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BEFORE THE ARIZONA CORPORATION COMMISSION

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RENZ D. JENNINGS  
CHAIRMAN  
MARCIA WEEKS  
COMMISSIONER  
CARL J. KUNASEK  
COMMISSIONER

IN THE MATTER OF THE COMPETITION  
IN THE PROVISIONS OF ELECTRIC  
SERVICES THROUGHOUT THE STATE  
OF ARIZONA

DOCKET NO. U-0000-94-165

NOTICE OF FILING COMMENTS OF  
CITIZENS UTILITIES COMPANY

Citizens Utilities Company hereby provides notice of filing its Comments in the above-referenced docket.

DATED: November 8, 1996

Respectfully submitted,

*Beth Ann Burns*

Beth Ann Burns  
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Arizona Corporation Commission  
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1 R14-2-1604

2 On October 7, 1996, the Cooperatives filed Exceptions in  
3 this docket. For convenience, a copy of those Exceptions is  
4 attached hereto and incorporated herein by this reference.

5 R14-2-1604.H establishes a waiver mechanism for  
6 cooperatives to petition to modify the competitive schedule "so as  
7 to preserve the tax exempt status of the cooperative or to allow  
8 time to modify contractual arrangements pertaining to delivery of  
9 power supplies and associated loans." In the Cooperatives'  
10 Exceptions, they suggested an alternate reporting approach which  
11 would save both Commission and cooperative resource in addressing  
12 these tax exemption, mortgage default, impairment of contract and  
13 other issues. The Cooperatives feel this alternative is preferable  
14 to the current version of the Proposed Rules. It will allow them to  
15 focus their efforts on resolving these issues and will keep the  
16 Commission fully informed as to their efforts.

17 Therefore, the Cooperatives request that the Commission  
18 delete cooperatives from the definition of "Affected Utilities" in  
19 R14-2-1601.1 and substitute the following language for the current  
20 version of R14-2-1604.H:

21 H. By December 31, 1997, Arizona electric  
22 cooperatives shall file with the Commission a  
23 report describing the status of their efforts  
24 to address and resolve tax exemption,  
25 contractual and federal financing issues which  
26 affect their ability to participate in a  
competitive market. If such issues have been  
resolved by that date, such report shall  
include a proposed timetable under which the  
service territories of the electric

1 cooperatives may be opened to competition as  
2 described in this article. An electric  
3 cooperative may at any time elect to  
participate in this article pursuant to the  
provisions of R14-2-1611.B.

4 R14-2-1604 also establishes a phased timetable for  
5 introduction of competition. The rule should be modified to make it  
6 clear that (1) customers electing to participate in the competitive  
7 market should bear the costs associated with that decision and (2)  
8 its requirements are subject to available transmission capability.

9 As to these issues, to the extent that load is supplied by  
10 generation external to a system, it impacts the ability to provide  
11 reliable service to all customers. Each system has a limit to its  
12 import capabilities. A certain amount of online generation is  
13 required to provide reactive and/or real support to the transmission  
14 system which restricts the ability to import competitive resources.  
15 Also, the system may not have import capability because of  
16 transformer, substation and other transmission constraints.  
17 Although these limitations impact all systems, they are of  
18 particular concern to the Cooperatives because of the limited  
19 facilities which are in place to serve their less densely populated  
20 and widely disbursed service territories.

21 As R14-2-1604 is currently phrased, a competitive supplier  
22 might argue that an Affected Utility had not "made available" the  
23 required percentage of its retail demand if, because of system  
24 capacity constraints, a smaller percentage than the mandated targets  
25 were capable of receiving competitive service. For example, an  
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1 Affected Utility might only be physically able to make available  
2 40%, not 50%, of its retail peak demand by January 1, 2001 because  
3 of capacity constraints. The competitive supplier might then argue  
4 that the Proposed Rules require the Affected Utility and its  
5 customers to pay for system modifications. The Proposed Rules  
6 should be changed to make it clear that it is the electric service  
7 provider or competitively served customer who must bear the cost of  
8 overcoming such system limitations, if necessary, not the Affected  
9 Utility or its customers.

10 To address this issue, a new definition should be added to  
11 R14-2-1601 as follows:

12 "Available Transmission Capability" has the  
13 meaning accorded it by Federal Energy  
14 Regulatory Commission Order 888 (III FERC  
Stats. & Regs. ¶ 31,036, 1996) incorporated  
herein by reference.

15 The phrase "Subject to Available Transmission Capability" should  
16 then be added at the beginning of paragraphs A, B and D in R14-2-  
17 1604.

18 Finally, the following new paragraph I should be added at  
19 the conclusion of R14-2-1604:

20 I. Any consumer which elects to  
21 participate in the competitive market shall pay  
22 all costs attributable to such election  
including but not limited to special metering  
costs and any costs required to relieve  
transmission or distribution constraints.

23 These modifications avoid ambiguity and make clear that the  
24 competitive consumer or competitive supplier will shoulder costs  
25 created by allowing competition. The modifications are also  
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1 consistent with this Commission's Finding of Fact No. 4 in Decision  
2 No. 59870: "It is the expectation of the Commission that the rates  
3 for Standard Offer service will not increase, relative to existing  
4 rates, as a result of allowing competition."

5 R14-2-1606

6 R14-2-1606.A requires Affected Utilities until some  
7 undefined future date to stand ready to provide all customers in  
8 their service areas Standard Offer service. Thus, even though a  
9 large industrial, commercial or residential load has left a system,  
10 the Affected Utility will still have to plan for, finance and secure  
11 generation, transmission and distribution resources or facilities  
12 necessary to serve that load. For example, if 10 MW of commercial  
13 load leaves the system in 1999, the Affected Utility nonetheless  
14 will have to continue to incur the cost necessary to accommodate  
15 that load until the Commission determines that competition has been  
16 implemented for the commercial class of consumers.

17 From society's standpoint, this obviously is an  
18 inefficient use of resources. For this time period, both the  
19 competitive generation supplier and the Affected Utility will be  
20 expending resources to serve the same customer. From the  
21 competitive customer's standpoint, it offers tremendous  
22 opportunities to "game" the system because that customer may move  
23 back and forth based upon the relationship between marginal and  
24 average embedded cost. The requirement also places Affected  
25 Utilities at a competitive disadvantage. Their Standard Offer rates  
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1 must include these cost increments, while competitive suppliers are  
2 subject to no similar obligation. Finally, the provision shifts  
3 costs to the Standard Offer consumer which must bear the expense  
4 associated with maintaining system capability on the mere chance  
5 that the competitively served customer will sometime want to return.

6 The Cooperatives recognize that this is a difficult and  
7 complex issue. For that reason, they suggest that the provisions of  
8 R14-2-1606.A are simply premature. That paragraph should be deleted  
9 in its entirety and this subject should be addressed in the  
10 workshops already contemplated by R14-2-1606.I. This issue could  
11 then be dealt with as part of the Commission's consideration of  
12 specific Standard Offer and/or Unbundled Service tariffs.

13 R14-2-1601.4

14 FERC Order 888 acknowledges that "local facilities" are  
15 subject to state jurisdiction. For that reason, we suggest that the  
16 definition of "distribution service" use that same term of art as  
17 follows:

- 18 4. "Distribution Service" means the delivery  
19 of electricity to a retail consumer  
20 through wires, transformers, and other  
21 devices that are classified as local  
22 facilities not subject to the jurisdiction  
of the Federal Energy Regulatory  
Commission; Distribution Service excludes  
meters and meter reading.

23 R14-2-1607

24 Paragraph A requires Affected Utilities to take feasible,  
25 cost-effective steps to mitigate Stranded Cost by means such as  
26 expanding wholesale or retail markets. One of the many problems

1 with the Commission's current timetable is that most of the  
2 surrounding states whose markets would provide these opportunities  
3 will not be open to Arizona's utilities. Yet, those states'  
4 utilities will be able to sell in Arizona, thus exacerbating the  
5 Stranded Cost problem. For this reason alone, the Commission should  
6 delay action on rules adoption, proceed further with the Proposed  
7 Rules' refinement and seek coordinated, regional solutions that will  
8 not inherently disadvantage this state's utilities and their  
9 customers.

10 Paragraphs D and I list factors as to Stranded Cost which  
11 are wholly inappropriate. For decades, the Cooperatives have  
12 faithfully adhered to the "regulatory compact" and expended  
13 considerable sums to assure reliable, reasonably priced power for  
14 their service territories. These are vested property rights under  
15 Arizona's constitution and statutes which can't be disturbed by this  
16 Commission. At a minimum, those vested rights certainly can't be  
17 diminished by factors such as the "impact of Stranded Cost recovery  
18 on the effectiveness of competition."

19 Factors 1, 4, 8 and 9 should be deleted from paragraphs D  
20 and I of R14-2-1607.

21 R14-2-1611

22 Affiliates of non-Affected Utilities should also be  
23 prohibited from competition unless they meet this Rule's conditions.  
24 For that reason, we suggest the following change to R14-2-1611:

- 25 A. The service territories of Arizona  
26 electric utilities which are not Affected

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Utilities shall not be open to competition under the provisions of this Article, nor shall Arizona electric utilities which are not Affected Utilities (or their affiliates as that term is defined in R14-2-801.1) be able to compete for sales in the service territories of the Affected Utilities.

B. An Arizona electric utility (or its affiliate as that term is defined in R14-2-801.1), subject to the jurisdiction of the Commission, which is not an Affected Utility may voluntarily participate under the provisions of this Article if it makes its service territory available for competing sellers, if it agrees to all of the requirements of this Article, and if it obtains an appropriate Certificate of Convenience and Necessity.

D. An Arizona electric utility (or its affiliate as that term is defined in R14-2-801.1), not subject to the jurisdiction of the Commission, which is not an Affected Utility, may voluntarily participate under the provisions of this Article if it makes its service territory available for competing sellers, if it agrees to all of the requirements of this Article other than any requirements to obtain a Certificate of Convenience and Necessity, if adequate enforcement mechanisms can be established, and if all other Affected Utilities consent in writing.

**CONCLUSION**

The Cooperatives request that the Commission modify the Proposed Rules as set forth above.

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RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of November, 196.

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- 1 Original and 10 copies of the
- 2 foregoing were filed this 8<sup>th</sup>
- 3 day of November, 1996, with:
- 4 Docket Control
- 5 Arizona Corporation Commission
- 6 1200 West Washington
- 7 Phoenix, Arizona 85007
- 8 Copy of the foregoing hand-delivered
- 9 this 8<sup>th</sup> day of November, 1996, to:
- 10 Chairman Renz D. Jennings
- 11 Arizona Corporation Commission
- 12 1200 West Washington
- 13 Phoenix, Arizona 85007
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