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**SOAH DOCKET NO. 473-02-3761
PUC DOCKET NO. 25931**

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**TEXAS-NEW MEXICO POWER
COMPANY'S APPLICATION FOR
FINDINGS ON PROPOSED
EWG STATUS**

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STATE OFFICE

OF

**PUBLIC UTILITY COMMISSION
FILING CLERK**

ADMINISTRATIVE HEARING

**OFFICE OF PUBLIC UTILITY COUNSEL'S
MOTION TO COMPEL RESPONSES TO
OPC'S FIRST SET OF REQUESTS FOR INFORMATION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the Office of Public Utility Counsel (OPC), Intervenor, and files this, its Motion to Compel Responses to OPC's First Set of Requests for Information to Texas-New Mexico Power Company (TNMP). OPC received TNMP's objections to OPC's RFIs on September 3, 2002. Pursuant to Order No. 8, OPC's response is due September 5, 2002 and is hereby timely filed.

I.

GENERAL RESPONSE TO TNMP's OBJECTIONS

TNMP has applied for Commission findings necessary for obtaining EWG status from FERC. FERC regulations require that to receive EWG status an applicant must obtain findings from the relevant state utility commission that such status 1) will benefit consumers, 2) is in the public interest, and 3) does not violate state law. The Commission adopted these as issues in the instant proceeding. In accord, OPC submitted its first set of RFIs to which TNMP objected. OPC files this its response and moves this Court to compel TNMP to respond.

TNMP describes OPC's RFIs as relevant only to stranded costs and the impact of stranded costs on consumer rates which the Commission in its preliminary order declined

to include in this proceeding. This characterization of OPC's RFIs is erroneous. TNMP seeks EWG status as a condition of the sale of TNP One, its generation plant, to Twin Oaks Power. The primary argument supporting TNMP's application is that EWG status encourages competition which in turn will benefit consumers and is therefore in the public interest. OPC's RFIs are directed towards ascertaining how competition will be impacted by EWG status on TNP One.

TNMP cannot avoid responding to the RFIs by branding each as a stranded cost question. If this characterization was accepted, then no question on the sale of TNP One could be asked. Rather, questions on TNP One must be regarded as reasonably calculated to lead to the discovery of admissible evidence. If the RFI delves into the collateral issue of stranded costs, this should not be reason to exclude the RFI in its entirety.

Further, TNMP's objections based on attorney-client privilege and work product are extremely vague and ambiguous. As these objections lack specificity, each amounts to no objection at all and should be overruled.

Regarding objections on the basis of unreasonably burdensome to TNMP, OPC is agreeable to discussing with TNMP the amount and type of documents sought in an effort to narrow the request.

II.

MOTION TO COMPEL

- 1-1. **Please provide complete copies of all market price analyses that have been done regarding the TNP One plant pursuant to the Company's decision to sell the plant.**
- 1-2. **Please provide all reports, studies and analyses, memos and correspondence regarding the Company's decision to sell TNP One.**

- 1-3. a) Please provide a complete description of the process used to inform the public that the TNMP plant was for sale.**
- b) Provide all notices, correspondence and any other material submitted or publicized by TNMP that solicited buyers for the plant.**
- c) Please provide all analyses, inquiries and any other materials submitted by all interested buyers of the plant.**
- d) To the extent there were any other potential buyers for the plant, please provide all correspondence, documents, reports analyses provided to TNMP from each potential buyer.**

TNMP states that EWG status is necessary to accomplish the sale of TNP One, its generating plant. OPC's RFIs seek to determine why such status is necessary for the sale and, from this, how EWG status will benefit consumers. It is necessary to study the background and the circumstances surrounding the sale of the plant to understand the necessity of EWG status and how and why consumers will benefit. Further, in that TNMP claims that EWG status will foster competition, it must be examined how TNMP encouraged and contributed to competition beginning with the dynamics (bids, buyers solicited, prices considered to encourage bidding) behind the sale of TNP One. TNMP's objections to RFIs 1-1, 1-2 and 1-3 should be overruled.

- 1-4. Please provide the identities of all customers who are currently buying power from the TNP One plant, as well as the amount of power purchased by each customer.**

TNMP contends that TNP One will sell power at wholesale as an EWG. It remains to be seen how and whether sales from the plant will benefit competition, much less consumers. It must be determined whether wholesale energy sales prior to attaining EWG status will differ markedly from wholesale energy sales post EWG. This RFI is directed toward this. TNMP's objections should be overruled.

1-5. Please provide all reports, analyses and other documents that discuss TNMP's arbitration proceedings regarding the lignite contract for TNP One fuel.

TNMP contends that EWG status will facilitate the unbundling and sale of TNP One. TNMP does not explain, however, how EWG status would benefit TNP One if its operations are weighed by a presumably overpriced lignite contract. It must be evaluated how the contract impacts EWG status and ultimately competition. Further, as TNMP admits, the fuel supply agreement undoubtedly was considered by potential bidders of TNP One. This RFI seeks to determine how the agreement encouraged competitive bids and in turn competition. TNMP's objections should be overruled.

1-6. a) Please provide the book value of the TNP One plant as of June 30, 2002.

b) Please identify all additional depreciation taken on the TNP One plant pursuant to Docket 17751.

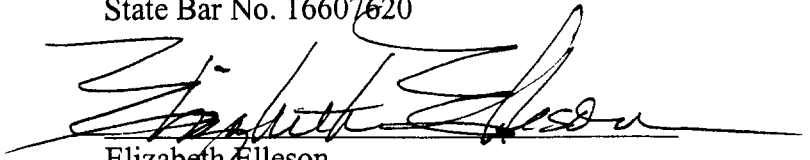
c) Show the amount of additional depreciation and date the depreciation was booked.

TNMP argues that EWG status will facilitate the sale of TNP One. Yet it must be considered what other features of TNP One, *e.g.* the book value and depreciation, make the plant attractive for sale. It must be studied whether these factors suppressed or encouraged competition in the sale process. Moreover, it must be evaluated whether in order to make the sale, EWG status is necessary after these matters are taken into account. TNMP's objections should be overruled.

WHEREFORE, PREMISES CONSIDERED, OPC respectfully requests that its motion to compel be granted, and for such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

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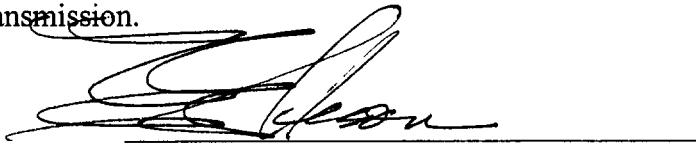


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CERTIFICATE OF SERVICE
SOAH DOCKET NO. 473-02-3761
P.U.C. Docket No. 25931

I certify that on September 5, 2002 a true copy of the foregoing document was served on all parties of record in the captioned proceeding via United States First-Class Mail, hand-delivery or facsimile transmission.



Elizabeth Elleson