

APPENDIX B

CONCISE EXPLANATORY STATEMENT

I. CHANGES IN THE TEXT OF THE PROPOSED RULES FROM THAT CONTAINED IN DECISION NO. 61634 (PUBLISHED ON MAY 14, 1999, IN 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 – No Change
- R14-2-202 Certificate of Convenience and Necessity for electric utilities; filing requirements on certain new plants – No Change
- R14-2-203 Establishment of service - Modified
- R14-2-204 Minimum customer information requirements – No Change
- R14-2-205 Master metering – No Change
- R14-2-206 Service lines and establishments – No Change
- R14-2-207 Line Extensions – No Change
- R14-2-208 Provision of service – No Change
- R14-2-209 Meter reading - Modified
- R14-2-210 Billing and collection – No Change
- R14-2-211 Termination of service – No Change
- R14-2-212 Administrative and hearing requirements – No Change

ARTICLE 16. RETAIL ELECTRIC COMPETITION

- R14-2-1601 Definitions - Modified
- R14-2-1602 Commencement of Competition – No Change
- R14-2-1603 Certificates of Convenience and Necessity - Modified
- R14-2-1604 Competitive Phases - Modified
- R14-2-1605 Competitive Services - Modified

- 1 R14-2-1606 Services Required To Be Made Available - Modified
 2 R14-2-1607 Recovery of Stranded Cost of Affected Utilities – No Change
 3 R14-2-1608 System Benefits Charges – No Change
 4 R14-2-1609 Transmission and Distribution Access - Modified
 5 R14-2-1610 In-state Reciprocity – No Change
 6 R14-2-1611 Rates - Modified
 7 R14-2-1612 Service Quality, Consumer Protection, Safety, and Billing Requirements - modified
 8 R14-2-1613 Reporting Requirements - Modified
 9 R14-2-1614 Administrative Requirements – No Change
 10 R14-2-1615 Separation of Monopoly and Competitive Services - Modified
 11 R14-2-1616 Code of Conduct - Modified
 12 R14-2-1617 Disclosure of Information - Modified

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14 **II. EVALUATION OF THE ARGUMENTS FOR AND AGAINST THE**
 15 **PROPOSED AMENDMENTS TO THE RULES.**

16 **R14-2-203 - Establishment of Service**

17 **203(B)**

18 **Issue:** New West Energy (“NEW”) recommended that a provision be added to Section
 19 203(B)(6) to clarify that deposits for residential and nonresidential customers would be estimated
 20 using average monthly usage for Noncompetitive Services. The Arizona Corporation Commission
 21 (“Commission”) Staff (“Staff”) responded that the existing Section already contains the word
 22 “estimated” and argued no change was required.

23 **Analysis:** We concur with Staff.

24 **Resolution:** No change is necessary.

25 **Issue:** Commonwealth Energy Corporation (“Commonwealth”) stated that Section 203(B)(9)
 26 should be deleted because Utility Distribution Companies (“UDCs”) may attempt to dissuade
 27 customers from seeking competitive services by claiming customer deposits may be raised if the

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1 customers are dissatisfied with the alternative provider and return to Standard Offer Service. Staff
 2 responded that it is clear that the only reason a UDC can increase a deposit is for the return to
 3 Standard Offer Service, which may be more expensive than competitors' service. Staff argued that
 4 this provision should motivate customers to choose another Electric Service Provider ("ESP") and not
 5 return to Standard Offer Service.

6 **Analysis:** This Section allows the deposit to be raised only in proportion to the expected
 7 increase in monthly billing, and also requires a refund of the deposit for non-delinquent customers
 8 when a customer switches to competitive services. This Section is not anti-competitive and requires
 9 no change.

10 **Resolution:** No change is necessary.

11 **203(D)(1)**

12 **Issue:** NWE recommended that the language "including transfers between Electric Service
 13 Providers" in Section 203(D)(1) be deleted. Staff responded that no change is necessary because the
 14 Rules already contemplate a charge for transfers between ESPs.

15 **Analysis:** This Section requires Commission approval of such charges. ESPs may object
 16 if they believe the amount of such a charge is unreasonable.

17 **Resolution:** No change is necessary.

18 **203(D)(4)**

19 **Issue:** The City of Tucson ("Tucson") advocated rewriting Section 203(D)(4) regarding
 20 service establishments to clearly set time limits for actions by each party and to avoid incentives to
 21 delay processing Direct Access Service Requests ("DASRs") or meter changes.

22 **Analysis:** We agree that the language "if the direct access service request is processed 15
 23 calendar days prior to that date" does not provide a sufficiently clear time limit, and does not avoid
 24 incentives to delay processing DASRs. As explained in our analysis of Section 1612(I), whether
 25 appropriate metering equipment is in place is an important concern in some circumstances, and that
 26 language should remain unchanged.

27 **Resolution:** Modify the first sentence of this Section as follows:
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1 Service establishments with an Electric Service Provider will be scheduled for the next
2 regular meter read date if the direct access service request is provided ~~processed~~ 15
calendar days prior to that date and appropriate metering equipment is in place.

3 Such change merely clarifies the intent of this provision and is not substantive.

4 **R14-2-204 – Minimum Customer Information Requirements**

5 **Issue:** Arizona Consumers Council (“AZCC”) objected to the language in this Section on the
6 grounds that an ESP might sign consumers up for new service without being obligated to provide
7 adequate information regarding the offered services.

8 **Analysis:** Our modification to Section 1612(C) addresses this concern by requiring that
9 the written authorization to switch providers confirm the rates, terms, conditions and nature of the
10 service to be provided. This Section requires Load-Serving Entities to provide further information to
11 residential consumers who request it.

12 **Resolution:** No change is required.

13 **R14-2-205 – Master Metering**

14 **Issue:** In late-filed comments, the Arizona Multihousing Association (“AMA”) advocated for
15 the deletion of Section 205(B) which limits master metering for newly constructed apartment
16 complexes. The AMA asserted that the prohibition was counterproductive to achieving the critical
17 mass necessary to benefit from aggregation. AMA also recommended that the issue of aggregation
18 be clarified.

19 **Analysis:** The AMA raised this issue for the first time very late in the rule revision
20 process and other parties have not had opportunity to respond. We do not believe revision of this
21 existing rule is warranted, especially without input from other parties. We believe that at least some
22 of AMA’s concerns are addressed by our clarifications to the process of aggregation in Section 1604.

23 **Resolution:** No change is required.

24 **R14-2-209 – Meter Reading**

25 **Issue:** The AZCC raised a concern that under this Section a customer may be charged for a
26 meter re-read when the customer had nothing to do with the request for a re-read.

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1 **Analysis:** Section 209(C)(1) provides that a customer, ESP, UDC, or billing entity may
 2 request a re-read of a meter. Section 209(C)(2) provides that a re-read may be charged to the
 3 customer, ESP, UDC or billing entity at the tariff rate. It is implicit in this Section that the requesting
 4 party will be the party to be charged. However, we will modify this Section to clarify that it is the
 5 requesting party that may be charged for the re-read. Such modification merely clarifies this
 6 provision and is not substantive.

7 **Resolution:** Insert “making the request” after “or billing entity” in Section 209(C)(2).

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

9 **210(A)**

10 **Issue:** Tucson Electric Power Company (“TEP”) recommended deleting Section
 11 210(A)(5)(c) which prohibits estimated bills for direct access customers requiring load data because
 12 the utility or billing entity has the ability to do it and such bills can be estimated in accordance with
 13 Sections 209(A)(8) and 1612(K)(14). Staff responded that as a general rule, direct access customers’
 14 bills should not be estimated, and argued against changing this provision.

15 **Analysis:** We concur with Staff.

16 **Resolution:** No change is necessary.

17 **Issue:** NWE states that the terms “utility” and “customer” are not defined in Section
 18 210(A)(2). Staff noted that these terms are defined in Section 201.

19 **Analysis:** The definitions in Section 201 are sufficient.

20 **Resolution:** No change is necessary.

21 **Issue:** NWE states that the rules for estimated meter readings should be developed by the
 22 working group and should not be included in Sections 210(A)(3) through (6). Staff stated that this
 23 Section sets forth conditions which the working groups have previously developed and therefore no
 24 change is warranted.

25 **Analysis:** We concur with Staff.

26 **Resolution:** No change is necessary.

27 **210(C-I)**

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1 **Issue:** NWE states that Sections 210(C) through (I) should be stricken in their entirety
 2 because it believes they do not apply to ESPs, and that to the extent they apply to UDCs, they should
 3 be covered by the UDCs' tariffs. Staff responded that these rules apply to UDCs and ESPs.

4 **Analysis:** As the term "utility" is defined in Section 201, these Sections apply to both
 5 UDCs and ESPs. It is preferable that the issues covered in these Sections be prescribed by general
 6 rule rather than be provided in individual tariffs.

7 **Resolution:** No change is necessary.

8 **R14-2-211 - Termination of Service**

9 **Issue:** Commonwealth recommended the deletion of the opening sentences in Sections
 10 211(B) and (C), which prohibit an ESP from ordering disconnection of service for nonpayment. Staff
 11 responded that ESPs can terminate service to customers for nonpayment through terminating their
 12 contract with customers.

13 **Analysis:** This Section does not preclude an ESP from terminating a contract for
 14 nonpayment. Commonwealth's concerns about its ability to terminate contracts expediently are
 15 addressed by our revisions to Section 1612(I).

16 **Resolution:** No change required.

17 **R14-2-213 - Conservation**

18 **Issue:** TEP proposed deleting this Section because it is premature; the issue will be addressed
 19 when revisiting the Resource Planning Rules; it should apply to all utilities and ESPs; and it should
 20 be delayed until there is 100 percent statewide competition. Staff responded that this rule has been in
 21 effect for several years and there is no justification for deleting it at this time.

22 **Analysis:** We remain unconvinced that a change in this provision is warranted.

23 **Recommendation:** No change is necessary.

24 **R14-2-1601 - Definitions**

25 **1601(2) "Aggregator"**

26 **Issue:** The Land and Water Fund of the Rockies and the Grand Canyon Trust (collectively,
 27 the "LAW Fund") and the AZCC expressed concern that the Rules do not sufficiently encourage
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1 aggregation of smaller users. Commonwealth concurred. The Arizona Transmission Dependent
 2 Utility Group (“ATDUG”) suggested deleting the term “Aggregator” and adding a new definition of
 3 “Aggregation.” Staff responded that the definition of “Aggregator” was placed in the Rules, as
 4 originally drafted, to address businesses that choose to provide “aggregation” as an electric service to
 5 customers. Staff noted that apparently, that definition has created confusion, causing some to believe
 6 that in order for a group of customers to combine or “aggregate” their load, they would have to
 7 become an ESP. Staff stated that was not the intent of the Rule as originally drafted. Staff noted that
 8 in addition, there have been questions raised about whether residential customers are able to
 9 aggregate their load, either through self-aggregation or through the services of an Aggregator. Staff
 10 believed that clarification of this issue would be helpful. Staff therefore proposed new language to
 11 clarify that only entities which perform aggregation services as part of their business are required to
 12 obtain ESP certification; to provide new definitions of “Aggregation” and “Self-Aggregation”; to
 13 clarify that residential customers may also aggregate or self-aggregate their loads, subject to the
 14 phase-in percentage limitations; and to clarify that eligible residential and non-residential customers
 15 may be aggregated together. Staff proposed the following new definition of “Aggregator”:

16 “2. ‘Aggregator’ means an Electric Service Provider that, as part of its business,
 17 combines retail electric customers into a purchasing group.”

18 Staff also suggested a new definition of “Aggregation” similar to that suggested by ATDUG:

19 “3. ‘Aggregation’ means the combination and consolidation of loads of multiple
 20 customers.”

21 Staff proposed that a revised version of the definition of “Self-Aggregation” be included in the Rules:

22 “Self-Aggregation is the action of a retail electric customer or group of customers who
 23 combine their own metered loads into a single purchase block.”

24 In addition, Staff proposed additional clarifying modifications to Sections 1604(A)(2) and (4) and
 25 1604(B)(6) concerning aggregation and self-aggregation, which are discussed in our analysis of those
 26 Sections.

27 **Analysis:** Staff’s recommended modifications to this Section are not substantive, but
 28 provide clarity and should be adopted.

1 **Resolution:** Modify Section 1601 in accordance with Staff’s recommendations and
 2 renumber accordingly.

3 **1601(3) “Ancillary Services”**

4 **Issue:** Staff noted that although the Proposed Rules contain several references to the term
 5 “Ancillary Services,” they do not include a definition for that term, and suggested that the following
 6 definition be added to the Rules:

7 “Ancillary Services” means those services designated as ancillary services in Federal
 8 Energy Regulatory Commission Order 888, including the services necessary to
 9 support the transmission of electricity from resource to load while maintaining reliable
operation of the transmission system in accordance with good utility practice.

10 **Analysis:** The proposed definition provides clarity and is not a substantive change to the
 11 Rules.

12 **Resolution:** Add the definition as proposed and renumber accordingly.

13 **1601(5) – Competitive Services**

14 **Issue:** Arizona Public Service Company (“APS”) argued that the Commission should not
 15 define “Competitive Services” simply by negative reference to another definition because it is vague.
 16 APS proposed that the definition of “Competitive Services” should be replaced with the following:

17 5. “Competitive Services” means retail electric Generation, Meter Service (other
 18 than those aspects of Meter Service described in R14-2-1612(K)), Meter Reading
 19 Service, and billing and collection for such services (other than joint or consolidated
 20 billing provided pursuant to a tariff). It does not include Standard Offer Service or
 21 any other electric service defined by this article as noncompetitive. ~~all aspects of retail~~
~~electric service except those services specifically defined as “Noncompetitive~~
~~Services” pursuant to R14 2-1601(27) or noncompetitive services as defined by the~~
~~Federal Energy Regulatory Commission.~~

22 Arizona Electric Power Cooperative, Inc., Duncan Valley Electric Cooperative, Inc. and
 23 Graham County Electric Cooperative, Inc. (“AEPCO, Duncan and Graham”) supported APS’
 24 modification of the definition. Commonwealth and Arizonans for Electric Choice and Competition
 25 (“AECC”) opposed APS’ proposal. In its responsive comments, Staff noted that Competitive and
 26 Noncompetitive Services as defined by the Rules are mutually exclusive, and argued that APS
 27 appears to be attempting to create a third category of services: Competitive Services that may be
 28 provided by Affected Utilities or Utility Distribution Companies. Staff believed that the existing

1 definition is sufficiently clear, and maintains the proper distinction between services that may be
2 provided by Affected Utilities or UDCs, and those services that may not.

3 **Analysis:** APS' proposal could narrow the competitive environment by excluding other
4 energy-related services. The distinction between Competitive and Noncompetitive Services is
5 sufficiently clear without modification.

6 **Resolution:** No change is required.

7 **1601(4) "Competition Transition Charge"**

8 **Issue:** Navopache Electric Cooperative, Inc. ("Navopache") and Mohave Electric
9 Cooperative, Inc. ("Mohave") commented that the definition of Competition Transition Charge
10 ("CTC") should include costs incurred by the Affected Utilities in implementing these Rules.
11 Navopache and Mohave argued that these costs would not be incurred but for customers electing to
12 switch to competitive providers, and therefore customers who switch should bear the associated costs,
13 rather than the customers who remain on Standard Offer Service.

14 Staff stated that because many of Navopache's and Mohave's concerns are already addressed
15 by the proposed modification to the definition of Stranded Cost to include "other transition and
16 restructuring costs," it is unnecessary to make the modification Navopache and Mohave recommend.

17 **Analysis:** We concur with Staff.

18 **Resolution:** No change is required.

19 **1601(13) (newly proposed) "Economic Development Tariffs"**

20 **Issue:** Staff proposed to add a new definition for "Economic Development Tariffs" as "those
21 discounted tariffs used to attract new business expansions in Arizona" to comport with its
22 recommendation to add language to Section 1606(C)(6), referring to "economic development tariffs
23 that clearly mitigate Stranded Costs."

24 **Analysis:** As explained in our discussion under Section 1606(C) below, due to
25 insufficient evidence in the record to support the implementation of the proposed "Economic
26 Development Tariff", we will not revise Section 1606(C) as proposed by Staff at this time.
27 Therefore, this proposed definition is not needed.

28 **Resolution:** No change is required.

1 **1601(15) “Electric Service Provider Service Acquisition Agreement”**

2 **Issue:** NWE recommends that the Electric Service Provider Service Acquisition Agreement
3 be a standardized, Commission-approved agreement between an Affected Utility and an ESP because
4 NWE believes that the rule as written creates an uncertain process that may deter potential ESPs from
5 competing in Arizona. NWE also argues that a standardized, Commission-approved agreement is the
6 most efficient mechanism for controlling the technical and financial viability of competitors.
7 Commonwealth supported the approach of a Commission pre-approved agreement for all service
8 areas.

9 Staff stated it agreed with the Commission’s conclusion in Decision No. 61634 on this issue,
10 that the certification process is not overly burdensome or anti-competitive.

11 **Analysis:** We believe that the certification process as currently structured is not such an
12 uncertain or burdensome process as to deter potential ESPs from competing in Arizona, and that the
13 current process provides adequate oversight of ESPs’ technical and financial viability.

14 **Resolution:** No change is required.

15 **1601(27) “Noncompetitive Services”**

16 **Issue:** Navopache and Mohave argued that it is necessary for customer-owned distribution
17 cooperatives to maintain the relationships and communications links with their members/owners for
18 membership, voting and other purposes. To achieve that goal, Navopache and Mohave
19 recommended that the definition of Noncompetitive Services be modified to state that metering,
20 meter ownership, meter reading, billing, collections and information services are deemed to be
21 Noncompetitive Services in the service territories of the distribution cooperatives.

22 Staff responded that the provisions of Section 1615(B)(1) allow distribution cooperatives to
23 maintain sufficient links with their members/owners.

24 **Analysis:** We agree with Staff that Section 1615(B)(1) explicitly allows an Affected
25 Utility or UDC to bill its own customers for distribution service and to provide billing services to
26 ESPs in conjunction with its own billing, and also allows an Affected Utility or UDC to provide
27 billing and collections, Metering and Meter Reading Service as part of its Standard Offer Service
28 tariff to Standard Offer Service customers.

1 **Resolution:** No change is required.

2 **Issue:** ATDUG suggested that the definition of Noncompetitive Services should be amended
3 to add “Aggregation Service.”

4 **Analysis:** Although the actual delivery of electricity sold to aggregated customers will be
5 a Noncompetitive Service, there is no reason to differentiate the generation services provided to
6 aggregated customers from generation services provided to non-aggregated customers. Both
7 aggregated and non-aggregated competitive generation services should remain classified as
8 Competitive Services.

9 **Resolution:** No change is required.

10 **Issue:** Commonwealth asserted that ESPs should not have to pay the utility for customer data
11 when the customer requests its release. Commonwealth recommended that the definition of
12 Noncompetitive Services should be amended by deleting “provision of customer demand and energy
13 data by an Affected Utility or Utility Distribution Company to an Electric Service Provider” so that
14 the utility cannot impose a charge on these services. Alternatively, Commonwealth argued that the
15 Rules should provide that the data will be provided to the customer (or its authorized representative)
16 at no charge.

17 **Analysis:** Because customers who switch providers will be the “cost-causers,” it is
18 appropriate that they should bear the administrative costs associated with switching providers. We
19 share Commonwealth’s concern, however, that such charges may be prohibitively high and
20 discourage new market entrants. As this will be a tariffed item, the Commission will oversee the
21 reasonableness of such a charge. If an ESP finds the tariffed charge unreasonable, the ESP is free to
22 protest the tariff.

23 **Resolution:** No change is required.

24 **1601(28) (former) “Net Metering or Net Billing”**

25 **Issue:** Tucson recommended not deleting the definition of Net Metering or Net Billing from
26 the Rules, as the potential for customer-sited generation using any sort of generation is still possible,
27 even if not mandated. Tucson recommended striking the word “solar electric” from the definition.

1 **Analysis:** The terms “Net Metering or Net Billing” are not referenced in the Rules and
2 consequently, their inclusion in the definitions is not necessary and could be confusing.

3 **Resolution:** No change is required.

4 **1601 (34) (newly proposed) “Public Power Entity”**

5 **Issue:** Staff noted that although the Rules have added the term “Public Power Entity” they do
6 not include a definition for that term. Staff recommend that the definition parallel that set forth by
7 the legislature in A.R.S. § 30-801.16. Trico Electric Cooperative (“Trico”) and Commonwealth
8 concurred.

9 **Analysis:** This definition is needed because prior revisions of Section 1610 introduced
10 this term, however, the change is not substantive.

11 **Resolution:** Add the following definition to Section 1601 and renumber accordingly:
12 “Public Power Entity’ incorporates by reference the definition set forth in A.R.S. § 30-801.16.”

13 **1601(35) “Stranded Cost”**

14 **Issue:** TEP argued that the Proposed Rules’ replacement of the word “value” with “net
15 original cost” is not appropriate because the new term may be inconsistent with assets held under
16 lease arrangements and with various regulatory assets. AECC disagreed with TEP. Staff responded
17 that it concurs with the change made in Decision No. 61634 to replace “value” with “net original
18 cost,” and that this language will not preclude TEP from seeking what it believes to be an appropriate
19 level of recovery for its Stranded Costs.

20 Trico recommended adding “and distribution assets” after “regulatory assets” in Section
21 1601(35)(a)(i), because distribution electric public service corporations are also entitled to recover
22 their Stranded Costs. ATDUG and Commonwealth responded to Trico’s recommendation by
23 questioning how distribution assets could be considered “stranded” since they remain with the
24 regulated entity. Staff responded that due to the difficulty in calculating distribution cooperatives’
25 Stranded Costs prior to competition, it is more appropriate to deal with those costs in rate cases for
26 distribution electric public service corporations. Staff therefore recommends that the definition of
27 Stranded Costs not be changed.

1 **Analysis:** We concur with Staff that the term “net original cost” will not preclude TEP
 2 from recovering appropriate Stranded Costs. We also concur that the recovery of costs related to
 3 distribution assets are appropriately handled in a rate case.

4 **Resolution:** No change is necessary.

5 **1601(36) “System Benefits”**

6 **Issue:** NWE states that the definition of "System Benefits" is "vague and fails to specify who
 7 will determine what specific costs qualify as System Benefits." Staff responded that it believes that
 8 testimony on System Benefit charges will be taken in the Stranded Cost and Unbundled Tariff
 9 hearings that will commence in August 1999, and that based on that testimony, the Commission will
 10 determine the specific costs to be included in the System Benefits Charges in the Decisions rendered
 11 in those proceedings. Staff therefore believes that no change to this definition is necessary.

12 TEP recommended that non-nuclear plant decommissioning costs be included in the System
 13 Benefits charge because generating plants other than nuclear will also have decommissioning costs in
 14 the future. AEPCO, Duncan and Graham supported and Commonwealth opposed TEP’s suggestion.
 15 Staff asserted that non-nuclear decommissioning costs should not be included in System Benefits, for
 16 two reasons. First, nuclear decommissioning costs are already being collected in rates, in part
 17 because nuclear utilities are required by the Nuclear Regulatory Commission to begin accumulating
 18 funds for decommissioning while the nuclear plants are operating. This is not the case with non-
 19 nuclear facilities. Staff pointed out that in addition, nuclear decommissioning costs are of such a
 20 great magnitude that it is reasonable to attempt to spread them over the operating life of the plant, but
 21 that it is unlikely that the costs to decommission non-nuclear plants will be as large.

22 **Analysis:** We concur with Staff’s reasoning.

23 **Resolution:** No change is necessary.

24 **1601(40) “Utility Distribution Company”**

25 **Issue:** The Arizona State Association of Electrical Workers (“ASAEW”) urged the
 26 Commission to insert the word “constructs” as part of the definition of a Utility Distribution
 27 Company so that the definition would include an entity that “operates, constructs and maintains the
 28 distribution system” TEP also argued for the inclusion of the word “constructs” in the definition

1 because it will be the responsibility of the UDC to construct the transmission and distribution systems
 2 to ensure consistent, safe and reliable service. Staff agrees that “construction” is an integral part of
 3 the provision of electrical distribution service, and recommends adoption of TEP and ASAEW’s
 4 recommendation.

5 **Analysis:** We concur with ASAEW, TEP and Staff. This is not a substantive change.

6 **Resolution:** Add the word “constructs” after “operates” in the definition of “Utility
 7 Distribution Company.”

8 **R14-2-1602 “Commencement of Competition”**

9 **Issue:** AEPCO proposed that statewide competition commence at the same time, subject to
 10 the phase-in schedule in Section 1604. Commonwealth made a proposal that full competition
 11 commence immediately upon the conclusion of the scheduled Stranded Cost/Unbundling proceeding.
 12 Staff believes that both proposals would delay the commencement of competition until all the
 13 Stranded Cost/Unbundling proceedings are concluded, rather than bringing the benefits of
 14 competition to the citizens of Arizona as quickly as possible at the conclusion of each Affected
 15 Utility’s proceedings, and that further, phasing in competition under Section 1604 establishes a
 16 workable timetable to implement competition to various customer classes. APS argued that at this
 17 date, the Commission should not make additional adjustments to start dates or phase-in schedules.

18 **Analysis:** We believe that the current timetable for bringing competition to the state is an
 19 expeditious and achievable means of implementing competition.

20 **Resolution:** No change is required.

21 **R14-2-1603 “Certificates of Convenience and Necessity”**

22 **1603(A)**

23 **Issue:** AEPCO, Duncan and Graham proposed modifying the third sentence of Section
 24 1603(A) as follows:

25 A Utility Distribution Company providing Standard Offer Service or services
 26 authorized in R14-2-1615 after January 1, 2001 need not apply for a Certificate of
 27 Convenience and Necessity.

1 Staff agreed with AEPCO that this change is needed to remedy the conflict between Sections 1603
 2 and 1605 which might result if one were to conclude that a distribution cooperative needs to acquire a
 3 new Certificate of Convenience and Necessity (“CC&N”) to provide competitive services pursuant to
 4 Section 1615.

5 **Analysis:** We concur that this clarification is needed. The change is not substantive.

6 **Resolution:** Amend Section 1603(A) as recommended by AEPCO, Duncan, and Graham.

7 **1603(B)**

8 **Issue:** Arizona Community Action Association (“ACAA”) proposes to insert new language
 9 in R14-2-1603(B)(1). The new language would require the CC&N applicant to provide information
 10 as follows:

- 11 1. A description of the electric services which the applicant intends to offer;
 12 including a plan to enroll and serve at least 15% of the total residential consumers
 13 eligible on October 1, 2000;

14 Staff responded that although it understands that ACAA’s goal in making this proposal is to
 15 encourage an equitable and robust market, this proposal directly conflicts with efforts to develop a
 16 competitive market that will attract the maximum number of potential provider applicants. Staff
 17 further commented that if implemented, this proposal might in fact discourage some competitors
 18 from entering the Arizona market, and therefore would not serve the public interest.

19 **Analysis:** We agree with Staff that requiring competitive ESPs to provide services to the
 20 residential market as a prerequisite to being allowed entry to the industrial and commercial markets
 21 may impede, rather than encourage the development of a truly competitive market and therefore
 22 would not serve the public interest.

23 **Resolution:** No change is necessary.

24 **1603(B)(3-6)**

25 **Issue:** NWE recommended that Section 1603(B)(3), which requires the CC&N applicant to
 26 file a tariff for each service to be provided, be modified in the following manner:

- 27 3. A tariff for each service to be provided that states the ~~maximum rate and terms~~
 and conditions that will apply to the provision of the service.

1 NWE believes this change would be appropriate because Section 1611(A) deems market rates just
 2 and reasonable, and market forces may cause an ESP's rate to temporarily surpass its filed maximum
 3 rate. NWE requested that if maximum rates must be filed with the Commission, the Commission
 4 should clarify that those maximum rates are deemed approved when the Commission grants a CC&N.
 5 NWE claims that items (4), (5), (6), and (8) relating to CC&N application information concerning the
 6 applicant's technical ability, financial capability, description of form of ownership, and requiring any
 7 other information the Commission or Staff may request are vague and should be deleted. Staff stated
 8 that Section 1603(B)(3)'s requirement that maximum rates be filed should remain intact because it is
 9 necessary for the Commission to have this information in order to fulfill its constitutional
 10 responsibility to evaluate the service rates of public service utilities. Staff also stated that the
 11 information required in items (4), (5), (6), and (8) are consistent with requirements for CC&Ns for
 12 other services regulated by the Commission, that CC&N and certification authority is required not
 13 only by Commission rules but by HB2663, and that the specifics of what the Commission means by
 14 technical capability, financial capability, and other information is obvious in the CC&N application
 15 form.

16 **Analysis:** We concur with Staff. It is in the public interest to have maximum rates and
 17 the other information included in the CC&N application as required by Section 1603(B)(3-6) and (8)
 18 for the Commission to evaluate in the course of considering the CC&N application. Approval of a
 19 CC&N application that includes maximum rates in the tariff required by Section 1603(B)(3)
 20 constitutes approval of those maximum rates, unless the Order approving the application conditions
 21 approval upon the filing of different maximum rates.

22 **Resolution:** No change is required.

23 **1603(B)(7)**

24 **Issue:** NWE suggested the following change:

25 7. An explanation of how an applicant which is an affiliate of an Affected Utility
 26 ~~the applicant~~ intends to comply with the requirements of R14-2-1616, or a request for
 27 waiver or modification thereof with an accompanying justification for any such
 requested waiver or modification.

1 Staff agrees with NWE that Section 1603(B)(7) should be modified to reflect the fact that Section
 2 1616 by its terms applies only to Affected Utilities planning to provide Competitive Services through
 3 a competitive electric affiliate, and that the applicant which is an affiliate of an Affected Utility
 4 should be required to provide a statement of whether the Affected Utility has complied with the
 5 requirements of Section 1616. Staff therefore recommended replacing Section 1603(B)(7) in its
 6 entirety with the following:

7 7. For an applicant which is an affiliate of an Affected Utility, a statement of
 8 whether the Affected Utility has complied with the requirements of R14-2-1616,
 9 including the Commission Decision number approving the Code of Conduct, where
 10 applicable.

11 **Analysis:** We concur with Staff. It is in the public interest for entities that are required to
 12 have an approved Code of Conduct to be required to demonstrate compliance with this requirement
 13 as part of the certification process. This modification is not substantive.

14 **Resolution:** Modify Section 1603(B)(7) as recommended by Staff.

15 **1603(E)**

16 **Issue:** NWE proposed to delete the entire Section concerning the requirement of the CC&N
 17 applicant to provide notice of its application to each of the respective Affected Utilities, Utility
 18 Distribution Companies or an electric utility not subject to the jurisdiction of the Commission in
 19 whose service territories it wishes to offer service. NWE claims that this provision protects the
 20 Affected Utilities' market share and invites unfair business practices. Staff responded that proper
 21 notice is required for any CC&N application.

22 **Analysis:** This formal notice requirement is not unduly burdensome to new CC&N
 23 applicants, who, in order to serve their customers, must establish a working relationship with the
 24 UDCs. It is in the public interest to insure that the CC&N applicant provides proper notice.

25 **Resolution:** No change is necessary.

26 **1603(F)**

27 **Issue:** NWE proposes to delete this Section which states that the Commission may issue a
 28 CC&N for a specific period of time. NWE feels this provision would add a further obstacle to market
 entry by some ESPs and would deter some entrants from competing in Arizona. NWE feels that the

1 necessary security provisions can be efficiently achieved through an ESP Service Agreement in lieu
 2 of this provision. Staff responded that this Section is necessary to provide the Commission with
 3 needed flexibility in certificating ESPs who have little or no experience, and that an ESP certificated
 4 under this provision may apply for an extension of the effectiveness the CC&N.

5 **Analysis:** Instead of creating an obstacle to market entry by ESPs with little or no
 6 experience, this provision allows the Commission to provisionally certificate such companies, and
 7 thus is pro-competitive.

8 **Resolution:** No change is necessary.

9 **1603(G)(2), (4), and (5)**

10 **Issue:** NWE proposes to delete Sections 1603(G)(2), (4), and (5). According to NWE,
 11 Section 1603(G)(2) should be deleted because the technical and financial capabilities of an ESP can
 12 be controlled through the ESP Service Agreement with the UDC, and that Section 1603(G)(4) should
 13 not be a precondition to certification, as explained in NWE's comment to Section 1603(I). NWE
 14 also opined that Section 1603(G)(5) is not necessary. Staff stated that it would not be in the public
 15 interest to issue competitive retail electric CC&Ns without explicitly addressing the public interest
 16 and consumer protection issues contained in these Sections.

17 **Analysis:** We concur with Staff.

18 **Resolution:** No change is required.

19 **1603(G)(7)**

20 **Issue:** ACAA proposed to insert a new Section 1603(G)(7) to provide an additional condition
 21 for the Commission to deny certification to any CC&N applicant as follows:

22 7. Fails to provide a plan to enroll and serve residential consumers pursuant to
 23 R14-2-1603(B)(1).

24 ACAA makes this recommendation in conjunction with its proposed new language for Section
 25 1603(B)(1) that would require a CC&N applicant to provide a plan to enroll and serve at least 15% of
 26 the total residential consumers eligible for competitive services on October 1, 2000. Staff stated that
 27 although ACAA suggested this Section to help make the residential market an equitable and robust
 28

1 market, this proposal is too restrictive and may keep potential service providers from viewing
 2 Arizona's retail market as being entirely open to providers offering competitive service to those
 3 customers they wish to initially target.

4 **Analysis:** We agree with Staff. Adopting the provision ACAA suggests could
 5 discourage potential competitive ESP applicants who might find the associated costs prohibitive.
 6 Instead of leading to a more robust market, this would actually lessen the chances of developing a
 7 truly competitive market. Adoption of this recommendation would therefore not ultimately serve the
 8 public interest.

9 **Resolution:** No change is necessary.

10 **1603(I)(4)**

11 **Issue:** NWE recommends the following change to this Section:

12 4. The Electric Service Provider shall maintain on file with the Commission all
 13 current tariffs ~~and any service standards that the Commission shall require;~~

14 NWE argues that the term "service standards" is not defined in the rules and the requirement in this
 15 Section does not provide adequate notice of the requirements for remaining certificated in Arizona.
 16 Staff stated that it is in the public interest for the Commission to require ESPs to file any service
 17 standards the Commission deems necessary to serve its customers.

18 **Analysis:** We concur with Staff

19 **Resolution:** No change is required.

20 **1603(I)(6)**

21 **Issue:** NWE recommended deletion of Section 1603(I)(6), which conditions a CC&N on the
 22 ESP obtaining all necessary permits and licenses including relevant tax licenses. NWE believes that
 23 the Commission has no authority to police state-law permit and license requirements. Staff believes
 24 the item should remain in the rule because it is in the public interest.

25 **Analysis:** We concur with Staff.

26 **Resolution:** No change is necessary.

27 **1603(I)(9)**

1 **Issue:** ACAA proposed to insert a new Section 1603(I)(9) that contains the following
 2 additional condition for an ESP to obtain a CC&N:

3 9. The Electric Service Provider shall comply with the provisions of R14-2-
 4 1603(B)(1) on or before September 1, 1999.

5 Staff disagreed with the propriety of this proposal because it is too restrictive and may keep potential
 6 service providers from viewing Arizona's retail market as being entirely open to providers offering
 7 competitive service to those customers they are targeting to serve, which could result in fewer
 8 competitors seeking to provide service in Arizona.

9 **Analysis:** We concur with Staff.

10 **Resolution:** No change is necessary.

11 **Issue:** Navopache and Mohave recommended the addition of a new Section 1603(I)(9) as
 12 follows:

13 9. An Electric Service Provider certificated pursuant to this Article shall be
 14 subject to the jurisdiction of the Arizona Corporation Commission.

15 Staff responded that because the Rules are specific in regard to which entities are governed by the
 16 competitive retail electric rules, and HB2663 describes the CC&N jurisdictional authority of the
 Commission for public power entities, this change is not necessary.

17 **Analysis:** We concur with Staff that this proposed amendment is unnecessary as it is
 18 addressed throughout the Rules and by HB2663.

19 **Resolution:** No change is necessary.

20 **1603(K)**

21 **Issue:** NWE recommended deletion of Section 1603(K), which allows the Commission to
 22 require in appropriate circumstances, as a precondition to certification, the procurement of a
 23 performance bond sufficient to cover any advances or deposits the applicant may collect from its
 24 customers, or order that such advances or deposits be held in escrow or trust. NWE objected to this
 25 provision because the amount of the performance bond or escrow can only be based on estimations
 26 before the ESP commences to do business in the state. Staff responded that a bond requirement is
 27 just one option the ESP has to address customer protection in the certification process, and that this
 28

1 provision is needed to provide the Commission flexibility in having the CC&N applicant address
2 customer protection concerns prior to being certificated.

3 **Analysis:** We agree with Staff that Section 1603(K) provides the Commission with a
4 means of protecting consumers. The Commission has flexibility to adjust the amount of the
5 performance bond, escrow or trust after the ESP commences doing business. While it is true that the
6 amount of the performance bond, escrow or trust must initially be based on estimates, the amount
7 required, or indeed whether the bond, escrow or trust is required at all, is an issue that the CC&N
8 applicant is free to address in the proceedings on the application.

9 **Resolution:** No change is necessary.

10 **R14-2-1604 “Competitive Phases”**

11 **1604(A)**

12 **Issue:** Commonwealth and Tucson requested that the phase-in of load be eliminated, and that
13 a “flash cut” be substituted. Commonwealth stated that it wants to serve commercial loads of all
14 sizes, but cannot because this Section does not include smaller customers with loads less than 1 MW
15 or who cannot aggregate 40 kW loads into 1 MW during the phase-in to competition. Tucson stated
16 that it desires to have its entire load served competitively, but that it cannot because the phase-in rule
17 precludes facilities less than 40 kW, which includes many City premises, from obtaining Competitive
18 Services. Tucson further stated that the original reason for the phase-in, to limit the exposure of
19 Affected Utilities to the technical problems that could result from a large number of customers
20 suddenly switching to competitive generation providers, is no longer valid because based on the
21 experience in California, few customers are likely to initially participate in the competitive market.
22 APS, AEPCO, Duncan and Graham opposed a flashcut. Staff agreed that a flash-cut would eliminate
23 many of the inequities and other problems associated with a phase-in, but noted that the current
24 phase-in is much shorter than the one in the 1996 version of the rules.

25 NWE commented that the rule is unclear in regard to aggregation of loads and the definition
26 of "customer," and recommended that the rule clarify that, if a single site is over 1MW, all lesser sites
27 for the same entity also become eligible for competitive generation. NWE also noted that this
28 Section does not allow any further aggregation once 20 percent of an Affected Utility's 1995 system

1 peak demand is reached, although more 1 MW customers could be allowed, and that this provision
2 favors large ESPs that can provide incentives for aggregation at the earliest possible date while
3 penalizing customers who might not be prepared to aggregate in the early phases of competition.
4 Staff conceded that this Section currently does not require Affected Utilities to allow small
5 commercial customers to participate in the competitive market during the phase-in, but pointed out
6 that all classes of customers will be eligible by January 1, 2001. Staff stated that this Section makes
7 clear that the eligibility of a customer's load is to be determined at a single premise, and that smaller
8 loads at other premises for the same entity are not eligible. Staff agreed with NWE that this Section
9 as currently written appears to favor 1 MW customers over aggregated 40 kWh customers, but that
10 the intent of this Section was to give both groups of customers equal opportunity to participate. Staff
11 recommended that in order to clarify that 1MW customers should not be favored over aggregated 40
12 kW customers, the sentence stating that additional aggregated customers must wait until 2001 to
13 obtain competitive service should be deleted.

14 TEP asserted that only customers with a 1 MW minimum demand should be eligible for direct
15 access under Section 1604(A)(1) and (2), and that utilizing a single non-coincident peak has the
16 consequence of expanding direct access eligibility beyond 20 percent of TEP's 1995 system retail
17 peak demand, thereby excluding some customers with loads in excess of 1MW. TEP also suggested
18 that Section 1604 (A)(2) be modified to read that the 40 kWh criterion shall be met if the customer's
19 usage exceeds 16,500 kWh in any six months, instead of in any month, in the event peak load data
20 are not available. TEP believes that this would better characterize a customer whose load usage is
21 more consistently at least 40 MW or 16,500 kWh. Staff responded to TEP's recommendations by
22 stating that minimum demands should not be used to determine eligibility, which could exclude a
23 customer because of one particular month having a lower demand than usual. Staff also disagreed
24 with TEP's proposal to change one month to six months to determine eligibility of 40 kW customers
25 because Staff believes there should be no increased restrictions on the eligibility of medium-size
26 commercial customers.

27 In its responsive comments, TEP disagreed with Tucson regarding a flashcut and regarding
28 the 40kW minimum requirement for aggregation.

1 **Analysis:** We concur with Staff that TEP's proposal to change one month to six months
2 to determine eligibility of 40 kW customers should not be adopted.

3 We do not agree with Tucson that the phase-in should be eliminated based on California's
4 experience that a only a limited number of customers are likely to initially participate in the
5 competitive market. The current phase-in schedule is not unreasonable and will allow the Affected
6 Utilities to continue their current course of preparation for the commencement of full competition.

7 We agree with Staff that deleting the last sentence of Section 1604(A)(2) would clarify that
8 1MW customers should not be favored over aggregated 40 kW customers. This deletion is not
9 substantive.

10 **Resolution:** Delete the last sentence of Section 1604(A)(2). No other change is required.

11 **1604(A)(2) and (4) and 1604(B)(6)**

12 **Issue:** In response to comments filed by ATDUG on June 23, 1999, and to the numerous oral
13 comments made at the public comment hearing on June 23, 1999, Staff proposed that these Sections
14 be clarified regarding the ability of customers to aggregate or self-aggregate their loads, subject to the
15 phase-in percentage limitations; and to clarify that eligible residential and non-residential customers
16 may be aggregated together. Staff recommended modifying the first sentence of Section 1604(A)(2)
17 as follows:

18 "During 1999 and 2000, an Affected Utility's customers with single premise non-
19 coincident peak load demands of 40 kW or greater aggregated by an Electric Service
20 Provider with other such customers or eligible residential customers into a combined
21 load of 1 MW or greater within the Affected Utility's service territory will be eligible
22 for competitive electric services."

21 Staff also recommended reinserting the following after "competitive electric services":

22 "Self-Aggregation is also allowed pursuant to the minimum and combined load
23 demands set forth in this rule.";

24 and adding the following sentence after the foregoing:

25 "Customers choosing Self-Aggregation must purchase their electricity and related
26 services from a certificated Electric Service Provider as provided for in these rules."

27 Staff recommended adding a new Section 1604(A)(4) as follows:

1 “Effective January 1, 2001, all Affected Utility customers irrespective of size will be
2 eligible for Aggregation and Self-Aggregation. Those customers must purchase their
3 electricity and related services from a certificated Electric Service Provider as
4 provided for in these rules.”

5 Staff also recommended a new Section 1604(B)(6) as follows:

6 “Aggregation or Self-Aggregation of residential customers is allowed subject to the
7 limitations of the phase-in percentages in this rule. Customers choosing Self-
8 Aggregation must purchase their electricity and related services from a certificated
9 Electric Service Provider as provided for in these rules.”

10 Staff believed that the above changes would help clarify the original intent of the Rules to
11 require certification of businesses that choose to provide Aggregation services, while also allowing
12 customers to combine load (“Self-Aggregation”) in a manner that will facilitate obtaining favorable
13 competitive bids from ESP. Staff stated that the practice of Self-Aggregation could cut costs to
14 competitors by having the customers themselves perform the functions of combining loads and
15 developing purchase blocks.

16 ATDUG replied that some of Staff’s proposed language additions to Section 1604 “are
17 written as to regulate the conduct of customers” and make it “appear that the Commission is trying to
18 prevent retail electric customers from buying power through aggregation or self-aggregation from
19 Salt River Project and other legitimate electricity suppliers that are not regulated by the
20 Commission.” ATDUG suggested that the Sections in question be rewritten so as to require ESPs to
21 sell electricity to aggregated customers, instead of requiring that aggregated customers must purchase
22 their electricity from certificated ESPs.

23 **Analysis:** We agree with Staff’s recommended changes. However, as written, proposed
24 Section 1604(A) and Section 1604(B)(6) are redundant, as both state the requirement that customers
25 choosing Self-Aggregation must purchase electricity from a certificated provider. Consequently, we
26 will adopt Staff’s recommendation, with the exception of the second sentence in newly proposed
27 Section 1604(B)(6). We do not agree that these changes will have the effect that ATDUG suggests,
28 because in order to ensure system reliability and consumer protection, all ESPs providing competitive
retail electric services in the service territories of the Affected Utilities must be certificated by the

1 Commission. Further, we do not believe that requiring ESPs to provide designated services to
2 designated customers would encourage competition.

3 The changes merely clarify the original intent of the Rules and are not substantive.

4 **Resolution:** Modify Sections 1604(A)(2) and (4), and Section 1604(B)(6) as recommended
5 by Staff, with the exception of the second sentence of Staff's proposed Section 1604(B)(6) which is
6 redundant.

7 **1604(B)**

8 **Issue:** NWE suggested that the proposed limitations on residential participation will make the
9 residential market unattractive to potential ESPs, but NWE did not make a specific recommendation
10 other than that the Section should be "entirely revised." ACAA proposed that the minimum
11 percentages for participation of residential customers be increased. Commonwealth believes that it
12 should not have to obtain a customer list from its competing utility in order to market its services, and
13 that the waiting list of interested residential customers should be distributed to all ESPs. Staff
14 responded that the percentage increases ACAA proposed are probably too small to have a major
15 impact on participation of residential customers. Staff stated that any lists of interested customers
16 should be readily available to ESPs if the customers have given permission for their names and other
17 information to be released, and stated that this Section does not preclude availability of such lists.

18 **Analysis:** We concur with Staff. This Section should be clarified with respect to the
19 release of customer lists to ESPs. Such modification is not substantive.

20 **Resolution:** Add the following to Section 1604(B)(2) after "manage the residential phase-in
21 program":

22 " , which list shall promptly be made available to any certificated Load-Serving ESP
23 upon request"

24 **1604(C)**

25 **Issue:** APS recommended that the words "such as" replace "including" when referring to rate
26 reductions in this Section in order to clarify that this Section does not require a rate reduction. NWE
27 commented that a mandatory rate reduction would be anti-competitive unless applied to all customers
28 and that information about a rate reduction must be made available before competition begins.

1 **Analysis:** This Section as written does not require a rate reduction.

2 **Resolution:** No change is necessary.

3 **R14-2-1605 “Competitive Services”**

4 **Issue:** Section 1605 requires a CC&N for all competitive services. AEPCO, Duncan,
5 Graham, Trico, Navopache, and Mohave (collectively, “Cooperatives”) argue that this requirement
6 conflicts with Section 1615(C), which allows distribution cooperatives to provide Competitive
7 Services within their distribution service territories after January 1, 2001. The Cooperatives believe
8 that it was not the intent of Section 1615(C) to require them to obtain a CC&N in order to provide
9 competitive services within their distribution service territories. Staff agreed with these comments,
10 and recommended the following addition to Section 1605:

11 “Except as provided in R14-2-1615(C), Competitive Services shall require a
12 Certificate of Convenience and Necessity and a tariff as described in R14-2-1603.”

13 **Analysis:** We concur with the Cooperatives and Staff that this Section should be
14 modified to clarify that the Cooperatives do not have to apply for a CC&N to provide Competitive
15 Services within their distribution service territories. Such modification adds clarity and is not
16 substantive.

17 **Resolution:** Revise Section 1605(C) as recommended by Staff.

18 **R14-2-1606 - Services Required to be Made Available**

19 **1606(A)**

20 **Issue:** APS proposed that a sentence be added to state that a UDC, at its option, may provide
21 Standard Offer Service to customers whose annual usage is more than 100,000 kWh. Navopache and
22 Mohave proposed additional language to state that the UDC shall offer Standard Offer Service to the
23 larger customers if the tariff covers the cost of providing the service and that the UDC could seek
24 Commission approval for additional rate schedules to provide such service. Commonwealth
25 suggested that ESPs be allowed to bid on services furnished to Standard Offer customers. Staff stated
26 that the Rules already allow UDCs to provide Standard Offer Service to customers with usage greater
27 than 100,000 kWh, but UDCs will not be Providers of Last Resort for those customers, and that

28

1 because the Commission has determined that Standard Offer Service is a Noncompetitive Service,
2 ESPs cannot bid on Standard Offer Service.

3 **Analysis:** UDCs may offer Standard Offer Service to any customer, but as Staff pointed
4 out, are not required to offer Standard Offer Service to customers whose annual usage exceeds
5 100,000 kWh. Competitive bidding on Provider of Last Resort services is not currently contemplated
6 in the Rules, but the Commission may consider implementing such a process in the future when the
7 competitive generation market has developed.

8 **Resolution:** No change is necessary at this time.

9 **1606(B)**

10 **Issue:** Commonwealth proposed that power for Standard Offer Service be acquired through a
11 competitive bid process instead of through the "open market." In addition, Commonwealth proposed
12 that cooperatives not be excluded from the requirement of this Section. Tucson feels that the
13 meaning of "open market" is not clear and proposed that power for Standard Offer Service be
14 acquired "through a competitive procurement with prudent management of market risks, including
15 management of price fluctuations." TEP proposed that a purchased power adjustment mechanism
16 should be allowed as a means for UDCs to recover costs of procuring power for Standard Offer
17 Service. Staff agreed with Commonwealth and Tucson that power for Standard Office Service
18 should be acquired through competitive bidding, and agreed with Tucson's proposed language. Staff
19 opposed the use of a purchased power adjustment mechanism because it would reduce the incentive
20 for the utility to obtain reliable power sources at reasonable rates. Staff recommended that the
21 following sentence be added to Section 1606(B):

22 "Standard Offer Service power shall be acquired through a competitive procurement
23 with prudent management of market risks, including management of price
24 fluctuations.

25 Staff further recommended that if the Commission does not adopt a competitive bid process, then the
26 term "open market" should be defined in the Rules.

27 **Analysis:** There appears to be some confusion concerning the meaning of the term "open
28 market." We do not wish to impose the constraints on energy procurement that would be associated

1 with a competitive bid process. Consequently, we will modify Section 1606(B) to clarify the term
2 “open market”. Our clarification is not substantive.

3 **Resolution:** Revise Section 1606(B) by replacing “open market” with “an open, fair and
4 arms-length transaction with prudent management of market risks, including management of price
5 fluctuations.”

6 **1606(C)**

7 **Issue:** Navopache and Mohave proposed adding language to Section 1606(C)(2) which
8 would provide an exception to the requirement that Standard Offer Service be unbundled when
9 wholesale power supplies are obtained on a bundled basis. Trico made a similar comment. APS
10 recommended that the prohibition of "contracts with term" in Section 1606(C)(6) be deleted or at
11 least limited to customers whose annual usage is 100,000 kWh or less because the prohibition
12 restricts customer options and imposes burdens on the UDC when large customers leave from or
13 return to Standard Offer Service. Commonwealth suggested that UDCs be prohibited from offering
14 any discount, special contract, or unique tariff to any particular customer, as these services would in
15 effect constitute Competitive Services. Commonwealth also opposed Trico’s proposal because it
16 would prevent potential customers and competitors from easily calculating Commonwealth’s
17 proposed “Generation Shopping Credit.”

18 APS also recommended that an Affected Utility be allowed to submit for Commission
19 approval a plan for unbundling Standard Offer Service that varies from the requirements of this
20 Section. Commonwealth vigorously opposed APS’ suggestion that the utility develop its own
21 unbundling and billing plan because a unified billing format should be available to all customers.
22 Commonwealth proposed addition of the new definition “Generation Shopping Credit” to Section
23 1601 and a new provision 1606(C)(3) to require that the “Generation Shopping Credit” appear on the
24 bills of those customers who opt for competitive generation as follows:

25 “Simultaneously with the start date for the implementation of retail choice, each
26 Affected Utility shall provide a Generation Shopping Credit on the bill of each retail
27 customer of an Affected Utility that chooses to purchase its electric generation service
28 from an entity other than the Affected Utility that provides its distribution service.
The Generation Shopping Credit shall be based on the Affected Utility’s full cost to

1 provide retail electric generation service to each customer class, including but not
 2 limited to the cost of energy, capacity, ancillary services, Must-Run Generating Units,
 3 all relevant taxes, reserves, transmission service (or the applicable independent system
 4 administrator or independent systems operator), marketing, administration and general
 5 costs, and the applicable rate of return on the energy, capacity, ancillary services,
 6 reserves, Must-Run Generating Units, marketing, administrative and general costs.
 7 The Commission shall determine the appropriate level of Generation Shopping Credits
 8 for each Affected Utility.”

Commonwealth proposed the following definition be added to Section 1601:

9 “‘Generation Shopping Credit’ means the bill credit that will be afforded to each
 10 customer of an Affected Utility that chooses to purchase its electric generation service
 11 from an entity other than the Affected Utility that provides its distribution service.”

Commonwealth also proposed that 1606(C)(2)(a)(1) and 1612(N)(1)(a) be amended to read:
 “Generation Shopping Credit”, and that Must-Run Generating Units should be deleted from
 1606(C)(2)(a)(3) as that cost component should be part of the Generation Shopping Credit.

Staff argued that when possible, unbundled elements need to be standard across companies so
 that comparisons can be made, and that APS’ suggested changes to Section 1606(C)(2) are
 unnecessary because an Affected Utility can file for Commission approval of a waiver, if necessary.
 Staff stated that the intent of Section 1606(C)(6) is to prohibit tariffs for Standard Offer Service that
 prevent customers from accessing a competitive option, and believes that the prohibition against
 “contracts with term” is consistent with that intent. Staff stated that this Section should be made
 consistent with Section 1612(N), which identifies billing elements. Staff also stated that ancillary
 services should be identified as either variable costs or fixed costs. Staff therefore recommended that
 Section 1606(C)(2) be amended as follows:

- 21 “a. Electricity:
 22 (1). Generation including Ancillary Services (variable costs)
 23 (2) Competition Transition Charge
 24 (3) Must-Run Generating Units
- 25 b. Delivery:
 26 (1) Distribution services
 27 (2) Transmission services
 28 (3) Ancillary Services (fixed costs)
- c. Other:
 (1) Metering Service
 (2) Meter Reading Service

(3) Billing and collection

d. System Benefits”

Staff also recommended that the date in Section 1606(C)(6) be made consistent with dates appearing elsewhere in the Rules.

In its responsive comments, Commonwealth stated that it is unclear what Staff means by “variable” ancillary services which are part of generation costs and “fixed” ancillary services, which are included in delivery costs. Commonwealth contended that all ancillary services relating to generation, both variable and fixed, should be included in the computation of the “Generation Shopping Credit.” Commonwealth argued that under its proposal, the distinction between a fixed and variable ancillary service would not be a pathway for cost shifting from generation to delivery charges. Commonwealth recommended that all ancillary services be included in both the Standard Offer Service tariff provision (Section 1606(C)(2)) and the Billing provision (Section 1612(N)), under “Generation Shopping Credit.” APS argued that because FERC classifies all ancillary services as transmission related costs, they should be included in the “delivery” category of unbundled bills. APS contended that to modify Section 1606(C) as Staff proposed would be confusing and an unnecessary complication.

In its responsive written comments, NWE proposed the following changes to Section 1606(C)(2):

1. Standard offer tariffs shall include the following elements, each of which shall be clearly unbundled and identified in the filed tariffs:

a. ~~Electricity~~ Competitive Services

- (1) Generation, which shall include all transaction costs and line losses
- (2) Competition Transition Charge, which shall include recovery of generation related regulatory assets
- (3) ~~Must Run Generating Units~~ Generation-related billing and collection
- (4) Transmission Services
- (5) Metering services

1 (6) Meter reading service

2 (7) Optional Ancillary Services, which shall include spinning
 3 reserve service, supplemental reserve service, regulation and
 4 frequency response service, and energy imbalance service

5 b. Delivery-Non-Competitive Services

6 (1) Distribution services

7 ~~(2) Transmission services~~

8 ~~(3) Required Ancillary services, which shall include scheduling,~~
 9 ~~system control and dispatch service, and reactive supply and~~
 10 ~~voltage control from generation sources service~~

11 (3) Use of generating units for must-run purposes

12 (4) System Benefit Charges

13 (5) Distribution-related billing and collection

14 c. ~~Other~~

15 ~~Metering Services~~

16 ~~(2) Meter Reading Service~~

17 ~~(3) Billing and Collection~~

18 ~~The Competition Transition Charge shall be include in the Standard Offer Service~~
 19 ~~tariffs for the purpose of clearly showing the portion of Standard Offer Service~~
 20 ~~charges being collected to pay Stranded Cost. Each of these unbundled elements of~~
 21 ~~the standard offer price shall be clearly identified on each customer bill.~~

22 **Analysis:** Standard Offer Service tariffs must be unbundled in a manner that permits a
 23 meaningful comparison for consumers but not be cost prohibitive. Section 1606(C)(4) provides that
 24 unbundled Standard Offer Service tariffs be cost-based. If an entity is not able to comply with the
 25 unbundling provisions, it may seek a waiver after notice and a hearing.

26 For the most part, NWE' s proposal concerning unbundled Standard Offer Service appears
 27 reasonable and appropriately categorizes the various elements. NWE's proposed unbundled tariff
 28 elements present the existing categories in a logical manner and recognize that Ancillary Services
 may be either generation- or transmission-related. The Rule provides that the Commission must

1 approve all Standard Offer Service tariffs, and it is through the approval process that the Affected
 2 Utility must demonstrate that costs are appropriately allocated. The process of unbundling tariff
 3 elements with Commission oversight and after public hearing, should alleviate Commonwealth's
 4 concerns that costs may be unfairly shifted from generation to transmission.

5 We believe, however, that the last sentence in NWE's proposal requiring that each of the
 6 unbundled elements shall be identified on the customer bill is more appropriately addressed in
 7 Section 1613(K) regarding billing elements. While we agree that customer bills for Standard Offer
 8 Service must reflect all of the unbundled elements, we do not believe that the bill format must exactly
 9 parallel the detail of the tariff because of the potential confusion for consumers. As long as all bill
 10 formats are identical for all providers, and billing elements reflect the same underlying costs to
 11 permit comparisons, bills should be as simple as possible to read while providing the consumer with
 12 adequate information to make informed choices.

13 Our modification provides additional guidance and detail into how tariffs should be
 14 unbundled, but it does not substantively alter the original provision that requires unbundled tariffs.

15 **Resolution:** Replace "After January 2, 2001" with "Beginning January 1, 2001". Modify
 16 1606(C)(2) as follows:

17 2. Standard Offer Service tariffs shall include the following elements, each of which
 18 shall be clearly unbundled and identified in the filed tariffs:

19 a. Competitive Services~~Electricity~~:

- 20 (1) Generation, which shall include all transaction costs and line losses;
 21 (2) Competition Transition Charge, which shall include recovery of
 22 generation related regulatory assets;
 23 (3) Generation-related billing and collection; ~~Must Run Generating Units~~
 24 (4) Transmission Services;
 25 (5) Metering Services;
 26 (6) Meter Reading Services; and

1 (7) Optional Ancillary Services, which shall include spinning reserve
 2 service, supplemental reserve, regulation and frequency response
 3 service, and energy imbalance service.

4 b. Non-Competitive Services: Delivery

5 (1) Distribution services;

6 (2) Required Ancillary services, which shall include scheduling, system
 7 control and dispatch service, and reactive supply and voltage control
 8 from generation sources service; Transmission services

9 (3) Must-Run Generating Units; Ancillary services

10 (4) System Benefit Charges; and

11 (5) Distribution-related billing and collection.

12 e. ~~Other:~~

13 (1) ~~Metering Service~~

14 (2) ~~Meter Reading Service~~

15 (3) ~~Billing and collection~~

16 ~~d. System Benefits~~

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

20 **Issue:** Staff recommended that Section 1606(C)(6) be modified to allow “economic
 21 development tariffs that clearly mitigate stranded costs” to be included in Standard Offer Service.
 22 AECC urged the Commission to broaden the definition of Economic Development Tariff to provide
 23 discounted tariffs to businesses for whom a discounted tariff would provide an economic benefit that
 24 would be in the public interest and ensure continued availability of jobs for Arizona citizens. At the
 25 public comment sessions, consumer and low-income groups expressed reservations about whether the
 26 implementation of such “Economic Development Tariffs” would be equitable. Commonwealth
 27 believes Staff’s proposal merges the “wires” business with the “generation” business and retains the

1 monopoly configuration of a utility. Commonwealth opposes utility generation discounts or any
2 other special deals that drive up the distribution charges for all customers.

3 **Analysis:** At the present time there is insufficient evidence in the record to adopt the
4 proposed “Economic Development Tariff” over the concerns and reservations expressed by
5 representatives of captive Standard Offer Service ratepayers. It appears that if this tariff were
6 allowed, it would be Standard Offer Service ratepayers who would be subsidizing this economic
7 development program. We are therefore reluctant to implement such a program without the guidance
8 of a cost-benefit analysis, and none was presented in the record to support this proposal.
9 Furthermore, the benefits this proposal seeks to accord should come as a natural consequence of a
10 competition, with competitive rates becoming available to businesses. Indeed, approval of such a
11 tariff for UDCs could thwart the growth of competition in the generation market and thereby actually
12 have an anticompetitive result. Absent the showing of any evidence to the contrary, we find that the
13 proposed “Economic Development Tariff” is neither necessary nor beneficial at this time and
14 consequently, we decline to revise Section 1606(C) as proposed by Staff.

15 **Resolution:** No change is necessary.

16 **1606(D)**

17 **Issue:** Trico recommended that the Unbundled Service tariff not include a Noncompetitive
18 Service tariff, but that instead, two separate tariffs should be filed. Staff responded that the
19 Unbundled Service tariff should reflect all components of services available, and that it will be less
20 confusing to all parties if Noncompetitive Services are included in the Unbundled Service tariff rather
21 than filing two separate tariffs.

22 In its responsive comments NWE recommended adding the following modification to Section
23 1606(D):

- 24 D. ~~By July 1, 1999,~~ By the effective date of these rules, or pursuant to
25 Commission Order, whichever occurs first, each Affected Utility or
26 Utility Distribution Company shall file an Unbundled Service tariff
27 which shall include a Noncompetitive Services tariff. The Unbundled
Service tariff shall calculate the items listed in 1606(C)(2)(b) on the same
basis as those items are calculated in the Standard Offer tariff.

1 **Analysis:** NWE’s recommended modifications add clarity and should be adopted. The
2 proposed modification is not substantive.

3 **Resolution:** Modify Section 1606(D) as recommended by NWE.

4 **1606(G)**

5 **Issue:** Commonwealth proposed that oral authorization, subject to third party verification, be
6 allowed for the release of customer data. NWE commented that the customer should be able to give
7 the data to whomever the customer wants, but did not suggest a change to the Section. Staff believes
8 it is important that customer information not be released without written consent from the customer,
9 because written authorization minimizes the possibility of third parties receiving customer
10 information without customer consent. The AZCC, in public comments, opposed oral third-party
11 verification, stating that it hasn’t been of benefit to residential consumers of telephone service.

12 **Analysis:** Because customer data belongs to the customer, we agree with NWE that the
13 customer should be able to give the data to whomever the customer wants. For the reasons given by
14 Staff, however, it is important that customer information not be released without the customer’s
15 written authorization. The required written authorization to switch providers as required by Section
16 1612(C) can also specify the customer’s consent for the release of the customer’s demand and energy
17 data. For the reasons explained below under Section 1612(C), we are not convinced at this time that
18 permitting oral authorization for the release of customer data with third party verification should be
19 allowed.

20 **Resolution:** No change is necessary at this time.

21 **1606(H)**

22 **Issue:** Section 1606(H)(2) provides that rates for Competitive Services and for
23 Noncompetitive Services shall reflect the costs of providing the services. Trico suggested amending
24 Section 1606(H)(2) to clarify that cost has nothing to do with competitive rates. Trico also suggested
25 amending Section 1606(H)(3) to clarify that flexible rates are limited to Competitive Services. Trico
26 further stated that Sections 1606(H)(2) and (H)(3) discriminate between UDCs and ESPs. Staff
27 asserted that it is unreasonably restrictive to limit flexible pricing to Competitive Services. Staff
28 noted that adjuster mechanisms, which are commonly used in monopoly regulation, are a form of

1 flexible pricing, with the maximum rates subject to Commission approval. Staff stated that because
 2 Section 1606(H) by its terms applies to both Competitive and Noncompetitive Services, there is no
 3 discrimination.

4 **Analysis:** We concur with Staff. Competitive tariffs are required to state a maximum
 5 rate, and the minimum rate cannot be below marginal cost. Accordingly, competitive rates are
 6 clearly related to cost. Section 1606(H)(3) allows downwardly flexible pricing if the tariff is
 7 approved by the Commission. This approval process provides a forum in which Trico may address
 8 any particular concerns.

9 **Resolution:** No change is necessary.

10 **R14-2-1607 – Recovery of Stranded Cost of Affected Utilities**

11 **1607(A)**

12 **Issue:** TEP urged the Commission to delete the reference to “expanding wholesale or retail
 13 markets or offering a wider scope of permitted regulated utility services for profit, among others” as a
 14 mechanism for mitigating Stranded Cost. TEP believes that most, if not all, new products and
 15 services will develop in the unregulated, competitive market, and because the profits therefrom will
 16 be unregulated, the Commission will not require those profits to be used to offset Affected Utilities’
 17 Stranded Cost. APS contends that the definition of “Competitive Services” in Section 1601 “all but
 18 eliminates the possibility of an Affected Utility offering such additional services” as are referred to in
 19 this Section. Staff concurs with the resolution of this issue in Decision No. 61634 when TEP’s
 20 argument was not adopted, and believes that TEP’s concern was adequately addressed in our earlier
 21 revision to this provision.

22 **Analysis:** This provision requires the Affected Utilities to take every reasonable, cost-
 23 effective measure to mitigate or offset Stranded Cost. It does not, however, mandate any particular
 24 method for doing so. We agree with APS that the definition of “Competitive Services” precludes the
 25 Affected Utilities from offering those competitive services that their competitive affiliates may offer
 26 for profit. We also agree with TEP that unsubsidized profits from the activities of competitive
 27 affiliates of Affected Utilities will not be required to offset Affected Utilities’ Stranded Cost.

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1 However, we do not believe that the inclusion in this Section of various options for mitigating
2 Stranded Cost disadvantages the UDCs.

3 **Resolution:** No change is required.

4 **1607(B)**

5 **Issue:** Trico asked the Commission to insert the word “all” before “unmitigated Stranded
6 Costs” to clarify that Affected Utilities are entitled to recover all of their unmitigated Stranded Costs.

7 **Analysis:** This issue was raised and rejected in earlier revisions of the Rules. We stand
8 by our earlier decision to reject this argument. We believe that the inclusion of the word “all” may
9 infer that Affected Utilities are entitled to recover all Stranded Costs in all circumstances.

10 **Resolution:** No change is required.

11 **1607(C)**

12 **Issue:** Trico recommended that, after competition has been implemented, Affected Utilities
13 be required to file on an annual basis the amount of the actual unmitigated distribution Stranded Cost
14 incurred. Staff responded that although distribution electric public service corporations may
15 experience distribution Stranded Cost from competition, due to the difficulty in calculating such
16 Stranded Cost prior to competition, it would be more appropriate to deal with those costs in rate cases
17 for distribution electric public service corporations.

18 **Analysis:** We concur with Staff that there is no need for distribution electric public
19 service corporations to make a distribution-related Stranded Cost filing with the Commission outside
20 the confines of a rate case.

21 **Resolution:** No change is required.

22 **1607(F-G)**

23 **Issue:** TEP urged the Commission to remove the exclusion of self-generated power from the
24 calculation of recovery of Stranded Cost from a customer. TEP believes that this Section as written
25 will increase uneconomic self-generation while increasing cost burdens on customers who purchase
26 their power in the competitive marketplace. Staff disagreed with TEP that this Section will create
27 significant problems, noting that although self-generation has been an option for customers even prior

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1 to competition, significant problems of cost-shifting have not developed. TEP also requested adding
 2 the following language to the end of Section 1607(G):

3 “Subject to Commission approval, neither Section F or G of this Rule shall preclude
 4 an Affected Utility from implementing stand-by tariffs that recover appropriate
 5 stranded costs or from providing other opportunities to recover such resultant stranded
 6 costs.”

7 TEP argued this language is necessary to allow an Affected Utility, with Commission
 8 approval, to implement stand-by tariffs or other mechanisms to recover Stranded Costs in the event
 9 there are Stranded Cost recovery shortfalls resulting from conditions completely outside the control
 10 of the Affected Utility. Staff opposed TEP’s proposal, characterizing it as transforming an
 11 opportunity to recover Stranded Costs into a guarantee of recovery. In public comments, TEP
 12 explained that it wishes for customers who self-generate, but will be taking back-up service from
 13 TEP, to come under a maintenance and backup tariff, which would include some Stranded Cost
 14 recovery. In the event self-generation raises a UDC’s distribution costs, such increase is
 15 appropriately addressed in the context of a rate case.

16 **Analysis:** We concur with Staff that TEP’s recommended language is not necessary.
 17 Sections 1607(F) and (G) do not preclude an Affected Utility from filing tariffs that apply to
 18 maintenance and backup customers who may self-generate but will remain connected to the system in
 19 order to receive backup power. It is reasonable for such customers to pay a CTC based on the
 20 amount of generation purchased from any Load-Serving Entity.

21 **Resolution:** No change is required.

22 **R14-2-1609 – Transmission and Distribution Access**

23 **Issue:** NWE suggested numerous language changes throughout this Section to emphasize
 24 that an Independent System Operator (“ISO”) will be “regional” in form and that the Arizona
 25 Independent Scheduling Administrator (“AISA”) is an “interim” organization. Staff responded that
 26 because Section 1609(F) adequately describes the support of an ISO being regional and the intent to
 27 transition from the AISA to an ISO, NWE’s suggested addition of the descriptive terms “regional”
 28 and “interim” in the numerous locations throughout this Section would be redundant.

Analysis: NWE’s concerns are adequately addressed by Section 1609(F).

1 **Resolution:** No change is necessary.

2 **1609(B)**

3 **Issue:** Navopache, Mohave, Trico, and APS contended that UDCs should not be required to
4 ensure that adequate transmission import capability is available to meet the load requirements of all
5 distribution customers within their service areas. Trico contended that such a requirement should
6 apply only to customers receiving Standard Offer Service from the UDC. Navopache and Mohave
7 contended that the Section as written places an obligation with the UDC but fails to address cost and
8 revenue responsibility. AEPCO, Duncan and Graham supported the modification or deletion of
9 Section 1609(B). Navopache, Mohave and APS question Commission jurisdictional authority to
10 regulate a FERC jurisdictional transmission issue. As a solution, Navopache and Mohave suggested
11 replacing the words “transmission import” with “distribution.” APS suggested deletion of this
12 Section altogether because it “arguably extends to extra-high voltage (“EHV”) and other FERC-
13 regulated transmission systems as well.” APS further contended that a rule requiring UDCs to ensure
14 adequate EHV transmission import capability could eliminate or mask market forces that rightly
15 drive plant-siting decisions by new market entrants or merchant generators.

16 ATDUG suggested that additional clarity would result from the substitution of the words
17 “transmission and distribution import, export, and local operation”, for the words “transmission
18 import” noting this would require a UDC to construct facilities to accommodate load growth.
19 ATDUG noted that facilities subject to FERC jurisdiction would have regulations in place to
20 determine available transfer capability (“ATC”) and assigned costs for increased system transfer
21 requirements, but that this Section is silent as to how these issues will be faced for facilities subject to
22 Commission jurisdiction. ATDUG contended that additional safeguards are required to guarantee
23 that ATC calculations are not used as a shield against competition.

24 Staff responded that the advent of electric retail competition does not remove, eliminate or
25 diminish the obligation of UDCs to ensure reliable delivery of distribution service to all retail
26 customers and that this obligation does not extend exclusively to only Standard Offer Service
27 customers, because the UDC is the Provider of Last Resort for competitive retail consumers as well.
28 Staff stated that because the ability of a UDC to meet this obligation depends upon the adequacy of

1 its distribution system, local generation and its interconnections with the bulk transmission system,
2 this Section's reference to transmission import capability is proper.

3 Staff also pointed out that because the cost of distribution system improvements is recovered
4 via the UDC's distribution delivery charge, ensuring that such system adequacies are achieved does
5 not imply that the UDC must absorb the full cost for required system improvements, and that
6 transmission providers recover transmission system improvement costs via a transmission delivery
7 charge. Staff stated that although such charges may be regulated by different jurisdictional
8 authorities, adequate system delivery obligation remains a composite responsibility of the UDC and
9 its interconnected transmission providers.

10 For those reasons, Staff did not agree with suggestions to delete this Section or eliminate use
11 of the words "transmission import" therein. Staff did note, however, that the current rule fails to
12 speak to the obligation of the UDC to provide an adequate distribution system as well as transmission
13 capabilities, and recommended that this Section be amended to read as follows:

14 "Utility Distribution Companies shall retain the obligation to assure that
15 adequate transmission import capability and distribution system capacity is
16 available to meet the load requirements of all distribution customers within
their services areas."

17 **Analysis:** We concur with Staff that the advent of electric retail competition does not
18 remove, eliminate or diminish the obligation of UDCs to ensure reliable distribution service to all
19 retail customers, and not exclusively to Standard Offer Service customers. Because the ability of a
20 UDC to meet this obligation depends upon the adequacy of its distribution system, local generation,
21 and interconnections with the bulk transmission system, this Section's reference to transmission
22 import capability does not exceed the Commission's jurisdiction. As in the past, the cost of
23 distribution system improvements are recoverable via the UDC's distribution delivery charge, and
24 transmission providers can recover transmission system improvement costs via transmission delivery
25 charges.

26 We will adopt Staff's recommended modification. We will not delete this Section as
27 requested by APS, or eliminate the use of the words "transmission import" as suggested by
28 Navopache and Mohave, because the Commission has the authority and the obligation to mandate

1 that all distribution ratepayers in UDC service territories have access to generation provided by the
 2 certificated ESP of their choice. However, we agree that distribution issues are closely tied to
 3 transmission issues, and that ideally market forces, and not UDC decisions, should drive plant-siting
 4 decisions by new market entrants or merchant generators. We will therefore modify this Section to
 5 indicate that eventually, the obligation to assure adequate transmission import capabilities should rest
 6 with the ISO, or in the event the ISO does not become operational, by default with the AISA. Our
 7 modifications do not substantively modify this Section.

8 **Resolution:** Modify this Section as follows:

9 “Until such time that the transmission planning process mandated by R14-2-
 10 1609(D)(5) is fully implemented, or until such time that a FERC-approved and
 11 operational Independent System Operator assumes the obligations of the AISA
 12 as is contemplated by R14-2-1609(F), Utility Distribution Companies shall
 13 retain the obligation to assure that adequate transmission import capability is
 14 available to meet the load requirements of all distribution customers within
 15 their services areas. Utility Distribution Companies shall retain the obligation
 16 to assure that adequate distribution system capacity is available to meet the
 17 load requirements of all distribution customers within their services areas.”

18 **1609(D)**

19 **Issue:** TEP proposed that transmission-owning Affected Utilities’ participation in AISA
 20 formation be made optional instead of mandatory, and that the resulting optional-participation AISA
 21 should be given the latitude to determine whether the functional characteristics of the AISA
 22 contemplated by this Section are “appropriate.” To this end, TEP suggested that, because the AISA
 23 should determine what functions it must carry out as circumstances change over time, the word
 24 “shall” should be replaced with the word “may” throughout this Section. NWE proposed revised
 25 language that would limit the AISA role to that of a monitor or auditor without developing and
 26 operating an overarching statewide Open Access Same-Time Information System (“OASIS”). APS
 27 stated that the AISA should be limited to verifying rather than calculating the Available Transmission
 28 Capacity (“ATC”) for Arizona transmission facilities. Staff responded that the functional
 characteristics outlined for the AISA in this Section describe what is required to assure non-

1 discriminatory retail access in a robust and efficient electricity market, and that reducing or changing
 2 such functional characteristics could jeopardize the effective achievement of a fair and non-
 3 discriminatory retail market. Staff further stated that by filing with FERC, the AISA will become a
 4 regulated entity that cannot indiscriminately change its functionality.

5 Staff explained that two stages of development are envisioned for AISA: an initial
 6 implementation and an ultimate implementation, and that the ultimate implementation includes an
 7 overarching statewide OASIS that will provide AISA with the technical ability to take an active role
 8 in the calculation and allocation of the ATC for the Arizona transmission system. Staff explained
 9 that this Section by necessity defines a fully developed AISA providing the necessary functional
 10 requirements in the absence of an ISO, and that the pace of ISO implementation will dictate to what
 11 extent the AISA becomes fully developed before handing over its responsibilities and functions to the
 12 regional ISO as contemplated by Section 1609(F). Staff therefore believes that the language changes
 13 suggested by TEP and NWE are not appropriate.

14 **Analysis:** It is essential that the Rules assure, in the event of any delay in the
 15 implementation of the planned regional ISO, the fair and non-discriminatory transmission access that
 16 is essential to the development of a robust and efficient electricity market. We agree with Staff's
 17 characterization of the two stages of implementation of the AISA, and that this Section should remain
 18 in place as written. The role of the AISA should not be limited at this time in reliance on the planned
 19 regional ISO, which has as yet has not been officially formed and is awaiting FERC approval.

20 **Resolution:** No change is necessary.

21 **1609(D)(5)**

22 **Issue:** APS and TEP contend that the transmission planning function required of AISA by
 23 this Section is unnecessary, duplicates the efforts of the Southwest Regional Transmission
 24 Association ("SWRTA") and the Western States Coordinating Council ("WSCC"), and should be
 25 deleted. Staff stated that Affected Utilities historically assumed the responsibility to plan
 26 transmission expansion requirements, and that although SWRTA and WSCC do study the
 27 interconnected EHV transmission system's capability to perform reliably under various forecast
 28 operating conditions, the transmission system analysis functions currently performed by SWRTA and

1 WSCC do not consider transmission alternatives to solve local transmission problems. Staff further
 2 stated that it should not be assumed that the transmission planning function accompanying a regional
 3 ISO will address the transmission interface with local UDC distribution systems. Staff agreed with
 4 APS' and TEP's assessment that because Section 1609(B) places that obligation with the UDC and
 5 its transmission providers, AISA implementation of a transmission planning process as required by
 6 Section 1609(D)(5) would be redundant and unnecessary. Staff therefore recommended that this
 7 Section be deleted.

8 **Analysis:** Due to our modification of Section 1609(B), this Section is not redundant, but
 9 is essential to assure that the transmission interface with local UDC distribution systems is addressed.
 10 Otherwise, we concur with Staff.

11 **Resolution:** No change is necessary.

12 **1609(E)**

13 **Issue:** APS contended that because APS has already filed a proposed AISA implementation
 14 plan on behalf of itself, AEPCO, TEP, and Citizens, Section 1609(E) is moot and should be deleted.
 15 NWE recommended inclusion of language in Section 1609(E) to require a proposed schedule for the
 16 phased development of a regional ISO. Staff agreed that a proposed schedule for the staged
 17 development of the AISA and its transition to a regional ISO is needed, and that the AISA
 18 implementation plan should be updated and re-filed with the Commission following final adoption of
 19 these rules, and recommended the following language changes to Section 1609(E):

20 "... the schedule for the phased development of Arizona Independent Scheduling
 21 Administrator functionality and proposed transition to a regional ISO; ..."

22 **Analysis:** We concur with Staff's recommendation. This modification is not substantive.

23 **Resolution:** Make the changes to Section 1609(E) as suggested by Staff to require a
 24 proposed regional ISO transition schedule in the AISA implementation plan.

25 **1609(F)**

26 **Issue:** Tucson expressed doubts as to the necessity of a regional ISO, which Tucson states
 27 may be more expensive than originally anticipated, and therefore recommended deletion of Section
 28 1609(F).

1 **Analysis:** Section 1609(F) directs the Affected Utilities to make good-faith efforts to
2 develop a regional ISO. The FERC has provided guidelines for ISO formation to ensure
3 nondiscriminatory access to the transmission grid. Section 1609(C) expresses the Commission’s
4 support for a regional ISO. We do not believe that this provision as written overly burdens the
5 Affected Utilities, nor does it mandate the creation of an ISO if it is not economically feasible to do
6 so.

7 **Resolution:** No change is required.

8 **1609(G)**

9 **Issue:** APS wanted assurances that the Commission “will” authorize Affected Utilities to
10 recover costs for establishing and operating the AISA or regional ISO if FERC fails to do so within
11 90 days of application with FERC. Staff recognized that the cost of organizing and implementing
12 AISA and Desert STAR has been partially assumed by Arizona’s Affected Utilities, and that their
13 timely recovery of such costs is a reasonable expectation. Staff stated, however, that this Section
14 already accommodates such a cost recovery and therefore did not support wording changes in Section
15 1609(G).

16 **Analysis:** We concur with Staff.

17 **Resolution:** No change is necessary.

18 **1609(I)**

19 **Issue:** NWE recommended removal of language requiring AISA development of protocols
20 for pricing and availability of Must-Run Generating Units, their presentation to the Commission for
21 review and approval prior to filing with FERC, provision of such services by UDCs, and recovery of
22 such fixed-costs via a regulated charge that is part of the distribution service charge. APS opposed
23 NWE’s proposal. Staff recommended that this Section should be left intact, as the AISA is
24 developing such protocols and is proceeding to comply with this Section as it is written.

25 **Analysis:** NWE’s comments do not provide the basis upon which its proposed changes
26 are premised, and do not suggest an alternative method of developing protocols for the availability of
27 services from Must-Run Generating Units. Generation from Must-Run Generating Units is essential

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1 to maintain system reliability, and should therefore remain a Noncompetitive Service. Must-Run
 2 Generating Units should operate on a regulated cost-of-service basis.

3 **Resolution:** No change is necessary.

4 **1609(J)**

5 **Issue:** APS suggested deletion of this Section on the basis that the AISA will not address
 6 settlement protocols. Staff responded that the AISA is in fact addressing protocols for settlement of
 7 Ancillary Services, Must-Run Generation, Energy Imbalance, and After-the-Fact Checkout in order
 8 to shape and manage Scheduling Coordinators' expectations of the settlement process, and that this
 9 Section should remain as written.

10 **Analysis:** We concur with Staff.

11 **Resolution:** No change is necessary.

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

13 **Issue:** Photovoltaics International, LLC encouraged the Commission to retain the Solar
 14 Portfolio Standard and further stated that in selecting a location for its next solar manufacturing plant,
 15 it would look for a state with "appropriate encouragements for adoption of solar electricity
 16 generation." Similarly, the ACAA, Golden Genesis Company, and Robert Annan recommended the
 17 reinstatement or retention of the Solar Portfolio Standard (R14-2-1609). Tucson also recommended
 18 that the Solar Portfolio Standard be retained, but indicated that it "... may be desirable to modify the
 19 standard to make it more practical, but complete elimination of the solar requirements is poor public
 20 policy." Tucson expressed support of the Environmental Portfolio Standard as outlined in
 21 Commissioner Kunasek's April 8, 1999, letter "as a substitute for the Solar Portfolio Standard."
 22 Tucson suggested that the Environmental Portfolio Standard "be formulated to follow the intent of
 23 the Solar Portfolio Standard." The LAW Fund also recommended reinstatement of the Solar
 24 Portfolio Standard. However, the LAW Fund applauded the opening of a new docket on an
 25 Environmental Portfolio Standard (E-00000A-99-0205), and stated that it will participate in the new
 26 docket. The Arizona Solar Energy Industries Association ("ARISEIA") stated that the Solar
 27 Portfolio Standard "should have been retained in the Rules." ARISEIA further stated, however that it

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1 supports the new Environmental Portfolio Standard docket, which will "provide significant economic
2 development opportunities, cleaner air and a brighter future for Arizona."

3 Staff provided the following comments: "Staff has been supportive of the Solar Portfolio
4 Standard since its inception in 1996. However, since the Amended Rules approved in Decision No.
5 61634 on April 23, 1999, did not include the Solar Portfolio Standard, it is problematic to attempt to
6 reintroduce the standard at this point in the rule amendment process. To do so would be a
7 "substantive" change in the rules, in Staff's opinion, necessitating a re-commencement of the rule
8 amendment process that might delay the start of competition. Staff believes that delaying the entire
9 rules package would be neither prudent nor wise.

10 "Staff does, however, agree with Tucson, the LAW Fund and ARISEIA that the new docket
11 for the Environmental Portfolio Standard, as suggested by Commissioner Kunasek's April 8, 1999,
12 letter is an excellent vehicle to incorporate solar and other clean technologies into the new
13 competitive market. In fact, Staff believes that the Environmental Portfolio Standard process, if
14 promptly handled, and followed by a supplemental rulemaking process, could add Environmental
15 Portfolio Standard rules that could be in effect by January 1, 2000."

16 Staff recommended no change to the rules at this time, but a continuation of the
17 Environmental Portfolio Standard proceedings in the new docket.

18 **Analysis:** We believe that the Environmental Portfolio Standard docket constitutes the
19 proper forum for consideration of the costs and benefits of renewable energy requirements, and that
20 the start of competition should not be delayed pending such consideration.

21 **Resolution:** No change is required.

22 **R14-2-1611 – Rates**

23 **1611(B)**

24 **Issue:** NWE opposed the language in Section 1611(B) regarding the filing of maximum rates,
25 stating that the market will set the price of electric services and that in certain cases, the maximums
26 may need to be exceeded. NWE also pointed out that this provision does not establish any time
27 limitations for the Commission to approve such rates. Staff responded that the filing of maximum
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1 rates is an established rate/regulatory practice in Arizona, and that the Commission has approved
 2 maximum rates in conjunction with its approval of ESP applications.

3 **Analysis:** We concur with Staff.

4 **Resolution:** No change is necessary.

5 **1611(C)**

6 **Issue:** NWE stated that Section 1611(C) is an unnecessary remnant of the regulatory regime
 7 that Arizona is now abandoning, and that it should be stricken in its entirety, but that if retained, strict
 8 time limitations for such review should be required, and submitted contracts should be presumed
 9 valid unless disapproved under clear criteria within the established time period. Staff stated that this
 10 Section requires a Commission Order for contract approval only if the contract terms deviate from a
 11 Load Serving Entity's approved tariffs. Tucson stated that this Section should be deleted because it is
 12 unclear why competitively negotiated contracts should be treated differently before January 1, 2001,
 13 than after that date. Trico recommended that because the word "terms" is ambiguous, the word
 14 "terms" should be replaced by the word "provisions" in the last sentence of Section 1611(C).
 15 Commonwealth joined in the concerns of Tucson and Trico. Staff agreed that the word "terms" may
 16 be misconstrued to mean the length of the contract and recommended adoption of Trico's proposed
 17 modification.

18 **Analysis:** This Section places a reasonable requirement on Load-Serving Entities in order
 19 to allow the Commission's Utilities Division to monitor the referenced contracts during the phase-in
 20 of competition. After January 1, 2001 all customers will have access to contracts with competitive
 21 suppliers, and this monitoring will no longer be necessary for contracts that comply with the
 22 provisions of approved tariffs. It is reasonable that a Commission Order be required for approval of
 23 contracts that deviate from approved tariffs, because to approve such contracts without Commission
 24 Order would render Commission approval of tariffs meaningless. We concur with Staff regarding the
 25 substitution of the word "provisions" for the word "terms."

26 **Resolution:** Replace the word "terms" with the word "provisions" in the last sentence of
 27 this Section. No other change is necessary.

28 **1611(D)**

1 the best way to avoid any potential unauthorized switching of providers, or “slamming” problems that
2 may occur, and recommended no change.

3 **Analysis:** Arizona’s electricity consumers must be protected from the practice of
4 “slamming” that is unfortunately an ongoing problem in the deregulated long-distance
5 telecommunications industry. In that industry, the third-party oral verification process is known not
6 to be completely effective in preventing slamming. We do not believe that requiring written
7 authorization rather than third-party oral verification will necessarily result in higher market entry
8 costs for competitive ESPs. On the contrary, the requirement of written customer authorization will
9 provide protection for ESPs as well as for consumers, because it will result in fewer erroneous
10 switches, which are costly for ESPs. In keeping with the intent of A.R.S. § 40-202(C)(4), we will not
11 modify this Section as Commonwealth requests.

12 **Resolution:** No change is necessary.

13 **Issue:** A.R.S. § 40-202(C)(4) confirms the Commission’s authority to adopt consumer
14 protection requirements related to switching service providers. Several of the requirements appearing
15 in A.R.S. § 40-202(C)(4) are embodied in Section 1612(C), but some are not.

16 **Analysis:** For consistency, clarity and certainty, Section 1612(C) should include the
17 specific requirements and prohibitions relating to written authorizations to switch service providers
18 that appear in A.R.S. § 40-202(C)(4). Such additions to the Rules are not substantive.

19 **Resolution:** Modify Section 1612(C) by adding the following after “switching the
20 consumer back to the previous provider.”:

21 “A new provider who switches a customer without written authorization shall also
22 refund to the retail electricity customer the entire amount of the customer’s electricity
23 charges attributable to electric generation service from the new provider for three
24 months, or the period of the unauthorized service, whichever is less.”

24 Add the following after “the provider’s certificate.”:

25 “The following requirements and restrictions shall apply to the written authorization
26 form requesting electric service from the new provider:

- 27 1. The authorization shall not contain any inducements;

1 2. The authorization shall be in legible print with clear and
2 plain language confirming the rates, terms, conditions and nature of
3 the service to be provided;

4 3. The authorization shall not state or suggest that the customer
5 must take action to retain the customer's current electricity supplier;

6 4. The authorization shall be in the same language as any
7 promotional or inducement materials provided to the retail electric
8 customer; and

9 5. No box or container may be used to collect entries for
10 sweepstakes or a contest that, at the same time, is used to collect
11 authorization by a retail electric customer to change their electricity
12 supplier or to subscribe to other services.

13 **Issue:** Commonwealth objected to the language in Section 1612(C) that authorizes UDCs to
14 audit ESPs written authorizations to switch providers in order to assure that a customer switch was
15 properly authorized.

16 **Analysis:** We agree that this provision could unnecessarily delay the switching process.
17 The penalties for unauthorized switching should be adequate to deter intentional unauthorized
18 switching, which should preclude any need to audit written authorizations. However, the
19 Commission's Consumer Services Division has the regulatory authority to conduct such audits, and if
20 a UDC believes such an audit is necessary, the UDC should request that the Commission conduct an
21 audit. A UDC, especially one with a competitive ESP affiliate, should not have the authority to
22 conduct such audits itself.

23 **Resolution:** Replace "has the right" with "may request that the Commission's Consumer
24 Services Division". Such modification does not substantively affect any entity's right to an audit.

25 **1612(E)**

26 **Issue:** NWE recommended that this Section be redrafted to clarify that compliance with
27 applicable reliability standards is the responsibility of the scheduling coordinator, the ISO or the ISA,
28 and that notification of scheduled outages is the responsibility of the UDC and should not apply to
29 ESPs. Staff responded that ESPs should remain subject to the same applicable reliability standards as
30 UDCs and recommended no change.

31 **Analysis:** We concur with Staff.

1 **Resolution:** No change is necessary.

2 **1612(G-H)**

3 **Issue:** NWE stated that the provisions found in Sections 1612(G) and (H) should apply only
4 to UDCs. Staff responded that ESPs should remain subject to the same service quality provisions as
5 the UDCs, and recommended no change.

6 **Analysis:** We concur with Staff.

7 **Resolution:** No change is necessary.

8 **1612(I)**

9 **Issue:** Tucson requested that Section 1612(I) be modified to clarify the time frames and
10 conditions that a customer that is being served by an ESP may return to Standard Offer Service. Staff
11 stated that it will be necessary for both the ESP and UDC to coordinate a customer returning to
12 Standard Offer Service through the Termination of Service Agreement Direct Access Service
13 Request (DASR) process, because once properly notified by the ESP, the UDC has the responsibility
14 to ensure that the proper metering equipment is in place to serve a customer who is returning to
15 Standard Offer Service. Staff stated that the time frames and the conditions that are included in
16 Section 1612(I) are therefore necessary and reasonable. Further, APS responded that Tucson's
17 suggestion fails to recognize the timing and coordination that may be necessary to return some
18 customers to Standard Offer if it is necessary to replace meter equipment.

19 **Analysis:** We concur with Tucson that the timeframes in this Section are ambiguous
20 concerning the timing for providing notice to return a customer to Standard Offer Service. We agree
21 with Staff and APS, however, that in certain situations, whether appropriate metering equipment is in
22 place can affect the transfer of service. Provided that the appropriate metering equipment is in place,
23 we believe 15 days notice is adequate for a UDC to return a customer to Standard Offer Service.
24 Consequently, we adopt Tucson's proposed modification, with the exception of Tucson's proposed
25 deletion of the reference concerning the placement of appropriate metering equipment.

26 **Resolution:** Revise Section 1612(I) as follows:

27 Electric Service Providers shall give at least 5 days notice to their customer ~~and to the~~
28 ~~appropriate Utility Distribution Company~~ of scheduled return to Standard Offer
 Service ~~but that return of that customer to Standard Offer Service would be at the~~

1 ~~next regular billing cycle, if appropriate metering equipment is in place and the~~
 2 ~~request is processed 15 calendar days prior to the next scheduled meter read date.~~
 3 ~~Electric Service Providers shall provide 15 calendar days notice prior to the next~~
 4 ~~scheduled meter reading date to the appropriate Utility Distribution Company~~
 5 ~~regarding the intent to terminate a service agreement. Return of that customer to~~
 6 ~~Standard Offer Service will be at the next regular billing cycle if appropriate metering~~
 7 ~~equipment is in place and the request is provided 15 calendar days prior to the next~~
 8 ~~regular read date. Responsibility for charges incurred between the notice and the next~~
 9 ~~scheduled read date shall rest with the Electric Service Provider.~~

10 **1612(K)(1)**

11 **Issue:** Navopache and Mohave proposed adding a sentence to Section 1612(K)(1) to allow
 12 UDCs to recover costs associated with collecting and distributing metering data when UDCs provide
 13 metering data to an ESP or customer, and proposed adding the words “Utility Distribution
 14 Companies shall make available to the Customer or Electric Service Provider all metering
 15 information and may charge a fee for that service. The charge or fee shall reflect the cost of
 16 providing such information.” Staff pointed out that UDCs may request that the Commission approve
 17 this type of charge as a tariff item, and recommended no change to this Section.

18 **Analysis:** We concur with Staff.

19 **Resolution:** No change is necessary.

20 **1612(K)(2)**

21 **Issue:** NWE contended that the Commission should not approve tariffs for meter testing, and
 22 that rather than establishing a set percentage of error, this Section should refer to a Commission-
 23 approved standard. NWE also suggested replacing “another” with “an”.

24 **Analysis:** This Section contains the Commission-approved standard of ± 3 percent as
 25 provided by Section 209(F). Tariffs for meter testing should be filed for approval by the
 26 Commission. NWE’s suggestion that “another” be replaced by “an” provides clarity and should be
 27 adopted.

28 **Resolution:** Replace “another” with “an another”. No other change is required.

29 **1612(K)(3)**

30 **Issue:** Staff stated that at the June 2, 1999 Metering Committee meeting it was proposed that
 31 the word “customer” be removed after the word “competitive” and be replaced with “point of
 32 delivery,” and deletion of the words “for each service delivery point.” Staff stated that the Metering
 33

1 Committee had previously determined that each point of delivery be assigned a Universal Node
 2 Identifier (“UNI”), and that because a customer could have more than one point of delivery, a UNI
 3 must be assigned to each point of delivery. Staff recommended that this Section be modified using
 4 the wording developed by the Metering Committee.

5 **Analysis:** We concur with Staff. This modification is not substantive.

6 **Resolution:** Modify this Section as follows:

7 3. Each competitive ~~customer~~ point of delivery shall be assigned a Universal
 8 Node Identifier ~~for each service delivery point~~ by the Affected Utility or the Utility
 9 Distribution Company whose distribution system serves the customer.

9 **1612(K)(4)**

10 **Issue:** NWE contended that the Utility Industry Group (“UIG”) should be required to
 11 complete its standards at least 60 days before competition begins, and therefore proposed deleting the
 12 words “standards approved by the Utility Industry Group (UIG) that can be used by the Affected
 13 Utility or the Utility Distribution Company and the Electric Service Provider.” and replacing them
 14 with “UIG standards in effect at least 60 days before the onset of competition.” NWE alternatively
 15 proposed that in the penultimate line of this Section, “can” should be changed to “shall.” Staff
 16 responded that because the use of EDI formats approved by UIG has been discussed by the Metering
 17 Committee, and all formats that are being used were already in effect earlier this year, NWE’s first
 18 proposed change is unnecessary.

19 **Analysis:** We concur with Staff’s reasoning regarding the first proposed change, and
 20 agree with NWE regarding its alternative proposal. This modification is not substantive.

21 **Resolution:** Change “can” to “shall” in the penultimate line of this Section. No other
 22 change is necessary.

23 **1612(K)(6)**

24 **Issue:** TEP proposed deleting the words “Predictable loads will be permitted to use load
 25 profiles to satisfy the requirement of hourly consumption data. The Affected Utility or Electric
 26 Service Provider will make the determination if a load is predictable.” APS did not oppose allowing
 27 some “predictable load” to use load profiling in lieu of hourly consumption data, but believed that
 28

1 this Section is unclear as to who may waive the requirements for hourly consumption data. APS
2 recommended changing the last sentence of Section 1612(K)(6) to provide that the “entity developing
3 the load profile shall determine if a load is predictable.” Staff responded that ESPs and UDCs are
4 responsible for developing the load profiles for their respective customers and if they do not estimate
5 the load profile correctly, the AISA will require them to pay scheduling penalties. Staff believed that
6 APS’ proposed language appropriately clarifies where this responsibility resides, and recommended
7 that APS’ wording be used.

8 Commonwealth disagreed with Staff’s and APS’ proposed modification as an additional
9 barrier to entry and supported keeping the original language. Commonwealth argued that any ESP
10 should be able to make its independent determination of whether or not a customer has a load it
11 desires to serve. TEP did not agree with the modifications proposed by Staff, Tucson and APS on the
12 basis that they do not address the concerns TEP raised. TEP argued that loads are determined by an
13 Affected Utility’s unmetered tariffs, so only the Affected Utility is in a position to determine whether
14 load is predictable. TEP maintained that there are many reasons why load profiling fails to
15 adequately address issues such as economic efficiency, system reliability, proper allocation of costs
16 to customers and proper allocation of costs to third-party suppliers. TEP strongly contended that
17 until these issues are resolved, there is no justification to avoid the use of interval metering in favor of
18 load profiling.

19 ATDUG believed that some types of loads such as irrigation and other water pumping loads
20 are inherently predictable and suggested the following sentence be added: “The Commission will
21 identify categories of loads that are deemed predictable.”

22 **Analysis:** TEP states there are unresolved issues that argue against the use of load
23 profiling in lieu of interval metering. However, TEP did not provide the rationale why these issues
24 should prevent the use of profiling for predictable loads. We concur with Tucson, Staff and APS that
25 it is reasonable to allow predictable loads to use load profiling in lieu of hourly consumption data.
26 We agree with Staff that because the entity determining whether a load is predictable or not will bear
27 the responsibility of paying any scheduling penalties stemming from inaccurate predictions, that

28

1 APS' proposed language should be adopted. We do not believe that ATDUG's suggestion that the
 2 Commission should identify categories of loads to be deemed predictable is necessary at this time.

3 **Resolution:** Delete the last sentence of Section 1612(K)(6) and replace with "The Load-
 4 Serving Entity developing the load profiling shall determine if a load is predictable." Such
 5 modification is not substantive.

6 **1612(K)(6) and (7)**

7 **Issue:** Commonwealth proposed that instead of the current 20 kW and 100,000 kWh limit for
 8 hourly interval meters, that a limit of 50 kW and 250,000 kWh be imposed for the use of hourly
 9 interval meters. Tucson proposed that the 20 kW demand threshold be re-evaluated. Staff responded
 10 that 20kW was the appropriate cut-off for requiring hourly interval meters because customers over 20
 11 kW do not have easily predictable load profiles and use of load profiling for such customers can
 12 result in higher scheduling errors and cause the Load-Serving Entities to pay scheduling penalties
 13 which would be passed on to both the Standard Offer Service and competitive consumers. APS
 14 asserted that Commonwealth has not provided a compelling argument why the threshold of 20kW,
 15 developed by the working group, is not appropriate. Staff argued that the lower limit reduces
 16 scheduling errors and results in lower costs to the Standard Offer Service and competitive customers.

17 **Analysis:** Section 1612(K)(6) provides a means for loads over 20 kW determined to be
 18 predictable by Load-Serving Entities developing load profiles to use those load profiles in lieu of
 19 interval meters. We concur that the 20 kW threshold, that was developed by the working group,
 20 should remain unchanged.

21 **Resolution:** No change is necessary.

22 **1612(M)**

23 **Issue:** NWE recommended that Section 1612(M) be stricken in its entirety because the
 24 Electric Power Competition Act (HB 2663) requires substantial statewide consumer outreach and
 25 education, and further informational programs by ESPs is unnecessary. Staff responded that the
 26 Commission has a duty to ensure that all customers throughout the state are well informed regarding
 27 electric competition and recommended that this provision remain.

1 **Analysis:** This provision provides the Commission with the ability to ensure that
2 consumers receive information about competition.

3 **Resolution:** No change is necessary.

4 **1612(N)**

5 **Issue:** Trico, Navopache and Mohave recommend that the language in Section 1612(N) be
6 modified to clarify that UDCs are not required to segregate Wholesale Power Contract bills which
7 combine generation and transmission services. Staff responded that the Commission recognizes that
8 distribution cooperatives may not have the ability to segregate Wholesale Power Contract bills which
9 bundle generation and transmission services. Staff believed the proper remedy would be for the
10 affected distribution cooperatives to seek a waiver from this Rule.

11 **Analysis:** We believe that the proper way to address the distribution cooperatives'
12 concerns is through the waiver process rather than the revision of this Rule.

13 **Resolution:** No change is necessary.

14 **Issue:** NWE states that if an ESP is mandated by Section 1612(N) to provide the listed
15 information on their billing statements, then Affected Utilities and UDCs should be mandated to
16 provide such information that is in their control to the ESP in order to permit the ESP to meet its
17 requirements. Staff responded that the billing entity will be responsible for providing this
18 information on customer bills, and that the billing entity for direct access customers will be
19 responsible for coordinating with UDCs, ESPs, and Meter Reader Service Providers to provide this
20 information. Staff therefore recommended no change to this Section.

21 **Analysis:** We concur with Staff. This information exchange should be covered in the
22 Electric Service Provider Service Acquisition Agreement between the ESP and the UDC.

23 **Resolution:** No change is necessary.

24 **Issue:** Most commentators who addressed the issue of bill elements opined that they should
25 be consistent with the unbundled tariff elements established in Section 1606(C)(2).

26 **Analysis:** Bills should provide information to customers in a manner that is easily
27 understood and that permits customers to compare the price of the various services. We believe that
28 the format established in our revised Section 1606(C)(2) concerning unbundled tariffs provides a

1 good framework for delineating bill elements. We agree with the Residential Utility Consumer
 2 Office's comments to a past version of these Rules that consumers likely are not interested in and
 3 may be confused by too much detail on the bill. Consequently, we believe that certain elements that
 4 are broken down for tariff purposes are better combined when presented on the bill.

5 Our modifications to this Section, while providing additional direction to the affected entities
 6 and clarity for consumers, are not substantive changes from the original provision.

7 **Resolution:** Revise Section 1612(N) as follows:

8 1. Competitive Services Electricity Costs:

- 9 a. Generation, which shall include generation-related billing and collection;
 10 b. Competition Transition Charge, and
 11 c. Transmission and Ancillary Services Fuel or purchased power adjustor, if
 12 applicable;
 13 d. Metering Services; and
 14 e. Meter Reading Services.

15 2. Non-Competitive Services Delivery costs:

- 16 a. Distribution services, including distribution-related billing and collection,
 17 required Ancillary Services and Must-Run Generating Units; and
 18 b. System Benefit Charges. Transmission services;

19 3. Regulatory assessments; and Other Costs:

- 20 a. ~~Metering Service,~~
 21 b. ~~Meter Reading Service,~~
 22 c. ~~Billing and collection, and~~
 23 d. ~~System Benefits charge.~~

24 4. Applicable taxes.

25
 26 **R14-2-1613 – Reporting Requirements**

27 **Issue:** NWE recommended that this entire Section be deleted because NWE believed that the
 28 reporting requirements are regulatory in nature with no pro-competitive justification, and that the

1 requirements will harm consumers by raising costs, as ESPs will be forced to hire employees whose
 2 sole purpose is to fulfill these reporting requirements. TEP questioned the need for the amount of
 3 information this Section requires, arguing that the amount of information will be difficult to compile
 4 and will increase the costs that, ultimately, customers will be required to pay.

5 Staff responded that the reporting requirements are necessary for the Commission to monitor
 6 and determine that the bond and insurance coverage amounts are adequate to protect consumers,
 7 including customer deposits and advances. Staff contended that the reports required by this Section
 8 will also furnish the Commission with valuable information in assessing the competitiveness of the
 9 electricity market in Arizona.

10 **Analysis:** We agree with Staff that the information required by this Section is very
 11 valuable to the Commission, especially in the early stages of competition, and that the information is
 12 also needed to ensure continued consumer protection via bonds and insurance.

13 **Resolution:** No change is necessary.

14 **R14-2-1614 – Administrative Requirements**

15 **1614(A-C)**

16 **Issue:** NWE repeated its suggestion that there should be no requirement to file maximum
 17 rates, and therefore proposed deletion of these Sections 1614 (A), (B), and (C). Staff responded that
 18 ESPs are public service corporations, for whom the Commission is lawfully authorized to establish
 19 just and reasonable rates. Staff contended that the filing of maximum rates, subject to discount, and
 20 the filing of contracts are the means by which the Commission has decided to exercise its jurisdiction.

21 **Evaluation:** We concur with Staff.

22 **Resolution:** No change is necessary.

23 **1614(E)**

24 **Issue:** ACAA suggested additional language which would further define specifics
 25 surrounding the Consumer Education Program. ACAA would have this Section specifically
 26 reference adoption of a funding plan, specify that the adopted Consumer Education Program is to be a
 27 model, and require Affected Utilities to conform to the adopted plan. Staff responded that this

1 Section as currently written will accommodate the concerns addressed by ACAA, and recommended
2 no change.

3 **Analysis:** We believe that ACAA's concerns will be addressed when the Commission
4 adopts the Consumer Education Program required by this Section.

5 **Resolution:** No change is necessary.

6 **R14-2-1615 – Separation of Monopoly and Competitive Services**

7 **1615(A)**

8 **Issue:** Section 1615(A) requires all competitive generation and Competitive Services to be
9 separated from an Affected Utility prior to January 1, 2001. Such separation shall either be to an
10 unaffiliated party or to a separate corporate affiliate or affiliates. Commonwealth asserted that all
11 generation assets, except for Must Run Generating Units, should be sold at market value to third
12 parties. Commonwealth also suggested that an Affected Utility's competitive affiliate should be
13 precluded from acquiring generation assets unless it is the highest bidder at auction. Commonwealth
14 believes that, without the requirement of a sale at market value, the UDCs will be able to manipulate
15 values and shift costs from Competitive Services to Noncompetitive Services.

16 Staff responded that Commonwealth's proposal to require generation assets to be divested
17 through a market auction is in direct conflict with Decision No. 61677, the Commission's Stranded
18 Cost order, which treats divestiture as an option, not a requirement. Staff pointed out that pursuant to
19 Section 1615(A), the asset transfer shall be at a value determined by the Commission to be fair and
20 reasonable, and that accordingly, the asset transfer will not occur outside of Commission oversight.
21 Staff further stated that Commonwealth's concerns regarding cost shifting between UDCs and their
22 affiliates may be addressed through the Code of Conduct required by Section 1616 and through
23 subsequent UDC rate cases governing Noncompetitive Services.

24 Commonwealth asserted that Section 1615(A) should be clarified by deleting the word
25 "competitive", thereby requiring all generation assets except for Must-Run Generating Units to be
26 separated from Affected Utilities prior to January 1, 2001. Staff responded that the definition of
27 "Noncompetitive Services" clearly excludes generation services, except for Must-Run Generating
28

1 Units, and that it is therefore clear that competitive generation includes all generation except for
2 Must-Run Generating Units. Staff recommended against adoption of Commonwealth's suggested
3 modifications to this Section.

4 **Analysis:** We concur with Staff.

5 **Resolution:** No change is necessary.

6 **Issue:** Section 1615(A) requires Affected Utilities to transfer their generation assets by
7 January 1, 2001. TEP suggested changing this date to January 1, 2003 to accommodate lease and
8 bond restrictions that may interfere with TEP's ability to comply with the 2001 deadline. Staff
9 responded that the Rules already provide an avenue in which a public service corporation may
10 request a waiver to the rules, and that while TEP's individual circumstances may justify a case-
11 specific waiver from the proposed deadline, these circumstances do not justify an amendment to the
12 Rules.

13 **Analysis:** We believe that TEP's concerns are best addressed through a waiver rather
14 than a redrafting of this rule.

15 **Resolution:** No change is necessary.

16 **Issue:** Section 1615(A) allows Affected Utilities to transfer competitive generation assets to
17 affiliates. TEP suggested adding the word "subsidiary" because it believes that transfer to a
18 subsidiary may under some circumstances be less costly than transfer to an affiliate. Staff responded
19 that in Decision No. 61669, the Commission clearly indicated its intent to require transfer to an
20 affiliate, instead of a subsidiary, and that TEP's suggestion conflicts with the Commission's clearly
21 established intent. Staff therefore recommended no change. ATDUG expressed grave concerns
22 about the effectiveness of "separation" if the transfer of generation assets is allowed to affiliates.

23 **Analysis:** We agree that the requirement that competitive generation assets and
24 Competitive Services be separated to an unaffiliated party or to a separate corporate affiliate or
25 affiliates, will provide greater protection against cross-subsidization than would separation to a
26 subsidiary.

27 **Resolution:** No change is necessary.

28

1 **Issue:** APS argued that the separation from the UDC of metering, meter reading, billing, and
2 collection required by Section 1615 is not necessary, appropriate, or to the benefit of consumers or
3 the competitive market. APS proposed amending Section 1615 to allow UDCs to offer non-
4 generation related Competitive Services without divesting such functions to affiliates. AECC
5 opposed APS' proposal. Staff responded that Affected Utilities, such as APS, currently have
6 substantial market power by virtue of their status as incumbent monopolists, and that the prospective
7 competitive market will benefit by the creation of a level playing field for new market entrants so that
8 competitors will have an incentive to enter the market. Staff therefore recommended no change to
9 this Section.

10 **Analysis:** We concur that separation of monopoly and competitive services by the
11 incumbent Affected Utilities must take place in order to foster development of a competitive market
12 in Arizona.

13 **Resolution:** No change is necessary.

14 **1615(B)**

15 **Issue:** Section 1615(B)(1) recognizes that UDCs may provide meters for Load Profiled
16 customers. APS proposed clarifying this Section by substituting the phrase "Meter Services and
17 Meter Reading Services" for the word "meters." Staff supported APS' proposal as it uses defined
18 terms in place of an undefined term.

19 **Analysis:** We concur with Staff. This modification eliminates ambiguity and is not
20 substantive.

21 **Resolution:** Delete "meters" and replace with "Meter Services and Meter Reading
22 Services".

23 **1615(C)**

24 **Issue:** Section 1615(C) allows distribution cooperatives to provide competitive electric
25 services in areas in which they currently provide service. AEPCO, Duncan, Graham, and Trico
26 suggested amending this Section to allow the distribution cooperatives to provide competitive
27 services in any areas in which they will be providing Noncompetitive Services now or in the future.
28 Staff responded that Section 1615(C) was intended to allow distribution cooperatives to provide

1 competitive services within areas in which they are providing distribution services, and that because
 2 distribution service territories change, it would be sensible to draft the rule in a manner that
 3 recognizes this. Staff therefore recommended deleting the phrase “the service territory it had as of
 4 the effective date of these rules” and replace it with “its distribution service territory.”

5 **Analysis:** We agree with this nonsubstantive modification.

6 **Resolution:** Replace “the service territory it had as of the effective date of these rules” with
 7 “its distribution service territory ~~the service territory it had as of the effective date of these rules.~~”

8 **Issue:** Section 1615(C) states that a generation cooperative shall be subject to the same
 9 limitations to which its member cooperatives are subject. AEPCO argues that a generation
 10 cooperative, such as AEPCO, does not have a geographic service territory and does not have
 11 distribution customers. AEPCO further argued that, because it is not a distribution cooperative, it is
 12 not eligible for the exemption contained in this Section, and is therefore subject to all the
 13 requirements contained in Sections 1615(A) and (B). AEPCO therefore recommended deleting the
 14 last sentence of Section 1615(C). Staff agreed with AEPCO.

15 **Analysis:** The intent of this provision was to preclude a generation cooperative or its
 16 competitive affiliate from providing power in the competitive market before the territories of its
 17 member distribution cooperatives were open to competition. The reference here is misplaced and we
 18 agree it should be removed. The timing for AEPCO’s competitive affiliate to begin providing
 19 Competitive Services will be addressed by Commission order in AEPCO’s Stranded Cost/Unbundled
 20 tariff proceeding.

21 **Resolution:** Delete the last sentence of Section 1615(C). This change is not substantive.

22 **R14-2-1616 – Code of Conduct**

23 **Issue:** Commonwealth, Tucson, AECC and Enron Corp. (“Enron”) opposed the
 24 Commission’s elimination of the Affiliate Transaction rules (formerly R14-2-1617). AECC joined in
 25 and fully supported the separately filed comments of Enron and submits that the Electric Competition
 26 Rules must contain Affiliate Transaction rules to provide consumers appropriate safeguards in the
 27 competitive marketplace. Enron claimed that the Affiliate Transaction rules should be designed to
 28 prevent Affected Utilities from abusing or unfairly exerting market power due to their inherent and

1 historical monopoly positions in Arizona. Enron argued that at a minimum, the above concerns
2 would be reduced if Affected Utilities and their marketing affiliates are required to operate as
3 separate corporate entities, keeping separate books and records. Enron indicated that market power
4 concerns have been heightened recently because of the Commission's approach to Stranded Cost
5 which does not require Affected Utilities to divest generation assets, thereby leaving Affected
6 Utilities with tremendous competitive advantage and market power. Enron identified the potential
7 absence of uniformity among the Affected Utilities' Codes of Conduct as a problem resulting in the
8 ESPs having to guess which types of activities are allowed for each individual Affected Utility and its
9 affiliates. Commonwealth recommended that the Code of Conduct should preclude any Affected
10 Utility from offering competitive services through an affiliate until a Code of Conduct has been
11 approved by the Commission, after notice, comment, and hearing. Tucson urged the Commission to
12 promulgate Affiliate Transaction rules with sufficient detail to assure the public that there is adequate
13 Commission oversight of these relationships. Commonwealth stated that the Code of Conduct should
14 not displace Affiliate Transaction rules or guidelines. Commonwealth suggested that, if the Affiliate
15 Transactions rule is not reinserted back into the rules, an alternative seven pages of guidelines for
16 Affected Utilities and their competitive affiliates should be incorporated within the Codes of Conduct
17 of each Affected Utility.

18 TEP disagreed with the comments of AECC, Tucson and Commonwealth regarding the re-
19 adoption of the Affiliate Transaction rules, preferring the flexibility of a Code of Conduct. TEP
20 argued that contrary to Enron's assertion, the requirements that Affected Utilities transfer their
21 generation assets to a separate affiliate and that Standard Offer Service generation be procured in the
22 open market, will make it impossible for the Affected Utility to favor its generation affiliates to the
23 detriment of other ESPs. Trico and AEPCO, Duncan and Graham believed that each entity that
24 would be subject to the Affiliate Transaction rules is unique and the parties advocating their
25 reinstatement have not provided adequate reasons why an individually tailored Code of Conduct
26 subject to Commission review and approval is not a satisfactory solution. ATDUG believed that
27 Affected Utilities should not draft their own Code of Conduct without, at a minimum, a guideline or
28 standard.

1 Staff responded that a Code of Conduct for Affected Utilities and their affiliates is necessary
 2 in order to ensure the development of a robust competitive market. Staff believed that, while it is not
 3 essential for all Affected Utilities to have identical Codes of Conduct, it is desirable for each Code of
 4 Conduct to address certain significant issues. Staff stated that in the absence of some minimal degree
 5 of uniformity, parties will be uncertain as to the rules governing the Arizona market, and enforcement
 6 of these issues will be difficult. Staff therefore supported amending Section 1616 to require each
 7 Affected Utility to address certain minimum standards in its Code of Conduct.

8 Staff recommended making the following changes to Section 1616:

9 No later than 90 days after adoption of these Rules, each Affected Utility which plans
 10 to offer Noncompetitive Services and which plans to offer Competitive Services
 11 through its competitive electric affiliate shall propose a Code of Conduct to prevent
 12 anti-competitive activities. Each Affected Utility that is an electric cooperative, that
 13 plans to offer Noncompetitive Services, and that is a member of any electric
 14 cooperative that plans to offer Competitive Services shall also submit a Code of
 15 Conduct to prevent anti-competitive activities. All ~~The~~ Codes of Conduct shall be
 16 subject to Commission approval.

17 The Code of Conduct shall address the following subjects:

- 18 1. Appropriate procedures to prevent cross subsidization between the Utility
 19 Distribution Company and any competitive affiliates;
- 20 2. Appropriate procedures to ensure that the Utility Distribution Company's
 21 competitive affiliate does not have access to confidential utility information that is
 22 not also available to other market participants;
- 23 3. Appropriate guidelines to limit the joint employment of personnel by both a Utility
 24 Distribution Company and its competitive affiliate;
- 25 4. Appropriate guidelines to govern the use of the Utility Distribution Company's
 26 name or logo by the Utility Distribution Company's competitive affiliate;
- 27 5. Appropriate procedures to ensure that the Utility Distribution Company does not
 28 give its competitive affiliate any unreasonably preferential treatment such that
other market participants are unfairly disadvantaged;
6. Appropriate policies to eliminate joint advertising, joint marketing, or joint sales
by a Utility Distribution Company and its competitive affiliate;
7. Appropriate procedures to govern transactions between a Utility Distribution
Company and its competitive affiliate; and

1 8. Appropriate policies to prevent the Utility Distribution Company and its
 2 competitive affiliate from representing that customers will receive better service as
 3 a result of the affiliation.

4 **Analysis:** Nearly all parties providing comments on this issue suggest that the entire
 5 Affiliate Transactions rule (formerly R14-2-1617) be reinserted back into the proposed rules. Others
 6 suggested rewriting the current Code of Conduct, R14-2-1616, to include specific appropriate
 7 Affiliate Transactions rules. We believe that to promote competition it is critical to have a statewide
 8 standard for the Codes of Conduct. We believe that Staff's recommended guideline for Code of
 9 Conduct content is reasonable and will promote competition within the state while at the same time
 10 providing flexibility for individual Affected Utilities.

11 **Resolution:** Modify Section 1616 as recommended by Staff, adding clarification that
 12 approval shall occur after a notice and a hearing. Staff's recommended modification provides
 13 additional detail as to what is expected in a Code of Conduct, but does not substantively change the
 14 affect of this section.

14 **R14-2-1617 – Disclosure of Information**

15 **Issue:** NWE and TEP proposed that this entire Section be deleted. APS proposed that only
 16 Load-Serving ESPs, and not UDCs, should be required to disclose information to consumers. Trico
 17 proposed that a new Section be added stating that the UDC would not be required to furnish the same
 18 information as provided by a Load-Serving Entity. AEPCO, Duncan and Graham believed that
 19 mandating a "guess" about the characteristics of the resource portfolio will not improve the value of
 20 data provided to the customer.

21 ACAA proposed that information about the resource mix be readily available to residential
 22 consumers without any acquisition barriers. Tucson expressed concern that this Section requires
 23 information about the resource portfolio to be provided only upon request and stated that experience
 24 in other states has shown that consumers "prefer a more environmentally sound mix of resources than
 25 traditional suppliers have in their portfolios." Tucson believes that since the information would have
 26 to be developed in case someone requested it, the only rationale for not providing it automatically
 27 would be to hide the resource mix. The LAW Fund pointed out that by not requiring disclosure about
 28 resources, Arizona consumers will be not be informed about their choices and will be at a

1 disadvantage in comparison to those in other western states. Commonwealth asserts that it has found
 2 that many customers desire the option to purchase generation from environmentally-compatible
 3 sources. Commonwealth supported the disclosure requirements and urged that it be reinstated in the
 4 Rules. APS believed that market forces would operate to provide consumers with information
 5 concerning resource mix, and that mandatory disclosure adds unnecessary costs

6 Staff stated that consumers are entitled to receive information so that they can make informed
 7 choices, and that research conducted in other states indicates that consumers want information on
 8 generation resources. Staff argued that all ESPs providing generation service and UDCs providing
 9 Standard Offer Service should be required to disclose generation resource information as part of the
 10 consumer information label, and not only upon request. Staff recommended restoring Sections
 11 1617(A)(4),(5) and (6), and deleting Section 1617(B). Staff also recommended inserting "providing
 12 either generation service or Standard Offer Service" after "Load-Serving Entity" in Section 1617(A).

13 **Analysis:** We agree with those entities who advocate for the disclosure of a Load-
 14 Serving Entities' resource portfolio characteristics. However, we are also concerned about the costs
 15 to Load-Serving Entities and question the need to include this information, which may or may not be
 16 available, in all marketing materials. There are going to be a significant number of customers who
 17 are interested in this information. Because Load-Serving Entities will have to prepare the
 18 information concerning the resource portfolio in anticipation of customer requests, we do not believe
 19 that they will be able to hide the information, and further, market forces will work to disseminate this
 20 information.

21 **Resolution:** Except to add Staff's clarifying language, we do not believe that further
 22 modification is necessary. Insert "providing either generation service or Standard Offer Service" after
 23 Load-Serving Entity in Section 1617(A). This modification is not substantive.

24 **1617(G)**

25 **Issue:** Commonwealth proposed that the word "written" be deleted from Section 1617(G)(2)
 26 because it believes third-party orally verified customer authorizations should suffice. Staff reiterated
 27 its belief that a customer's service provider should not be changed without written consent from the

1 customer because written authorization minimizes the possibility of being switched to other service
2 providers without customer consent, and therefore recommended no change to this Section.

3 **Analysis:** We concur with Staff.

4 **Resolution:** No change is required.

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