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BEFORE THE ARIZONA CORPORATION COMMISSION

- 1
- 2 **MARC SPITZER**
CHAIRMAN
- 3 **WILLIAM A. MUNDELL**
COMMISSIONER
- 4 **JEFF HATCH-MILLER**
COMMISSIONER
- 5 **MIKE GLEASON**
COMMISSIONER
- 6 **KRISTIN K. MAYES**
COMMISSIONER
- 7

Arizona Corporation Commission

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 ARIZONA CORPORATION COMMISSION
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8 IN THE MATTER OF COMPETITION IN THE
9 PROVISION OF ELECTRIC SERVICES
10 THROUGHOUT THE STATE OF ARIZONA

DOCKET NO. RE-00000C-94-0165

11 IN THE MATTER OF THE STRANDED COST
12 FILING AND REQUEST FOR A WAIVER OF
13 CERTAIN PORTIONS OF THE RULES FILED BY
14 MOHAVE ELECTRIC COOPERATIVE, INC.

DOCKET NO. E-01787A-98-0465

15 IN THE MATTER OF THE FILING BY MOHAVE
16 ELECTRIC COOPERATIVE, INC. OF
17 UNBUNDLED AND STANDARD OFFER
18 SERVICE TARIFFS PURSUANT TO A.A.C. R14-2-
19 1606.

DOCKET NO. E-01750A-⁹⁷~~98~~-0701

20 IN THE MATTER OF THE STRANDED COST
21 FILING AND REQUEST FOR A WAIVER OF
22 CERTAIN PORTIONS OF THE RULES FILED BY
23 TRICO ELECTRIC COOPERATIVE, INC.

DOCKET NO. E-01461A-98-0466

24 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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 PHOENIX, ARIZONA 85016-9225
 (602) 530-8000

1 IN THE MATTER OF THE STRANDED COST DOCKET NO. E-01703A-98-0469
2 FILING AND REQUEST FOR A WAIVER OF
3 CERTAIN PORTIONS OF THE RULES FILED BY
DUNCAN VALLEY ELECTRIC COOPERATIVE,
INC.

4 IN THE MATTER OF THE STRANDED COST DOCKET NO. E-01575A-98-0472
5 FILING AND REQUEST FOR A WAIVER OF
6 CERTAIN PORTIONS OF THE RULES FILED BY
SULPHUR SPRINGS VALLEY ELECTRIC
COOPERATIVE, INC.

7 IN THE MATTER OF THE FILING BY SULPHUR DOCKET NO. E-01575A-97-0706
8 SPRINGS VALLEY ELECTRIC COOPERATIVE,
9 INC. OF UNBUNDLED AND STANDARD OFFER
(PROCEDURAL CONFERENCE
SERVICE TARIFFS PURSUANT TO A.A.C. R14-2- REQUESTED)
1606.

10
11 **DUNCAN AND GRAHAM'S RESPONSE TO THE APPLICATION OF PHELPS**
12 **DODGE, ASARCO AND AECC FOR THE SCHEDULING OF THE DISTRIBUTION**
13 **COOPERATIVES' STRANDED COST HEARING**

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

23 **Brief Statement of the Response.**

24 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

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

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

15 **Background.**

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

22 However, about two months before that Decision was issued, the California retail market
23 meltdown commenced and then continued until the summer of 2001. Shortly thereafter, APS
24

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

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

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

18 Finally, through their participation in the Process Standardization Work Group
19 ("PSWG"), the Cooperatives have investigated the costs which would be necessary in order to
20 meet their obligations under the current Rules if their territories were opened to competition.
21 EDI software necessary to meet PSWG standards would cost approximately \$80,000 per
22 cooperative. Additional personnel would have to be hired and trained in these hardware,
23

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

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

7 **Argument.**

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

17 For example, assume that the Cooperatives' service territories are opened to competition
18 and the necessary computer and personnel resources are devoted to that task. Then, a few
19 months later, the Commission adopts Rules changing meter and billing data exchange
20 requirements, customer verification standards or any number of other Rules' subjects currently
21 under review. Depending upon the scope of the Rules' review, the Commission may act on
22 broader suggestions to suspend or greatly restrict direct retail access. In either event, some
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1 portion or perhaps all of that Cooperative investment and resource will have been rendered
2 worthless.

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

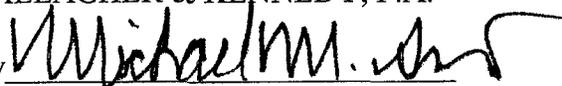
9 Finally, the Commission has been made aware of the fact that the Cooperatives' service
10 territories were not open, but has taken no steps to activate these matters. On August 22, 2002,
11 the Commission issued Decision No. 65119. It suspended the annual re-setting process on
12 AEPCO's CTC until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

14 **Conclusion.**

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

18 RESPECTFULLY SUBMITTED this 9th day of January, 2004.

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1 **Original** and 29 copies filed this
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6 **Copies** of the foregoing mailed this
9th day of January, 2004, to:

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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.

January 14, 2002

Page 3

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
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