Comments On Electric Industry Restructuring
Arizona Community Action Association
Docket No. U-0000-94-165
June 28, 1998

Summary of ACAA's Comments

The Arizona Community Action Association (ACAA) appreciates the opportunity to respond to the questions on electric utility industry restructuring developed by the Staff of the Arizona Corporation Commission, dated February 22, 1996.

In the comments below, ACAA:

- Supports the general objectives for the introduction of competition outlined by Staff, and recommends expanding and clarifying the objectives to ensure that low income customers will receive a fair share of the benefits, while protecting them against undue risks and costs.

- Suggests ways to assess progress in meeting some of the objectives of restructuring.

- Recommends phased implementation of retail competition in three phases over a five year period, as opposed to either a pilot or full implementation, with phased implementation to begin after the most important outstanding issues are resolved (on or after January 1, 1998).

- Recommends that all utilities open their markets to competition at the same time, and that portions of all classes and segments of customers be given the opportunity to choose their energy supplier in each of the three phases of implementation.

- Strongly urges that low income and residential customers be given greater opportunities than commercial and industrial customers to select their energy supplier in the early phases of implementation, to help offset the negative influences of market power during the transition to a restructured industry, and to give low income and residential customers an opportunity to secure some of the benefits of a competitive market.

- Recommends that the proportions of customer load within customer classes or segments opened to retail competition be higher for low income and residential customers in the early phases of implementation, and lower for other classes and segments.

- Recommends that the costs of *net* stranded investment be borne fairly by the utilities, new market entrants and providers, and customers for whose needs the stranded generating facilities and regulatory assets were designed to meet.

- Argues that captive customers, especially low income customers, should not be left responsible for any of the costs of stranded investment associated with generating facilities built to serve the loads of other customers.

- Asserts that low income programs such as rate discounts, weatherization, education, and case management will be essential for meeting the needs of low income customers.

- Recommends that mandated programs (including low income, DSM, renewables, environmental, and nuclear decommissioning programs) be funded using a non-bypassable system benefits charge, applied on a per kWh basis to the volume of energy sales for all distribution customers.

Objectives of Electric Industry Restructuring

ACAA agrees with the general objectives for the introduction of competition that Staff outlined in the request for comments. In particular, ACAA supports: encouraging the benefits of retail electric competition, enabling a wide range of customers to participate in a competitive market, shielding customers who do not or cannot participate in a competitive market from rate (and cost) increases attributable to competition, protecting important public programs (including low income, DSM, renewables, environmental, and nuclear decommissioning programs), limiting the potential for market impediments (including exertion of market power and high transaction costs), and limiting the potential for decreases in electric system reliability (and reductions in quality of service).

However, because the objectives that Staff developed are *general* as opposed to detailed, it is not clear to ACAA whether the objectives are sufficient to meet the needs and protect the interests of low income customers. ACAA recommends that the objectives be expanded and clarified by Staff, the utilities, and other interested parties. Without further expansion and clarification, ACAA does not believe that the general objectives are sufficient to ensure that low income customers will receive a fair share of the benefits of restructuring, while protecting them against undue risks and costs. Below is an expanded list of objectives and associated strategies designed to meet the needs and protect the interests of low income customers.

For a particular scenario of a restructured electric industry to be beneficial for and acceptable to low income customers, it must provide or ensure the following:

- *Fair allocation of the benefits of restructuring*
  - A fair share of the benefits of restructuring for low income customers without undue discrimination.
  - Lower bills for low income customers.

- Opportunities for low income customers to participate in a competitive market, including explicit actions to increase the market power of low income customers (such as aggregation, portfolio requirements, and early participation during phased implementation).
- Sharing in the value of fully amortized generation plants.
- Proper treatment of assets with book values below market values (or "negative stranded investment" using Staff's terminology), including using these assets to offset stranded investment now and in the future.

- *Fair and affordable access to electricity and quality service*
  - Basic access to reliable electricity at reasonable, affordable rates for all low income customers.
  - Access to quality service enforced by quality of service standards.
  - Rates and programs designed for low income customers (including rate discounts and payment plans).

- *Fair and equitable allocation of costs*
  - No unfair or discriminatory cost shifting in rate design.
  - No unfair shifting of costs from past actions and decisions, including those due to stranded investment.
  - Costs of net stranded investment borne fairly by utilities, new market entrants and providers, and customers for whose needs the stranded generating facilities and regulatory assets were designed to meet, including customers who leave the existing utility system.

- *Opportunities to reduce consumption*
  - Weatherization and energy efficiency programs for low income customers.
  - Programs delivered effectively and efficiently by weatherization providers.
  - Distribution company rate design that does not provide disincentives to energy efficiency, DSM, or renewable resources.

- *Fair billing, collection, and consumer protection procedures*
  - Fair deposit, noticing, collection, and disconnection procedures.
  - Reasonable payment arrangements.
  - Licensing requirements for all providers that include strong consumer protections.
  - Protection against unfair trade practices, such as fraud and misrepresentation.
  - Clear, understandable information on energy and service proposals in equivalent formats, supported by impartial consumer education.
  - Right of privacy to consumer records.

- *Environmental quality and environmental justice*
  - Reduction and prevention of environmental damage, including the use of energy efficiency and renewable resources programs.
  - Protection of low income neighborhoods against disproportionate siting of generation, transmission, and distribution facilities.

- Balance of long-term and short-term needs and goals.

- *Participation in setting public policy*
  - Access and input to planning and decision-making.

Some of the above objectives are really no more than the stated objectives of advocates for retail competition, such as lower prices for all groups of customers (which includes low income customers). Others are principles that should be met by any scenario of a restructured industry, such as fair billing, collection, and consumer protection procedures.

In addition to the above list of objectives and strategies, ACAA has endorsed a resolution developed nationally by a group of advocates for low income customers entitled "Policies to Protect the Rights of Vulnerable Customers in the Restructuring of the Electric Utility Industry," included as Attachment ACAA-1.

ACAA recommends that the general objectives developed by Staff be expanded and clarified by Staff, the utilities, and other interested parties, using the information ACAA has provided both above and in Attachment ACAA-1.

Measuring Progress in Meeting the Objectives

In the request for comments, Staff asked how the general objectives listed could be measured. ACAA agrees that it is very important to assess and measure progress in meeting the objectives for the introduction of retail competition. However, ACAA does not have specific proposals at this time for all objectives. ACAA recommends that Staff, the utilities, and the interested parties work together to (1) expand and clarify the objectives (as recommended above), and (2) identify and develop specific methods for measuring progress in meeting the objectives. A potential starting point for this process would be the compilation of specific proposals provided by the utilities and other interested parties in their comments in response to Staff's request.

ACAA does have a general proposal for measuring progress in meeting the objective entitled "protect important public programs." ACAA recommends that progress be measured by assessing current and past program costs and benefits, forecasting future costs and benefits, and assessing the degree to which the programs are meeting or could meet customer needs and societal objectives. For low income programs, all evaluations should include assessments of a broad range of costs and benefits, including other potential benefits and cost reductions. ACAA believes that, at a minimum, the word "protect" means no reduction in effort or funding from current levels, unless the programs are not meeting customer needs and societal objectives. ACAA asserts that increased efforts will be required to meet the needs of low income customers.

Options: Pilot, Phased Implementation, or Full Implementation?

ACAA recommends phased implementation of retail competition as opposed to a pilot or full implementation for several reasons. First, we can learn from other pilots around the country (such as the New Hampshire pilot in which about 3% of the state's electric customers have the option of choosing their energy supplier on a competitive basis), without having to conduct a pilot in Arizona. Second, the lessons learned and information gained from any pilot would be limited unless the pilot was large enough (much more than 3% of customers) and structured very similar to the proposed final restructured industry to be a real test of retail competition. ACAA is concerned that others may reach false conclusions based on a limited pilot. Third, while a pilot could be valuable for exploring marketing approaches and the response of customers to new marketing approaches, we can gather the same information from other pilots and from the early stages of phased implementation. Fourth, if a pilot is large enough and structured very similar to the proposed final restructured industry, it is basically equivalent to the first phase of phased implementation. Finally, ACAA believes that adjustments will be necessary during the early stages of the implementation of retail competition, and therefore it is premature to encourage full implementation.

ACAA recommends that Arizona regulators, utilities, interested parties, and customers learn from other pilots around the country, and resolve the most important outstanding issues (including those outlined in Staff's questions) before beginning the phased implementation.

Questions in Attachment A (Questions Regarding Electric Industry Restructuring)

ACAA is not responding to all of the questions that Staff asked in the request for comments. Instead, ACAA is addressing only the subset of questions that are of most interest and importance to ACAA's constituency. Since ACAA is recommending phased implementation as opposed to a pilot, the majority of these comments apply to phased implementation.

A1. Affected Utilities

ACAA believes that all investor-owned utilities should open their markets to competition at the same time.

ACAA also believes that there should be reciprocity in terms of the opportunity to compete. If out-of-state providers want to offer energy services and compete in Arizona, the markets in their home states should be open to Arizona providers. Likewise, if in-state utilities that are not investor-owned (such as Salt River Project, municipal utilities, and rural electric cooperatives) want to offer energy services and compete in the existing service territories of Arizona investor-owned utilities, the markets in their service territories should be open to the investor-owned utilities. ACAA suggests that retail competition licensing requirements may be one way to encourage and enforce reciprocity.

A2. Scope of Restructuring

Consistent with phased implementation, ACAA recommends that a portion of the market be opened to retail competition before opening the entire market. ACAA suggests three phases of implementation over a five year period, with no more than 30% of total load (based on kWh sales) being opened to competition in the first phase, and no less than 40% of load remaining for the third phase. One option would be 25% of load in the first phase, 35% of load in the second phase, and the remaining 40% of load in the third phase.

Portions of customers in all classes, and in all segments within classes (including low income customers within the residential class) should be given the opportunity to choose their energy supplier in each of the three phases.

Special efforts will be needed to ensure that low income customers specifically, and residential customers in general, have a fair opportunity to benefit from a competitive market, given the lower market power of individual residential customers. Proportions of customer load within customer classes or segments opened to retail competition should be higher for some customer classes and segments, and lower for other classes and segments, to account for the negative influences of market power during the transition to a restructured industry, and to give low income and residential customers an opportunity to secure some of the benefits of a competitive market.

Low income customers should have the largest proportion of customer load within their segment opened to retail competition, followed by decreasing proportions for residential, small commercial, large commercial, and industrial customer loads. For example, the proportion of customer load within a class or segment opened to retail competition in the first phase could be 20% low income, 15% residential, 12% small commercial, 10% large commercial, and 5% industrial. (To date, ACAA has not applied both recommendations on (1) phased implementation, and (2) varying proportions of customer loads by class and segment to all existing Arizona utility systems, so these specific percentages should be viewed as examples, not as firm or final percentages.)

ACAA recommends consolidating residential and low income customers in geographic areas for the first two phases of phased implementation to increase opportunities for aggregation. Some of this geographic consolidation in the first two phases should be in rural areas. ACAA also suggests that automatic aggregation (by geographic area) be explored as a mechanism for increasing the market power of these customers.

ACAA believes that customers served by existing contracts should not be eligible to participate in phased implementation of retail competition until their contracts expire.

ACAA believes that existing vertically-integrated utilities must be separated into distribution, transmission, and generation companies. Divestiture of generation assets is far preferable to functional separation, but ACAA recognizes that this will take time and will not be completed by the first two phases of phased implementation. Therefore, ACAA believes strongly-enforced functional separation is necessary until divestiture can be implemented and fully accomplished.

A3. Term of Restructuring

ACAA recommends that phased implementation as described above begin as soon as possible. However, ACAA recognizes that there are important issues to discuss and resolve before implementation can begin. Therefore, ACAA recommends that phased implementation begin after the most important outstanding issues are resolved based on negotiations, discussions, and decisions within Arizona, relying partly on the lessons learned from pilots in other states. ACAA expects that phased implementation will begin on or after January 1, 1998, but certainly no later than January 1, 2000.

As stated above, implementation should be completed in three phases over a five-year period.

A5. Necessary Services

Distribution service should be provided by a regulated monopoly distribution company. Distribution companies should be required to ensure their access charges are least-cost, and should be encouraged to use targeted DSM and distributed generation to avoid or defer distribution system investments. Distribution access charges should be fair and nondiscriminatory. The access charges should be designed so that distribution company earnings are not affected by changes in energy or demand throughput (thereby avoiding the creation of any lost revenue disincentives to energy efficiency or renewable resources on the part of the distribution company).

Transmission service should be provided by a regulated monopoly transmission company with transmission rates regulated by FERC.

The existing quality of service should be maintained, and should be encouraged to increase, by using explicit quality of service standards for distribution companies, transmission companies, aggregators, and all energy providers.

Customers are likely to be confused by their new choices, wary of the new options and the associated claims of marketers, and irritated by the barrage of marketing that will interrupt their lives and businesses. Clear, objective, understandable information on energy and service proposals, in equivalent formats, supported by impartial consumer education, will be required to ensure that customers are fully aware of the options that they might choose. Consumer-oriented prospectus standards and consumer protection regulation will be required to ensure that energy and service providers give accurate and understandable information to customers. In addition, objective and impartial consumer education will need to be supported, particularly in the early stages of implementation.

Existing consumer safeguards and protections may need to be increased, and new consumer protections added, to protect customers against unfair trade practices, including fraud and misrepresentation.

A9. Recovery of Stranded Investment

Stranded investment is an issue of fairness, not economic efficiency. Therefore, solutions to the recovery of stranded investment should be fair, equitable, and nondiscriminatory.

ACAA believes that the issue is really *net* stranded investment as opposed to total stranded investment. Net stranded investment would account for assets whose book values are below market values (i.e., what Staff appears to call "negative stranded investment"), by subtracting the increment of market value above book value from the sum of total stranded investment. The value of other assets that customers have funded, including information resources and fully amortized generation plants, should also be considered when estimating the level of net stranded investment.

Before any net stranded investment recovery is provided, the utility should be required to demonstrate that it has taken and will take all reasonable actions to mitigate stranded investments.

The costs of net stranded investment should be borne fairly by the utilities, new market entrants and providers (e.g., as part of a licensing or market access fee), and customers (retail and wholesale) for whose needs the stranded generating facilities and regulatory assets were designed to meet.

Captive customers, especially low income customers, should not be left responsible for any of the costs of stranded investment associated with generating facilities built to serve the loads of other customers. These costs should be paid by the utilities, new market entrants/providers, and customers for whose loads the generating facilities were designed to meet.

After allocating appropriate and reasonable portions of net stranded investment costs to utilities and new market entrants/providers, low income customers should be responsible for only that part of the remaining portion of net stranded investment associated with generating facilities and regulatory assets designed to meet their needs prior to restructuring and the early onset of competition (i.e., prior to special contracts and flexible pricing). The resulting amount should be non-existent or very low for low income customers.

The portion of net stranded investment to be recovered from customers (if any) should be collected using a combination of (1) non-bypassable distribution access charges applied on a per kWh basis to the volume of energy sales for customers remaining on the distribution system (with allocations by customer class and segment based on the portion of generating facilities and regulatory assets designed to meet the needs of the class/segment prior to restructuring, as outlined above) , and (2) exit fees for customers who leave the distribution system (or who otherwise attempt to avoid the access charges, e.g., by changing from a retail to a wholesale customer).

A10. Recovery of Costs of Commission-Mandated Programs (Utility Low Income, DSM, Environmental, Renewables, and Nuclear Power Plant Decommissioning Programs)

Utility low income customer assistance programs such as rate discounts, weatherization, education, budget counseling, and case management are essential for meeting the needs of low income customers. DSM, renewables, environmental, and nuclear power plant decommissioning programs provide benefits to customers and society, and should also be protected and supported in a restructured electric utility industry.

ACAA recommends that these programs be funded using a non-bypassable system benefits charge. The system benefits charge should be applied on a per kWh basis to the volume of energy sales for all distribution customers.

The magnitude of the costs for each of these programs should be determined by assessing current and past program costs and benefits, forecasting future costs and benefits, and assessing the degree to which the programs are meeting customer needs and societal objectives. Historical funding levels for these programs should be used as a floor at the beginning. ACAA believes that funding levels higher than historical amounts will be required for low income programs in order to meet the needs of these customers.

ACAA recommends that Staff, the utilities, and other interested parties further develop the system benefits charge, and funding levels and allocations within the charge, through a workshop process. Also, ACAA recommends that Staff, the utilities, and other interested parties discuss any needed changes to the nature, scope, or focus of the programs, as well as the appropriate agent(s) to administer, implement, and/or evaluate the performance of these programs.

A11. Encouragement of Renewables

ACAA recommends that increased use of renewable resources be encouraged in a competitive environment. There are several mechanisms that could be used, including minimum portfolio requirements for all energy providers, encouraging providers to go beyond the minimum portfolio requirements by offering a "green" or clean energy option, a renewables fund collected through a non-bypassable charge (as discussed above), using renewable resources (and DSM) to avoid or defer distribution system investments, and requiring distribution companies to purchase power generated by small renewable resources located on customers' sites.

ACAA believes that low income customers should have the opportunity to use renewable resources, and recommends that energy providers, distribution companies, and renewables businesses be encouraged to provide renewables options to all customers.

A17. Impacts on Other Utility Customers

Adverse impacts on the availability, affordability, rates, costs, quality of service, or reliability of service for utility customers not participating in the competitive market (including those who will not have the opportunity to choose energy suppliers until later phases of implementation) should be minimized. Customers who choose not to participate should not assume the costs and risks of customers who do participate, or who have greater opportunities to participate. In addition, customers who have later opportunities to participate should be ensured a fair opportunity to secure the benefits of a competitive market.

ACAA has recommended several safeguards in the comments above, including:

- Methods to prevent unfair or discriminatory cost shifting in rate design, or during the implementation process.
- Methods to prevent unfair shifting of costs from past actions and decisions, including those due to stranded investment.
- Enforcement of strong consumer protections and quality of service standards.

Attachment ACAA-1

Policies to Protect the Rights of Vulnerable Customers in the Restructuring of the Electric Utility Industry

September 23, 1995

Whereas, many states and the Federal Energy Regulatory Commission are considering proposals to restructure the electric utility industry that could change how electricity services are priced and provided; and

Whereas, electricity is necessary to maintain health and safety for fixed-income and low-income customers in this modern era, that as a group these households use the least amount of electricity but pay the highest percentage of their income for this need; and

Whereas, fixed- and low-income households with children, older persons, disabled people and minority customers are the most likely to be exposed to the toxic and environmental effects of electricity generation and transmission; and

Whereas, customers on fixed- and low-incomes face unique market barriers to obtaining energy efficiency services through the open market, are the least likely to be in a position to exercise meaningful customer choice in any restructured electricity market, and the most likely to be captive customers; and

Whereas, the National Association of Regulatory Utility Commissioners Executive Committee unanimously passed a resolution on July 27, 1995, on the impact of electric industry restructuring on low-income residential customers, and set forth broad policy recommendations to protect low-income customers from the adverse impacts of said restructuring; and

Whereas, to carry out the goal of protecting low-income households, the specific policies articulated below must be implemented; and

Whereas, restructuring of the electric utility industry suggests a radical change in public policy that redistributes benefits and costs; now therefore be it hereby

Resolved that if restructuring shifts responsibility for paying costs onto captive customers, the revenues needed should be collected only with approval of the appropriate state legislative or regulatory body; and be it further

Resolved that in their deliberations over the restructuring of the electric industry, state and federal regulators are urged to adopt the following policies, at a minimum, necessary to protect residential customers on fixed- and low-incomes:

1) Affordable Access

Any alternative structure must include all of the following:

A. Maintain the obligation of utilities and/or other providers to serve as the provider of last resort for vulnerable customers, such as fixed- and low-income consumers;

B. Enable fixed- and low-income customers to obtain electricity essential to health and safety;

C. Require utilities and/or other providers to provide affordable service to low- or fixed-income customers;

D. Provide comprehensive energy conservation and efficiency grant programs. These must improve the efficiency of energy services for fixed- and low-income customers, address indoor air quality, and make optimum use of the existing network of low-income weatherization providers;

E. Provide affordable deposit and deferred payment policies; and

F. Prevent mandatory use of service limiters, prepayment cards, or other forms of degraded service.

2) Fair Billing and Collection Procedures

Any alternative industry structure must ensure freedom from abusive and unfair collection procedures and from unfair disconnect practices. It must:

A. Provide adequate notice of proposed termination of services;

B. Provide reasonable payment arrangement options for current and deferred bills;

C. Provide access to customer service representatives who are knowledgeable in the areas of customer assistance, bill assistance, different rate and weatherization programs, energy education, and payment options;

D. Prohibit disconnections that threaten the health and safety of vulnerable customers;

E. Maintain the right to appeal an unfair utility action to an impartial regulator.

3) Participation in Setting Public Policy

Low- and fixed-income customers must be able to participate in collaborative or any other form of decision-making relative to electric industry restructuring issues, with funding for full participation.

4) Environmental Justice

Historically, low income and minority communities have been disproportionately harmed by local generation and transmission siting. Any alternative industry structure must avoid adverse environmental and safety impacts on low-income and minority communities.

5) Long Term Perspective

Any alternative industry structure must provide a balanced portfolio of energy resources that are affordable, sustainable, reliable, environmentally and societally responsible, and economically efficient. Such an alternative industry structure must prevent environmental degradation and maximize employment. Long-term goals must not be sacrificed for a short-term perspective which may reduce rates for some customers while increasing bills for fixed- and low-income customers and exposing them to unacceptable environmental risks.

6) Fair Allocation of Costs and Benefits

A. The costs resulting from past decisions in the electric industry, especially those that built load for industrial customers' demand, must not be borne by the low-income customer.

   1. Stranded investments must be borne by providers, industrials, and investors through non-bypassable charges.

   2. Stranded cost must be borne by utilities <u>now</u> through rate reductions for all customers without waiting for final resolution of the restructuring issue.

B. All customers, including fixed- and low-income customers, must share in the benefits of a restructured electric industry. Restructuring must not go forward unless bills go down for everyone.