

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER



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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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DATE: JULY 11, 2001  
DOCKET NO.: E-03869A-00-0268

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Lyn Farmer. The recommendation has been filed in the form of an Opinion and Order on:

PDM ENERGY, L.L.C.  
(CC&N/ELECTRIC)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **12:00** p.m. on or before:

JULY 20, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 24, 2001 and JULY 25, 2001

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250.

Arizona Corporation Commission

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JUL 11 2001

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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

IN THE MATTER OF PDM ENERGY, L.L.C. FOR  
A CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE COMPETITIVE  
RETAIL ELECTRIC SERVICES AS AN  
ELECTRIC SERVICE PROVIDER PURSUANT TO  
A.A.C. R14-02-1601.

DOCKET NO. E-03869A-00-0268

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

DATE OF HEARING: March 12, 2001  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Lyn Farmer  
APPEARANCES: Mr. Michael W. Patten, ROSHKA, HEYMAN & DeWULF, PLC, on behalf of PDM Energy, L.L.C.;  
Mr. Todd Wiley, GALLAGHER & KENNEDY, on behalf of Arizona Electric Power Cooperative, Graham County Electric Cooperative, Duncan Valley Electric Cooperative, Trico Electric Cooperative, and Sulphur Springs Electric Cooperative; and  
Ms. Janet Wagner, Staff Attorney, Legal Division on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On April 21, 2000, PDM Energy, L.L.C. ("PDM" or "Company") filed an application for a Certificate of Convenience and Necessity ("Certificate" or "CC&N") to provide competitive retail electric services as an Electric Service Provider ("ESP") in the State of Arizona.

On July 25, 2000, the Utilities Division Staff ("Staff") notified the Company that its application was not sufficient. On August 24, September 14, and November 16, 2000, the Company filed supplemental and additional information.

On January 4, 2001, Staff filed its Staff Report, recommending approval after a hearing.

By Procedural Order issued January 11, 2001, the matter was set for hearing on March 12, 2001.

1 \* \* \* \* \*

2 Having considered the entire record herein and being fully advised in the premises, the  
3 Commission finds, concludes, and orders that:

4 **FINDINGS OF FACT**

5 1. On April 21, 2000, PDM filed its application requesting certification as an ESP with  
6 authority to provide competitive retail electric service in all areas of the State of Arizona which the  
7 Commission has designated as open to retail electric competition, excluding the certificated areas of  
8 Morenci Water & Electric Company ("Morenci") and Ajo Improvement Company ("Ajo"), which are  
9 subsidiaries of PDM's ultimate parent company, Phelps Dodge Company ("Phelps Dodge").

10 2. PDM is an Arizona limited liability company, authorized to do business in Arizona  
11 since 2000.

12 3. On January 3, 2001, Staff filed its Staff Report in this matter, recommending that  
13 PDM be granted a CC&N as an ESP with authority to provide competitive retail services statewide.

14 4. By Procedural Order dated January 11, 2001, the Affected Utilities were joined as  
15 parties in this matter with the opportunity to respond to the Application, and were given notice that if  
16 the Application is granted, the CC&Ns of the Affected Utilities will be rescinded, altered, or  
17 amended pursuant to A.R.S. § 40-252.

18 5. PDM caused notice of the hearing in this matter to be published in the Arizona  
19 Republic on January 22, 2001.

20 6. On March 12, 2001, a public hearing was held as scheduled, with David Ogonowski  
21 testifying on behalf of PDM, and Erinn Adreasen testifying on behalf of Staff. Arizona Electric  
22 Power Cooperative, Graham County Electric Cooperative, Duncan Valley Electric Cooperative, Trico  
23 Electric Cooperative, and Sulphur Springs Valley Electric Cooperative presented no evidence, but did  
24 cross-examine witnesses.<sup>1</sup>

25 7. PDM is wholly-owned by its sole member, Morenci. Morenci is wholly-owned by  
26 Phelps Dodge Corporation. Phelps Dodge also owns Ajo, an Arizona certificated public service  
27

28 <sup>1</sup> Administrative notice is taken of the PG&E CC&N application in Docket No. E-03595A-98-0389.

1 company.

2 8. PDM seeks authority to provide competitive retail electric supply services to  
3 commercial and industrial customers, billing and collection services, and meter service and meter  
4 reading service through a resale arrangement with a certificated provider. PDM also intends to offer  
5 its retail customers other non-certificated services, such as financing options.

6 9. PDM plans to purchase power on the open market and intends to supply customers  
7 through long and short term energy contracts and wholesale power purchases.

8 10. PDM proposed a maximum rate of \$25 per kWh. PDM's witness testified that this  
9 maximum price does not reflect an hourly energy price that customers would normally incur, nor  
10 does it reflect an expected monthly average price per kWh. Typically, the hourly energy prices  
11 would be substantially below this price, but the tariff's maximum price was intentionally set at a  
12 high level to accommodate the potential high variation in hourly market energy prices based on  
13 recent historical experience.

14 11. PDM's witness testified that PDM will be able to draw upon the extensive expertise of  
15 Phelps Dodge in the acquisition of energy for large industrial customers. PDM will contract with  
16 Phelps Dodge to use its personnel that have significant experience in wholesale power acquisition,  
17 scheduling, and delivery, and PDM also plans to obtain additional technical expertise through new  
18 employees and consultants.

19 12. PDM's parent, Phelps Dodge, submitted a statement of intent to provide financial  
20 support to PDM. Phelps Dodge's 1999 Annual Report lists assets of \$8.23 billion, total equity of  
21 \$3.28 billion, retained earnings of \$180.3 million and a net loss of (\$257.8) million on revenues of  
22 \$3.11 billion. Phelps Dodge had net income of \$109.9 million and \$408.7 million for 1998 and  
23 1997, respectively. Based upon this information, Staff believes the Company has sufficient financial  
24 resources available to meet its capitalization requirement or incur operating losses.

25 13. On July 10, 2001, PDM submitted documentation that it had acquired a \$100,000  
26 performance bond.

27 14. Staff's Report recommended approval of the Application subject to the following  
28 conditions:

- 1 (a) PDM must either be its own scheduling coordinator, or have a service acquisition  
2 agreement with a Scheduling Coordinator before it provides service. The service  
3 acquisition agreement must be approved by the Director, Utilities Division, prior  
4 to the provision of service in a service area;
- 5 (b) PDM must have a service acquisition agreement with the Utility Distribution  
6 Company in each service area to be served that is approved by the Director,  
7 Utilities Division, prior to the provision of service in a service area;
- 8 (c) PDM will provide the Director, Utilities Division, with evidence indicating that the  
9 UDC has found it credit worthy prior to provision of any certificated service;
- 10 (d) PDM's tariffs filed in this matter shall be approved on an interim basis;
- 11 (e) PDM shall not provide competitive services until the Commission approves a  
12 Code of Conduct for Morenci Water & Electric Company. Staff recommends that  
13 the Commission address any issues raised by the sharing of employees between  
14 PDM and any other Phelps Dodge entity in the code of conduct proceeding;
- 15 (f) PDM shall apply to the Commission for approval prior to the provision of any  
16 other competitive service not approved at this time;
- 17 (g) PDM shall acquire all necessary licenses prior to actually providing service;
- 18 (h) PDM shall not be authorized to provide competitive service in the certificated area  
19 of an Affected Utility until the Commission has reached a final resolution in that  
20 Affected Utility's respective stranded cost filing;
- 21 (i) PDM shall, prior to providing any specialized billing and collection service in  
22 service areas regulated by the Commission, file a tariff setting forth a maximum  
23 price for specialized billing and collection services;
- 24 (j) PDM shall not provide services in the service areas of Morenci Water & Electric  
25 Company and Ajo Improvement Company;
- 26 (k) PDM shall acquire from Phelps Dodge a clarification of the extent to which it  
27 intends to provide financial support to PDM<sup>2</sup>;
- 28 (l) Applicant should be required to file in this Docket, within 18 months of the date it

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<sup>2</sup> Staff had initially requested additional information on the extent of Phelps Dodge's intent to provide financial support to PDM, but subsequently agreed to PDM obtaining a performance bond. PDM has satisfied this recommendation with its July 10, 2001 filing.

1 first provides service following certification, sufficient information for Staff  
 2 analysis and recommendation for a fair value finding, as well as for an analysis  
 and recommendation for permanent tariff approval. This information must  
 include, at a minimum, the following:

- 3 (1) A dollar amount representing the total revenue for the  
 4 first twelve months of electric service provided to  
 Arizona customers by the Applicant following  
 5 certification, adjusted to reflect the Maximum rates that  
 the Applicant has requested in its tariff. This adjusted  
 6 total revenue figure could be calculated as the number of  
 units sold for all services offered times the maximum  
 7 charge per unit.
- 8 (2) The total actual operating expenses for the first twelve  
 months of electric service provided to Arizona  
 9 customers by the Applicant following certification.
- 10 (3) The value of all assets, listed by major category, used for  
 the first twelve months of electric service provided to  
 11 Arizona customers by the Applicant following  
 certification. Assets are not limited to plant and  
 12 equipment. Items such as office equipment and office  
 supplies should be included in this list.
- 13 (4) Staff further recommended that the Applicant's failure to  
 meet the condition to timely file sufficient information  
 14 for a fair value finding and analysis and  
 recommendation of permanent tariffs shall result in the  
 15 expiration of the Certificate and of the tariffs.

16 15. PDM's witness testified at the hearing that it had no objections to Staff's  
 17 recommendations as stated in Findings of Fact No. 14.

18 16. Staff's recommendations in Findings of Fact No. 14 above are reasonable and  
 19 necessary.

20 17. PDM has the requisite technical and financial capability to provide competitive retail  
 21 electric services within the State of Arizona

### 22 CONCLUSIONS OF LAW

23 1. PDM is a public service corporation within the meaning of Article XV of the Arizona  
 24 Constitution.

25 2. The Commission has jurisdiction over PDM and the subject matter of the application.

26 3. Notice of the application was provided in accordance with law.

27 4. The Arizona Legislature and the Commission have found that competition is in the  
 28 public interest.



1 L.L.C are hereby approved on an interim basis.

2 IT IS FURTHER ORDERED that PDM Energy, L.L.C. shall not be authorized to provide  
3 competitive services in any certificated area of any Affected Utility until the Certificate of  
4 Convenience and Necessity of the respective Affected Utility has been amended.

5 IT IS FURTHER ORDERED that PDM Energy, L.L.C.'s Certificate of Convenience and  
6 Necessity shall be considered null and void without further order from the Commission should PDM  
7 Energy, L.L.C. fail to comply with the above conditions.

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

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN

COMMISSIONER

COMMISSIONER

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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
Secretary of the Arizona Corporation Commission, have  
hereunto set my hand and caused the official seal of the  
Commission to be affixed at the Capitol, in the City of Phoenix,  
this \_\_\_\_ day of \_\_\_\_\_, 2001.

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\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

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DISSENT \_\_\_\_\_  
LAF:dap

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1 SERVICE LIST FOR: PDM ENERGY, L.L.C.  
2 DOCKET NO.: E-03869A-00-0268

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4 Copies mailed to Electric Competition Service List -  
Docket No. RE-00000C-94-0165

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