



0000069357

ORIGINAL

nt of Chairman William Mundell

RECEIVED

Arizona Corporation Commission

Arizona Corporation Commission

August 26, 2002

2002 AUG 26 P 4: 04

DOCKETED

AUG 26 2002

Generic Proceeding for Electric Restructuring

Docket Nos.

AZ CORP COMMISSION
DOCUMENT CONTROL
E-00000A-01-0630
E-01345A-01-0822
E-00000A-01-0630
E-01933A-02-0069
E-01933A-02-0471

DOCKETED BY CAR

Deregulation: The states are in a better position to protect consumers than the federal government.

When I started the review of deregulation in Arizona with my December 5, 2001 letter I was concerned that in reacting to the California energy crisis the federal government was preempting our ability to protect the consumers of Arizona. Over the last eight months I have become increasingly concerned. I still am not ready to completely stop deregulation, but I have grave concerns on how deregulation will affect the consumers of Arizona. Because circumstances have changed since I voted on deregulation, I support delaying deregulation, even longer than proposed by the Administrative Law Judge. I hope today begins a much broader discussion of how deregulation will affect Arizona's jurisdiction and why Arizona is better equipped to protect consumers than the federal government.

A coordinated effort of elected officials from all four branches of Arizona government along with other interested parties is needed to protect Arizona from the federal government. All three branches of the federal government are attacking the sovereignty of Arizona--the federal courts through their decisions, the executive branch through the orders of FERC and the legislative branch with the energy legislation now pending in Congress.

Federal Courts

The federal courts continue to chip away at Arizona's ability to protect our consumers. We unknowingly gave up jurisdiction when we unbundled our rates. Because FERC v. New York was decided by the United States Supreme Court long after we voted on deregulation the decision's impact on our jurisdiction and the consumers of Arizona was never discussed. Additionally, a recent federal court decision in California applied the filed rate doctrine and ruled that consumers have no choice but to pay the rates charged by wholesalers. The decision even limits a "prudence review" by the California Public Utilities Commission.

Litigation pending in the federal court in Wisconsin calls into question the states' ability to protect consumers when dealing with an out-of-state energy-holding company. In Connecticut an out-of-state wholesaler has threatened to cut off power to the local utility if its bill is not paid. In New Jersey because of a situation similar to California, the governor has signed an executive order creating a task force to investigate why utilities may have to charge consumers one billion dollars in additional wholesale electricity rates. In Pennsylvania the public utility commission has recently alleged market manipulation by a wholesaler and has referred the matter to the United States Department of Justice.

FERC

Since I voted on deregulation, FERC has issued a number of orders that preempt our jurisdiction. The most obvious one is the "one size fits all" Standard Market Design order. As one state utility commissioner from the northwest stated, "Centralized control of electricity by Washington, D.C. will not benefit consumers and businesses. FERC is subjecting our consumers and economy to a reckless experiment." A commissioner from the southeast showed that the concern is nationwide when he stated: "We don't believe we need the federal government to impose a layer of bureaucracy and rules that would threaten our electric reliability and our reasonably-priced power rates. We are particularly concerned that many aspects of the FERC proposal impair our ability to effectively regulate utilities--our number one job is to protect consumers, and we feel that FERC's proposed rules prevent us from doing so."

In a recent order that has not received a lot of publicity FERC ruled that it already has exclusive jurisdiction over significant aspects of the siting of interconnection of transmission lines and power plants. This is an unprecedented power grab and will have a chilling impact on our ability to customize orders so that Arizona consumers are protected. I do not think we should put all "our eggs in one basket" and hope that FERC protects us from market manipulation, price gouging, and market power. Certainly we do not want to rely on FERC to insure the reliability of our transmission grid. We have seen how FERC failed to protect Arizona consumers in the El Paso natural gas capacity case.

Congress

Ironically, Congress is considering preemption legislation that would clearly take away Arizona's siting authority over transmission lines. As a practical matter, this legislation will have the indirect result of letting the federal government decide where power plants are sited in Arizona. Do we really want bureaucrats in Washington, D.C. deciding where power plants and transmission lines are sited in Arizona?

If we were talking about Arizona's water, we would not knowingly give up jurisdiction to the federal government. We certainly should not do it with our electricity.

It is disappointing but not surprising that the incumbent utilities and the merchants are acting out of their own self-interest and not what is in the best interest of the consumers of Arizona. Everyday there are new allegations of illegal and unethical conduct by merchant/wholesalers manipulating the energy market.

However, there is one ray of hope. Arizona Public Service, unlike other wholesalers who engaged in price gouging/market manipulation, acted ethically and responsibly in reporting to FERC its concerns about Enron. This reporting occurred long before the illegal and unconscionable conduct of Enron had surfaced in the media.

The proponents of deregulation have stated that having Arizona's utilities owned by out of state or foreign holding companies is just how business is done in a global economy. They seem to suggest that we can do nothing to stop it or that we should do nothing to stop it. I disagree. We can go silently into the night or we can fight every inch of the way to make sure that Arizonans have reliable, affordable and environmentally friendly electricity just like we have done for decades in protecting our water.