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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF ELECTRIC
INDUSTRY RESTRUCTURING

NORDIC POWER'S COMMENTS
ON PROPOSED RULE--RETAIL
ELECTRIC COMPETITION

Nordic Power of Southpoint I, Limited Partnership ("Nordic Power") presents these comments on the Proposed Rule.

General Comments

Numerous barriers to open competition are contained in the Proposed Rule. Nordic Power urges that these barriers be lifted. The Proposed Rule inherently gives the existing electric utilities ("the Affected Utilities") control over the scope and pace of competition. Each Affected Utility is given the right to select who participates in the competitive market. Customers of these monopolies should be granted that right instead. Potential electric suppliers will likely avoid participating in this "controlled market" because of the uncertainty of future costs, such as regulatory transaction costs, exit fees, distribution charges and other costs, which result from this Proposed Rule.

The Proposed Rule suggests a regulated market. The Commission will review the "Arizona business plan" of each potential participant, whether or not the potential participant has an "adequate technical or a financial capability," whether the potential participant complies with rules "relevant to resource planning." The Commission may also set performance bond levels as the Commission deems appropriate. No guidelines or standards to meet these requirements are mentioned in the Proposed Rule. Furthermore, under the Proposed Rule, the Commission will continue to approve tariffs before transactions may be completed. This regime of approving maximum rates for

1 service and prices being not less than marginal cost of providing service is the hallmark
2 of a regulated industry. Continuation of this regulatory framework is incompatible with
3 a competitive environment.

4 **Specific Comments**

5 Nordic Power presents these specific comments on the Proposed Rule:

6 R14-2-xxx2. Filing of Tariffs By Affected Utilities.

7 The June 30, 1997 deadline for filing tariffs by the Affected Utility should be
8 advanced to no later than January 1, 1997. The data and information needed for these
9 tariffs are presently available. The Proposed Rule should include a procedure for
10 challenging these tariffs if they are unreasonable or not in the public interest of a
11 competitive market. Tariffs are not to be structured to quash competition.

12 R14-2-xxx3. Certificates of Convenience and Necessity

13 Regulated monopolies are controlled through a certification process. Open
14 competition requires free entry and exit of participants, so that large and small entities,
15 new and old ones, and sophisticated and simple firms may participate. Through the
16 certificate of convenience and necessity process, the Commission may restrict entry of
17 firms only to those that have obtained city, county, and other state agency approvals.
18 Under the guides of "consumer protection," the Proposed Rule continues the historic
19 regulated monopoly concept and may in essence create a formal oligopoly of only major
20 national and international energy firms.

21 R14-2-xxx4. Competitive Phases

22 In phasing in the competitive sales of electrical services, the Proposed Rule uses
23 a percentage of the 1995 "system retail peak demand for competitive generation supply"
24 as the criterion. Presumably the Commission has the figures for each Affected Utility
25 for determining the competitive market demand (MW) for each Affected Utility and they
26 should be included as an attachment to the final rule.

1 In this R14-2-xxx4, the competitive market for each Affected Utility is based upon
2 the "competitive generation supply." It is unclear whether or not this provision intends
3 to distinguish between the supply generated by the Affected Utility and the wholesale
4 supply purchased by the Affected Utility for its customers as of 1995.

5 Retail peak demands vary monthly for each Affected Utility. In deriving the
6 amount of demand that is subject to the competitive market, will monthly demands or
7 annualized average demands be used? As suggested earlier, these issues might be
8 resolved by including an attachment of the available competitive market demands for each
9 Affected Utility so that there is no confusion as to the calculation and interpretation of
10 this provision.

11 Nordic Power opposes the granting to Affected Utilities the exclusive right to
12 select methods for designating which customers may participate in a competitive market.
13 It grants these monopoly utilities the right to "cherry pick" the more desirable customers
14 prior to the year 2003.

15 The "buy-through" program under R14-2xxx4.G presents Arizona customers with
16 the early opportunity to pursue low-cost energy resources. With the January 1, 1997
17 deadline for filing of tariffs by the Affected Utilities, as proposed by Nordic Power, it
18 is recommended that the buy-through program be permitted no later than March 1, 1997,
19 under R14-2xxx4.G.2.

20 The Proposed Rule says that each Affected Utility must make at least 5 percent of
21 its 1995 system retail peak demand available for this buy-through program. As suggested
22 earlier, the actual amount of this 1995 demand may be described in actual amounts by
23 addendum to the final rule. Furthermore, the amount of the buy-through program should
24 be increased in 5 percent increments annually from the commencement date until the
25 Commission declares complete open access of the electrical industry.

1 In implementing this buy-through program, the Proposed Rule allows the Affected
2 Utilities to be compensated for their services through unbundled rates, plus a 15 percent
3 "mark-up" on the cost of electricity, under R14-2xxx4.G.4. Nordic Power requests that
4 this provision be amended to read that these services shall be provided at "competitive"
5 unbundled rates and the reference to the 15 percent mark-up be deleted. Rates charged
6 by Affected Utilities for these services should be based on market prices, not
7 monopolistic rates. The 15 percent mark-up is clearly an anti-competitive surcharge, or
8 windfall, to the Affected Utilities which is unrelated to any service provided by them.
9 Nordic Power strongly urges that this "monopoly tax" be excluded from the final rule.

10 R14-2-xxx6. Services Required To Be Made Available by Affected Utilities

11 Unbundled Service Tariffs should clearly describe the availability of telemetry, the
12 lawful access to meters by any supplier, and the arrangements for load following.

13 Any supplier should have the freedom to aggregate the loads of its customers and
14 to arrange for their power schedules.

15 R14-2-xxx7. Recovery of Stranded Investment of Affected Utilities

16 The Proposed Rule suggests the Commission may allow recovery of unmitigated
17 stranded investments by Affected Utilities. The Proposed Rule does not, however,
18 include a procedure for customers and other market participants to evaluate and challenge
19 the appropriate nature or amount of the stranded investment. Nordic Power urges the
20 Commission to include a review and hearing process prior to the recovery of any stranded
21 investment by an Affected Utility.

22 Various factors are to be considered by the Commission when it decides whether
23 or not stranded investments are recoverable. Additional factors, such as whether the
24 asset meets "use and useful standards," and the amount of any stranded investments
25 which may be offset by future load growth or future mitigation efforts of the Affected
26 Utility, should be included under R14-2-xxx7.E.

1 Recovery of stranded investments cannot occur after December 31, 2004, under
2 R14-2-xxx7.I. This Proposed Rule would allow the utility to collect stranded investments
3 two years after full competition is in place by January 1, 2003. See R14-2-xxx4.D. Any
4 recovery should end no later than January 1, 2003.

5 Under R14-2-xxx7.G, the reference to "utility" should be changed to "Affected
6 Utility" so as to be consistent with the defined term.

7 If Affected Utilities are entitled to recover stranded investments, minimal fees must
8 be established in order to create a workable competitive program.

9 R14-2-xxx8. System Benefits Charges

10 As with stranded investments, customers and other market participants should have
11 an opportunity to review and seek a hearing before any recovery of system benefit
12 charges.

13 R14-2-xxx9. Solar Portfolio Standard

14 Solar power is only one form of renewable energy. An additional subsection
15 should allow a participant to substitute other forms of renewable resources in the place
16 of solar.

17 R12-2-xxx10. Pooling of Generation and Centralized Dispatch of Generation or
18 Transmission.

19 The Commission will conduct an inquiry into pooling and dispatch arrangements
20 for transmission and generation of electricity. The Commission may create an
21 independent system operator or work with other entities to establish this pooling or
22 centralized dispatch arrangement. The Proposed Rule should be amended to provide for
23 notice and the opportunity for all interested parties to participate in this process before
24 these arrangements are implemented.

25 Pooling arrangements or the use of an independent system operator should be on
26 a voluntary basis, without centralized control by a selected entity or a chosen few.

1 Nordic Power opposes the imposition of additional regulatory barriers which might be
2 created under the guise of a collective effort.

3 R14-2-xxx11. In-State Reciprocity

4 Nordic Power has no comment on this provision.

5 R14-2-xxx12. Rates

6 Approval of tariffs and negotiated market based rates are inherently inconsistent.
7 The Proposed Rule requires each company to file tariffs setting the maximum rates for
8 services and a floor price of not less than the marginal cost for providing the service.
9 Instead of letting a willing buyer and a willing seller set the market price, a controlled
10 and regulated environment will continue under the Proposed Rule. Market participants
11 should not be required to file tariffs for approval by the Commission, other than an
12 Affected Utility which continues to serve captive customers or attempts to recover a
13 stranded investment or system benefits charges. Under these circumstances, the
14 Commission has an interest in the cost allocation and potential cost shifting by the
15 Affected Utility between its captive customers and those participating under the Proposed
16 Rule. This phenomenon is not of course applicable to other market participants who have
17 no captive customer, nor seek to recover any stranded investment or system benefits
18 charges. To correct this concern, R14-2-xxx12.E. should be amended by deleting the
19 following phrase: "or company holding a Certificate pursuant to this Article."

20 This rate provision requires that all contracts be filed with the Director of the
21 Utilities Division at least thirty (30) days before the contract becomes effective and if the
22 contract does not comply with the Proposed Rule it cannot become effective without a
23 Commission order. Nordic Power urges that this provision be deleted. Instead, this
24 matter could be covered under the reporting section (R14-2-xxx14) by requiring all
25 contracts be filed with the Director of the Utilities Division at least thirty (30) days after
26 their effective dates. Furthermore, R14-2-xxx12.D has not include any standard for
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1 determining whether a contract may not comply with this Proposed Rule, nor does this
2 provision require the Commission to notify the parties of non-compliance or provide an
3 opportunity for hearing and review.

4 R14-2-xxx13. Service Quality, Consumer Protection, Safety, and Billing
5 Requirements

6 A working group on system reliability and safety will be established by the
7 Commission in a separate order. This working group should include a cross-section of
8 interested participants and should not be weighted in favor of the Affected Utilities.

9 R14-2-xxx14. Reporting Requirements

10 In conjunction with the reporting requirement, all companies governed by this
11 Proposed Rule are required to participate in Commission workshops or other forums
12 whose purpose is to evaluate competition or market issues. Nordic Power suggests that
13 this provision be changed to read as follows: "In addition to the above recording
14 requirements, companies governed by this Article shall be encourage to participate in
15 Commission workshops or other forums whose purpose is to advance market
16 competition."

17 R14-2-xxx15. Administrative Requirements

18 Variations or exemptions to the Proposed Rule may be granted by the Commission.
19 As mentioned previously, the regulatory hand of the Commission, rather than market
20 forces, will ultimately determine the new structure of Arizona's electrical industry. These
21 variations or exemptions should be granted only if competition will be advanced.

22
23 **Notice and Hearing Proposal**

24 As suggested earlier, procedures for receiving notice and the hearing and judicial
25 review process should be spelled out in the final rule. All participants in restructuring
26 of Arizona's electric industry should have an opportunity to review and analyze the many
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1 filings of the Affected Utilities and the decisions that will be made by the Commission.
2 Otherwise only the Affected Utilities and the Commission will have protected rights in
3 this restructuring process. Nordic Power has suggested the following subsection be
4 included in the final rule:
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6 **R14-2-xxx16. Notice and Hearing Requirements**

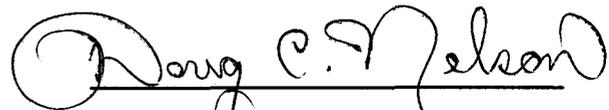
- 7 A. Any interested party may request and receive notice from the Commission
8 of the filing of any tariffs under Subsection R14-2-xxx2, any proposal for
9 selection of customers under Subsection R14-2-xxx4.E, any Standard Offer
10 Bundled Services tariff under Subsection R14-2-xxx6.B, any Unbundled
11 Service tariff under Subsection R14-2-xxx6.C, any estimates or recovery of
12 Stranded Investment under Subsection R14-2-xxx7, and any rates or related
13 mechanisms to recover the costs of System Benefits under Subsection
14 R14-2-xxx8.
- 15 B. Any Company intending to supply services described in this Article may file
16 a written objection within 30 days of any filing made under Subsection
17 R14-2-xxx16.A by stating the reason(s) for said objection.
- 18 C. Within 30 days of the receipt of a written objection, the Commission shall
19 hold a hearing to arbitrate the resolution of the objection. The hearing shall
20 be governed by the following rules:
- 21 1. Each party may be represented by legal counsel, if desired.
 - 22 2. All such hearings may be recorded or held in the presence of
23 a stenographer.
 - 24 3. All parties will have the opportunity to present written or oral
25 evidentiary material to support the position of the individual
26 parties.
 - 27 4. All parties and the Commission's representatives shall be
28 given the opportunity for cross-examination of the various
witnesses.
- 29 D. The Commission will render a written decision to all parties within 10
30 working days after the date of the hearing. Such written decision of the
hearing officer shall be binding on the parties and subject to judicial review
under A.R.S. § 40-254.A.

1 **Closing Comments**

2 The Proposed Rule as drafted retains "market power" in the Affected Utilities.
3 Although not a pure monopoly, the Proposed Rule imposes new and unnecessary legal
4 barriers to exclude potential competitors from restructuring the electrical industry. The
5 key to discovering whether an Affected Utility has monopoly power or not is to determine
6 whether it sets the price of its service rather than accepting the market-determined price.
7 Under this Proposed Rule, the Affected Utility not only sets its price but also decides
8 which customers may participate. Far too many restrictions are being placed on
9 marketers. These barriers hinder Arizona's ability to move towards an efficient and
10 workable competitive environment. Nordic Power urges that this Proposed Rule be
11 revised so that market-determined prices reshape the electrical industry with the least
12 amount of transactional cost to the Arizona consumer and with minimum control over
13 market conditions by the Affected Utilities and the Commission.

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15 RESPECTFULLY SUBMITTED this 12th day of September, 1996.

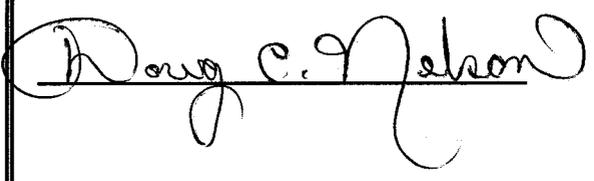
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1 ORIGINAL and ten copies of the foregoing HAND-DELIVERED
2 this 12th day of September 1996 with:

3 Arizona Corporation Commission
4 Docket Control
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