



0000058206

# OPEN MEETING ITEM

MARC SPITZER - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES



## ARIZONA CORPORATION COMMISSION

**ORIGINAL**  
BRIAN C. MCNEIL  
Executive Secretary  
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ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

DATE: OCTOBER 6, 2003

DOCKET NO: T-4165A-03-0094

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amanda Pope. The recommendation has been filed in the form of an Order on:

EXERGY GROUP, INC.  
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

OCTOBER 15, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

OCTOBER 21, 2003 and OCTOBER 22, 2003

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

**DOCKETED**

OCT 06 2003

DOCKETED BY 

BRIAN C. MCNEIL  
EXECUTIVE SECRETARY

1  
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 MARC SPITZER, Chairman  
5 WILLIAM A. MUNDELL  
6 JEFF HATCH-MILLER  
7 MIKE GLEASON  
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF  
10 EXERGY GROUP, INC. FOR A CERTIFICATE OF  
11 CONVENIENCE AND NECESSITY TO PROVIDE  
12 COMPETITIVE RESOLD INTEREXCHANGE  
13 TELECOMMUNICATIONS SERVICES, EXCEPT  
14 LOCAL EXCHANGE SERVICES

DOCKET NO. T-04165A-03-0094

DECISION NO. \_\_\_\_\_

15 **ORDER**

16 Open Meeting  
17 October 21 and 22, 2003  
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 Having considered the entire record herein and being fully advised in the premises, the  
21 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

22 **FINDINGS OF FACT**

23 1. On February 14, 2003, Exergy Group, Inc. ("Applicant" or "Exergy") filed with the  
24 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide  
25 competitive resold interexchange telecommunications services, except local exchange services,  
26 within the State of Arizona.

27 2. Applicant is a switchless reseller that purchases telecommunications services from a  
28 variety of carriers for resale to its customers.

1 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold  
2 telecommunications providers ("resellers") are public service corporations subject to the jurisdiction  
3 of the Commission.

4 4. Exergy has authority to transact business in the State of Arizona.

5 5. On July 9, 2003, Exergy filed an Affidavit of Publication indicating compliance with  
6 the Commission's notice requirements.

1           6.       On August 29, 2003, the Commission's Utilities Division Staff ("Staff") filed a Staff  
2 Report, which includes Staff's fair value rate base determination in this matter and recommends  
3 approval of the application subject to certain conditions.

4           7.       In the Staff Report, Staff stated that Exergy provided financial statements for the  
5 period ending August 11, 2003, which list assets of \$804,177, negative equity of \$475,647, and a net  
6 loss of 649,147.

7           8.       In its Staff Report, Staff stated that based on information obtained from the Applicant,  
8 it has determined that Exergy's fair value rate base ("FVRB") is zero. Staff has determined that  
9 Applicant's FVRB is too small to be useful in a fair value analysis and is not useful in setting rates.  
10 Staff further stated that in general, rates for competitive services are not set according to rate of return  
11 regulation, but are heavily influenced by the market. Staff recommended that the Commission not set  
12 rates for Exergy based on the fair value of its rate base.

13           9.       Staff believes that Exergy has no market power and that the reasonableness of its rates  
14 will be evaluated in a market with numerous competitors. In light of the competitive market in which  
15 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed  
16 tariffs for its competitive services will be just and reasonable, and recommends that the Commission  
17 approve them.

18           10.       Staff recommended approval of Exergy's application subject to the following:

19                   (a)       The Applicant should be ordered to comply with all Commission rules, orders,  
20 and other requirements relevant to the provision of intrastate telecommunications  
21 service;

22                   (b)       The Applicant should be ordered to maintain its accounts and records as  
23 required by the Commission;

24                   (c)       The Applicant should be ordered to file with the Commission all financial and  
25 other reports that the Commission may require, and in a form and at such times as the  
26 Commission may designate;

27                   (d)       The Applicant should be ordered to maintain on file with the Commission all  
28 current tariffs and rates, and any service standards that the Commission may require;

                  (e)       The Applicant should be ordered to comply with the Commission's rules and  
modify its tariffs to conform to these rules if it is determined that there is a conflict

1 between the Applicant's tariffs and the Commission's rules;

2 (f) The Applicant should be ordered to cooperate with Commission investigations  
3 of customer complaints;

4 (g) The Applicant should be ordered to participate in and contribute to a universal  
5 service fund, as required by the Commission;

6 (h) The Applicant should be ordered to notify the Commission immediately upon  
7 changes to the Applicant's address or telephone number;

8 (i) If the Applicant, at some future, date wants to collect from its customers an  
9 advance, deposit, and/or prepayment, it must file information with the Commission for  
10 Staff review. Upon receipt of such filing and after review, Staff would forward its  
11 recommendations to the Commission;

12 (j) The Applicant's interexchange service offerings should be classified as  
13 competitive pursuant to A.A.C. R14-2-1108;

14 (k) The Applicant's maximum rates should be the maximum rates proposed by the  
15 Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive  
16 services should be the Applicant's total service long run incremental costs of  
17 providing those services as set forth in A.A.C. R14-2-1109; and

18 (l) In the event that the Applicant states only one rate in its proposed tariff for a  
19 competitive service, the rate stated should be the effective (actual) price to be charged  
20 for the service as well as the service's maximum rate.

21 11. Staff further recommended that Exergy's Certificate should be conditioned upon the  
22 Applicant filing conforming tariffs in accordance with this Decision within 365 days of the effective  
23 date of this Decision, or 30 days prior to providing service, whichever comes first.

24 12. Staff recommended that if the Applicant fails to meet the timeframes outlined in  
25 Findings of Fact No. 11, that Exergy's Certificate should become null and void without further Order  
26 of the Commission, and that no time extensions for compliance should be granted.

27 13. The rates proposed by this filing are for competitive services.

28 14. Staff's recommendations as set forth herein are reasonable.

15. Exergy's fair value rate base is zero.

### CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the  
Arizona Constitution and A.R.S. §§ 40-281 and 40-282.



1 IT IS FURTHER ORDERED that if Exergy Group, Inc. fails to meet the timeframes outlined  
2 in Findings of Fact No. 11 above, that the Certificate conditionally granted herein shall become null  
3 and void without further Order of the Commission.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN COMMISSIONER COMMISSIONER

9  
10  
11 COMMISSIONER COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
13 Secretary of the Arizona Corporation Commission, have  
14 hereunto set my hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the City of Phoenix,  
16 this \_\_\_\_ day of \_\_\_\_\_, 2003.

17 BRIAN C. McNEIL  
EXECUTIVE SECRETARY

18 DISSENT \_\_\_\_\_

19  
20 DISSENT \_\_\_\_\_  
AP:mj

1 SERVICE LIST FOR: EXERGY GROUP, INC.

2 DOCKET NO.: T-04165A-03-0094

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