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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
CHAIRMAN
WILLIAM A. MUNDELL
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IN THE MATTER OF COMPETITION IN THE PROVISION OF ELECTRIC SERVICES THROUGHOUT THE STATE OF ARIZONA	DOCKET NO. RE-00000C-94-0165
IN THE MATTER OF THE STRANDED COST FILING AND REQUEST FOR A WAIVER OF CERTAIN PORTIONS OF THE RULES FILED BY MOHAVE ELECTRIC COOPERATIVE, INC.	DOCKET NO. E-01787A-98-0465
IN THE MATTER OF THE FILING BY MOHAVE ELECTRIC COOPERATIVE, INC. OF UNBUNDLED AND STANDARD OFFER SERVICE TARIFFS PURSUANT TO A.A.C. R14-2-1606.	DOCKET NO. E-01750A-~~98~~ 97-0701
IN THE MATTER OF THE STRANDED COST FILING AND REQUEST FOR A WAIVER OF CERTAIN PORTIONS OF THE RULES FILED BY TRICO ELECTRIC COOPERATIVE, INC.	DOCKET NO. E-01461A-98-0466
IN THE MATTER OF THE FILING BY TRICO ELECTRIC COOPERATIVE, INC. OF UNBUNDLED AND STANDARD OFFER SERVICE TARIFFS PURSUANT TO A.A.C. R14-2-1606.	DOCKET NO. E-01461A-97-0696
IN THE MATTER OF THE STRANDED COST FILING AND REQUEST FOR A WAIVER OF CERTAIN PORTIONS OF THE RULES FILED BY GRAHAM COUNTY ELECTRIC COOPERATIVE, INC.	DOCKET NO. E-01749A-98-0468

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IN THE MATTER OF THE STRANDED COST FILING AND REQUEST FOR A WAIVER OF CERTAIN PORTIONS OF THE RULES FILED BY DUNCAN VALLEY ELECTRIC COOPERATIVE, INC.	DOCKET NO. E-01703A-98-0469
IN THE MATTER OF THE STRANDED COST FILING AND REQUEST FOR A WAIVER OF CERTAIN PORTIONS OF THE RULES FILED BY SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC.	DOCKET NO. E-01575A-98-0472
IN THE MATTER OF THE FILING BY SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC. OF UNBUNDLED AND STANDARD OFFER SERVICE TARIFFS PURSUANT TO A.A.C. R14-2-1606.	DOCKET NO. E-01575A-97-0706 **(PROCEDURAL CONFERENCE REQUESTED)**

DUNCAN AND GRAHAM'S RESPONSE TO THE APPLICATION OF PHELPS DODGE, ASARCO AND AECC FOR THE SCHEDULING OF THE DISTRIBUTION COOPERATIVES' STRANDED COST HEARING

Duncan Valley Electric Cooperative, Inc. ("Duncan") and Graham County Electric Cooperative, Inc. ("Graham") submit this response to the Application of Phelps Dodge, ASARCO and Arizonans for Electric Choice and Competition (collectively "AECC") dated December 19, 2003 in these consolidated dockets (the "Application"). The Application requests that the Commission schedule a hearing on the Stranded Cost cases and issue an order determining Stranded Costs as well as opening Duncan, Graham and the other Distribution Cooperatives' territories to competition. For the reasons set forth below, Duncan and Graham request that the Application be denied until various other issues concerning the Electric Competition Rules have been resolved.

Brief Statement of the Response.

Pursuant to a Procedural Order issued by the Administrative Law Judge in these consolidated cases on January 21, 2000, consideration of the Duncan and Graham Stranded Cost

filings have been suspended for a period of almost four years. In the interim, the California retail competitive market collapsed; surrounding states either repealed their earlier electric competition efforts, elected not to proceed further or seriously limited their direct access programs; and this Commission instituted an Electric Competition Advisory Group ("ECAG") process to determine what revisions are necessary to its Retail Electric Competition Rules (the "Rules"). As the Commission is aware, there is currently no retail competition occurring anywhere in the state where service territories are open and none is expected for the foreseeable future.

Notwithstanding these circumstances, the Application seeks to force the parties and the Commission to expend resources on determining Stranded Costs in relation to a competitive market that does not exist pursuant to Rules which likely will change. If an Order to open the Cooperatives' service territories is issued, the Cooperatives and their customer/owners will be forced to incur substantial implementation costs complying with a Rules' paradigm that likely will be revised--rendering some portion, if not all, of those expenditures worthless. At this time, the Application simply makes no sense and should be denied.

Background.

As required by the Rules, Duncan and Graham sought and received approval for their unbundled rates and, in 1999, filed their requests for Stranded Costs. Because the Cooperatives' requests were partially dependent on the determination of, and authorization for them to pass through, AEPCO's generation-related Stranded Costs, the Administrative Law Judge vacated the hearing on these matters in early 2000 pending the resolution of AEPCO's application. Decision No. 62758 which granted the AEPCO Stranded Costs application was issued on July 27, 2000.

However, about two months before that Decision was issued, the California retail market meltdown commenced and then continued until the summer of 2001. Shortly thereafter, APS

filed its request for a variance of the Rules which led to the Track A and B proceedings. In January, 2002, Commissioner Mundell (later joined by the other Commissioners) directed a series of questions to interested parties concerning, as he put it, whether "changed circumstances require the Commission to take another look at electric restructuring in Arizona." Several parties responded with detailed comments.[1]

This informal review was then formally established in the Track A decision (Decision No. 65154) as the ECAG process which instructed Staff to open a rulemaking to review and amend the Rules. In March and October of last year, Staff sought and received comments from numerous parties, including the AECC, on a wide variety of Rules' subjects. Recommendations range from outright rescission of the Rules through limitations on participation to only large customers to a host of suggested Rules' modifications on various definitional, reporting and technical requirements. Last month, the Staff conducted an ECAG workshop on December 19. Further proceedings are contemplated over the next few months ultimately leading, as the Commission has ordered, to an Administrative Procedure Act proceeding to revise the Rules.

In the meantime, the TEP, APS and SRP territories remain open to competition. But, no direct access transactions are occurring and no interest has been expressed since the first few hundred transactions occurred in early 2000 prior to the California catastrophe.

Finally, through their participation in the Process Standardization Work Group ("PSWG"), the Cooperatives have investigated the costs which would be necessary in order to meet their obligations under the current Rules if their territories were opened to competition. EDI software necessary to meet PSWG standards would cost approximately $80,000 per cooperative. Additional personnel would have to be hired and trained in these hardware,

[1] For convenience, a copy of Commissioner Mundell's letter is attached.

software and other processes. The Cooperatives estimate that, depending upon the size of the system, 1-2 additional personnel would be required for an on-going annual cost of $40-80,000. Thus, for Duncan and Graham, conservatively initial costs would total $160,000 and recurring annual costs would increase by $80,000. Collectively, the five cooperatives involved in these dockets would incur initial retail market opening costs of at least $400,000 and increased annual expense of $200,000.

Argument.

Phelps Dodge states, without elaboration, that there is no just nor reasonable reason for not scheduling the hearing to determine the Cooperatives' Stranded Costs and open their service territories to competition. Application, p.3. Just the opposite is true. There is no reason--reasonable or otherwise--to commit party and Commission resources to a proceeding based on a set of Rules' assumptions which are in the process of being changed. There is no reason--just or otherwise--to force Cooperative owner/customers to incur substantial costs complying with a set of Rules' requirements which are actively being re-evaluated. And, there is no reason--reasonable or otherwise--to open territories to a market which does not now and is not expected to exist in the near future given these uncertainties and costs.

For example, assume that the Cooperatives' service territories are opened to competition and the necessary computer and personnel resources are devoted to that task. Then, a few months later, the Commission adopts Rules changing meter and billing data exchange requirements, customer verification standards or any number of other Rules' subjects currently under review. Depending upon the scope of the Rules' review, the Commission may act on broader suggestions to suspend or greatly restrict direct retail access. In either event, some

portion or perhaps all of that Cooperative investment and resource will have been rendered worthless.

The Application to proceed also makes no sense in light of the fact that there is no retail competition. AECC's members operate in the APS, TEP and SRP service territories. Yet, no direct access transactions are occurring. If the critical mass of the state's two large urban areas can't sustain retail competition, it is exceedingly unlikely it will happen in the rural areas – once again rendering the cooperatives' investment necessary to "stand and wait" partly or wholly wasted.

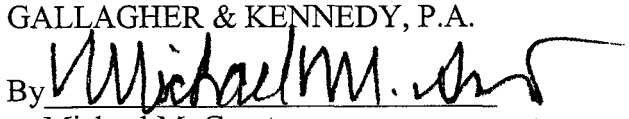
Finally, the Commission has been made aware of the fact that the Cooperatives' service territories were not open, but has taken no steps to activate these matters. On August 22, 2002, the Commission issued Decision No. 65119. It suspended the annual re-setting process on AEPCO's CTC until the service territories of the distribution cooperatives were opened to competition. But, the Commission did not order activation of these proceedings.

Conclusion.

Duncan and Graham request that the Administrative Law Judge deny the Phelps Dodge Application and leave these matters on inactive status pending resolution of the ECAG rulemaking process.

RESPECTFULLY SUBMITTED this 9th day of January, 2004.

GALLAGHER & KENNEDY, P.A.

By 

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ARIZONA CORPORATION COMMISSION

January 14, 2002

Commissioner Jim Irvin
Commissioner Marc Spitzer
Arizona Corporation Commission
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Re: Electric Competition: 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

Dear Commissioners and Interested Parties:

This letter is the follow up letter on electric restructuring issues, referred to in my December 5, 2001 letter to Commissioners Jim Irvin and Marc Spitzer. First, I would like to thank them for their support of my efforts to bring developing issues in electric restructuring into an open forum with public participation. The Commission's Electric Competition Rules were first adopted in 1996. Since then, relevant circumstances have changed. I believe it is necessary to determine if changed circumstances require the Commission to take another look at electric restructuring in Arizona.

The purpose of this letter is to identify questions that should be answered before important Commission decisions are made concerning electric restructuring. At the present time, the Commission's Electric Competition Rules, along with the Settlement Agreements approved by the Commission for APS and TEP, establish the framework for a transition to a retail generation competitive market. Recent events such as California's disastrous experience with retail electric competition, as well an apparent trend of other western states to step back from competition to more traditional regulation, reflect problems in the transition to and implementation of a competitive market.

Many say the Arizona Commission, unlike some other states, has implemented electric competition correctly by safeguarding the public interest in the transition to a competitive market. I certainly believe the Commission's actions, to date, have been prudent and have also led to many customers enjoying lower—not just stable—rates. I have concerns, however, that before we continue at the same pace on the path existing, the Commission should continue its commitment to prudence and make an opportunity for consideration of whether circumstances have changed enough to compel a different pace or path.

Recent events within Arizona have heightened those concerns. For example, the APS request for a variance of the Electric Competition Rules' requirement, as modified by its Settlement Agreement and Commission order, that at least 50% of APS' electricity to serve Standard Offer

customers be acquired by competitive bid by 2003 does not reflect how we originally thought things would develop. Another example is the Commission Staff AISA Report filed on November 17, 2001, which raised similar issues on the direction of retail electric competition in the context of whether there should be continued support for the AISA. These dockets are part of a larger picture framed by the present Electric Competition Rules, and should not be considered or addressed in isolation. Rather than addressing these issues as discrete decisions, a look at both the Rules and their implementation under the Settlements is warranted before moving farther down the road. All of these factors lead me to believe that it is in the public interest to take a precautionary pause for an open forum to receive public comment and provide for full discourse by the Commission.

The matters addressed at these public proceedings are those identified by all of the Commissioners at the December 5, 2001 procedural conference in the APS' variance request docket. These matters include whether the Commission should continue implementation of the Rules as they now provide, without any changes like the APS variance request or modification of the Rule provisions establishing the AISA. In the alternative, the Commission could slow the pace of the implementation of the Rules to provide an opportunity to consider the extent to which Rule modification and variance is in the public interest, including changing the direction to retail electric competition. A third choice may be to step back from electric restructuring until the Commission is convinced that there exists a viable competitive wholesale electric market to support retail electric competition in Arizona.

In order to make these proceedings meaningful, interested parties should answer certain questions, and specific proposals should be made if alternatives are advocated. However, this is not the time to file comments on the generalities of retail electric competition. I think the Commission needs to hear **specific** answers and **specific** proposals from the interested parties on the identified issues, not the same global comments on the pros and cons of electric competition in general that have previously been given to this Commission. In light of this, I have attached a list of questions to be answered by interested parties. I invite the other Commissioners to docket their questions as well.

Because I believe that these matters cannot be addressed in isolation, I find that a new generic docket should be established to deal with the concerns expressed herein. The APS variance request docket and the AISA docket should be consolidated with the new generic docket for the same reason. By this letter I direct that the Chief Hearing Officer open the generic docket by procedural order, and consolidate it with the APS variance request and AISA dockets. I also direct that a procedural order set the times for written responses to the Commissioners' questions and an open meeting with public comment for the consolidated dockets. I am aware that certain time frames for the APS docket have been established, and these may remain in effect, unless consolidation requires some modification.

Finally, please do not read conclusions into any or all of the attached list of questions. I have decided we need a thorough review and, consequently, a comprehensive list of questions is in order. I am particularly concerned that some of the more "elementary" questions not lead to a conclusion that abandonment of the existing plans is imminent. If readers must reach any conclusions regarding the intent of any question (or the entire range of them), it should be that I do not wish to take anything for granted in this inquiry. I believe there is simply too much at stake to be overly selective in what is asked and reviewed regarding the matter of electric restructuring in Arizona.

Interested parties should file and docket in the generic docket established by the Chief Hearing Officer their responses to the attached questions on or before February 1, 2002.

Sincerely,

William A. Mundell

William A. Mundell
Chairman

Attachment

cc: Brian McNeil, Executive Secretary
Ernest Johnson, Utilities Division Director
Chris Kempley, Chief Counsel
Lyn Farmer, Chief Hearing Officer
All Parties of Record