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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

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CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

DOCKETED BY *sdl*

IN THE MATTER OF THE APPLICATION OF
SIERRA SOUTHWEST ELECTRIC POWER
COOPERATIVE SERVICES, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
RETAIL ELECTRIC SERVICES AS AN
ELECTRIC SERVICE PROVIDER PURSUANT TO
A.A.C. R14-2-1601 *ET SEQ.*

DOCKET NO. E-03665A-98-0681

DECISION NO. 619132

OPINION AND ORDER

DATE OF HEARING: May 27, 1999
PLACE OF HEARING: Phoenix, Arizona
PRESIDING OFFICER: Teena Wolfe
APPEARANCES: Mr. Michael M. Grant, GALLAGHER & KENNEDY, on behalf of Applicant Sierra Southwest Electric Power Cooperative Services, Inc.;
Mr. Jeffrey B. Guldner, SNELL & WILMER, LLP, on behalf of Arizona Public Service Company;
Mr. Russell Jones, O'CONNOR CAVANAGH MOLLOY JONES, on behalf of Duncan Valley Electric Cooperative, Sulphur Springs Valley Electric Cooperative, Inc., and Trico Electric Power Cooperative, Inc.;
Mr. Randall H. Warner, ROSHKA, HEYMAN & DEWULF, PLC, on behalf of Intervenor NEV Southwest, LLC;
Mr. Douglas C. Nelson, DOUGLAS C. NELSON, PC, on behalf of Intervenor Calpine Power Services and Commonwealth Energy Corporation; and
Ms. Janet F. Wagner, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On November 30, 1998, Sierra Southwest Electric Power Cooperative Services, Inc. ("SSWEPCO") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate" or "CC&N") to supply competitive retail electric services as an Electric Service Provider ("ESP") pursuant to A.A.C. R14-2-1601 *et seq.* ("Application"). In its Application, SSWEPCO proposed to provide competitive retail electric

1 service as a Load-Serving Entity and as an Aggregator in all areas in the State of Arizona which the
2 Commission has designated as open to retail electric competition.

3 On April 8, 1999, the Commission's Utilities Division Staff ("Staff") filed its Staff Report in
4 this matter, recommending approval of the Application following a hearing.

5 By Procedural Order dated April 12, 1999, all the Affected Utilities as defined by the Retail
6 Electric Competition Rules¹ were joined as parties in this matter with the opportunity to respond to
7 SSWEPCO's Application, and were given notice that if the Application was granted, their
8 Certificates would be rescinded, altered, or amended pursuant to A.R.S. §40-252. Those parties so
9 joined and noticed include Tucson Electric Power Company, Arizona Public Service Company,
10 Citizens Utilities Company, Arizona Electric Power Cooperative, Trico Electric Cooperative, Duncan
11 Valley Electric Cooperative, Graham County Electric Cooperative, Mohave Electric Cooperative,
12 Sulphur Springs Valley Electric Cooperative, Navopache Electric Cooperative, Ajo Improvement
13 Company, and Morenci Water and Electric Company, and are referred to collectively herein as
14 "Affected Utilities."

15 Other parties who requested and were granted intervention in this matter include NE v
16 Southwest, L.L.C. ("NEV"), Cyprus Climax Metals Company ("Cyprus"), ASARCO Incorporated
17 ("ASARCO"), Enron Corp. ("Enron"), Calpine Corporation ("Calpine"), and Commonwealth Energy
18 Corporation ("Commonwealth").

19 This matter came before a duly authorized Hearing Officer of the Commission at the
20 Commission's offices in Phoenix, Arizona on May 27, 1999. Applicant and Staff presented evidence
21 at the hearing. At the conclusion of the hearing, the matter was taken under advisement pending
22 submission of a Recommended Opinion and Order to the Commission.

23 * * * * *

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

26 ¹ A.A.C. R14-2-1601 *et seq.*, which were stayed on the date the April 12, 1999 Procedural Order was issued. Decision
27 No. 61311 (January 11, 1999) stayed the effectiveness of the Retail Electric Competition Rules. Pursuant to Decision N'
28 61634 (April 23, 1999), Staff has forwarded new Proposed Retail Electric Competition Rules ("Proposed Rules") to
Office of the Secretary of State for Notice of Proposed Rulemaking. Sections 1601 of both the stayed Rules and
Proposed Rules define the same entities as "Affected Utilities."

FINDINGS OF FACT

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2 1. On November 30, 1998, SSWEPCO filed its Application requesting certification as an
3 ESP with authority to provide competitive retail electric services as a Load-Serving Entity and as an
4 Aggregator in all areas in the State of Arizona which the Commission has designated as open to retail
5 electric competition.

6 2. SSWEPCO is an Arizona non-profit electric cooperative formed pursuant to A.R.S. §
7 10-2121 on October 7, 1998 as part of Arizona Electric Power Cooperative's ("AEPCO's") planned
8 restructuring to accommodate the advent of retail electric competition in Arizona.

9 3. On November 30, 1998, SSWEPCO filed with the Commission a Notice of Filing
10 stating that SSWEPCO provided notice of its Application pursuant to stayed A.A.C. R14-2-1603(E)
11 to Affected Utilities, Utility Distribution Companies, and electric utilities not subject to the
12 jurisdiction of the Arizona Corporation Commission in whose territory SSWEPCO wishes to offer
13 service.

14 4. On April 9, 1999, the Commission's Utilities Division Staff ("Staff") filed its Staff
15 Report in this matter, recommending that SSWEPCO be granted a CC&N as an Electric Service
16 Provider with authority to provide competitive retail electric services as a Load-Serving Entity and
17 Aggregator.

18 5. By Procedural Order dated April 12, 1999, the Affected Utilities were joined as parties
19 in this matter with the opportunity to respond to SSWEPCO's Application, and were given notice that
20 if the Application was granted, their CC&Ns would be rescinded, altered, or amended pursuant to
21 A.R.S. §40-252.

22 6. Other parties who requested and were granted intervention in this matter include NEV,
23 Cyprus, ASARCO, Enron, Calpine, and Commonwealth.

24 7. On April 23, 1999, SSWEPCO caused notice of the hearing to be published in the
25 Arizona Daily Star, and on April 26, 1999, SSWEPCO caused notice of the hearing to be published
26 in the Arizona Republic.

27 8. On May 27, 1999, a public hearing was held as scheduled, at which Mr. Dirk C.
28 Minson for Applicant and Mr. Lynn J. Garrett for Staff presented evidence.

1 9. The Application proposed a maximum tariff rate of \$25 per kilowatt hour for electric
2 energy and aggregation.

3 10. SSWEPCO does not seek Certification at this time as a Meter Service Provider or
4 Meter Reading Service Provider, but requests Commission authorization to resell those services to its
5 customers.

6 11. Staff's recommendation at the hearing was that approval of the Application be made
7 subject to the following conditions:

8 (a) Until the Commission-approved stay of the Retail Electric Competition
9 Rules is lifted, SSWEPCO shall not provide competitive retail electric
10 services in the service areas of Affected Utilities under Commission
11 jurisdiction; but SSWEPCO shall be eligible to provide competitive retail
12 electric services in areas opened to competition by enacted House Bill
13 2663;

14 (b) SSWEPCO shall not be eligible to provide Competitive Service in the
15 certificated area of an Affected Utility until the Commission has reached a
16 final resolution in that Affected Utility's respective Stranded Cost filing;

17 (c) SSWEPCO shall have a Service Acquisition Agreement, approved by the
18 Director, Utilities Division, with the Utility Distribution Company in each
19 service area in which it wishes to provide service prior to providing
20 service within that service area;

21 (d) SSWEPCO shall either have a service agreement with a Scheduling
22 Coordinator certified by the Arizona Independent System Administrator or
23 become certified by the Arizona Independent System Administrator as its
24 own Scheduling Coordinator prior to the provision of service;

25 (e) SSWEPCO shall acquire all necessary licenses prior to actually providing
26 service; and

27 (f) SSWEPCO shall develop a consumer information product label consistent
28 with the Disclosure of Information rule approved by the Commission.

12 12. Staff also recommended that prior to providing any competitive residential electric
13 service, SSWEPCO should file a tariff for that service for Commission approval.

14 13. Staff also recommended that prior to providing any billing and collection service in
15 service areas regulated by the Commission, SSWEPCO should file a tariff setting forth a maximum
16 price for billing and collection service.

1 14. On May 11, 1999, SSWEPCO filed a tariff in conformance with Staff's
2 recommendations in Findings of Fact Nos. 12 and 13 above.

3 15. SSWEPCO's tariff is acceptable and presented in a format consistent with competitive
4 tariffs previously approved by the Commission.

5 16. AEPCO's testimony outlined its plans to restructure into three separate cooperative
6 corporations as follows: AEPCO, which will continue to own generation assets and to supply the
7 power needs of its member distribution cooperatives in addition to making other electricity sales at
8 wholesale; Southwest Transmission, which will own and operate the transmission system currently
9 owned by AEPCO; and SSWEPCO, which will operate as an ESP providing electricity and other
10 competitive services to customers eligible for direct access. AEPCO indicated its intent to close the
11 restructuring process by September 30, 1999.

12 17. As a result of the restructuring, SSWEPCO will be subject to Section 1616 of the
13 Proposed Rules.

14 18. The Application states that SSWEPCO "will, through joint marketing plans, assist
15 AEPCO's Class A member distribution cooperatives in competitive efforts inside their service
16 territories."

17 19. In the Staff Report, Staff indicated that it had not concluded its review of AEPCO's
18 planned business restructuring plan and SSWEPCO's proposed "joint marketing plans/activities"
19 with its member distribution cooperatives as outlined in the Application, but that Staff would
20 conclude such a review prior to the hearing.

21 20. At the hearing, however, Mr. Garrett testified that in light of the Proposed Rules'
22 replacement of the former affiliate transaction provisions with the new Code of Conduct provision,
23 Staff could make no recommendations regarding SSWEPCO's relationships or interaction with its
24 member cooperatives. Mr. Garrett indicated that instead, issues associated with AEPCO's proposed
25 restructuring would be examined by the Commission in a later proceeding.

26 21. In its Staff Report, Staff recommended that SSWEPCO's potential utilization of a \$7
27 million guaranteed line of credit from AEPCO as indicated in the Application should be limited to
28 payment requirements for operating expenses only.

1 4. The Arizona Legislature's enactment of House Bill 2663 and the Commission's
2 issuance of Decision Nos. 59943, 60977, 61017, and 61634 have made it clear that competition in the
3 provision of retail electric services is the public policy of Arizona.

4 5. SSWEPCO should receive a CC&N as an ESP authorized to provide services as a
5 Load-Serving Entity and as an Aggregator.

6 6. SSWEPCO's CC&N should be subject to the conditions recommended by Staff in
7 Findings of Fact No. 11 above.

8 7. SSWEPCO should be authorized to resell Meter Service and Meter Reading Service to
9 its customers.

10 8. Prior to providing Competitive Services, SSWEPCO should file documents to be
11 approved by the Utilities Division Director that clarify the extent of the financial commitment
12 SSWEPCO has received from AEPCO and Southwest Transmission, and the availability and amount
13 of the anticipated operating line of credit SSWEPCO is in the process of establishing with the
14 National Rural Utilities Cooperative Finance Corporation.

15 9. Rates and terms and conditions of service adopted herein are fair, reasonable and
16 consistent with the Proposed Rules and with the underlying policies of the Arizona Constitution.

17 10. The Affected Utilities received notice of the possibility of rescission, alteration or
18 amendment of their existing CC&Ns should SSWEPCO receive a CC&N to supply competitive
19 services as an ESP within the service territories of the Affected Utilities.

20 11. The Affected Utilities had an opportunity to be heard on the possibility of rescission,
21 alteration or amendment of their existing CC&Ns.

22 12. Issuance of a CC&N requires the Certificate holder to make an adequate investment
23 and to render competent and adequate service.

24 13. There was no evidence presented in this proceeding indicating that any of the Affected
25 Utilities had failed to render adequate service or had charged unreasonable rates.

26 14. Granting SSWEPCO's Application for a CC&N to supply Competitive Services as an
27 Electric Service Provider within the service territories of the Affected Utilities is in the public
28 interest, because it will provide a reasonable opportunity for the potential benefits of competition to

1 develop in the State of Arizona.

2 15. The affiliate issues associated with SSWEPCO's planned "joint marketing plans" will
3 AEPCO's member distribution cooperatives should be examined by the Commission in a future
4 proceeding on AEPCO's Code of Conduct.

5 16. It is not in the public interest to rescind, alter or amend the CC&N of any Affected
6 Utility prior to final resolution of the Stranded Cost issues for that Affected Utility.

7 **ORDER**

8 IT IS THEREFORE ORDERED that the application of Sierra Southwest Electric Power
9 Cooperative Services, Inc. for an Electric Service Provider Certificate of Convenience and Necessity
10 is hereby granted, and that Sierra Southwest Electric Power Cooperative Services, Inc. is thereby
11 authorized to supply competitive retail electric services as a Load-Serving Entity and as an
12 Aggregator in all areas of the State of Arizona which are opened to retail electric competition, subject
13 to the conditions recommended by Staff in Findings of Fact No. 11 above.

14 IT IS FURTHER ORDERED that prior to providing Competitive Services, Sierra South
15 Electric Power Cooperative Services, Inc. shall file documents to be approved by the Utilities
16 Division Director that clarify the extent of the financial commitment Sierra Southwest Electric Power
17 Cooperative Services, Inc. has received from Arizona Electric Power Cooperative, and the
18 availability and amount of the anticipated operating line of credit Sierra Southwest Electric Power
19 Cooperative Services, Inc. is in the process of establishing with the National Rural Utilities
20 Cooperative Finance Corporation.

21 IT IS FURTHER ORDERED that Sierra Southwest Electric Power Cooperative Services, Inc.
22 is hereby authorized to resell Meter Service and Meter Reading Service to its customers.

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IT IS FURTHER ORDERED that the separation issues associated with any joint marketing plans Sierra Southwest Electric Power Cooperative Services, Inc. anticipates having with Arizona Electric Power Cooperative's member distribution cooperatives shall be examined in the course of the Commission's proceeding on Arizona Electric Power Cooperative's Code of Conduct.

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

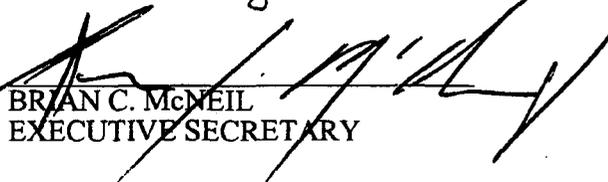
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

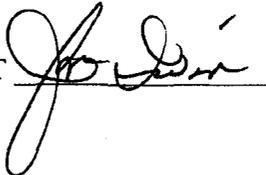

CHAIRMAN


COMMISSIONER


COMMISSIONER

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 27th day of August, 1999.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT
TIW: 

1 SERVICE LIST FOR: SIERRA SOUTHWEST ELECTRIC POWER
COOPERATIVE SERVICES, INC.

2 DOCKET NO. E-03665A-98-0681

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