

115 FERC ¶ 61,055  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Pinnacle West Capital Corporation

Docket Nos. ER00-2268-003  
ER00-2268-005  
ER00-2268-006  
ER00-2268-007  
ER00-2268-008  
ER00-2268-010  
ER00-2268-012  
ER00-2268-013  
ER00-2268-015  
EL05-10-002  
EL05-10-004  
EL05-10-006

Arizona Public Service Company

ER99-4124-001  
ER99-4124-003  
ER99-4124-004  
ER99-4124-005  
ER99-4124-006  
ER99-4124-008  
ER99-4124-010  
ER99-4124-011  
ER99-4124-013  
EL05-11-002  
EL05-11-004  
EL05-11-006

Pinnacle West Energy Corporation

ER00-3312-002  
ER00-3312-004  
ER00-3312-005  
ER00-3312-006  
ER00-3312-007  
ER00-3312-009  
ER00-3312-011

	ER00-3312-012
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	EL05-12-002
APS Energy Services Company, Inc.	EL05-12-004
	EL05-12-006
	ER99-4122-004
	ER99-4122-006
	ER99-4122-007
	ER99-4122-008
	ER99-4122-009
	ER99-4122-011
	ER99-4122-013
	ER99-4122-014
	ER99-4122-016
GenWest LLC	EL05-13-002
	EL05-13-004
	EL05-13-006
	ER03-352-003

ORDER ON UPDATED MARKET POWER ANALYSIS AND REVOKING  
MARKET-BASED RATE AUTHORITY

(Issued April 17, 2006)

1. On December 20, 2004, the Commission issued an order<sup>1</sup> on the updated market power analysis filed by the Pinnacle West Companies,<sup>2</sup> which, among other things, instituted a proceeding pursuant to section 206 of the Federal Power Act (FPA)<sup>3</sup> to

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<sup>1</sup> *Pinnacle West Capital Corp.*, 109 FERC ¶ 61,295 (2004) (December Order).

<sup>2</sup> The Pinnacle West Companies are Pinnacle West Capital Corporation (PWC), Arizona Public Service Company (APS), the Pinnacle West Energy Corporation (PWEC) and APS Energy Services Company, Inc. (APS Energy).

<sup>3</sup> 16 U.S.C. § 824e (2000).

determine whether the Pinnacle West Companies may continue to charge market-based rates in the APS control area as well as the Public Service Company of New Mexico (PNM) and the Tucson Electric Power Company (TEP) first-tier control areas and established a refund effective date.

2. For the APS control area, the Commission stated that the simultaneous transmission import capability study provided by the Pinnacle West Companies did not comply with the requirements set forth in Appendix E of the April 14 Order.<sup>4</sup> The Commission found that the Pinnacle West Companies' failure to comply with the April 14 Order provided the basis for the Commission to institute a section 206 proceeding to determine whether the Pinnacle West Companies may continue to charge market-based rates in that market. The December Order gave the Pinnacle West Companies the option, within 60 days, to either: (1) file a revised simultaneous transmission import capability study that complies with the requirements in Appendix E of the April 14 Order; (2) file a Delivered Price Test (DPT) analysis; (3) file a mitigation proposal tailored to their particular circumstances that would eliminate the ability to exercise market power; or (4) inform the Commission that they will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

3. In addition, for the PNM and TEP first-tier control areas, the Commission gave the Pinnacle West Companies the option to file, within 60 days, revised wholesale market share analyses which exclude uncommitted capacity imports from control areas which are not directly interconnected with the PNM or TEP control areas. Alternatively, for the PNM and TEP control areas, the Commission gave the Pinnacle West Companies the option, within 60 days, to either: (1) file a DPT analysis; (2) file a mitigation proposal tailored to their particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that they will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

4. In this order, as discussed more fully below, the Commission finds that the simultaneous transmission import capability study included in the Pinnacle West Companies' filings fails to comply with the directive in the December Order. In particular, the Pinnacle West Companies' simultaneous transmission import capability study continues to fail to comply with the requirements set forth in Appendix E of the

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<sup>4</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

April 14 Order. In the absence of an updated market power analysis that contains a simultaneous transmission import capability study that complies with the requirements set forth in Appendix E, the Commission finds that continuation of the Pinnacle West Companies' - market-based rate authority in the APS control area is not just and reasonable.

5. Therefore, the Commission herein revokes the Pinnacle West Companies' market-based rate authority in the APS control area.<sup>5</sup> Accordingly, the Pinnacle West Companies are directed to file, within thirty days of the date of this order, to be effective as of the refund effective date in this proceeding, revised market-based rate tariffs limiting sales at market-based rates to areas outside of the APS control area. In addition, the Pinnacle West Companies are directed to file a separate tariff to provide for the default cost-based rates as specified in the April 14 Order,<sup>6</sup> to be effective as of the refund effective date in this proceeding. The Pinnacle West Companies are directed to provide cost support for these rates. This cost-based filing is directed without prejudice to the Pinnacle West Companies' ability to propose tailored mitigation that would apply prospectively or to make sales under its existing Commission-approved cost-based rate tariffs.

6. The Pinnacle West Companies are also directed to inform the Commission, within 15 days from the date of the issuance of this order, whether they accept the same restrictions on GenWest's<sup>7</sup> market-based rate authority, and on the market-based rate authority of all other affiliates that have or seek market-based rate authority, that the Commission is here imposing on the market-based rate authority of the Pinnacle West Companies (*i.e.*, to limit sales at market-based rates to areas outside of the APS control area).

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<sup>5</sup> The revocation of the Pinnacle West Companies' market-based rate authority in the APS control area does not apply to, or affect, existing market-based rate contracts that were entered into prior to the refund effective date in this proceeding.

<sup>6</sup> April 14 Order, 107 FERC ¶ 61,018 at P 151-55.

<sup>7</sup> GenWest LLC (GenWest) was included in the Pinnacle West Companies' change in status filing. GenWest is a part of the Pinnacle West Companies' corporate family. GenWest is authorized to make wholesale sales of power at market-based rates. *See GenWest, LLC*, Letter Order, (Docket No. ER03-352-000) (issued June 6, 2003).

7. The revocation of the Pinnacle West Companies' market-based rate authority in the APS control area is without prejudice to the Pinnacle West Companies making a new filing with the Commission under section 205 of the FPA to request market-based rate authority prospectively for the APS control area. Any such filing should include a simultaneous transmission import capability study consistent with Appendix E.

8. As discussed more fully below, this order also: (a) finds that the Pinnacle West Companies pass the wholesale market share screen in the PNM and TEP first-tier control areas; (b) accepts the Pinnacle West Companies' compliance filing filed in response to the December Order that required the removal of proposed tariff amendments related to the standard of review; (c) accepts the Pinnacle West Companies' and GenWest's notice of change in status filing; and (d) rejects revisions to the Pinnacle West Companies' market-based rate tariffs filed to incorporate the change in status reporting requirement and requires the Pinnacle West Companies to submit a compliance filing to revise their market-based rate tariffs within 30 days of the date of this order.<sup>8</sup>

### **Background**

9. On April 11, 2003, the Pinnacle West Companies filed their three-year updated market power analysis in compliance with several Commission orders accepting the Pinnacle West Companies' market-based rate tariffs.<sup>9</sup>

10. On August 11, 2004, as amended, the Pinnacle West Companies filed a revised updated market power analysis pursuant to the Commission's order issued on May 13, 2004.<sup>10</sup> The May 13 Order addressed the procedures for implementing the generation market power analysis announced in the April 14 Order and clarified in the July 8 Order.

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<sup>8</sup> See *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005) (Order No. 652).

<sup>9</sup> See *Pinnacle West Energy Corp.*, 92 FERC ¶ 61,248 (2000), *reh'g denied*, 95 FERC ¶ 61,301 (2001); *Pinnacle West Capital Corp.* 91 FERC ¶ 61,290 (2000), *reh'g denied*, 95 FERC ¶ 61,300 (2001); *APS Energy Services Co.*, 89 FERC ¶ 61,024 (1999); *Arizona Public Service Co.*, 79 FERC ¶ 61,022 (1997).

<sup>10</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

The Pinnacle West Companies' filing focused on both the APS control area and the combined APS-Salt River Project Agricultural and Power District (SRP)<sup>11</sup> control areas.

11. In the December Order, the Commission found that in calculating uncommitted capacity available to APS' first-tier markets, the Pinnacle West Companies erroneously included simultaneous import capacity from control areas that are first-tier to the APS control area but are not directly interconnected to the first-tier market being studied, contrary to the instructions in the April 14 Order. Our analysis indicated that if the Pinnacle West Companies had performed their calculations as required by the April 14 Order, the Pinnacle West Companies could fail the market share screens, in certain seasons, in the PNM and TEP first-tier control areas.

12. We also found that the updated market power analysis that the Pinnacle West Companies submitted did not provide adequate information for the Commission to determine whether the Pinnacle West Companies pass the generation market power screens in the APS control area. As we stated in the December Order, our analysis of the Pinnacle West Companies' simultaneous transmission import capability study indicated that the study did not comply with the requirements set forth in Appendix E of the April 14 Order. We determined that the Pinnacle West Companies' potentially overstated simultaneous transmission import capabilities could affect the results of the generation market power screens by inflating the amount of uncommitted capacity available from competitors and that, if the Pinnacle West Companies performed the simultaneous import study as required by the April 14 Order, the Pinnacle West Companies could fail the screens.

13. Because we were unable to validate the results of the Pinnacle West Companies' generation market power analysis, we instituted a proceeding pursuant to section 206 of the FPA to determine whether the Pinnacle West Companies may continue to charge market-based rates in the APS, PNM and TEP control areas.

14. For the PNM and TEP first-tier control areas, we gave the Pinnacle West Companies the option to file revised wholesale market share analyses that exclude uncommitted capacity imports from the control areas that are not directly interconnected with the PNM or TEP control areas. For the APS control area, we gave the Pinnacle West Companies several options, including the option to file a revised simultaneous transmission import capability study that complies with the requirements in Appendix E. Finally, we deferred making a determination regarding the Pinnacle West Companies' assertion that the combined APS-SRP control areas (rather than the APS control area) are

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<sup>11</sup> SRP is a first-tier control area to APS.

the proper relevant market and stated that we would consider this issue in the section 206 proceeding.

15. On February 11, 2005, the Commission granted the Pinnacle West Companies' request for clarification of the December Order.<sup>12</sup> Specifically, the Commission provided clarification as to the appropriate methodology for determining simultaneous transmission import limits in the Western Interconnection.

### **Description of the Filings and Technical Conferences**

16. On December 23, 2004, in response to the December Order, the Pinnacle West Companies submitted a compliance filing (December 2004 Compliance Filing) to remove proposed tariff amendments related to the standard of review for changes to the rate when both parties do not agree to a change or when the Commission acts *sua sponte*.

17. On February 18, 2005, the Pinnacle West Companies submitted a supplemental filing in response to the December Order (February 2005 Filing) that provided a revised simultaneous transmission import capability study, related information for the APS control area, and revised generation market power analyses incorporating the revised simultaneous import limits. The Pinnacle West Companies also submitted revised wholesale market share analyses for the PNM and TEP control areas. The Pinnacle West Companies reargued in the February 2005 Filing that the appropriate geographic market is the combined APS-SRP control areas. The Pinnacle West Companies submitted a revised market share analysis for the combined APS-SRP control areas. The Pinnacle West Companies filed an errata to the February 2005 Filing on March 29, 2005 (March 2005 Filing) to correct inconsistencies between the modeling of the APS control area for purposes of calculating the simultaneous import limit and the generation market screen analyses.

18. On April 5, 2005, the Director, Division of Tariffs and Market Development – South, acting under delegated authority, issued a data request (April 2005 Data Request) seeking additional information relating to the Pinnacle West Companies' February 2005 Filing, as corrected.

19. On April 15, 2005, Commission Staff held a conference with representatives from the Pinnacle West Companies and interested parties (April 2005 Meeting) to discuss revised compliance filings and matters related to Staff's April 2005 Data Request.

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<sup>12</sup> *Pinnacle West Capital Corp.*, 110 FERC ¶ 61,127 (2005) (Clarification Order).

20. On April 20, 2005, the Pinnacle West Companies filed a notice of change in status (Change in Status Filing),<sup>13</sup> as well as revised tariff sheets to include the change in status reporting requirement adopted by the Commission in Order No. 652. The Change in Status Filing notified the Commission of the Pinnacle West Companies' acquisition of generation assets, among other things.

21. On April 22, 2005, the Pinnacle West Companies filed their response to the April 5 Data Request (April 2005 Response Filing).

22. On June 8, 2005, the Director, Division of Tariffs and Market Development – South, acting under delegated authority, issued a data request (June 2005 Data Request) seeking additional information relating to the Pinnacle West Companies' Change in Status Filing.

23. On June 27, 2005, Commission Staff held a conference with representatives from the Pinnacle West Companies and interested parties (June 2005 Meeting) to discuss revised compliance filings and matters related to the June 2005 Data Request.

24. On August 8, 2005, as supplemented on August 12, 2005, the Pinnacle West Companies filed a response to the June 2005 Data Request (August 2005 Response Filing). The filing included revised generation market power screen analyses that incorporate several of the changes identified in the Change in Status Filing.

25. On January 20, 2006, the Pinnacle West Companies filed a DPT analysis (January 2006 DPT Filing). The DPT analysis included the acquired generation assets that the Pinnacle West Companies reported in their Change in Status Filing.

26. On February 24, 2006, the Pinnacle West Companies filed a letter (February 2006 Filing) containing additional information with respect to the use of a combined APS-SRP area as the relevant geographic market.

### **Notice of Filings and Responsive Pleadings**

27. Notice of the December 2004 Compliance Filing was published in the *Federal Register*, 70 Fed. Reg. 1,429 (2005), with interventions or protests due on or before January 13, 2005. None was filed.

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<sup>13</sup> The Change in Status Filing includes GenWest.

28. Notice of the February 2005 Filing was published in the *Federal Register*, 70 Fed. Reg. 11,964 (2005), with interventions or protests due on or before March 11, 2005. On March 7, 2005, the Arizona Districts filed a motion for a technical conference, limited discovery and an extension of time to present historical data and protest the Pinnacle West Companies' updated market power analysis. On March 9, 2005, the Arizona Districts filed an errata to their March 7, 2005 filing. On March 11, 2005, the Arizona Districts and the Pinnacle West Companies filed a joint motion for an extension of time to file comments. On March 16, 2005, the Commission extended the time to file comments to March 21, 2005, and directed the Arizona Districts to file a status report on or before that date. On March 21, 2005, the Arizona Districts filed a status report and a withdrawal of their March 7, 2005 motion.

29. Notice of the March 2005 Filing was published in the *Federal Register*, 70 Fed. Reg. 18,387 (2005), with interventions or protests due on or before April 19, 2005. None was filed.

30. Notice of the April 2005 Response Filing was published in the *Federal Register*, 70 Fed. Reg. 22,655 (2005), with interventions or protests due on or before May 5, 2005. None was filed.

31. Notice of the April 2005 Meeting was published in the *Federal Register*, 70 Fed. Reg. 19,950 (2005).

32. Notice of the Change in Status Filing was published in the *Federal Register*, 70 Fed. Reg. 22,655 (2005), with interventions or protests due on or before May 5, 2005. None was filed.

33. Notice of the June 2005 Meeting was published in the *Federal Register*, 70 Fed. Reg. 36,581 (2005).

34. Notice of the August 2005 Response Filing was published in the *Federal Register*, 70 Fed. Reg. 49,270 (2005), with interventions or protests due on or before August 29, 2005. None was filed.

35. Notice of the January 2006 DPT Filing was published in the *Federal Register*, 71 Fed. Reg. 5,825 (2006), with interventions or protests due on or before February 10, 2006. None was filed.

36. Notice of the February 2006 Filing was published in the *Federal Register*, 71 Fed. Reg. 11,603 (2006), with interventions or protests due on or before March 8, 2006. None was filed.

## **Discussion**

### **I. Compliance Filing**

37. In the December Order, the Commission rejected the Pinnacle West Companies' proposal to adopt language in the respective tariffs providing that unless both parties agree to a proposed change, the standard of review for changes to the rate proposed by either party, or the Commission acting *sua sponte*, shall be the "public interest" standard of review. Accordingly, the Commission directed the Pinnacle West Companies to submit a compliance filing, within 15 days of the date of the December Order, reflecting this change.

38. On December 23, 2004, the Pinnacle West Companies submitted a compliance filing to remove the provision from each of the respective market-based rate tariffs. The Commission finds that these revisions comply with the December Order and will accept them.

### **II. Updated Market Power Analyses**

39. In the December Order, among other things, the Commission provided the Pinnacle West Companies the option to file a revised wholesale market share screen for the PNM and TEP control areas that removes generation import capacity from control areas that are first-tier to the APS control area but are not directly interconnected to the first-tier market being studied.

40. In the December Order, the Commission also found that the Pinnacle West Companies' simultaneous import limitation study did not comply with the requirements set forth in Appendix E. The Commission expressed concern that the Pinnacle West Companies' study may overstate simultaneous transmission import capability. In the December Order, the Commission provided the Pinnacle West Companies the opportunity to file a revised simultaneous transmission import capability study for the APS control area that complies with the requirements in Appendix E of the April 14 Order. In the alternative, the Commission also gave the Pinnacle West Companies the option to go directly to a DPT analysis, propose tailored mitigation, or adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

41. In the Pinnacle West Companies' February 2005 filing, they provided a revised wholesale market share screen for the PNM and TEP control areas. In addition, in the Pinnacle West Companies' February 2005 Filing, as amended, and in their April 2005 Response Filing to the data request, the Pinnacle West Companies provided information related to the combined APS-SRP control areas and a revised simultaneous import

capability study for the APS and combined APS-SRP control areas. The Pinnacle West Companies' February 2005 Filing included revised generation market power analyses incorporating the revised simultaneous import limits for the APS control area and for the APS-SRP combined control areas.

42. In the Pinnacle West Companies' August 2005 Response Filing, they provided revised generation market power screen analyses to incorporate their recently acquired generation assets and all other changes identified in the Change in Status Filing. On January 20, 2006, the Pinnacle West Companies voluntarily filed a DPT analysis that included the acquired generation assets reported in their Change in Status Filing.

**A. First-Tier Control Areas**

43. In the December Order, the Commission provided the Pinnacle West Companies the option to file a revised wholesale market share screen for the PNM and TEP control areas that removes generation import capacity from control areas that are first-tier to the APS control area but are not directly interconnected to the first-tier market being studied. In their February 2005 filing, in response to the December Order, the Pinnacle West Companies provided a revised wholesale market share screen for the PNM and TEP control areas that removes generation import capacity from control areas that are first-tier to the APS control area but are not directly interconnected to the first-tier market being studied. The Pinnacle West Companies state that the results of this revised analysis show that they pass the wholesale market share screen for all seasons in the PNM and TEP control areas.

44. The Commission has reviewed the revised generation market power analyses that the Pinnacle West Companies provided for the PNM and TEP control areas and finds that the Pinnacle West Companies pass the screens in those first-tier control areas. Accordingly, the Commission finds that the Pinnacle West Companies satisfy the Commission's generation market power standard for the grant of market-based rate authority in the PNM and TEP control areas. Thus, the Commission terminates the section 206 proceeding with regard to the PNM and TEP control areas.

**B. Simultaneous Transmission Import Capability Study**

45. The simultaneous transmission import capability study assists in examining market power potential that existed during each historical peak condition. The purpose of the study is to obtain a reasonable reflection of transmission capacity historically available to competitive resources during each seasonal peak used in the generation market power screen analysis.

46. As a condition of receiving market-based rate authority, the Commission requires market-based rate sellers to submit an updated market power analysis every three years to allow the Commission to evaluate the reasonableness of their charges and to provide for ongoing monitoring of their ability to exercise market power. Once a seller submits an updated market power analysis, it is incumbent upon the seller to comply with the Commission's directives concerning any deficiencies in that analysis. In order for the Commission to make a determination on the Pinnacle West Companies' ability to charge market-based rates, the Commission must be able to rely on the inputs used to conduct the updated market power analysis. In the absence of an updated market power analysis that contains a simultaneous transmission import capability study that complies with the requirements set forth in Appendix E, the Commission cannot exercise its statutory duty to ensure that market-based rates are just and reasonable and that the Pinnacle West Companies continue to lack the potential to exercise market power in the APS control area.

47. We find that the Pinnacle West Companies' revised simultaneous transmission import capability study (Revised Study) continues to fail to comply with the requirements of Appendix E, as clarified by the Clarification Order. Specifically, we find that the Revised Study continues to violate the requirements of Appendix E in the following four respects: (a) the Revised Study did not follow historical operating conditions that represent actual OATT-OASIS practices; (b) the Revised Study used available transmission capacity in Northern Arizona as if it would have been available to the Phoenix Valley; (c) the Revised Study did not use actual, historical load in Northern Arizona; and (d) the Pinnacle West Companies failed to support their selective scaling analysis.

48. The Revised Study neither uses historical operating conditions nor simulates the transmission available to first-tier supply to serve historical wholesale markets within the APS control area. Our primary concern with the Revised Study is that the Pinnacle West Companies failed to demonstrate that their Revised Study is consistent with historical operating conditions that represent actual OATT-OASIS practices.<sup>14</sup> We also find that the Revised Study does not adequately represent or account for the historical concentration of wholesale demand in the Phoenix Valley and the binding transmission constraints. The Pinnacle West Companies use a method that models *around* the Phoenix

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<sup>14</sup> April 14 Order, 107 FERC ¶ 61,018 at P 84. Also, Appendix E states that the power flow cases should represent the transmission provider's tariff provisions and the operational practices historically used. *See also* Clarification Order, 110 FERC ¶ 61, 127 at P 8 and 10.

Valley. That is, the Revised Study substitutes available transmission capacity in Northern Arizona as if the transmission capacity was historically available to first-tier supply attempting to deliver wholesale power into the Phoenix Valley.<sup>15</sup> This method overstates the deliverability of first-tier supply to the Phoenix Valley and consequently may understate the Pinnacle West Companies' market share in the APS control area.

49. In order to model around the Phoenix Valley, the Pinnacle West Companies' method increases demand in excess of actual historical seasonal peak demand in Northern Arizona outside of the Phoenix Valley.<sup>16</sup> This is inconsistent with Appendix E because the Pinnacle West Companies have failed to provide benchmark cases of historical monthly peaks that "reasonably simulate the historical conditions that were present in applicant's bulk power transmission."<sup>17</sup>

50. Additionally, the Pinnacle West Companies fail to adequately support their selective scaling analysis.<sup>18</sup> The Commission clarified that while Appendix E does not

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<sup>15</sup> The Pinnacle West Companies' method creates two separate congestion zones within the combined APS-SRP market area due to transmission limits surrounding the Phoenix Valley. (*See* April 2005 Response) This method misrepresents the deliverability of first-tier supply to the Phoenix Valley.

<sup>16</sup> April 2005 Response at 7-15.

<sup>17</sup> April 14 Order, 107 FERC ¶ 61,018 at Appendix E, requires the use of historical conditions and actual peak demand. Under the Power Flow Benchmark Cases of Historical Monthly Peaks section, Appendix E states that "we will require TP applicants to submit power flow benchmark cases (with supporting data) used in calculating total simultaneous import capability for each of the previous four seasonal peaks. The cases should reasonably simulate the historical conditions that were present including...actual unit dispatch used to fulfill network and firm reservation obligation, the actual peak demand, generator operating limits imposed on all resources in real time, other limits/constraints imposed by the TP during the season peaks." [Emphasis added].

<sup>18</sup> In general, scaling of generation is a modeling method that changes the dispatch of the system in order to determine additional transfer capability into the relevant market that could have been available during the study period. Proportional scaling up of generation in an exporting area consists of increasing all generation in a *pro rata* manner based on each generator's undischarged capacity. Proportional scaling down of generation in the import area consists of reducing all generation in a *pro rata* manner based on each generator's unit dispatch.

*require* proportional scaling,<sup>19</sup> the methods used should be "according to the same methods used historically in assessing available transmission for non-affiliate resources."<sup>20</sup> The Commission noted in the Clarification Order that the scaling analysis should reflect the applicant's dispatch order used in conducting regional transfer studies to economically and reliably meet demand requirements.<sup>21</sup> The simultaneous import limit study should reasonably simulate historical or actual conditions of the transmission system in the relevant control area in order to evaluate competitive conditions that historically existed. The Pinnacle West Companies have not done this and thus have failed to demonstrate that their study reflects historical and actual transmission practices.<sup>22</sup>

51. The Pinnacle West Companies improperly modeled conditions that did not historically exist and failed to demonstrate, or even claim, that their methodology is consistent with transmission and operating practices used to determine transmission capability available under their OATT. Accordingly, their methodology fails to comply with the December Order, as clarified by the Clarification Order that directed the Pinnacle West Companies to submit a revised simultaneous import capability study that complied with the requirements of Appendix E. The Commission stated in the Clarification Order that "Appendix E is designed to calculate simultaneous transmission import capability that could have been utilized by remote resources during historic[al] peaks, and is clear in directing that simultaneous transmission import capability calculations should be based on actual historic[al] conditions."<sup>23</sup> The Clarification Order further stated:

[A]n Appendix E simultaneous transmission import capability analysis which uses WECC path ratings should be based on the effective TTC of paths, as discussed in P 9 above [of the Clarification Order], reflective of the actual historical[al] operating conditions that existed at the time of the

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<sup>19</sup> Clarification Order, 110 FERC ¶ 61,127 at P 5.

<sup>20</sup> April 14 Order, 107 FERC ¶ 61,018 at Appendix E.

<sup>21</sup> Clarification Order, 110 FERC ¶ 61,127 at P 11 n. 10.

<sup>22</sup> April 14 Order, 107 FERC ¶ 61,018 at P 84.

<sup>23</sup> Clarification Order, 110 FERC ¶ 61,127 at P 8.

seasonal peaks used in the screen, and correspondingly, the simultaneous transmission import capability analyses. In other words, the path TTC should reflect simultaneous transmission import capability that actually existed. This analysis must include documentation and supporting data that demonstrate that the WECC path TTCs used in the simultaneous transmission import capability analyses reflect the actual use and provision of transmission service on the Pinnacle West Companies' system during the historic[al] peaks used in the screen analysis. This support should include OASIS postings showing path TTCs and available transmission capacity during these peaks, and any adjustments to path TTCs made by the Pinnacle West Companies to reflect all actual operating conditions during the specific time of each seasonal peak.<sup>24</sup>

Because the Pinnacle West Companies have failed to submit simultaneous transmission import capability study calculations consistent with Appendix E, failed to demonstrate that this study is reflective of the actual historic operating conditions that existed at the time of the seasonal peaks, and failed to provide supporting data that demonstrate that the WECC path TTCs used in the simultaneous transmission import capability analyses reflect the actual use and provision of transmission service on the Pinnacle West Companies' system during the historic peaks used in the screen analysis, as described above, the Pinnacle West Companies have failed to comply with the December Order as clarified by the Clarification Order. We note that the Pinnacle West Companies concede that "[t]hese figures [the Pinnacle West Companies' import figures] do not reflect transmission capability, but rather the historical load available to be served."<sup>25</sup> Further, the Pinnacle West Companies acknowledge that peak demand is a requirement of Appendix E, but nevertheless argue that "limiting the SIL [simultaneous transmission import capability limit] to peak load is not an appropriate constraint to apply to the SIL calculation."<sup>26</sup> As the Commission stated in the April 14 Order, the screens must be prepared as designed.<sup>27</sup>

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<sup>24</sup> *Id.* at P 10.

<sup>25</sup> April 2005 Response at 8.

<sup>26</sup> *Id.* at 12.

<sup>27</sup> April 14 Order, 107 FERC ¶ 61,018 at P 118.

52. The Commission's analysis indicates that at full generation output, the Pinnacle West Companies' transmission system reached several import limits that were not identified in the Pinnacle West Companies' Revised Study. The Commission's analysis indicates that once the simultaneous transmission import capability study is conducted according to typical transmission practices as outlined in Appendix E, the amount of imports available to the APS control area decreases considerably, thus, reducing the amount of available competing capacity in the geographic markets.

### **C. DPT Analysis**

53. In the DPT analysis filing submitted on January 20, 2006, the Pinnacle West Companies state that they pass both the pivotal supplier and market share screens using the available economic capacity (AEC) measure. They state that they pass the pivotal supplier screen in all time periods but fail the market share screen in all time periods for the economic capacity (EC) measure. For the APS-SRP combined geographic market, the Pinnacle West Companies state that they pass both the pivotal supplier and market share screens using the AEC measure but experience small failures of the market share screen for the EC measure. They state that the market concentration for the HHI analysis is well below 2,500 in all time periods, in both the AEC and EC measures. The Pinnacle West Companies state that the DPT analysis submitted in this proceeding is the same DPT analysis submitted by APS to address its recent acquisition of the Sundance generation station.<sup>28</sup> They state that in both sets of analyses, the basic underlying data and assumptions were consistent, although there were some minor differences.<sup>29</sup> The Pinnacle West Companies state that the DPT filed in this proceeding is a 2005 snapshot and includes the recently acquired Sundance generation as an APS resource.<sup>30</sup> The Pinnacle West Companies state that they "incorporated the simultaneous limits calculated by APS for its recent [s]ection 205 application for the joint APS-SRP region (10,212 MW),"<sup>31</sup> *i.e.*, they used the same simultaneous import limits calculated for the generation market power screens and for the DPT analysis.

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<sup>28</sup> Docket No. EC05-20-000, submitted on November 22, 2004, as amended on February 11, 2005. On May 6, 2005, the Commission authorized the acquisition in *PPL Sundance Energy, LLC*, 111 FERC ¶ 62,146 (2005).

<sup>29</sup> *Id.* affidavit at 2.

<sup>30</sup> *Id.* at 7.

<sup>31</sup> *Id.* Exhibit WHH - 4 at 24.

54. We cannot rely upon the DPT analysis that the Pinnacle West Companies have submitted because it incorporates the same faulty simultaneous transmission import capability study used for the generation market power screens that, as explained above, does not comply with the Commission's directive in the December Order to provide a study that is consistent with the requirements set forth in Appendix E of the April 14 Order.

#### **D. Pinnacle's Failure to Propose Mitigation**

55. The Commission provided the Pinnacle West Companies ample opportunity to correct their simultaneous transmission import capability study consistent with Appendix E and, as the record indicates, held technical conferences on the topic at the Pinnacle West Companies' request.<sup>32</sup>

56. As discussed above, it is a condition of the Pinnacle West Companies' market-based rate authority that they submit triennial market power updates to allow the Commission to evaluate the reasonableness of their charges and to provide for ongoing monitoring of their ability to exercise market power. Consistent with the April 14 Order, the generation market power analysis portion of the triennial update must include a properly constructed simultaneous transmission import capability study consistent with the requirements set forth in the April 14 Order. In the December Order, the Commission directed the Pinnacle West Companies to revise their study to be consistent with the requirements of the April 14 Order. The Pinnacle West Companies' failure to comply with the directive in the December Order in this regard violates a condition of their market-based rate authority because they have failed to meet the minimum requirements for a triennial update as set forth in the April 14 Order. Given the Pinnacle West Companies' failure to abide by the conditions under which they have been authorized to transact at market-based rates, we find that continuation of their market-based rate

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<sup>32</sup> Many deficiency letters and/or data requests were sent to applicants seeking clarifying or supporting information and/or revised studies regarding the simultaneous import capability study, including but not limited to Puget Sound Power and Light Company in Docket No. ER99-845-004, LG&E Energy Corporation in Docket No. ER99-1623-003 and Kansas City Power, Light in Docket No. ER99-1005-001, Avista Corporation in Docket No. ER99-1435-006, Wisconsin Electric Power Company, Docket No. ER98-855-004, and Consumers Energy Company, Docket No. ER98-4421-004. These applicants were able to satisfy questions, correct deficiencies and/or re-submit satisfactory studies consistent with Appendix E and the applicant's actual transmission operating conditions.

authority in the APS control area is not just and reasonable. Accordingly, we will revoke the Pinnacle West Companies' market-based rate authority in the APS control area.

57. In the April 14 Order, the Commission stated that, "[i]f an applicant does not pass the generation market power screens, or foregoes the screens entirely, the Commission will set the just and reasonable rate at the 'default' rate unless it approves different cost-based rates for that applicant based on case-specific circumstances."<sup>33</sup> The Pinnacle West Companies have, in effect, foregone filing the required studies due to their repeated failures to file complete and accurate studies that comply with the April 14 Order. The April 14 Order required applicants, whose market-based rate authority has been revoked, to adopt some form of cost-based rates or other mitigation the applicant proposes and the Commission accepts.<sup>34</sup> In the April 14 Order, the Commission stated that, "[w]e will also allow applicants to propose case-specific mitigation tailored to their particular circumstances that eliminates the ability to exercise market power, or adopt cost-based rates such as the default rates herein."<sup>35</sup> As stated in the April 14 Order, default cost-based rates are as follows: (1) sales of power of one week or less will be priced at the applicant's incremental cost plus a 10 percent adder; (2) sales of power of more than one week but less than one year will be priced at an embedded cost "up to" rate reflecting the costs of the unit(s) expected to provide the service; and (3) sales of power for one year or more will be priced on an embedded cost-of-service basis and each such contract will be filed with the Commission for review and approved prior to the commencement of service.

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<sup>33</sup> April 14 Order at P 148.

<sup>34</sup> *Id.* at P 40, 150. The April 14 Order's discussion in this regard referenced situations where an applicant is found to have market power, or where the applicant accepts a presumption of market power and an order is issued addressing whether the default cost-based rates or case-specific cost-based rates are to be applied. However, it is also applicable to situations where, as here, the Commission finds that a seller's failure to comply with the Commission's requirements for continued market-based rate authorization (the submission of an updated market power analysis with a simultaneous transmission import capability study that complies with the requirements set forth in Appendix E of the April 14 Order justifies the revocation of that seller's market-based rate authority.

<sup>35</sup> *Id.* at P 147.

58. Rather than proposing tailored mitigation, the Pinnacle West Companies simply note their belief that the WSPP's cost-based rates are more appropriate than the cost-based rates defined in the April 14 Order. However, the Pinnacle West Companies fail to propose or justify such mitigation.

59. Further the Pinnacle West Companies assert that limitations on market-based rates in a control area should only apply to wholesale load within that control area, and not to loads or customers in other control areas, even if the generation used to supply those loads is within the control area where market-based rates are foreclosed. However in *MidAmerican*,<sup>36</sup> the Commission rejected language proposed by MidAmerican that would limit the prohibition on market-based rates sales in its control area to only those sales that sink within the MidAmerican control area. The Commission explained that MidAmerican's proposed tariff language would improperly limit mitigation to certain customers in the MidAmerican control area, namely, only to sales to those buyers that serve end-use customers in the MidAmerican control area.<sup>37</sup>

60. The Pinnacle West Companies have not proposed mitigation. They merely reference alternatives to market-based rates in the event the Commission finds the Pinnacle West Companies' market-based rates to be inappropriate. They state in their February 2005 Filing:

[A]s a [s]ection 206 proceeding, where the only evidence to date is that submitted by the Pinnacle West Companies, it is premature to address what alternatives should apply were the Commission ultimately to conclude that market-based rates in one or more of the control areas are somehow inappropriate. The Pinnacle West Companies note, however, that the Western Systems Power Pool (WSPP) cost-based rates are more appropriate as cost-based rates for control areas where market rate authority is denied than cost-based rates proposed as default by the Commission in AEP Power Marketing, 107 FERC ¶ 61,018 (2004). AEP Power Marketing's default rates are biased in favor of shorter term transactions and could cause parties to rely too heavily on spot market transactions, particularly given the must-offer obligation in the West. Moreover, the Commission has adopted the WSPP cost-based rates in other cases, *e.g.* *Northpoint Energy Solutions, Inc.*, 107 FERC ¶ 61,181, Letter Order

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<sup>36</sup> *MidAmerican Energy Company*, 114 FERC ¶ 61,280 (2006) (*MidAmerican*).

<sup>37</sup> *Id.* at P 31.

(May 25, 2004), and that rate is particularly appropriate for the West, where many WSPP members transact.

Also, any limitation on market-based rates in a control area should only apply to wholesale load within that control area, and not to loads or customers in other control areas, even if the generation used to supply those loads is within the control area where market-based rates are foreclosed.<sup>38</sup>

61. Although the Pinnacle West Companies state that "it is premature to address what alternatives should apply were the Commission ultimately to conclude that market-based rates in one or more of the control areas are somehow inappropriate," in *Duke Power*<sup>39</sup> the Commission found that because Duke Power had not availed itself of the opportunity of proposing tailored mitigation options, the Commission's proper course was to impose the default cost-based rates as defined in the April 14 Order.<sup>40</sup>

62. Similarly, because the Pinnacle West Companies have not availed themselves of the opportunity to propose tailored mitigation, the Commission has before it only the default cost-based rates as defined in the April 14 Order. Accordingly, we direct the Pinnacle West Companies to submit a compliance filing within 30 days of the date of this order to set the just and reasonable rate for sales in the APS control area at the default cost-based rates specified in the April 14 Order.<sup>41</sup> The Pinnacle West Companies are directed to provide cost support for these rates. In particular, the Pinnacle West Companies are directed to provide the formulas and methodology according to which they intend to calculate incremental costs. We direct the Pinnacle West Companies to submit a compliance filing that adopts the default cost-based rates in a tariff separate from their market-based rate tariffs, and to file this to be effective February 27, 2005, the refund effective date established in this proceeding. In addition, we direct the Pinnacle West Companies to submit a compliance filing to revise their market-based rate tariffs to limit sales at market-based rates to areas outside of the APS control area. We direct the Pinnacle West Companies to file the

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<sup>38</sup> February 2005 Filing at n. 14.

<sup>39</sup> *Duke Power*, 111 FERC ¶ 61, 506 (2005) (*Duke Power*).

<sup>40</sup> *Id.* at P 60.

<sup>41</sup> April 14 Order, 107 FERC ¶ 61,018 at P 151-55.

revisions to their market-based rate tariffs to be effective February 27, 2005, the refund effective date established in this proceeding.

63. The cost-based compliance filing directed herein is without prejudice to the Pinnacle West Companies proposing, on a prospective basis, case-specific mitigation tailored to their particular circumstances that eliminates their ability to exercise market power.

64. The cost-based compliance filing directed herein is also without prejudice to the Pinnacle West Companies' ability to make sales under their existing Commission-approved cost-based rate tariffs prospectively.<sup>42</sup> However, to the extent that the Pinnacle West Companies elect to prospectively replace market-based rate sales in the APS control area with cost-based rate sales pursuant to its existing cost-based rate tariffs, the Pinnacle West Companies are directed to so inform the Commission within 30 days of the date of issuance of this order and specify under which tariff(s) they intend to transact. Furthermore, we emphasize that the Commission has a statutory duty to ensure that jurisdictional rates are just and reasonable, whether cost-based or market-based, and the Commission reserves the right to investigate whether existing cost-based rates continue to be just and reasonable.

65. The revocation of the Pinnacle West Companies' market-based rate authority in the APS control area is without prejudice to the Pinnacle West Companies making a new filing with the Commission under section 205 of the FPA to request market-based rate authority prospectively for the APS control area. Any such filing should include a simultaneous transmission import capability study consistent with Appendix E.

66. Because we revoke the Pinnacle West Companies' market-based rate authority in the APS control area, any waivers and authorizations previously granted in connection with that market-based rate authority are no longer applicable, effective as of the date of this order.<sup>43</sup>

67. The Commission notes that the Pinnacle West Companies' affiliate, GenWest, has market-based rate authority. The Commission directs the Pinnacle West Companies to inform the Commission within 15 days of the date of issuance of this order whether they accept the same restrictions on GenWest's market-based rate authority, and on the

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<sup>42</sup> Any sales made under Pinnacle West's market-based rate tariff since the refund effective date will be considered to be under the default cost-based tariff directed herein.

<sup>43</sup> April 14 Order, 107 FERC ¶ 61,018 at P 150

market-based rate authority of all other affiliates that have or seek market-based rate authority, that the Commission is here imposing on the market-based rate authority of the Pinnacle West Companies (i.e., to limit sales at market-based rates to areas outside of the APS control area.

### **E. Change in Status Filing**

68. The Pinnacle West Companies' and GenWest's notice of change in status is accepted for filing. As noted above, the Pinnacle West Companies filed a notice of several changes in status, as well as revised tariff sheets to incorporate the change in status reporting requirement adopted in Order No. 652. The Change in Status Filing informed the Commission of: (a) an acquisition by the Pinnacle West Companies of the 450 MW Sundance Generating Station (Sundance) from PPL Sundance Energy, LLC;<sup>44</sup> (b) an acquisition by the Pinnacle West Companies of the Redhawk generating station as part of a retail rate case settlement;<sup>45</sup> (c) a fire at the Westwing substation, in the Phoenix Metropolitan area that the Pinnacle West Companies own or co-own, which resulted in a temporary de-rate in the capacity of the substation and a resulting loss of import capability into the Phoenix Valley; and (d) a contractual agreement involving GenWest and Southern Nevada Water Authority (SNWA), related to the 590 MW Silverhawk generating facility located in Clark County, Nevada.<sup>46</sup>

69. In addition, in the Change in Status Filing, as noted above, the Pinnacle West Companies informed the Commission that PWC has entered into contractual agreements with GenWest and SNWA with respect to the Silverhawk generating facility in Nevada. Because construction on the Silverhawk generating facility began on or after July 9, 1996

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<sup>44</sup> On May 6, 2005, the Commission authorized the acquisition. *See PPL Sundance Energy, LLC*, 111 FERC ¶ 62,146 (2005).

<sup>45</sup> On June 15, 2005, the Commission authorized the disposition and acquisition of jurisdictional facilities. *See Arizona Public Service Company*, 111 FERC ¶ 62,302 (2005).

<sup>46</sup> The Pinnacle West Companies also notified the Commission of final judicial review of Arizona Retail Electric Competition Rules by the Arizona Supreme Court. *See Phelps Dodge Corp. v. AEPCO*, 83 P.3d 573 (Ariz. 2004). In addition, the Pinnacle West Companies notified the Commission of the implementation of a retail Power Supply Adjustment mechanism for APS, pursuant to the terms of a settlement agreement in APS's most recent retail rate case.

and neither the Pinnacle West Companies nor their affiliates own other generation assets in the Nevada Power control area, no generation market power analysis for the Silverhawk facility is required. Accordingly, based on the Pinnacle West Companies' representation, we find that these contractual agreements do not raise any generation market power concerns.

### **III. Tariff Revisions**

70. The Pinnacle West Companies must timely report to the Commission any change in status that would reflect a departure from the characteristics upon which the Commission relied in granting market-based rate authority.<sup>47</sup> Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates.

71. As noted above, in the Pinnacle West Companies' Change in Status Filing, they revised their market-based rate tariffs to include the change in status reporting requirement. However, the Commission notes that the tariff sheets filed in Attachment E for GenWest refer to PWC rather than to GenWest. Accordingly, we will direct GenWest to submit, within 30 days of the date of this order, a compliance filing to revise the tariff, as discussed above. Additionally, because the tariff sheets do not include the correct provisions, we will direct the Pinnacle West Companies to revise their market-based rate tariffs, within 30 days of the date of issuance of this order, to incorporate the following provision without variation:

[insert market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

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<sup>47</sup> Order No. 652 at P 113.

#### **IV. Reporting Requirements**

72. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (i) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (ii) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.<sup>48</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>49</sup>

73. The Pinnacle West Companies are directed to file an updated market power analysis within three years of the date of this order for the markets in which they retain market-based rate authority. The Commission also reserves the right to require such an analysis at any intervening time.

#### **The Commission orders:**

(A) The Pinnacle West Companies' compliance filing, submitted on December 23, 2004, is hereby accepted for filing, as discussed in the body of this order.

(B) The Pinnacle West Companies' updated market power analysis for the PNM and TEP control areas is hereby accepted for filing, as discussed in the body of this order. The section 206 proceeding instituted for the PNM and TEP control areas is hereby terminated, as discussed in the body of this order.

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<sup>48</sup> Order No. 2001 required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>49</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

(C) The Commission hereby revokes the Pinnacle West Companies' market-based rate authority in the APS control area. Any waivers and authorizations previously granted in connected with the Pinnacle West Companies' market-based rate authorization are no longer applicable as of the date of issuance of this order.

(D) The Pinnacle West Companies are hereby directed, within 30 days of the date of this order, to revise their market-based rate tariffs to limit sales at market-based rates to areas outside of the APS control area, as discussed in the body of this order.

(E) The Pinnacle West Companies are hereby directed to submit, within 30 days of the date of this order, a separate tariff to provide for the default cost-based rates for the APS control area, as discussed in the body of this order.

(F) The Pinnacle West Companies are hereby directed to file cost support, as discussed in the body of the order.

(G) The Pinnacle West Companies' next updated market power analysis is due within three years of the date of this order.

(H) The Pinnacle West Companies' and GenWest's notice of change in status filing is hereby accepted for filing, as discussed in the body of this order.

(I) The Pinnacle West Companies are hereby directed to submit a compliance filing to revise their tariffs with respect to the change in status reporting requirement, within 30 days of the date of this order, as discussed in the body of this order.

(J) The Pinnacle West Companies are hereby directed to notify the Commission, within 15 days of the date of issuance of this order whether they intend to impose on their affiliate, GenWest, and on all other affiliates that have market-based rate

authority, the same restrictions that the Commission is here imposing on the Pinnacle West Companies, *i.e.*, to limit sales at market-based rates to areas outside of the APS control area.

By the Commission. Chairman Kelliher dissenting in part with a separate statement attached.  
Commissioner Brownell concurring with a separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Pinnacle West Companies West Capital Corporation	Docket Nos.	ER00-2268-003
		ER00-2268-005
		ER00-2268-006
		ER00-2268-007
		ER00-2268-008
		ER00-2268-010
		ER00-2268-012
		ER00-2268-013
		ER00-2268-015
		EL05-10-002
		EL05-10-004
		EL05-10-006
	Arizona Public Service Company	
		ER99-4124-003
		ER99-4124-004
		ER99-4124-005
		ER99-4124-006
		ER99-4124-008
		ER99-4124-010
		ER99-4124-011
		ER99-4124-013
		EL05-11-002
		EL05-11-004
		EL05-11-006
Pinnacle West Companies West Energy Corporation		
		ER00-3312-004
		ER00-3312-005
		ER00-3312-006
		ER00-3312-007
		ER00-3312-009
		ER00-3312-011
		ER00-3312-012
	ER00-3312-014	

	EL05-12-002
	EL05-12-004
	EL05-12-006
APS Energy Services Company, Inc.	ER99-4122-004
	ER99-4122-006
	ER99-4122-007
	ER99-4122-008
	ER99-4122-009
	ER99-4122-011
	ER99-4122-013
	ER99-4122-014
	ER99-4122-016
	EL05-13-002
	EL05-13-004
	EL05-13-006
GenWest LLC	ER03-352-003

(Issued April 17, 2006)

Joseph T. KELLIHER, Chairman *dissenting in part*:

For the first time, the Commission revokes an entity's market-based rate authority for improperly calculating simultaneous transmission import capability. While the Commission could very well find that the Pinnacle West Companies have market power if they were to file complete calculations, I believe the order is legally infirm for failure to provide sufficient notice to the Pinnacle West Companies of the defects in their filing, and failure to provide a reasonable opportunity to remedy these deficiencies.

As the basis for its revocation of market-based rate authority, the order states that the Pinnacle West Companies have not complied with Commission requirements regarding the submission of simultaneous transmission import capability necessary to determine whether they have market power.<sup>1</sup> The order documents the Commission

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<sup>1</sup> The Commission has revoked the market-based rate authority of entities that were patently deficient in responding to the section 206 investigation concerning the

staff's attempts to assist the Pinnacle West Companies in submitting proper calculations and asserts that the calculations, despite numerous submissions to the Commission, are not correct and that this constitutes, in essence, a failure to file the screens in compliance with the April 14 Order. This finding might be equitable if these were simple calculations. The Pinnacle West Companies raised their concern about the difficulties they were having with the simultaneous transmission import capability calculations when they stated shortly after the December Order that these calculations "are extremely technical in nature and depend on accurate data and assumptions. It is difficult enough to reach a common understanding on these issues even with a full sharing of information. Without data on how the Commission Staff performed the studies, it is nearly impossible for the Pinnacle West Companies (or any party) to respond accurately and fully to any concerns or problems."<sup>2</sup>

Further complicating these calculations is the Pinnacle West Companies' contention that the Commission's Appendix E methodology was developed for cases involving the Eastern Interconnection.<sup>3</sup> In response to the Pinnacle West Companies' motion requesting clarification, the Commission issued its Clarification Order that acknowledged the distinction between the Western and Eastern interconnections. Specifically, the Clarification Order agreed with the Pinnacle West Companies that their simultaneous transmission import capability calculations should take into account the various Western Electricity Coordinating Council path ratings into the APS control area.<sup>4</sup> I believe we should recognize the differences between the transmission grids in the East and the West. Given the complex nature of these calculations<sup>5</sup> and the acknowledged

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requirement to submit an updated market power analysis. *See* 3E Technologies, Inc., 113 FERC ¶ 61,124 at P 7. However, the Pinnacle West Companies' filing is not patently deficient.

<sup>2</sup> Pinnacle West Companies' February 18, 2005 Further Supplement of the Pinnacle West Companies To Updated Market Power Analysis at p. 7.

<sup>3</sup> Pinnacle West Companies' January 19, 2005 Motion for Expedited Clarification/Request for Rehearing at p. 2.

<sup>4</sup> Clarification Order at P 6.

<sup>5</sup> In note 33, the order suggests that because several "applicants were able to satisfy questions, correct deficiencies and/or re-submit satisfactory studies consistent with Appendix E" that the Pinnacle West Companies should also have been able to complete their calculations. I have examined the "many deficiency letters and/or data requests" that the Commission staff sent to these applicants seeking clarification, supporting information or revised studies. I do not agree that these applicants' eventual compliance

problems with applying Appendix E in the West, I do not believe the Commission is justified in finding at this time that the Pinnacle West Companies have, “in effect,” failed to file screens, and that this constitutes a violation of a condition of their market-based rate authority.<sup>6</sup>

I also do not believe the Commission provided the Pinnacle West Companies with sufficient notice of the deficiencies in their latest filed study. Indeed, the first time the Commission specified in writing some of the deficiencies in the Pinnacle West Companies’ latest study is in this order revoking their market-based rate authority.<sup>7</sup> That hardly represents sufficient notice, and I believe this is fundamentally unfair. The order provides the Pinnacle West Companies no opportunity to remedy the deficiencies that we identify here for the first time.

Fundamental fairness dictates that the Commission clearly describes to a public utility what is required of it before it takes such a drastic step as revoking market-based rate authorization.<sup>8</sup> However, the record in this proceeding shows that the Commission

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with Commission staff concerns about their studies provides support for a decision to revoke the Pinnacle West Companies’ market-based rate authority. The fact that the Commission staff has required many entities to submit numerous compliance filings concerning simultaneous transmission import capability studies serves only to highlight the complex nature of these calculations and, ultimately, the inherent difficulty for any entity to properly complete this study. Furthermore, it is important to note that before any of these entities were able to file completed studies, all of these entities, unlike the Pinnacle West Companies, were sent clear written instructions describing how their most recent studies were deficient.

<sup>6</sup> *See* P 57.

<sup>7</sup> For example, the Commission or its staff has never explicitly expressed in writing, until this revocation order, that the Pinnacle West Companies’ latest simultaneous transmission import capability study was faulty because (1) it used available transmission capacity in Northern Arizona as if it would have been available to the Phoenix Valley; and (2) the Pinnacle West Companies failed to support their selective scaling analysis.

<sup>8</sup> Until this order, the Commission, when revoking market-based rates for failure to comply with a condition of market-based rate authority, has provided clear notification to specific entities that non-compliance will result in revocation. *See, e.g.*, 3E Technologies, Inc., 111 FERC ¶ 61,295 at P 1 (2005). While the December Order instituted a section 206 proceeding to determine whether the Pinnacle West Companies

or its staff has never explicitly described in writing to the Pinnacle West Companies how their latest simultaneous transmission import capability calculations violate the requirements of Appendix E.<sup>9</sup> For this reason, I would give the Pinnacle West Companies a limited amount of time to comply with explicit written directions along with notice to them of the ramifications of non-compliance with these directions within the limited time.

I have supported revocation of market-based rate authority in the past. I have done so when parties have had clear notice of what is required of them, such as filing a triennial market analysis and Electronic Quarterly Reports. However, to suddenly revoke an entity's market-based rate authority without notice of a change in Commission policy and without clear direction concerning how a public utility can comply is fundamentally unfair. Accordingly, I dissent from the part of this order that revokes the Pinnacle West Companies' market-based rate authority.

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Joseph T. Kelliher

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may continue to charge market-based rates, it did not inform the Pinnacle West Companies that failure to complete their simultaneous transmission import capability study by a specified date would result in revocation of their market-based rate authority.

<sup>9</sup>See n. 7 in this statement.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Pinnacle West Capital Corporation	Docket Nos. ER00-2268-003 ER00-2268-005 ER00-2268-006 ER00-2268-007 EL05-10-000
Arizona Public Service Company	ER99-4124-003 ER99-4124-004 ER99-4124-005 EL05-11-000
Pinnacle West Energy Corporation	ER00-3312-004 ER00-3312-005 ER00-3312-006 EL05-12-000
APS Energy Services Company, Inc.	ER99-4122-006 ER99-4122-007 ER99-4122-008 EL05-13-000

(Issued April 17, 2006)

Nora Mead BROWNELL, Commissioner *concurring*:

I concur Pinnacle West Companies submitted a sufficient compliance filing amending their market-based-rate tariffs by removing the standard of review language. However, for the reasons I explained in my separate statement in *Pinnacle West Capital Corp.*, 109 FERC ¶ 61,295 (2004) and in *Public Service Company of New Mexico*, 108 FERC ¶ 61,092 (2004), I would have accepted the Pinnacle West Companies' proposal to include such language in their tariff.

Nora Mead Brownell