 to "fully support the development of the Arizona Independent Scheduling Administrator []
19 and Desert STAR." [Decision No. 62103 (Settlement Agreement at Section 9.1)] As I
20 discuss in greater detail below, TEP has been a strong supporter of the AISA. I believe
21 that, by sponsoring my testimony (even though in part it may seem to be critical of the
22 ongoing role of the AISA), TEP is continuing to demonstrate its commitment to the proper
23 development of the AISA.

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1 **II. HISTORY OF THE AISA.**
2

3 Q: Mr. Beck, please provide a general history of the AISA.

4 A: I will not attempt to detail each and every event that has transpired related to the AISA.
5 But, I will discuss key events that have shaped the AISA into the organization that it is
6 today.

7
8 The AISA has its origins in the Commission's effort to establish retail electric competition
9 in Arizona. In my mind, the AISA and retail competition were intended to be, and are,
10 inseparably linked.

11
12 The earliest starting point for the AISA is the Commission-sponsored retail electric
13 competition workshop that was held on September 7, 1994. At this workshop represen-
14 tatives of the Commission's Utilities Division ("Staff"), incumbent utilities, and other
15 concerned parties discussed the potential for retail electric competition in the State and
16 eventually resulted in the formation of the Electric Competition Working Group.

17
18 On January 25, 1995, the Electric Competition Working Group met and formed three task
19 forces: (1) Energy Efficiency and Environment; (2) Regulatory; and (3) System and
20 Markets. In particular, the System and Markets task force was charged with addressing
21 transmission access and prices; transmission and generation system operations; system
22 reliability; and other related issues. The Systems and Markets task force investigated
23 various methods for operating a transmission system in connection with a competitive retail
24 electric market. This investigation also touched on the need for an entity such as the AISA.

25
26 On December 26, 1996, the Commission issued Decision No. 59943, approving A.A.C.
27 R14-2-1601 *et seq.* (the "Retail Electric Competition Rules"). One portion of those rules,

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A.A.C. R14-2-1609.D, required incumbent utilities that owned or operated Arizona transmission facilities to form an Arizona Independent Scheduling Administrator that would file with the Federal Energy Regulatory Commission for approval of an Independent Scheduling Administrator.

The Retail Electric Competition Rules also prompted the formation of additional working groups that focused on the necessary steps to transition to a competitive retail electric market. During 1997 and the early part of 1998, Staff conducted numerous meetings involving the working groups, that addressed such issues as metering, meter reading, billing, safety, reliability, ancillary services, committed uses, must-run generation, development of operational protocols, and the feasibility of developing an independent system operator ("ISO") or an independent scheduling administrator ("ISA"). Concurrently, during the 1998 the Arizona legislative session, House Bill No. 2663 (the "Electric Power Competition Act") was enacted. The Electric Power Competition Act provides that public power entities and the Commission should coordinate their efforts in the transition to retail competition to promote consistent statewide application of rules, procedures, and orders.

Through these working groups, it was determined that (a) in order for there to be retail electric competition in Arizona there should first be a means for providing non-discriminatory retail transmission access; and (b) an ISO should be implemented. Consequently, interested parties evaluated the feasibility of forming "Desert STAR", to be a regional ISO that would include Arizona. I should note that over time the concept of forming and operating Desert STAR has evolved to seeking authorization from FERC to form a for-profit Regional Transmission Organization ("RTO") called "WestConnect". However, initially, the focus was on the creation of Desert STAR. In order to meet the

1 potential immediate need for retail transmission access during the development of Desert
2 STAR, the AISA was formed.

3
4 Q: Could you briefly describe the structure and funding of the AISA?

5 A: On September 1, 1998 the Arizona "Affected Utilities" submitted a plan to the Commission
6 for implementation of the AISA. This plan included the Articles of Incorporation, Bylaws,
7 Financing, Timeline and Contingency Plan, as well as other documentation. In this
8 submittal the budget for the AISA was estimated at \$1,475,000 capital start up costs and
9 \$2,548,000 annual operating and maintenance ("O&M) costs for the first two years and
10 \$1,648,000 for years three through five. The Affected Utilities agreed to initial funding of
11 the capital startup costs and \$900,000 of the first two years of O&M costs with the
12 understanding that all of these costs would be recovered from customers through a
13 transmission surcharge. As various delays in start-up of the organization occurred, as well
14 as a recognition by the AISA Board that a contingency "shut down" fund should be
15 maintained, the ultimate funding and timeline for cost recovery was adjusted. The initial
16 repayment to TEP was received in August of 2001 and on May 20, 2003 the final
17 repayment was made. In June of this year, the AISA Board of Directors requested the
18 AISA staff to look at ways of reducing the cost of the organization. Effective July 1, 2003,
19 the AISA Board of Directors downsized the AISA staff from two full-time employees to
20 one three-quarter-time employee. Also, reductions were made in insurance levels and
21 office space.

22
23 Q: Mr. Beck, when the AISA was created, was it intended to be a permanent organization?

24 A: No. It was apparent that Desert STAR (and then WestConnect) would not be operational
25 within the time frames adopted by the Commission for the commencement of retail electric
26 competition in Arizona. Thus, the AISA was created to implement retail electric
27 competition in Arizona, by ensuring non-discriminatory retail access to the Arizona

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transmission system, until Desert STAR/WestConnect could be established. It was expected that, once an ISO or RTO (such as WestConnect) was established to serve Arizona, the AISA's responsibilities would be transferred to the new entity. Moreover, an ISA is more limited in its abilities than an ISO or an RTO because the ISA would cover only use of transmission within the State of Arizona and then only transmission that was being used to serve retail load. For those seeking to use the transmission systems for wholesale transactions, the ISA provides no value. The RTO is contemplated to span several states and cover all transmission within the RTO, whether for retail or wholesale use. Also, the costs of expanding the ISA to full functionality would be cost prohibitive when spread only over the relatively few retail customers in Arizona, particularly when compared to the ability to spread such costs over a much larger RTO customer base.

Q: Please summarize the original purpose for the AISA?

A: The purpose is detailed in A.A.C. R14-2-1609. In general, the AISA was to temporarily (a) oversee the application of operating protocols for non-discriminatory transmission access; (b) provide a dispute resolution service regarding Arizona transmission problem; (c) be responsible for the determination of available transmission capacity and operate the Open Access Same Time Information System ("OASIS"); (d) implement the standardized procedures for reserving and scheduling Arizona transmission facilities; and (e) oversee a transmission planning process for future load requirements.

Q: Has the AISA been able to meet those purposes?

A: Not all of them. As you can see, the AISA was originally envisioned to meet all the needs of retail customers in the state. When the costs of implementing all of the systems and hiring the manpower required to provide the various functions was reviewed, all parties to the AISA realized that the full functionality of the AISA would be very expensive. As a result, the parties agreed to develop the functionality in two distinct phases and implement

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1 only Phase I initially. The Staff Report discusses this phasing. The initial phase would
2 provide limited functionality for the AISA, but at a minimal cost. This is the only phase
3 that has been approved by FERC and the only phase that has been implemented to-date.
4 The present functionality of the AISA covers items a, b, and d of the purposes identified for
5 the AISA in my previous answer. Two significant (and potentially costly) items that were
6 contemplated, but never developed, are: (1) calculation of available transmission capacity
7 (“ATC”) and operation of an OASIS; and (2) a planning process for the state. While the
8 AISA never developed a planning process for Arizona, the utilities themselves (as well as
9 other stakeholders such as the Commission and Independent Power Producers) have
10 developed such a process through the Central Arizona Transmission Study (“CATS”). The
11 concept of this process is being expanded throughout the West under the banner of the
12 Seams Steering Group – Western Interconnection. The function of calculating ATC by the
13 AISA is one that has not been pursued and would require considerable professional level
14 staffing for the organization. Operation of an AISA OASIS has likewise never been
15 pursued and would be very costly to develop. In the meantime, through the WestConnect
16 effort, the Affected Utilities and others stakeholders throughout the Southwest are currently
17 developing a single OASIS site for the Southwest that would be much broader than the
18 OASIS originally contemplated by the AISA. This would eliminate the need for AISA to
19 perform the function.
20

21 Q: Mr. Beck, what were the specific initial activities that were to be undertaken by the AISA?

22 A: As noted in the Staff Report, the AISA Board of Directors determined that protocols to
23 assist in ensuring non-discriminatory retail access to the Arizona transmission system
24 needed to be developed. That development was to take place in phases, as also noted in the
25 Staff Report.
26
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1 Q: Was a set of protocols ever developed?

2 A: Yes. A set of operational and administrative protocols (the "Protocols Manual") was
3 established to govern operations of the AISA. The Protocols Manual defines the duties to
4 be performed and the procedures to be followed by the AISA, Control Area Operators
5 ("CAOs"), Transmission Providers ("TPs") and Scheduling Coordinators ("SCs"). The
6 Protocols Manual was approved by the AISA Board of Directors and filed as part of the
7 AISA's Tariff at FERC on September 1, 2000. *See* FERC Docket No. ER00-3583-000.
8

9 Q: What was the FERC's reaction to the AISA Protocols Manual filing?

10 A: The FERC initially found this filing deficient. This required TEP and Arizona Public
11 Service Company ("APS") to modify their existing OATTs to incorporate the Protocols
12 Manual. Subsequently, the FERC jurisdictional utilities in the AISA filed with FERC to
13 incorporate the Protocols Manual into their individual OATTs. FERC subsequently
14 approved the implementation of Phase I of the AISA effective November 1, 2000 in Docket
15 No. ER00-3583-000, issued November 30, 2000.
16

17 Q: What was the purpose of the Protocols Manual?

18 A: The Protocols Manual addresses, among other subjects: transmission allocation for retail
19 service; transmission reservations and OASIS management; congestion management for
20 retail service; emergency operations; must-run generation; ancillary services for retail
21 service; scheduling for retail service; and checkout. It is further intended that adoption of
22 and adherence to the Protocols Manual will result in CAOs and TPs employing uniform
23 standards and procedures applicable to retail electric service in Arizona that will facilitate
24 the use of Interconnected Transmission facilities for retail electric service on a non-
25 discriminatory basis. Finally, consistent with the AISA's Bylaws, Schedule Administration
26 Agreement, and Tariff, an ultimate objective of the Protocols Manual is to coordinate the
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reservation, allocation, scheduling and uses of transmission, ancillary services, and must-run generation resources by Scheduling Coordinators for retail service.

Q: Please describe the general activities of the AISA since its inception.

A: The activity of the AISA has ebbed and flowed since its inception. Initially, the AISA employed a Director and then several months later, an Assistant Director. These two positions comprised the staff of the AISA who were engaged in the administrative details of starting up the organization including overseeing the discussions of various workgroups writing the Protocols Manual. The Director resigned after approximately five months upon which the Board of Directors then named the Assistant Director as the Acting Director, a position that continues today. Subsequently, the Acting Director hired an assistant for administrative functions and retained Arizona legal counsel and a Certified Public Accountant. The AISA has held periodic Board of Directors meetings to deal with issues of approving the Protocols Manual, developing the agreements between Transmission Owners, Scheduling Coordinators and the AISA. The Board of Directors spent many hours on the FERC process including developing a filing at FERC, dealing with deficiency orders from FERC and Compliance filings.

The AISA Acting Director participated in various industry activities to keep abreast of current industry practices, such as Western Electric Coordinating Council ("WECC") activities, Central Arizona Transmission Study workgroups and Commission meetings. I should note that, to-date, the AISA has not been called upon to perform its "dispute resolution" function. Another function that the AISA is expected to perform is the operation of an Open Access Same Time Information System ("OASIS") for the affected utilities. Early in the process, the parties realized that such an undertaking would incur significant expense for the AISA. The parties held discussion regarding consolidation of existing OASIS systems. The Affected Utilities ultimately agreed to consolidate their

1 postings onto one website with individual nodes for each provider. This would allow the
2 AISA to have one website to which it could go and review all OASIS postings for
3 conformity with the Protocols Manual. However, this has not occurred as anticipated. I
4 feel that I should note that all of these AISA activities have costs associated with them,
5 which have been borne by Affected Utility participants and customers.
6

7 **III. CURRENT STATUS OF THE AISA.**
8

9 Q: Mr. Beck, please describe the current status of the AISA.

10 A: Today, the AISA is not really very active. For the reasons that I have already discussed and
11 because direct access has not developed in Arizona as originally anticipated, the AISA is
12 not currently providing any of the functions it was originally established to serve.
13

14 Q: What action has the AISA Board of Directors recently taken regarding the operation of the
15 AISA?

16 A: On April 25, 2003, the AISA Board of Directors met and reviewed the operations of the
17 AISA. The Board of Directors requested that AISA staff provide a proposal to reduce the
18 AISA's personnel, office space, insurance and accounting expenses. As I previously
19 mentioned, at one time the AISA employed two full-time people. Now, the AISA is staffed
20 with one employee who works three-quarter time. On May 14, 2003, the AISA Board of
21 Directors voted to revise the AISA Articles of Incorporation to extend the existence of the
22 organization "until Federal Energy Regulatory Commission approved Regional Trans-
23 mission Organization is operational and serving Arizona." That vote eliminated the sunset
24 provisions that were originally included in the incorporation documents for the
25 organization. Without this change, the AISA would terminate later this year.
26
27

1 Q: Why did the AISA Board of Directors vote to extend the AISA, if it is providing little or no
2 service at this time?

3 A: Some of the AISA Board of Directors felt that the AISA would be the only appropriate
4 dispute resolution facilitator in the event that retail access was viable in Arizona. These
5 members of the Board of Directors also felt that the cost of maintaining the organization
6 was a small price for customers to pay for the ability to utilize this dispute resolution
7 mechanism in the future.

8
9 Q: What is the current status of Desert STAR and WestConnect?

10 A: As I mentioned earlier Desert STAR no longer exists. It was the genesis for the proposed
11 WestConnect. WestConnect is proposed as a for-profit RTO that is being developed in
12 response to FERC Order 2000. The current timeline for WestConnect contemplates
13 implementation of WestConnect functionality in phases. It is anticipated that Phase One
14 will be implemented in the first quarter of 2004. This phase will include a single OASIS
15 system for the Southwest and a market-posting mechanism for energy products. The goal
16 of WestConnect is to provide a single market interface for energy transactions in the
17 Southwest. WestConnect is currently undertaking a cost-benefit analysis of the RTO with
18 the specific review of the costs and benefits of full RTO functionality. Based on this
19 analysis, WestConnect will develop a proposed timeline for implementation of future
20 phases.

21

22 **IV. TEP'S SUPPORT OF THE AISA.**

23

24 Q: Mr. Beck can you please discuss TEP's involvement in and support of the AISA?

25 A: Yes. TEP has fully supported the AISA from its inception. TEP participated in the
26 rulemaking proceedings and workshops that gave rise to the AISA. TEP was heavily

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involved in the development of the AISA Protocols Manual. TEP has invested many man-hours in the development of the AISA.

TEP also has supported the AISA through my participation on the AISA Board of Directors. I have been a member of the AISA Board of Directors since September 2000.

Further, TEP has participated in all Commission inquiries related to the AISA and supported the AISA before the FERC staff in June of 2000. I should also note that TEP intervened in support of the AISA at FERC and modified its OATT as required by FERC related to the AISA.

Q: Did TEP file an AISA implementation plan as required by the Commission?

A: Yes. The TEP AISA implementation plan was filed with the Commission on September 1, 1998 in conjunction with the other Affected Utilities.

V. **TEP'S RESPONSE TO STAFF'S REPORT FOR THE GENERIC PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR.**

Q: Mr. Beck, have you reviewed the Staff Report?

A: Yes. The result of Staff's analysis of the AISA was four recommended options for the future of the AISA. These four options are:

Option 1: End the retail electric competition effort in Arizona, close down the AISA and return to a traditional regulated monopoly structure.

Option 2: Retain the existing Retail Electric Competition Rules and close down the AISA.

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Option 3: Retain the existing Retail Electric Competition Rules and the downsized AISA.

Option 4: Combine the consideration of the AISA with the Commission requirement in the Track A Decision that Staff open a rulemaking to review Retail Electric Competition Rules. This could include a review of all aspects of competition in Arizona and would specifically invite participation by potential national competitors that may be interested in becoming Electric Service Providers in Arizona. The review would include a full discussion of the role of AISA in Arizona's marketplace, to include an evaluation of the AISA structure, functions, and organization. The downsized AISA would remain in place while the review is undertaken.

After assessing the options, the Staff recommended that the Commission approve Option 4. Staff further noted that "[t]his option serves as the best insurance for the possibility that interest in retail competition can be renewed." In addition, in assessing Option 4, Staff stated that:

The Staff-led Retail Electric Competition Rules review can consider any appropriate changes to the Rules, while, at the same time, consider how the AISA will fit in Arizona's future competitive market and how the AISA structure, functions, or organization could be changed to enhance Arizona's future competitive market. Keeping AISA at this bare minimum level would allow Arizona to be prepared to respond quickly if renewed retail competition were to commence in the state.

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Q: What is your opinion on Staff's recommendation that Option 4 be implemented?

A: This recommendation is a reasonable option for the Commission. However, I believe there are several concerns that should be considered before adopting Staff's recommendation.

Q: What are those concerns?

A: First, the AISA has been incorporated since 1998, but has been providing little, if any, of the expected benefits. Indeed, there continues to be a great deal of discussion about the functionality of the AISA. During its tenure, due to the limited direct access activity in Arizona, the AISA has yet to be involved in any dispute resolution proceeding. The argument that keeping the AISA at a bare bones level would "allow Arizona to be prepared to respond quickly if renewed retail competition were to commence in the state" should be analyzed on a cost-benefit basis.

Second, the Protocols Manual that was developed for handling retail access is extensive and, I believe, adequately provides for dealing with the eventuality of vibrant retail access. In my opinion, the Protocols have worked well so far and will serve to reduce any likelihood of the need for dispute resolution by the AISA.

Third, in order for the AISA to reach the functionality that was originally envisioned for retail purposes – namely that the AISA would be the entity that receives and deals with all requests for retail access transmission service – and to allow a "quick response" to increased retail competition, the AISA would have to move on to "Phase II." This would be a very costly change, require the addition of a considerable number of staff and require a new filing at FERC. This is not something that could be done quickly.

1 Q: If the AISA would cease to exist, how could retail access disputes involving transmission
2 be resolved?

3 A: The Staff Report suggests that an alternative to AISA dispute resolution would be FERC
4 dispute resolution. I believe that this, too, is a reasonable option. However, I believe there
5 could be three alternative options for dealing with disputes other than by utilizing the
6 AISA. One option is the current dispute resolution provisions that exist in the transmission
7 providers' OATTs. TEP would be willing to discuss with Staff the development of an "on
8 call" list of parties that could be called on for quick dispute resolution. Such a
9 methodology was part of the Southwest Regional Transmission Association before it was
10 subsumed by the WECC. A second option would be a complaint proceeding before the
11 FERC. This process already exists. The third option could be filing an informal or formal
12 complaint with this Commission. Again, the procedures and rules for this type of a
13 proceeding already exist.

14
15 Q: Is the AISA necessary to develop a robust wholesale generation market in Arizona?

16 A: The present focus of the Commission concerning electric competition is to develop a
17 healthy wholesale generation market. That was a key result of the Track A proceeding and
18 a key purpose of the Track B proceeding. However, the AISA is not critical to achieving
19 that goal. From a historical perspective competition in the wholesale generation market in
20 the West, and particularly in Arizona, has existed independent of the AISA. For example,
21 the Western Systems Power Pool (WSPP) began as an agreement among a group of utilities
22 in the western states. The agreement, which was filed with the FERC by Pacific Gas and
23 Electric Company on behalf of the group, established a multi-state bulk power marketing
24 experiment. The agreement was meant to test whether broader pricing flexibility for
25 coordination and transmission services would promote increased efficiency, competition,
26 and coordination. The WSPP began operations in 1987, first as an experiment allowed by
27 FERC and then, beginning in 1991, as a more permanent entity. Its initial purpose was to

1 allow sales of power for short-term transactions to take place with a maximum of flexibility
2 and minimum of regulatory filings and to test market efficiency and competition. Today, it
3 is used to allow transactions to occur without constant renegotiations of contract terms and
4 to standardize terms, thereby promoting liquidity in the market. The current WSPP
5 agreement is open to power sellers and customers and is the result of a consensus reached
6 by a diversified group of power sellers and consumers, including most of the major players
7 in the industry. Right now, the WSPP Agreement is the most commonly used standardized
8 power sales contract in the electric industry.

9
10 Moreover, throughout the time that the AISA has been developing, the wholesale market
11 has mushroomed. There are now additional independent generators competing with
12 incumbent utilities for business. While maintaining a base of self-owned generation has
13 allowed most of the Arizona utilities to eliminate rate shock during the "California
14 Problem," the current glut of generation in Arizona is allowing these utilities to now reap
15 the benefit of competition amongst the various generation owners in the real-time markets.

16
17 **VI. CONCLUSION.**

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19 Q: Do you have any concluding direct testimony?

20 A: Yes, I do. Given the uncertain state of retail access in Arizona, the Staff's recommendation
21 (Option 4) is reasonable. Should the Commission choose to adopt the Staff's recommen-
22 dation, TEP would urge the Commission to conduct a cost-benefit analysis of the AISA and
23 to clearly state the specific expectations for the AISA.

24
25 Alternatively, to the extent the Commission believes that the Protocols currently
26 incorporated in the Affected Utilities' OATTs can meet the perceived role of an ISA – with
27 the exception of dispute resolution – then the Commission should consider suspending the

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AISA and ordering the Affected Utilities to rely upon the Protocols. TEP believes that the Protocols would enable retail competition to take place in Arizona. Moreover, a suspension of the AISA would not foreclose transmission access dispute resolution because, as noted above, there options other than the AISA for such dispute resolution, assuming such disputes will even arise in the near term.

Q: Does this conclude your direct testimony?

A: Yes, it does.