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September 12, 1996

Arizona Corporation Commission  
Docket Control  
1200 West Washington  
Phoenix, Arizona 85007

Re: Comments on Proposed Rule for Retail Electric Competition in  
Arizona, Docket No. U-0000-94-165

Ladies and Gentlemen:

Pursuant to your memorandum of August 28, 1996 soliciting comments on the proposed rule, I am submitting the following comments for your consideration. I have previously submitted comments to you by letter of June 28, 1996 responding to your prior request for comments. Many of the comments I made previously are still relevant to this proposed rule and I will not repeat them, but merely call them to your attention again.

I act as counsel for the Irrigation and Electrical Districts' Association of Arizona, a non-profit Arizona association, founded in 1962 to represent the interests of small districts and others engaged in the delivery of electric power and water resources, primarily in rural areas. I also represent a number of the members of the Association individually, while a number of them retain separate, individual counsel. These comments have not been officially approved by the Association or its members and do not represent the official position of the Association or any of its members. However, I believe the comments fairly reflect the sentiments of Association members on key issues based on my work with them on this subject and on the related issues raised by the adoption of Rule 888 and Rule 889 by the Federal Energy Regulatory Commission.

#### JURISDICTION

It is clear that the listed Affected Utilities are public service corporations subject to jurisdiction of the Commission. It is not clear that the broader use of the term "company" also falls within the term public service corporation. The rule does not attempt to address the issue. Moreover, it also uses a different term, "properly certificated electric company", in the proposed rule on Competitive Services. The use of the different terminology (company v. Affected Utility) also has some interesting assumptions. Only Affected Utilities can recover stranded investment. Presumably, other companies cannot. This anomaly also shows up in the proposed rule on rates as well as several other places. It would seem that this problem about the scope of the Commission's authority, if sidestepped, will only subject the final rule to controversy and to litigation, as well as charges of discriminatory treatment between Affected Utilities and other companies. The Commission should address the subject head-on in the proposed rule and receive comments thereon.

#### RECIPROCITY

This proposed rule also raises unfortunate jurisdictional issues. While the proposed rule recognizes that there are electric utilities in Arizona which are not "Affected Utilities", the rule does not deal with the term "company", does not deal with the subject of political subdivisions, Indian communities and others providing retail electric service in Arizona. Nor does it distinguish how this rule will apply in the future when other service providers may become "Arizona" electric utilities.

In my view, the Federal Energy Regulatory Commission had a better approach. FERC recognized head-on the limits to its jurisdiction and propounded a reciprocity rule that requires non-jurisdictional utilities to get on board if they wish to avail themselves of the opportunity to complain about the actions of jurisdictional utilities under the new rules. While the motivations of FERC non-jurisdictional utilities to respond and voluntarily establish open access tariffs might vary somewhat, the general result has been a rush to volunteer by such entities. The strong motivation was the continued availability of the FERC complaint process in attacking objectionable behavior by jurisdictional utilities contrary to the new rules.

Similarly, the Commission could specifically provide that its complaint procedure is available but that utilization of it for purposes of challenging compliance with this article is limited to those non-jurisdictional utilities that voluntarily prepare tariffs for designated service areas. I am not sure that the Commission has the authority or would even really need or want to grant certificates of convenience and necessity to non-jurisdictional entities under these circumstances.

The proposed rule needs to be substantially revised in order to have its intended effect.

It also needs to be revised because it totally ignores the existence of competition that already exists in Arizona. Irrigation and electrical districts and others already provide services in some categories in the same service territories as jurisdictional utilities. This has been going on for a very long time. A literal reading of the proposed rule would shut the districts down. Besides being beyond the jurisdiction of the Commission, it is clearly not, as a policy matter, what is intended by this rule or should be intended by this rule. If we are instilling competition in Arizona, the competition we already have should be preserved and nurtured.

#### SOLAR PORTFOLIO STANDARD

The Department of Energy recently directed the Western Area Power Administration to propose a rule by which Western would buy non-hydro renewable energy, even though doing so would drive the cost of resources up in direct violation of their statutory mandate to provide electricity at the lowest possible cost consistent with sound business principles. The uproar that followed effectively blunted this effort, which had been aimed at a specific solar project in a specific state that was in economic trouble.

Likewise, this proposed rule, whatever its laudatory motivation, suffers in several respects. First, it should be directed at encouraging renewable resource acquisition and development, not just solar resources. Second, it should be a mechanism for providing credit to those entities that assist their consumers in utilizing such resources, not just a mandate to purchase new solar generation or create new solar generation. This forced subsidization of a portion of this industry is unwise. Moreover, since the proposed rule does not require a solar resource to be itself competitive with other resources, electric consumers in

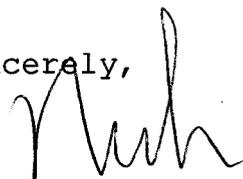
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Arizona will be subsidizing non-economic projects to their detriment.

There is no doubt that solar energy has a great potential future in Arizona. There is also no doubt that creating a stampede to develop these resources uneconomically will damage the long-term future of solar energy in Arizona by discrediting it over the near term. The Commission would be far better off developing a "carrot" approach to renewable resource development rather than this solar "stick".

Thank you for the opportunity to comment on this important proposed rule. I look forward to further discussion of it at your September 18, 1996 workshop and hopefully the opportunity for further comment on the proposed rule and amendments to it before it is finalized.

Sincerely,



Robert S. Lynch

RSL:psr  
cc: IEDA Members