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BEFORE THE ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission

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CHAIRMAN
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COMMISSIONER

IN THE MATTER OF ARIZONA PUBLIC)
SERVICE COMPANY'S REQUEST FOR)
VARIANCE OF CERTAIN REQUIREMENTS)
OF A.A.C. R14-2-1606)

DOCKET NO. E-01345A-01-0822

**BRIEF OF ARIZONANS FOR
ELECTRIC CHOICE AND
COMPETITION**

On December 11, 2001 the Chief Administrative Law Judge issued a Procedural Order directing the parties in the above-captioned proceeding to file briefs addressing the issues identified both in the Procedural Order and at the Procedural Conference held on December 5, 2001. Arizonans for Electric Choice and Competition ("AECC") hereby submits this brief in response to the Procedural Order.

I. ISSUES TO BE DISCUSSED

The specific issue for discussion identified in the Procedural Order is the appropriate procedural mechanism for the Commission's consideration of APS' requested variance and whether and what additional due process requirements are needed. The issues raised in the Procedural Conference were much broader and included, among other things, the willingness of the Commission to reevaluate certain aspects of the Electric Competition Rules.

1 AECC anticipates that the relatively narrow question of the appropriate procedural
2 mechanism for the Commission's consideration of the requested variance will be thoroughly
3 addressed by a number of other parties to the proceeding. Consequently, AECC will not devote
4 much space to this point *per se*, but will direct its commentary to another, related aspect of
5 proceeding forward: namely, the inherent connection between the subject matter of the APS
6 proposal, and the questions raised by the Commissioners during the Procedural Conference
7 concerning the future cost of standard offer service.

8 **II. ANY PROCEEDING IN WHICH THE COMMISSION CONSIDERS THE APS**
9 **PROPOSAL IS ALSO THE APPROPRIATE FORUM FOR ADDRESSING THE**
10 **COMMISSION'S CONCERNS REGARDING THE FUTURE COST OF**
11 **STANDARD OFFER SERVICE.**
12

13 AECC anticipates that the Commission will, in some fashion, consider the substance and
14 the reasons behind APS' proposal. When that occurs, the Commission will, of necessity, be
15 required to evaluate the mechanism used to set the future cost basis of standard offer service. In
16 so doing, the Commission will be dealing with the core issue raised by Chairman Mundell during
17 the Procedural Conference, namely, the question of what is in store for standard offer customers
18 after the standard offer rates established in the APS Settlement Agreement expire on June 30,
19 2004.

20 The APS request for variance and the accompanying proposal for a long-term supply
21 contract deal exclusively with issues pertaining to the provision of standard offer service. In
22 particular, the Rule from which APS seeks a variance requires that "power purchased by an
23 investor owned Utility Distribution Company for Standard Offer Service shall be acquired from
24 the competitive market through prudent, arm's length transactions, and with at least 50% through

1 a competitive bid process.”¹To make its case, APS will have to demonstrate that the alternative
2 approach it is recommending – a long-term contract with its affiliate – is a superior outcome for
3 standard offer customers after 2004 than would obtain under the provisions of the Rule.

4 AECC anticipates that APS’ proposal will be vigorously challenged by other parties and
5 that these parties will attempt to show that the existing bidding provisions in the Rule will
6 provide a superior result for standard offer customers after 2004.

7 In presiding over that debate and in ruling on it, the Commission would grapple directly
8 with its own expressed concerns about standard offer service in the post-2004 period. Therefore,
9 AECC recommends that any upcoming proceeding on APS’ request for a variance be viewed as
10 the appropriate forum for addressing Commission’s core concerns regarding the future cost of
11 standard offer service.

12 **III. THE PROCEEDING TO REVIEW THE APS PROPOSAL SHOULD NOT BE**
13 **TURNED INTO A COMPLETE RE-EXAMINATION OF THE ELECTRIC**
14 **COMPETITION RULES AND THE APS OR TEP SETTLEMENT**
15 **AGREEMENTS.**
16

17 The Electric Competition Rules and the APS and TEP Settlements provide for customer
18 choice with standard offer service as an important backstop. The new proposal put forward by
19 APS concerns the backstop, not customer choice. AECC submits that, upon reflection, parties
20 and policy-makers will also conclude that the chief policy concerns for Arizona raised by the
21 California experience are the cost implications for standard offer service. Therefore, AECC
22 encourages the Commissioners to undertake their promised review of Arizona’s electric policy

¹ A.A.C.R-14-2-1606(B).

1 direction – as it pertains to the future provision of standard offer service – as part of the
2 Commission’s evaluation of the APS proposal.

3 Contrary to the open-ended agenda advocated by Staff in its Response filing ², it is
4 simply not necessary to re-open the issue of customer choice and the Settlement Agreements in
5 order to consider the reasons behind the APS proposal or the proposal itself. Indeed, the
6 Commission is likely to find that, in thoroughly considering the matter of the future cost of
7 standard offer service, the major policy concerns raised by events in California will be addressed
8 satisfactorily. Following such a review, the Commission may find it useful to engage in a
9 “situation analysis” to assess the status of, and possible impediments to, the implementation of
10 direct access service. To the extent the Commission’s policy concerns are not allayed after such
11 an analysis, then AECC would encourage additional, carefully-managed steps to evaluate and
12 improve the Electric Competition Rules to the extent that such changes do not deprive any party
13 to the Settlement Agreements of the benefit of their bargain.

14 **IV. CONCLUSION**

15 AECC anticipates that the Commission will, in some fashion, consider the substance of
16 and the reasons behind APS’ proposal. In addressing that proposal, the Commission would also
17 be addressing directly its own expressed concerns about standard offer service in the post-2004
18 period. AECC encourages the Commissioners to undertake their promised review of Arizona’s
19 electric policy direction – as it pertains to the future provision of standard offer service – as part
20 of any Commission consideration of the APS proposal.

² See “Staff’s Response” filed November 16, 2001 in this docket, esp. pp. 7-9.

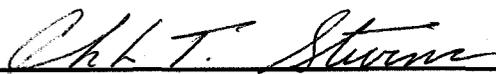
1 It is not necessary to re-open the issue of customer choice and the Settlement Agreements
2 in order to consider the APS proposal. However, following its review of the APS proposal and
3 the implications for standard offer service, the Commission may find it useful to conduct a
4 “situation analysis” to assess the status of, and possible impediments to, the implementation of
5 direct access service.

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7 RESPECTFULLY SUBMITTED this 19th day of December, 2001.

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