Exhibit B-2  
  
  
  
 PRO FORMA AGENCY AGREEMENT  
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 AGENCY AGREEMENT  
  
 This Agreement ("Agency Agreement") is entered by and between the  
undersigned owner of Non-transferred Transmission Facilities ("Owner") and the  
Transco ("Transco") for the purpose of allowing the Transco to offer and provide  
transmission service and Wholesale Distribution Service over Non-transferred  
Transmission Facilities as detailed below.  
  
 The Owners have filed rate schedules with FERC as part of a proposal for  
establishment of the Transco ("Rate Schedules"). Upon FERC approval and the  
transfer of operational control and/or ownership of those facilities in  
accordance with the Transco LLC Agreement, the Transco will control certain  
transmission facilities, control of which will be transferred to it under  
Section 203 of the Federal Power Act. The Transco will offer to provide open  
access transmission service across those facilities. In accordance with the  
terms and conditions of the Southwest Power Pool ("SPP") RTO transmission tariff  
("RTO Transmission Tariff") and the rates set forth in the Rate Schedules, it is  
intended that the Transco also will offer to provide transmission service and  
Wholesale Distribution Service over Non-transferred Transmission Facilities.  
  
 In order for the Transco to offer service over Non-transferred Transmission  
Facilities, it is necessary that the Owner provide the authority to the Transco  
to provide the transmission and other services necessary.  
  
 THEREFORE, the undersigned parties agree as follows:  
  
 ARTICLE I  
 INCORPORATION OF THE RTO TRANSMISSION  
 TARIFF AND RATE SCHEDULES  
  
 The RTO Transmission Tariff and the Rate Schedules, including each and  
every constituent part as it or they may be amended, is incorporated into this  
Agency Agreement as though set forth herein in its entirety. In the event of any  
conflict between any provision of this Agency Agreement and the RTO Transmission  
Tariff and the Rate Schedules, the RTO Transmission Tariff and the Rate  
Schedules shall control. Capitalized terms not defined herein shall have the  
meaning set forth in the RTO Transmission Tariff.  
  
  
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 ARTICLE II  
 APPOINTMENT OF TRANSCO AS AGENT  
  
 The Owner appoints the Transco as its agent to enter into service  
agreements in conformity with the RTO Transmission Tariff and the Rate Schedules  
on its behalf with regard to transmission services involving Non-transferred  
Transmission Facilities. It is agreed that such service agreements will bind the  
Owner to perform to the requirements and specifications of the RTO Transmission  
Tariff and service agreements where appropriate. A list of Non-transferred  
Transmission Facilities subject to this Agency Agreement is attached as Appendix  
A.  
  
 ARTICLE III  
 PERFORMANCE BY THE OWNER  
  
 The Owner agrees to provide all services necessary or appropriate to  
performance under the RTO Transmission Tariff and service agreements thereunder  
with regard to RTO Transmission Tariff services involving Non-transferred  
Transmission Facilities. Upon the Transco's request, the Owner further agrees to  
provide the Transco with all information necessary or appropriate relating to  
the Non-transferred Transmission Facilities to permit or facilitate the Transco  
to provide service under the RTO Transmission Tariff and service agreements  
relating to such facilities.  
  
 ARTICLE IV  
 PAYMENT  
  
 The Transco shall distribute revenues associated with service under the RTO  
Transmission Tariff and the Rate Schedules in accordance with the Pricing and  
Revenue Distribution Protocol, attached hereto as Appendix B.  
  
 ARTICLE V  
 EFFECTIVENESS, DURATION OF AGENCY AGREEMENT,  
 AND WITHDRAWAL RIGHTS  
  
 5.1 TERM COEXTENSIVE WITH OPERATING AGREEMENT. This Section 5.1 shall be  
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given effect if the Owner has committed its transmission assets to the Transco,  
either through transfer, lease or operating agreement, or is affiliated with a  
Transmission Owner that has committed its transmission assets to the Transco,  
either through transfer, lease or operating agreement. The Agency Agreement is  
effective with respect to the Owner on the effective date of the Owner's, or its  
affiliate's, transfer of transmission facilities to the Transco. The term of  
this Agency Agreement shall thereafter be coexistent with the operation of the  
Transco. This Agency Agreement is effective as of the date on which the Transco  
assumes rights and duties granted to it pursuant to Article II, which date shall  
be mutually agreed upon by the parties. The Owner may terminate this Agency  
  
  
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Agreement on 90 days notice and subject to receipt of necessary regulatory  
approvals.  
  
 ARTICLE VI  
 LIABILITY AND INDEMNIFICATION  
  
 6.1 The liability and indemnification provisions governing the Transco's  
liability to the Owner, and the Owner's liability to the Transco, including any  
indemnification, shall be the same as set forth in the RTO Transmission Tariff  
where the liability issue arises as a result of services under the RTO  
Transmission Tariff.  
  
 6.2 As between the Parties to this Agreement, each Owner ("Indemnifying  
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Owner") shall assume liability for any injury or damage to persons or property  
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arising from its own acts or neglect, including the acts or neglect of its  
directors, officers, employees, agents, or contractors, and shall release,  
indemnify and hold harmless Transco and each other Owner ("Indemnified Owners")  
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from any damages, losses, claims, demands, suits, recoveries, costs and  
expenses, court costs, attorney fees, and all other obligations by or of third  
parties, arising from the Indemnifying Owner's performance or neglect of its  
obligations (whether arising from a finding of negligence, strict liability or  
other fault or responsibility) under this Agreement except in cases where, and  
only to the extent that, the gross negligence or intentional wrongdoing of  
Transco or the Indemnified Owner(s) contributes to the claimed injury or damage.  
Except as provided in the RTO Transmission Tariff, each Owner shall not be  
liable for any costs or expenses relating to the operation, repair, maintenance,  
or improvement of any of the transmission facilities committed to the Transco by  
any other Owner.  
  
 ARTICLE VII  
 DISPUTE RESOLUTION PROCEDURES  
  
 Any dispute between or among the Transco and the Owner arising under this  
Agency Agreement shall be resolved in accordance with the Dispute Resolution  
procedures of the RTO Transmission Tariff.  
  
 ARTICLE VIII  
 INTEGRATION AND AMENDMENT  
  
 This is an integrated Agreement which contains all terms and conditions of  
Agreement between the parties concerning the subject matter hereof. Any prior or  
oral agreements concerning the subject matter not stated herein are superseded  
by this Agency Agreement. This Agency Agreement may be amended only by an  
executed writing.  
  
  
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 ARTICLE IX  
 AUTHORITY  
  
 The Owner hereto represents that the person executing this Agreement on its  
behalf is authorized to execute this Agreement and bind such Owner to its terms,  
and that such authorization has been made in compliance with all applicable  
laws, articles of incorporation, bylaws, and resolutions and in a manner such  
that the authorization is binding upon the Owner.  
  
 ARTICLE X  
 MISCELLANEOUS PROVISIONS  
  
 10.1 DESCRIPTIVE HEADINGS. The descriptive headings of Articles, Sections,  
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Subsections and other provisions of this Agreement have been inserted for  
convenience of reference only and shall not define, modify, restrict, construe,  
or otherwise affect the construction or interpretation of any of the provisions  
of this Agreement.  
  
 10.2 NO IMPLIED WAIVERS. The failure of a party to insist upon or enforce  
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strict performance of any of the specific provisions of this Agreement at any  
time shall not be construed as a waiver or relinquishment to any extent of a  
party's right to assert or rely upon any such provisions, rights, or remedies in  
that or any other instance, or as a waiver to any extent of any specific  
provision of this Agreement; rather the same shall be and remain in full force  
and effect.  
  
 10.3 SEVERABILITY. Except for Article V of this Agreement, each provision  
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of this Agreement shall be considered severable, and if for any reason any  
provision of this Agreement, or the application thereof to any person, entity,  
or circumstance, is determined by a court or regulatory authority of competent  
jurisdiction to be invalid, void, or unenforceable, then the remaining  
provisions of this Agreement shall continue in full force and effect and shall  
in no way be affected, impaired, or invalidated, and such invalid, void, or  
unenforceable provision shall be replaced with a suitable and equitable  
provision pursuant to Section 10.6 in order to carry out, so far as may be valid  
and enforceable, the intent and purpose of such invalid, void, or unenforceable  
provision.  
  
 10.4 GOVERNING LAW. This Agreement shall be interpreted, construed, and  
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governed by the laws of the State of Delaware, except to the extent preempted by  
the laws of the United States of America.  
  
 10.5 SUCCESSORS AND ASSIGNS. This Agreement shall inure to the benefit or,  
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and be binding upon, each of the parties, their respective successors and  
assigns permitted hereunder. This Agreement shall not be assigned by any Owner,  
by operation of law or otherwise, without the prior approval of the Transco,  
except to a successor in the operation of the Owner's Non-transferred  
Transmission Facilities committed to this Agreement by reason of a merger,  
  
  
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consolidation, reorganization, sale, spin-off, or foreclosure, as a result of  
which substantially all such facilities are acquired by such successor and such  
successor becomes an Owner under this Agreement.  
  
 10.6 RENEGOTIATION. If any provision of this Agreement, or the application  
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thereof to any person, entity, or circumstance, is held by a court or regulatory  
authority of competent jurisdiction to be invalid, void, or unenforceable, or if  
a modification or condition to this Agreement is imposed by a regulatory  
authority exercising jurisdiction over this Agreement, then the parties shall  
endeavor in good faith to negotiate such amendment or amendments to this  
Agreement as will restore the relative benefits and benefits and obligations of  
the parties under this Agreement immediately prior to such holding,  
modification, or condition; provided, however, that any such amendments are  
subject to the provisions of Section 10.11 hereto. If such negotiations are  
unsuccessful, then the parties may exercise their individual or collective  
withdrawal or termination rights available under this Agreement.  
  
 10.7 REPRESENTATIONS AND WARRANTIES. Each party, with respect to itself,  
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represents and warrants to the other as of Effective Date of this Agreement as  
follows:  
  
 10.7.1 It is duly organized, validly existing, and in good standing  
 under the laws of the jurisdiction where organized, and is qualified to do  
 business in the jurisdictions necessary to perform this Agreement.  
  
 10.7.2 The execution, delivery, and performance of this Agreement are  
 within its powers, have been duly and validly authorized by all requisite  
 action, and do not conflict with any applicable law, any of the terms or  
 conditions of its governing documents, or with any other binding agreement  
 except third-party joint agreements covered by Section 10.13.  
  
 10.7.3 This Agreement has been duly executed and delivered by the  
 party and, subject to the conditions, if any, expressly set forth in  
 writing, this Agreement constitutes the legal, valid, and binding  
 obligation of the party enforceable against it in accordance with its terms  
 except insofar as the enforceability thereof may be limited by applicable  
 bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium,  
 or other similar laws affecting the enforcement of creditor's rights  
 generally, and by general principles of equity regardless of whether such  
 principles are considered in a proceeding at law or in equity.  
  
 10.7.4 It has, or will have as of the time required, all regulatory  
 authorizations necessary for it to legally perform its obligations under  
 this Agreement.  
  
  
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 10.7.5 There are no bankruptcy, insolvency, reorganization,  
 receivership, or other arrangement proceedings pending or being  
 contemplated by it, or to its knowledge threatened against it.  
  
 10.8 FURTHER ASSURANCES. Each party agrees that it shall hereafter execute  
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and deliver such further instruments, provide all information, and take or  
forbear such further acts and things as may be reasonably required and useful to  
carry out the intent and purpose of this Agreement and as are not inconsistent  
with the provisions of the Agreement.  
  
 10.9 DELIVERY OF NOTICES. Except as otherwise expressly provided herein,  
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notices required under this Agreement shall be in writing and shall be sent by  
U.S. mail, overnight courier, hand delivery, facsimile, or other reliable  
electronic means. any notice required under this Agreement shall be deemed to  
have been given either upon delivery, if by U.S. mail, overnight courier, or  
hand delivery, or upon confirmation, if given by facsimile or other reliable  
electronic means.  
  
 10.10 LIMITATIONS ON LIABILITY. Notwithstanding any other provision of this  
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Agreement, no Owner shall be liable to any other Owner or Transmission User, as  
that term is defined in the RTO Transmission Tariff, for any actions taken  
pursuant to the direction of the Transco except in cases of the gross negligence  
or intentional wrongdoing of such Owner or Transmission User.  
  
 10.11 ENTIRE AGREEMENT. This Agreement, including any attachments to this  
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Agreement, the RTO Transmission Tariff, the Rate Schedules, the Operating  
Agreement, the LLC Agreement, and other agreements referenced herein, constitute  
the entire agreement between the parties with respect to the subject matter of  
this Agreement, and no previous or contemporary oral or written representations,  
agreements, or understandings made by any officer, agent, or employee of any  
Owner or of the Transco shall be binding unless contained in this Agreement,  
including the appendices attached hereto, the RTO Transmission Tariff, the  
Operating Agreement, or other agreements referenced herein. This Agreement shall  
not be amended except by the written agreement of the parties; provided, that  
the effectiveness of any such amendment shall be conditioned upon the execution  
of the same amendment by all other Owners.  
  
 10.12 GOOD FAITH EFFORTS. The Owner agrees that it shall in good faith take  
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all reasonable actions necessary to permit it to fulfill its obligations under  
this Agreement. Where the consent, agreement, or approval of the Owner must be  
obtained hereunder, such consent, agreement, or approval shall not be  
unreasonably withheld, conditioned, or delayed. Where the Owner is required or  
permitted to act, or omit to act, based on its opinion or judgment, such opinion  
or judgment shall not be unreasonably exercised. To the extent that the  
jurisdiction of any federal or state regulatory authority applies to any part of  
this Agreement and/or the transactions or actions covered by this Agreement, the  
Owner shall cooperate with the Transco and all other Owners to secure any  
  
  
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necessary or desirable approval or acceptance of such regulatory authorities of  
such part of this Agreement and/or such transactions or actions.  
  
 10.13 THIRD-PARTY JOINT AGREEMENTS. This Agreement, including the RTO  
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Transmission Tariff, shall not be construed, interpreted, or applied in such a  
manner as to cause any Owner to be in material breach, anticipatory or  
otherwise, of any agreement in effect on the effective date of this Agreement,  
between such Owner and one or more third parties who are not Owners (regardless  
of the inclusion of one or more other Owners as parties to such agreement) for  
the joint ownership, operation, or maintenance of any electrical facilities  
covered by this Agreement, the RTO Transmission Tariff, the LLC Agreement, or  
the Operating Agreement.  
  
 10.14 NO PARTNERSHIP. This Agreement is not intended, and shall not be  
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construed, interpreted or applied, to create a partnership or joint venture, and  
with the exception of the Transco, in accordance with the terms of this  
Agreement, no Owner shall be entitled to act as an agent for any other Owner  
with respect to the Transco.  
  
 10.15 CURRENT DOCUMENTS. The Transco shall maintain current versions of all  
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protocols, the RTO Transmission Tariff, the Rate Schedules, the LLC Agreement,  
and the Operating Agreement and all amendments thereto and shall post such  
documents on its Internet World Wide Web Site or equivalent form of electronic  
posting and provide such documents to the Owner.  
  
  
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 IN WITNESS WHEREOF, the Parties have caused their duly authorized  
representatives to execute this Agreement, on their respective behalves.  
  
On Behalf of the Transco On Behalf of the Owner  
  
  
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 Name of Owner  
  
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 Title Title  
  
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 Signature Signature  
  
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 Date Date  
  
  
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 APPENDIX A  
 LIST OF NON-TRANSFERRED FACILITIES  
  
 [TO BE ADDED]  
  
  
  
  
  
  
  
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 APPENDIX B  
 PRICING AND REVENUE DISTRIBUTION  
 PROTOCOL  
  
 [TO BE ADDED]  
  
  
  
  
  
  
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