STATE OF ARIZONA
BEFORE THE
ARIZONA CORPORATION COMMISSION

Re: Electric Competition:		
Generic Docket for Electric Restructuring	)	Docket No. E-00000A-02-0051
Electric Competition Rules	)	Docket No. RE-00000C-00-0275
AISA	)	Docket No. E-00000A-01-0630
APS Request for A Variance	)	Docket No. E-01345A-01-0822

COMMENTS OF STRATEGIC ENERGY L.L.C.

Introduction

The Strategic Energy L.L.C. ("Strategic Energy") appreciates the opportunity to respond the Arizona Corporation Commission's (ACC or Commission) request for Comments on issues related to the Commission's discussion of the state's electric competition rules. Strategic Energy is a potential Energy Service Provider in Arizona and is currently providing service all across North America. Founded in 1986, Strategic Energy serves over 19,000 customers across the nation and is dedicated to end-users energy needs.

Strategic Energy believes that all consumers have a right to choose their energy provider. Competition is the most effective tool to enhance reliability, bolster economic development and provide new services to consumers. While acknowledging that every state is unique, Strategic Energy believes that every consumer nationwide can and will benefit from having a choice of electricity suppliers.

Strategic Energy has attempted to provide comments in line with identification of issues in the Commission's notice. Given that Strategic Energy is an Energy Service Supplier, we have tried to focus simply on the issues that we have and continue to encounter and not address those issues which may be slightly removed from our core business. We do however, encourage the Commission's review of all issues as it takes all pieces to produce a successful competitive energy market.

I. Identification of Retail Electric Products and Services for Which Competition Could Bring Benefits

Generation

Competition in the wholesale electric generation business is quickly becoming the principal way additional demand for electricity is being managed across the country. The competitive supplier share of installed capacity has increased almost four-fold in less than five years, rising from 70.3 Gigawatts (GW) in 1997 to 319.5 GW in 2001. During 1997-2001, the amount of competitive generation has grown from 8.5 percent of total U.S. capacity in 1997, to 35.6 percent of the total in 2001.

Generating facilities that competitive power suppliers construct are built at stockholder risk. This shifting of risk from utility ratepayers to merchant power investors indicates that, with respect to development projects financed by new entrants, certificates of need are obsolete. Experience with the emerging markets has demonstrated that the competitive pressures of supply and demand are an effective substitute for a regulatory certification process, particularly where private stockholders, not ratepayers, are at-risk. In light of the availability and willingness of competitive power suppliers to meet the nation's electricity needs, there is no reason to require utility ratepayers to bear the risks associated with utility investment in power generation when other market participants can insulate consumers from those risks.

Aggregation Services

There is every indication that residential customers can benefit significantly from competition. Residential customers can benefit directly from all the cost efficiencies and service gains competition will deliver. The aggregation of residential and small business customers' needs could result in additional savings. Aggregation provides opportunities for small customers, who may not otherwise be the target of marketing efforts by retail energy suppliers, to participate in and benefit from the competitive market. Through aggregation, small customers are able to pool their purchasing power and wield the same influence as much larger customers. As the competitive retail market evolves, aggregators may also be able to secure valuable services, such as consolidated billing, energy management services, and energy use analysis for smaller use customers. Aggregation is an increasingly effective tool for maximizing savings and mitigating risk in the competitive power market. For instance, Green Mountain Energy was selected in February 2001 to serve more than 400,000 electricity customers in Ohio in the nation's largest-ever energy aggregation contract to-date. The Northeast Ohio Public Energy Council formed the electricity-buying group to serve nearly 100 communities in the state.

Price Benefits

Strategic Energy will provide and objectively manage the electricity supply to customers on a real-time basis. Strategic Energy's unique Ceiling Price structure sets a Ceiling Price based on the customers usage, protecting the company from electricity price risk in the volatile California market. Strategic Energy then works through its Energy Management Center 24 hours a day, 365 days a year to objectively manage the customers electricity portfolio. This real-time marketplace presence and objective approach allows Strategic Energy to utilize the market, drive down electricity costs, and pass the savings back to the customer. Customers can save significant dollars beyond the savings guaranteed by Strategic Energy's Ceiling Price

Strategic Energy offers a range of products and services, which includes a myriad of products and services that are not available to customers without competition. Strategic Energy has the ability to negotiate long-term contracts for customers that enables them price certainty in an uncertain and volatile marketplace.

II. Relationship of the Current Regulatory Regime to Competition

Price Caps

Price controls prevent demand-side response to rising prices. For competitive markets to flourish, supply and demand must interact freely to determine the price, thereby allowing market participants to make intelligent resource allocation decisions. At just the time when we need to attract capital for new generation and to expand and improve the electrical system's infrastructure, price controls create uncertainty that will discourage and delay this much-needed investment. This narrow speculation regarding demand-side responsiveness amounts to a high stakes gamble that consumers are harmed more by short-lived, infrequent price spikes than by long-term delays in generation investment needed for reliability purposes. Rather than speculative short-term outcomes, the wiser approach to both price spikes and reliability concerns is to utilize free market forces and the investment capital they will provide.

Finally, price controls divert policymakers from making the structural changes necessary to assure a fully competitive market that offers competitive prices, low risk, high reliability and superior environmental performance. Policymakers should concentrate on developing market-oriented solutions to any remaining market flaws.

Customer Switching Rules

There are several aspects of switching rules that are critical to the successful development of retail markets. Uniform business rules for switching customer accounts are necessary for a properly functioning competitive marketplace. Switching fees are a significant barrier to competitive suppliers in developing markets, since high customer acquisition costs discourage participation in retail markets. Lengthy notice periods, and cumbersome authorization requirements, before consumers can switch to a new electricity supplier also pose a threat to the competitiveness of new market entrants. When a customer initiates contact with its distribution company to authorize the switch, and provides identifying information, additional barriers to finalize this transaction should not be imposed. The distribution company's only obligation should be to record the change for billing purposes. Customers who are solicited by a supplier to switch should not be switched until the new supplier obtains authorization in one of three methods: oral verification by an independent third-party, electronic verification or written authorization.

Competitive Bidding for Standard Offer Service

The importance of standard offer service issues to the development of competitive markets cannot be overstated. In the transition to a fully competitive market, legislators, regulators and consumer advocates have been understandably concerned about ensuring small customers receive continued generation service at a reasonable price. Customers should be assured a continuous source of electricity, even if they do not choose a new supplier. In addition to those customers who choose not to choose, other customers who must also be assured access to electricity include: (1) customers who need standard offer service because they are unable or unqualified to obtain service from a competitive power supplier, and (2) customers whose service has, for whatever reason, been terminated by their supplier and who need "backstop" service. State regulators must decide who will provide the electricity service to these customers. It is important that policymakers design standard offer service programs to maximize customers' choice, and minimize the number of customers who take standard offer service.

Allowing new market entrants (including competitive utility affiliates) to bid to provide standard offer service is essential. If customers can, by not choosing, remain with the incumbent utility, then the incumbent utility has gained a significant competitive advantage. Competitive suppliers will have a tremendous struggle to enter this market, which may discourage them from doing so.

III. Industry Events External to Arizona

The California Experience

During the summer of 2000, the California energy market fell victim to a confluence of circumstances: inadequate generation, lack of demand-side programs, lethargic siting approvals, low hydroelectricity due to drought conditions, significant load growth throughout the West, the inability of load-serving entities to hedge risks, masked price signals to retail customers and poorly-functioning retail markets. We urge the Commission to: (1) encourage new generation, (2) develop effective demand-response programs; (3) expand transmission infrastructure and improve interconnection procedures; (4) provide credit assurances; (5) increase natural gas pipeline capacity; (6) avoid price caps and other price controls; and, (7) stimulate retail services by allowing more customer choices.

Enron Bankruptcy

Although Enron was closely associated with the move to open U.S. energy markets to competition, the company's collapse is unrelated to the industry restructuring now underway. Financial analysts, economists and regulators agree that Enron's fall was the result of investors and financiers pulling back after they lost confidence in the company's financial disclosures and debt levels — not because of problems in competitive energy markets. U.S. Secretary of Energy Spencer Abraham is among those making this point. "In the face of Enron's collapse, the largest bankruptcy in U.S. history, there were no price spikes, no trading panics, no electricity outages and no gas shortages," Abraham said. "… there is no indication that the energy side of Enron's business was the cause of its collapse."

Energy marketing and trading continued without interruption in Enron's wake. Ironically, the competition that Enron helped establish ensured that the company's departure did not become a crisis in terms of energy supply – as trades were picked up by other companies, energy supplies were undisturbed, power flowed from generators to utilities to consumers, and prices remained stable.

Economists, analysts and regulators have been quick to point out that Enron's fall appears to be the result of Enron's financial disclosure and accounting practices, not restructured electricity markets. In fact, many of these experts have pointed to the lack of disruption in energy trading, and the marketplace's swift move to marginalize Enron once its troubles were revealed, as proof that open markets are working in the best interests of consumers and the economy.

ICAP ("Installed Capacity")

There is a charge in the customer's electricity bill in the Northeast U.S. called an "ICAP" charge. For the customer, this charge behaves just like a tax[1], only without any benefits usually associated with a tax. The charge already drains an estimated $2 billion a year from the economy in Pennsylvania, New Jersey and Maryland while providing absolutely no benefit. The charge costs New York City homes and businesses $1.2 billion a year and approximately $0.4 billion a year in New England.

The recipients of the ICAP windfall have obscured the charge by characterizing it as a reliability issue. The use the term "reliability" to disguise their true intent – to maintain this windfall charge and continue to extract monopoly money charges after retail competition is introduced. Further demonstrating that the reliability issue is a ruse, the New England utilities that sold all their generation asked FERC to eliminate the ICAP charge proving that there is no reliability benefit. Utilities that still own their generators have a vested interest in keeping ICAP for reasons that have everything to do with money and nothing to do with reliability

The ICAP charge is the single biggest threat to the success of the Pennsylvania retail choice program because it absorbs all of the potential savings retail customers would otherwise receive.

Conclusion

Due to federal and state initiatives, the power industry is being transformed with the ultimate goal of a successful and reliable competitive energy marketplace. Strategic Energy encourages the Commission to remain on the forefront of this evolution and move towards a robust and competitive wholesale and retail market in Arizona.

Strategic Energy, once again, applauds the Commission for its proactive approach and thanks the Commission for this opportunity to provide some initial comments on a very important issue to the State of Arizona. Strategic Energy sincerely hopes that we will be able to assist the Commission in the future and encourage your questions and inquiries. If you do have any additional questions regarding these issues, please do not hesitate to contact us. We are more than happy to be a source of information and expertise to you and your staff as you work towards the development of a successful competitive energy marketplace.

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[1] Technically, the fee has the economic effects of a tax, but is much worse than a tax. Merriam-Webster defines the word tax as ***1 a:*** *a charge usually of money imposed by authority on persons or property for public purposes* ***b:*** *a sum levied on members of an organization to defray expenses.* In this case, the charge is imposed by an entity without taxing authority, and the revenues collected are not designated for pubic purposes. Nor is the charge levied on members of PJM to defray PJM's expenses

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon each person designated on the official service list compiled by the Clerk in this proceeding.

Dated at Irvine, California this 25th day of February 25, 2002

Andrea M. Weller