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BEFORE THE ARIZONA CORPORATION COMMISSION

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)	DOCKET NO. R-0000-94-165
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)	ASARCO, INCORPORATED'S,
)	BHP COPPER INC.'S AND
)	CYPRUS CLIMAX METAL'S
)	REBUTTAL COMMENTS ON
)	RULES PROPOSED IN
)	DECISION NO. 59870
)	
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On November 8, 1996, Asarco, BHP Copper, and Cyprus ("ABC") filed comments in support of the adoption of the Commission's Proposed Rule Regarding Retail Electric Competition. ABC reaffirms its support of the Proposed Rule and, in these Rebuttal Comments, offers the following responses to the comments filed by various other parties.

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1 **1. Reliability**

2 ABC agrees that maintaining the reliability of electric service is critical. The
3 importance of reliable service was underscored by the occurrence of two major outages on
4 the western grid in July and August this past summer. However, it is worth remembering
5 that both outages occurred under a system of regulated monopoly, when a government-
6 owned entity failed to meet its responsibilities. It does not necessarily follow that the same
7 outages would have occurred under a system of regulated competition. In fact, there is
8 reason to believe that a privately owned entity facing not only regulatory oversight but
9 possible discipline by the market, might well have met the responsibilities which the
10 Bonneville Power Administration failed to meet. In any event, all responsible parties agree
11 that, as the electric industry transitions to a more competitive market structure, measures
12 must be adopted to ensure that system reliability is not compromised.

14 ABC believes the Proposed Rule properly addresses the issue of reliability
15 by requiring that all electric service providers adhere to the reliability standards and practices
16 of the Western Systems Coordinating Council (WSCC) and the North American Reliability
17 Council (NERC). In addition, the Commission has established the Electric System
18 Reliability and Safety Working Group. This Working Group includes key utility technical
19 personnel and is tasked with identifying additional means of maintaining system reliability
20 during and after the transition to retail competition.

22 Just as it is necessary to address legitimate reliability concerns, it is also
23 important to recognize that the potential impact of competition on reliability is sometimes
24 overstated by those who hope to delay competition. In its discussion of Staff's Economic
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1 Impact Statement, Arizona Public Service (APS) discusses a hypothetical scenario in which
2 the “proliferation of unregulated (or lightly regulated) generation suppliers under the
3 Proposed Rules creates a less reliable power supply that increases the risk of power supply
4 interruptions.” [APS Comments, p. 7, lines 16-18]. This is a transparent scare tactic. In fact,
5 “lightly regulated” generation suppliers have appeared throughout the United States since
6 the implementation of PURPA in 1978, and overall system reliability has been consistently
7 maintained. If anything, the advance of retail competition is creating the impetus for even
8 stricter adherence to sound reliability practices, and may also provide new mechanisms for
9 assuring reliable service.
10

11 In summary, ABC believes that the steps the Commission is taking to ensure
12 continuing system reliability are both appropriate and adequate.
13

14 **2. Stranded Cost**

15 Development of a stranded cost recovery policy is perhaps the biggest
16 challenge facing regulators in the transition to retail competition. The utilities have
17 sought--and continue to seek--iron-clad assurances from regulators that consumers will pay
18 for any and all costs which could conceivably become stranded. APS, for example, suggests
19 self-serving changes to the Proposed Rule so that the factors to be considered in determining
20 the amount of stranded cost recovery “will be utilized only in determining the type of
21 recovery mechanism and the period over which stranded costs will be recovered, not whether
22 all such costs are to be fully recoverable.” [APS, p. 10, lines 3-7 (emphasis supplied)].
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RUCO, in contrast, recommends that the Commission “make it clear that there is no guarantee of recovery of stranded costs by utilities” [RUCO, p. 8] To the extent that the utilities are asking that they be guaranteed recovery of one hundred percent of potentially strandable costs, ABC agrees with RUCO, because such a guarantee would be tantamount to giving the utilities a “blank check.” ABC does not believe that it was ever the intent of the Commission to give the utilities a blank check. Moreover, it would not be in the public interest for the Commission to give the utilities a blank check that they can then fill in and present to the consumers of this state to be cashed. The utilities' self-serving effort to create a record that suggests that the Commission has already committed to give them a blank check should be firmly rebuffed.

The language in the Proposed Rule affirms, as a general proposition, that the Commission will allow recovery of unmitigated stranded costs but, at the same time, the Rule does not guarantee full recovery of any and all costs which the utilities later claim are "stranded." This is evident from the nature of the eleven factors which the Commission has said will be considered when dealing with stranded investment issues, including the impact on the effectiveness of competition; the impact on an Affected Utility's ability to meet debt obligations; and the impact on prices paid by consumers who participate in the competitive market. ABC believes that the language in the Proposed Rule strikes a careful balance; it provides assurances to the Affected Utilities that, to the extent reasonably possible, unmitigated stranded costs will be recoverable, while at the same time the Commission retains the flexibility to consider the potential impact on other parties in determining the

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1 mechanism, timing, and amount of any recovery. This balanced approach is in the public
2 interest and should be retained.

3 APS recommends changes in the definition of "stranded cost." ABC
4 disagrees with APS that the word "net" is superfluous and can be deleted without changing
5 the intent of the definition. The word "net" makes it clear that there are to be deductions or
6 offsets to otherwise stranded costs, and emphasizes that the utilities are not being given a
7 blank check. If, as APS claims, the word "net" is merely superfluous, no harm will come
8 from retaining the word in the definition of stranded cost. On the other hand, we suspect
9 that, if the word is deleted, APS will later argue that its deletion had some profound
10 significance and constituted a further "guarantee" by the Commission that APS would
11 recover all of its stranded costs. The Commission should resist the invitation to make
12 unnecessary changes to the stranded cost definition.

13
14 Tucson Electric Power (TEP) objects to Part J of the Stranded Cost Rule
15 (R14-2-1607), which states that stranded costs may only be recovered from customer
16 purchases made in the competitive market. TEP wants to extend stranded cost charges to
17 customers who self-generate, despite the fact that self-generation is a business risk that
18 utilities have faced for at least as long as PURPA has been in effect and, in many cases, well
19 before that. Because self-generation is not attributable to the introduction of retail
20 competition, it should not be subject to stranded cost recovery calculations. The
21 Commission should retain the current language of the Proposed Rule.

22
23 Citizens Utilities (Citizens) also objects to the provision in the Proposed Rule
24 which states that stranded costs may be recovered only from customer purchases made in the
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1 competitive market. Citizens states that such a provision “serves to postpone by several
2 years the implementation of stranded cost recovery” because collection of stranded costs
3 would then follow the same phase-in schedule as retail competition. [Citizens, p. 9, lines 7-
4 11]. ABC believes that to do what Citizens wants, i.e., to begin collecting stranded cost
5 payments from customers in *advance* of competition, would be entirely inappropriate.
6 Customers receiving today’s tariffed service are already paying for potentially “strandable”
7 costs in their bundled rates. Under Citizens' proposal, consumers would pay twice for
8 stranded costs. Likewise, customers who receive standard offer service during the transition
9 to competition will be paying for “strandable” costs in their rates. They should not pay twice
10 either. There simply is no need to increase the fixed-cost burden on consumers who receive
11 traditional utility service in order to accelerate the utilities' recovery of what may, or may
12 not, become provable and reimbursable stranded costs.
13
14

15 **3. Inclusion of Salt River Project**

16 The Proposed Rule provides mechanisms for inclusion of SRP through either
17 legislative action or voluntary compliance. Such inclusion is in the public interest, for at
18 least two reasons. First, it would offer competitive choice to SRP’s current customers.
19 Second, it would offer customers outside of SRP’s distribution service territory the option
20 of purchasing generation service from SRP.
21

22 SRP objects to the Commission’s treatment of this issue, arguing that the
23 Proposed Rule “effectively preclude[s] customers of SRP...from choosing their own electric
24 energy provider, *and*...attempt[s] to exclude municipal entities, including SRP, directly or
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1 indirectly, from offering competitively priced electric energy to other customers throughout
2 Arizona.” [SRP, p. 1, lines 20-24].

3 ABC finds SRP's argument difficult to understand. On its face, the Proposed
4 Rule does not prevent SRP from offering competitive choice to its customers. Furthermore,
5 because SRP is not regulated by the Commission, SRP can provide this option to its
6 customers today if it so chooses. The difficulty lies in establishing ground rules that would
7 allow SRP to provide generation service in other utilities' service territories. In an effort to
8 address this issue, SRP proposes the use of intergovernmental agreements. ABC believes
9 this concept has merit, and recommends that the Commission consider including in the
10 Proposed Rules the language in SRP's "Exhibit A" as an additional means for implementing
11 retail access. The use of intergovernmental agreements would give the Commission the
12 opportunity to fully evaluate the "level playing field" issue; as part of such an evaluation, the
13 Commission could further examine the factual basis underlying the claims of inappropriate
14 competitive advantages between utilities, and could identify means of equitably resolving
15 any actual unfairness.

16 **4. Customer participation**

17 The Proposed Rule contains both minimum participation levels for residential
18 customers and maximum participation levels for large customers. ABC supports the 15
19 percent and 30 percent residential participation minimums in Phase 1 and Phase 2,
20 respectively, as appropriate means for ensuring broad-based participation in retail
21 competition. In its comments, RUCO suggests that a more rigid proportionality be applied;
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1 specifically, RUCO proposes that whenever a given percentage of overall demand is opened
2 to competition, the given percentage must be exactly the same for each customer class.
3 [RUCO, pp. 1-2]. RUCO supports this argument by asserting that anything less than
4 perfectly proportional participation will result in a shifting of stranded cost recovery to “still-
5 captive” customer classes.

6
7 RUCO’s argument lacks merit. Under the Proposed Rule, those customers
8 who participate in the competitive market are assigned responsibility for stranded cost
9 recovery; customers who remain on the utility’s system will pay for “strandable” costs
10 through the tariffs for standard offer service. The Commission has already indicated in the
11 Proposed Rule that its expectation is that the rates for standard offer service will not be
12 increased relative to existing rates as a result of allowing competition [R14-2-1606]. Thus,
13 there is no factual basis for RUCO’s proposal for rigid proportionality.

14 ABC recommends that customer participation based on rigid proportionality
15 be rejected. Such an approach is unnecessary for ensuring broad-based participation and
16 would be overly intrusive in the marketplace. Moreover, concerns that anything less than
17 perfectly proportional participation would result in a shifting of the burden of stranded cost
18 recovery are already addressed and resolved within the Proposed Rule.

21 **5. Buy-throughs**

22 The Proposed Rule allows “buy-throughs,” which are wholesale purchases
23 made by a utility on behalf of a retail customer, and as such, represent a partial step toward
24 retail access. Buy-throughs effected prior to the starting date for retail competition (January
25

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1, 1999) require Commission approval. RUCO opposes the allowance of buy-throughs, arguing that “it opens up the danger that part of the utility’s power supply will be ear-marked for favored customers.” [RUCO, p. 7].

ABC strongly urges the Commission to reject the recommendation to eliminate buy-throughs. RUCO’s argument makes no distinction between buy-throughs made prior to the start-up date for retail access and those made afterward. In the latter case, it is difficult to understand why there would be opposition to buy-throughs effected following the introduction of retail competition, as buy-throughs are, by definition, more restrictive than the retail access contemplated in the Proposed Rule. Regarding buy-throughs made prior to retail access, RUCO’s concern about “ear-marked” utility generation appears incompatible with the service contemplated in a buy-through, which is simply the use of the utility’s transmission and distribution system to gain access to the wholesale market. The Proposed Rule already provides safeguards against the misuse of pre-competition buy-throughs by requiring that such buy-throughs have Commission approval.

6. Out-of-state reciprocity

In the Proposed Rule, the Commission wisely steers clear of burdening Arizona’s retail access program with unconstitutional and protectionist out-of-state reciprocity provisions. APS, however, proposes the introduction of such provisions into the CC&N approval process. [APS, p. 11, lines 14-24.]

ABC urges the Commission to reject any changes to the Proposed Rules which would interfere with interstate commerce. Out-of-state reciprocity provisions not only

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1 create constitutional problems, they are anti-competitive and anti-consumer. As other states
2 open up their markets to retail competition, Arizona utilities will have access to new
3 customers. In the case of California, this will occur *prior* to Arizona opening its market.
4 Arizona customers should not be denied access to utility generation from other states which
5 open their markets more slowly. A more effective and constitutionally permissible way to
6 ensure out-of-state reciprocity would be for Arizona utilities to encourage the development
7 of retail access in those neighboring states -- such as Utah, New Mexico, and Nevada -- in
8 which competition is now under consideration.
9

10 11 **7. Legal Issues.**

12 Several of the utilities have misused the opportunity to comment on the
13 substance of the Proposed Rule by arguing legal issues that are to be resolved in another
14 forum and at another time. Pursuant to the Proposed Rule, the Commission has created a
15 subcommittee to study the relevant legal issues and propose ways in which those legal issues
16 can be addressed. In short, there is a time and place for the utilities to raise and discuss the
17 legal issues that they believe to be germane. The written comments which interested parties
18 were invited to file at this time is not that place, and this is not that time. Therefore, ABC
19 will not attempt to brief the legal issues at this time. However, ABC's restraint should not
20 be interpreted as agreement that the issues raised by the utilities are, in fact, relevant or that
21 their view of the law is one that would prevail if it were necessary to present the issues to the
22 courts.
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ABC assumes that, after receiving the report of the study group that is considering the legal issues, the Commission will work with the legislature to draft and pass any legislation that it believes is required.

Furthermore, to the extent the utilities continue to question the Commission's authority to adopt the Proposed Rule, ABC assumes that this is an issue that the Commission's legal staff has already examined, and that the Commission would not have approved the Proposed Rule if it did not believe that it was acting within its authority.

Finally, ABC notes that the same arguments being raised by the utilities were raised in telecommunications, and the Commission's response to the utilities' arguments is a matter of record in telecommunications.

Respectfully submitted this 27th day of November, 1996.

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CERTIFICATE OF SERVICE

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