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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN)
MARICIA WEEKS)
COMMISSIONER)
CARL J. KUNASEK)
COMMISSIONER)

DOCKET NO. U-0000-94-165

IN THE MATTER OF ELECTRIC)
INDUSTRY RESTRUCTURING)
_____)

RESPONSE OF NORDIC POWER

Nordic Power of Southpoint I, Limited Partnership ("Nordic Power") supports market-based rates with customer choice in the most expeditious manner reasonably feasible. Nordic Power urges a more deliberate "phase in" process, beginning no later than January 1, 1998.

Nordic Power incorporates by reference its June 28, 1996 comments and September 12, 1996 comments filed in this proceeding.

Introduction

Recent comments of some Arizona utilities urge the Commission to impose market barriers and to delay retail electric competition. Nordic Power made recommendations for opening retail markets at a more rapid pace than suggested in the proposed rule. The Commission, after receiving extensive comments and oral testimony, made a compromise in entering its Findings of Fact, Conclusions of Law and Order for the restructuring of the electrical industry in Arizona. Nordic Power does not believe the Commission should retreat. In particular, Nordic Power will address several of the comments made by certain utilities.

1 **The Proposed Rule Should Promote Consumer Choice**

2 Many of the same arguments have been raised by Arizona Public Service Company
3 ("APS"), Tucson Electric Power Company ("TEP"), and Salt River Project ("SRP")
4 ("collectively the utilities"). They each desire to protect their customer-base while "supporting"
5 competition to the extent they may wish to sell to customers in other communities. An exclusive
6 monopoly for me and mine, and competition for the customers of others. Unfortunately, the
7 benefits of market-based rates and the consumers' interest are left out of the utilities' arguments,
8 even though they have reaped the rewards of wholesale competition for some time.

9 The utilities claim the proposed rule does not create "a level playing field." In fact, the
10 field is tilted in favor of these utilities because they have the customer information, knowledge
11 of the costs for their proposed unbundled rates, suggest the customer selection process they may
12 desire, and no mandatory divestiture requirement. No utility is precluded from "playing" in the
13 competitive environment, both in and outside of Arizona. Their concerns seem to be focused
14 only on protecting their perceived entitlements, such as service territories, stranded cost
15 recovery, preferential bond financing, and independence from consumer protection requirements.
16 All these utilities may individually decide if it is more economical to restructure their electrical
17 businesses before entering the competitive retail market.

18 The intergovernmental agreement approach recommended by SRP appears to be an
19 extension of the monopolistic carving out of service territories by the major utilities in Arizona.
20 Customers and competitive power service providers would be left out of the process. SRP and
21 the Commission would jointly decide when and who may enjoy the benefits of retail electric
22 competition in Arizona, one body elected statewide and the other not.

23 The utilities complain that the rule does not contain a clause obligating them to serve
24 customers who do not participate in the retail wheeling process. By including such obligation,
25 the utilities may later use this commitment in limiting the number of customers who may
26 participate in retail wheeling to the minimum percentage, along with their argument of stranded
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1 cost associated with that obligation. Any obligation to serve should not preclude these customers
2 from later aggregating their electrical demands by another. Competitive power suppliers would
3 be eager to have the obligation to serve any customers the utility decides not to serve. The Rule
4 does not need to be changed, unless to make more clear that any customer not served by the
5 utility may be served by any electric service provider.

6 **Stranded Costs**

7 Comments made by the utilities on stranded costs are better left to the process contained
8 in Rule R14-2-1607, as originally proposed. Recovery of "lost revenue opportunities" as
9 suggested by TEP (at 8) would effectively eliminate competition. Recapture of future income
10 streams by a former monopolistic supplier from old and new customers will essentially price
11 these customers out of a competitive market. The objective of retail electric competition, as
12 proposed by the Commission, would be defeated.

13 Any stranded cost recovery should be accomplished only after the working group makes
14 its recommendations on the efficacy of stranded costs and their impacts on retail competition,
15 and public hearings are held. The Rule should make no inference that recovery of stranded costs
16 is guaranteed, for the obvious reason that these Affected Utilities have significant control over
17 their amount and the means for mitigating these costs. Exit fees or unit charges (such as a
18 charge per kilowatt-hour) would mute the benefits of competition and trap consumers with
19 inefficient power producers.

20 **Monopoly Nature of CC&Ns**

21 Legal arguments raised by the utilities are better left to the legal issues working group,
22 as contained in the Rule (R14-2-1616). There are many differences of opinion on these
23 questions, and on any changes which have been proposed by the utilities. Nevertheless, it seems
24 appropriate in these comments to clarify the misconception the utilities have made about their
25 perceived monopolistic nature of their certificates of convenience and necessity ("CC&Ns").

1 Article 14, Section 15 of the Arizona Constitution says "monopolies and trusts shall never
2 be allowed in this State . . ." The Arizona Supreme Court has said that Arizona is a regulated
3 monopoly state and the monopoly is tolerated only because it is subject to the vigilant and
4 continuous regulation by the Commission and is subject to rescission or amendment at any time
5 when the public interest would be served. *Arizona Corporation Commission v. Arizona Water*
6 *Co.*, 111 Ariz. 74, 523 P.2d 505 (1974). In an earlier sanitation service case and a heating and
7 cooling case, the Arizona courts held that the Commission may grant a monopoly to a private
8 business only if it is clearly authorized by the Arizona Constitution and statutes. *Cochise*
9 *Sanitary Services, Inc. v. Arizona Corporation Commission*, 2 Ariz. App. 559, 410 P.2d 677
10 (1966); *Williams v. Pipe Trades Industry Program of Arizona*, 100 Ariz. 14, 409 P.2d 720
11 (1966).

12 The powers of the Corporation Commission do not exceed beyond those which may be
13 derived from a strict construction of the Arizona Constitution and any implementing statutes.
14 *Williams v. Pipe Trades Industry Program of Arizona*, 409 P.2d at 722. The Arizona Legislature
15 has not granted an exclusive monopoly to public service corporations which provide electric
16 service. Furthermore, an exclusive CC&N would violate the anti-monopoly provision of the
17 Arizona Constitution. Art. 14, § 15, Ariz. Const.

18 The utilities rely on a water company case for their proposition that they should be
19 compensated for CC&N privileges, because of this Rule. See TEP Comments at 27; APS
20 Comments at 4. In this 1983 decision, *James P. Paul Water Company v. Arizona Corporation*
21 *Commission*, 137 Ariz. 426, 671 P.2d 404 (1983), the Arizona Supreme Court held that it serves
22 the public interest to allow a certificate holder an opportunity to provide adequate water service
23 at a reasonable rate before a portion of its certificate could be deleted. The *James P. Paul* court
24 reasoned that granting a new CC&N for water service would be antithetical to the public interest
25 for particular reasons applicable to water delivery services:
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1 First, it would encourage price competition between public service corporations, the very
2 mode of operation which the Legislature has rejected.

3 Second, it encourages over-extensive development. In order to insure that they will be
4 able to supply service as the need arises, certificate holders will feel compelled to
5 construct facilities before facilities are needed. The consuming public will ultimately pay
6 for this needless construction which may, given the rate of technical development, prove
7 to be obsolete by the time it is needed.

8 Third, it fails to reward a public service corporation for taking on the risks and
9 obligations concomittant to certification. Once certified to supply water to a parcel of
10 land, a water company must comply with orders and regulations promulgated by the
11 Commission in the public interest, . . .

12 Finally, it discourages service by companies that would supply service to sparsely
13 populated areas today, at a marginal profit, if they could be assured of an opportunity
14 to provide extensive, more profitable service when such service was needed.

15 671 P.2d at 407-8.

16 This water company case is distinguishable on several points. First, the Legislature has
17 not enacted monopolistic service territories for electrical providers. Instead, APS and SRP have
18 sorted out these arrangements by private agreement in providing retail power service. The
19 Legislature has in fact encouraged competition by creating a Joint Study Committee on Electric
20 Industry Competition (HB 2504). Similarly, the Commission and APS have already made a
21 commitment to move towards open competition, as a result of the recent APS rate reduction
22 case. Furthermore, competition already exists in the electrical industry, through bulk electric
23 sales among utilities, as well as the retail level among electric, natural gas and co-gen suppliers.
24 Some retail suppliers are already overlapping in their CC&Ns (e.g. gas and electric). This is
25 far different from a small water utility which merely pumps water for delivery to some
26 customers at the end of the tap.

1 **The Economic Impact Statement Properly Identifies the Benefits of Retail Electric**
2 **Competition**

3 Nordic Power has emphasized the benefits of retail electric competition for all customers
4 and communities in its earlier comments. Likewise, the Commission Staff has articulated these
5 attributes of increased competition:

- 6 (1) Consumer choice among energy suppliers.
- 7 (2) Greater customization of energy services, especially for larger
8 consumers, regarding time of use rates, interruptible service,
9 contract duration, pricing arrangements, risk management, and so
10 on.
- 11 (3) Greater innovation in technology and greater applications of
12 technological innovations, especially in distributed generation, as
13 a result of incentives in the competitive marketplace.
- 14 (4) Greater application of energy efficiency measures as energy service
15 companies offer packages of electric energy, demand side
16 management measures, and possibly other services such as
17 building maintenance services.
- 18 (5) Lower prices for electricity due to competitive pressures and to
19 technological, marketing, and organizational innovations that
20 would not occur as rapidly, if at all, in a regulated monopoly
21 environment.

22 Commission Staff, *Economic Impact Statement* at 1.

23 Clearly, lower electric rates through competition will mean economic growth which includes new
24 jobs, increased personal income, and additional tax revenues for local and state governments.

25 **Waiting for Interstate Reciprocity Will Harm Arizona Customers**

26 The utilities suggest other states should open their retail markets before Arizona's
27 consumers should benefit from lower-cost power. See SRP Comments at 7; APS Comments at

1 10-12. The price of electric power to Arizona's consumers is considerably higher than the
 2 average price paid in the 6 western states studied by the Land and Water Fund. Table 1.1 below
 3 illustrates the "premium" price--almost 23% higher--for all Arizona customers, as compared to
 4 customers in these other states. Waiting for retail wheeling in other states will harm Arizona's
 5 ratepayers and its economy.

6 **Table 1-1. The Region's Utilities: A Snapshot, 1994**

	Retail Sales Revenues, <i>billions of dollars</i>	Price of Electric Power <i>cents per kilowatt-hour</i>	Number of Employees (1993)
Arizona	3.9	8.1	15,000
Colorado	2.1	6.1	12,000
Nevada	1.3	6.4	3,500
New Mexico	1.1	7.2	3,000
Utah	1.0	5.4	4,500
Wyoming	0.5	4.2	1,500
	9.9 (total)	6.6 (ave.)	39,500 (total)

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17 Source: *How the West Can Win: A Blueprint for a Clean and Affordable Energy Future* (Land
 18 and Water Fund of the Rockies) at 21.

19 The average price for residential customers in 1995 was 9.82 cents in the APS service
 20 area and 9.36 cents in the TEP service area, according to a study by Regulatory Research
 21 Associates. These average residential prices for power were lower in other western, states
 22 except for California.

23 Arizona, as a high power cost state, would benefit greatly from retail competition. This
 24 would result in greater price reductions that would benefit small customers as well as large ones.
 25 Freed from monopolies, residential customers and small businesses can buy power cooperatively

1 at wholesale prices from more efficient producers of power. Electricity deregulation and
2 competition in the industry will benefit all classes of consumers with lower electricity rates and
3 better service.

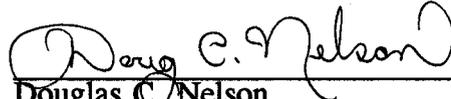
4 **Closing Comments**

5 Excuses for delaying this Rule have been suggested by the utilities: wait until a regional
6 interstate compact is negotiated, or until intergovernmental agreements are entered into, or until
7 other states open their electric markets, or until the Legislature rewrites the law and the Arizona
8 citizens amend the Constitution. Waiting on these host of conditions desired by the utilities
9 merely means no effective retail competition in Arizona and many millions of dollars in lost
10 power-saving costs to Arizona consumers.

11 On May 20, 1994, the Commission Staff opened this docket on competition in the
12 provision of electric service. The Commission conducted a series of workshops beginning in
13 September 7, 1994. A series of nine working group and task force meetings were held in 1995
14 which addressed the options and opportunities for electric retail competition. In February of
15 1996, the Staff requested comments on how to implement electric industry restructuring. A
16 workshop was held on August 12, 1996 to obtain comments on the various options. The Staff
17 submitted a proposed rule for comment on August 28, 1996. On October 1, 1996, Staff
18 docketed a proposed rule containing a redline version of changes requested by participants.
19 Staff and working group reports have been prepared. For more than two years the Commission,
20 the Staff, the utilities, consumers, and others have analyzed and commented on these issues.
21 Notices and the opportunity to be heard have been given repeatedly. The Rule should be
22 adopted as proposed, with the "phase in" process commencing no later than January 1, 1998.

1 DATED this 27th day of November, 1996.

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11 this ____ day of November 1996 with:

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17 Copies of the foregoing hand delivered
18 this 27 of November 1996 to the following:

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