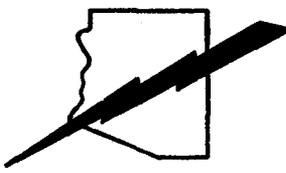




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ARIZONA MUNICIPAL POWER U.  
**POWER**  **ASSOCIATION**  
**USERS'**

2712 NORTH SEVENTH ST. • PHOENIX, ARIZONA 85006•1003

**MICHAEL A. CURTIS**  
EXECUTIVE SECRETARY  
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COMMUNICATIONS  
ACCEPTED

JUN 28 1996

RECORDED BY

June 24, 1996

Honorable Marcia Weeks, Commissioner  
Honorable Renz Jennings, Commissioner  
Honorable Carl Kanasek, Commissioner  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, Arizona 85007

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RECEIVED  
AZ CORP COMMISSION

Re: Comments on Restructuring

Dear Commissioners and Members of the Staff:

The following are the comments of the Arizona Municipal Power Users' Association with respect to the Arizona Corporation Commission inquiry on restructuring.

The Arizona Municipal Power Users' Association ("AMPUA") is an association of consumer-owned and operated electrical systems and it consists of cities and towns, rural electric distribution and generation cooperatives, special districts, irrigation and electrical districts, water conservation districts, agricultural improvement districts, Indian water projects and Indian utilities. Collectively the members deliver almost one-half the electricity in Arizona to over a million people.

Our comments are as follows:

Principles to be applied.

1. We believe a deliberate step-wise approach should be taken and the Commission should only proceed to implement retail competition for electric generation when essential elements to insure the fairness of a competitive market as well as to protect the public interest are all developed and in place. These elements must begin with an achievement of an open transmission system and the establishment of a robust wholesale competitive market for electric energy and capacity.
2. The benefits of competition should be realized by all customer classes.
3. Equitable and efficient unbundling of electric rates and services must be afforded. There should be no cross-subsidy between competitive and monopoly services. The generation operation should be at least functionally unbundled from other utility operations.

4. Existence of an obligation to provide distribution service. The distribution system is and should remain a regulated monopoly service. The distributor should maintain exclusive service areas and have the obligation to provide distribution service.

5. There should be universal energy service. Universal service at a reasonable rate should be a primary goal. This should be supported through a non-bypassable mechanism.

6. There should be attention to the needs of residential consumers. There must exist fair and non-discriminatory mechanisms for all consumers to participate in a competitive market.

7. Public participation. The entire process must be open to public participation.

8. Performance standards. There should be some performance standards in place.

9. There should be fair and immediate treatment of transition costs. The recovery of stranded costs should be shared by all stakeholders, including investors and customers.

10. Environmental improvement. There should be some regard for maintaining environmental accomplishments and not allowing degradation.

11. State participation and transmission planning. There should be a discussion of State participation and transmission planning.

12. Diverse portfolio of energy resources. There should be an effort to have the market make available a diverse portfolio of energy resources to all utilities.

13. There should be a competitive State economy.

14. Realigned regulation should be accomplished. In a fully restructured industry, regulatory and administrative processes should be realigned to meet the regulatory needs of the new competitive structure. This will require a transition period. The transition period will require sufficient regulatory resources to ensure the development of a fair market.

15. There should be recognition and accommodation of the interest of local government.

16. The interest of cities and towns which are served by their own utilities or by franchised electric utilities should be recognized and accommodated.

We also would like to file, for the record, the comments prepared by the American Public Power Association's Retail Wheeling Legislation Task Force, dated June, 1996, and entitled "Customer Choice in a Re-regulated Electricity Industry".

We thank you for the opportunity to present these comments.

Very truly yours,

ARIZONA MUNICIPAL POWER USERS'  
ASSOCIATION

By

  
Its Executive Secretary

Enclosure: Customer Choice in a Re-regulated Electricity Industry

cc: Arizona Electric Power Cooperative  
Central Arizona Water Conservation District  
Cortaro-Marana Irrigation District  
Electrical District No. 2  
Electrical District No. 3  
Electrical District No. 4  
Electrical District No. 5  
Grand Canyon State Electric Cooperative Assn.  
HoHoKam Irrigation & Drainage District  
Maricopa County Municipal Water Conservation District  
City of Mesa  
Navajo Tribal Utility Authority  
Navopache Electric Cooperative  
City of Page  
City of Safford  
Salt River Project  
San Carlos Irrigation & Drainage District  
San Carlos Irrigation Project  
San Tan Irrigation District  
Town of Thatcher  
Utah Association of Municipal Power Systems  
Wellton-Mohawk Irrigation & Drainage District  
Town of Wickenburg

## CUSTOMER CHOICE IN A RE-REGULATED ELECTRICITY INDUSTRY

A REPORT FROM APPA's  
RETAIL WHEELING LEGISLATION TASK FORCE  
June 1996

The American Public Power Association and its members embrace competition as the best means to provide lower electricity rates for all electricity consumers. Consistently over the past thirty years, APPA has advocated open transmission access and aggressive competition in the market for wholesale power.

In the 1960's, APPA endorsed the common carrier principle for transmission facilities. APPA successfully urged Congress to allow the Nuclear Regulatory Commission to condition nuclear power plant construction and operating licenses to address situations that would tend to create or maintain situations inconsistent with the antitrust laws, specifically the abuse of monopoly control over transmission facilities. Some transmission systems were opened up as a result, bringing additional competition into the wholesale electricity market. Using the antitrust laws, public power systems were in the forefront of legal battles to address monopoly abuses of transmission market power in federal courts. Competition in wholesale power markets was again enhanced. In 1977-78, during debates over the National Energy Policy Act, public power unsuccessfully urged Congress to expand the authority of the Federal Energy Regulatory Commission (FERC) to enable it to order transmitting utilities to provide transmission services. With public power's support, Congress finally granted such authority in the Energy Policy Act of 1992. FERC's aggressive implementation of this authority, which has been strongly supported and encouraged by public power, is propelling the industry forward toward the goal of fully competitive bulk power markets. In view of this long and consistent record, public power's pro-competition record can hardly be challenged.

Today, a new, but related, issue faces public policy makers -- whether and to what extent should competition in the electric utility industry be expanded to provide opportunities for individual retail customers to shop the market. This debate raises difficult issues of federal, state and, local jurisdiction over retail service. The pro-competitive open transmission initiatives of public power over the past three decades related to the interstate transmission of wholesale power, matters traditionally within the jurisdiction of the federal government. Today's initiatives deal with matters traditionally within the province of states and locally regulated public power systems -- retail service.

Public power's commitment to competition to benefit all consumers remains unchanged. At the same time, public power is also committed to the proposition that public power systems, because they are consumer owned and controlled, have the right to determine through their own political processes what policies will best serve their own constituents and communities.

It is clear that momentum for customer choice is building. Policy makers at all levels of government are examining the potential benefits and risks of increasing competition in the electric utility industry by allowing or requiring the implementation of retail wheeling and retail access policies. In part, this is a response to the many large industrial electric users and independent power producers and marketers that are actively urging states to permit retail wheeling. Retail access is the opportunity for retail customers of electricity to purchase power from a variety of electricity providers as well as the opportunity for electricity providers to compete for sales to retail customers. Retail wheeling, or use of the local utility's distribution system, is the mechanism through which retail access would occur.

As of April 1996, over 40 states are actively analyzing the potential advantages and disadvantages of industry restructuring and some form of retail access through their state legislature and/or public utility commission. Some states are moving forward with specific proposals. The California Public Utilities Commission has announced its plan for retail wheeling and the states of New Hampshire and Illinois, among others, have approved limited retail wheeling experiments. This creativity by the states offers a significant opportunity to learn what measures work best and where the pitfalls are.

The prospect of retail wheeling raises specific issues for public power. These issues are directly related to how retail wheeling comes about, that is, whether it is imposed as an external federal (or state) mandate, or whether it occurs as a consequence of customer involvement and local choice. The APPA Retail Wheeling Legislation Task Force strongly opposes the former, while embracing the latter.

Federally mandated retail wheeling would overturn arbitrarily a local decision to provide electricity on a not-for-profit basis as a city service to all electric consumers within the community, managed by a locally governed body accountable to the community. Most if not all public power systems would strongly resist such an intrusion in their local affairs. On the other hand, public power systems themselves came into existence as a direct consequence of customer choice -- the choice of communities to provide for their own needs in electric service. Responding to customer needs is as ingrained in the public power "corporate ethic" as it is a political necessity. For this reason, customer choice is already a fact in some public power communities. For example, retail wheeling service has been provided for the last two years to the University of Missouri, Columbia, served by the Columbia Water and Light Department. Clark Public Utilities in Washington, has in place a retail wheeling tariff for its customers.

Another issue that must be taken into account is the fact that many public power systems may not have the ability under state law to compete for retail customers outside their service territories. Public power systems are political entities. As a general rule, private corporations can engage in activities unless expressly prohibited by law while publicly-owned corporations such as public power systems can only engage in activities expressly provided by law. This legal fact means that public power systems may find themselves in a situation where others may compete with them to serve customers within their service

territories while they are denied the opportunity to reach out to serve customers beyond their traditional boundaries. Similarly, private use restrictions on public power debt may cripple the ability of some public power systems to respond effectively to competition. Legal constraints such as these must be taken into account by public power systems as they consider the consequences of retail wheeling on their entire customer base.

In addition, a key aspect of ensuring that a retail access program provides sufficient benefits to consumers is providing for diversity in the types of electricity suppliers that may participate. To achieve this goal, a state's retail access policy must allow a continuation of the right of local jurisdictions to act on forming new municipal electric utilities if they so choose.

Advocates of retail wheeling assert that allowing large industrial customers to shop for retail power supply will result in lower costs of electricity to all end-users, but they have not yet demonstrated that this result is likely to occur, or that all customers will be protected against an inappropriate reallocation of costs from large customers to smaller commercial and residential consumers.

Another concern is the accelerating trend to mergers and massive consolidation of investor-owned utilities that threatens the ability to establish vigorously competitive wholesale and retail markets. Placing greater market power in the hands of an increasingly smaller number of huge private utilities does not seem to promote the interests of competition and consumers. Thus, if this issue is not addressed appropriately, retail access poses a substantial risk that the end result is simply de-regulation of monopolies, not real competition that results in benefits for all consumers.

Moreover, FERC only recently has issued a final rule to implement, on an industry-wide basis, its new authority to order wholesale transmission service. These efforts by FERC to create an open, non-discriminatory transmission access regime, and to foster the creation of competitive regional bulk power markets, have met with resistance in a number of quarters. While the potential for open transmission access now exists, it is not the norm, and competitive regional bulk power markets are just beginning to form.

In addition, a number of states and utilities, including public power systems, are experimenting with competitive bidding for the construction of new generation and the procurement of power on a long-term basis in order to lower costs for the benefit of all ratepayers through competition.

Public power systems' top priority continues to be responsiveness to the needs and desires of their customers. Increasing customer interest in the potential advantages and disadvantages of retail wheeling creates some conflict with the compelling arguments for gaining the benefits of wholesale competition and adequate knowledge about retail access before moving to implement retail wheeling.

It is very important that change in the electric utility industry be undertaken carefully and in an orderly fashion for the protection of all consumers. One way to achieve this

and resolve the conflict mentioned above is to support a process through which state and local jurisdictions undertake an evaluation of retail access policies and come to a definitive conclusion as to whether or not it makes sense to implement such a policy in that jurisdiction, and if not, why not. Moreover, a specific time period should be established for such an evaluation that is of sufficient duration to allow for reasoned consideration of new policies but without undue delay.

The evaluation should include a number of elements or principles to ensure that it is both comprehensive and responsive to the interests of all consumers. Those elements should include, but not be limited to:

a. An analysis of the cost and efficiency gains that are likely to occur as a result of the availability of retail access for the benefit of all end-users of electricity, above and beyond the benefits that are achieved through the combination of open, non-discriminatory transmission access, competitive regional bulk power markets and competition in new generation.

b. An analysis of the current reliability and service benchmarks (e.g. outage frequency; response times) in order to monitor these matters in the future and prevent retail access policies from leading to service degradation.

c. Consideration of how to provide for the recovery of all costs associated with assets rendered uneconomic through implementation of the retail access program (stranded cost recovery).

d. Resolution of issues related to the obligation of a utility to provide service to and the protection of small industrial, commercial and residential customers in a way that is fair to all electric utilities and customer classes. Special care should be taken to prevent cost-shifting, higher prices and poorer service over the long term

e. Consideration of methods to preserve and enhance environmental goals, energy efficiency programs and development of cost-effective renewable energy technologies with associated costs distributed in an equitable manner.

f. Consideration of measures to preserve and enhance reliability of electric service, particularly for public safety entities, medical facilities, residential customers, and those individuals dependent on electricity-powered devices for continued health. Reliability includes adequacy of supply, as well as reliable expansion and operation of the integrated bulk electric system, distribution service reliability and the ability of retail and wholesale sellers to meet contract obligations. Consideration of reliability may include the offering by an electricity provider of more than one level of reliability for certain customers as a cost reduction opportunity for those customers.

g. Consideration of "sunshine" requirements to ensure the availability and transparency of relevant market information by all utilities and electricity service providers, including supply rates and prices and transmission capacity and rates, in

order to preclude predatory pricing, at the same time protecting the rights of individual consumers against the unauthorized release of customer account information.

h. Consideration of additional measures designed to prevent anticompetitive behavior and the abuse of market power during any industry transition and indefinitely if necessary. This would include to the extent jurisdiction permitted, but not be limited to: merger approval policies; prevention of affiliate cross subsidization; denial of price discrimination; and prevention of a "state action" exemption from scrutiny under federal antitrust laws.

i. Consideration of provisions to allow utilities to select whether to participate in retail access, including issues related to timing, notice, and reciprocity with other utilities and electric service providers.

j. Consideration of whether or not to allow future construction of duplicate facilities.

Support for such an evaluation by state and local authorities in any comprehensive federal legislation would allow Congress to set a national framework and encourage a reasonable level of consistency through the consideration of specific issues and principles. A similar approach was used in Title I of the Public Utility Regulatory Policies Act (PURPA) of 1978. The national goals of PURPA were thus successfully considered and implemented, despite concern over potential discrepancies arising between jurisdictions. The responsibilities of state and local regulatory authorities were respected while simultaneously ensuring that decisions were made based on both national criteria and local circumstances.

Some state and local jurisdictions will conclude this process with a decision to move forward with retail access and wheeling policies. Changes in federal law are therefore appropriate in order to allow these jurisdictions to implement the decisions they have made in accordance with their evaluation.

The Retail Wheeling Legislation Task Force believes it is appropriate for APPA to consider additions and changes to its existing policy pursuant to this report. Accordingly, the Task Force has drafted a policy resolution for consideration by APPA's Legislative and Resolutions Committee at its meeting on June 16, 1996.