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BEFORE THE ARIZONA CORPORATIVE COMMISSION

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2006 FEB -9 A 9 16
AZ CORP COMMISSION
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IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

Docket No. E-00000A-02-0051

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE
ARIZONA INDEPENDENT SCHEDULING
ADMINISTRATOR.

Docket No. E-00000A-01-0630

**RUCO'S EXCEPTIONS TO THE RECOMMENDED OPINION
AND ORDER ISSUED JANUARY 31, 2006**

The Residential Utility Consumer Office ("RUCO") files these exceptions to the Recommended Opinion and Order ("ROO") issued January 31, 2006 regarding continuation of the Arizona Independent Scheduling Administrator ("AISA"). At the time of the hearing in this proceeding in 2003, RUCO supported continued funding of a scaled-down AISA pending the Commission's reevaluation of the Electric Competition Rules ("Rules"). However, with retail electric competition no more than a dream (or more likely a nightmare), and the Commission's attention focused on protecting customers from the impacts of wholesale competition, RUCO can no longer endorse customers continuing to pay the costs to maintain a framework for retail

1 competition. RUCO therefore recommends that the Commission modify the ROO to permit the
2 Affected Utilities to terminate their financial support of the AISA.

3 Four years ago the Commission first began its review of its electric restructuring rules.¹
4 Since that time, the Commission has made a monumental change of course in the degree to
5 which it was willing to rely on wholesale electric markets to meet the needs of Arizona
6 consumers.² In addition, the Arizona Court of Appeals reversed portions of the decision
7 adopting the Rules, and upheld the vacating of the certificates of convenience and necessity
8 that had been issued to all of the electric service providers.³ The Commission's Electric
9 Competition Advisory Group, created to identify impediments to competition, held only one
10 meeting, over two years ago, and has had no activity since then. During those same four
11 years, the Commission has focused significant attention on insuring that customers are
12 protected from the impacts of costs of wholesale energy markets. It is no surprise that little
13 attention has been paid to retail competition.

14 The ROO concludes that the AISA "provides the important public benefit of keeping the
15 *possibility* of retail access available to Arizona consumers at a minimal cost." ROO at 15
16 (emphasis added). While the costs of the AISA itself may be arguably minimal, they are not
17 the only costs customers are paying, or deferring for future payment, related to the "possibility
18 of retail access." Further, retail competition remains elusive, and the economic and legal
19 barriers to it have only mounted as time has passed. Customers should no longer be required

21 ¹ See Procedural Order dated January 22, 2002, opening Docket No. E-00000A-02-0051, In the
22 Matter of the Generic Proceedings Concerning Electric Restructuring Issues.

23 ² See Decision No. 65154 (September 10, 2002) ("Track A Order"), which ordered Arizona Public
24 Service Company ("APS") and Tucson Electric Power Company ("TEP") to cancel plans for divestiture and
stayed requirements that APS and TEP acquire all power for standard offer customers from the competitive
market.

³ *Phelps Dodge v. Arizona Electric Power Cooperative*, 207 Ariz. 95, 83 P.3d 573 (App. 2004).

1 to pay to hold an "option" on retail competition when that "option" is so clearly not in the
2 money.

3 The costs that customers have borne over the ten years since the Commission first
4 began its venture to open retail electric markets have mounted, and continue to accrue. And,
5 they include costs far beyond those of the AISA. In its 2003 rate case, APS indicated it had
6 deferred \$34 million in costs related to the transition to competition. It further indicated it was
7 incurring nearly \$1.5 million in ongoing annual costs to comply with the Commission's electric
8 competition rules, of which less than 10 percent was APS's share of the down-sized AISA.
9 TEP's 2004 rate review filing likewise indicated that it had deferred \$11 million of costs related
10 to opening its markets to for retail access.

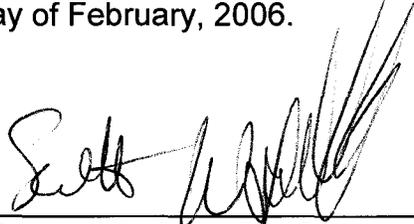
11 Acknowledgment that *retail* competition has failed does not require that the Commission
12 end its efforts to spur *wholesale* competition. The Track B Order and the approval of APS's
13 2003 rate case both contain important provisions requiring the incumbent utilities to attempt to
14 acquire resources from the wholesale market, provided that they are available in that market at
15 less-than-cost-based prices. Those efforts can continue to allow the wholesale market to
16 mature, while all retail customers remain with their incumbent providers.

17 In today's environment of skyrocketing energy costs, the Commission has asked at
18 least one of its regulated electric companies to do what it can to cut costs to alleviate financial
19 pressures that may ultimately affect customers.⁴ The Commission can likewise do its part to
20 reduce costs by eliminating the requirement that Affected Utilities stand ready for a retail
21 competitive market that has shown no hope of materializing and that is failing elsewhere. As a
22

23 ⁴ See Commissioner Mayes' letters of January 11, 2006 and February 1, 2006 to APS in Docket No.
24 E-01345A-06-0009.

1 first step, the Commission should no longer require the utilities and their customers to fund the
2 AISA.

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4 RESPECTFULLY SUBMITTED this 9th day of February, 2006.

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