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Legal Aid For The Environment

BEFORE THE ARIZONA CORPORATION COMMISSION ENVIRONMENT CONTROL

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IN THE MATTER OF ELECTRIC)
INDUSTRY RESTRUCTURING IN THE)
STATE OF ARIZONA)

Docket No. U-0000-94-165

NOTICE OF FILING

Arizona Corporation Commission
DOCKETED

JUN 28 1996

The Land and Water Fund of the Rockies hereby files its comments in the
above-captioned matter.

DOCKETED BY

Brian R. Hanson
Executive Director

RESPECTIVELY SUBMITTED this 27th day of June of 1996.

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**Comments on Electric Industry Restructuring
Land and Water Fund of the Rockies**

June 28, 1996

These comments on electric industry restructuring respond to the staff's request in Docket No. U-0000-940-165. Our comments first briefly evaluate the objectives set forth in the staff filing. We then present our perspective about how well several different industry restructuring paradigms can achieve these objectives. We conclude by cautiously suggesting that the ACC consider a retail competition pilot.

I. Objectives

We support the nine objectives identified by Staff. In particular, we believe that the electric industry in Arizona must be structured in a way that promotes public interests such as renewable resources, energy efficiency, equity for low-income customers, and environmental protection. Indeed, Arizona is currently experiencing very rapid growth. As a result of this growth, we estimate that Arizona will need close to 3,000 MW of new capacity by the year 2015. Clean energy technologies offer Arizona an economically and environmentally attractive approach for meeting this demand in a way that increases jobs in Arizona and equitably distributes the costs and benefits of growth.

II. Available Paradigms

In our view, there are two viable paradigms for obtaining the nine objectives identified in the staff report: (1) maintenance of the current situation of regulated monopoly; and (2) a more rapid shift to enhanced competition involving the functional unbundling or disaggregation of existing

vertically integrated utilities. A third potential alternative — relaxing regulatory oversight, while maintaining vertically integrated monopolies — produces a situation of unregulated monopoly and should be rejected. We briefly discuss each of these alternatives.

Regulated Monopoly

This category is the closest one to the current industry structure. This paradigm would continue present day regulatory approaches to influencing the behavior of vertically integrated monopolies, including streamlined approaches to resource planning, rate setting, and transmission line and generation siting. In addition, incentive or "performance based regulatory" mechanisms would be used to promote specific utility behaviors to achieve certain goals and objectives. This approach, however, would focus on developing new regulatory approaches that are consistent with managing utility market power given the changing conditions in the industry. Through these approaches, we believe that the industry can continue to promote public interests such as energy efficiency, renewable resources, and environmental protection.

Enhanced Competition

This paradigm — involving disaggregation and retail wheeling — would segregate the competitive aspects of the present-day electric utility business from the monopoly aspects. Thus, the delivery, or distribution system (including most transmission assets), would remain under regulation. The energy supply business would be fully segregated, or spun-off, into a competitive profit-maximizing enterprise. The transition may be made less abrupt with a long-term contract between the new generation and T&D entities. Alternatively, through extensive regulation of T&D access and pricing, it may be possible to functionally unbundle the existing vertically integrated utilities. In addition, this paradigm would develop methods to let retail customers, on some incremental basis,

have direct access to wholesale power markets — so-called retail wheeling.

Several approaches could be used within this paradigm to promote clean energy. For example, a transmission or distribution volumetric charge could raise funds to maintain energy efficiency, renewable resource, low-income, and environmental protection efforts. In addition, in a retail wheeling environment there may be opportunities to directly market clean power to retail customers. Thus, the market itself could help promote clean power.

Unregulated Monopoly

This paradigm would reduce or even eliminate regulatory oversight, allowing electricity suppliers to remain vertically integrated with wide latitude with respect to resource planning, rates, tariffs and contracts. This could result, however, in the possibility that vertically integrated utilities could use their monopoly power over transmission and distribution facilities to provide a competitive advantage for their generation assets. Indeed, this approach allows utilities to make rate, siting, and resource acquisition decisions consistent with whatever financial incentives currently exist. As such, it provides no guarantees that utilities would protect public interests such as energy efficiency, renewable resources, and environmental protection. As a result, we believe that this approach is inconsistent with the public interest, is poor public policy, and should be rejected.

III. Evaluating the Various Paradigms

To gain a better understanding of each of the paradigms, we evaluate them against the nine public policy objectives identified by the staff. The following table summarizes the relative effectiveness with which these general paradigms address the key objectives.

STAFF OBJECTIVES/PARADIGMS	Reg Mon	Unreg Mon	Compet
Enhanced Competition (1)	M	L	H
Utility Investors (2)	M	H	M
Open to All (3)	H	L	M
System Reliability (4)	H	H	M
Limiting Market Power (5)	M	L	H
Market Solutions (6)	L	L	H
Renewable Resources (7)	H	L	H
Public Interests (8)	H	L	H
Equity for all (9)	H	L	M

H: Highly effective

M: Moderately effective

L: Not very effective

Based on this review of each of the paradigms, the LAW Fund can support either a situation of regulated monopoly or enhanced competition. Indeed, we believe that our core environmental and other public interest objectives can be protected in either paradigm with appropriate regulatory and legislative attention. Despite this flexibility, however, we oppose the creation of a situation of unregulated monopoly. We believe that this situation creates the possibility that vertically integrated utilities can use their control over monopoly T&D facilities to provide an unfair competitive advantage. As a result, we believe that regulators and legislators should reject this alternative as being poor public policy.

IV. LAW Fund Suggestions for Retail Competition

If the Commission were committed to further exploring how a retail competition regime could

be implemented, the LAW Fund cautiously recommends a limited pilot for two to three years along the lines just being implemented in New Hampshire. From an environmental perspective, the pilot can be developed to employ a wires surcharge to fund energy efficiency, renewable resources, and low-income weatherization efforts. In addition, a limited retail wheeling pilot also provides suppliers with an opportunity to sell clean energy to "green" customers.

From a consumer perspective the pilot could be confined to a small enough group of customers that the overall impact on any utility's demands, revenues, and costs is negligible. Moreover, by developing a pilot, all classes of customers can participate, rather than just the largest ones. Also, a wires charge could be used to allow utilities to recover any stranded costs associated with the experiment, if deemed appropriate by regulators. Thus, a limited retail wheeling pilot has a number of attractive aspects to it.

Nevertheless, a pilot also raises several concerns. There may be legal and jurisdictional issues surrounding the implementation of such a pilot. For example, utilities currently have legally protected monopoly franchise service territories and several legal changes may be necessary to implement a pilot. In addition to the legal concerns, a small pilot may not be sufficient to create a real market that would generate the price and other information necessary to develop a full-scale scheme for implementing retail competition. Finally, there are likely to be metering and other monitoring issues that may be difficult to deal with in the context of a small-scale pilot.

Conclusion

The LAW Fund believes its core environmental objectives can be promoted in either a retail competition or a regulated monopoly paradigm. If the Commission is committed to further investigating retail competition, on balance we believe that a retail wheeling pilot has merit.

BEFORE THE ARIZONA CORPORATION COMMISSION

RENZ D. JENNINGS, Chairman
MARCIA WEEKS, Commissioner
CARL KUNASEK, Commissioner

IN THE MATTER OF ELECTRIC)
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Docket No. U-0000-94-165

CERTIFICATE OF MAILING

I hereby certify that the original and 10 copies of the LAND AND WATER FUND OF THE ROCKIES' COMMENTS IN THE ABOVE CAPTIONED MATTER were sent by Federal Express to the Docket Control Division, Arizona Corporation Commission, 1200 West Washington Street, Phoenix, AZ 85007, this 27th day of June, 1996, and a true and correct copy of the above was placed in the United States mail, postage pre-paid, this 27th day of June, 1996, addressed to the following:

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