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BEFORE THE ARIZONA CORPORATION COMMISSION  
Arizona Corporation Commission

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

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IN THE MATTER OF COMPETITION )  
IN THE PROVISION OF ELECTRIC )  
SERVICES THROUGHOUT THE STATE )  
OF ARIZONA )

DOCKET NO. U-0000-94-165  
COMMENTS OF TRICO  
ELECTRIC COOPERATIVE, INC.

TRICO ELECTRIC COOPERATIVE, INC. ("Trico") joins in the comments filed pursuant to the Procedural Order of the Hearing Officer dated October 11, 1996, by Arizona Electric Power Cooperative, Inc., Duncan Valley Electric Cooperative, Inc., Graham County Electric Cooperative, Inc., and Sulphur Springs Electric Cooperative, Inc. (collectively, "AEPCO").

GENERAL COMMENTS

The Commission by entering Decision No. 59870 on October 10, 1996 established clearly that it favored retail competition in Arizona. This should suffice. The Commission has no legal right to adopt such rules before the Arizona Constitution and statutes are amended to permit retail competition. In the event that the Proposed Rules are adopted by the Commission before such amendment, the Commission will be inviting unnecessary litigation by those who will take the position that litigation is necessary to protect their rights.

In the leading Arizona Supreme Court case of *Corporation Commission v. Pacific Greyhound Lines*, 54 Ariz. 159, 84 94 P.2d 443 at 450 (1939), the court stated:

"Re-examining the meaning of section 3, supra [Article XV, Section 3 of the Arizona Constitution], in the

1 light of the other sections of the constitution affecting the  
2 question, and the language and reasoning of all of our  
3 decisions, we are of the opinion that the 'full power to  
4 \*\*\* make reasonable rules, regulations and orders, by  
5 which such corporations shall be governed in the  
6 transaction of business within the State', qualifies and  
7 refers only to the power given the commission by the  
8 same section to 'prescribe just and reasonable  
9 classifications to be used, and just and reasonable rates and  
10 charges to be made and collected by public service  
11 corporation', and that both under the direct language of  
12 the constitution and the police power inherent in the  
13 legislative authority, the paramount power to make all  
14 rules and regulations governing public service  
15 corporations not specifically and expressly given to the  
16 commission by some provision of the constitution, rests  
17 in the legislature, and it may, therefore, either exercise  
18 such powers directly or delegate them to the commission  
19 upon such terms and limitations as it thinks proper. The  
20 limitation set forth in section 6, of chapter 100, supra  
21 [former A.R.S. §40-607 pertaining to certificates of  
22 convenience and necessity issued to motor carriers,  
23 repealed effective January 1, 1982], is, therefore,  
24 constitutional. The meaning and purpose of the  
25 limitation is clear." (Emphasis supplied.)  
26

16 The Arizona Supreme Court recognized the continued validity of *Pacific*  
17 *Greyhound, supra*, as recently as in *Corporation Commission v. State ex rel Woods*,  
18 171 Ariz. 286, 830 P.2d 807 at 814 and 815 (1992), by the following statement:

19 "... *Pacific Greyhound* has been precedent for over fifty  
20 years. Utilities, the Commission, and countless state  
21 officials undoubtedly have relied on that case. Although  
22 we examine such precedent critically in light of the history  
23 and text of the constitution, we do not readily overturn it,  
24 especially if it is possible to resolve the questions  
25 presented without disturbing that precedent. In the  
26 present case, therefore, we measure the Commission's  
regulatory power by the doctrine apparently established by  
*Pacific Greyhound* and its progeny—that the Commission  
has no regulatory authority under article 15, section 3

1                   except that connected to its ratemaking power."  
2                   (Emphasis supplied.)

3                   Pursuant to Article XV, Section 6, the legislature enacted A.R.S. §§40-281, *et*  
4 *seq.* which are the bases of the doctrine of regulated monopoly with respect to fixed  
5 utilities in Arizona. Insofar as electric public service corporations are concerned,  
6 these statutes are now in effect and are the bases of regulated monopoly in Arizona  
7 at the present time. The Court of Appeals, Division One in *Tonto Creek Estates v.*  
8 *Corporation Commission*, 177 Ariz. 49, 864 P.2d 1081, 1088 (1993), stated:

9                   "The Constitution does not authorize the Commission  
10                   to issue public certificates of convenience and necessity ...

11                   ...

12                   The Constitution permits the legislature to 'enlarge the  
13 powers and extend the duties of the Corporation  
14 Commission. ...' Ariz. Const. art. XV, § 6. In the area of  
15 certificates of convenience and necessity the legislature  
16 has, by statute, authorized the Commission to issue such  
17 certificates:

18                   ...

19                   Issuing certificates of convenience and necessity is far  
20 from a plenary power of the Commission. To the  
21 contrary, it is a legislative power delegated to the  
22 Commission subject to restrictions as the legislature  
23 deems appropriate. ..."

24                   It is therefore clear that while the Commission does have plenary power with  
25 respect to rate-making, it does not have plenary power with respect to certificates of  
26 convenience and necessity or the effect thereof, that is, whether public service  
corporations are to be regulated under the doctrine of regulated monopoly or there  
is to be retail competition. The Commission has put the "cart before the horse."  
The Commission, instead of including Proposed Rule R14-2-1616 relating to legal  
issues, should first determine the legal issues before adopting any rules which are

1 presently contrary to the Constitution and statutes and adopt the proposed rules  
2 only after the Constitution and statutes permit retail competition. Adopting rules  
3 in anticipation of a change in the law is impermissible. *Kennecott Copper Corp. v.*  
4 *Industrial Commission of Arizona*, 115 Ariz. 184, 564 P.2d 407 at 409 (1977).

#### 5 SPECIFIC COMMENTS

6 1. Trico and the other cooperatives joining in AEPCO's comments urge  
7 that Proposed Rule R14-2-1601(1) should be amended to delete from the definition  
8 of "Affected Utilities" each of the cooperatives set forth therein and that R14-2-  
9 1604.H be amended to provide that the cooperatives file a status report with the  
10 Commission on or before December 31, 1997, as set forth in AEPCO's comments.

11 2. R14-2-1607 should be amended as follows:

12 A. Subsection A should be amended to read:

13 "The Affected Utilities shall take prudent, feasible,  
14 cost-effective measures to mitigate Stranded Costs."

15 B. Subsections D and I should be deleted.

16 Rule R14-2-1601(8) defines "Stranded Costs". Subsections D and I purport to  
17 redefine this term causing an apparent conflict between Rules R14-2-1601 and R14-2-  
18 1607. It is well established by the appellate courts of this state that electric public  
19 service corporations have vested property rights protected by Article II, Section 17 of  
20 the Arizona Constitution (and also Amendment V of the United States  
21 Constitution). Certain provisions in subsections D and I are completely irrelevant  
22 to determining the extent of damage that will be suffered by electric public service  
23 corporations in the event these vested property rights are impaired.

24 3. A new Rule R14-2-1617 should be added to the Proposed Rules as  
25 follows:  
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"Duplication Prohibited.

No duplication of existing electric facilities shall be permitted under this Article and no Certificate of Convenience and Necessity shall be granted by the Commission to an Electric Service Provider that will adversely affect the rights of an Affected Utility except to render services described in R14-2-1605 or R14-2-1606."

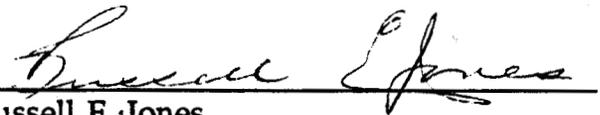
4. Another new section should be added to the Proposed Rules as R14-2-1618 as follows:

"No Impairment of Obligation of Contract.

Any provision of this Article which, if complied with by an Affected Utility, would constitute a breach of an existing contract by such Affected Utility which is in effect on the date this Article is adopted, shall not apply to such Affected Utility."

Respectfully submitted,

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**Comments of**  
**Residential Utility Consumer Office**  
  
**on the**  
**Arizona Corporation Commission Staff's**  
**Proposed Rule on Retail Electric Competition**

**November 8, 1996**

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## **1. The Draft Rule is Premature**

The Commission is rushing through this rule-making with unseemly haste. Yet the Draft Regulations are proposing a leisurely introduction of retail electric competition starting only in 1999.

With regard to the rule-making, the Commission is putting the cart before the horse. Issue resolution should precede rule adoption. The Commission is calling for detailed comments on the implementation of a new industry structure that has not been thought through and is seriously flawed.

One reason given for the rushed rule-making schedule is that it will establish a time-line that will move forward the process of retail competition. But this is not the case with the drawn-out time line currently proposed. The proposed schedule is so slow that it will be overtaken by events. The pace of change in the electric industry in the Southwest is likely to accelerate as California moves toward retail competition in 1998, while under the Draft Rule only 20% of the Arizona market would be opened up by 1999, with complete retail access only by 2003.

The contradiction between the undue haste of the rule-making and the overly drawn-out schedule for introducing retail competition should be resolved as follows. First, the rule-making should take place only after due deliberation and decision on the issues. This could take be achieved by April 1, 1997.

Second, if the Commission truly wishes to move the restructuring process forward, RUCO's proposed implementation schedule should be adopted, commencing with a relatively small initial phase that would help to iron out the potential problems of retail access. There are no compelling reasons why an initial "pilot program" phase of retail access should not be introduced in 1997. Nor should half of Arizona's electricity consumers have to wait for over six more years for retail access. The phasing proposed by RUCO is as follows:

- July 1, 1997: Phase One (Pilot Program) -- 2-4% of load.
- January 1, 1999: Phase Two -- a total of 25% of load (additional 21-23%).
- January 1, 2000: Complete retail access -- 100% of load (additional 75%).

## **2. There Must be Proportional Retail Access for All Customer Classes on the Same Time Schedule**

A clear danger in the Draft Rule is that a select group of customers, predominantly large industrials, will enjoy access to the competitive market long before most other customers do. The Draft Rule's provisions regarding the proportions of eligible load in different customer classes are unduly complex. Anything short of proportional access by all customer classes

and on the same time schedule is a recipe for favoring some customer classes over others and for shifting of stranded cost recovery to still-captive customer classes. As a general matter, the Rule should explicitly provide that there shall be no shifting of responsibility for stranded costs between customer classes.

The simple rule should be that the same percentage of each class's load should be eligible for retail access in each phase. For example, when 50% of load is eligible, it should be 50% of each customer class's load. Equivalently, if residential customers account for 30% of a distribution utility's demand, in each phase residential customers should account for 30% of eligible demand.

A further requirement that is necessary to make it practical (in terms of transaction costs) for all customers to participate in the competitive market is that no special customer metering should be required. Time of use meters should only be required for those customers who wish to benefit from time of day prices. For other customers or groups of customers supplied by competitive suppliers, the distribution utility can estimate their hourly load responsibility using load research data.

### **3. The Distinction Between Distribution Utilities and Competitive Electricity Suppliers Should be Clarified**

As the debate about retail electric competition continues, it is becoming increasingly clear that a number of services now being provided by electric utilities can be provided competitively. What is not so clear, however, is exactly *which* services can be provided competitively at any given time. It is not necessary to attempt to decide prematurely which services belong in each category -- competitive and non-competitive services.

Utilities and other electric service providers should be defined with the distinction between these two categories of services in mind. Utilities should be called "Distribution Utilities," it being clear that for the indefinite future the service of providing the wires through which electricity is delivered to retail customers in a service area will be a regulated monopoly.<sup>1</sup>

The Distribution Utilities should not only be listed, as in draft R14-2-1601, but should be *defined* as those public service corporations franchised by the Commission to provide, within their specified service areas, such services as are found by the Commission to be non-competitive for the time being. In other words, Distribution Utilities should continue to have the sole franchise to provide these non-competitive utility services in their service areas.

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<sup>1</sup> This distinction mirrors that in the natural gas industry, in which distribution utilities -- conventionally named Local Distribution Companies or LDCs -- are focused on the service of delivering gas under rate regulation. Gas supply, however, is becoming competitive.

<sup>2</sup>By contrast, other electric service providers should be termed generically "Electricity Suppliers," since it is the principal objective of price deregulation to create a competitive power generation and supply market. Electricity Suppliers should be *defined* as electric service providers who are licensed to provide one or more electricity services deemed to be competitive at the time by the Commission.

#### **4. The Commission Should Periodically Determine Which Services are Competitive and Which are Not**

It follows from the previous point that the Commission must make critical decisions from time to time regarding the general competitiveness of different electric services, particularly the generation of electricity and its supply to retail customers. RUCO believes that the Commission should make the determination that a service is competitive if it can *generally* be competitively provided in Arizona -- not necessarily to *all* customers -- a point that will become clear presently.

The Commission should have the authority to make such determination; to conduct such investigations and undertake such studies as it deems necessary for this purposes *before* making such determination, *and* subsequently from time to time as market conditions change (e.g., mergers could make a previously competitive market no longer competitive).

The Commission should make an initial determination of those services that are competitive at the present time, or rather, will in its opinion be competitive if (a) they are deregulated and (b) appropriate restrictions are imposed on market participants to ensure that there will be no undue exercise of vertical or horizontal market power. These services could include electric energy generation, electricity supply (the putting together of supply packages for retail customers , possibly including energy efficiency, special pricing features, etc.). Competitive markets will likely also be established for certain ancillary services. This category includes elements of system control and reliability such as voltage control and reactive power. Metering, meter reading and billing may also become competitive services.

After these services are deregulated, *i.e.*, freed from price regulation, the Commission would need to make periodic assessments regarding any barriers to effective competition, by establishing a complaints procedure and by having the authority to investigate market power abuses on its own motion.

The Commission should have the power to rectify the situation or, in extreme cases, reintroduce price regulation.

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<sup>2</sup> Distribution utilities should be responsible for distribution system losses, for which they would be required to generate or purchase energy. Their tariffs should include this service. Distribution utilities should be required to offer energy balancing service until such time as such service is competitively provided.

## 5. The Draft Rule Should Comprehensively Address the Problem of Market Power

RUCO has serious concerns regarding the danger of market power resulting from vertical integration between distribution, transmission and power supply functions; affiliate transactions; and horizontal market combinations. The Draft Rule needs to be strengthened in a number of respects to deal with the market power problem.

The Rule already provides that utilities must make customer-specific information available to other electricity suppliers if requested to do so by the customer concerned. The Rule should be strengthened, by requiring that Distribution Utilities should make load research and other *customer class* data available to all competitive Electricity Suppliers, even in the absence of a request by the customers. This data can largely or entirely be made public without breaching the confidentiality concerns of customers.

Second, the Commission should require divestiture or at least *functional separation* of the competitive electric services such as generation provided by the distribution utilities. The continued vertical integration of these functions is the greatest threat to competition, because the distribution utilities can use their existing relationships with their customers to give them an advantage in the generation market. To prevent continued "ownership" of retail customers, an affiliate electricity services provider should be separated by a "Chinese wall" from the distribution utility, and should be required to use an unrelated name in its marketing.<sup>3</sup>

Control of the *transmission system*, like the distribution system, gives utilities the ability to influence the generation market by favoring affiliate generation. The functional separation being proposed here would separate generation from both transmission and distribution. Regulation of transmission access and pricing by the Federal Energy Regulatory Commission (FERC) under Order 888 is also intended to prevent abuse of transmission ownership in the generation market.

In determining the provisions for stranded cost recovery for a utility, the Commission should be authorized to take into account the utility's proposals regarding corporate restructuring.

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<sup>3</sup> An alternative provision would be for distribution utilities to be required to sell designated and increasing portions of their generation to the competitive spot electric energy market, *i.e.*, without having any bilateral contracts with the ultimate buyers with respect to such designated resources. The spot market is discussed in the following section.

Third, the Commission should conduct periodic assessments of the state of competition in the relevant state or regional generation market. It should apply standard tests such as the HHI index to determine whether there is the likelihood of market manipulation by one or more large suppliers. As noted elsewhere, the Commission should also determine that the control of groups of generating units will not result in price manipulation in the spot energy market.

Four, the Commission should have the authority to investigate, review, and establish rules for, *transactions between distribution utilities and affiliated electric service providers*. More generally, it is becoming common to develop a "code of conduct" for utilities who wish to participate in the competitive supply market.

## **6. The Draft Rule Does Not Deal Adequately With the Issue of Market Structure**

In the previous section, we began to consider market structure in the context of the problem of continued vertical integration of generation and distribution functions. Here, we raise another critical issue -- the relationship between bilateral contracting and the spot electric energy market.

In the restructuring plans already being finalized in California and New England, the creation of a *spot energy market* is being given a central role. In RUCO's Initial Comments on retail electric competition, a dual market structure was proposed -- with both bilateral contracts and an active spot electric energy market. As we said, we find ourselves in the middle ground in this debate. By contrast, the Draft Rule focuses on bilateral contracts and includes a reference to a spot market almost as an afterthought. In the Draft, the development of spot markets is an option that is left to the market participants. RUCO believes that a spot market should have a more central role in a restructured competitive electricity industry. This matter must be resolved before Arizona embarks on electric industry restructuring.

While primary responsibility for regulating a spot market will likely reside with the FERC, even if an Arizona spot market is created as opposed to a regional one, the Commission should be given the authority to determine whether the spot market(s) relied upon by utilities are effectively competitive. Since regional utility power pooling is not as fully developed as it is in New England, for example, Arizona must address this matter on a state basis. In this respect the situation in Arizona is more like that in California, where the state is taking strong initiatives with respect to pooling and spot market issues.

A fully competitive spot market requires that no one utility controls a sufficient share of generation in any energy price range. With control of generating units that would be close to one another in the dispatching merit order, a utility can increase its profits by submitting bids to the spot market that exceed the operating costs of the lower-cost units. The Commission should ensure that this cannot happen. If it can happen, steps must be taken by the Commission to rectify the situation.

An *Independent System Operator* will also likely have a central role in a new market structure. Among the functions of an ISO could be the acquisition of *ancillary services* needed to make the bulk power system function reliably. Even if the ISO takes responsibility for these services, some of them could be competitively supplied, if there are enough suppliers, etc. These services include reactive power/voltage control, load following and spinning reserves, and energy imbalance service. The provision of generating *capacity* as opposed to electric energy is now sometimes being included in the list. System dispatch and control would be provided, or at least coordinated, by the ISO itself.

The relationship between the spot market and the ISO needs to be carefully structured. In some proposals, they are related functions performed by the same entity, in other models they are separately organized. RUCO has proposed that a Power Mart function as a spot market, submitting its proposed generation unit dispatching schedules to the ISO, which would implement them subject to reliability constraints.

The Commission should not itself be primarily responsible *for assuring system reliability*; it should be authorized to review the ISO's primarily role in this regard, and take any steps necessary to satisfy itself that reliability is assured. In an extreme case, it should be entitled to authorize or require the ISO to acquire additional generation or transmission resources.

#### **7. Standard Offer Service Must be Permanently Available**

RUCO noted above that a service could be determined to be competitive if it is *generally* competitively provided, i.e., there is effective competition between a number of suppliers to provide service to most customers, but not necessarily *all* customers. This is where Standard Offer Service is essential. It includes not only the same regulated utility services that are provided to *all* customers in a service area, but also all other electric services, i.e., those that can be provided competitively to most other customers.

The underlying reality is that there are two sides to competition. First, there must be a number of suppliers who compete effectively against each other. Second, however, any given group of customers must effectively be able to exercise choices between the alternative suppliers, taking into account informational barriers and transaction costs. The reality is that a number of customers -- probably including many low-income customers, customers with low electric consumption, and students and other temporary or seasonal residents -- may *never* be able to exercise market choices effectively. Standard Offer Service should be available to these customers on a permanent basis. It should be available to all customers in a service area who select it, or, by default, do not select a competitive Electric Services Supplier.

#### **8. The Franchise to Provide Standard Offer Service Should be Competitively Bid**

During the phase-in period, RUCO believes it is acceptable for Standard Offer Service to be provided by the incumbent distribution utilities. However, there is no reason why this

continued utility role should continue indefinitely. Commencing January 1, 2000, when retail access has been fully phased-in, the Standard Offer franchise for specified areas should be put out to bid by the Commission for successive periods of time such as five years.

The Commission should have the authority to determine the Standard Offer franchise areas. The areas could be those currently corresponding with distribution utility service areas, or they could be smaller sub-areas. The winning bidder should be given the franchise under conditions specified by the Commission in the bidding process and on the price and other competitive terms bid by the winning bidder.<sup>4</sup>

Within each area, the Standard Offer supplier would provide all the competitive services in free competition with competitive suppliers. The Standard Offer supplier would, however, purchase the distribution utility's distribution and other monopoly services, and would flow through the cost of such services to its customers in each rate class at the same regulated rates at which those services are provided to all other customers of the same class. The FERC-determined transmission component of regulated rates would be flowed through in the same manner as the ACC-determined distribution tariff would be.<sup>5</sup>

To be quite clear, RUCO's intention is to leave all regulated distribution utility services with the utilities. Only the other elements of Standard Offer Service would be put out to bid -- particularly generation, etc.

## **9. Buy-Through Should be Eliminated**

The concept of "buy-through" is a potentially fatal flaw -- a kind of "Trojan horse" -- in the market structure proposed in the Draft Rule. The key problem with buy-through is that it opens up the danger that part of the utility's power supply will be ear-marked for favored customers. It is inevitable that the creation of a separate power supply portfolio for select customers will be at the expense of small customers, who will end up being held responsible for the stranded costs associated with the remaining high-cost portfolio. The Commission should preferably eliminate the buy-through provision from the Draft Regulations.

If, notwithstanding these concerns, the Commission decides to retain buy-through in some form, it should be as part of retail access, and should take place only if requested by the customer(s) concerned. To be clear: if 20% of the load of a customer class is eligible for retail access, *and* if requested by one or more customers who are eligible within that class, the distribution utility should be permitted to acquire generation resources for such customers within the overall cap of 20%.

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<sup>4</sup> The price terms of the bids could include reference to spot market prices, provided that the spot market being relied upon is determined by the Commission to be effectively competitive.

<sup>5</sup> Note that rate unbundling sufficient to identify clearly the tariffs for (a) transmission utility services, (b) distribution utility services, and (c) generation and other services, is a pre-requisite for Standard Offer bidding, as it is for retail competition generally. Transmission needs to be broken out separately to the extent that different transmission tariffs may apply to different supply packages.

## **10. Should Special Provisions for Solar Power Have a Place in the Draft Rule?**

RUCO is concerned about the manner in which the Draft Rule singles out solar energy for special treatment. RUCO is concerned that these provisions could prove costly to ratepayers. It would be preferable in a competitive generation market for the Commission to leave issues regarding types of resources in the hands of power producers subject to regulation by environmental agencies. For example, it is quite likely that wind power will prove to have far greater economic potential than solar power in the near future.

Market solutions to emissions problems, along the lines of the acid rain provisions in the Clean Air Act Amendments of 1990, are generally to be preferred. They would allow generators to find the most economical way to achieve emissions reductions, rather than directing them to adopt specific technologies that might not prove to be the most economical. Further, where the emissions problem is a regional or national one, they can be applied generally across states rather than being state-specific.

## **11. Competitive Electricity Suppliers Should Not be Subjected to Onerous Regulation by the Commission**

The Draft Rule shows signs of a preference for continued regulation, while the intention of retail competition should be to create new market structures that replace the need for price regulation with the discipline of the competitive market place. Accordingly, the emphasis should be on establishing a competitive market structure -- as emphasized by RUCO in these comments -- rather than regulating the competitive suppliers. There are several places where the Draft Rule should be modified to reflect this overall principle.

First, unlike distribution utilities, competitive suppliers should *not* be required to file tariffs with the Commission. (The exception is Standard Offer Service, as and when that becomes competitively bid by suppliers.)

Second, Certificates of Convenience and Necessity should not be required. What should be required is an Electricity Supply License from the Commission, a license that should not be withheld provided that the supplier shows financial soundness and the technical capability to provide the service offered.

Third, for purposes of monitoring system reliability, suppliers should be required to submit to the Independent System Operator (rather than the Commission) summaries of existing and projected customer loads and resources.

## **12. The Conditions for Recovery of Stranded Costs by the Utilities Should be Tightened Up**

First, the Draft Rule should be amended to make it clear that there is no guarantee of recovery of stranded costs by utilities. The Commission should be authorized to make a

determination regarding the amount of stranded costs that should be recoverable by each utility.

Second, greater emphasis should be placed on mitigation of stranded costs by utilities.

Third, to the list of considerations to be taken into account in determining the amount of stranded costs that is recoverable by any utility, the Draft Rule should include the utility's restructuring proposals. Utilities should not be given the opportunity to drag their heels with regard to restructuring, while continuing to recovery high levels of potentially stranded costs, either in existing rates or in special stranded cost charges that apply to retail access customers.

### **13. The Proposed System Benefits Charge Should be Limited in Scope**

As with stranded cost charges, system benefits charges could be separated out and directly charged to *all* customers, whether or not identified separately in the bill. It should not be controversial to explicitly identify these charges.

System Benefits charges should be limited in extent. The main item should be continued provision of low-income support and limits on service terminations during winter months.

### **14. The In-State Reciprocity Provisions Should be Simplified**

The conditions contained in R14-2-1611(D) are unrealistic. Applicable to Salt River Project (SRP), there is a requirement that all other Affected Utilities must consent to SRP's voluntary participation in the competitive market.

It would be preferable to require that the Commission be authorized to decide upon an application by an Arizona electric utility, not subject to its jurisdiction, to participate in the competitive market. It should make its determination in terms of the public interest, including taking into account the impact on other utilities.

### **15. The Draft Rule Raises Serious Legal Problems**

The situation of Salt River Project discussed in the previous section raises legal issues with regard to the Commission's jurisdiction, as well as the charter of SRP.

More fundamentally, the franchise rights of existing utilities are entrenched in Arizona law to a far greater extent than the rights of utilities in many other states. It is questionable whether radical changes in these rights, of the kinds necessary to introduce retail competition, can be made without the Commission first obtaining legislative authorization.

**Conclusion: RUCO's Procedural Recommendation**

The Draft Rule must be rejected.

In light of RUCO's many fundamental concerns regarding the Draft Rule, we recommend that the Commission return in the New Year to the policy-making phase of electric industry restructuring.

Using the Draft Rule as a framework, the fatal flaws can be eliminated and the Rule can be finished in early 1997.