

**APPENDIX C**

**CONCISE EXPLANATORY STATEMENT**

**A. CHANGES IN THE TEXT OF THE PROPOSED RULES FROM THAT CONTAINED IN DECISION NO. 61272 (PUBLISHED ON JANUARY 22, 1999, VOL. 5, ISSUE 4 OF THE ARIZONA ADMINISTRATIVE REGISTER).**

The following sections have been modified as indicated in the text of the rules set forth in Appendix A hereto, and incorporated herein by reference:

- Article 2. Electric Utilities
  - R14-2-201 Definitions
  - R14-2-202 Certificate of Convenience and Necessity for electric utilities; filing requirements on certain new plants
  - R14-2-204 Minimum customer information requirements
  - R14-2-210 Billing and collection
  - R14-2-211 Termination of service
- Article 16. Retail Electric Competition
  - R14-2-1601 Definitions
  - R14-2-1602 Filing of Tariffs by Affected Utilities – replaced by Commencement of Competition
  - R14-2-1603. Certificates of Convenience and Necessity
  - R14-2-1604. Competitive Phases
  - R14-2-1605. Competitive Services
  - R14-2-1606. Services Required To Be Made Available
  - R14-2-1607. Recovery of Stranded Cost of Affected Utilities
  - R14-2-1608. System Benefits Charges
  - R14-2-1609. Solar Portfolio Standard
  - R14-2-1610. Transmission and Distribution Access
  - R14-2-1612. Rates

- R14-2-1613. Service Quality, Consumer Protection, Safety, and Billing Requirements
- R14-2-1614. Reporting Requirements
- R14-2-1615. Administrative Requirements
- R14-2-1616. Separation of Monopoly and Competitive Services
- R14-2-1617. Affiliate Transactions
- R14-2-1618. Disclosure of Information

**B. EVALUATION OF THE ARGUMENTS FOR AND AGAINST THE PROPOSED RULES**

**R14-2-201 Definitions**

Issue: To clarify terms that are defined in Article 16, but used in Article 2, ASARCO Incorporated, Cyprus Climax Metals Co., Enron Corp. and Arizonans for Electric Choice and Competition (“ASARCO et al.”) proposed adding after the first sentence of section 201 “In addition, the definitions contained in Article 16, Retail Electric Competition, shall apply in this Article unless the context otherwise requires.”

Evaluation: We concur with ASARCO et al.

Resolution: Insert the above language.

**R14-2-202 Certificate of Convenience and Necessity**

Issue: Sempra Energy Trading Corp. (“Sempra”) proposed that section 202(A)(1)(b) be revised to refer to “maximum rates.” In its exceptions, The Arizona Corporation Commission Utilities Division Staff (“Staff”) argued that this section does not apply to competitive services and the word “maximum” is not appropriate.

Evaluation: We concur with Staff.

Resolution: No change is required.

Issue: Arizona Public Service Company (“APS”) recommended deleting all of section 202(B) because a recent change in A.R.S. § 40-360.02 removed the requirement of filing information regarding generation plants.

Evaluation: We concur with APS.

Resolution: Delete section 202(B) and renumber accordingly.

#### **R14-2-203(B)**

Issue: Citizens Utility Company (“Citizens”) recommended adding section 203(B)(9) as follows: “If a Utility Distribution Company’s customer with an established deposit elects to take competitive services from an Electric Service Provider, and is not currently delinquent in payments to the Utility Distribution Company, the Utility Distribution Company will refund a portion of the customer’s deposit in proportion to the expected decrease in monthly billing. A customer returning to Standard Offer Service may be required to increase an established deposit in proportion to the expected increase in monthly billing.”

APS proposed replacing “shall” with “may” in section 203(B)(2), as APS does not issue a receipt when deposits are made over the phone or as a credit card transaction.

The Arizona Community Action Association (“ACAA”) recommended including a consumer group in the process of developing a label format and reporting requirements.

Evaluation: We concur with Citizens and APS. We believe that ACAA’s concerns are addressed in section 1618.

Resolution: Modify section 203(B)(2) as discussed above. No further changes are required.

#### **R14-2-204 Minimum customer information requirements**

Issue: Sempra proposed that 60 days be changed to 15 days because 60 days is not responsive to customer needs.

Evaluation: We concur.

Resolution: Replace “60” with “15”.

**R14-2-209 Meter Reading**

Issue: ASARCO et al. proposed changing the acceptable error allowance for meters from 3% to 1%.

APS recommended inserting “kW only” before meters in section 209(A)(1), as APS noted there is no way for a customer to reset a demand or read numerous dials such as time-of-use meters.

Sempra recommended adding “Meter Reading Service Provider” to section 209(D).

Trico Electric Cooperative, Inc. (“Trico”) recommended deleting sections 209(A)(6) and (8) and (F) to prevent metering, meter reading, and billing and collection from being competitive services because historically they are part of distribution services. Trico also recommended deleting references to Electric Services Providers (“ESPs”) in sections 209(C) and 210(B) and (E).

Evaluation: Based on our initial review of the comments of ASARCO et al., we are not convinced that changes are necessary. We do not agree with Trico’s position that metering services should not be competitive. This section is sufficiently clear without further modifications.

Resolution: No change is required.

**R14-2-210 Billing and Collection**

Issue: APS proposed replacing “authorization” with “notification” in section 210(A)(1), as APS agreed that a customer should be notified, but that it was impractical to obtain written authorization. APS recommended a new section 210(A)(3)(f) as follows: “When the Company gives customers prior notification that actual reads for kWh meters will be made on a less frequent basis.”

APS argued this would produce cost reduction measures in situations where monthly readings are not cost-effective. APS recommended deleting section 210(A)(5)(b).

Trico proposed inserting “unbundled” before “rates” and adding “except for Standard Offer services” in section 210(B)(2)(k). Trico recommended the deletion of section 210(E)(3) because it places a time limitation on the commencement of a civil action to enforce a constitutional right.

Tucson Electric Power Company (“TEP”) recommended deleting section 210(A)(5)(c), because such bills can be estimated in accordance with section 209(A)(8) and section 1613(K)(14).

TEP recommended inserting “(if measured)” after “demand” in section 210(B)(2)(c) as TEP does not measure demand for residential customers.

TEP proposed deleting “residential” from section 210(G)(1) to allow levelized billing plans to customers other than residential.

New West Energy (“NWE”) claimed that the provisions of section 210 are overly technical and should not be included in the rules, and also argued that this section does not clarify who has the right to bill a customer.

The Residential Utility Consumer Office (“RUCO”) proposed that section 210(C)(1) be modified to provide that bills be due no sooner than 15 days after rendered.

RUCO argued that the first sentence of section 210(E)(1) is duplicative of language included in section 209(F).

Evaluation: We concur with RUCO’s recommendation to delete the first portion of section 210(E)(1) and with TEP’s proposal regarding sections 210(B)(2)(c) and (G)(1). We believe APS’ proposals do not afford the consumer adequate protections and we do not accept NWE’s and Trico’s arguments. Based on our initial review of the other comments, we are not convinced that additional changes are necessary.

Resolution: Delete the first two sentences of section 210(E)(1). Insert “(if measured)” after “demand” in section 210(B)(2)(c) and delete “residential” in section 210(G)(1).

#### **R14-2-211 Termination of service**

Issue: APS recommended replacing “reasonable” with “mutually agreed” in section 211(A)(d), to avoid the ambiguity of the word “reasonable”. In its exceptions, Staff argued that “reasonable” should remain because the term “mutually agreed” would disadvantage consumers.

Sempra recommended changing sections 211(B)(1) and (C)(1) to permit an ESP to order a disconnect for non-payment to prevent customers from hopping from ESP to ESP to avoid payment. Sempra also recommended adding “and/or ESP” throughout this provision.

Evaluation: We concur with Staff regarding the word “reasonable.” We do not believe that an ESP should be allowed to order disconnection.

Resolution: No change is required.

#### **R14-2-213 - Conservation**

Issue: TEP recommended deleting section 213 because TEP argued it is premature to enact

this provision until it can be made statewide in conjunction with the legislature, and because the Commission will be revisiting the Integrated Resource Planning rules in light of the move to competition.

Evaluation: Based on our initial review, we are not convinced that changes are necessary.

Resolution: No change is required.

**R14-2-1601 Definitions<sup>1</sup>**

Issue: The City of Tucson (“Tucson”) recommended adding a new definition for the term “customer.” Tucson did not elaborate on the need for such addition.

Evaluation: The rules are clear without the proposed new definition.

Resolution: No change required.

**1601(4) - Buy Through**

Issue: APS and TEP recommended deleting the definition of “Buy-Through”. New Energy Ventures Southwest, LLC (“NEV”) argued that buy-throughs should not be allowed because they allow Utility Distribution Companies (“UDCs”) to compete in the competitive market and they are unnecessary because the Rules (section 1604(F)) already permit customers under contract to access the competitive market.

Evaluation: We concur with APS, TEP and NEV. The rules have been clarified to provide that beginning January 1, 2001, Affected Utilities and UDCs may not provide Competitive Services. To permit buy-throughs prior to January 1, 2001 appears to be a method to avoid the 20 percent cap during transition to full competition.

Resolution: Delete section 1601(4), and renumber accordingly.

**1601(5) Competition Transition Charge (CTC)**

Issue: Mohave Electric Cooperative, Inc. and Navopache Electric Cooperative, Inc. (collectively “Mohave and Navopache”) recommended adding language to the definition of Competition Transition Charge (“CTC”) that would allow the recovery of costs incurred by the Affected Utilities to implement the Competition Rules. RUCO proposed changing the definition of CTC to clarify that it will be recovered from all customers. In its exceptions, the Arizona Transmission Dependent Utility Group (“ATDUG”) commented that deleting “from the customers of competitive services” would result in Standard Offer Service customers subsidizing customers taking Competitive Services.

Evaluation: The CTC should be collected from all customers, whether in Standard Offer

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<sup>1</sup> This and all following Rule number references are to the Rule numbers as they appear in the Rules as contained in Decision No. 61272 (December 11, 1998), and not necessarily to the Rules as they were re-numbered after the proposed changes.

Service rates or from customers taking competitive services. The CTC charge to Standard Offer Service customers should not be an additional charge, but the portion of customers' Standard Offer Service bills that is going toward Stranded Costs should be identified on Standard Offer Service bills as required by section 1613(O). Mohave and Navopache's concerns are addressed in section 1607 concerning the determination of the CTC. Clarification of the Rules to specifically provide that Standard Offer Service customers will not be paying the CTC twice is necessary. However, the definition is clear as it is. The Rules should be amended in the sections concerning Stranded Cost and Standard Offer Service tariffs to clarify that the CTC appearing on Standard Offer Service customer bills will not result in double payment of Stranded Cost by those customers.

Resolution: Delete the words "from the customers of competitive service". Add language to section 1606(C) and section 1607(G) to clarify that the CTC appearing on Standard Offer Service customer bills will not result in Standard Offer Service customers paying for Stranded Cost both in Standard Offer Service charges and in the separate CTC.

#### **1601(6) Competitive Services**

Issue: Trico recommended the following definition for competitive services: "the retail sale of electricity obtained from the generation of electricity from generators at any location whether owned by the provider of Competitive Services or purchased from another generator or wholesaler of electric generation except Standard Offer service."

Evaluation: Trico's proposed definition is not sufficiently comprehensive.

Resolution: No change is required.

#### **1601(8) - Consumer Information**

Issue: RUCO proposed that the definition of "Consumer Information" be renamed "Consumer Education." RUCO noted that the use of "Consumer Information" in the definition is inconsistent with the use of those words in section 1618.

Evaluation: We agree that the term as used here is more properly called "Consumer Education."

Resolution: Replace "Information" with "Education". Capitalize Competitive and Noncompetitive Services.

**1601(10) Direct Access Service Request (DASR)**

Issue: APS proposed deleting the words “or the customer” at the end of section 1601(10) to exclude requests by the end-user because Staff’s changes to APS’ proposed Schedule 10, which were adopted by the Commission, eliminate the possibility of a direct access request by a customer. TEP proposed deleting “the customer” and inserting “self aggregator.” NEV proposed inserting “and the customer’s current Electric Service Provider” after “Utility Distribution Company” in section 1601(10) because it would be more efficient for ESPs to submit DASRs for the ESP’s customer.

Evaluation: It is more efficient for a customer’s ESP to submit the DASR to the Utility Distribution Company (“UDC”). All Aggregators are ESPs under the rules, thus no other changes are required.

Resolution: Delete “or the customer” at the end of section 1601(10).

**1601(13) Distribution Service**

Issue: Trico proposed changing the definition of “Distribution Service” to exclude metering service, Meter Reading Service and billing and collection services.

Evaluation: Trico’s concerns are already addressed in the definition.

Resolution: No change is required.

**1601(15) Electric Service Provider (ESP)**

Issue: Trico proposed modifying section 1601(15) to delete reference to sections 1605 and 1606.

Evaluation: We concur. We have attempted to revise the rules herein as necessary to eliminate ambiguity and the possibility of conflicting definitions. As the definitions formerly contained in sections 1605 and 1606 have now been incorporated into the definition of “Competitive Services” in section 1601, this conforming change is necessary.

Resolution: Replace “of the competitive services described in R14-2-1605 or R14-2-1606,” with “Competitive Services”.

**1601(16) Electric Service Provider Acquisition Agreement**

Issue: NWE recommended modifying the definition of “Electric Service Provider

Acquisition Agreement” to mean a standardized, Commission-approved agreement between an Affected Utility and an ESP. NWE argued that the certification process for ESPs hinders competition and argued in favor of standardized agreements as a way to control the technical and financial viability of competitors.

Evaluation: We do not believe the certification process to be overly burdensome or anti-competitive.

Resolution: No change is required.

### **1601(17) - Generation**

Issue: Calpine Power Services (“Calpine”) proposed modifying the definition of generation to the “retail sale of electricity power”. Calpine wanted to distinguish the sale of electrons from the sale of other services.

Evaluation: The current definition is sufficiently clear.

Resolution: No change is required.

### **1601(18) Green Pricing**

Issue: TEP, APS and NEV recommended broadening the definition to include renewable resources other than solar. TEP also recommended deleting “offered by an Electric Service Provider” because “green pricing” should not be limited to ESPs.

Evaluation: We concur that green pricing should apply to all renewable resources.

Resolution: Delete “solar generated” and insert “generated by renewable resources” after “electricity”.

### **1601(19) Independent Scheduling Administrator**

Issue: TEP and ASARCO et al. recommended deleting the words “a proposed entity” from the definition of the ISA, as the Arizona Independent System Administrator has been formed.

Evaluation: We concur.

Resolution: Delete “a proposed” and insert “an”.

### **1601(22) Load-Serving Entity**

Issue: The Arizona Utility Investors Association (“AUIA”) argued that this definition conflicted with the definition of “Aggregators”. APS recommended deleting the words “or

Aggregators” from the end of the definition of “Load-Serving Entity” because aggregators are defined as being ESPs, so that the only “Aggregators” being referenced in this section are “self-aggregators” a concept that no longer has relevance. NEV also recommended deleting “or Aggregators.”

Evaluation: The inclusion of the term “Aggregators” here is redundant and confusing.

Resolution: Delete “or Aggregators” at the end of the sentence and insert “and” before “Meter Reading Service Provider.”

#### **1601(24) Meter Reading Service Provider**

Issue: APS recommended inserting “that provides other ESPs” after “entity” and deleting “providing” to clarify that the “entity” being provided meter reading service is the ESP, not the end-use customer. Trico proposed replacing “an entity” with “a Utility Distribution Company” in both sections 1601(24) and (25).

Evaluation: Trico’s definition is too restrictive. The definition is sufficiently clear without modification.

Resolution: No change is required.

#### **1601(25) Meter Service Provider**

Issue: APS proposed adding the words “to other ESPs” to the end of the definition.

Evaluation: The definition is sufficiently clear without modification.

Resolution: No change is required.

#### **1601(27) Must-Run Generating Units**

Issue: To recognize FERC’s role in the determination of Must-Run Generating Units, Calpine proposed adding the words “as may be determined by the Federal Energy Regulatory Commission” to the end of the definition. In exceptions, Staff suggested inserting “local generating” between “those” and “units” for clarification. Staff also opposed, as did ASARCO et al. and ATDUG in their exceptions, the inclusion of the phrase “as may be determined by the Federal Energy Regulatory Commission” within this definition.

Evaluation: We agree with Staff that clarification as to the location of Must-Run Generating Units is necessary. We also agree with Staff, ASARCO et al., and ATDUG that the

phrase “as may be determined by the Federal Energy Regulatory Commission” is not appropriate within this definition.

Resolution: Insert “local generating” between “those” and “units”.

#### **1601(28) Net Metering or Net Billing**

Issue: ASARCO et al. and RUCO recommended eliminating this definition as it is not needed with the elimination of the Solar Portfolio requirement. NEV recommended adding “or other approved renewable generators.”

Evaluation: This term is not necessary after the elimination of the solar portfolio requirements.

Resolution: Delete section 1601(28) and renumber accordingly.

#### **1601(29) Noncompetitive Services**

Issue: Mohave and Navopache recommended adding the following to the end of the definition of “Noncompetitive Services”: “Metering, meter ownership, meter reading, billing, collections and information services are deemed to be non-competitive services in the service territories for distribution cooperatives.” Mohave and Navopache argued that it is necessary that the relationships and communication links between a cooperative and its members/customers be maintained for membership, voting and other purposes.

ASARCO et al. recommended inserting the word “certain” before “Federal Energy Regulatory Commission” and the words “which are precluded from being competitive” after “ancillary services”, as certain FERC-required ancillary services may be competitive.

Trico proposed that this definition should be simply “all aspects of retail electric service except Competitive Services.”

APS recommended placing a comma after “Standard Offer Service”. APS argued that otherwise, the sentence has a completely different meaning.

TEP proposed adding the words: “or other services approved by the Commission as “noncompetitive” at the end of the first sentence.

NEV proposed inserting “which are only allowed to be provided by an Affected Utility or a Utility Distribution Company pursuant to” before “R14-2-1613K”.

In its exceptions, APS argued that because competitive ESPs will be providing customer demand and energy data to other ESPs, provision of this information will not be a “Noncompetitive Service”.

Evaluation: This definition needs clarification and should incorporate all the definitions of Noncompetitive Services found elsewhere throughout the Rules. This definition should also clarify that providing customer demand and energy data to ESPs is a Noncompetitive Service when provided by an Affected Utility or UDC. The second sentence of this definition more properly belongs with the definition of “Standard Offer Service” in section 1601. Based on our initial review, Mohave and Navopache’s suggested language is unnecessary.

Resolution: Place a comma after “Standard Offer Service”, incorporate all definitions of Noncompetitive Services found elsewhere in the Rules, insert “by a Utility Distribution Company” between “energy data” and “to Electric Service Providers,” and move the second sentence to the definition of “Standard Offer Service” in section 1601. In addition, for clarity, replace “Federal Energy Regulatory Commission-required ancillary services” with “any ancillary services deemed to be non-competitive by the Federal Energy Regulatory Commission”.

### **1601(33) Provider of Last Resort**

Issue: Arizona Electric Power Cooperative, Inc., (“AEPCO”), in its exceptions, recommended that the definition of “Provider of Last Resort” be modified in order to clarify the limitation on the UDCs’ obligation to serve as Providers of Last Resort.

Evaluation: It is important that the Rules conform to State legislation regarding the kWh limitation on the UDCs’ obligation to serve as Providers of Last Resort. We agree with AEPCO’s recommendation in its exceptions that such language should be added to the definition of “Provider of Last Resort”.

Resolution: Insert “whose annual usage is 100,000 kWh or less and” between “area” and “who”.

### **1601(36) Self-Aggregation**

Issue: APS recommended deleting the definitions of “self-aggregation” as APS noted the concept was eliminated by Staff’s amendments to APS’s proposed schedule 10. According to APS,

Staff's amendments require all customers to obtain aggregation service through an ESP.

Evaluation: We concur.

Resolution: Delete section 1601(36) and renumber accordingly.

### **1601(37) Solar Electric Fund**

Issue: TEP, APS, AEPCO, Duncan Valley Electric Cooperative, Inc. ("Duncan"), and Graham County Electric Cooperative, Inc. ("Graham"), ASARCO et al. and RUCO recommended deleting the definition of "Solar Electric Fund" consistent with their recommendation to eliminate the Solar Resource Portfolio.

Evaluation: We concur. See the discussion for section 1609.

Resolution: Delete section 1601(37) and renumber accordingly.

### **1601(38) Standard Offer Service**

Issue: The definition of Standard Offer Service requires expansion to conform with clarifying amendments elsewhere in the Rules.

Evaluation: This definition should clarify that Standard Offer Service includes demand side management services, including but not limited to time-of-use. The second sentence of the definition of Noncompetitive Services more properly belongs with this definition and should be moved here.

Resolution: Delete the comma after "billing"; insert "and" between "billing" and "collection services"; insert ", demand side management services including but not limited to time-of use," after "collection services"; delete "other" before "consumer information services"; insert "All components of Standard Offer Service shall be deemed noncompetitive as long as those components are provided in a bundled transaction pursuant to R14-2-1606(A)." at the end of this definition.

### **1601(39) Stranded Cost**

Issue: APS recommended replacing "value" with "net original cost" in section 1601(39)(a)(i), and adding a section 1601(39)(d) as follows: "Other transition and restructuring costs as approved by the Commission." APS argued that the possibility of recovering such costs was allowed by Decision No. 60977.

ASARCO et al. recommended adding the following after the words "generation assets": "at

a sales price at or above the minimum bid price for each asset approved by the Commission as necessary to effect divestiture without incurring transition costs that would cause the delivered price of power to customers to be greater under competition than under regulation.” ASARCO et al. argued that Affected Utilities must not be allowed to use divestiture as a means to dispose of uneconomic investments at the expense of consumers.

TEP proposed that the date should be changed to the start-date for electric competition, as proposed by TEP, of October 1, 1999.

Trico proposed deleting “(such as generating plants, purchased power contracts, fuel contracts, and regulatory assets),” and “or entered into prior to December 26, 1996,” in section 1601(39)(a)(i). Trico argued that Stranded Cost should not be restricted to Stranded Cost as to generation assets only. Trico proposed adding “and reasonable employee severance and retraining costs necessitated by electric competition where not otherwise provided.” Trico also argued that the Commission does not have the authority to mandate divestiture.

Evaluation: We concur with APS that clarifying “value” and including “other Commission-approved transition costs” are warranted. However, to avoid the possibility of an Affected Utility seeking additional Stranded Cost recovery after its Stranded Cost determination pursuant to section 1607, we will limit recovery of transition and restructuring costs to those costs which can be proved at the Affected Utility’s Stranded Cost proceeding. The date should not be changed as suggested by TEP. Trico’s concerns are already addressed in the Rule. ASARCO et al.’s concerns will be addressed in each Affected Utility’s Stranded Cost proceeding.

Resolution: Replace “value” in section 1601(39)(a)(i) with “net original cost” and insert a new section 1601(39)(d) as follows: “Other transition and restructuring costs as approved by the Commission as part of the Affected Utility’s Stranded Cost determination pursuant to R14-2-1607.”

#### **1601(40) System Benefits**

Issue: AEPCO, with the support of Trico, Duncan and Graham, argued that section 1601(40) should be modified to include fossil plant decommissioning costs, and suggested examples of “market transformation” costs. APS proposed adding “customer education” to the definitions of System Benefits.

Citizens recommended a new definition for “Market Transformation” as follows: “activities by a Utility Distribution Company to transform its business processes and enable its customers to take competitive services offered by Electric Service Providers.” Citizens stated that the costs for required new functions should be submitted to the Commission for review and recovery. Alternatively, Citizens recommended the following additional subpart to the definition of Stranded Costs to allow for the recovery of these costs of competition: “Costs for new Utility Distribution Company functions (such as customer education and modifications and additions to key business processes) necessitated by the introduction of competition”.

Citizens also recommended adding the following additional subsection to the definition of Stranded Costs: “Costs associated with metering, meter reading, billing, collections and other consumer information services rendered unrecoverable by the introduction of competition for these services.”

ASARCO et al. proposed adding to the end of the definition of System Benefits the following: “provided, however, that systems benefits charges associated with nuclear power should be applied only to customers of utilities receiving power from nuclear power plants.”

Calpine proposed that the definition of “System Benefits” should include the language “may include Commission-approved utility low income and demand side management programs.” Calpine noted that System Benefits will vary among Affected Utilities, and that the notion of “market transformation” costs as being recovered beyond the Stranded Cost recovery period, or in addition to any CTC charge, would distort the market environment.

RUCO recommended the elimination of “market transformation” and “long-term public benefit research and development and nuclear power plant decommissioning” before “programs”.

TEP proposed adding “non-nuclear” decommissioning programs and other programs approved by the Commission.

In its exceptions, Calpine pointed out that the defined term “System Benefits” should replace the definitional language that currently appears in section 1608(A).

Evaluation: We agree that any unmitigated recovery of market transformation costs, apart from consumer education, should be recovered as Stranded Cost. We also agree that System

Benefits should include consumer education. Calpine’s observation regarding use of the defined term “System Benefits” in section 1608(A) is well taken. The definitional language from section 1608(A) should appear in the definition of “System Benefits” rather than in section 1608(A).

Resolution: Insert “consumer education” after “demand side management,” and delete “market transformation”. Modify the definition of “System Benefits” in section 1601 to include terms appearing in section 1608(A). Replace definitional language appearing in section 1608(A) with the defined term “System Benefits”.

#### **1601(43) Unbundled Service**

Issue: APS proposed adding “/or” before “priced separately” because not all electric service elements that are “priced” by a UDC can be provided by an ESP on a stand-alone basis. Trico proposed that Unbundled Service mean “Generation, Transmission (and Ancillary as defined by FERC) and Distribution Service priced separately.”

Evaluation: Trico’s concerns are already addressed in the Rule. Adding “/or” would create ambiguity in this definition. For completeness “Must Run Generation” should be added to this definition.

Resolution: Insert “Must Run Generation” after “as generation, transmission, distribution,”

#### **1601(44) Utility Distribution Company (UDC)**

Issue: APS recommended defining UDC as follows: “the electric utility regulated by the Commission that operates and maintains the distribution system for the delivery of power to the end user point of delivery on the distribution system. For purposes of R14-2-1617, UDC also includes any affiliate of an ESP that would be deemed a UDC if operating in Arizona, and subject to the Commission’s jurisdiction.” APS argued that whomever constructs or owns the distribution system is irrelevant, as operational control is the relevant point. APS argued that its proposed amendments generally exclude non-jurisdictional entities from the definition of UDC, but allow for the equal application of section 1617 to ESPs with out-of-state UDCs or in-state UDCs not subject to the Commission jurisdiction.

Evaluation: We concur with APS, with the exception of its proposed second sentence.

Resolution: Insert APS’ proposed language in the first sentence. Do not include the

second proposed sentence.

**R14-2-1602 Filing of Tariffs by Affected Utilities**

Issue: APS and AEPCO, with the support of Trico, Duncan and Graham, recommended striking the existing language which requires tariffs to be filed by December 31, 1997, as this date is obviously outdated. AEPCO, with the support of Trico, Duncan and Graham, suggested using this Rule to establish a new start date for competition through a separate Order by adopting the following language: “The Commission will, by separate order, establish a coordinated commencement date for competitive services and other requirements established by these Rules.”

ASARCO et al. recommended modifying the date for filing tariffs to March 19, 1999 and adding “such tariffs shall be unbundled to the highest kV service level of the historic retail customer base.” ASARCO et al. argued that customers should only be required to pay those costs that are required for the service they receive.

Evaluation: We agree that this section as currently drafted is meaningless. Consequently, we will delete the existing language and utilize this section to enact a new start date for competition. We agree with the general consensus that competition within an Affected Utility’s service territory cannot start until the issues surrounding that Affected Utility’s Stranded Cost are addressed. The Affected Utilities and other interested parties have proposed a procedural schedule that contemplates resolving the Stranded Cost issues. Consequently, we propose to establish a new start date for competition for each Affected Utility by separate order as part of its Stranded Cost/Unbundled Tariff Proceeding. It is our intent to encourage the Affected Utilities to resolve the Stranded Cost issues by restricting their competitive electric affiliates’ ability to provide competitive services in the service territory of other Affected Utilities until the Affected Utility’s service territory is open to competition by Order of the Commission. If an Affected Utility’s service territory is open for competition prior to January 1, 2001, its customers should have access to competitive services subject to the phase-in schedule of section 1604.

Resolution: Delete the existing provision and replace it with the new section “R14-2-1602-Commencement of Competition”.

Issue: In its exceptions, NEV suggested adding language to the newly proposed section

1602(B) that would prohibit a generation cooperative from competing until the service territory of its member cooperative is open to competition.

Evaluation: We agree that this section should be clarified to include generation affiliates of the electric cooperatives.

Resolution: Insert “or an affiliate of which it is a member” after “electric affiliates”.

## **R14-2-1603 Certificates of Convenience and Necessity**

### **1603(A)**

Issues: AEPCO, with the support of Trico, Duncan and Graham, recommended modifying section 1603(A) to remove the forced divestiture element of section 1616(A). Trico proposed modifying section 1603(A) to omit reference to sections 1605 or 1606 and to delete the last two sentences of section 1603(A). Trico argued that the Rule should be clear that an Affected Utility has the right under its existing Certificate of Convenience and Necessity (“Certificate” or “CC&N”) to provide electric service, and is not required to obtain a CC&N under this Rule.

APS recommended deleting the words “or self aggregation” and “Self Aggregators” and inserting “competitive” before “information” in the first sentence and deleting “services”. In the fourth sentence, APS proposed inserting “competitive metering and meter reading services” after “distribution”. APS argued that its changes distinguish between competitive and non-competitive metering and billing services and also between services provided by Affected Utilities within their current CC&Ns and any proposal to provide those services outside that area. These changes are also consistent with APS’s proposed amendment to section 1616.

ASARCO et al. proposed deleting the third sentence of section 1603 referring to Aggregators and Self-Aggregators. ASARCO et al. noted that the proposed deleted language is unnecessary and confusing because by definition, Aggregators must be ESPs.

Mohave and Navopache recommended deleting the last sentence of section 1603(A), claiming it is not needed due to proposed changes to section 1616.

NWE recommended modifying section 1603(A) by inserting “statewide” to modify “Certificate of Convenience and Necessity” and to eliminate “self aggregation” from those services not requiring a Certificate.

NEV recommended that section 1603(A) be modified to clarify that Aggregators and Self-Aggregators are required to “obtain generation and energy scheduling through an approved Electric Service Provider.”

Evaluation: This Rule must be clarified in order to provide needed certainty to all stakeholders in the electric restructuring process. The definition of “Aggregator” in R14-2-1601 should control throughout the rules, and conflicting references should be deleted. It should be clarified that beginning January 1, 2001, only UDCs will provide Standard Offer Service, unless or until this Commission determines otherwise.

Resolution: Replace “services described in R14-2-1605 or R14-2-1606, other than services subject to federal jurisdiction” with “Competitive Services”. Delete the second sentence to comport with our clarifying revision to section 1605. Delete the third sentence of section 1603(A). Replace “An Affected Utility” with “A Utility Distribution Company” and delete language which is now included in the defined term “Standard Offer Service”. Capitalize the defined term “Standard Offer Service”. Delete “other” in the last sentence.

### **1603(B)**

Issue: APS proposed a new (B)(7) as follows: “An explanation of how the applicant intends to comply with the requirements of R14-2-1617, or a request for waiver or modification thereof with an accompanying justification for any such requested waiver or modification.” APS stated that this proposal is consistent with its position that any affiliate restrictions should apply equally to all market competitors.

NWE recommended eliminating the requirement in the certification process of section 1603(B) to provide a tariff of maximum rates and to delete sections 1603(B)(4) through (7). NWE believed it too burdensome for the Commission to seek information on technical and financial capabilities of the ESP.

Evaluation: We concur with APS’ proposed section 1603(B)(7).

Resolution: Insert APS’ proposed section 1603(B)(7). Insert “to” between “and” and “provide” in section 1603(B)(4). It is not overly burdensome for the Commission to seek information on the technical and financial capabilities of an ESP. The certification process under

these Rules provides the Commission with valuable oversight that serves the public interest.

**1603(E), (F), (G)**

APS proposed replacing “serving notification” with “providing a copy to” in section 1603(E), and adding a sentence to the end as follows: “The attachment to the CC&N application should include a listing of the names and addresses of the notified Affected Utilities, Utility Distribution Companies or an electric company not subject to the jurisdiction of the Arizona Corporation Commission.” APS proposed this change as neither APS nor its legal counsel has been receiving notification or copies of CC&N applications.

NWE recommended eliminating all of sections 1603(E) and (F), believing the requirement to serve information on a competitor is anti-competitive and the provision that permits limited Certificates is a bureaucratic obstacle to market entry. Consistent with its views on certification, NWE recommended striking sections 1604(G)(2), (4) and (5).

Evaluation: The certification process under these rules is not overly burdensome or anti-competitive. It provides the Commission with valuable oversight that serves the public interest. Utility Distribution Companies should receive notice of ESPs’ intent to utilize their regulated distribution systems for planning purposes. Consequently, we do not accept NWE’s proposed modifications.

Resolution: Add APS’ proposed language changes to section 1603(E). Insert “an” between “have” and “Electric” in section 1603(G)(3).

Issue: In its exceptions to the proposed Rules, PHASER Advanced Metering Services (“PHASER”) recommended modifying this subsection to clarify that not all certified ESPs require an Electric Service Provider Service Acquisition Agreement. PHASER argued that Meter Service Providers and Meter Reading Service Providers who do not provide load service to consumers do not need an Electric Service Provider Service Acquisition Agreement.

Evaluation: We agree that section 1603(G) should be clarified.

Resolution: Modify sections 1603(G)(3) and (6) to limit these provisions to ESPs seeking certification as Load-Serving Entities.

**1603(I)**

Issues: Calpine and NWE proposed deleting “and relevant to resource planning;” from section 1603(I)(1). Calpine argued that the term “resource planning” is not defined in these rules and that with open transmission access and competitive generation marketing, integrated resource planning by the Commission is not appropriate.

To clarify that ESPs are subject to Commission jurisdiction, Mohave recommended a new section 1603(I)(9) as follows: “As a public service corporation, the Electric Service Provider shall be subject to the continuing jurisdiction of the Commission.”

NWE recommended deleting sections 1603(I)(2) and (3) because they require disclosure of information that could purportedly cause harm to an ESP. NWE argued that disclosure of accounts and records is a remnant of regulation that is not necessary in a competitive market. NWE wanted to delete “and any service standards that the Commission shall require” from 1603(I)(4) as it is undefined, and to delete section 1603(I)(6) requiring compliance with state-law permit and license requirements. NWE also suggested deleting section 1603(J).

ACAA recommended requiring ESPs to serve some portion of the residential market by adding a provision in the rules to require submission of a plan to serve residential customers and to allow for revocation of a Certificate if no plan is received.

Evaluation: Based on an initial review of the Rules, we are not convinced changes to this rule are necessary.

Resolution: No change is necessary.

#### **R14-2-1604 Competitive Phases**

Issues: Tucson recommended deleting the reference to requiring a single premise non-coincident peak load demand of 40 kw or greater to be able to aggregate to become eligible for competitive electric services.

ASARCO et al. proposed modifying section 1604(A) to provide that at least 30% of 1998 system retail peak demand be available for competitive generation, and deleting the reference to the first-come-first-served basis and the remainder of the subsection. ASARCO et al. proposed revising section 1604(A)(3) to permit all loads served by Load-Serving Entities under special contracts to be eligible for competitive services upon the expiration of the special contract, notwithstanding the

proposed 30 percent limitation.

Calpine proposed that access to competitive service start October 1, 1999 and that 40% of the Affected Utilities' 1995 system retail peak demand be eligible for competitive generation. Calpine recommended that 2 % of residential customers be eligible, and that the number should increase by 2 % each quarter until January 1, 2001.

TEP proposed a start date of October 1, 1999 for the 20% phase-in. TEP's recommendation is predicated on the Commission resolving issues on Stranded Cost, unbundled tariffs and operational reliability protocols in time for the companies to implement the changes in their systems. TEP stated that if competition does not start by October 1, 1999, it should not start until at least March 31, 2000, because of the "Y2K" problem.

TEP argued that using a "non-coincident" peak has unintended consequences and that only customers with a minimum 1 MW demand should be eligible for direct access. Consequently, TEP proposed replacing "non-coincident peak load" with "minimum" in sections 1604(A)(1) and (2) and replacing "month" with "six months" in (A)(2).

Sempra recommended making all customers eligible to receive competitive energy on September 1, 1999, and eliminating most of the remaining provisions of section 1604, except those that require Affected Utilities to inform customers of the start of competition by an unnamed date and that require Affected Utilities to file a report detailing possible mechanisms to provide benefits to Standard Offer Service customers. Sempra's proposal also retains the provision allowing customers under contract to participate in competition and allowing buy-throughs and schedule modifications for cooperatives.

APS suggested replacing "180" days with "60" days in 1604(A). APS proposed adding the words "single premise" after "non-coincident" to make this subsection consistent with section 1604(A)(2). APS proposed inserting "by an Electric Service Provider" after "aggregated" in section 1604(A)(2) and deleting the sentence referencing self aggregation. APS recommended deleting section 1604(A)(3) and 1604(C) as the referenced dates have passed. APS proposed deleting the remainder of the sentence of section 1604(D) after "January 1, 2001". APS recommended the deletion of section 1604(G) because it is unnecessary and confusing, because UDCs can already

engage in buy-through transactions through special contracts if approved by the Commission, while ESPs may engage such transactions whether or not approved by the Commission. TEP, NEV and NWE also recommended deleting section 1604(G). ASARCO argued that buy-throughs are required to protect consumers from delays in competition.

NWE recommended deleting the last sentence of section 1603(A)(2) because it penalizes small customers who might not be prepared to aggregate in the early phases of competition. NWE argued that section 1604(A) in general provided inadequate information of the mechanics of customer selection.

Tucson proposed a new section 1603(A)(4) as follows: “Load profiling may be used; however, residential customers participating in the residential phase-in program may choose other measurement options offered by their Electric Service Provider consistent with the Commission’s rules of metering.”

The Arizona Attorney General’s Office (“AG”) recommended inserting the following in section 1604(A) after “rule”: “provided that, for any given class of customer, if customer demand for competitive generation services exceeds this 20%, the Affected Utility shall make available such additional percentage as is consistent with customer demand” the AG proposed substituting “customer” for “premise” in section 1604(A)(2).

ACAA recommended increasing “1 ¼ % of residential customers” to “15% of residential customers” in 1604(B).

RUCO proposed that a minimum of 10% of residential customers have access to competitive services on October 1, 1999 and that the number should increase by 5% every six months until October 1, 2001. Further, RUCO proposed that Affected Utilities should file an application by November 1, 1999 to decrease Standard Offer Service rates by at least three to five percent.

Citizens recommended changing the reference of “1 ¼ %” of residential customers to “1/2%” in section 1604(B)(1). NWE argued that section 1604(B) should be entirely revised, as it removes the incentive for ESPs to pursue contracts with residential customers.

TEP proposed allowing ¼ of 1% of residential customers to participate in competition and that the number should increase by ¼ of 1 % every quarter until January 1, 2001, as originally

proposed by Staff. TEP also proposed that section 1604(B)(5) be modified to provide for semi-annual reports rather than quarterly reports, and that section 1604(B)(5)(d) be deleted.

Tucson recommended eliminating the phrase “benefits such as rate” from 1604(C). NWE argued that a mandatory rate reduction would have an anti-competitive effect unless applied to all customers. NWE argued that any mandated rate reduction should specify that the reduction must occur in the CTC, the transmission rate or the distribution rate.

Mohave and Navopache recommended deleting the references in sections 1604(A)(3), (B)(4), and (C) to notices, programs and reports for which the filing deadlines have already passed. Mohave and Navopache recommended deleting the second clause of section 1604(D) concerning the ability to aggregate beginning January 1, 2001.

TEP recommended deleting “including aggregation across service territories” from the end of section 1604(D).

NEV proposed a new section 1604(H)(4) as follows: “If an electric cooperative is granted a delay in implementing competition, then any Electric Service Provider affiliated with the electric cooperative or which has the electric cooperative as a member will be prohibited from providing services in Arizona until competition has begun in the electric cooperative’s service territory.”

Trico recommended deleting sections 1604(A)(3), (B)(2), (C), (E), and (H)(2) and (3), as the matters are moot. Trico also proposed revising section 1604(D) to provide that all customers are “eligible for competitive services no later than January 1, 2001, at which time all customers shall be permitted to aggregate, but not across service territories.”

Evaluation: There have been almost as many recommendations for a new phase-in plan as there have been entities commenting on these Rules. We believe that until January 1, 2001, the phase-in schedule should be retained. To the extent that an Affected Utility’s service territory is opened for competition prior to January 1, 2001, it should make 20% of its 1995 system retail peak load available for Competitive Services. Further, the Affected Utility should reserve demand to provide an increasing percentage of retail customers with access to competitive generation. The percentage of retail customers eligible for competitive generation should start at 1 ¼ percent and increase by 1 ¼ percent quarterly until all customers are eligible for competitive services beginning

January 1, 2001.

We agree that the effective date of Direct Access Service Requests (“DASRs”) should be within sixty days of the date of the DASR. We also agree that the provision permitting buy-throughs should be eliminated as well as the reference to self-aggregation.

Given the stay of the Rules and the delay in the introduction of competition, we have revised the date that an Affected Utility must notify its customers of their eligibility to receive Competitive Services to 60 days prior to the start of competition within its service territory. Our revisions also set the date of November 1, 1999 for filing a report that details possible benefits to Standard Offer Service customers that includes a 3 to 5 percent rate reduction.

We believe that NEV’s concern about the fairness of delays in implementing competition for cooperatives are addressed in section 1602(B).

Furthermore, section 1604(E) should be deleted in light of our decision concerning the solar portfolio. Based on our initial review of Tucson’s and TEP’s comments concerning particular demand load criteria, we are not convinced that additional changes are necessary. We do not accept the arguments that during the transition period entities currently under special contracts should automatically be eligible for competitive services upon the expiration of the contract.

Resolution: Revise sections 1604(A),(B),(C),(D), (E) and (G) as discussed above.

#### **R14-2-1605 Competitive Services**

Issue: APS and ASARCO et al. recommended that section 1605 (B) be modified to comport with the definitions of “Aggregator” and “Noncompetitive Services” in section 1601. TEP and NWE also recommended that the portion of section 1605(B) providing that aggregation of retail customers is a competitive service should be deleted.

Calpine commented that because “Generation” is a defined term in the Rules, its definition in section 1605(A) should be deleted, and that the defined term “Noncompetitive Services” should be capitalized in section 1605(B) where appropriate only.

Trico, with the support of Duncan and Graham, recommended that section 1605 be shortened to state that ESPs may provide “Competitive Services,” and that the definition of “Competitive Services” should exclude metering, meter reading, and billing and collection. AEPCO recommended

that this Section should allow an Affected Utility to provide competitive services in its service territory.

NEV suggested that the current section 1605(B) be deleted and replaced by new sections B-G for clarity and consistency. NEV's proposed new section 1605 would retain the current section 1605 requirement of a CC&N for the provision of any and all competitive retail electric services, and would preclude the option of self-aggregation.

Evaluation: This section should be clarified by utilizing references to the definitions provided by section 1601 in lieu of restating those definitions within the remainder of the Rules. The definition of "Competitive Services" should not exclude the services Trico enumerated.

Resolution: Modify sections 1605 and 1601 accordingly.

#### **R14-2-1606 Services Required to Be Made Available**

##### **1606(A)**

Issue: AEPCO and Trico, with the support of Duncan and Graham, recommended adding "and Utility Distribution Company" after "Each Affected Utility" in section 1606(A), and APS recommended adding "or Utility Distribution Company".

Evaluation: "or Utility Distribution Company" should be added to this Section as recommended, and also to other applicable provisions in the Rules.

Resolution: Change section 1606(A) and other applicable provisions in the Rules accordingly.

Issue: APS recommended including in section 1606(A) language referring to the definitions of "Standard Offer Service," and "Noncompetitive Services" in lieu of re-defining those terms within the section.

Evaluation: These modifications add clarity and should be adopted, along with a modification to section 1601 changing "Standard Offer" to "Standard Offer Service".

Resolution: Modify sections 1606(A) and 1601 accordingly.

Issue: APS recommended deletion of reference to section 1602 because the date has passed.

Evaluation: Our revision to section 1602 makes this unnecessary.

Resolution: No change is necessary.

Issue: NWE submitted that the Standard Offer tariff referred to in section 1606 is anti-competitive and should be phased out six months after competition begins.

Evaluation: Our revisions to the definition of “Standard Offer Service” in section 1601 address these concerns.

Resolution: No change is necessary.

Issue: AEPCO and Trico, with the support of Duncan and Graham, also suggested changes to section 1606(A) in order to conform to section 23 of HB 2663, which limits the Affected Utilities’ requirement to serve as Providers of Last Resort to consumers whose annual usage is 100,000 kWh or less. In support of its suggested change, AEPCO characterized consumers with an annual usage of greater than 100,000 kWh as large industrial and commercial consumers. AEPCO raised the concern that requiring Affected Utilities to serve as Providers of Last Resort would provide the opportunity for large, sophisticated customers to “game the system” by going on Standard Offer Service in order to obtain lower generation prices when convenient. AEPCO also proposed that removal of the last sentence of section 1606(A) “removes the forced divestiture element of the current Rules.”

Evaluation: It is important that the Rules conform to the same kWh limit as State legislation, and this language should be added to the Rules. For purposes of clarity, AEPCO’s suggested language should be provided within the definition of “Provider of Last Resort” in section 1601.

Resolution: Modify the definition of “Provider of Last Resort” in section 1601 to provide a limitation on the requirement of Utility Distribution Companies to serve as the Provider of Last Resort. No change to R14-2-1606(A) is necessary to establish this limitation.

### **R14-2-1606(B)**

Issue: Tucson recommended that section 1606(B) be revised to specify that UDCs are required to purchase power to serve their Standard Offer Service customers from the “low bidder meeting specifications.”

AEPCO and Trico, with the support of Duncan, Graham and Sulphur Springs, recommended that section 1606(B) be deleted entirely, claiming that the provision is unnecessary because market

forces alone will drive the UDCs to seek lowest-cost Standard Offer Service sources and mixes. AEPCO and Trico, with the support of Duncan and Graham, also stated in their comments that section 1606(B) breaches their all-requirements agreement.

TEP, APS, and Calpine all requested removal of the ratchet-down provision of section 1606(B). TEP commented that the ratchet-down provision would likely be expensive, and that Commission oversight of the UDCs' long-term power purchases is sufficient. APS commented that there is no precedent for this provision anywhere in the country. Calpine commented that the ratchet-down provision requirement is vague, would be difficult to administer, and could lead to claims of a failed bid process. Calpine further commented that allowing the UDCs to seek Commission modifications of the bid process could circumvent the Commission's goal of creating competitive electric markets.

APS recommended that UDCs not be required to seek competitive bids at all, but should be directed to acquire power for Standard Offer Service customers through the open market. TEP recommended inclusion of language in section 1606(B) allowing the UDC and the Commission to "consider alternatives to the competitive bid process."

APS and TEP both requested the inclusion of language in section 1606 which would allow UDCs to recover all purchased power costs for the provision of Standard Offer generation service through a purchased power adjustment mechanism ("PPAM") approved by the Commission. APS recommended that such a PPAM should be approved by the Commission prior to January 1, 2001.

AUIA also commented that sections 1606(A) and (B) are flawed and will increase costs for Standard Offer Service customers, and that they conflict with the transmission access principles in section 1610.

Evaluation: We agree with the numerous parties who were critical of the "ratchet-down" provision in section 1606(B). While the intent behind this provision was to keep costs down for Standard Offer Service customers, we believe that in practice it would not accomplish this goal, and worse, would only forestall the realization of our goal of fostering a competitive retail electric market in Arizona. It is our view that because the very purpose of this electric restructuring effort is to foster a competitive retail electric market, all purchases of generation should occur on the open

market. As AEPCO pointed out, market forces alone should drive the UDCs to seek the lowest cost generation sources and mixes of generation. However, the PPAM proposed by APS and TEP would have the exact opposite effect. The proposed PPAM would allow UDCs to recover all Standard Offer Service generation costs. If the UDCs were able to pass Standard Offer Service generation costs directly through to customers via the PPAM, the UDCs would lose the incentive to seek lowest cost Standard Offer Service generation sources and mixes. The combination of open market purchase of Standard Offer Service power with a PPAM would have anticompetitive effects and we therefore cannot combine these options in the Rules. One alternative to APS' and TEP's requested Rule modifications in this regard would be to require competitive bids and institute the requested purchased power adjustor mechanism. However, we believe that this avenue would be expensive and would not lead to a competitive generation market in Arizona within the foreseeable future. It is therefore an undesirable option. The alternative course of action would be to allow the UDCs to actively participate in the open market, and also to provide the UDCs with an incentive to obtain the lowest-cost source of generation sources and mix by requiring the UDCs to request a rate increase in order to pass increases in generation costs on to Standard Offer Service customers. We believe this to be the best option and will modify section 1606 accordingly. In order to prevent hardship to the UDCs in the event a rate increase becomes absolutely necessary, such rate requests should be treated expeditiously. By this Rule revision, the Commission wishes to send a clear message to UDCs that whenever possible, it will be more preferable and desirable to find the lowest-cost generation sources and mix available than to seek a rate increase to pay for higher-cost generation for Standard Offer Service customers.

Because the Arizona cooperatives obtain their power from a membership-owned generating affiliate, the provisions of section 1606(B) should apply only to investor owned Utility Distribution Companies.

Resolution: Modify section 1606(B) to delete the ratchet down provision, and to provide that beginning January 1, 2001, Standard Offer Service power purchased by investor-owned Utility Distribution Companies shall be purchased on the open market. Add language to section 1606(C)(2) to provide for expeditious treatment of rate requests.

**R14-2-1606(C)**

Issue: RUCO suggested that additional language be included in section 1606(C)(1) to require that Standard Offer Bundled Service tariffs include the same billing cost elements as the Unbundled Service tariffs.

In its exceptions, Staff noted that the date originally indicated in section 1602 was deleted in the proposed amendments, and suggested that the date in section 1606(C)(1) be changed to be consistent with the date contained in section 1606(D). Staff also suggested in its exceptions that language be added to section 1606(C)(1) requiring a rate case proceeding to justify any proposed rate change in Affected Utilities' initial Standard Offer Service tariff filings.

Evaluation: RUCO's suggested language changes will provide needed guidance for the Affected Utilities to follow in the unbundling process. The filing of new Standard Offer Service tariffs should be required so that the Commission can examine the cost elements. A new section 1606(C)(2) should be added to provide the elements which should be included in the required Standard Offer Service tariffs. A more concrete filing date should also be provided. We concur with Staff that the rate case proceeding language is necessary, especially in light of our deletion of the language from section 1606(C)(2) concerning the Commission's expectations in regard to Standard Offer Service rates.

Resolution: Replace "the date indicated in R14-2-1602," with "July 1, 1999, or pursuant to Commission Order, whichever occurs first,"; insert "Any rate increase proposed by an Affected Utility or Utility Distribution Company for Standard Offer Service must be fully justified through a rate case proceeding" between "until approved by the Commission." and "~~If no such tariffs~~"; and add the following new R14-2-1606(C)(2) and renumber accordingly:

- "2. Standard Offer Service tariffs shall include the following elements:
- a. Electricity:
    - (1) Generation
    - (2) Competition Transition Charge
    - (3) Must-Run Generating Units
  - b. Delivery:

- (1) Distribution services
- (2) Transmission services
- (3) Ancillary services
- c. Other:
  - (1) Metering Service
  - (2) Meter Reading Service
  - (3) Billing and collection
- d. System Benefits

The Competition Transition Charge shall be included in the Standard Offer Service tariffs for the purpose of clearly showing that portion of Standard Offer Service charges being collected to pay Stranded Cost.”

Issue: NEV recommended that an exception be made to section 1606(C) to preclude the inclusion in Standard Offer Service of special discounts or contracts with term, including but not limited to time-of-use rates, interruptible rates, self-generation deferral rates, or any tariff which would prevent consumers from accessing a competitive option.

Evaluation: Time-of-use rates, interruptible rates or self-generation deferral rates are more in line with demand side management than with Competitive Services. While ESPs should be free to contract with their customers to offer such rates, UDCs should not be precluded from managing demand by means of these measures. The remainder of NEV’s suggested language is reasonable. We agree with the specific language Staff recommended in its exceptions to clarify the rates that UDCs may continue to offer.

Resolution: Subsection (5) has been added to section 1606(C) to preclude the inclusion in Standard Offer Service of special discounts or contracts with term, or any tariff which would prevent consumers from accessing a competitive option, and to specify that UDCs may offer time-of-use rates, interruptible rates or self-generation deferral rates. The definition of “Standard Offer Service” in section 1601(36) has also been clarified to include demand side management services.

Issue: APS requested that the language in the second sentence in section 1606(C)(2) be deleted, because Commission expectations do not belong in a Rule. APS also requested deletion of

the portion of section 1606(C) stating that rate increase proposals must be fully justified through a rate case proceeding.

Evaluation: In our discussion of the changes to section 1606(B), we explained the necessity of rate case justification for rate increases. If a rate request becomes absolutely necessary, an expedited rate case proceeding should be available to UDCs.

Resolution: Add language to section 1606(C)(2) providing that rate case proceedings may be expedited at the discretion of the Director, Utilities Division.

Issue: APS requested a modification of the language in sections 1606(C)(3) and (4).

Evaluation: The provision in section 1606(C)(3) is adequate in its current form, but APS' suggested wording changes to section 1606(C)(4) should be adopted.

Resolution: Modify section 1606(C)(4) to delete language referring to a specific Commission Decision.

Issue: The Arizona Consumers' Council recommended that a new subsection be added to section 1606(C) to require that Standard Offer Service tariffs may not subsidize costs of competitive customers.

Evaluation: This is a valid concern. The clarification of requirements for the filing of properly unbundled tariffs and standardized billing cost elements made elsewhere in the Rules addresses this issue.

Resolution: The inclusion of the suggested language is unnecessary here.

#### **R14-2-1606(D)**

Issue: The date provided in section 1606(D) should be consistent with our amendment to section 1606(C)(1).

Evaluation: The date should be changed accordingly.

Resolution: Replace "the date indicated in R14-2-1602" with "July 1, 1999, or pursuant to Commission Order, whichever occurs first,".

Issue: APS recommended that section 1606(D) be modified to clarify that the Affected Utilities should file tariffs for Noncompetitive Services as defined in section 1601. Mohave and Navopache also suggested additional language for inclusion in section 1606(D) to clarify the

difference between Unbundled Service tariffs and Standard Offer Service tariffs.

Evaluation: Clarification of this provision is necessary.

Resolution: Modify section 1606(D) and the definition of Noncompetitive Services accordingly.

Issue: ASARCO et al. proposed that language be added to section 1606(D) requiring that Unbundled Service tariffs be based on electric service requirement charges, rather than on consumption, because unbundled rates based on consumption have little relationship to actual service provision costs, and because such changes would preclude the UDCs' need for competitive energy consumption information. The proposed language also offers the optional filing of unbundled tariffs based on simple energy consumption (kWh).

Evaluation: Because UDCs will retain the obligation to insure adequate transmission import capability to meet the load requirements of all customers within their service areas under revisions to the Rules' Transmission and Distribution Access provisions, this suggested language need not be included in section 1606(D).

Resolution: No change is necessary.

Issue: ASARCO et al. suggested that section 1606(D)(2) be modified in conformance with its suggested change to section 1616(B).

Evaluation: Our modification of section 1616(B) renders this change unnecessary.

Resolution: No change is necessary.

#### **R14-2-1606(E)**

Issue: APS recommended that "Utility Distribution Company" be added to section 1606(E).

Evaluation: The intent of the Rules is that UDCs will not provide Unbundled Services as defined in section 1601, but will provide Noncompetitive Services as defined in section 1601. Under the Rules, until an Affected Utility completes its spin-off of competitive affiliates, the Affected Utility may continue to provide Unbundled Services, but the provision of Unbundled Services will cease afterward. The inclusion of "Utility Distribution Company" in section 1606(E) would therefore not be proper.

Resolution: No change is necessary.

**R14-2-1606(F)**

Issue: AEPCO recommended that section 1606(F) be modified to preclude possible FERC jurisdictional conflicts. APS recommended complete removal of section 1606(F). Staff, in its exceptions, noted that section 1606(F) is ambiguous.

Evaluation: We agree with APS that as currently written, section 1606(F) identifies distribution services only in the prefatory language and does not provide any guidance relating to the provision of distribution services. We also agree that the Commission need not require by rule what is already mandated by FERC regarding provision of services according to FERC tariffs and FERC Orders. However, section 1606(F) should clarify how Affected Utilities and UDCs will provide access to their distribution systems.

Resolution: Modify section 1606(F) accordingly.

**R14-2-1606(G)**

Issue: AEPCO recommended that section 1606(G)(1) be revised so that Load-Serving Entities are not required to release customer information that is unavailable to them.

Evaluation: Because section 1606(G)(3) provides that data shall not be “unreasonably withheld,” it already meets AEPCO’s stated objective.

Resolution: No change is necessary.

Issue: The Arizona Consumers’ Council recommended that section 1606(G)(1) be expanded to require that customer data be released only to ESPs that have met all State of Arizona and Commission requirements.

Evaluation: Our revisions to the Rules clarify that all ESPs must be certificated by the Commission. This process provides the Commission with valuable oversight and should keep unscrupulous ESPs out of Arizona’s marketplace.

Resolution: Include “properly certificated Electric Service Provider” in this provision.

**R14-2-1606(H) & (I)**

Issue: APS recommended revisions to sections 1606(H) and (I) in order to clarify that rates for competitive services must comply with section 1612.

Evaluation: Clarification is in order with use of defined terms.

Resolution: Replace references to sections 1606(D) and (E) with the defined terms “Competitive Services” and “Noncompetitive Services”. Also replace “where it is” in section 1606(H) with “subject to Commission”.

Issue: NEV recommended that a subsection be added to section 1606 to require UDCs to provide credits to consumers who obtain competitive services from a provider other than the UDC.

Evaluation: Properly unbundled bills pursuant to section 1613 should make clear who is providing what service to a consumer, making these recommended “credits” to consumers’ bills unnecessary.

Resolution: No change is necessary.

Issue: Sempra recommended the deletion of section 1606(I), stating that its requirements add unnecessary cost burdens to ESPs, and that the market will determine proper rates.

Evaluation: It is in the public interest for the Commission to review and approve all rates at this time. ESPs are free to seek a waiver from these requirements. Granting of such a waiver will require a determination that a fully competitive market assures that the market truly does determine proper rates.

Resolution: No change is necessary.

## **R14-2-1607 Recovery of Stranded Cost of Affected Utilities**

### **1607(A)**

Issue: APS proposed deleting the words “means such as” and replacing it with “reducing costs” and inserting “permitted regulated utility” after “scope of”. TEP, Trico, Mohave and Sempra proposed ending the sentence after “Stranded Cost” and not delineating the means of mitigation. TEP asserted that it is unclear whether the markets and services mentioned are regulated or unregulated, and believes that most new products will develop in the unregulated competitive market.

Evaluation: We concur with APS’ proposal.

Resolution: Delete “means such as” and replace with “reducing costs,” and insert “permitted regulated utility” before “Services for profit”.

### **1607(B)**

Issue: APS proposed inserting “full” before “recovery” to make it consistent with the findings in the Stranded Cost proceeding. Trico proposed inserting “all” before “unmitigated”.

Evaluation: We believe that this subsection is sufficiently unambiguous as written.

Resolution: No change is required.

### **1607(C)**

Issue: Trico and Mohave and Navopache proposed deleting the second sentence of section 1607(C). Mohave and Navopache suggested inserting “together with supporting data” after “Stranded Cost.” Tucson recommended adding the word “public” to modify the required estimates of unmitigated Stranded Cost Affected Utilities must file.

Evaluation: We believe this section is sufficiently clear as written, except that it should provide a time frame for filing estimates of Stranded Cost.

Resolution: Insert “on or before July 1, 1999, or pursuant to Commission Order, whichever occurs first” after “estimates of Stranded Cost”.

### **1607(D)**

Issue: Calpine proposed that the Affected Utilities file estimates of unmitigated Stranded Cost by March 19, 1999. NEV recommended deleting the remainder of section 1607(D) following “Article”. ASARCO et al. proposed ending the sentence after “Stranded Cost”.

ATDUG recommended adding the following language to the end of section 1607(D) to permit an exit fee: “The filing shall include a discounted stranded costs exit methodology that a customer may choose to use to determine an amount due the Affected utility in lieu of making monthly distribution charge or other payments. Each Affected Utility will bear a high burden of proof concerning stranded costs and mitigation.”

Sempra recommended adding to the end of section 1607(D): “Customer specific stranded costs should be allocated to those customers on whose behalf they were incurred.” Sempra argued that directly assignable costs should be allocated to those customers who benefited, and that otherwise they should be absorbed.

RUCO proposed replacing section 1607(D) with the following: “Unmitigated Stranded Costs eligible for recovery shall be recovered both from customers who reduce or terminate generation

service from the Affected Utility as a direct result of competition governed by this Article by taking generation service from alternative suppliers, as well as from customers who stay with the Standard Offer service, through a non-bypassable nondiscriminatory competitively neutral wires charge.”

Evaluation: We agree that the CTC should be recovered from all customers. Consequently, we will delete the remainder of the sentence after “Stranded Cost”. Consistent with our revisions to other Rules, we will change the date for filing requests for approval of Stranded Cost to July 1, 1999, or pursuant to Commission Order, whichever occurs first. We concur with ATDUG’s suggestion to include an exit fee methodology; however, we do not believe that the proposed language regarding the standard of proof is necessary. We believe that Sempra’s concerns will be addressed at the Stranded Cost hearing for each Affected Utility.

Resolution: Modify section 1607(D) as discussed above.

### **1607(E)**

Issue: APS recommended deleting the words “Stranded Cost recovery” from sections 1607(E)(1), (2) and (4), as APS argued it is not the recovery of Stranded Cost that is being considered, but the timing and method of recovery. APS also recommended the deletion of sections 1607(E)(5), (6) and (7) as being redundant, and recommended eliminating sections 1607(E)(9) and (11) as being irrelevant.

Trico recommended deleting subparts (1) through (11) of section 1607(E).

APS suggested inserting the words: “for the recovery of Stranded Cost and the timing of such recovery,” after “charges” in the second sentence of section 1607(E).

Tucson suggested adding “public” before “hearing”.

Because TEP believed that the amount of electricity generated by renewable generating resources is inappropriate to consider in determining Stranded Cost, TEP recommended deleting section 1607(E)(11) and replacing it with “the impact of Stranded Cost recovery on shareholders of the Affected Utility.”

Evaluation: We do not concur with APS’ interpretation of the purpose of section 1607(E) and will not adopt APS’ proposed modifications, except that we agree that subparts (9) and (11) should be deleted, as the ease of determining Stranded Cost and the generation of electricity by

renewable sources are not relevant. Regarding Tucson's concerns, all of the Commission's hearings are public.

Resolution: Delete sections 1607(E)(9) and (11).

**1607(F)**

Issue: Citizens argued that all customers should pay the CTC. Citizens noted that there has been some confusion whether customers who remain on Standard Offer Service will somehow effectively be paying for Stranded Cost through generation costs bundled in Standard Offer Service, but, Citizens argued, if the generation has been divested, the resulting Stranded Cost would not be part of Standard Offer Service, except as part of a CTC. Citizens recommended that section 1607(F) be modified to read "A Competition Transition Charge may be assessed on customers eligible to make purchases in the competitive market using the provisions of this Article."

Sempra proposed that section 1607(F) be modified to provide the CTC "will" be assessed on "all" customer purchases "regardless of supplier."

TEP was concerned that customers who leave the distribution system to self-generate as a result of these Rules will avoid paying their fair share of the CTC.

Trico recommended deleting all but the first sentence of section 1607(F).

RUCO proposed that the CTC "shall be assessed on all customers continuing to use the distribution system based on the amount of generation purchased from any supplier". Because this suggested language would create a loophole that might allow large users who receive electric service at transmission-level voltage to escape the CTC, RUCO revised its recommendation in its filed exceptions to provide that the CTC may be assessed "on all retail customers based on the amount of generation purchased from any supplier".

APS proposed replacing "customer purchases" with "customers purchasing services" in the first sentence of section 1607(F) and deleting "using the provisions of this Article" and inserting "verifiable" after "Any" in the second sentence. APS argued that its proposed changes clarify that Stranded Cost is recoverable from customers taking competitive service rather than through rates for competitive services, and that such customers include customers taking competitive services from entities that arguably are not "using the provisions of this Article."

In its exceptions to the proposed Rules, ATDUG argued that it was “unconscionable to collect Stranded Cost from all users because those remaining on Standard Offer, who already pay full costs, would be subsidizing those who choose another Electric Service Provider.”

Evaluation: We agree that all customers should pay for Stranded Cost. This does not mean that Standard Offer Service customers should pay twice. Under the proposed Rule revisions, Standard Offer Service tariffs and customer bills will include a CTC component to clearly show how much of the generation charge is attributable to Stranded Cost. We believe RUCO’s proposed language, as set forth in its exceptions to the proposed Rules, most clearly addresses the proper assessment of the CTC. We understand TEP’s concern that by leaving the distribution system completely, a customer could potentially avoid paying its share of the CTC. However, based on our initial review of TEP’s comments, we are not convinced that a change is warranted.

Resolution: Modify the first sentence of section 1607(F) to read “A Competition Transition Charge (CTC) may be assessed on all retail customers based on the amount of generation purchased from any supplier.” Add the following new sentence to section 1607(G): “In no event shall the Competition Transition Charge be utilized as a mechanism for double recovery of Stranded Cost from Standard Offer Service customers.”

### **1607(G)**

Issue: APS suggested inserting “tariffed” before “rate” in section 1607(G) to clarify that special contract customers are not automatically entitled to special benefits even after the expiration of their contracts.

Evaluation: We concur with APS.

Resolution: Insert “tariffed” before “rate treatment”. Modify section 1607(G) as discussed previously to clarify that Standard Offer Service customers shall not be charged twice for the recovery of Stranded Cost.

### **1607(H)**

Issue: APS recommended deleting section 1607(H) as being redundant with section 1607(C)(1). Trico proposed deleting “or, if negative, to refund” from section 1607(H) on the grounds there is no legal basis to refund so-called negative Stranded Costs.

Evaluation: We concur with APS.

Resolution: Delete section 1607(H).

### **1607(I)**

Issue: Mohave and Navopache suggested adding “based upon established facts” at the end of section 1607(I). APS recommended inserting “after notice and hearing” after “The Commission may”.

Evaluation: We concur with APS. This addition should also address Mohave’s concerns.

Resolution: Insert “after notice and hearing” after “The Commission may”.

### **1607(J) (newly proposed)**

Issue: Citizens suggested the adoption of a new section 1607(J) as follows: “The Director, Utilities Division will issue no later than March 1, 1999, a description of a common methodology for calculation of Affected Utilities’ CTCs.”

TEP proposed a new section 1607(J) as follows: “The Commission may consider securitization as a financing method for recovery of Stranded Cost of the Affected Utility if the Commission finds that such method of financing will result in a lower cost alternative to customers.”

Evaluation: We concur with TEP. Based on our initial review of Citizen’s comments, we are not convinced additional changes are necessary.

Resolution: Insert new section 1607(H) (after renumbering) as proposed by TEP.

### **R14-2-1608 System Benefits Charges**

Issue: Citizens recommended deleting the reference in subsection (A) to “who participate in the competitive market” in order to clarify that both Standard Offer Service customers and customers taking competitive power will pay for System Benefits.

TEP, RUCO, Mohave and Navopache, ASARCO et al., Citizens, Calpine, Trico and AEPCO, with the support of Duncan and Graham, recommended deleting the final two sentences of section 1608(A) concerning the solar water heater rebate program, arguing that this program exceeded the Commission’s jurisdiction.

ASARCO et al. proposed adding the following to the end of section 1608(A): “provided, however, that only customers benefiting from nuclear power plants shall be required to pay such

charges to fund nuclear power plant decommissioning and nuclear fuel disposal programs.”

TEP recommended adding “Direct Access implementation costs”, “non-nuclear plant decommissioning costs” and “other programs approved by the Commission” for inclusion in the System Benefits Charge.

Calpine proposed deleting the words “market transformation, environmental, renewables, long-term public benefit research and development, and nuclear fuel disposal and nuclear power plant decommissioning”. RUCO proposed eliminating market transformation, long-term public benefit research and development, and nuclear fuel disposal and nuclear power plant decommissioning from the System Benefits Charges.

APS recommended deleting “By the date indicated in R14-2-1602” at the beginning of section 1608(A) and inserting “at least” before “every 3 years” in the second sentence. APS suggested adding “At such time, the Commission shall determine whether to eliminate, modify, expand, or add to such programs” after the second sentence, and inserting “customer education, approved solar water heater rebate programs” as programs included in the System Benefits Charges.

NWE argued that section 1608 failed to provide adequate notice of the criteria for calculating the System Benefits Charges.

ATDUG recommended adding the following to the end of section 1608(B): “The burden of proof on each Affected Utility or Utility Distribution Company shall be the same as that provided in R14-2-1607.”

Evaluation: We agree that the solar water heater rebate program should be eliminated at this time; that the reference to the date in section 1602 and the reference to “who participate in the competitive market” should be deleted; and with APS’ proposal to insert “at least” before “every three years”. We addressed the programs that should comprise System Benefits in the definitions of section 1601. System Benefits should not include non-nuclear power plant decommissioning.

Resolution: Delete “By the date indicated in R14-2-1602,” and end the first sentence after “service area”. To avoid ambiguity and the possibility of conflicting definitions, eliminate the reiteration in section 1608 of individual programs comprising System Benefits and replace it with the defined term “System Benefits”.

**R14-2-1609 Solar Portfolio Standard**

Issue: RUCO, Citizens, APS, ASARCO et al., AEPCO with the support of Duncan and Graham, NWE, Trico, NEV, TEP, and AUIA recommended deleting section 1609 in its entirety. They argued that the Solar Portfolio Standard is enormously expensive; that it mandates construction of capacity when none is needed; that it injects government control into what is supposed to be a deregulated, market-based system; and that it requires construction of the least efficient solar application. AEPCO, with the support of Trico, Duncan and Graham argued that the Solar Portfolio Standard exceeds the Commission’s jurisdiction.

TEP stated that it supported the concept of a Solar Portfolio Standard, but that the Rules set a schedule that is too aggressive and costly. TEP recommended that the Integrated Resource Planning Rules should be repealed or revised given the requirement that an Affected Utility separate its generation assets to an affiliate or non-affiliate.

The Land and Water Fund (“LAW Fund”) recommended that the Solar Portfolio Standard be retained.

Mohave and Navopache suggested ending the first sentence of section 1609(C) after “Competitive retail electricity” and adding the sentence “The solar portfolio requirement shall not apply to sales under Standard Offer tariffs.”

Calpine proposed clarifying this provision to refer to sales in Arizona by an ESP.

Evaluation: The Solar Portfolio Standard as currently contemplated in the Rules is extremely expensive and contrary to the spirit of these Rules. Solar generation has the potential to offer great public benefits. However, it must be brought forward in a cost-effective manner. The issue of encouraging the development of economic solar power is more properly addressed as part of System Benefits and/or the Integrated Resource Planning docket. In our effort to bring competition in the electric industry to the citizens of Arizona as quickly as we prudently are able, we must defer the issue of a Solar Portfolio Standard at this time.

Resolution: Delete section 1609 in its entirety.

**R14-2-1610 Transmission and Distribution Access**

Issue: APS recommended that references to an Independent Scheduling Administrator be

changed to read “Arizona Independent Scheduling Administrator” throughout this section.

Evaluation: The Arizona Independent Scheduling Administrator is an existing entity and should be referred to as such in the Rules.

Resolution: Insert “Arizona” where appropriate.

Issue: APS and AEPCO both recommended language for section 1610(A) to clarify FERC/Commission jurisdictional issues, and APS recommended wording changes throughout section 1610(C), some of them substantive. AEPCO recommended extensive revamping of this section, including many deletions, in order to avoid unnecessary jurisdictional conflicts with FERC regarding transmission rights and rates and must-run transactions and services. TEP suggested amendments to section 1610 to reflect changes it feels are necessary to ensure appropriate access to the State’s transmission and distribution systems. AUIA commented that sections 1610(A), (D), (F), (G) and (H) require clarifying language.

Evaluation: Clarifying language should be added to section 1610.

Resolution: Insert recommended language where appropriate and necessary.

Issue: Mohave and Navopache and Trico, with the support of Duncan and Graham, recommended the addition of language to section 1610(C)(2) specifying that ISA protocols with respect to Must-Run Generating Units should be in accordance with FERC regulation of such units.

Evaluation: Because section 1610(C) requires the Arizona Independent Scheduling Administrator (“AISA”) to file its protocols for FERC approval, we feel that it is unnecessary to include the suggested language in this subsection.

Resolution: No change is necessary.

Issue: Citizens recommended that new sections 1610(B) and (C)(5) be added to provide that the AISA will implement a transmission planning process to identify transmission needs within the State, and to clarify that UDCs will retain the obligation to assure adequate transmission import capability to meet the load requirements of all customers within their service areas.

Evaluation: This suggested addition to the Rules will serve the public interest.

Resolution: Add new sections 1610(B) and (C)(5).

Issue: ASARCO et al. recommended that language be added to section 1610(H) specifying

that service from Affected Utilities' Must-Run Generating Units be provided only in the geographical areas where Must-Run Generating Units are necessary.

Evaluation: Because the definition of "Must-Run Generating Units" in section 1601 addresses this concern, no language change to this effect is needed.

Resolution: No change is necessary.

Issue: Citizens recommended that language be added to section 1610(H) to clarify that Affected Utilities are not required to spin off their Must-Run Generating Units.

Evaluation: The inclusion of "Utility Distribution Company" in this section, along with our clarification of the definition of "Noncompetitive Services" in section 1601, accomplishes this goal, precluding the need for additional language.

Resolution: No change is necessary.

Issue: NEV proposed changes to section 1610 to add energy scheduling and energy imbalances to the necessary protocols to be overseen by the AISA.

Evaluation: This recommendation by a new market entrant is reasonable.

Resolution: Include the suggested language in section 1610(C)(2).

Issue: Staff recommended, in its exceptions, that language be added to this section 1610 clarifying the Commission's right to approve the pricing features of the Must-Run Generating Units protocol, when such approval is appropriate. Staff also recommended that clarifying language be included in this section to require that fixed Must-Run Generating Units costs be recovered through a charge to end-use customers in the appropriate load zone.

Evaluation: We concur with Staff.

Resolution: Modify section 1610 accordingly.

#### **R14-2-1611 In-State Reciprocity**

Issue: AUIA recommended that section 1611(E) should be eliminated. NWE saw no need for this section. ATDUG also suggested modifications to section 1611. ATDUG suggested adding the words "subject to the jurisdiction of the Commission" after the first "Arizona electric utilities" to clarify which utilities are subject to Commission control and to clarify that newly certified ESPs may compete in Salt River Project territory.

ATDUG recommended adding the following to the end of section 1611(C): “Upon such filings, the existing service territory of such electric utility shall be deemed open to competition.” ATDUG believed this language is necessary because otherwise a political subdivision could access the complaint procedures by filing under section 1611(C), but avoid competition by failing to enter into an intergovernmental agreement under section 1611(D).

ATDUG recommended adding the following to the end of section 1611(D): “Execution of such intergovernmental agreement shall provide the electric utility authority to utilize the Commission’s Rules of Practice and Procedure and other applicable rules concerning any complaint that an Affected Utility or Electric Service Provider is violating any provision of this Article or is otherwise discriminating against the filing electric utility or failing to provide just and reasonable rates in tariffs filed under this Article.”

Evaluation: Other than to clarify that the service territories of Public Power Entities should be opened to competition, no change is required.

Resolution: Revise this section accordingly.

#### **R14-2-1612 Rates**

Issue: NWE registered objections to the requirement to file maximum rates and also objected that this section did not establish time limitations for the Commission to approve rates.

TEP proposed deleting section 1612(A) arguing that it may be unconstitutional for the market to determine that rates are just and reasonable instead of the Commission.

APS recommended inserting at the end of section 1612(B) the following: “Such tariffs may combine one or more competitive services within the rates for any other competitive service.” APS asserted that this is consistent with Staff’s position in the PG&E Energy Services certification process.

NWE recommended deleting all of section 1612(C), arguing that the requirement to approve customer agreements is anti-competitive and a remnant of the regulatory regime.

APS recommended deleting from the third sentence of section 1612(C) and the second sentence of section 1612(D) the words “this Article and” to keep it consistent with the first sentence of section 1612(C) and to remove uncertainty surrounding the execution of an agreement.

Evaluation: It is in the public interest at this time for the Commission to establish a policy of overseeing whether contracts between Load-Serving Entities comply with approved tariffs.

In section 1612(A), the Commission has utilized its ratemaking power to determine that market-determined rates for competitively-provided services are to be just and reasonable, and there is no reason to delete this provision.

The new language APS suggested for section 1612(B) would be inconsistent with the intent of these Rules.

APS' recommended deletion of "this Article and" from the third sentence of section 1612(C) and the second sentence of section 1612(D) would clarify this Rule. In addition, sections 1612(C) and (D) should be modified to indicate a meaningful and reasonable date, and references to "Affected Utility" and "Electric Service Provider" in sections 1612(C) and (D) should be changed to "Load Serving Entity" so as to encompass UDCs as well. In section 1612(E), the defined term "Competitive Services" should be used.

Resolution: In section 1612(C), replace "the date indicated in R14-2-1604(D)" with "January 1, 2001"; delete "this Article and", and replace "Affected Utility's or Electric Service Provider's" with "Load-Serving Entity's".

In section 1612(D), replace "the date indicated in R14-2-1604(D)" with "January 1, 2001"; delete "this Article and", and replace "Affected Utility's or Electric Service Provider's" with "Load-Serving Entity's".

In section 1612(E), replace "competitive services, as defined in R14-2-1605" with "Competitive Services".

## **R14-2-1613 Service Quality, Consumer Protection, Safety and Billing Requirements**

### **1613(A)**

Issue: Trico proposed deleting the second sentence of section 1613(A).

Evaluation: Based on our initial review, we do not believe changes are necessary.

Resolution: No change is required.

### **1613(C)**

Issue: RUCO wanted to delete the words "supply by" and "(or slammed)" from section

1613(C). TEP proposed modifying section 1613(C) by inserting after the third sentence: “A Utility Distribution Company has the right to review or audit written authorizations to assure a customer switch was properly authorized”, and substituting a semi-annual report period instead of quarterly.

Evaluation: RUCO’s and TEP’s proposals are reasonable. In addition, we note that in the fourth sentence the word “Providers” appears to refer to “Electric Service Providers.”

Resolution: Delete the language as recommended by RUCO and insert TEP’s proposed sentence. Insert in the beginning of the fourth sentence “Electric Service” before “Providers”.

### **1613(D)**

Issue: NEV proposed limiting rescission to residential customers.

Evaluation: NEV’s proposal is reasonable.

Resolution: Insert “residential” before “customer” in section 1613(D) and delete “with an annual load of 100,000 kWh or less”.

### **1613(E)**

Issue: Without proposing specific language, NWE argued that section 1613(E) should be redrafted to clarify that compliance with applicable reliability standards is the responsibility of the scheduling coordinator, the Independent System Operator (“ISO”) or the AISA, and notification of the scheduled outages is the responsibility of the UDC.

APS recommended deleting the last sentence of section 1613(E) as it is covered by, and inconsistent with, section 208(D)(1).

Evaluation: We believe section 1613(E) sufficiently delineates responsibilities and disagree that this section is inconsistent with other Rules.

Resolution: No change is required.

### **1613(G) & (H)**

Issue: NWE argued that sections 1613(G) and (H) should apply only to UDCs. Sempra recommended deleting section 1613(G) as an unnecessary cost burden.

Evaluation: We believe that sections 1613(G) and (H) should apply to ESPs and do not believe that section 1613(G) is overly burdensome.

Resolution: No change is required.

**1613(I)**

Issue: APS recommended conforming section 1613(I) to section 203(D)(4).

Evaluation: We concur with APS.

Resolution: Insert “if appropriate metering equipment is in place, and the request is processed 15 calendar days prior to the next regular read date” after “billing cycle”

**1613(K)**

Issue: Mohave and Navopache proposed modifying section 1613(K)(1) to allow UDCs to charge a fee for providing data to the customer or ESP.

Evaluation: Based on our initial review, we are not convinced that changes are necessary.

Resolution: No change is necessary.

Issue: Tucson recommended adding the following to the end of section 1613(K)(6): “Predictable loads, such as streetlights, will be permitted to use load profiling to satisfy the requirements for hourly consumption data. The Affected Utility or Electric Service Provider will make the determination if a load is predictable.”

Evaluation: Tucson’s proposal is reasonable.

Resolution: Insert Tucson’s proposed language at the end of section 1613(K)(6). However, in response to Staff’s exceptions to the proposed Rules, do not include the phrase “such as streetlights”.

Issue: Tucson recommended increasing the maximum demand for eligibility for load profiling from 20kW to 50kW in section 1613(K)(7). NEV suggested changing the requirement to 40 kW to ensure that small commercial users have an opportunity to participate in the competitive market.

Evaluation: Based on our initial review of the Rule, we are not convinced changes are necessary.

Resolution: No change is necessary.

Issue: ASARCO et al. recommended deleting “metering or” from section 1613(K)(1) because this section applies only to Meter Reading Service Providers.

Evaluation: “Metering or Meter Reading Services” are defined terms. We do not believe

a change is required.

Resolution: No change is necessary.

Issue: Trico proposed eliminating the last sentence in section 1613(J). Trico also proposed deleting section 1613(K)(1), and adding to the end of section 1613(K)(2) the following: “The Utility Distribution Company shall make available to the customer or its Electric Service Provider all metering information requested at the incremental cost of providing such information.” Trico recommended deleting “reference to Electric Service Provider” in sections 1613(K)(8), (9) and (10) and deleting sections 1613(K)(13), (14) and (15).

Evaluation: Trico’s recommendations are consistent with its view that metering, meter reading, billing and collection have historically been considered part of distribution services and should not be made competitive. We have rejected this position, believing that for meaningful competition, these contact points with customers should be competitive.

Resolution: No change is necessary.

Issue: NWE argued that the provisions of section 1613(K)(4) and sections 1613(K)(10) through (15) are overly technical, and that in section 1613(K)(2), the Commission should not approve tariffs for meter testing. NWE suggested that by eliminating the reference to the allowed percentage of error, the Commission could change the standard without amending the Rule.

Evaluation: We disagree that sections 1613(K)(4) and (10) through (15) are inappropriate for inclusion in these Rules. Further, we believe tariffs for meter testing are appropriate. As for the suggestion of not delineating the allowable percentage of error, based on our initial review, we are not convinced changes are necessary. In section 1613(K)(14) it appears that the reference to “rules” should be to the “operating procedures” referred to in section 1613(K)(13).

Resolution: In section 1613(K)(14) replace the word “rules” with “operating procedures”.

Issue: Citizens recommended adding provisions to sections 1613(K)(4) and (5) that would require electronic reporting unless the Commission granted a specific waiver.

Evaluation: We concur.

Resolution: Insert at the beginning of sections 1613(K)(4) and (5) the following: “Unless the Commission grants a specific waiver”.

Issue: RUCO proposed adding the following to the end of section 1613(K)(7): “however, they may choose other metering options offered by their Electric Service Provider consistent with the Commission’s rules on metering.”

Evaluation: We concur.

Resolution: Insert RUCO’s proposed language.

Issue: ASARCO et al. proposed modifying section 1613(K)(8) to refer to metering equipment ownership rather than meter ownership and specifying the customer “must obtain the metering equipment through” the Affected Utility, ESP or UDC. Tucson recommended deleting the requirement that a meter must be obtained from an Affected Utility, UDC or ESP. Mohave and Navopache wanted section 1613(K) to provide that when the Affected Utility is a distribution cooperative, meter ownership must remain with the cooperative. ASARCO et al. proposed deleting sections 1613(K)(10) and (11), as ASARCO et al. believed they create unnecessary confusion regarding ownership of metering instrument transformers, stating there is no legitimate reason to preclude ownership.

Evaluation: We concur with ASARCO et al.’s proposed revision of section 1613(K)(8). It is important that meters be obtained through a regulated entity. Based on our initial review of ASARCO et al.’s comments regarding sections 1613(K)(10) and (11), we are not convinced changes are necessary. Nor are we convinced that cooperatives must retain ownership of meters.

Resolution: Insert “equipment” after “Meter” and delete “obtains the meter from” and replace with “must obtain the metering equipment through” in section 1613(K)(8). No other changes are required.

Issue: Citizens recommended that the Director of the Utilities Division be required to issue operating procedures and performance specifications and standards by a date certain. Citizens suggested April 1, 1999.

Evaluation: We concur with Citizens that the entities providing metering services should have access to the operating procedures and specifications sooner rather than later.

Resolution: Modify sections 1613(K)(13), (14) and (15) to require the Director of the Utilities Division to issue operating procedures and specifications and standards by May 1, 1999.

**1613(L)**

Issue: APS recommended deleting section 1613(L) as the System Reliability and Safety Working Group has been dissolved and the issues it was addressing have been incorporated within the AISA Working Group.

Evaluation: APS' proposal is reasonable.

Resolution: Delete section 1613(L).

**1613(N)**

Issue: NWE also argued that section 1613(N) should be deleted as the Electric Power Competition Act requires substantial statewide consumer outreach and education, and that further informational programs by ESPs are unnecessary.

Evaluation: We do not believe that this provision adds an additional burden on ESPs, but merely provides for their participation in Consumer Education programs the Commission may require.

Resolution: No change is required.

**1613(O)**

Issue: NWE argued that to the extent ESPs are mandated to provide information on their billing statements, the Affected Utilities and UDCs should be mandated to provide such information in their control to the ESP.

Mohave and Navopache proposed modifying section 1613(O) to state that "All customer bills will list, at a minimum, the billing cost elements shown below. In cases in which power supplies (including generation, transmission and ancillary services) are obtained on a bundled basis, those costs can be shown as a bundled cost."

ASARCO et al. proposed that the section 1613(O)(1) unbundled billing elements include an additional section 1613(O)(1)(d) for "fixed Must-Run Generating Units Costs." Calpine proposed adding " Must-Run Generating Units charge" as a new section 1613(O)(3)(e).

Trico proposed deleting sections 1613(O)(3)(a) through (c), arguing that providing unbundled Standard Offer Service is not necessary.

APS proposed inserting the words "for competitive electric services" after "bills" in section

1613(O).

RUCO recommended deleting the word “Unbundled” at the beginning of section 1613(O) and deleting section 1613(O)(1)(d) Must-Run Generating Units charge and (O)(2)(c) “ancillary services”. RUCO argued that these charges are reflected in generation and transmission costs.

Evaluation: We believe that after a service territory is open to competition, all customer bills, whether Standard Offer or not, should be unbundled. However, we concur with RUCO that for billing purposes, including separate charges for Must-Run Generating Units and Ancillary services will probably not assist consumers and may be confusing. Based on our decision to clarify that all customer bills should be unbundled, and on our initial review of the other comments, we are not convinced additional changes are necessary. We agree that the proper title for this section should be “Billing Elements”.

Resolution: Revise section 1613(O) to provide: “Billing Elements. After commencement of competition within a service territory pursuant to R14-2-1602, all customer bills, including bills for Standard Offer Service, for customers within that service territory, will list, at a minimum the following billing cost elements:” Delete subsection (O)(2)(c).

Issue: RUCO proposed a new section 1613(P) as follows: “Within a given customer class, the bundled and unbundled bills shall include the same billing cost elements.” Citizens recommended that section 1613(P) require the Director of the Utilities Division to issue procedures and specifications by April 1, 1999. APS proposed inserting at the beginning of section 1613(P) the words “Information on unbundled charges will be provided to Standard Offer customers upon request.” APS argued that most Standard Offer Service customers do not want or need the information and the cost of providing it to all Standard Offer Service customers is high.

Evaluation: We believe our modifications to section 1613(O) have addressed RUCO’s concerns. We disagree that Standard Offer Service customers do not need or want information on unbundled rates.

Resolution: No additional changes are necessary.

#### **R14-2-1614 Reporting Requirements**

Issue: NWE argued that the entire section 1614 should be stricken as it is regulatory in

nature with no pro-competitive justification. AUIA requested that section 1614(A)(8) be eliminated. Sempra recommended deleting sections 1614(A)(4), (6) and (8) as the information they require would be trade secrets under competition.

APS proposed inserting the words “and if not otherwise provided,” after “applicable” in section 1614(A), and proposed deleting section 1614(A)(12).

APS recommended deleting all of section 1614(B)(1) and modifying section 1614(B)(2) to require only an annual report due on April 15 of each year, commencing in 2000. APS proposed inserting “at the provider’s option” in the first sentence of section 1614(C). APS also proposed deleting section 1614(F) because it believed it “silly” to mandate participation in informal proceedings such as workshops.

TEP recommended the deletion of 1614(A)(3), and the deletion of all language after the word “disaggregated” in section 1614(A)(4), and sections 1614(A)(6), (7), (8) and (9). TEP questioned the need for the amount of information currently required under the Rule, and believed it would be unnecessarily expensive.

Evaluation: The reports required by section 1614(A) will furnish the Commission with valuable information in assessing the competitiveness of the electricity market in Arizona and we will retain the requirement that they be filed, with the exception of section 1614(A)(3), which is no longer necessary due to the deletion of the solar portfolio requirement, and section 1614(A)(12), which should be deleted due to mootness.

Section 1614(A)(7) would be clarified by the use of the defined terms “Competitive Services” and “Noncompetitive Services”.

APS’ proposed insertion of “at the provider’s option” in the first sentence of section 1614(C) clarifies the intent of that provision. This clarification also addresses Sempra’s concern regarding confidentiality.

Resolution: Modify section 1614 accordingly.

#### **R14-2-1615 Administrative Requirements**

Issue: APS and NWE both proposed that section 1615(A) be modified to provide that newly tariffed services shall become effective in thirty days unless suspended by the Commission as is the

case at present.

Evaluation: This is a reasonable recommendation.

Resolution: Remove the second sentence of this provision.

Issue: Trico, with the support of Duncan and Graham, recommended that section 1615(A) be modified to clarify that tariffs filed by ESPs are for Competitive Services.

Evaluation: This suggested modification provides clarity.

Resolution: Replace “services” with “Competitive Services” thereby incorporating the definition of “Competitive Services” in section 1601 into section 1615(A).

Issue: RUCO recommended adding a new subsection to section 1615 requiring the Director of Utilities to implement a Consumer Education program as approved by the Commission. The comments of the Arizona Consumers’ Council also indicated that Consumer Education is a critical need and its main concern.

Evaluation: We recognize the need for an educated consumer for the successful implementation of competition.

Resolution: Add a subsection (D) to R14-2-1615 providing for the implementation of a Consumer Education program.

#### **R14-2-1616 Separation of Monopoly and Competitive Services**

Issue: Many parties proposed that the bulk of the language in section 1616(B) be stricken.

Evaluation: We agree. Much of the language of condition appearing in section 1616(B) is unnecessary and does not provide the certainty to stakeholders that is vital to a rapid and orderly transition to competition. In its exceptions, Staff offered language which clarifies important portions of this section 1616(B).

Resolution: Modify section 1616 using defined terms for clarity and consistency. Insert Staff’s recommended language from its exceptions as new sections 1616(B)(1) and (2).

Issue: TEP suggested that separation of transmission and generation assets not be required until 2003 because TEP will be unable to accomplish the separation prior to that. TEP also recommended waiver language to address its concern that lease and bond restrictions may hamper its ability to accomplish the separation.

Evaluation: A Rule modification to this effect is unnecessary because a legal right to request a waiver already exists. In addition, TEP or any other Affected Utility will have an opportunity to address these issues in the upcoming proceedings on its Stranded Cost issues.

Resolution: No change is necessary.

Issue: TEP recommended that language be added to section 1616(C) to make generation cooperatives subject to the same limitations as their member distribution cooperatives. TEP stated that this is necessary in order to prevent generation cooperatives from competing in the retail electric market while utilizing the services of their member distribution cooperatives.

Evaluation: TEP has raised a valid issue.

Resolution: Add TEP's suggested language.

Issue: Mohave and Navopache recommended that section 1616 be replaced with a new section 1616 entitled "Standards of Conduct."

Evaluation: Upon review of Mohave and Navopache's suggested "Standards of Conduct," we find that putting it in place of section 1616 would not accomplish the goal of section 1616, which provides a means of instituting true competition in the provision of retail electric services in the State of Arizona.

Resolution: No change is necessary.

Issue: Many of the parties providing comments on these Rules requested that section 1616(D) be deleted from the Rules.

Evaluation: Deletion is necessary to conform with the deletion of the Solar Portfolio provisions of section 1609.

Resolution: Delete section 1616(D).

#### **R14-2-1617 Affiliate Transactions**

Issue: AEPCO recommended deleting all of section 1617 and substituting new language prohibiting cross-subsidization. AEPCO argued that section 1617 forces divestiture, unreasonably denies the economies and efficiencies of joint operation, and unfairly punishes the Affected Utilities. AEPCO further argued that the parties were not given sufficient opportunity to comment on this section which Staff first proposed in conjunction with the enactment of the Emergency Rules in

August 1998.

APS recommended deleting “An Affected Utility of” at the beginning of section 1617(A) and throughout this section based on APS’ assertion that it was redundant if the Affected Utility is also an UDC and unnecessary if it is not. APS proposed inserting “competitive electric” before “affiliates” throughout this section. Citizens also proposed clarifying that the use of the word “affiliate” means a “competitive electric affiliate.”

### **1617(A)**

Issue: TEP recommended the deletion of section 1617(A)(1) because, it argued, section 1617(A)(2) contains all the necessary safeguards.

The AG proposed adding the words “fair market value” before “compensation” in section 1617(A)(1).

Citizens proposed adding to the beginning of section 1617(A)(1) “Without full compensation” in accordance with section 1617(A)(7), and eliminating the last sentence of 1617(A)(1).

RUCO recommended adding the following after the first sentence of section 1617(A)(2): “however, no person privy to a utility’s non-public information shall serve as affiliate in any capacity or provide any guidance based on non-public information.”

Issue: RUCO recommended changing the reference in section 1617(A)(4) from “customer written communication” to “written communication to customers”.

Citizens recommended adding language to the beginning of section 1617(A)(4) and end of section 1617(A)(5) qualifying these sections with “Unless such activities are governed by a contract resulting from an open bidding process.” Citizens proposed deleting the second sentence from section 1617(A)(6) concerning the application of the Rules to Boards of Directors.

TEP recommended that the following be added after the first sentence of section 1617(A)(6): “Because Directors and Officers of a holding company are charged with the success of all of the holding company’s subsidiaries, they may also serve as Directors or Officers of all affiliated subsidiaries, provided that adequate procedures are in effect to prevent the transfer of information in violation of these Rules.” TEP recommended the deletion of the currently existing second

sentence.

NEV recommended modifying section 1617(A)(6) by changing the second sentence to provide that this Rule does not apply to Boards of Directors and corporate officers, and by eliminating everything after the second sentence.

APS proposed inserting “to existing or potential retail customers” in section 1617(A)(3). In section 1617(A)(5), APS proposed inserting “with retail customers” after “sales”. In section 1617(A)(6), APS recommended changing the second sentence to provide that this Rule “does not apply” to Boards of Directors and corporate officers. APS recommended deleting the third sentence. APS also proposed inserting “service company” in the fourth sentence.

Issue: TEP proposed replacing “higher of fully allocated cost of the” in section 1617(A)(7) with “no lower than the”.

APS suggested that section 1617(A)(7)(a) be modified to read “Goods and services provided by a Utility Distribution Company to a competitive electric affiliate shall be transferred at the price and under the terms and conditions specified in its tariff. If the goods or service to be transferred is a non-tariffed item, and is regularly sold by the Utility Distribution Company to third parties, the transfer price shall be the market price. If market price can not be easily determined by the Utility Distribution Company or if a good or service is not regularly offered to third parties (e.g. shared service), the transfer price should not be less than the fully allocated cost of the good or service.”

APS argued that its proposed language provided clarity, and that there is no reason to restrict pricing on goods and services from a competitive entity to a UDC.

APS proposed deleting section 1617(A)(7)(b) because it believes cross subsidization is covered in section 1617(A)(8). In section 1617(A)(8), APS recommended deleting the words “and shall not be provided access to confidential utility information” as this is covered in section 1617(B). Staff argued that the words APS sought to delete from section 1617(A)(8) should remain, because section 1617(B) addresses only confidential information that does not “concern customers”.

RUCO proposed adding the following language to section 1617(A)(7)(a) at the end of the second and third sentences: “except that if a good or service transferred is being divested because it is used to provide a competitive service under this Article, it may be transferred at a Commission-

approved market value even if its fully-allocated cost is higher.”

Issue: The AG recommended adding “and to other Energy Service Providers,” after “nonaffiliates” in section 1617(B). RUCO proposed deleting the words “As a general rule, an” from the beginning of section 1617(B).

### **1617(C)**

Issue: APS proposed deleting section 1617(C)(2) as being unnecessary. APS suggested adding a sentence to the end of section 1617(C)(3) as follows: “This provision does not prevent a UDC’s employees from giving customers objective, factual, and publicly available information concerning Energy Service Providers.”

Citizens proposed adding to section 1617(C)(3) “unless such activities are services governed by a contract resulting from an open competition bidding process,” after “rules” to allow the affiliate to bid in a fair, open process against other competitors.

### **1617(D)**

Issue: APS proposed inserting “for non-competitive service” in sections 1617(D)(1) and (4) on the theory that there is no harm if one unregulated entity wants to give preference to another unregulated affiliate. APS also recommended deleting the second sentence of section 1617(D) as it is covered elsewhere.

### **1617(E)**

Issue: Citizens proposed adding the following to the end of section 1617(E): “The Director, Utilities Division shall issue no later than December 31, 1999, detailed requirements which describe the scope of these audits and the degree of responsibility to be taken by the auditor.”

TEP proposed changing the date of December 31, 1998 in section 1617(E) to September 30, 1999, and requiring semi-annual audit reports rather than quarterly reports.

Sempra recommended that section 1617(E) be modified to require filing a compliance plan thirty days prior to the implementation of competition.

APS proposed adding language in section 1617(E) that would make requiring a UDC to hire an independent auditor discretionary for cause. APS also proposed changing “performance audit” to “compliance audit” for the sake of consistency.

**1617(F)**

Issue: The AG recommended adding the following after “interest” in section 1617(F)(2): “only after notice and an opportunity to be heard is given to all parties to the Commission’s Electric Energy Restructuring consolidated docket, and to the public, and only at an open meeting called for that purpose.”

Calpine proposed a new section 1617(F)(2) as follows: “the petitioner shall notify the Electric Service Providers and provide public notice of the petition as required by the Commission.”

Evaluation: We concur with those parties who believe that compliance with the affiliate transaction rules as they appear in this section may be too onerous and costly. However, in the restructured market, it is imperative that Affected Utilities implement some safeguards to prevent Noncompetitive rates from possibly subsidizing the Competitive Services that will be provided by Affected Utilities and their competitive electric affiliates. Consequently, all Affected Utilities that provide Competitive Services through competitive electric affiliates should be required to formulate a code of conduct in order to protect ratepayers from such cross-subsidization. The code of conduct should be designed to prevent the occurrence of anti-competitive activities, and should be subject to Commission review and approval.

Resolution: Strike the entirety of section 1617 and replace with the following: “**Code of Conduct** No later than 90 days after adoption of these Rules, each Affected Utility which plans to offer Noncompetitive Services and Competitive Services through its competitive electric affiliate shall propose a code of conduct to prevent anti-competitive activities. The code of conduct shall be subject to Commission approval.”

**R14-2-1618 Disclosure of Information**

Issue: AEPCO, with the support of Trico, Duncan and Graham, recommended deleting section 1618 because the tracking mechanism necessary to assure accurate information disclosure does not currently exist. NWE argued that section 1618 should be stricken in its entirety as it is burdensome, onerous, misleading and unlikely to assist customers in making a reasoned choice of suppliers. TEP also recommended deleting section 1618 in its entirety because the costs outweigh its benefits.

Trico proposed two new provisions to replace sections 1616, 1617 and 1618:

“R14-2-1615 - Cross Subsidization Prohibited

Competitive Services offered by an Affected Utility, Utility Distribution Company or their affiliates, if any, shall not be subsidized by any rate or charge for any Noncompetitive Service.”  
and

“R14-2-1616 - Code of Conduct

The Commission shall establish a Code of Conduct that shall be applicable to each Affected Utility, Utility Distribution Company or their affiliates, if any, who conduct more than one of Generation, Transmission or Distribution Services to prevent subsidization and improper communications between the two or three functions.”

RUCO and APS recommended deleting section 1618(A). RUCO proposed replacing “Load-Serving Entity” in section 1618(B) with “provider of services described in Rule R14-2-1605.A”. RUCO wanted to clarify that all providers of competitive generation are required to disclose the information, but that Standard Offer Service providers are not. RUCO also recommended deleting sections 1618(B)(4), (5) and (6). APS recommended deleting section 1618(G)(2), asserting that this subsection would make it too hard to change ESPs. ASARCO et al. proposed deleting sections 1618(B), (C), (D) in their entirety and the words “consumer information label” from section 1618(G), believing the product labeling requirements to be onerous. AUIA recommended eliminating sections 1618 (A), (B), (C), (D), (E), (G) and (H).

APS recommended replacing “Load-Serving Entity” in section 1618 with “ESP providing generation services” and inserting in section 1618(B) “(to the extent reasonably available or known) for residential” and deleting “with a demand of less than 1 MW”. APS also proposed deleting sections 1618(F)(11) and (12) .

NEV proposed modifying section 1618(D) to require the disclosure label in all “brochures and other collateral” marketing materials targeted to residential customers. NEV claimed that business customers would not require or benefit from the proposed consumer protection measures.

NEV proposed deleting section 1618(F)(12). ACAA recommended modifying section 1618(F) to refer to low income programs and rate eligibility in order to recognize that there are more than just rate programs for low-income consumers. ACAA also proposed requiring the Commission

to establish a consumer information advisory panel to assist the Commission in developing a Consumer Education program.

The AG proposed adding at the end of section 1618(I): “ a representative of the Attorney General’s Office shall be named to the panel.”

Evaluation: We believe that section 1618 provides valuable protections for consumers, but that it should be modified to be less onerous on ESPs. In reviewing Staff’s exceptions to the proposed Rules, we agree that this section should apply to Load-Serving Entities. We believe that the information provided in section 1618(B) will be helpful to consumers making choices among ESPs and between competitive service and Standard Offer Service. However, we are mindful that providers of generation services may not always know the characteristics of the resource portfolio. Consequently, we will modify this section to provide that Load-Serving Entities shall prepare a consumer information label containing the information currently contained in sections 1618(B)(1), (2), (3) and (7). This information should be made available in accordance with the requirements of section 1618(G). Load-Serving Entities should be required to provide upon request (to the extent reasonably known) the information concerning the resource portfolio that is currently set forth in sections 1618(B)(4), (5) and (6).

Resolution: Delete section 1618(A). Modify section 1618(B) as discussed above. Insert a new subsection requiring Load-Serving Entities to provide the information discussed above. Correct the grammar in section 1618(D) and insert “programs and” after “income” in section 1618(F)(10). Change “may” to “shall” in section 1618(I).