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Arizona House of Representatives

Phoenix, Arizona 85007

COMMITTEES:
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DISTRICT 30

JOINT LEGISLATIVE BUDGET
COMMITTEE

September 12, 1996

Arizona Corporation Commission
DOCKETED

SEP 18 1996

Arizona Corporation Commission
Docket No. U-0000-94-165
1200 West Washington
Phoenix, Arizona 85007

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This is a formal request for an indefinite postponement of further proceedings on the proposed rule relating to retail electric competition, docket number U-0000-94-165.

We urge you to delay consideration of this rule to provide the Legislature and the Executive Branch the opportunity to comment on the jurisdictional basis for the Commission's legal authority in this area, and the extent of that authority.

As you are aware, the Legislature enacted House Bill 2504 in the 1996 Regular Session which was signed by the Governor effective July 17, 1996. This bill establishes a comprehensive approach to the study and implementation of electric industry competition in this State. It provides for a Joint Legislative Study Committee and report as well as an Advisory Committee on this issue, both of which allow for full participation and representation by all affected entities, including the Corporation Commission. The Commission is represented by appointment to the Advisory Committee.

Article XV, section 6 of the Arizona Constitution provides that the Legislature may enlarge the powers and extend the duties of the Corporation Commission and may also prescribe rules and regulations to govern Commission proceedings. The Commission's efforts to radically restructure the electric utility industry by introducing retail electric competition is certainly a significant extension of the Commission's authority and is subject to the proceedings instituted in House Bill 2504. See *Arizona Corporation Commission v. S. and L. Service, Inc.*, 93 Ariz. 380, 381 P.2d 104 (1963); *Corporation Commission v. Pacific Greyhound Lines*, 54 Ariz. 159, 94 P. 2d 443 (1939).

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We are not contesting the Constitutional authority of the Commission to establish just and reasonable rates for electric public service corporations under Article XV, section 3. The proposed rule, however, goes well beyond rate-making and affects the exclusive nature and property rights associated with electric utility certificates of convenience and necessity that are issued by the Commission pursuant to the express Legislative authority to do so. Arizona Revised Statutes section 40-281.

The issue here is that the Legislature has established a procedure in House Bill 2504 to determine how to enlarge the Commission's authority over retail electric competition that is in the best interests of the Arizona economy and the people of this State. This is an issue for the Joint Legislative Committee and the Advisory Committee, of which the Commission is a member.

There are many practical as well as legal reasons to grant this request for postponement. The proposed Commission rule does not address many of the important issues included in House Bill 2504. The hearing is not coordinated with the Legislative study, possibly resulting in bifurcated public policy and potential litigation. Also, the rule purports to apply to municipal corporations delivering retail electric service over which the Corporation Commission has no jurisdiction and to modifying existing certificates in a manner that is not authorized by the Legislature.

We feel that it is not responsible public policy at this time during an election cycle for the Commission to be considering any rule changes in this important area without full cooperation with the Legislative and Executive Branches. The proper mechanism has been put into place for this procedure through House Bill 2504.

Sincerely,



JEFF GROSCOST
State Representative

JG/so

cc: Jt. Legislative Study Committee on Electric Industry Competition
Advisory Committee on Electric Industry Competition
Renz D. Jennings, Chairman, Corporation Commission
Marcia Weeks, Commissioner
Carl J. Kunasek, Commissioner
Governor Fife Symington