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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED

OCT 24 2003

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
EXERGY GROUP, INC. FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
COMPETITIVE RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES, EXCEPT
LOCAL EXCHANGE SERVICES

DOCKET NO. T-04165A-03-0094

DECISION NO. 66454

ORDER

Open Meeting
October 21 and 22, 2003
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On February 14, 2003, Exergy Group, Inc. ("Applicant" or "Exergy") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services, except local exchange services, within the State of Arizona.

2. Applicant is a switchless reseller that purchases telecommunications services from a variety of carriers for resale to its customers.

3. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") are public service corporations subject to the jurisdiction of the Commission.

4. Exergy has authority to transact business in the State of Arizona.

5. On July 9, 2003, Exergy filed an Affidavit of Publication indicating compliance with the Commission's notice requirements.

1 6. On August 29, 2003, the Commission's Utilities Division Staff ("Staff") filed a Staff
2 Report, which includes Staff's fair value rate base determination in this matter and recommends
3 approval of the application subject to certain conditions.

4 7. In the Staff Report, Staff stated that Exergy provided financial statements for the
5 period ending August 11, 2003, which list assets of \$804,177, negative equity of \$475,647, and a net
6 loss of 649,147.

7 8. In its Staff Report, Staff stated that based on information obtained from the Applicant,
8 it has determined that Exergy's fair value rate base ("FVRB") is zero. Staff has determined that
9 Applicant's FVRB is too small to be useful in a fair value analysis and is not useful in setting rates.
10 Staff further stated that in general, rates for competitive services are not set according to rate of return
11 regulation, but are heavily influenced by the market. Staff recommended that the Commission not set
12 rates for Exergy based on the fair value of its rate base.

13 9. Staff believes that Exergy has no market power and that the reasonableness of its rates
14 will be evaluated in a market with numerous competitors. In light of the competitive market in which
15 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed
16 tariffs for its competitive services will be just and reasonable, and recommends that the Commission
17 approve them.

18 10. Staff recommended approval of Exergy's application subject to the following:

19 (a) The Applicant should be ordered to comply with all Commission rules, orders,
20 and other requirements relevant to the provision of intrastate telecommunications
21 service;

22 (b) The Applicant should be ordered to maintain its accounts and records as
23 required by the Commission;

24 (c) The Applicant should be ordered to file with the Commission all financial and
25 other reports that the Commission may require, and in a form and at such times as the
26 Commission may designate;

27 (d) The Applicant should be ordered to maintain on file with the Commission all
28 current tariffs and rates, and any service standards that the Commission may require;

 (e) The Applicant should be ordered to comply with the Commission's rules and
modify its tariffs to conform to these rules if it is determined that there is a conflict

1 between the Applicant's tariffs and the Commission's rules;

2 (f) The Applicant should be ordered to cooperate with Commission investigations
3 of customer complaints;

4 (g) The Applicant should be ordered to participate in and contribute to a universal
5 service fund, as required by the Commission;

6 (h) The Applicant should be ordered to notify the Commission immediately upon
7 changes to the Applicant's address or telephone number;

8 (i) If the Applicant, at some future, date wants to collect from its customers an
9 advance, deposit, and/or prepayment, it must file information with the Commission for
10 Staff review. Upon receipt of such filing and after review, Staff would forward its
11 recommendations to the Commission;

12 (j) The Applicant's interexchange service offerings should be classified as
13 competitive pursuant to A.A.C. R14-2-1108;

14 (k) The Applicant's maximum rates should be the maximum rates proposed by the
15 Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive
16 services should be the Applicant's total service long run incremental costs of
17 providing those services as set forth in A.A.C. R14-2-1109; and

18 (l) In the event that the Applicant states only one rate in its proposed tariff for a
19 competitive service, the rate stated should be the effective (actual) price to be charged
20 for the service as well as the service's maximum rate.

21 11. Staff further recommended that Exergy's Certificate should be conditioned upon the
22 Applicant filing conforming tariffs in accordance with this Decision within 365 days of the effective
23 date of this Decision, or 30 days prior to providing service, whichever comes first.

24 12. Staff recommended that if the Applicant fails to meet the timeframes outlined in
25 Findings of Fact No. 11, that Exergy's Certificate should become null and void without further Order
26 of the Commission, and that no time extensions for compliance should be granted.

27 13. The rates proposed by this filing are for competitive services.

28 14. Staff's recommendations as set forth herein are reasonable.

15. Exergy's fair value rate base is zero.

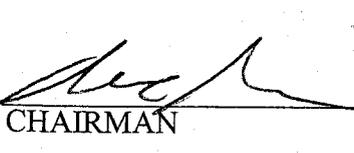
CONCLUSIONS OF LAW

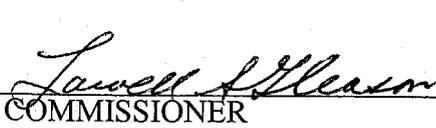
1. Applicant is a public service corporation within the meaning of Article XV of the
Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

1 IT IS FURTHER ORDERED that if Exergy Group, Inc. fails to meet the timeframes outlined
2 in Findings of Fact No. 11 above, that the Certificate conditionally granted herein shall become null
3 and void without further Order of the Commission.

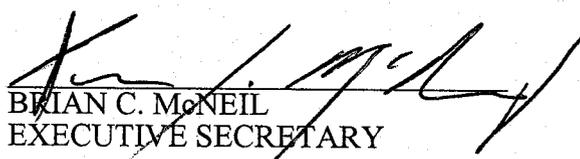
4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN COMMISSIONER COMMISSIONER

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11 COMMISSIONER COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 24th day of October, 2003.

17 
BRIAN C. McNEIL
EXECUTIVE SECRETARY

18 DISSENT _____

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20 DISSENT _____
AP:mj

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1 SERVICE LIST FOR: EXERGY GROUP, INC.

2 DOCKET NO.: T-04165A-03-0094

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