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BEFORE THE ARIZONA CORPORATION COMMISSION

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RENZ D. JENNINGS
Chairman

MARCIA WEEKS
Commissioner

CARL J. KUNASEK
Commissioner

Arizona Corporation Commission
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IN THE MATTER OF THE COMPETITION)	DOCKET NO. U-0000-94-165
IN THE PROVISION OF ELECTRIC)	
SERVICES THROUGHOUT THE STATE)	EXCEPTIONS OF ARIZONA
OF ARIZONA)	PUBLIC SERVICE COMPANY
)	TO RECOMMENDED ORDER
)	ON PROPOSED RETAIL ELECTRIC
)	ACCESS RULE

I. INTRODUCTION

Arizona Public Service Company ("APS" or the "Company") strongly supports the orderly introduction of effective retail electric competition and freedom of choice for electric customers in the State of Arizona. Toward that end, APS proposed the comprehensive Arizona Customer Choice Plan on June 28, 1996, to allow customers phased access to the increasingly dynamic power supply markets without sacrificing reliability or historic regulatory obligations.

Although APS is and has been an active proponent of increased competition, the Company cannot and does not agree with the process by which the Proposed Rule was created or with many of its substantive provisions. The Commission must first carefully consider, through open evidentiary hearings that can begin as soon as the Commission is ready, and then decide such fundamental issues as customer impact, reliability, compensation and utility service obligations before, and not after, the Commission attempts to drastically restructure the State's multi-billion dollar electric industry. The Proposed Rule has the process totally reversed in clear violation of the law and sound public policy. Therefore, despite our agreement with the

1 ultimate objectives of increased competition, less regulation, and more customer choice, APS
2 requests that the Arizona Corporation Commission ("Commission") reject the proposed Staff
3 Retail Access Rule and accompanying Rule package (the "Proposed Rule"), which was filed on
4 October 1, 1996, in this docket.

5 APS had hoped that the collaborative process envisioned in the Rate Reduction
6 Agreement approved by this Commission this past April, and the proceedings in this
7 investigative docket would result in the introduction of retail access in a manner that reflected a
8 broad policy consensus and provided for a practical transition. Such a process should provide
9 proof of demonstrable benefits from retail electric competition to the state and electric
10 consumers as a whole while promoting important public policy goals (such as electric system
11 reliability, universal service, and environmental protection) and protecting the legitimate due
12 process and property rights of those existing utilities that have provided this state with a first-
13 class, dependable, integrated electric system - one that has helped fuel the quality of life
14 currently enjoyed by Arizonans.

15 Unfortunately, the Proposed Rule is so deficient in a number of procedural and
16 substantive areas that the Commission should decline to forward it to the Secretary of State for
17 the commencement of formal rulemaking. Rather, the Commission should promptly convene a
18 series of Commissioner-led open meeting hearings over the next six weeks. This would allow
19 truly meaningful deliberations to take place among all interested parties, including the
20 Commissioners, in order to craft a workable and legal decision that will truly be in the public
21 interest. Taking the opportunity to do it right now will not delay the implementation of retail
22 access. However, it will avoid renoticing, et al., under A.R.S. § 41-1025 to make the
23 necessary substantial changes in the Proposed Rule or, if the Commission were to adopt the
24 present Proposed Rule as the Final Rule, the litigation and associated substantial delay and
25 uncertainty that will likely follow.

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1 **II. THE PROPOSED RULE IS LEGALLY AND SUBSTANTIVELY DEFICIENT**

2 The Proposed Rule is seriously deficient for the reasons set forth in more detail in its
3 September 12, 1996, Comments to the Draft Staff Rules and its June 28, 1996, "Response to
4 Staff's Questions on Competition and Industry Restructuring," wherein APS presented a far
5 better proposal (the Arizona Customer Choice Plan) for meaningful retail access. To recap, the
6 following is a summary of the Proposed Rule's defects:

7 1. Legal Procedure. The Commission is required to hold evidentiary hearings (with
8 the opportunity for discovery, testimony under oath, cross-examination, etc.) before it
9 can attempt to revoke or modify the legally protected rights utilities have to their
10 exclusive service territories. The procedures followed so far¹ and the Proposed Rule's
11 schedule for the earliest possible "oral proceedings" do not satisfy fundamental statutory
12 and constitutional requirements.

13 2. Legal Substance. No matter how strongly Staff desires to introduce retail access,
14 the citizens of this state have not conferred upon the Commission the power to order
15 Arizona public service corporations to surrender their exclusive rights to serve. That
16 power can only be exercised in conjunction with appropriate legislative authorization and
17 only after the provision for adequate compensation for any losses occasioned thereby.
18 The Commission likewise possesses no power over a variety of entities and activities
19 addressed in the Proposed Rule, including municipal corporations such as SRP, federal
20 entities such as SCIP and WAPA and tribal utilities, as well as FERC-regulated services,
21 etc.

22 3. Non-Legal Substantive. Dwarfing even the procedural and substantive legal

23
24 ¹ APS and others had expected the Staff "workshops" would represent a true, "roll-up-the-sleeves"
25 opportunity to discuss and debate the benefits and drawbacks of various pathways to retail access and their
26 associated impacts on the state, customers and utilities. In reality, such ad hoc sessions (and the limited opportunity
to provide written comments) were a one-way street in which outsiders were invited to offer their own views - but
Staff declined to offer any explanation or supporting information surrounding its conclusions. As such, there has
been no truly meaningful public dialogue on these rules.

1 infirmities described above, the Proposed Rule in its current form has no evidentiary
2 support and is bad public policy for at least the following reasons:

3 a. The Proposed Rule does not ensure adequate reliability or even establish
4 reliability principles. The vague provision in Proposed Rule R14-2-1613(K) that
5 electric service providers comply with “applicable reliability standards”
6 established by the WSCC and NERC will simply not preserve the needed system
7 reliability amid the chaotic inflow of lightly or unregulated power suppliers,
8 marketers and aggregators. The Proposed Rule's establishment of a “working
9 group” on system reliability and safety (Proposed Rule R14-2-1613(J)) provides
10 no assurance that any effective reliability standards will ever emerge from the
11 Commission in time to deal with this critical issue.

12 b. Coordination with other Arizona stakeholders. This Commission should
13 not “go it alone” and attempt to set critical state policies without reaching a
14 consensus with the other governmental branches, particularly when the
15 Commission's action will substantially impact critical state functions beyond the
16 Commission's control (such as state revenues, essential government and social
17 programs, and economic development). It was precisely because the introduction
18 of retail electric access would have widespread impact on the economy of
19 Arizona that the Legislative Study Committee was created.

20 c. The statutorily required economic impact statement (“EIS”) analysis is
21 woefully deficient. It does not even claim to demonstrate that the Proposed
22 Rule's benefits will outweigh its costs. See, A.R.S. § 41-1052.² This EIS
23 analysis has never been shown or discussed with any of the participants in the
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25 ² APS recognizes that the Proposed Rule is not subject to review by the Governor's Regulatory Review
26 Council. However, the Legislature has clearly expressed its intent that no rule should be passed unless its benefits
outweigh its costs.

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over two years this docket has been open. Nor does the Commission Staff explain in the Proposed Rule the basis and information supporting the cursory conclusions in the EIS. Many of the claimed “benefits” (which are never quantified) will either occur (or not) independent of the Proposed Rule through competition at the generation level or open access transmission. The potential costs and adverse impacts (reduced governmental revenues, employee layoffs, transition costs, investment in expensive solar resources, etc.) are either ignored or given the most superficial “brush-off.” The EIS does not represent the type of reasoned, in-depth analysis required of the Commission and expected in support of the most important and far-reaching Commission action in over 80 years.

d. The Commission has continued the obligation to serve for incumbent utilities even though customers are free to depart and reenter the system at with and without prior notice. This “provider of last resort” status will distort the competitive balance by saddling such utilities (and their remaining customers) with costly burdens not shared by its competitors.

e. The Commission has failed to provide for meaningful reciprocity, thus allowing competitors to freely skim for the profitable loads of existing utilities without providing comparable opportunities for Arizona public service corporations to expand their markets.

f. The Proposed Rule's provisions on stranded investment recovery, although somewhat improved, still fail to provide sufficient assurances that prudent expenditures, costs and obligations will be fully recovered by the utilities who incurred them in response to their Commission-supervised public utility obligations of the past.

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III. CONCLUSION

Wherefore, for the foregoing reasons, APS respectfully asks the Commission to reject the Proposed Rule. Instead, APS urges the Commission to convene a series of Commissioner-led proceedings to compile a full and adequate evidentiary record for its subsequent deliberations. The present path charted by the Proposed Rule will poorly serve the citizens of this state and will only lead to litigation and delay.

RESPECTFULLY SUBMITTED this 7th day of October, 1996.

SNELL & WILMER L.L.P.

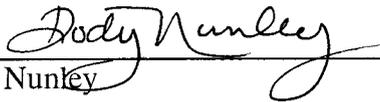
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CERTIFICATE OF SERVICE

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The original and ten (10) copies of the foregoing document were filed with the Arizona Corporation Commission on this 7th day of October, 1996, and service was completed by mailing, faxing or hand-delivering a copy of the foregoing document this 7th day of October, 1996, to all parties of record herein.



Dody Nunley