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

DOCKET NO. U-0000-94-165

**NOTICE OF FILING**

The Arizona Utility Investors Association hereby provides notice of filing comments on the Commission's proposed rule on retail electric competition.

DATED THIS 27TH DAY OF NOVEMBER, 1996.

  
WALTER W. MEEK, PRESIDENT

Original and ten (10) copies of the referenced Comments were filed this 27th day of November, 1996, with:

Docket Control  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

Arizona Corporation Commission  
**DOCKETED**

NOV 27 1996

Copies of the referenced Comments were hand-delivered this 27th day of November, 1996, to:

DOCKETED BY 

Renz D. Jennings, Chairman  
Marcia Weeks, Commissioner  
Carl J. Kunasek, Commissioner  
Janice M. Alward, Legal Division  
Gary Yaquinto, Utilities Division  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

Copies of the foregoing Notice were mailed this 27th day of November, 1996, to:



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BEFORE THE ARIZONA CORPORATION COMMISSION

RENZ D. JENNINGS  
CHAIRMAN  
MARCIA WEEKS  
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IN THE MATTER OF COMPETITION IN THE  
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DOCKET NO.  
U-00094165

COMMENTS OF THE ARIZONA UTILITY INVESTORS  
ASSOCIATION ON THE COMMISSION'S PROPOSED RULES  
ESTABLISHING RETAIL ELECTRIC COMPETITION

The Arizona Utility Investors Association (AUIA) has previously identified many areas of deficiency within these proposed rules, including legal, procedural and equity issues. However, at this stage of rule making our comments are limited to the following subjects:

**Aggregation**

1. Municipal aggregation must be proscribed.
2. Aggregators should be included in the definition of Electric Service Providers and required to obtain a CC&N.

**Standard Offer Tariffs**

3. The provisions for standard offer service are unrealistic and unfair to host utilities.

**Stranded Costs**

4. The definition of stranded cost should be rewritten to reflect the reality of regulatory actions in Arizona to date.
5. The provisions for stranded cost recovery should be revised to reflect the legal obligation of the Commission to provide for full recovery.

**Solar Portfolio**

6. The solar portfolio requirements have no legal efficacy as written and should be eliminated from these rules.

**Reciprocity**

7. Salt River Project (SRP) should be removed from the definition of Affected Utilities.
8. The provisions regarding in-state reciprocity are muddled by the Commission's desire to regulate SRP and as such, they are legally insufficient and serve no useful purpose.

## COMMENTS

### Aggregation

1. Municipal aggregation should be proscribed. The rules state in R14-2-1604 (A.3.) and (B.3.) that "Aggregation of loads of multiple consumers shall be permitted." Nowhere else in the rules is aggregation discussed or defined, nor is the subject included in any proposed workshop or working group. Under questioning in the last workshop, the Staff conceded that nothing in the rules would prevent municipalities from aggregating customers of any kind, and they admitted it is unclear whether Commission regulations could be extended legally to a customer of a municipality. This is a serious fault which should be corrected for the following reasons:

A. Utility investors have relied on strong Arizona case law which asserts that a municipality may not take over the customers or the distribution facilities of a certificated utility without paying a proportionate share of all of the investment which has been made by the utility to serve those customers. As the ACC interprets these rules, they could be used by any municipality to circumvent the law by simply aggregating customers without paying for any facilities. No certificated utility should submit to such an end run during the transition to full competition and until all compensation issues are completely resolved.

B. As aggregators, municipalities would have significant advantages over other competitors who market electricity. These advantages accrue from the fact that their activities would be underwritten by municipal taxpayers and they would have subsidized access to almost the entire customer base through water and sewer billing records.

C. Allowing municipalities to sidestep into the electricity market would insert a new layer of government which would seek to enrich its coffers by brokering electricity sales. Such sales would be unregulated since municipal corporations are beyond the reach of the Corporation Commission under the terms of the Arizona Constitution. AUIA has serious doubts about whether wires charges, including system benefits charges and stranded investment recovery, could be legally imposed by the Commission on the customers of a municipality in the absence of legislative enactment.

For all of the above reasons, the Commission should revise the proposed rules to prohibit the entry of municipal corporations into the service territories of so-called Affected Utilities until the Commission declares that a competitive market has been achieved and gives up its jurisdictional responsibility for those service territories and the customers therein.

2. The definition of Electric Service Provider at R14-2-1601 (5.) should be amended to include aggregators among those who are required, elsewhere in the rules, to obtain a Certificate of Convenience & Necessity from the Commission. This would aid in implementing the recommendation in the previous section, but there are other reasons for pinpointing aggregators. Although the industry seems to share some common understanding of the probable role of aggregators as opposed to brokers and marketers, the distinction will not be obvious to lay consumers.

For example, if an aggregator signs up homeowners for reduced-cost electric service and then obtains supply commitments from one or several producers, brokers or marketers, the homeowners only know that the aggregator is the interface. Furthermore, the aggregator may be the only person in the service chain that has any fix on the load characteristics of the customer group. If something goes wrong, the aggregator may be at fault because he has put together a bad deal. If he is an unregulated middleman on a pair of skates, everyone else has a problem.

There is as much potential for mischief and poor performance in aggregation as there is anywhere in the service chain. Therefore, the rules should not simply condone aggregation and leave it to bad experience to find out what it is and who can do it.

### **Standard Offer Tariffs**

3. The provisions for Standard Offer Tariffs are unrealistic and unfair to host utilities.

A. The Findings of Fact in Decision No. 59870 and also Sec. B. 2. of R14-2-1606 state that "It is the expectation of the Commission that the rates for Standard Offer service will not increase. Any rate increase proposed by an Affected Utility for Standard Offer service must be fully justified through a rate case proceeding." Presumably, this provision applies to all customer classes.

We can only point out that this proceeding has produced no evidence and no facts to support this expectation. In fact, it completely ignores the probability of cost-shifting and other dislocations that will occur with retail competition.

B. Overall, the Standard Offer provisions are schizophrenic, reflecting a strong tendency by the Commission to try to have its cake and eat it at the same time. To put it another way, the Commission seems unwilling to commit fully to competition unless it is completely painless. We will explore this tendency further in discussing stranded investment.

The problem with Standard Offer service under these rules is that it could continue forever. The rules say that the Affected Utilities can petition for an end to Standard Offer service, but there is no assurance that the utility's obligation to serve would ever end, either after the transition or when retail competition is complete. While there may be a continuing social need for Standard Offer or Universal Service, the responsibility of Affected Utilities to provide it should end with the transition to full competition in 2003. The rules should be explicit in this regard.

### **Stranded Costs**

4. The definition of stranded costs in R14-2-1601 (8.) is ambiguous to the point of being worthless and should be rewritten. First, the phrase "The value of all the prudent jurisdictional assets and obligations" implies that accepted book values and previous Commission decisions could be ignored. Likewise, the phrase "necessary to furnish electricity," adds more confusion.

There are recorded costs associated with these assets and obligations, and if they are used and useful, they are eligible for stranded cost recovery. "Market value" is a strange term to apply to regulatory assets which have no market value. And finally, the limitation imposed by the phrase "prior to the adoption of this article" assumes that no strandable obligations or investments can occur in the seven years from now until 2003. That is only true if the Affected Utilities simply stop operating. It is an open invitation for the utilities to quit maintaining their plants and equipment.

5. In general, the Commission's approach to stranded costs (R14-2-1607) reflects its underlying fear of competition. The Commission wants to change the game but without risking any pain. Yes, the rules contain straightforward language saying the Commission shall allow stranded cost recovery. But, just as Standard Offer service may never go away, these rules create numerous barriers to full recovery and they exempt much of the customer base from any responsibility. For example:

A. Utilities are required to take "every feasible, cost-effective measure" to reduce stranded cost. This standard is not defined anywhere and is probably too vague and demanding to have any legal efficacy.

B. Mitigation measures are further defined as "expanding wholesale or retail markets, or offering a wider scope of services for profit, among others." The implication is that an Affected Utility can leave absolutely no stone unturned, no matter how risky or costly, in mitigating stranded cost. And then, any new business venture would have to be approved by the Commission before it could even be carried out.

C. The rules have retained the provision that stranded cost may only be recovered through exit charges on customers who leave an Affected Utility for a competitive supplier. This provision will effectively exempt half of the customer base from any responsibility for stranded cost even though they will benefit from competition after 2003. We do not expect that the Commission will be willing or able to levy exit charges after the transition. Therefore, it is also our contention that this provision may make it mathematically impossible to achieve full recovery, regardless of what the rules pretend to say.

### **Solar Portfolio**

6. The solar portfolio standard is absolutely out of place in a set of rules that are designed to usher in a competitive era in the electric industry. Solar or any other renewable resource, no matter how socially desirable, must stand on its own in a competitive marketplace. Moreover, the Commission has no right whatsoever to dictate to the equity owners of Affected Utilities that they *must* invest their funds in specific generation assets, regardless of whether they are economic or not. This entire section should be stricken from the rules.

## **Reciprocity**

7. The inclusion of Salt River Project (SRP) in the definitions of these rules (R14-2-1601 (1.)) serves no useful purpose. There are no modifications "to existing law" that could allow SRP to be regulated by the Commission under this article or any other because the Arizona Constitution prohibits it.

8. The Commission's barely disguised desire to regulate SRP so muddies the provisions regarding in-state reciprocity (R14-2-1611) that they are worthless.

The Commission should give up its territorial ambitions and let the utilities and the Arizona Legislature find a solution to any competitive problems that remain between regulated and non-regulated entities.

Both in-state and out-of-state reciprocity are important competitive issues in the long run, but they can't be resolved by this Commission. If the Commission is concerned about these issues, the solution is to hold up the implementation of these rules until they can be resolved at the Legislature and in the U.S. Congress.