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BEFORE THE ARIZONA CORPORATION COMMISSION

1
2 MARC SPITZER
3 Chairman
4 WILLIAM A. MUNDELL
5 Commissioner
6 JEFF HATCH-MILLER
7 Commissioner
8 MIKE GLEASON
9 Commissioner
10 KRISTIN K. MAYES
11 Commissioner

AZ CORP COMMISSION
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9 IN THE MATTER OF THE
10 APPLICATION OF ARIZONA PUBLIC
11 SERVICE COMPANY FOR A
12 HEARING TO DETERMINE THE FAIR
13 VALUE OF THE UTILITY PROPERTY
14 OF THE COMPANY FOR
15 RATEMAKING PURPOSES, TO FIX A
16 JUST AND REASONABLE RATE OF
17 RETURN THEREON, TO APPROVE
18 RATE SCHEDULES DESIGNED TO
19 DEVELOP SUCH RETURN, AND FOR
20 APPROVAL OF PURCHASED POWER
21 CONTRACT

DOCKET NO. E-01345A-03-0437

**NOTICE OF FILING CROSS-
REBUTTAL TESTIMONY OF
MARK E. FULMER**

17 PLEASE TAKE NOTICE THAT Constellation NewEnergy, Inc. and Strategic
18 Energy, L.L.C. hereby file the attached Cross-Rebuttal Testimony of Mark E. Fulmer in the
19 above-captioned docket.

20 DATED this 30th day of March, 2004.

21 SACKS TIERNEY P.A.

22
23 Arizona Corporation Commission
24 **DOCKETED**

25 MAR 30 2004

26 DOCKETED BY 

27 By Charlene Gibson Robertson
28 Marvin S. Cohen
Charlene Gibson Robertson
Attorneys for Constellation
NewEnergy, Inc. and Strategic
Energy, L.L.C.

SACKS TIERNEY P.A., LAWYERS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

SACKS TIERNEY P.A., LAWYERS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

1 THE ORIGINAL AND 13 COPIES OF
2 THE FOREGOING FILED
3 this ____ day of March, 2004, with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix, Arizona 85007

8 COPIES OF THE FOREGOING
9 HAND-DELIVERED
10 this ____ day of March, 2004, to:

11 MARC SPITZER, Chairman
12 Arizona Corporation Commission
13 1200 West Washington
14 Phoenix, Arizona 85007

15 WILLIAM A. MUNDELL, Commissioner
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007

19 JEFF HATCH-MILLER, Commissioner
20 Arizona Corporation Commission
21 1200 West Washington
22 Phoenix, Arizona 85007

23 MIKE GLEASON, Commissioner
24 Arizona Corporation Commission
25 1200 West Washington
26 Phoenix, Arizona 85007

27 KRISTIN K. MAYES, Commissioner
28 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Lyn Farmer, Chief Administrative Law
Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007
Lfarmer@cc.state.az.us

SACKS TIERNEY P.A., LAWYERS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

1 Christopher Kempley, Chief Counsel
Legal Division
2 Arizona Corporation Commission
1200 West Washington
3 Phoenix, Arizona 85007
Ckempley@cc.state.az.us

4 Ernest Johnson, Director
5 Utilities Division
Arizona Corporation Commission
6 1200 West Washington
Phoenix, Arizona 85007
7 Ejohnson@cc.state.az.us

8 COPIES OF THE FOREGOING
MAILED/E-MAILED
9 this ____ day of March, 2004, to:

10 Jeffrey B. Guldner
11 Kimberly A. Grouse
SNELL & WILMER
400 E. Van Buren Street
12 One Arizona Center
Phoenix, Arizona 85004-2202
13 jguldner@swlaw.com
kgrouse@swlaw.com
14 Attorneys for Arizona Public Service Company

15 Jana Van Ness
Arizona Public Service Company
16 P.O. Box 53999
Mail Station: 9905
17 Phoenix, Arizona 85072-3999
jana.vanness@aps.com

18 Thomas L. Mumaw
19 Karilee S. Ramaley
PINNACLE WEST
20 CAPITAL CORPORATION
P.O. Box 53999, MS 8695
21 Phoenix, Arizona 85072-3999
Thomas.mumaw@pinnaclewest.com
22 Karilee.ramaley@pinnaclewest.com

23 C. Webb Crockett
FENNEMORE CRAIG
24 3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
25 wcrocket@fclaw.com
Attorneys for AECC and Phelps Dodge
26
27
28

- 1 Major Allen G. Erickson
AFCES A/ULT
2 139 Barnes Drive, Suite 1
Tyndall AFB, Florida 32403-5319
3 allen.erickson@tyndall.af.mil
Attorney for FEA
4
5 Michael L. Kurtz
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 2110
6 Cincinnati, Ohio 45202
mkurtzlaw@aol.com
7 Attorneys for Kroger Company
8
9 Scott Wakefield
RUCO
1110 West Washington Street, Suite 220
10 Phoenix, Arizona 85007
swakefield@azruco.com
11
12 Walter W. Meek
AUIA
2100 North Central Avenue, Suite 210
13 Phoenix, Arizona 85067
meek@auia.org
14
15 Nicholas J. Enoch
LUBIN & ENOCH
349 North Fourth Avenue
Phoenix, Arizona 85003
16 Nicholas.enoch@azbar.org
Attorneys for IBEW
17
18 Bill Murphy
MURPHY CONSULTING
2422 East Palo Verde Drive
19 Phoenix, Arizona 85016
billmurphy@cox.net
20 Consultant for Arizona Cogeneration Assn.
21
22 Jay L. Shapiro
Patrick J. Black
FENNEMORE CRAIG
3003 North Central Avenue, Suite 2600
23 Phoenix, Arizona 85012
jshapiro@fclaw.com
24 pblack@fclaw.com
Attorneys for Panda Gila River, L.P.
25
26 Robert W. Geake
ARIZONA WATER COMPANY
P.O. Box 29006
27 Phoenix, Arizona 85038-9006
bgeake@azwater.com
28

1 Andrew W. Bettwy
2 Bridget A. Branigan
3 SOUTHWEST GAS CORPORATION
4 5241 Spring Mountain Road
5 Las Vegas, Nevada 89150
6 andy.bettwy@swgas.com

7 Timothy M. Hogan
8 ARIZONA CENTER FOR LAW
9 IN THE PUBLIC INTEREST
10 202 East McDowell Road, Suite 153
11 Phoenix, Arizona 85004
12 thogan@aclpi.org
13 Attorneys for Western Resource Advocates

14 Paul R. Michaud
15 MARTINEZ & CURTIS, P.C.
16 2712 North 7th Street
17 Phoenix, Arizona 85006-1090
18 pmichaud@martinezcurtis.com
19 Attorneys for Dome Valley Energy Partners, LLC

20 Raymond S. Heyman
21 Laura Schoeler
22 ROSHKA, HEYMAN & DeWULF
23 400 East Van Buren, Suite 800
24 Phoenix, Arizona 85004
25 rheyman@rhd-law.com
26 Attorneys for UniSource Energy Services

27 Deborah R. Scott
28 UNISOURCE ENERGY SERVICES
One South Church Street, Suite 200
Tucson, Arizona 85702
dscott@tucsonelectric.com

J. William Moore
1144 East Jefferson
Phoenix, Arizona 85034
jwilliammoore@worldnet.att.net
Attorney for Kroger Co.

Penny Anderson
Western Resource Advocates
2260 Baseline Road, Suite 200
Boulder, Colorado 80302
penny@westernresources.org

Cynthia Zwick
Arizona Community Action Association
2627 North 3rd Street Suite Two
Phoenix, Arizona 85004
czwick@azcaa.org

28

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2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

S. David Childers
LOW & CHILDERS
2999 North 44th Street, Suite 250
Phoenix, Arizona 85018
dchilders@lowchilders.com
Attorney for Arizona Competitive Power Alliance

James M. Van Nostrand
Katherine McDowell
George M. Galloway
STOEL RIVES
900 SW Fifth Avenue, Ste. 2600
Portland, Oregon 97204
jmvannostrand@stoel.com
kamcdowell@stoel.com
gmgalloway@stoel.com
Attorneys for Arizona Competitive Power Alliance

Greg Patterson, Executive Director
Arizona Competitive Power Alliance
916 West Adams, Suite 3
Phoenix, Arizona 85007
greg@azcpa.org

Michael A. Curtis
MARTINEZ & CURTIS, P.C.
2712 North Seventh Street
Phoenix, Arizona 85006-1090
mcurtis401@aol.com
Attorneys for Town of Wickenburg

Rebecca C. Salisbury
56th Fighter Wing JA
7383 North Litchfield Road
Luke AFB, Arizona 85309-1540
rebecca.salisbury@luke.af.mil
Attorney for Federal Executive Agencies

Jon Poston
AARP Electric Rate Project
6733 East Dale Lane
Cave Creek, Arizona 85331
Jon_Poston@prodigy.net

Coralette Hannon
AARP Department of State Affairs
6705 Reedy Creek Road
Charlotte, North Carolina 28215
channon@aarp.org

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Lawrence V. Robertson
MUNGER CHADWICK
333 North Wilmot, Suite 300
Tucson, Arizona 85711
lvrobertson@mungerchadwick.com
Attorneys for Southwestern Power Group II, LLC,
Mesquite Power and Bowing Power Station

David Berry
Western Resource Advocates
P.O. Box 1064
Scottsdale, Arizona 85252-1064
azbluhill@aol.com

SACKS TIERNEY P.A., LAWYERS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

**BEFORE THE
ARIZONA CORPORATION COMMISSION**

**CROSS-REBUTTAL TESTIMONY OF MARK E. FULMER
On Behalf of Constellation NewEnergy, Inc. and Strategic Energy, L.L.C.**

Docket No. E-01345A-03-0437

March 30, 2004

CROSS-REBUTTAL TESTIMONY OF MARK E. FULMER

I. INTRODUCTION1

II. CROSS-REBUTTAL TO THE TESTIMONY OF MARYLEE DIAZ
CORTEZ1

III. CROSS-REBUTTAL TO THE TESTIMONY OF RICHARD ROSEN5

1 **CROSS-REBUTTAL TESTIMONY OF MARK E. FULMER**

2 **I. INTRODUCTION**

3 **Q: Please state your name and business address.**

4 A: My name is Mark E. Fulmer. I am employed by MRW & Associates, Inc. My business
5 address is 1999 Harrison Street, Suite 1440, Oakland, California.

6 **Q: Are you the same Mark E. Fulmer who filed direct testimony in this docket on**
7 **February 3, 2004?**

8 A. Yes, I am.

9 **Q: What is the purpose of your cross-rebuttal testimony?**

10 A: I will be rebutting portions of the direct testimony of Residential Utility Consumer Office
11 (RUCO) witnesses Marylee Diaz Cortez and Richard Rosen. Specifically, I will address
12 areas where the witnesses recommend that the ACC end retail choice in Arizona.

13 **II. CROSS-REBUTTAL TO THE TESTIMONY OF MARYLEE DIAZ CORTEZ**

14 **Q: At the top of page 8 of her testimony, Ms. Diaz Cortez states three items “required**
15 **in this docket:” “First, to recognize the experiment into retail competition has**
16 **failed. ... Second, to recognize that no retail market has developed, and ratepayers**
17 **have not chosen to seek direct access electric power. Third, to rebuild a retail**
18 **regulatory framework, and abandon the failed specter of a competitive retail**
19 **market.” Do you agree with Ms. Diaz Cortez’s first and second contentions, that**
20 **the retail competition experiment has failed and that no customers are currently**
21 **taking direct access service?**

22 A: Ms. Diaz Cortez has correctly pointed out that customers have not chosen competitive
23 suppliers. However, as I stated in my direct testimony, the fundamental reason for this

1 was the flawed application of generation credits resulting from the APS and TEP
2 settlements. The combination of a reduced price to bundled customers and an artificially
3 low procurement credit made it difficult or impossible for competitive retailers to
4 compete with bundled APS service. This result was accurately predicted by both
5 competitive retailers and the ACC Staff.¹ Failure of this first attempt at competitive retail
6 market design in Arizona is not indicative of retail markets in general.

7 **Q: Do you agree with Ms. Diaz Cortez's statement on page 8 that the failure of retail**
8 **competition "is evident from the California experience and how that situation**
9 **affected local power costs?"**

10 A: The California restructuring attempt failed, with ramifications rippling through the
11 western wholesale power market. But the California approach failed because of poor
12 regulation and restructuring design, such as requiring utilities to purchase over 200
13 million megawatt-hours per year on the spot market² and implementing wholesale market
14 rules that allowed gaming. This does not mean that retail competition as a concept has
15 failed, even in California. As I stated in my direct testimony, retail competition was not a
16 contributor to the California crisis. Even in California, legislators and regulators
17 recognize that retail competition can work and are considering ways to reopen retail
18 choice for commercial and industrial customers. There is at present a very successful
19 competitive retail component in the California market, comprising roughly 14% of the
20 state's load.

¹ See ACC Decision 61973, page 6.

² "Electricity Markets of the California Power Exchange, Annual Report to the Federal Energy Regulatory Commission," California Power Exchange Corporation, July 30, 1999, page 17.

1 Ms. Diaz Cortez incorrectly focuses on mistakes made in the California wholesale
2 market when looking for evidence of retail market failures. Again, my direct testimony
3 highlighted a few examples where retail competition has succeeded. As I noted,
4 competitive retailers now serve roughly 52,000 MW of load across the U.S. Other states
5 with developing retail markets continue to expand retail competition. Maine has a robust
6 retail market, with 60 percent of that state's larger customers choosing alternative
7 suppliers, and in Texas the fraction is even higher. In fact, the Maine experience has
8 been so positive that the commission there has determined that third party provision
9 should be "the norm." The benefits of retail competition are clearly evident in states such
10 as these.

11 **Q: How do you respond to Ms. Diaz Cortez's proposal that the Commission use this**
12 **docket "to rebuild a retail regulatory framework, and abandon the failed specter of**
13 **a competitive retail market?"**

14 A: I do not believe the retail regulatory framework needs to be rebuilt. Too much valuable
15 groundwork has been laid through the development of the competition rules to start from
16 scratch. Modifications to the Competition Rules are needed and are most appropriately
17 addressed by the Electric Competition Advisory Group (ECAG). I believe that these
18 modifications should be made to bring the benefits of a competitive retail power market
19 to Arizona electric customers.

20 **Q: Is Ms. Diaz Cortez correct that "[t]he envisioned benefits [of the competitive electric**
21 **market in Arizona] were only of consequence for large commercial and industrial**
22 **customers" and that only through "aggregation was there much potential for**
23 **residential customer benefit?" (pages 8 and 9)**

1 A: No. All of Arizona can benefit if the state's industries and commercial enterprises have
2 access to lower-cost competitive power. Electricity bill savings would be passed on to
3 customers, employees, shareholders or reinvested into businesses, improving the state's
4 economy as a whole.

5 With respect to direct financial benefit to residential customers, Ms. Diaz Cortez
6 correctly notes that aggregation is one workable way for residential customers to receive
7 lower-price competitive power. Even outside of aggregation, retail electric choice can
8 offer residential customers benefits. For example, residential customers may choose to
9 purchase a larger fraction of power from renewable resources than they would receive
10 through APS. Experience has shown that many individuals are willing to pay more for
11 "green power" than for power generated from nuclear fission or fossil fuels. While
12 purchasing green power through a competitive supplier may not necessarily result in bill
13 savings, simply being able to do so is an undeniable benefit.

14 **Q: Ms. Diaz Cortez notes on page 9 that "residential ratepayers should not be subject**
15 **to the high level of risk that comes from a competitive electric market..." Do you**
16 **agree?**

17 A: Under a bifurcated model such as I propose, residential customers are protected from the
18 price risks of a competitive electric market. Residential customers would receive the
19 regulatory protection that Ms. Diaz Cortez believes is necessary while having the option
20 to purchase competitive power, such as green power, if they so choose.

21 **Q: Should commercial and industrial customers be denied access to supply options**
22 **simply because residential customers may not see an immediate direct financial**
23 **benefit?**

1 A: No. Simply because residential customers may not be able to achieve the same level of
2 financial savings as larger customers is no reason to prohibit Arizona businesses and
3 industries from benefiting from competitive choice. This is not an all-or-nothing
4 proposition: a complete monopoly with all customers receiving take-it-or-leave-it APS
5 tariff pricing, or a system in which everyone is subject to the market. The bifurcated
6 model allows those who need or desire regulatory protection to receive it while allowing
7 other customers the option to receive power products tailored to meet their needs.

8 Furthermore, this is not a zero-sum game. Unlike cost-of-service ratemaking,
9 savings for one group of customers do not come at the expense of another. The potential
10 savings for commercial and industrial customers will not cause residential customers'
11 power bills to increase. Residential customers will be protected.

12 **Q: Do you have any other observations concerning Ms. Diaz Cortez's testimony?**

13 A: Yes. On page 5 of her testimony, Ms Diaz Cortez selectively quotes a portion of the
14 Track A Decision, Decision 65154, suggesting that it supports her proposal to end retail
15 competition. However the very next page of that decision states: "Therefore, the wise
16 course of action is to try to minimize the effects and figure out a way to move forward
17 that will ultimately result in a market structure that performs efficiently and rationally,
18 and that will result in the benefits that were promoted in the move to competition." This
19 statement clearly sets forth a policy goal that is consistent with my proposal of a
20 bifurcated market. Such a market would provide a way for Arizona to move forward
21 with an efficient and rational structure that will provide the benefits of competition.

22 **III. CROSS-REBUTTAL TO THE TESTIMONY OF RICHARD ROSEN**

23 **Q: Do any other RUCO witnesses address retail markets?**

1 A: Yes. RUCO witness Richard Rosen advocates abolishing unbundled tariffs and customer
2 choice.

3 **Q: On page 13 of his testimony, Dr. Rosen testifies: "I recommend to the ACC that**
4 **they repeal the Commission's competition rules that established retail competition**
5 **for retail customers in Arizona... If this is done prior to July 1, 2004, then APS'**
6 **Standard Offer Service will cease to exist as an unbundled service, and traditional**
7 **bundled retail service will again be the only type of electric service offered to retail**
8 **customers." Do you agree with this recommendation?**

9 A: No. I am particularly concerned about Dr. Rosen's recommendation that the ACC void,
10 by July 1, 2004, APS's unbundled service tariffs. I believe that limiting all retail
11 customers to one-size-fits-all traditional bundled service is a mistake. Customers that
12 have the ability to make their own procurement decisions should be allowed the freedom
13 to do so, and unbundled tariffs are necessary to facilitate this freedom. I therefore
14 recommend that the ACC not revoke APS's unbundled tariffs.

15 **Q: Does this conclude your rebuttal testimony?**

16 A: Yes.

17