

151 FERC ¶ 61,089  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

Tucson Electric Power Company

Docket No. EC15-31-000

ORDER AUTHORIZING ACQUISITION AND DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued May 1, 2015)

1. On November 12, 2014, Tucson Electric Power Company (Tucson Electric), on behalf of itself and its public utility affiliates,<sup>1</sup> filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)<sup>2</sup> and Part 33 of the Commission's regulations<sup>3</sup> requesting authorization to permit Tucson Electric (i) to sell to Salt River Project Agricultural Improvement and Power District (Salt River Project) an approximately 57.44 percent undivided interest in the 345 kV Springerville-Coronado transmission line (Springerville-Coronado Line) and (ii) to acquire from Salt River Project an approximately 42.56 percent undivided interest in certain upgrades installed by Salt River Project on the Springerville-Coronado Line (Springerville-Coronado

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<sup>1</sup> Tucson Electric's energy subsidiaries and affiliates in the United States are: FortisUS Inc. (FortisUS); CH Energy Group Inc.; Central Hudson Gas & Electric Corporation; Central Hudson Enterprises Corporation; Hunterdon Cogeneration Limited Partnership; Plymouth Cogeneration Limited Partnership; CH-Community Wind Energy, LLP; FortisUS Energy Corporation; LRCS Limited Partnership; Luna Power Company, LLC; Millennium Energy Holdings, Inc.; San Carlos Resources Inc.; Southwest Energy Solutions, Inc.; Tucsonel Inc.; UNS Electric, Inc.; UniSource Energy Development Company; UniSource Energy Services, Inc.; and UNS Gas, Inc.

<sup>2</sup> 16 U.S.C. § 824b(a)(1) (2012).

<sup>3</sup> 18 C.F.R. pt. 33 (2014).

Upgrades) (Proposed Transaction).<sup>4</sup> The Commission has reviewed the Proposed Transaction under the Commission's Merger Policy Statement.<sup>5</sup> As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

## **I. Background**

### **A. Description of the Parties to the Proposed Transaction**

#### **1. Tucson Electric**

2. Tucson Electric states that it is a vertically-integrated utility that provides regulated electric service to approximately 415,000 retail customers in Arizona.<sup>6</sup> In

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<sup>4</sup> Application for Approval Pursuant to Section 203 of the Federal Power Act and Request for Expedited Consideration, Docket No. EC15-31-000 (Nov. 12, 2014) (Application). Tucson Electric notes that on October 30, 2014, it submitted, under FPA section 205, 16 U.S.C. § 824d (2012), in Docket No. ER15-251-000, an Amended and Restated San Juan-Springerville-Vail Transmission System Participation Agreement (Amended Participation Agreement) among Public Service Company of New Mexico, Salt River Project, and Tucson Electric. Tucson Electric states that the agreement amends the existing participation agreement as necessary to facilitate the Proposed Transaction, and that the Amended Participation Agreement and the Application are interrelated, insofar as the Amended Participation Agreement is conditioned on approval of the Application.

<sup>5</sup> See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). See also *FPA Section 203 Supplemental Policy Statement*, 72 Fed. Reg. 42,277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) (Order No. 642), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

<sup>6</sup> Tucson Electric describes its retail service territory as consisting of a 1,155 square mile area and including a population of over one million in the greater

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addition, Tucson Electric sells electricity at wholesale to other utilities and power marketers at locations in the southwestern United States.

3. According to Tucson Electric, it owns or leases approximately 2,490 megawatts (MW) of generating capacity. At the time the Application was filed, Tucson Electric owned 14.1 percent of Springerville Unit 1, a 424.8 MW (nameplate) coal-fired generation facility that is part of the Springerville Generating Station (Springerville Station), a four unit, coal-fired electric generating facility with a combined nameplate rating of 1,766 MW located in eastern Arizona. In addition to the 14.1 percent ownership interest in Springerville Unit 1, Tucson Electric leased the remaining capacity of Springerville Unit 1 pursuant to several leases that expired on January 1, 2015.<sup>7</sup> In the Application, Tucson Electric explained that these leases provided it with the option to purchase the remaining interests in Springerville Unit 1, and that, in accordance with its rights under those leases, it had decided to purchase additional ownership interests in Springerville Unit 1 totaling an additional 35.4 percent. On May 15, 2013, Tucson Electric received approval under FPA section 203 to acquire the additional ownership interests in Springerville Unit 1.<sup>8</sup> On January 6, 2015, Tucson Electric provided notice to the Commission that it completed its purchases of additional interests in Springerville Unit 1, and that its total ownership in that unit is now 49.5 percent.<sup>9</sup>

4. Tucson Electric also owns certain electric transmission facilities that are used primarily to transmit power generated at the Four Corners, Luna, Navajo, Springerville, and San Juan generating stations to Tucson Electric's service territory for use by its customers. Specifically, Tucson Electric states that it presently owns, or participates in, an overhead electric transmission system consisting of approximately 2,132 pole and/or circuit-miles of high voltage lines (rated 138 kV to 500 kV), and that open access to these facilities is provided pursuant to the Tucson Electric Open Access Transmission Tariff (Tucson Electric Tariff). Tucson Electric notes that it operates a North American Electric Reliability Corporation-certified balancing authority area within Arizona and portions of

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Tucson metropolitan area in Pima County, as well as parts of Cochise County, Arizona. Application at 2.

<sup>7</sup> *Id.* at n.5.

<sup>8</sup> *See Tucson Elec. Power Co.*, 143 FERC ¶ 62,120 (2013).

<sup>9</sup> Notice of Consummation, Docket No. EC13-76-000 (Jan. 6, 2015).

western New Mexico, and that the Commission has granted Tucson Electric market-based rate authority.<sup>10</sup>

5. Tucson Electric states that it does not provide any wholesale or retail natural gas service; does not own or operate any natural gas pipelines or distribution facilities; and is subject to regulation by the Arizona Corporation Commission (Arizona Commission) with respect to retail electric rates, the issuance of securities, affiliate transactions, the maintenance of books and records, and other matters. Tucson Electric notes that it is a wholly-owned subsidiary of UNS Energy Corporation, which is a wholly-owned subsidiary of FortisUS.

## 2. Salt River Project

6. According to Tucson Electric, Salt River Project is a political subdivision of the State of Arizona, organized and existing under and pursuant to Arizona state statutes, with its principal place of business in Maricopa County, Arizona. Tucson Electric states that Salt River Project provides electricity to approximately 970,000 customers in central Arizona, and that its service area consists of a 2,900 square mile area in central Arizona, including large portions of Maricopa, Gila, and Pinal counties. Tucson Electric adds that Salt River Project provides electric service to wholesale and mining loads in Gila County and Pinal County, Arizona, and that Salt River Project operates or participates in a number of major power plants and generating stations, including coal, nuclear, natural gas, and renewable sources. Tucson Electric states that open access to Salt River Project's transmission facilities is provided pursuant to Salt River Project's Open Access Transmission Tariff (Salt River Project Tariff).

### B. Description of the Proposed Transaction

7. Tucson Electric states that, currently, the Springerville-Coronado Line is jointly owned by it (83.33 percent) and Public Service Company of New Mexico (16.67 percent),<sup>11</sup> and that the Springerville-Coronado Upgrades are owned by Salt River

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<sup>10</sup> Application at 2-3.

<sup>11</sup> Tucson Electric explains that, as the term is used in the Application, the Springerville-Coronado Line consists of (1) the 345 kV transmission line that runs between the Springerville Station and the Coronado Generating Station; and (2) a 500/235 kV transformer and associated facilities at the Coronado Generating Station. *Id.* at 4.

Project.<sup>12</sup> Pursuant to the Proposed Transaction, Tucson Electric will (1) sell to Salt River Project an approximately 57.44 percent undivided interest in the Springerville-Coronado Line, along with associated real property rights (Line Interest), and (2) acquire from Salt River Project an approximately 42.56 percent undivided interest in the Springerville-Coronado Upgrades (Upgrades Interest). As consideration for the Proposed Transaction as a whole, Salt River Project will pay to Tucson Electric \$2,404,622.62, the net book value of the Line Interest, which will be updated to reflect the net book value at the time of closing.

8. Tucson Electric provides additional context for and background on the Proposed Transaction, noting that it will be consummated in accordance with the following five agreements:

- Transmission Line Interest Purchase and Sale Agreement between Tucson Electric and Salt River, dated October 20, 2003 (Springerville Unit 3 Agreement);
- second Transmission Line Interest Purchase and Sale Agreement between Tucson Electric and Salt River, also dated October 20, 2003 (Springerville Unit 4 Agreement);
- letter agreement between Tucson Electric and Salt River, dated September 18, 2013, amending and clarifying the U3 Agreement (Springerville Unit 3 Letter Agreement);
- second letter agreement between Tucson Electric and Salt River, dated September 18, 2013, amending the U4 Agreement (Springerville Unit 4 Letter Agreement); and
- letter agreement between Tucson Electric and Salt River, dated November 12, 2014, whereby Tucson Electric and Salt River agreed upon the purchase price of the Proposed Transaction (Purchase Letter Agreement).

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<sup>12</sup> Tucson Electric notes that the Springerville-Coronado Upgrades were placed into service in 2010 to increase the capacity over the Springerville-Coronado Line in anticipation of the Proposed Transaction and the interconnection of Springerville Unit 4, a 458 MW coal-fired electric generating facility located at the Springerville Station, which is owned by Salt River Project and operated by Tucson Electric. *Id.* at 4-5.

9. Tucson Electric states that the Proposed Transaction is a component of a larger transaction involving the development of Springerville Units 3<sup>13</sup> and 4 at the Springerville Station. Tucson Electric explains that, incidental to the development of Springerville Units 3 and 4, Tucson Electric agreed in the Springerville Unit 3 and Springerville Unit 4 Agreements to transfer to Salt River Project certain undivided interests in the Springerville-Coronado Line. Specifically, Tucson Electric states that, under the Springerville Unit 3 Agreement, it agreed to sell to Salt River Project an interest in the Springerville-Coronado Line sufficient to provide Salt River Project with transmission rights to move the power it purchases from Springerville Unit 3. In the Springerville Unit 4 Agreement, Tucson Electric agreed to sell to Salt River Project an interest in the Springerville-Coronado Line sufficient for Salt River to move all of the output of Springerville Unit 4.

10. With respect to the Springerville-Coronado Upgrades, Tucson Electric states that Salt River Project installed them at its sole expense, as agreed to in the Springerville Unit 4 Agreement, as amended by the Springerville Unit 4 Letter Agreement. Tucson Electric notes that Salt River Project presently owns all of the interests in the Springerville-Coronado Upgrades but will, as part of the Proposed Transaction and in accordance with the Springerville Unit 4 Letter Agreement, transfer an undivided 42.56 percent interest in them to Tucson Electric.

## **II. Notice of Filings**

11. Notice of the Application was published in the *Federal Register*, 79 Fed. Reg. 70,515 (2014), with interventions and protests due on or before December 3, 2014.

12. Motions to intervene were filed by Alterna Springerville LLC and LDVF1TEP LLC (together, Intervenors) and El Paso Electric Company. Salt River Project filed a

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<sup>13</sup> Tucson Electric states that Springerville Unit 3, which is owned by Springerville Unit 3 Holding LLC, is leased to Tri-State Generation and Transmission Association, Inc., and that 100 MW of the output of that unit is sold to Salt River Project under a long-term agreement.

motion to intervene and comments in support of the Application. Intervenors filed a protest.<sup>14</sup> Tucson Electric filed an answer to Intervenors' protest.<sup>15</sup>

### **III. Discussion**

#### **A. Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>16</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>17</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer because it provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

##### **1. Standard of Review under FPA Section 203**

15. FPA section 203(a)(4) requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest.<sup>18</sup> The Commission's analysis of whether a transaction will be consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.<sup>19</sup> FPA section 203(a)(4) also requires the

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<sup>14</sup> Protest of Alterna Springerville LLC and LDVF1 TEP LLC, Docket No. EC15-31-000 (Dec. 3, 2014) (Intervenors Protest).

<sup>15</sup> Request for Leave to Answer and Answer of Tucson Electric Company (as corrected), Docket No. EC15-31-000 (Dec. 18, 2014) (Tucson Electric Answer).

<sup>16</sup> 18 C.F.R. § 385.214 (2014).

<sup>17</sup> 18 C.F.R. § 385.213(a)(2) (2014).

<sup>18</sup> 16 U.S.C. § 824b(a)(4) (2012).

<sup>19</sup> See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044, at 30,111 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger

Commission to find that the transaction “will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.”<sup>20</sup> The Commission’s regulations establish verification and information requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or a pledge or encumbrance of utility assets.<sup>21</sup>

## **2. Analysis of the Proposed Transaction**

### **a. Effect on Competition**

#### **i. Tucson Electric’s Analysis**

16. According to Tucson Electric, the Proposed Transaction is a “wires-only” transaction that will have no effect on competition. Tucson Electric asserts that, since the Proposed Transaction does not involve the disposition of any generating assets, it will not result in any change in market concentration for generation and, therefore, the Proposed Transaction does not raise any horizontal market power concerns.<sup>22</sup>

17. Tucson Electric also asserts that the Proposed Transaction will have not have an adverse effect on competition in transmission. Tucson Electric notes that it provides open access transmission service pursuant to its Commission-approved tariff, and that, after consummation of the Proposed Transaction, it will continue to provide open-access service over the Springerville-Coronado Line and its portion of the acquired Springerville-Coronado Upgrades.

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Policy Statement). *See also FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement). *See also Revised Filing Requirements Under Part 33 of the Commission’s Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh’g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). *See also Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh’g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh’g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

<sup>20</sup> 16 U.S.C. § 824b(a)(4) (2012).

<sup>21</sup> 18 C.F.R. § 33.2(j) (2014).

<sup>22</sup> Application at 8-9.

**ii. Intervenors' Protest**

18. Intervenors state that they are beneficiaries under certain trust agreements between Wilmington Trust Company and William J. Wade (as Trustees) relating to ownership and operation of Springerville Unit 1.<sup>23</sup> According to Intervenors, Tucson Electric leased Springerville Unit 1 from the Trustees pursuant to a facility lease agreement that was scheduled to expire on January 1, 2015 (Lease Agreement). Intervenors state that, upon expiration of the Lease Agreement, the ownership interests in Springerville Unit 1 held by the Trustees on behalf of Intervenors and leased to Tucson Electric were to revert to the Trustees, and Intervenors were to become responsible for marketing their respective ownership of the electrical output of Springerville Unit 1. Since Springerville Unit 1 is connected to the Tucson Electric transmission system, Intervenors state that they need transmission service on the Tucson Electric transmission system to deliver the output of Springerville Unit 1 to wholesale electricity markets.

19. Intervenors claim that, under the terms of an Amended and Restated Facility Support Agreement between the Trustees and Tucson Electric, as amended and restated as of December 15, 1992 (1992 FSA), Tucson Electric is obligated, upon termination of the Lease Agreement, “to provide firm transmission service from Springerville Unit 1 to a point of interconnection with the transmission system of another utility, subject to the reasonable approval of Intervenors, in order to enable Intervenors to market their respective scheduled entitlement shares of the output of Springerville Unit 1.”<sup>24</sup> Intervenors assert that Palo Verde is the only point on Tucson Electric’s transmission system that is commercially reasonable for the sale of electricity from Springerville Unit 1, but that Tucson Electric has refused to provide the transmission service that they need because, according to Intervenors, Tucson Electric asserts that it lacks available transmission capacity.<sup>25</sup>

20. Intervenors note that, prior to filing the Application, Tucson Electric filed, under FPA section 205, several long-term Transmission Service Agreements pursuant to which it proposes to provide up to 623 MW of firm transmission service for Salt River Project

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<sup>23</sup> Intervenors Protest at 2.

<sup>24</sup> *Id.* at 3.

<sup>25</sup> *Id.* Specifically, Intervenors assert that they require service from Springerville to Vail over the San Juan-Springerville-Vail Transmission System, and then from Vail to Palo Verde. The Springerville-Coronado Line is part of the San Juan-Springerville-Vail Transmission System.

on the Springerville-Coronado Line (Salt River Project Transmission Service Agreements).<sup>26</sup> Intervenors filed a motion to intervene and protest in that proceeding in which they expressed concern that the provision of such transmission service to Salt River Project may reduce the amount of capacity on the San Juan-Springerville-Vail Transmission System that would otherwise be available for Tucson Electric's transmission of electricity on Intervenors' behalf.<sup>27</sup> Intervenors further claim that the Application in this proceeding represents an attempt by Tucson Electric to undermine the Commission's ability to address the issues raised by Intervenors in the Salt River Project Transmission Service Agreements Proceeding.

21. Intervenors argue that the Proposed Transaction is not in the public interest because it would adversely affect competition. Specifically, Intervenors explain that, after the Lease Agreement expires, they will become potential competitors of Tucson Electric and other generation suppliers in the Southwestern United States with respect to the sale of electricity at wholesale to purchasers in California. In order to make those sales, however, Intervenors state that they need transmission service from Tucson Electric for transmission of electricity from Springerville Unit 1 to Palo Verde.

22. Intervenors argue that the sale of an interest in the Springerville-Coronado Line by Tucson Electric to Salt River Project may reduce the amount of transmission capacity on the San Juan-Springerville-Vail Transmission System that could otherwise be used by Tucson Electric to transmit electricity on behalf of Intervenors. Intervenors claim further that, regardless of whether Tucson Electric provides transmission service to Salt River Project over the Springerville-Coronado Line pursuant to the Salt River Project Transmission Service Agreements or by Salt River Project as a joint owner of the Springerville-Coronado Line pursuant to the Proposed Transaction, the use of the Springerville-Coronado line by Salt River Project for transmission of electricity from Coronado to Springerville, and thereafter to Vail or other points on the Tucson Electric transmission system, may reduce the amount of capacity on the San Juan-Springerville-Vail Transmission System that would otherwise be available for Tucson Electric's transmission of electricity from Springerville Unit 1 to Palo Verde on behalf of Intervenors.<sup>28</sup> According to Intervenors, the Proposed Transaction may prevent their

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<sup>26</sup> *Id.* The Salt River Project Transmission Service Agreements were filed in Docket No. ER15-124-000 (Salt River Project Transmission Service Agreements Proceeding).

<sup>27</sup> *Id.* at 3-4.

<sup>28</sup> *Id.* at 5.

shares of the output of Springerville Unit 1 from entering the market for sale of electricity at wholesale to purchasers in California, and thereby help Tucson Electric to preserve its existing share of that market. Intervenors conclude that Tucson Electric's sale of an interest in the Springerville-Coronado Line to Salt River Project, without appropriate conditions, would adversely affect competition in wholesale electricity markets in the Southwestern United States.<sup>29</sup>

23. Intervenors also question Tucson Electric's discussion regarding the impact of Salt River Project's use of the Springerville-Coronado Line on available transmission capacity in other segments of the San Juan-Springerville-Vail Transmission System.<sup>30</sup> Intervenors dispute the conclusions of the Beck Affidavit and submit that Tucson Electric should have provided a more comprehensive explanation of the methodology used by Tucson Electric to determine the amount of available transfer capability that exists on each segment of the transmission path from Springerville to Vail to Palo Verde, and additional data to support its conclusions.

24. Intervenors also dispute Tucson Electric's claim that the sale of the interest in the Springerville-Coronado Line will not have an adverse impact on competition in transmission because Tucson Electric currently provides transmission service under the Tucson Electric Tariff and will continue to provide open access service over the line and its portion of the Springerville-Coronado Upgrades after the Proposed Transaction has been consummated. Intervenors assert that if Tucson Electric is permitted to sell an interest in the Springerville-Coronado Line to Salt River Project without appropriate conditions, the amount of capacity in that line that may be used by Tucson Electric to provide transmission service under its tariff will be reduced. Intervenors state that, because transmission customers of Tucson Electric will no longer have transmission access over the transmission capacity being transferred to Salt River Project, the fact that

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<sup>29</sup> *Id.* at 5-6.

<sup>30</sup> In the Salt River Project Transmission Agreements Proceeding, Tucson Electric filed an affidavit to demonstrate that the transmission service granted by Tucson Electric to Salt River Project pursuant to the Salt River Project Transmission Service Agreements "did not, in any way impact available transmission capability...starting January 1, 2015, between Springerville and Palo Verde sought by [Intervenors]." *See* Request to Defer Statutory Action, Request for Leave to Answer, and Answer of Tucson Electric Power Company, Affidavit of Ed Beck on Behalf of Tucson Electric Power Company at 2 (Beck Affidavit), Docket No. ER15-124-000 (Nov. 20, 2014). Although that affidavit was not filed in this proceeding, Intervenors included it with their protest.

Tucson Electric will continue to provide open access transmission service over the portion of the Springerville-Coronado Line in which it retains ownership does not refute Intervenors' showing that the transfer of an interest in that line to Salt River Project will have an adverse effect on competition.

25. Finally, Intervenors argue that their rights to transmission service on the Tucson Electric transmission system are based on the 1992 FSA, to which Tucson Electric was legally bound before it filed its tariff and before its negotiations with Salt River Project regarding the Proposed Transaction commenced. Intervenors state that, unless and until Tucson Electric demonstrates that the amount of capacity available on its system in 1992, when it made its commitment to Intervenors in the 1992 FSA, has not been adversely affected by the use of the Springerville-Coronado Line by Salt River Project, there is no basis upon which the Commission can conclude that the Proposed Transaction will not have an adverse effect on competition.<sup>31</sup>

**iii. Tucson Electric's Answer**

26. Tucson Electric disputes Intervenors' claim that the Proposed Transaction will have an adverse effect on competition. First, Tucson Electric states that the Proposed Transaction will have no bearing on Intervenors' ability to move power from Springerville Unit 1 to Palo Verde in order to sell the output of Springerville Unit 1 into California. Tucson Electric states that, as explained in the Beck Affidavit, the Springerville-Coronado Line has "no bearing on the available transmission capability...on the Springerville to Palo Verde path sought by Intervenors."<sup>32</sup> Citing the Beck Affidavit and an additional affidavit appended to its answer, Tucson Electric states that available transmission capability "on the two paths is determined separately and [Salt River Project's] transmission rights over the Springerville-Coronado Line does not in any way, shape, or form reduce [available transmission capability] on the Springerville to Palo Verde"<sup>33</sup> path sought by Intervenors.

27. Second, Tucson Electric states that Commission precedent supports a finding that the Proposed Transaction will have no adverse effect on competition. According to Tucson Electric, the Commission has approved "wires-only" transactions under FPA section 203, including transactions involving generating-owning utilities, without finding

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<sup>31</sup> Intervenors Protest at 8-9.

<sup>32</sup> Tucson Electric Answer at 4 (quoting Beck Affidavit at 3-4).

<sup>33</sup> *Id.*

any adverse effect on competition, and Intervenors' arguments do not undermine the Commission's policy that outside of any Regional Transmission Organization context, anticompetitive effects are unlikely to arise with regard to transactions that only involve the disposition of transmission facilities.<sup>34</sup>

28. Third, Tucson Electric disputes Intervenors' claims regarding Tucson Electric's share of the electricity market in California. Tucson Electric states that it has not sold any power into California Independent System Operator Corp. (CAISO) since at least October 21, 2010, and that, in the year ending September 30, 2014, it was a net buyer of power at Palo Verde, which is a gateway to the CAISO markets. Specifically, Tucson Electric explains that it purchased nearly 600,000 more MWh of power at Palo Verde than it sold, noting that it sold only 1,070 MWh of power at Palo Verde during the same time period, a figure that it characterizes as small in comparison to the size of the CAISO market. Tucson Electric states that preservation of this share of the electric market in California, or even its enhancement, would have no measurable impact on competition in California's power markets given the size of that market.<sup>35</sup>

#### iv. Commission Determination

29. We find that the Proposed Transaction will not have an adverse effect on competition. As Tucson Electric notes, the Commission has recognized that anticompetitive effects are unlikely to arise with regard to transactions involving only the transfer of transmission facilities.<sup>36</sup> Because the Proposed Transaction will only involve the transfer of transmission facilities, we find that it will not have an adverse effect on horizontal competition.

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<sup>34</sup> *Id.* at 6 (citing Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,902-3).

<sup>35</sup> Tucson Electric compares its sale of 1,070 MWh of power at Palo Verde during the year ending September 30, 2014 to the total MWh sold in California during the same time period, which it posits is well in excess of 231,800,000 MWh, the quantity of energy required to serve CAISO's system load in 2013. *Id.* at 7, n.17.

<sup>36</sup> *See* Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,903 (recognizing that there is no need for a Competitive Analysis Screen when a transaction only involves a disposition of transmission facilities); *DTE Energy Co.*, 97 FERC ¶ 61,330, at 62,572 (2001) ("anticompetitive effects are unlikely to arise in a transaction that only involves a disposition of transmission facilities").

30. In analyzing whether a transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. First, because there is no transfer of generation facilities or inputs to electric power generation, the Proposed Transaction is unlikely to have an adverse effect on vertical competition. Additionally, we find that the combination of electric generation and transmission assets will not give Tucson Electric the ability to exercise vertical market power because Tucson Electric's operation of the Springerville-Coronado Line and Springerville-Coronado Upgrades will continue to be subject to Tucson Electric's Commission-approved open access transmission tariff.

31. Further, we are not persuaded by Intervenors' claims that the Proposed Transaction will have an adverse effect on competition. The transfer of the interest in the Springerville-Coronado Line to Salt River Project will not impact transmission service on the San Juan-Springerville-Vail Transmission System. In *Alterna Springerville LLC, LDVFI TEP LLC v. Tucson Elec. Power Co.*,<sup>37</sup> the Commission denied a complaint filed by Intervenors against Tucson Electric that raised many of the same issues Intervenors raise in this proceeding. In that order, the Commission found that Tucson Electric had not engaged in undue discrimination or preference in providing transmission service to Salt River Project because "the transmission path utilized by [Salt River Project] has no impact on available transfer capability over the transmission path requested"<sup>38</sup> by Intervenors. The Commission stated that while transmission service from Springerville to Coronado (the service provided to Salt River Project) and transmission service from Springerville to Palo Verde (the service requested by Intervenors) share the same point of receipt, the requests do not create competing transmission service because they require separate paths.<sup>39</sup>

32. Moreover, the Commission has already addressed Intervenors' claim that, under the 1992 FSA, Tucson Electric is obligated to provide service to Palo Verde. In the Order on Intervenors' Complaint, the Commission found that Intervenors failed to show that the 1992 FSA requires Tucson Electric to provide firm transmission to Palo Verde, the point of interconnection requested by Intervenors. In that order, the Commission

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<sup>37</sup> 150 FERC ¶ 61,094 (2015) (Order on Intervenors' Complaint).

<sup>38</sup> *Id.* P 39.

<sup>39</sup> *Id.*

found that Tucson Electric may fulfill its obligation under the 1992 FSA by offering delivery points at Four Corners and San Juan.<sup>40</sup>

**b. Effect on Rates**

**i. Tucson Electric's Analysis**

33. Tucson Electric states that the Proposed Transaction will have no adverse impact on the rates charged to wholesale power and transmission customers. Tucson Electric states that Salt River Project does not engage in any transactions subject to the Commission's jurisdiction, so there are no jurisdictional rates of Salt River Project that can be affected by the Proposed Transaction.

34. Tucson Electric states that, but for energy exchange agreements and emergency energy sales under the Southwest Reserve Sharing Group Participation Agreement (which, when called upon, are at the cost incurred by the supplying utility as determined by the applicable operating procedures), the contracts under which its current wholesale electricity customers take service were all entered into under market-based rate authority. Tucson Electric therefore concludes that the Proposed Transaction will not have an adverse effect on the rates of its wholesale power customers.

35. Tucson Electric also claims that the Proposed Transaction will have no adverse effect on its transmission service rates. Tucson Electric states that the Tucson Electric Tariff contains fixed, not formula rates, and that it is unable to pass through the costs related to the Proposed Transaction to its transmission customers absent an application with the Commission pursuant to FPA section 205. Therefore, Tucson Electric states that its transmission customers will not be adversely affected by the Proposed Transaction.

36. Tucson Electric and its public utility affiliates nevertheless pledge to hold harmless all transmission and current wholesale power customers "from any costs associated with the Transaction (e.g., transaction costs) for a period of five years to the extent that such costs exceed savings related" to the Proposed Transaction.<sup>41</sup> Tucson

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<sup>40</sup> Order on Intervenors' Complaint, 150 FERC ¶ 61,094 at P 18. In their protest of the Application, Intervenors ask the Commission to defer action on the Proposed Transaction pending resolution of the complaint, or, in the alternative, to condition its approval of the Application on the outcome of the complaint. Intervenors Protest at 10. Tucson Electric opposed Intervenors' request. Given issuance of the Order on Intervenors' Complaint, Intervenors' request is moot.

<sup>41</sup> Application at 10.

Electric states that, consistent with Commission precedent, “transaction costs” in this context includes all transaction-related costs, not only costs related to consummating the Proposed Transaction.<sup>42</sup> Tucson Electric explains, however, that the hold harmless commitment “is not a rate freeze and would not preclude changes in jurisdictional rates attributable to non-Transaction costs or to the costs or value of the Transferred Assets themselves.”<sup>43</sup> Tucson Electric asserts that the Commission has accepted similar limitations on hold harmless commitments in previous cases.<sup>44</sup>

**ii. Commission Determination**

37. We agree with Tucson Electric that the Proposed Transaction will not have an adverse effect on rates. First, the Proposed Transaction will not have an adverse effect on wholesale power rates because, except for energy exchange agreements and emergency energy sales under the Southwest Reserve Sharing Group Participation Agreement, Tucson Electric does not make wholesale power sales at cost-based rates, and will continue to make sales of electric energy pursuant to its market-based rate authorizations.<sup>45</sup> Further, we note that the Southwest Reserve Sharing Group Participation Agreement provides no mechanism through which the costs of the Proposed Transaction could be passed through to customers and affect those rates.

38. Second, as the Tucson Electric Tariff contains fixed, not formula rates, there is no mechanism through which Tucson Electric could pass costs associated with the Proposed Transaction on to transmission customers without submitting an application with the Commission to do so.

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<sup>42</sup> *Id.* (citing *ITC Midwest LLC*, 142 FERC ¶ 62,106 (2013) (citing *PPL Corp. and E.ON U.S. LLC*, 133 FERC ¶ 61,083 (2010))).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* (citing *PNM Resources, Inc.*, 110 FERC ¶ 61,204, at P 43 (2005); *Ameren Corp.*, 108 FERC ¶ 61,094, at P 62 (2004); *Tucson Elec. Power Co.*, 103 FERC ¶ 62,100, at 64,163, n.3 (2003)).

<sup>45</sup> *See Union Electric Co.*, 114 FERC ¶ 61,255, at P 45 (2006) (finding wholesale customers will not be adversely affected where Applicant provides wholesale service at market-based rates); *NorAm Energy Servs., Inc.*, 80 FERC ¶ 61,120, at 61,382-83 (1997) (stating that the Commission’s ratepayer protection concerns do not apply to customers charged market-based rates).

39. We accept Tucson Electric's commitment to hold customers harmless from costs related to the Proposed Transaction. We interpret Tucson Electric's hold harmless commitment to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction, incurred prior to the consummation of the Proposed Transaction, or in the five years after the Proposed Transaction's consummation.

40. The Commission has established that, where applicants make hold harmless commitments in the context of FPA section 203 transactions, in order to recover transaction-related costs, applicants must demonstrate offsetting benefits at the time they apply to recover those costs. The Commission has clarified its procedures for recovery of such costs under FPA sections 203 and 205.<sup>46</sup> Consistent with those clarifications, and given the commitment by Tucson Electric to hold wholesale power and transmission customers harmless from transaction-related costs, if Tucson Electric seeks to recover transaction-related costs incurred prior to the consummation of the Proposed Transaction or in the five years after the consummation of the Proposed Transaction, then Tucson Electric must make that filing in a new FPA section 205 docket<sup>47</sup> and submit that same filing as a concurrent information filing in this FPA section 203 docket.<sup>48</sup> The Commission will notice the new FPA section 205 filing for public comment.

41. In the FPA section 205 proceeding, the Commission will determine first, whether Tucson Electric has demonstrated offsetting savings, supported by sufficient evidence, to customers served under Commission jurisdictional rate schedules such that recovery of transaction-related costs is consistent with the hold harmless commitment and, second, whether the resulting new rate is just and reasonable in light of all the other factors underlying the proposed new rate. In the FPA section 205 filing, Tucson Electric must: (1) specifically identify the transaction-related costs it is seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction. Tucson Electric must show that the proposed rate is just and reasonable in addition to providing appropriate evidentiary support, such as reasonable documentation and estimates of the costs avoided, demonstrating that transaction-related costs have been

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<sup>46</sup> *Exelon Corp.* 149 FERC ¶ 61,148, at PP 106-109 (2014).

<sup>47</sup> The Commission will not authorize the recovery of transaction-related costs in an annual informational filing under existing formula rates.

<sup>48</sup> Upon receipt, the Commission will not act on or notice the concurrent informational filing.

offset by transaction-related savings in order to recover those transaction-related costs and comply with its hold harmless commitment. Those savings must be realized prior to, or concurrent with, any authorized recovery of transaction-related costs, and cannot be based on estimates or projections of future savings, but must be based on a demonstration of actual transaction-related savings realized by jurisdictional customers.<sup>49</sup> The Commission will consider rates not to be “just and reasonable” if they include recovery of costs subject to a hold harmless commitment made in connection with an FPA section 203 application and if applicants fail to show offsetting savings due to the transaction.<sup>50</sup>

**c. Effect on Regulation**

**i. Tucson Electric’s Analysis**

42. Tucson Electric asserts that the Proposed Transaction will not diminish federal regulatory authority over it. According to Tucson Electric, following consummation of the Proposed Transaction, it will remain subject to the Commission’s jurisdiction under the FPA. Tucson Electric explains that insofar as Salt River Project is a political subdivision of the State of Arizona, any reduction of federal regulatory authority over the Springerville-Coronado Line resulting from the Proposed Transaction should not cause the Commission concern, because Order No. 888 requires a public utility that owns interstate transmission facilities jointly with a non-jurisdictional entity to offer open access transmission service over the public utility’s share of the joint facilities.<sup>51</sup>

43. Tucson Electric also explains that the Proposed Transaction will not have an adverse effect on state regulation because the Proposed Transaction does not require prior approval of the Arizona Commission and will not adversely affect the ability of the Arizona Commission, or any other state commission, to regulate Tucson Electric.

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<sup>49</sup> See *Audit Report of National Grid, USA*, Docket No. FA09-10-000 (Feb. 11, 2011) at 55; see also *Ameren Corp.*, 140 FERC ¶ 61,034, at PP 36-37 (2012).

<sup>50</sup> *Exelon Corp.*, 149 FERC ¶ 61,148 at P 107.

<sup>51</sup> Application at 11-12 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,692 (1996)).

**ii. Intervenors' Protest**

44. Intervenors argue that the transfer of an interest in the Springerville-Coronado Line to Salt River Project will reduce the amount of transmission capability that is within the Commission's regulatory jurisdiction. Intervenors argue further that because Salt River Project is not a Commission-jurisdictional public utility, the sale of an interest in the Springerville-Coronado Line would deprive the Commission of its regulatory authority to require the provision of open access transmission service over the capacity associated with the ownership interest in that line that is sold to Salt River Project.<sup>52</sup>

**iii. Tucson Electric's Answer**

45. Tucson Electric disputes Intervenors' assertion that the Proposed Transaction will have an adverse effect on regulation. Tucson Electric states that, although Salt River Project is not a public utility as defined under the FPA, it conducts its transmission business in accordance with its own open access transmission tariff. Tucson Electric asserts that transmission over the interests in the Springerville-Coronado Line transferred pursuant to the Proposed Transaction will continue to be subject to open access. Tucson Electric also asserts that the Proposed Transaction as a whole will reduce Tucson Electric's transfer capability over the Springerville-Coronado Line by only 100 MW because the upgrades constructed by Salt River Project have resulted in a doubling of the total transfer capability of the Springerville-Coronado Line. Tucson Electric states that, while it may be true that Tucson Electric will transfer some of its transfer capability over the Springerville-Coronado Line as part of the Proposed Transaction, most of what will be transferred is the result of upgrades paid for by Salt River Project. Tucson Electric argues that the mere fact that Tucson Electric will transfer an ownership interest to a non-public utility should not form a basis for a Commission finding that the Proposed Transaction will adversely affect regulation.<sup>53</sup>

46. Tucson Electric also asserts that the Commission's evaluation of whether a proposed transaction will have an adverse effect on regulation is not an inquiry into "whether the Commission will simply lose jurisdiction."<sup>54</sup> Tucson Electric explains that the Commission reviews whether a proposed transaction will result in a regulatory gap at the federal or state level, and has expressed concern regarding whether a state lacks

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<sup>52</sup> Intervenors Protest at 9-10.

<sup>53</sup> Tucson Electric Answer at 8.

<sup>54</sup> *Id.*

authority to act on a transaction and raises concerns about the effect on regulation. Tucson Electric states that the Proposed Transaction will not create any regulatory gap because it will remain subject to Commission jurisdiction following the Proposed Transaction. In addition, Tucson Electric states that, following the Proposed Transaction, Salt River Project will remain a political subdivision of the state of Arizona. In addition, Tucson Electric states that no state commission has raised any concerns about the Proposed Transaction, and that the Commission has found no adverse effect on regulation where a jurisdictional entity sought authority to transfer jurisdictional assets to a non-jurisdictional entity that is subject to state jurisdiction.<sup>55</sup>

**iv. Commission Determination**

47. We find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap at the federal or state level.<sup>56</sup> We find that the Proposed Transaction will not create a regulatory gap at the federal level because the Commission will retain its regulatory authority over Tucson Electric after the Proposed Transaction is consummated. Further, as Tucson Electric notes, Salt River Project has an open access transmission tariff.<sup>57</sup> As to the state level, no state commission has intervened or raised concerns about the effect of the Proposed Transaction on state regulation, nor do we find that the Proposed Transaction raises any such concerns.

**d. Cross-Subsidization**

**i. Tucson Electric's Analysis**

48. Tucson Electric states that, based on the facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate

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<sup>55</sup> *Id.* at 9 (citing *Southwestern Pub. Serv. Co.*, 144 FERC ¶ 61,131, at PP 20-21 (2013); *American Elec. Power Serv. Corp.*, 113 FERC ¶ 61,163, at PP 26-28 (2005)).

<sup>56</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

<sup>57</sup> See <http://www.oatioasis.com/SRP>. See also *Salt River Project Agricultural Improvement and Power District*, 90 FERC ¶ 61,284 (2000).

company.<sup>58</sup> In support of this claim, Tucson Electric states that (1) Tucson Electric's utility assets are not pledged or encumbered except as through general bond issuances such as those routinely used by utilities to raise capital; (2) the Proposed Transaction will not result in any transfers of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (3) Tucson Electric will not issue new debt or equity in order to effectuate the Proposed Transaction, therefore, the Proposed Transaction will not result in any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; and (4) the Proposed Transaction will not result in any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review pursuant to FPA sections 205 and 206.<sup>59</sup>

**ii. Commission Determination**

49. Based on the representations in the Application, we find that the Proposed Transaction will not result in inappropriate cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise.

**3. Accounting**

50. Tucson Electric includes its proposed accounting entries related to the Proposed Transaction in Appendix 2 of the Application. Tucson Electric proposes to clear the sale of the interest in the Line Interest through Account 102, Electric Plant Purchased or Sold, and remove the original cost and related accumulated depreciation of the facilities from its books. Tucson Electric also proposes to clear the acquisition of the Upgrades Interest and cash through Account 102, and record the original cost and related accumulated depreciation of the facilities on its books. Finally, Tucson Electric proposes to record a \$4,356,444 negative acquisition adjustment in Account 114, Electric Plant Acquisition Adjustments, representing the difference between the book value of the Line Interest relinquished and book value of the Upgrade Interest and cash acquired. However,

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<sup>58</sup> Application, Exhibit M: Cross-Subsidization, Pledges or Encumbrances of Utility Assets.

<sup>59</sup> 16 U.S.C. § 824e (2012).

consistent with Commission policy, we will require Tucson Electric to clear the negative acquisition adjustment with a debit to Account 114 and a credit to Account 108, Accumulated Provision for Depreciation of Electric Utility Plant.<sup>60</sup>

#### 4. Other Considerations

51. Order No. 652 requires that sellers with market-based rate authority 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.<sup>61</sup> To the extent that the foregoing authorization results in a change in status, Applicants are advised that they must comply with the requirements of Order No. 652. In addition, Applicants shall make any appropriate filings under section 205 of the FPA to implement the Proposed Transaction.

52. Information and/or systems connected to the bulk power system involved in the Proposed Transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215.<sup>62</sup> Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, and operating systems. If affiliates, personnel, or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cyber security standards. The Commission, North American Electric Reliability Corporation or the relevant Regional Entity may audit compliance with reliability and cyber security standards.

#### The Commission orders:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

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<sup>60</sup> See *Locust Ridge Gas Co.*, 29 FERC ¶ 61,052, at 61,114 (1984); *Southwestern Pub. Serv. Co. and New Mexico Elec. Serv. Co.*, 23 FERC ¶ 61,153 (1983).

<sup>61</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005). See 18 C.F.R. § 35.42 (2014).

<sup>62</sup> 16 U.S.C. § 824o (2012).

(B) Tucson Electric must inform the Commission within 30 days of any material change in circumstances that departs from the facts the Commission relied upon in authorizing the Proposed Transaction.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Tucson Electric, to the extent that it has not already done so, shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) If Tucson Electric seeks to recover transaction-related costs through its wholesale power or transmission rates, it must first submit a compliance filing in this docket that details how it is satisfying the hold harmless requirement in addition to a section 205 filing. In particular, in such a filing, Tucson Electric must: (1) specifically identify the transaction-related costs it is seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction.

(H) Tucson Electric shall account for the Proposed Transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. Tucson Electric shall submit its final accounting entries within six months of the date that the Proposed Transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

(I) Tucson Electric shall notify the Commission within 10 days of the date on which the Proposed Transaction is consummated.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.