

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDEI
COMMISSIONER



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BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

DATE: JULY 18, 2000
DOCKET NO: E-03685A-99-0008
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

NEW WEST ENERGY CORPORATION
(CODE OF CONDUCT)

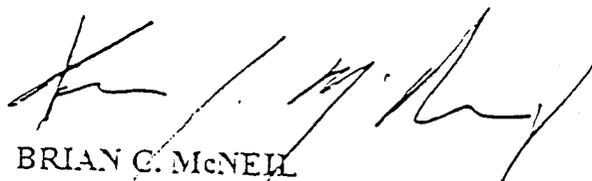
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 28, 2000

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 1, 2000 and AUGUST 2, 2000

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.



BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 WILLIAM A. MUNDELL
COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
NEW WEST ENERGY CORPORATION FOR A
7 CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
8 RETAIL ELECTRIC SERVICES AS AN
ELECTRIC SERVICE PROVIDER PURSUANT TO
9 A.A.C. R14-2-1601 *ET SEQ*

DOCKET NO. E-03685A-99-0008

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: June 20 and 21, 2000
11 PLACE OF HEARING: Tucson and Phoenix, Arizona
12 PRESIDING OFFICERS: Jerry L. Rudibaugh
13 Jane L. Rodda
14 APPEARANCES: Mr. Kenneth C. Sundlof, Jr., JENNINGS STROUSS &
15 SALMON, PLC, on behalf of New West Energy; and
16 Mr. Christopher Kempley, Assistant Chief Counsel and
17 Ms. Teena Wolfe, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. In Decision No. 61944 (September 17, 1999) the Commission granted New West
23 energy Corporation ("NWE") a Certificate of Convenience and necessity as an Electric Service
24 Provider pursuant to A.A.C. R14-2-1601 *et seq.* NWE is a competitive electric affiliate of the Salt
25 River Project ("SRP").

26 2. Pursuant to Decision No. 61944, NWE filed a Code of Conduct on November 16,
27 1999.

1 3. Pursuant to a Procedural Order dated December 3, 1999, interested parties were
2 ordered to file comments to NWE's proposed Code of Conduct by January 10, 2000, and NWE was
3 ordered to file a final proposed Code of Conduct by February 7, 2000.

4 4. Pursuant to the December 3, 1999 Procedural Order, the Residential Utility Consumer
5 Office ("RUCO"), APS Energy Services Company, Inc., Utility.com , Arizona Public Service
6 Company ("APS"), and Commission Utilities Division Staff ("Staff") filed comments to NWE's
7 proposed Code of Conduct.

8 5. Upon the Motion of NWE and Staff, a Procedural Order dated February 3, 2000
9 extended NWE's deadline for filing a final proposed Code of Conduct until fifteen days following the
10 Commission's final Order on the APS' Code of Conduct. The February 3, 2000 Procedural Order
11 gave interested parties ten days following NWE's submission of a final proposed Code of Conduct to
12 file additional comments, including recommendations for a hearing.

13 6. The Commission entered a final Order approving the APS Code of Conduct on April
14 3, 2000, in Decision No. 62146. Thereafter, NWE filed its final proposed Code of Conduct on April
15 18, 2000.

16 7. New Energy Southwest, LLC ("New Energy"), APS Energy Services, APS and Staff
17 filed comments to NWE's final proposed Code of Conduct.

18 8. In its comments filed April 28, 2000, Staff recommended a change to Section XII of
19 the Code concerning joint marketing and recommended that an evidentiary hearing not be held. In
20 comments filed May 5, 2000, APS Energy Services stated that it had engaged in discussions with
21 NWE that would result in NWE modifying its final proposed Code of Conduct to address concerns
22 about joint employment and marketing, a prohibition on joint websites and the purchase of tariffed
23 services from SRP. Based on the parties' agreement concerning these areas, APS Energy Services
24 supported NWE's proposed Code of Conduct and did not believe a hearing was necessary. New
25 Energy's comments filed on April 28, 2000 recommended that the Commission amend the proposed
26 Code of Conduct to separate NWE from the SRP merchant function, to address competitive bundled
27 offerings being made to standard offer customers and to request SRP to only provide competitive
28 bundled offerings through a licensed energy service provider.

1 9. On May 5, 2000 NWE filed its Second Revision of its Proposed Code of Conduct
2 which incorporates the agreement with APS Energy Services and Staff's comments concerning
3 Section XII. A copy of NWE's revised final proposed Code of Conduct is attached hereto as Exhibit
4 A, and incorporated by reference.

5 10. By Procedural Order dated May 19, 2000, public comment hearings on NWE's Code
6 of Conduct were held on June 20, 2000 in Tucson, Arizona, and on June 21, 2000 in Phoenix,
7 Arizona.

8 11. NWE's revised proposed Code of Conduct does not contain a definition of "P&P" the
9 Policies and Procedures manual which implements the provisions of the Code of Conduct, nor does it
10 contain a prohibition on NWE's use of "Confidential Customer Information" as defined in the Code
11 without customer authorization.

12 12. It is reasonable and in the public interest to modify NWE's revised proposed final
13 Code of Conduct to include provisions addressing the omissions identified in Findings of Fact No.
14 11.

15 13. NWE's proposed final Code of Conduct applies to the conduct of NWE, and
16 incorporates the Code of Conduct adopted by SRP, although to the extent the provisions of the SRP
17 Code of Conduct conflict with the terms of the NWE Code of Conduct, the NWE Code of Conduct
18 shall govern.

19 14. NWE's proposed Code of Conduct prohibits SRP NC (the division and personnel of
20 SRP which do not provide Competitive Services) from subsidizing NWE.

21 15. NWE's proposed Code of Conduct, as modified herein, includes provisions governing
22 separation of books and records; the use of confidential information; the joint employment of
23 personnel; the use of SRP's name or logo in advertising materials, the use of telephone numbers and
24 websites; nondiscrimination; joint advertising, marketing, and sales; representations regarding quality
25 of service; and complaint resolution.

26 16. NWE's proposed Code of Conduct also addresses procedures governing transactions
27 between SRP and NWE.

28 17. NWE's proposed Code of Conduct requires that NWE develop Policies and Procedures to

1 address the implementation of this Code of Conduct, and provides that the Commission shall approve
2 the Policies and Procedures. If the Commission, or its designee, takes no action within 60 days of its
3 filing, the Policies and Procedures shall be deemed approved.

4 18. NWE's proposed Code of Conduct provides that that after the initial approval of the
5 Policies and Procedures, NWE may not make substantial changes to it without seeking prior approval
6 of the Commission or its designee. Once NWE has notified the Commission of an intended
7 modification, if no action is taken by the Commission within 30 days of filing, the modification shall
8 be deemed approved.

9 **CONCLUSIONS OF LAW**

10 1. NWE is a public service corporation within the meaning of Article XV, Section 3 of
11 the Arizona Constitution, and A.A.C. R14-2-1601, *et seq.*

12 2. Notice of the proceeding was provided as required by law.

13 3. The modifications to the Code of Conduct as set forth in Findings of Fact No. 11 are
14 reasonable and should be adopted.

15 4. NWE's revised proposed Code of Conduct attached as Exhibit A, as modified herein,
16 satisfies the requirements of A.A.C. R14-2-1616 and is supported by the evidence in this proceeding.

17 5. The Policies and Procedures developed to implement the Code of Conduct are to be
18 consistent with the proposed Code of Conduct and may be amended in accordance with the
19 procedures set forth therein.

20 **ORDER**

21 IT IS THEREFORE ORDERED that that New West Energy Corporation's proposed Code of
22 Conduct attached hereto as Exhibit A, and as modified herein, is approved.

23 IT IS FURTHER ORDERED that New West Energy Corporation shall file a revised Code of
24 Conduct that complies with the modifications approved herein within ten days of the effective date of
25 this Decision.

26 IT IS FURTHER ORDERED that that New West Energy Corporation shall submit Policies
27 and Procedures to implement the Code of Conduct to the Commission for approval within 60 days of
28 the date of this Decision.

1 IT IS FURTHER ORDERED that this Decision and the proposed Code of Conduct, as
2 modified herein, shall become effective immediately.

3 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
4

5
6 CHAIRMAN

COMMISSIONER

COMMISSIONER

7
8 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
9 Secretary of the Arizona Corporation Commission, have
10 hereunto set my hand and caused the official seal of the
11 Commission to be affixed at the Capitol, in the City of Phoenix,
12 this ____ day of _____, 2000.

13
14 _____
15 BRIAN C. McNEIL
16 EXECUTIVE SECRETARY

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1 SERVICE LIST FOR:

NEW WEST ENERGY CORPORATION

2 DOCKET NOS.:

E-03685A-99-0008

3 Service List for RE-00000C-94-0165

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5 Lyn Farmer, Chief Counsel
6 LEGAL DIVISION
7 1200 W. Washington Street
8 Phoenix, Arizona 85007

9 Deborah Scott, Director
10 UTILITIES DIVISION
11 1200 W. Washington Street
12 Phoenix, Arizona 85007

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EXHIBIT A

NEW WEST ENERGY CODE OF CONDUCT

I. Definitions

The following terms in the Code of Conduct shall have the following meanings:

“NWE” shall mean New West Energy Corporation as it currently exists, as its name may be changed, or as any successor enterprise.

“SRP” shall mean Salt River Project as it currently exists, as its name may be changed, or as any successor enterprise.

“SRP NC” shall mean the divisions and personnel of SRP which do not provide Competitive Services.

“Bill” shall mean the billing invoice for noncompetitive services.

“Competitive Services” shall mean those services described in A.A.C. R14-2-1601(7).

“Confidential Customer Information” shall mean any customer-specific information obtained by SRP NC as a result of SRP NC providing noncompetitive services. Confidential Customer Information also includes non public customer-specific information obtained by SRP NC from customers of special districts and public power entities on behalf of such special districts and public power entities.

“Confidential Information” means Confidential Customer Information as that term is defined in this Code of Conduct and any other information obtained through the provision of Noncompetitive Services that would provide a competitive advantage to NWE.

“Distribution Service” shall mean those services described in A.A.C. R14-2-1601(14).

“Electric Competition Rules” shall mean A.A.C. R14-2-1601 to -1617 as attached to this Code of Conduct, including all future amendments and modifications.

“Noncompetitive Services” shall mean those services described in A.A.C. R14-2-1601(29).

“Same Terms” shall mean that SRP, as required by its Code of Conduct, shall provide noncompetitive services to NWE and Third Parties on the same terms and conditions.

“Third Party” shall mean any electric service provider that does not fall within the definition of “NWE”.

II. Applicability of Code of Conduct

The following rules shall apply to the Conduct of NWE. All employees and authorized agents of NWE shall conduct their activities in compliance with the requirements of this Code of Conduct.

III. Incorporation of SRP's Code of Conduct

The Code of Conduct adopted by SRP, as it may be amended from time to time by the SRP Board of Directors, is hereby incorporated into NWE's Code of Conduct. To the extent that provisions of the incorporated SRP Code of Conduct are in conflict with the terms of this Code of Conduct, the terms of this Code of Conduct shall govern the conduct of NWE.

IV. Use of the Bill and Promotions within the Bill Envelope

- A. NWE shall not use SRP NC's billing services unless SRP NC makes its billing services available to Third Parties upon the same terms.
- B. This provision shall not prevent NWE or any Third Party from including amounts due for noncompetitive services in its own consolidated billing statement, as long as the customer receiving such consolidated billing statement has authorized NWE or a Third Party, as applicable, to act as its agent for such purpose.

V. Customer Telephone Calls

Telephone numbers and websites used by NWE shall be different from those used for SRP NC. NWE shall not use the call center of SRP NC.

VI. Prohibition on Suggestion of Utility Advantage

NWE shall not state in any advertising, promotional materials, or sales efforts that a consumer who purchases services from NWE will receive preferential treatment in the provision by SRP NC of Noncompetitive Services or that any other advantage regarding the provision by SRP NC of Noncompetitive Services will accrue to that customer.

VII. Accounting for Costs

- A. NWE shall ensure that its competitive services are not cross subsidized by SRP NC.
- B. All transactions between NWE and SRP NC shall be accounted for in accordance with NWE's Policies and Procedures (P&P), which shall be developed to describe the cost allocation of all transactions pertaining to NWE and SRP NC in a manner that ensures that there is no subsidization of NWE by SRP NC. Any material

violation of the P&P which would constitute engagement in unlawful anticompetitive behavior shall constitute a violation of this Code of Conduct.

- C. The initial P&P shall be submitted to the Commission for review and approval. If no action is taken by the Commission or its designee within 60 days of the filing, the P&P shall be deemed approved. Beginning one year from the date of approval of the P&P, NWE shall notify the Commission by filing annual updates to the P&P, including any and all Commission approved modifications as specified in subsection D, to allocation methods and changes in direct and indirect allocators used in the P&P. If no action is taken by the Commission or its designee within 30 days of its filing, the modification shall be deemed approved.
- D. NWE may not make or implement any material change to the P&P without seeking the prior approval of the Commission or its designee. Once notification is made by NWE of an intended modification, if no action is taken by the Commission or its designee within 30 days of its filing, the modification shall be deemed approved.

VIII. Reporting Requirements

NWE shall submit the following to the Commission on at least an annual basis:

- A. A report detailing all allocation methods used in the P&P and all modifications to these allocation methods.
- B. A report detailing all of the direct and indirect allocators used in the P&P and all modifications to these allocators, such that a history of allocator evolution may be maintained.
- C. A report detailing confidential customer information that was obtained by NWE from SRP NC. Such a report shall include the type of information and the date of customer consent. It shall also specify whether the information was obtained from a Direct Access Service Request or another source. If the information was not obtained through a Direct Access Service Request, NWE shall name the source of the information transfer.
- D. A report detailing the costs allocated to NWE from SRP NC and the basis for the cost allocation.
- E. A copy of the annual external audit provided to SRP as referenced in Subsection 6 of the "Directive to Management" Section of SRP's Code.

IX. Separation Requirements

- A. NWE and SRP shall keep separate books and records. NWE shall keep accounting records that set forth appropriate cost allocations between SRP NC

and NWE. All NWE records shall be kept in accordance Generally Accepted Accounting Principles. As a precondition to transacting any business with SRP NC, books and records of NWE must be made available for inspection by the Arizona Corporation Commission to the extent reasonably necessary to determine compliance with this Code of Conduct.

- B. NWE and SRP shall not jointly employ the same employees; provided, however, that NWE and SRP may have common officers and directors (which shall include the SRP General Manager and direct executive reports to the General Manager) for corporate support, oversight, and governance, but SRP officers directly responsible for Noncompetitive operational matters shall not serve as officers or directors of NWE. Common officers and directors shall not utilize Confidential Information obtained through the provision of Noncompetitive Services to provide a competitive advantage to NWE. Contracts for services accounted for in conformance with Section X shall not constitute prohibited joint employment if measures are taken to prevent the transfer of Confidential Information between SRP and NWE.

X. Transfers of Goods and Services

- A. NWE shall purchase tariffed goods and services from SRP at the rates and under the terms and conditions set forth in the tariff.
- B. If NWE buys from SRP NC nontariffed goods and services that were developed by SRP NC for sale in the market, the transfer price shall be the fair market value.
- C. All other transfers of nontariffed goods and services from SRP NC to NWE shall be at the higher of fully allocated cost or fair market value.
- D. If NWE sells any goods and services to SRP NC that were developed for sale by NWE in the market, the transfer price shall be the fair market value.
- E. All other transfers of goods and services from NWE to SRP NC shall be at the lower of fully allocated cost or fair market value.

XI. Transfers of Assets

- A. Transfers of assets from SRP NC to NWE or contracts for NWE's use of SRP NC's assets, shall be at the higher of book value or fair market value.
- B. Transfers of assets from NWE to SRP NC or contracts for SRP NC's use of NWE's assets shall be at the lower of book value or fair market value.

XII. Joint Marketing

- A. The name or logo of SRP shall not be used in promotional advertising materials circulated by NWE. Nothing in this section shall prohibit NWE from providing factual information regarding the corporate structure and corporate functions of its parent company.
- B. NWE and SRP NC shall not jointly market their respective services.

XIII. Procedure for Modification of the Code of Conduct

NWE or any other interested party, including Commission Staff, may request modifications to its Code of Conduct by filing an application with the Commission. The application shall set forth the proposed modifications and the reasons supporting them.

XIV. Dispute Resolution

To the extent permitted by law, complaints concerning violations of this Code of Conduct shall be processed under the procedures established in R14-2-212.