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Arizona Corporation Commission  
**BEFORE THE ARIZONA CORPORATION COMMISSION**

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JIM IRVIN  
COMMISSIONER-CHAIRMAN  
TONY WEST  
COMMISSIONER  
CARL J. KUNASEK  
COMMISSIONER

JAN 11 1999

DOCKETED BY *ad*

IN THE MATTER OF COMPETITION IN THE  
PROVISIONS OF ELECTRIC SERVICES  
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. RE-00000C-94-0165

REHEARING OF DECISION NO. 61272, STAY  
OF THE ELECTRIC COMPETITION RULES  
AND A TEMPORARY WAIVER FROM  
COMPLIANCE WITH THE ELECTRIC  
COMPETITION RULES.

DECISION NO. 61311

**ORDER**

Open Meeting  
January 5, 1999  
Phoenix, Arizona

BY THE COMMISSION:

**PROCEDURAL HISTORY**

On December 26, 1996, the Arizona Corporation Commission ("Commission") issued Decision No. 59943 which approved new Rules A.A.C. R14-2-1601 through R14-2-1616, the Retail Electric Competition Rules ("Rules"). The Rules established a policy framework for the transition from a non-competitive to a competitive market environment for electric monopolies and customers in the State of Arizona. Decision No. 59943 recognized complex problems regarding the recoverability of stranded investments, intra-state and inter-state reciprocity, the status of new Certificates of Convenience and Necessity ("CC&Ns") and other issues. The Commission further stated:

(We) conclude that these gaps, to the extent that they exist, can be filled in later workshops, working groups, subsequent evidentiary hearings, and perhaps subsequent rulemaking proceedings; while competition is approaching rapidly, the transition to competition will allow time to address these issues and resolve them in a timely fashion.

Eight electric utility companies and the Residential Utility Consumer Office appealed the Rules by suing the Commission in Maricopa County Superior Court. These lawsuits were consolidated,

1 effective January 15, 1998.

2 On June 22, 1998 the Commission issued Decision No. 60977, the Stranded Cost Order,  
3 which required each Affected Utility to file a plan for stranded cost recovery. The Decision provided  
4 Affected Utilities two options: Divestiture/Auction Methodology or Transition Revenues  
5 Methodology. Divestiture requires the Affected Utility to determine stranded costs by divesting all  
6 generation assets. The Transition Revenues Methodology is designed to provide the Affected Utility  
7 "sufficient revenues necessary to maintain financial integrity."

8 On August 10, 1998 the Commission issued Decision No. 61071 which adopted Emergency  
9 Rules for Electric Competition. The Commission stated in part:

10 The safe, efficient and reliable provision of electric service is clothed with the public  
11 interest, and the details resolved by the proposed rules further those interests. Due to  
12 the need to adhere to the originally approved deadline of January 1, 1999 and to  
13 enable all stakeholders to make necessary preparations for this date, the proposed rules  
and revisions are necessary as an emergency measure.

14 In addition, Decision No. 61071 ordered the Hearing Division to schedule oral proceedings on  
15 the Amended Rules. Pursuant to our August 11, 1998 Procedural Order, interested parties, including  
16 the Utilities Division Staff ("Staff") of the Commission, could file written comments up through  
17 October 8, 1998.

18 On November 24, 1998, in contravention of the August 11, 1998 Procedural Order, Staff filed  
19 additional comments in which Staff proposed additional changes to the Amended Rules.

20 On November 25, 1998, the Commission issued Decision No. 61257, which ordered the  
21 Hearing Division to issue on or before December 4, 1998 "a recommended order approving final  
22 amendments to the Retail Electric Competition Rules." It was further ordered that the normal ten-day  
23 time frame for exceptions to the Proposed Order was to be reduced to a five-day period.

24 On November 25, 1998, the Commission issued Decision No. 61259 which established a  
25 procedural schedule for evidentiary hearings of the Staff Settlement Proposals with Arizona Public  
26 Service Company ("APS") and Tucson Electric Power Company ("TEP"), Docket Numbers: E-  
27 01345A-98-0473, E-01345A-97-0773, E-01933A-98-0471, E-01933A-97-0772 and RE-00000C-94-  
28 0165.

1 The Commission required hearings to begin December 3, 1998 at 8:00 a.m. and "each day,  
2 including Saturday, December 5, 1998, and shall continue until 8:00 p.m. each day, or such other  
3 time as is appropriate under the circumstances." The Commission also required that "all parties other  
4 than Staff, APS or TEP shall file testimony, comments, disagreements regarding the Proposed  
5 Agreements by noon on November 30, 1998."

6 On November 30, 1998, the Arizona Attorney General's Office, in association with numerous  
7 other parties, filed a Verified Petition for Special Action and Writ of Mandamus with the Arizona  
8 Supreme Court regarding the Commission's November 25, 1998 Procedural Order, Decision No.  
9 61259. The Attorney General sought a Stay of the Commission's consideration of the Staff  
10 Settlement proposals with APS and TEP.

11 The Attorney General argued that the Supreme Court should Stay the proceeding of the  
12 Commission because the schedule was denying the interested parties their constitutionally protected  
13 right to due process.

14 The Attorney General asserted that the Court should take jurisdiction due in part to:

15 (I)n a matter of days, the Commission is likely to approve the Agreements that would  
16 restructure Arizona's electric energy markets upon a forced, inadequate and truncated  
17 process that involves *ex parte* contacts with a Commissioner and which would deny  
18 the State and other energy consumer petitioners their right to a full and fair hearing.

19 On December 1, 1998, Vice Chief Justice Charles E. Jones granted a Motion for Immediate  
20 Stay of the Procedural Order. Justice Jones wrote in part:

21 The Court has reviewed these agreements and finds them lengthy and complex.  
22 Petitioners received notice of the hearing date four business days prior to the hearing  
23 which will involve detailed evidence on comprehensive issues. This is plainly  
24 insufficient under applicable standards. To consider adequately the interests of  
25 taxpayers and rate payers and to balance those interests carefully against the interests  
26 of investors in private utility companies, the Commission must allow sufficient time to  
27 prepare, evaluate, and present the evidence.

28 On December 9, 1998, the Commission Staff filed a notice with the Supreme Court that the  
Staff Settlement Proposals had been withdrawn from Commission consideration.

On December 11, 1998, the Commission issued Decision No. 61272, which adopted  
Amendments including all additional changes to the Rules proposed by Staff on November 24, 1998.

1 On December 14, 1998, the Commission issued Decision Nos. 61282, 61283, and 61284  
 2 which approved the unbundled and standard offer service tariffs for Graham County Electric  
 3 Cooperative, Navopache Electric Cooperative and Trico Electric Cooperative.

4 On December 23, 1998, the Commission issued Decision No. 61302 which granted  
 5 Navopache Electric Cooperative's application for amendment of its CC&N; a variance from the  
 6 Rules; and Eastern Competitive Solutions' application for a Certificate of Convenience and Necessity  
 7 to provide retail electric services in Navopache's service territory.

8 On December 31, 1998, prior to 5:00 p.m., Parties to the Rules Docket<sup>1</sup> timely filed  
 9 Applications for Rehearing of Decision No. 61272. The Parties argue in part that the Amended Rules  
 10 are fatally flawed with ambiguities and inconsistencies, exceed the constitutional and statutory  
 11 authority of the Commission and cannot be practically implemented at this time. The Parties argue  
 12 the Commission has yet to resolve issues critical to creating a transition to a competitive market.  
 13 These issues include but are not limited to: market structure, federal-state jurisdiction, system  
 14 reliability, must run generation, unbundled tariffs for the three largest investor-owned utilities and  
 15 stranded cost recovery.

16 The Commission held an Open Meeting on December 31, 1998, at 5:30 p.m. after the close of  
 17 normal business hours, to consider Requests for Reconsideration of Decision No. 61272, the  
 18 amended Rules.

#### 19 DISCUSSION

20 Under the Arizona Constitution, the Commission retains the primary role of developing and  
 21 executing public policy for public service corporations. This duty requires the Commission to act in  
 22 a lawful and deliberative manner. It is essential to our form of government that all parties before the  
 23 Commission be provided adequate notice and the proper forum to voice their support or concerns  
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 26 <sup>1</sup> Trico Electric Cooperative, Inc., ASARCO Incorporated, Cyprus Climax Metals Company, Enron Corp.,  
 27 Arizona for Electric Choice and Competition, the Residential Utility Consumer Office, Tucson Electric Power  
 28 Company, Arizona Public Service Company, Arizona Transmission Dependent Utility Group, Sulphur Springs Valley  
 Electric Cooperative, Inc., Graham County Electric Cooperative, Inc., Duncan Valley Electric Cooperative, Inc. and  
 Arizona Electric Power Cooperative, Inc.

1 with public policy decisions that will directly affect our citizens, the consumers and stakeholders in  
2 the industries we regulate.

3 The Commission enacted the initial Rules on December 26, 1996, and specifically assured all  
4 parties that "while competition is approaching rapidly, the transition to competition will allow time to  
5 address these issues and resolve them in a timely fashion." The Commission originally proposed that  
6 electric competition was to begin on January 1, 1999. Unfortunately, the Commission has failed to  
7 adequately address the issues necessary to begin implementing competition in the electric industry in  
8 a timely or consistent manner. Consumers and stakeholders should not bear additional liabilities  
9 from the Commission's actions in electric competition.

10 Therefore, in order to take action consistent with the public interest and due process, the  
11 Commission must stay the Rules, grant all Affected Utilities a waiver from compliance with such  
12 Rules and related Decisions, and grant a Rehearing of Decision No. 61272.

13 Furthermore, the Commission should establish a Procedural Schedule that sets guidelines with  
14 full public and due process, for a program to bring electric competition to Arizona.

15 . . . . .

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

#### 18 **FINDINGS OF FACT**

19 1. On December 26, 1996, in Decision No. 59943, the Commission enacted A.A.C. R14-  
20 2-1601 through R14-2-1616, the Rules. The Rules established a schedule to resolve issues and  
21 phase-in retail electric competition beginning January 1, 1999.

22 2. On June 22, 1998, the Commission adopted Decision No. 60977, the Stranded Cost  
23 Order, in association with the Rules

24 3. On August 10, 1998, in Decision No. 61071, the Commission adopted certain  
25 modifications to the Retail Electric Competition Rules.

26 4. In addition, Decision No. 61071 ordered the Hearing Division to schedule oral  
27 proceedings on the Amended Rules.  
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1 5. Pursuant to our August 11, 1998 Procedural Order, interested parties, including Staff,  
2 could file written comments up through October 8, 1998.

3 6. On November 24, 1998, in contravention of the August 11, 1998 Procedural Order,  
4 Staff filed additional comments in which Staff proposed additional changes to the Amended Rules.

5 7. On November 25, 1998, in Decision No. 61257, the Commission required the Hearing  
6 Division to issue "a recommended order approving amendments to the Retail Electric Competition  
7 Rules" and reduced the normal time frame for exceptions to the Order from ten days to five.

8 8. On December 11, 1998, in Decision No. 61272, the Commission adopted amendments  
9 to the existing Rules, including Staff's additional changes proposed on November 24, 1998.

10 9. On December 31, 1998, numerous Parties timely filed Applications for Rehearing of  
11 Decision No. 61272.

12 10. On December 31, 1998, after normal business hours, in Decision No. 61309, the  
13 Commission denied the Parties' Applications for Rehearing.

14 11. The Commission has not resolved issues critical to creating a transition to a  
15 competitive market in the public interest.

16 12. The Commission has not established a consistent market structure between other  
17 jurisdictions and the Affected Utilities.

18 13. The Commission has not resolved questions of federal and state jurisdiction on  
19 transmission issues critical to system reliability.

20 14. The Commission has not resolved issues on pricing and cost recovery for must run  
21 generation.

22 15. The Commission has not considered nor approved unbundled tariffs for APS, TEP, or  
23 Citizens Utilities Company.

24 16. The Commission has not resolved the issues of stranded costs for any Affected Utility.

25 17. Parties to this Docket should be given an opportunity to provide the Commission with  
26 a list of issues still unresolved by the Rules along with a proposed schedule for resolving such issues  
27 consistent with due process and public hearings.  
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18. On January 4, 1999, RUCO filed an Application for Rehearing on Decision No. 61309.

**CONCLUSIONS OF LAW**

1. Decision No. 61257 pre-empted the Hearing Division from completing its analysis of the comments by the Parties.

2. Decision No. 61272 failed to give adequate consideration of the written comments of Parties in violation of A.R.S. § 41-1024(C).

3. There is good cause for the Commission to stay the effectiveness of the Rules and related Decisions cited herein.

4. The public interest justifies granting the Affected Utilities a temporary waiver from compliance with the Rules until further Order of the Commission.

5. The Commission has authority to receive further comments and schedule further proceedings on the Rules.

6. Decision No. 61309 should be vacated.

7. Reconsideration and/or Rehearing of Decision No. 61272 should be approved.

8. Decision No. 61272 should be stayed pending reconsideration by the Commission.

**ORDER**

IT IS THEREFORE ORDERED that Decision No. 61309 is hereby vacated, and reconsideration of Decision No. 61272 is hereby approved.

IT IS FURTHER ORDERED that all Affected Utilities are hereby granted waivers from compliance with the Retail Electric Competition Rules until further Order of the Commission.

IT IS FURTHER ORDERED that the Retail Electric Competition Rules are hereby stayed until further Order of the Commission.



1 SERVICE LIST FOR:

ELECTRIC COMPETITION RULES

2 DOCKET NO.:

RE-00000C-94- 65

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All parties of the Electric Competition Rules Service List

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Arizona Corporation Commission  
**DOCKETED**

**ARIZONA CORPORATION COMMISSION**

**JAN 13 1999**

COMMISSIONER JIM IRVIN *J. Irvin*

Decision No. 61311, dated January 11, 1999

DOCKETED BY *JM*

**Dissenting Opinion**

Decision No. 61311, which stays Arizona's Retail Electric Competition Rules, is being justified as action, "consistent with the public interest and due process," based upon the argument that the Commission has "failed to adequately address the issues necessary to begin implementing competition in the electric industry in a timely or consistent manner."

Such a view not only ignores the procedural history established in adopting the Rules, but also fails to recognize; 1) hundreds of working group meetings involving business, government and consumer representatives who presented their findings, viewpoints and recommendations to the Commission over the past four years; 2) nearly three weeks of exhaustive hearings, over thirty witnesses and hundreds of pages of written testimony, given in February 1996, on the issue of stranded investment alone; and 3) numerous revisions of the Rules based not only on staff and working group recommendations, but general and specific individual comments submitted by stakeholders participating in the process outlined above.

Instead, the majority embraces Arizona Supreme Court Vice Chief Justice Charles E. Jones' justification for effectively killing the proposed agreements with Arizona Public Service (APS) and Tucson Electric Power (TEP), and misapplies his reasoning - that due

process requires, "sufficient time to prepare, evaluate, and present the evidence" - to the procedures followed in adopting the Rules. Vice Chief Justice Jones narrowly tailored his decision to deal, "solely with the insufficiency of advance notice of the proposed December 3 hearing before the Corporation Commission," and as such, makes no determination as to the authority of the Commission to adopt rules necessary to implement competition (see attached: Page 2, Supplemental Order dated December 4, 1998). Decision No's. 61272 and 61309 were a result of a lengthy, highly complex and open process. This decision not only extends the timeline, but essentially closes the discussion from those stakeholders and parties whose budgets cannot afford the expensive attorneys and expert witnesses more hearings and further analysis will cost. All options have been considered during the last four years, and with competing interests covering the entire spectrum of perspectives, all stakeholders cannot have all issues resolved to complete satisfaction. Endless political wrangling is not going to benefit consumers, and at some point, the process has to end.

While I fail to recognize what public interest has been gained by this decision, I recognize what the public has lost in the past month. First and foremost, the countless hours committed by Commission staff, business and industry representatives, as well as consumer groups, have yet to bear results for consumers and taxpayers. Also, the proposed agreements with APS and TEP would have collectively given ratepayers an additional immediate rate cut, while adding market generation credits and capping stranded cost recovery figures. Meanwhile, SRP customers are enjoying a 5.4% rate decrease as SRP's market affiliate gains valuable experience elsewhere. As the





clarify the parties' understanding of the purpose and scope of the court's stay order dated December 1, 1998:

IT IS ORDERED:

1. The December 1 stay deals solely with the insufficiency of advance notice of the proposed December 3 hearing before the Corporation Commission.

2. The notice period of four business days as provided by the Corporation Commission's Procedural Order of November 25 is unduly restrictive and violates constitutional due process rights of electric customers as asserted by the Attorney General.

3. The stay order does not prevent the establishment of a new hearing date before the Corporation Commission, either by mutual agreement of the parties or by order of the Commission, subject to reasonable notice. However, the parties are entitled to a reasonable and adequate period of time in which to gather, evaluate, and prepare evidence for presentation at the Commission hearing.

4. The court does not pass judgment in this proceeding on the merits or the substance of the proposed settlement agreements with Arizona Public Service Company and Tucson Electric Power Company.

DATED this 4th day of December, 1998.



Charles E. Jones  
Vice Chief Justice

TO: