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September 26, 1996

Arizona Corporation Commission

DOCKETED

SEP 26 1996

The Honorable Carl J. Kunasek  
Commissioner  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

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Re: Electric Industry Restructuring  
Docket No. U-0000-94-165

Dear Carl:

Thank you for your letter of September 24, 1996, in which you shared your thoughts regarding the pace and process of the Commission's consideration of electric restructuring issues. I would like to respond to some of those comments.

I was heartened by your compliments to our Staff, and your recognition of the excellent work they have performed in studying electric restructuring issues and drafting rules designed to bring about competition. Frankly, from time to time I am left with the impression that you are dissatisfied with our Staff's efforts. I believe that the work in this area is yet another example of the professionalism and dedication that our Staff brings to the Commission.

However, I was less enamored of your suggestion that we bring the Attorney General into the equation for an "independent" opinion. As you know, the Attorney General is a member of the Executive Branch. His opinions are therefore certainly cannot be considered "independent" in matters such as these where the Executive Branch has weighed in with its own position. The Attorney General may even be called upon to represent before the Commission the Executive Branch or executive agencies as electric customers. I would hesitate to rely on an opinion expressed by the Attorney General on these matters as being more independent or more reliable than the opinions of our own attorneys.

I am nevertheless sensitive to your concern that we not drive a wedge between the Commission and the other branches of state government. That has never been my intent, and it is not my intent now. Unfortunately, it appears that others wish to do so.

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The Commission has been examining electric restructuring for the past two years. As a part of that examination we engaged all affected stakeholders in discussion. Input and action by the Governor's Office has been nil. Input and action by the Legislature has been nil, other than to establish a study committee which has yet to meet. Yet now, as the Commission moves toward making policy decisions based on two years of groundwork, the Governor and Representative Groscost have both asked the Commission to bring its work to a halt in order to protect utility interests.

It is true, as you suggest, that the Executive and Legislative branches may have approaches to electric restructuring that are dissimilar to the Commission's. They didn't evidence any approach to restructuring, though, until the utilities clearly complained to them and urged them to stop the Commission because we might allow competition to occur sooner and on different conditions than the utilities want.

I am very encouraged by your statements that you do not wish to risk delaying competition, and that you believe we could actually accelerate final implementation of competition far sooner than 2003 as contemplated in the draft rules. Unfortunately, the three steps that you suggest the Commission take would do nothing to accelerate competition.

Your first suggestion was to ask the Attorney General for his opinion. As I discussed earlier, I believe there is little value in that, and there is great potential for a conflict of interest.

You next suggest that we back off adopting rules until the concerns stated in the workshop by interested parties are resolved. "Resolving" the concerns of the parties will be an impossibility, I fear, as many of the parties would have certain concerns resolved in ways that are diametrically opposed. Furthermore, I do not believe it is necessary to hold up Commission action until all issues are resolved. The Competitive Telecommunications Services Rules are a case in point. As you will recall, there were several important issues that were not resolved in those rules but were left for subsequent rulemakings, such as universal service, interconnection and unbundling, and intraLATA equal access. Addressing these specific items on separate timelines from the original rules did not delay competition, but rather allowed competition to move forward more quickly as the Commission was able to process applications for CC&Ns from potential competitors even as these other issues were being resolved.

Your final suggestion is that we have an informal meeting with the Executive and Legislative branches to air our various concerns. What strikes me as odd about this suggestion is the implicit assumption that the Executive and Legislative branches have

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actually determined what their concerns are. Certainly, to date there has been no evidence that they have articulated any specific concerns, other than those suggested to them by the utilities and restated in the letters of the Governor and Representative Groscost. I am therefore skeptical of the value of any such a meeting unless each of them is ready with substantive points they are ready to advocate. On the procedural front, I'm not interested in them having a forum to chant "just say slow."

Nevertheless, both the Commission and the Legislature have a role to play in creating an efficient marketplace. The Executive Branch, as a large consumer of electricity, also has an obvious interest in the outcome of restructuring. I therefore welcome the input of the Executive and Legislative Branches in the Commission's consideration of restructuring issues. In fact, the Commission has provided them with ample opportunity to provide that input through the open and participatory process that we have undertaken to examine those issues over the past two years. It is unfortunate that they have not availed themselves of that opportunity until now, as the Commission begins focusing on specific policy choices, when they begin advocating a halt to the process in order to protect utility interests. Although the Governor and Representative Groscost have spoken up rather late in the day, I would hope that they continue to participate in the Commission's process as we move forward.

Carl, I do appreciate your stated commitment to bringing about a competitive marketplace for electricity in Arizona. I believe the process that we have undertaken to consider the myriad issues involved in achieving that objective is a fair and participatory one, and will lead to a fair result.

Sincerely,



Renz D. Jennings  
Chairman

RDJ:ahh

cc: Commissioner Marcia Weeks