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AZ CORP COMMISSION

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BEFORE THE ARIZONA CORPORATION COMMISSION

- 1
- 2 RENZ D. JENNINGS
CHAIRMAN
- 3 MARCIA WEEKS
COMMISSIONER
- 4 CARL J. KUNASEK
COMMISSIONER
- 5

DOCUMENT CONTROL

6 IN THE MATTER OF THE COMPETITION)
 7 IN THE PROVISION OF ELECTRIC)
 8 SERVICES THROUGHOUT THE STATE OF)
 ARIZONA.)

DOCKET NO. U-0000-94-165

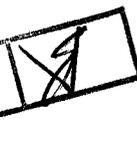
NOTICE OF FILING

9 Arizona Corporation Commission Staff ("Staff") hereby provides Notice of the filing
 10 of it's Proposed Order in the above-captioned matter. The Commission will consider this matter at
 11 a Special Open Meeting that has been scheduled and Noticed for December 23, 1996, at 10:00 a.m.,
 12 at the Commission's offices in Phoenix.

RESPECTFULLY SUBMITTED this 13th day of December, 1996.

Arizona Corporation Commission
DOCKETED

DEC 13 1996

DOCKETED BY 

Bradford A. Borman
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 Janet Wagner
 Attorneys, Legal Division
 Arizona Corporation Commission
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 Phoenix, Arizona 85007
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1 Original and ten (10) copies of the
2 foregoing filed this 13th day of
3 December, 1996, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, AZ 85007

5 Copies of the foregoing mailed
6 this 13th day of December, 1996 to:

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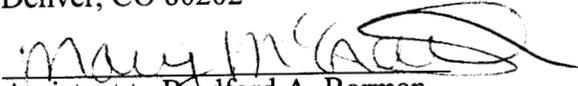
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BEFORE THE ARIZONA CORPORATION COMMISSION

RENZ D. JENNINGS
Chairman
MARCIA WEEKS
Commissioner
CARL J. KUNASEK
Commissioner

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

DOCKET NO. U-0000-94-165

DECISION NO. _____

OPINION AND ORDER

DATES OF HEARING:	December 2, 3 and 4, 1996
PLACES OF PUBLIC COMMENT:	Phoenix, Tucson, Yuma, Flagstaff, and Kingman, Arizona
PRESIDING OFFICERS:	Jerry L. Rudibaugh, Jane Rodda, Scott Wakefield
IN ATTENDANCE:	Renz D. Jennings, Chairman Marcia Weeks, Commissioner Carl J. Kunasek, Commissioner
APPEARANCES:	Mr. Bradford A. Borman, and Mr. Peter Breen, Staff Attorneys, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On October 1, 1996, the Utilities Division Staff ("Staff") of the Arizona Corporation Commission ("Commission") forwarded to the Commission proposed new rules A.A.C. R14-2-1601 through A.A.C. R14-2-1616 ("Rules" or "Electric Competition Rules") regarding competitive electric services. By Decision No. 59870 (October 10, 1996), the Commission directed the Hearing Division to schedule Public Comment regarding the proposed Rules in Phoenix, Tucson, Yuma, Flagstaff, and Kingman, Arizona.

Our October 11, 1996 Procedural Order scheduled public comment proceedings on the above-captioned matter on December 2 in Phoenix, December 3 in Tucson and Yuma, and December

1 4 in Flagstaff and Kingman. Decision No. 59870 also ordered Staff to forward a Notice of Proposed
2 Rulemaking ("Notice") to the Office of the Secretary of State for publication. The Notice was
3 published in the Arizona Administrative Register on November 1, 1996.

4 DISCUSSION

5 The proposed Competitive Electric Rules set forth a framework for the inevitable transition
6 from a non-competitive to a competitive environment. It has been a process that has evolved since
7 May 1994 as Staff has held numerous workshops prior to bringing forth the proposed Rules. Based
8 on the amount of comments filed and the attendance at each of the public comment proceedings held,
9 the interest in the proposed Rules is as great as it has been for as any rules the Commission has
10 promulgated.

11 Based on the overall comments, we must conclude that all of the parties have expressed a
12 desire for a more competitive electric market in Arizona. Some parties, including Arizona Public
13 Service ("APS"), Tucson Electric Power ("TEP"), Citizens Utilities Company ("Citizens"), Salt
14 River Project ("SRP") and the cooperatives were not as receptive to the proposed Rules as other
15 parties. That is certainly understandable since, under the proposed Rules, their status as monopoly
16 providers of electric service will change.

17 The parties were generally in agreement that competition will provide the benefit of reduced
18 costs, at least for some consumers. However, there were concerns raised regarding the quality of
19 service, as well as concerns that not all customers, particularly residential customers, will receive
20 the benefits of competition as quickly as some large industrial customers. And of course, the
21 incumbent utilities were greatly concerned regarding the recoverability of stranded costs.

22 While there was general agreement as to the need and inevitability of competition in the
23 electric field, there were major disagreements over the implementation of these Rules. The parties
24 identified complex problems such as the recoverability of stranded investment, intra-state and inter-
25 state reciprocity, the status of the new Certificates of Convenience and Necessity ("CC&Ns"), and
26 other issues, for which the parties assert the Rules provide insufficient guidance. Several parties
27 have suggested holding evidentiary hearings on these issues in order to resolve them before going
28 forward with these Rules. Other parties, including Staff, have warned against delay in promulgating

1 these rules, indicating that the competitive electric market is rapidly approaching whether these
 2 Rules are promulgated or not. We conclude that these gaps, to the extent that they exist, can be filled
 3 in later with workshops, working groups, subsequent evidentiary hearings, and perhaps subsequent
 4 rulemaking proceedings; while competition is approaching rapidly, the transition to competition will
 5 allow time to address these issues and resolve them in a timely fashion.

6 * * * * *

7 Having considered the entire record herein and being fully advised in the premises, the
 8 Commission finds, concludes, and orders that:

9 **FINDINGS OF FACT**

10 1. On October 1, 1996, Staff filed the proposed Rules regarding competitive electric
 11 services.

12 2. On October 10, 1996, the Commission issued Decision No. 59870 which directed the
 13 Hearing Division to schedule hearings on the proposed Rules in Phoenix, Tucson, Yuma, Flagstaff,
 14 and Kingman, Arizona.

15 3. The purpose of the proposed Rules is to provide the Commission with a framework
 16 to open the retail electric market to competition, and to streamline the regulatory process for setting
 17 rates for competitive electric services.

18 4. The proposed amendments to the Rules are set forth in Appendix A, attached hereto
 19 and incorporated by reference.

20 5. In accordance with A.R.S. Section 41-1027, a Concise Explanatory Statement for the
 21 proposed Rules is set forth in Appendix B, attached hereto and incorporated by reference.

22 6. The economic impact of the proposed Rules is set forth in Appendix C, attached
 23 hereto and incorporated by reference.

24 7. The Notice of Rulemaking was filed with the Secretary of State and was published
 25 in the Arizona Administrative Register on November 1, 1996.

26 8. Public Comment sessions were held on December 2, 1996, in Phoenix, December 3,
 27 1996 in Tucson and Yuma, and December 4, 1996 in Flagstaff and Kingman, Arizona.

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CONCLUSIONS OF LAW

1. The Commission has authority for the proposed Rules pursuant to the Arizona Constitution, Article XV, under A.R.S. Sections 40-202, -203, -250, -321, -322, -331, -332, -336, 361, -365, -367, and under the Arizona Revised Statutes, Title 40, generally.

2. Notice of the proceeding has been given in the manner prescribed by law.

3. Adoption of the proposed Rules is in the public interest.

4. The Concise Explanatory Statement set forth in Appendix B should be adopted.

ORDER

IT IS THEREFORE ORDERED that the proposed Rules A.A.C. R14-2-1601, R14-2-1602, R14-2-1603, R14-2-1604, R14-2-1605, R14-2-1606, R14-2-1607, R14-2-1608, R14-2-1609, R14-2-1610, R14-2-1611, R14-2-1612, R14-2-1613, R14-2-1614, R14-2-1615, and R14-2-1616, as set forth in Appendix A, and the Concise Explanatory Statement, as set forth in Appendix B, are hereby adopted.

IT IS FURTHER ORDERED that the Commission's Utilities Division shall immediately forward the new Rules A.A.C. R14-2-1601, R14-2-1602, R14-2-1603, R14-2-1604, R14-2-1605, R14-2-1606, R14-2-1607, R14-2-1608, R14-2-1609, R14-2-1610, R14-2-1611, R14-2-1612, R14-2-1613, R14-2-1614, R14-2-1615, and R14-2-1616, to the Secretary of State.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

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BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS,
Executive Secretary of the Arizona Corporation Commission,
have hereunto, set my hand and caused the official seal of this
Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 1996.

JAMES MATTHEWS
Executive Secretary

DISSENT _____

GY:DB:KEC: RTW:BAB:mmc

APPENDIX A

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TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATIONS
CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES
ARTICLE 16. RETAIL ELECTRIC COMPETITION

Section

- R14-2-1601. Definitions
- R14-2-1602. Filing of Tariffs by Affected Utilities
- R14-2-1603. Certificates of Convenience and Necessity
- R14-2-1604. Competitive Phases
- R14-2-1605. Competitive Services
- R14-2-1606. Services Required To Be Made Available by Affected Utilities
- R14-2-1607. Recovery of Stranded Cost of Affected Utilities
- R14-2-1608. System Benefits Charges
- R14-2-1609. Solar Portfolio Standard
- R14-2-1610. Spot Markets and Independent System Operation
- R14-2-1611. In-State Reciprocity
- R14-2-1612. Rates
- R14-2-1613. Service Quality, Consumer Protection, Safety, and Billing Requirements
- R14-2-1614. Reporting Requirements
- R14-2-1615. Administrative Requirements
- R14-2-1616. Legal Issues

ARTICLE 16. RETAIL ELECTRIC COMPETITION

R14-2-1601. Definitions

In this Article, unless the context otherwise requires:

1. "Affected Utilities" means the following public service corporations providing electric service:

Tucson Electric Power Company, Arizona Public Service Company, Citizens Utilities Company, Arizona Electric Power Cooperative, Trico Electric Cooperative, Duncan Valley Electric Cooperative, Graham County Electric Cooperative, Mohave Electric Cooperative, Sulphur Springs Valley Electric Cooperative, Navopache Electric Cooperative, Ajo Improvement Company, and Morenci Water and Electric Company.

In the event that modifications are made to existing law that would allow the application of this Article to the Salt River Project Agricultural Improvement and Power District ("SRP"), then Affected Utilities shall also include SRP.

2. "Bundled Service" means electric service provided as a package to the consumer including all generation, transmission, distribution, ancillary and other services necessary to deliver and measure useful electric energy and power to consumers.

3. "Buy-through" refers to a purchase of electricity by an Affected Utility at wholesale for a particular retail consumer or aggregate of consumers or at the direction of a particular retail consumer or aggregate of consumers.

4. "Distribution Service" means the delivery of electricity to a retail consumer through wires, transformers, and other devices that are not classified as transmission services subject to the jurisdiction of the Federal Energy Regulatory Commission; Distribution Service excludes meters and meter reading.

5. "Electric Service Provider" means a company supplying, marketing, or brokering at retail any of the services described in R14-2-1605 or R14-2-1606.

6. "Eligible Demand" means the total consumer kilowatts of demand which an Affected Utility must make available to competitive generation under the terms of this Article or the

- 1 consumer kilowatts of demand provided competitively in an Affected Utility's distribution
2 territory, whichever is greater.
- 3 7. "Standard Offer" means Bundled Service offered to all consumers in a designated area at
4 regulated rates.
- 5 8. "Stranded Cost" means the verifiable net difference between:
- 6 a. The value of all the prudent jurisdictional assets and obligations necessary to furnish
7 electricity (such as generating plants, purchased power contracts, fuel contracts, and
8 regulatory assets), acquired or entered into prior to the adoption of this Article, under
9 traditional regulation of Affected Utilities; and
- 10 b. The market value of those assets and obligations directly attributable to the
11 introduction of competition under this Article.
- 12 9. "System Benefits" means Commission-approved utility low income, demand side
13 management, environmental, renewables, and nuclear power plant decommissioning
14 programs.
- 15 10. "Unbundled Service" means electric service elements provided and priced separately,
16 including, but not limited to, such service elements as generation, transmission, distribution,
17 and ancillary services. Unbundled Service may be sold to consumers or to other Electric
18 Service Providers.

19 **R14-2-1602. Filing of Tariffs by Affected Utilities**

20 Each Affected Utility shall file tariffs consistent with this Article by December 31, 1997.

21 **R14-2-1603. Certificates of Convenience and Necessity**

- 22 A. Any Electric Service Provider intending to supply services described in R14-2-1605 or R-14-
23 2-1606, other than services subject to federal jurisdiction, shall obtain a Certificate of
24 Convenience and Necessity from the Commission pursuant to this Article; however, a
25 Certificate is not required to offer information services or billing and collection services. An
26 Affected Utility does not need to apply for a Certificate of Convenience and Necessity for
27 any service provided as of the date of adoption of this Article within its distribution service
28 territory.

1 **B.** Any company desiring such a Certificate of Convenience and Necessity shall file with the
2 Docket Control Center the required number of copies of an application. Such Certificates
3 shall be restricted to geographical areas served by the Affected Utilities as of the date this
4 Article is adopted and to service areas added under the provisions of R14-2-1611(B). In
5 support of the request for a Certificate of Convenience and Necessity, the following
6 information must be provided:

- 7 1. A description of the electric services which the applicant intends to offer;
- 8 2. The proper name and correct address of the applicant, and
 - 9 a. The full name of the owner if a sole proprietorship,
 - 10 b. The full name of each partner if a partnership,
 - 11 c. A full list of officers and directors if a corporation, or
 - 12 d. A full list of the members if a limited liability corporation;
- 13 3. A tariff for each service to be provided that states the maximum rate and terms and
14 conditions that will apply to the provision of the service;
- 15 4. A description of the applicant's technical ability to obtain and deliver electricity and
16 provide any other proposed services;
- 17 5. Documentation of the financial capability of the applicant to provide the proposed
18 services, including the most recent income statement and balance sheet, the most
19 recent projected income statement, and other pertinent financial information.
20 Audited information shall be provided if available;
- 21 6. A description of the form of ownership (e.g., partnership, corporation);
- 22 7. Such other information as the Commission or the Staff may request.

23 **C.** At the time of filing for a Certificate of Convenience and Necessity, each applicant shall
24 notify the Affected Utilities in whose service territories it wishes to offer service of the
25 application by serving a complete copy of the application on the Affected Utilities.

26 **D.** The Commission may deny certification to any applicant who:

- 27 1. Does not provide the information required by this Article;

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2. Does not possess adequate technical or financial capabilities to provide the proposed services;

3. Fails to provide a performance bond, if required.

E. Every Electric Service Provider obtaining a Certificate of Convenience and Necessity under this Article shall obtain certification subject to the following conditions:

1. The Electric Service Provider shall comply with all Commission rules, orders, and other requirements relevant to the provision of electric service and relevant to resource planning;

2. The Electric Service Provider shall maintain accounts and records as required by the Commission;

3. The Electric Service Provider shall file with the Director of the Utilities Division all financial and other reports that the Commission may require and in a form and at such times as the Commission may designate;

4. The Electric Service Provider shall maintain on file with the Commission all current tariffs and any service standards that the Commission shall require;

5. The Electric Service Provider shall cooperate with any Commission investigation of customer complaints;

6. The Electric Service Provider shall obtain all necessary permits and licenses;

7. Failure to comply with any of the above conditions may result in rescission of the Electric Service Provider's Certificate of Convenience and Necessity.

F. In appropriate circumstances, the Commission may require, as a precondition to certification, the procurement of a performance bond sufficient to cover any advances or deposits the applicant may collect from its customers, or order that such advances or deposits be held in escrow or trust.

R14-2-1604. Competitive Phases

A. Each Affected Utility shall make available at least 20% of its 1995 system retail peak demand for competitive generation supply to all customer classes (including residential and

.....

1 small commercial consumers) not later than January 1, 1999. If data permit, coincident
2 annual peak demand shall be used; otherwise noncoincident peak data may be used.

- 3 1. No more than $\frac{1}{2}$ of the Eligible Demand may be procured by consumers, each of
4 whose total competitive contract demand is greater than 3 MW.
- 5 2. At least 15% of the Eligible Demand shall be reserved for residential consumers.
- 6 3. Aggregation of loads of multiple consumers shall be permitted.

7 **B.** Each Affected Utility shall make available at least 50% of its 1995 system retail peak
8 demand for competitive generation supply to all customer classes (including residential and
9 small commercial consumers) not later than January 1, 2001. If data permit, coincident peak
10 annual demand shall be used; otherwise noncoincident peak data may be used.

- 11 1. No more than $\frac{1}{2}$ of the Eligible Demand may be procured by consumers, each of
12 whose total competitive contract demand is greater than 3 MW.
- 13 2. At least 30% of the Eligible Demand shall be reserved for residential consumers.
- 14 3. Aggregation of loads of multiple consumers shall be permitted.

15 **C.** Prior to 2001, no single consumer shall receive more than 20% of the Eligible Demand in
16 a given year in an Affected Utility's service territory.

17 **D.** Each Affected Utility shall make available all of its retail demand for competitive generation
18 supply not later than January 1, 2003.

19 **E.** By the date indicated in R14-2-1602, Affected Utilities shall propose for Commission review
20 and approval how customers will be selected for participation in the competitive market prior
21 to 2003.

- 22 1. Possible selection methods are first-come, first-served; random selection via a lottery
23 among volunteering consumers; or designation of geographic areas.
- 24 2. The method for selecting customers to participate in the competitive market must
25 fairly allow participation by a wide variety of customers of all sizes of loads.
- 26 3. All customers who produce or purchase at least 10% of their annual electricity
27 consumption from photovoltaic or solar thermal resources installed in Arizona after
28 January 1, 1997 shall be selected for participation in the competitive market if those

1 customers apply for participation in the competitive market. Such participants count
2 toward the minimum requirements in R14-2-1604(A) and R14-2-1604(B).

- 3 4. The Commission Staff shall commence a series of workshops on selection issues
4 within 45 days of the adoption of this Article and Staff shall submit a report to the
5 Commission discussing the activities and recommendations of participants in the
6 workshops. The report shall be due not later than 90 days prior to the date indicated
7 in R14-2-1602.

8 **F.** Retail consumers served under existing contracts are eligible to participate in the competitive
9 market prior to expiration of the existing contract only if the Affected Utility and the
10 consumer agree that the retail consumer may participate in the competitive market.

11 **G.** An Affected Utility may engage in Buy-throughs with individual or aggregated consumers.
12 Any contract for a Buy-through effective prior to the date indicated in R14-2-1604(A) must
13 be approved by the Commission.

14 **H.** Schedule Modifications for Cooperatives

- 15 1. An electric cooperative may request that the Commission modify the schedule
16 described in R14-2-1604(A) through R14-2-1604(D) so as to preserve the tax exempt
17 status of the cooperative or to allow time to modify contractual arrangements
18 pertaining to delivery of power supplies and associated loans.
- 19 2. As part of the request, the cooperative shall propose methods to enhance consumer
20 choice among generation resources.
- 21 3. The Commission shall consider whether the benefits of modifying the schedule
22 exceed the costs of modifying the schedule.

23 **R14-2-1605. Competitive Services**

24 A properly certificated Electric Service Provider may offer any of the following services under
25 bilateral or multilateral contracts with retail consumers:

26 **A.** Generation of electricity from generators at any location whether owned by the Electric
27 Service Provider or purchased from another generator or wholesaler of electric generation.

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1 B. Any service described in R14-2-1606, except Distribution Service and except services
2 required by the Federal Energy Regulatory Commission to be monopoly services. Billing
3 and collection services and information services do not require a Certificate of Convenience
4 and Necessity.

5 **R14-2-1606. Services Required To Be Made Available by Affected Utilities**

6 A. Until the Commission determines that competition has been substantially implemented for
7 a particular class of consumers (residential, commercial, industrial) so that all consumers in
8 that class have an opportunity to participate in the competitive market, and until all Stranded
9 Costs pertaining to that class of customers have been recovered, each Affected Utility shall
10 make available to all consumers in that class in its service area, as defined on the date
11 indicated in R14-2-1602, Standard Offer bundled generation, transmission, ancillary,
12 distribution, and other necessary services at regulated rates.

- 13 1. An Affected Utility may request that the Commission determine that competition has
14 been substantially implemented to allow discontinuation of Standard Offer service
15 and shall provide sufficient documentation to support its request.
- 16 2. The Commission may, on its own motion, investigate whether competition has been
17 substantially implemented and whether Standard Offer service may be discontinued.

18 B. Standard Offer Tariffs

- 19 1. By the date indicated in R14-2-1602, each Affected Utility may file proposed tariffs
20 to provide Standard Offer Bundled Service and such rates shall not become effective
21 until approved by the Commission. If no such tariffs are filed, rates and services in
22 existence as of the date in R14-2-1602 shall constitute the Standard Offer.
- 23 2. Affected Utilities may file proposed revisions to such rates. It is the expectation of
24 the Commission that the rates for Standard Offer service will not increase, relative
25 to existing rates, as a result of allowing competition. Any rate increase proposed by
26 an Affected Utility for Standard Offer service must be fully justified through a rate
27 case proceeding.
- 28 3. Such rates shall reflect the costs of providing the service.

- 1 4. Consumers receiving Standard Offer service are eligible for potential future rate
2 reductions authorized by the Commission, such as reductions authorized in Decision
3 No. 59601.
- 4 **C.** By the date indicated in R14-2-1602, each Affected Utility shall file Unbundled Service
5 tariffs to provide the services listed below to all eligible purchasers on a nondiscriminatory
6 basis:
- 7 1. Distribution Service;
 - 8 2. Metering and meter reading services;
 - 9 3. Billing and collection services;
 - 10 4. Open access transmission service (as approved by the Federal Energy Regulatory
11 Commission, if applicable);
 - 12 5. Ancillary services in accordance with Federal Energy Regulatory Commission Order
13 888 (III FERC Stats. & Regs. ¶ 31,036, 1996) incorporated herein by reference;
 - 14 6. Information services such as provision of customer information to other Electric
15 Service Providers;
 - 16 7. Other ancillary services necessary for safe and reliable system operation.
- 17 **D.** To manage its risks, an Affected Utility may include in its tariffs deposit requirements and
18 advance payment requirements for Unbundled Services.
- 19 **E.** The Affected Utilities must provide transmission and ancillary services according to the
20 following guidelines:
- 21 1. Services must be provided consistent with applicable tariffs filed with the Federal
22 Energy Regulatory Commission.
 - 23 2. Unless otherwise required by federal regulation, Affected Utilities must accept power
24 and energy delivered to their transmission systems by others and offer transmission
25 and related services comparable to services they provide to themselves.
- 26 **F.** Customer Data
- 27 1. Upon authorization by the customer, an Electric Service Provider shall release in a
28 timely and useful manner that customer's demand and energy data for the most recent

- 1 12 month period to a customer-specified Electric Service Provider.
- 2 2. The Electric Service Provider requesting such customer data shall provide an
- 3 accurate account number for the customer.
- 4 3. The form of data shall be mutually agreed upon by the parties and such data shall not
- 5 be unreasonably withheld.
- 6 **G. Rates for Unbundled Services**
- 7 1. The Commission shall review and approve rates for services listed in R14-2-1606(C)
- 8 and requirements listed in R14-2-1606(D), where it has jurisdiction, before such
- 9 services can be offered.
- 10 2. Such rates shall reflect the costs of providing the services.
- 11 3. Such rates may be downwardly flexible if approved by the Commission.
- 12 **H. Electric Service Providers offering services under this R14-2-1606 shall provide adequate**
- 13 **supporting documentation for their proposed rates. Where rates are approved by another**
- 14 **jurisdiction, such as the Federal Energy Regulatory Commission, those rates shall be**
- 15 **provided to this Commission.**
- 16 **I. Within 90 days of the adoption of this Article, the Commission Staff shall commence a**
- 17 **series of workshops to explore issues in the provision of Unbundled Service and Standard**
- 18 **Offer service.**
- 19 1. Parties to be invited to participate in the workshops shall include utilities, consumers,
- 20 organizations promoting energy efficiency, and other Electric Service Providers.
- 21 2. Among the issues to be reviewed in the workshops are: metering requirements;
- 22 metering protocols; designation of appropriate test years; the nature of adjustments
- 23 to test year data; de-averaging of rates; service characteristics such as voltage levels;
- 24 revenue uncertainty; line extension policies; and the need for performance bonds.
- 25 3. A report shall be submitted to the Commission by the Staff on the activities and
- 26 recommendations of the participants in the workshops not later than 60 days prior to
- 27 the date indicated in R14-2-1602. The Commission shall consider any
- 28 recommendations regarding Unbundled Service and Standard Offer service tariffs.

1 **R14-2-1607. Recovery of Stranded Cost of Affected Utilities**

- 2 **A.** The Affected Utilities shall take every feasible, cost-effective measure to mitigate or offset
3 Stranded Cost by means such as expanding wholesale or retail markets, or offering a wider
4 scope of services for profit, among others.
- 5 **B.** The Commission shall allow recovery of unmitigated Stranded Cost by Affected Utilities.
- 6 **C.** A working group to develop recommendations for the analysis and recovery of Stranded
7 Cost shall be established.
- 8 1. The working group shall commence activities within 15 days of the date of adoption
9 of this Article.
- 10 2. Members of the working group shall include representatives of Staff, the Residential
11 Utility Consumer Office, consumers, utilities, and other Electric Service Providers.
12 In addition, the Executive and Legislative Branches shall be invited to send
13 representatives to be members of the working group.
- 14 3. The working group shall be coordinated by the Director of the Utilities Division of
15 the Commission or by his or her designee.
- 16 **D.** In developing its recommendations, the working group shall consider at least the following
17 factors:
- 18 1. The impact of Stranded Cost recovery on the effectiveness of competition;
- 19 2. The impact of Stranded Cost recovery on customers of the Affected Utility who do
20 not participate in the competitive market;
- 21 3. The impact, if any, on the Affected Utility's ability to meet debt obligations;
- 22 4. The impact of Stranded Cost recovery on prices paid by consumers who participate
23 in the competitive market;
- 24 5. The degree to which the Affected Utility has mitigated or offset Stranded Cost;
- 25 6. The degree to which some assets have values in excess of their book values;
- 26 7. Appropriate treatment of negative Stranded Cost;
- 27 8. The time period over which such Stranded Cost charges may be recovered. The
28 Commission shall limit the application of such charges to a specified time period;

- 1 9. The ease of determining the amount of Stranded Cost;
- 2 10. The applicability of Stranded Cost to interruptible customers;
- 3 11. The amount of electricity generated by renewable generating resources owned by the
- 4 Affected Utility.
- 5 **E.** The working group shall submit to the Commission a report on the activities and
- 6 recommendations of the working group no later than 90 days prior to the date indicated in
- 7 R14-2-1602.
- 8 **F.** The Commission shall consider the recommendations and decide what actions, if any, to take
- 9 based on the recommendations.
- 10 **G.** The Affected Utilities shall file estimates of unmitigated Stranded Cost. Such estimates shall
- 11 be fully supported by analyses and by records of market transactions undertaken by willing
- 12 buyers and willing sellers.
- 13 **H.** An Affected Utility shall request Commission approval of distribution charges or other
- 14 means of recovering unmitigated Stranded Cost from customers who reduce or terminate
- 15 service from the Affected Utility as a direct result of competition governed by this Article,
- 16 or who obtain lower rates from the Affected Utility as a direct result of the competition
- 17 governed by this Article.
- 18 **I.** The Commission shall, after hearing and consideration of analyses and recommendations
- 19 presented by the Affected Utilities, Staff, and intervenors, determine for each Affected
- 20 Utility the magnitude of Stranded Cost, and appropriate Stranded Cost recovery mechanisms
- 21 and charges. In making its determination of mechanisms and charges, the Commission shall
- 22 consider at least the following factors:
- 23 1. The impact of Stranded Cost recovery on the effectiveness of competition;
- 24 2. The impact of Stranded Cost recovery on customers of the Affected Utility who do
- 25 not participate in the competitive market;
- 26 3. The impact, if any, on the Affected Utility's ability to meet debt obligations;
- 27 4. The impact of Stranded Cost recovery on prices paid by consumers who participate
- 28 in the competitive market;

- 1 5. The degree to which the Affected Utility has mitigated or offset Stranded Cost;
 - 2 6. The degree to which some assets have values in excess of their book values;
 - 3 7. Appropriate treatment of negative Stranded Cost;
 - 4 8. The time period over which such Stranded Cost charges may be recovered. The
 - 5 Commission shall limit the application of such charges to a specified time period;
 - 6 9. The ease of determining the amount of Stranded Cost;
 - 7 10. The applicability of Stranded Cost to interruptible customers;
 - 8 11. The amount of electricity generated by renewable generating resources owned by the
 - 9 Affected Utility.
- 10 **J.** Stranded Cost may only be recovered from customer purchases made in the competitive
- 11 market using the provisions of this Article. Any reduction in electricity purchases from an
- 12 Affected Utility resulting from self-generation, demand side management, or other demand
- 13 reduction attributable to any cause other than the retail access provisions of this Article shall
- 14 not be used to calculate or recover any Stranded Cost from a consumer.
- 15 **K.** The Commission may order an Affected Utility to file estimates of Stranded Cost and
- 16 mechanisms to recover or, if negative, to refund Stranded Cost.
- 17 **L.** The Commission may order regular revisions to estimates of the magnitude of Stranded Cost.
- 18 **R14-2-1608. System Benefits Charges**
- 19 **A.** By the date indicated in R14-2-1602, each Affected Utility shall file for Commission review
- 20 non-bypassable rates or related mechanisms to recover the applicable pro-rata costs of
- 21 System Benefits from all consumers located in the Affected Utility's service area who
- 22 participate in the competitive market. In addition, the Affected Utility may file for a change
- 23 in the System Benefits charge at any time. The amount collected annually through the
- 24 System Benefits charge shall be sufficient to fund the Affected Utilities' present
- 25 Commission-approved low income, demand side management, environmental, renewables,
- 26 and nuclear power plant decommissioning programs.
- 27 **B.** Each Affected Utility shall provide adequate supporting documentation for its proposed rates
- 28 for System Benefits.

1 C. An Affected Utility shall recover the costs of System Benefits only upon hearing and
2 approval by the Commission of the recovery charge and mechanism. The Commission may
3 combine its review of System Benefits charges with its review of filings pursuant to R14-2-
4 1606.

5 D. Methods of calculating System Benefits charges shall be included in the workshops
6 described in R14-2-1606(I).

7 **R14-2-1609. Solar Portfolio Standard**

8 A. Starting on January 1, 1999, any Electric Service Provider selling electricity under the
9 provisions of this Article must derive at least $\frac{1}{2}$ of 1% of the total retail energy sold
10 competitively from new solar resources, whether that solar energy is purchased or generated
11 by the seller. Solar resources include photovoltaic resources and solar thermal resources that
12 generate electricity. New solar resources are those installed on or after January 1, 1997.

13 B. Solar portfolio standard after December 31, 2001:

14 1. Starting on January 1, 2002, any Electric Service Provider selling electricity under
15 the provisions of this Article must derive at least 1% of the total retail energy sold
16 competitively from new solar resources, whether that solar energy is purchased or
17 generated by the seller. Solar resources include photovoltaic resources and solar
18 thermal resources that generate electricity. New solar resources are those installed
19 on or after January 1, 1997.

20 2. The Commission may change the solar portfolio percentage applicable after
21 December 31, 2001, taking into account, among other factors, the costs of producing
22 solar electricity and the costs of fossil fuel for conventional power plants.

23 C. Any Electric Service Provider certificated under the provisions of this Article shall be able
24 to credit 2 times the electric energy it generated, or caused to be generated under contract,
25 before January 1, 1999 using photovoltaics or solar thermal resources installed on or after
26 January 1, 1997 in Arizona to the electric energy requirements of R14-2-1609(A) or R14-2-
27 1609(B).

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- 1 D. Electric Service Providers selling electricity under the provisions of this Article shall provide
2 reports on sales and solar power as required in this Article, clearly demonstrating the output
3 of solar resources, the installation date of solar resources, and the transmission of energy
4 from those solar resources to Arizona consumers. The Commission may conduct necessary
5 monitoring to ensure the accuracy of these data.
- 6 E. If an Electric Service Provider selling electricity under the provisions of this Article fails to
7 meet the requirement in R14-2-1609(A) or R14-2-1609(B) in any year, the Commission may
8 impose a penalty on that Electric Service Provider up to 30¢ per kWh for deficiencies in the
9 provision of solar energy. In addition, if the provision of solar energy is consistently
10 deficient, the Commission may void an Electric Service Provider's contracts negotiated under
11 this Article.
- 12 F. Photovoltaic or solar thermal resources that are located on the consumer's premises shall
13 count toward the solar portfolio standard applicable to the current Electric Service Provider
14 serving that consumer.
- 15 G. The solar portfolio standard described in this section is in addition to renewable resource
16 goals for Affected Utilities established in Decision No. 58643.

17 **R14-2-1610. Spot Markets and Independent System Operation**

- 18 A. The Commission shall conduct an inquiry into spot market development and independent
19 system operation for the transmission system.
- 20 B. The Commission may support development of a spot market or independent system
21 operator(s) for the transmission system.
- 22 C. The Commission may work with other entities to help establish spot markets and
23 independent system operators.

24 **R14-2-1611. In-State Reciprocity**

- 25 A. The service territories of Arizona electric utilities which are not Affected Utilities shall not
26 be open to competition under the provisions of this Article, nor shall Arizona electric utilities
27 which are not Affected Utilities be able to compete for sales in the service territories of the
28 Affected Utilities.

- 1 B. An Arizona electric utility, subject to the jurisdiction of the Commission, which is not an
2 Affected Utility may voluntarily participate under the provisions of this Article if it makes
3 its service territory available for competing sellers, if it agrees to all of the requirements of
4 this Article, and if it obtains an appropriate Certificate of Convenience and Necessity.
- 5 C. The Commission shall pursue, on its own or in cooperation with the Joint Legislative Study
6 Committee on Electric Industry Competition established by House Bill 2504 (1996),
7 legislation to address the role of electric utilities of Arizona political subdivisions or
8 municipal corporations in a competitive market. The Commission shall further make
9 available, as appropriate, Staff assistance to the Legislature if the Legislature requests such
10 assistance for the purpose of determining the proper role of electric utilities of Arizona
11 political subdivisions or municipal corporations in a competitive market.
- 12 ~~D. An Arizona electric utility, not subject to the jurisdiction of the Commission, which is not
13 an Affected Utility, may voluntarily participate under the provisions of this Article if it
14 makes its service territory available for competing sellers, if it agrees to all of the
15 requirements of this Article other than any requirement to obtain a Certificate of
16 Convenience and Necessity, if adequate enforcement mechanisms can be established, and
17 if all other Affected Utilities consent in writing.~~
- 18 D. An Arizona electric utility, not subject to the jurisdiction of the Commission, may submit
19 a statement to the Commission that it voluntarily opens its service territory for competing
20 sellers in a manner similar to the provisions of this Article. Such statement shall be
21 accompanied by the electric utility's nondiscriminatory Standard Offer Tariff, electric supply
22 tariffs, Unbundled Services rates, Stranded Cost charges, System Benefits charges,
23 Distribution Services charges and any other applicable tariffs and policies for services the
24 electric utility offers, for which these Rules otherwise require compliance by Affected
25 Utilities or Electric Service Providers. Such filings shall serve as authorization for such
26 electric utility to utilize the Commission's Rules of Practice and Procedure and other
27 applicable Rules concerning any complaint that an Affected Utility or Electric Service
28 Provider is violating any provision of this Article or is otherwise discriminating against the

1 filing electric utility or failing to provide just and reasonable rates in tariffs filed under this
2 Article.

3 **E.** If an electric utility making a filing under R14-2-1611(D) is an Arizona political subdivision
4 or municipal corporation, then the existing service territory of such electric utility shall be
5 deemed open to competition if the political subdivision or municipality has entered into an
6 intergovernmental agreement with the Commission that establishes nondiscriminatory terms
7 and conditions for Distribution Services and other Unbundled Services, provides a procedure
8 for complaints arising therefrom, and provides for reciprocity with Affected Utilities.

9 **R14-2-1612. Rates**

10 **A.** Market determined rates for competitively provided services as defined in R14-2-1605 shall
11 be deemed to be just and reasonable.

12 **B.** Each Electric Service Provider selling services under this Article shall have on file with the
13 Commission tariffs describing such services and maximum rates for those services, but the
14 services may not be provided until the Commission has approved the tariffs.

15 **C.** Prior to the date indicated in R14-2-1604(D), competitively negotiated contracts governed
16 by this Article customized to individual customers which comply with approved tariffs do
17 not require further Commission approval. However, all such contracts whose term is 1 year
18 or more and for service of 1 MW or more must be filed with the Director of the Utilities
19 Division as soon as practicable. If a contract does not comply with the provisions of this
20 Article it shall not become effective without a Commission order.

21 **D.** Contracts entered into on or after the date indicated in R14-2-1604(D) which comply with
22 approved tariffs need not be filed with the Director of the Utilities Division. If a contract
23 does not comply with the provisions of this Article it shall not become effective without a
24 Commission order.

25 **E.** An Electric Service Provider holding a Certificate pursuant to this Article may price its
26 competitive services, as defined in R14-2-1605, at or below the maximum rates specified in
27 its filed tariff, provided that the price is not less than the marginal cost of providing the
28 service.

1 F. Requests for changes in maximum rates or changes in terms and conditions of previously
2 approved tariffs may be filed. Such changes become effective only upon Commission
3 approval.

4 **R14-2-1613. Service Quality, Consumer Protection, Safety, and Billing Requirements**

5 A. Except as indicated elsewhere in this Article, R14-2-201 through R14-2-212, inclusive, are
6 adopted in this Article by reference. However, where the term "utility" is used in R14-2-201
7 through R14-2-212, the term "utility" shall pertain to Electric Service Providers providing
8 the services described in each paragraph of R14-2-201 through R14-2-212. R14-2-212(G)(2)
9 shall pertain only to Affected Utilities. R14-2-212(G)(4) shall apply only to Affected
10 Utilities. R14-2-212(H) shall pertain only to Electric Service Providers who provide
11 distribution service.

12 B. The following shall not apply to this Article:

- 13 1. R14-2-202 in its entirety,
- 14 2. R14-2-212(F)(1),
- 15 3. R14-2-213.

16 C. No consumer shall be deemed to have changed suppliers of any service authorized in this
17 Article (including changes from supply by the Affected Utility to another supplier) without
18 written authorization by the consumer for service from the new supplier. If a consumer is
19 switched to a different ("new") supplier without such written authorization, the new supplier
20 shall cause service by the previous supplier to be resumed and the new supplier shall bear
21 all costs associated with switching the consumer back to the previous supplier.

22 D. Each Electric Service Provider providing service governed by this Article shall be
23 responsible for meeting applicable reliability standards and shall work cooperatively with
24 other companies with whom it has interconnections, directly or indirectly, to ensure safe,
25 reliable electric service.

26 E. Each Electric Service Provider shall provide at least 30 days notice to all of its affected
27 consumers if it is no longer obtaining generation, transmission, distribution, or ancillary
28 services necessitating that the consumer obtain service from another supplier of generation,

- 1 transmission, distribution, or ancillary services.
- 2 **F.** All Electric Service Providers rendering service under this Article shall submit accident
3 reports as required in R14-2-101.
- 4 **G.** An Electric Service Provider providing firm electric service governed by this Article shall
5 make reasonable efforts to reestablish service within the shortest possible time when service
6 interruptions occur and shall work cooperatively with other companies to ensure timely
7 restoration of service where facilities are not under the control of the Electric Service
8 Provider.
- 9 **H.** Each Electric Service Provider shall ensure that bills rendered on its behalf include the toll
10 free telephone numbers for billing, service, and safety inquiries and the telephone number
11 of the Consumer Services Section of the Arizona Corporation Commission Utilities Division.
12 Each Electric Service Provider shall ensure that billing and collection services rendered on
13 its behalf comply with R14-2-1613(A) and R14-2-1613(B).
- 14 **I.** Additional Provisions for Metering and Meter Reading Services
- 15 1. An Electric Service Provider who provides metering or meter reading services
16 pertaining to a particular consumer shall provide access to meter readings to other
17 Electric Service Providers serving that same consumer.
- 18 2. A consumer or an Electric Service Provider relying on metering information
19 provided by another Electric Service Provider may request a meter test according to
20 the tariff on file and approved by the Commission. However, if the meter is found
21 to be in error by more than 3%, no meter testing fee will be charged.
- 22 3. Protocols for metering shall be developed subsequent to the workshops described in
23 R14-2-1606(I).
- 24 **J.** Working Group on System Reliability and Safety
- 25 1. If it has not already done so, the Commission shall establish, by separate order, a
26 working group to monitor and review system reliability and safety.
- 27 a. The working group may establish technical advisory panels to assist it.
- 28 b. The working group shall commence activities within 15 days of the date of

1 adoption of this Article.

2 c. Members of the working group shall include representatives of Staff,
3 consumers, the Residential Utility Consumer Office, utilities, other Electric
4 Service Providers and organizations promoting energy efficiency. In
5 addition, the Executive and Legislative Branches shall be invited to send
6 representatives to be members of the working group.

7 d. The working group shall be coordinated by the Director of the Utilities
8 Division of the Commission or by his or her designee.

9 2. All Electric Service Providers governed by this Article shall cooperate and
10 participate in any investigation conducted by the working group, including provision
11 of data reasonably related to system reliability or safety.

12 3. The working group shall report to the Commission on system reliability and safety
13 regularly, and shall make recommendations to the Commission regarding
14 improvements to reliability or safety.

15 **K.** Electric Service Providers shall comply with applicable reliability standards and practices
16 established by the Western Systems Coordinating Council and the North American Electric
17 Reliability Council or successor organizations.

18 **L.** Electric Service Providers shall provide notification and informational materials to
19 consumers about competition and consumer choices, such as a standardized description of
20 services, as ordered by the Commission.

21 **R14-2-1614. Reporting Requirements**

22 **A.** Reports covering the following items shall be submitted to the Director of the Utilities
23 Division by Affected Utilities and all Electric Service Providers granted a Certificate of
24 Convenience and Necessity pursuant to this Article. These reports shall include the
25 following information pertaining to competitive service offerings, Unbundled Services, and
26 Standard Offer services in Arizona:

- 27 1. Type of services offered;
28 2. kW and kWh sales to consumers, disaggregated by customer class (e.g., residential,

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- commercial, industrial);
- 3. Solar energy sales (kWh) and sources for grid connected solar resources; kW capacity for off-grid solar resources;
- 4. Revenues from sales by customer class (e.g., residential, commercial, industrial);
- 5. Number of retail customers disaggregated as follows: aggregators, residential, commercial under 100 kW, commercial 100 kW to 2999 kW, commercial 3000 kW or more, industrial less than 3000 kW, industrial 3000 kW or more, agricultural (if not included in commercial), and other;
- 6. Retail kWh sales and revenues disaggregated by term of the contract (less than 1 year, 1 to 4 years, longer than 4 years), and by type of service (for example, firm, interruptible, other);
- 7. Amount of and revenues from each service provided under R14-2-1605, and, if applicable, R14-2-1606;
- 8. Value of all Arizona specific assets and accumulated depreciation;
- 9. Tabulation of Arizona electric generation plants owned by the Electric Service Provider broken down by generation technology, fuel type, and generation capacity;
- 10. Other data requested by Staff or the Commission;
- 11. In addition, prior to the date indicated in R14-2-1604(D), Affected Utilities shall provide data demonstrating compliance with the requirements of R14-2-1604.

B. Reporting Schedule

- 1. For the period through December 31, 2003, semi-annual reports shall be due on April 15 (covering the previous period of July through December) and October 15 (covering the previous period of January through June). The first such report shall cover the period January 1 through June 30, 1999.
- 2. For the period after December 31, 2003, annual reports shall be due on April 15 (covering the previous period of January through December). The first such report shall cover the period January 1 through December 31, 2004.

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- 1 C. The information listed above may be provided on a confidential basis. However, Staff or the
2 Commission may issue reports with aggregate statistics based on confidential information
3 that do not disclose data pertaining to a particular seller or purchases by a particular buyer.
- 4 D. Any Electric Service Provider governed by this Article which fails to file the above data in
5 a timely manner may be subject to a penalty imposed by the Commission or may have its
6 Certificate rescinded by the Commission.
- 7 E. Any Electric Service Provider holding a Certificate pursuant to this Article shall report to the
8 Director of the Utilities Division the discontinuation of any competitive tariff as soon as
9 practicable after the decision to discontinue offering service is made.
- 10 F. In addition to the above reporting requirements, Electric Service Providers governed by this
11 Article shall participate in Commission workshops or other forums whose purpose is to
12 evaluate competition or assess market issues.
- 13 G. Reports filed under the provisions of this section shall be submitted in written format and in
14 electronic format. Electric Service Providers shall coordinate with the Commission Staff on
15 formats.

16 **R14-2-1615. Administrative Requirements**

- 17 A. Any Electric Service Provider certificated under this Article may propose additional electric
18 services at any time by filing a proposed tariff with the Commission describing the service,
19 maximum rates, terms and conditions. The proposed new electrical service may not be
20 provided until the Commission has approved the tariff.
- 21 B. Contracts filed pursuant to this Article shall not be open to public inspection or made public
22 except on order of the Commission, or by the Commission or a Commissioner in the course
23 of a hearing or proceeding.
- 24 C. The Commission may consider variations or exemptions from the terms or requirements of
25 any of the rules in this Article upon the application of an affected party. The application
26 must set forth the reasons why the public interest will be served by the variation or
27 exemption from the Commission rules and regulations. Any variation or exemption granted
28 shall require an order of the Commission. Where a conflict exists between these rules and

1 a report dated August 19, 1996.

2 ♦ *Requests for comments on a draft rule to phase-in retail electric competition.* The
3 requests were sent out on August 28, 1996 and comments were due September 12,
4 1996. Comments were provided by a total of 30 utilities, consumer organizations,
5 other power suppliers, and others.

6 ♦ *A workshop to discuss a revised draft rule held on September 18, 1996.* Ninety
7 individuals attended the workshop, including representatives from utilities, consumer
8 organizations, other power suppliers, and others.

9 In addition, to better understand possible impacts of restructuring, the Commission Staff
10 reviewed activities in other jurisdictions, including: New Hampshire, Massachusetts, Illinois, Rhode
11 Island, Texas, Alberta, and New York.

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1 an approved tariff or order of the Commission, the provisions of the approved tariff or order
2 of the Commission shall apply.

3 D. The Commission may develop procedures for resolving disputes regarding implementation
4 of retail electric competition.

5 **R14-2-1616. Legal Issues**

6 A. A working group to identify, analyze and provide recommendations to the Commission on
7 legal issues relevant to this Article shall be established.

8 1. The working group shall commence activities within 15 days of the date of adoption
9 of this Article.

10 2. Members of the working group shall include representatives of Staff, the Residential
11 Utility Consumer Office, consumers, utilities, and other Electric Service Providers.
12 In addition, the Executive and Legislative Branches and the Attorney General shall
13 be invited to send representatives to be members of the working group.

14 3. The working group shall be coordinated by the Director of the Legal Division of the
15 Commission or by his or her designee.

16 B. The working group shall submit to the Commission a report on the activities and
17 recommendations of the working group no later than 90 days prior to the date indicated in
18 R14-2-1602.

19 C. The Commission shall consider the recommendations and decide what actions, if any, to take
20 based on the recommendations.

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APPENDIX B**CONCISE EXPLANATORY STATEMENT**

This explanatory statement is provided to comply with A.R.S. § 41-1036.

I. REASONS FOR ADOPTING THE PROPOSED AMENDMENTS.

The Arizona Corporation Commission has promulgated proposed Rules to govern the provision of competitive electric services in the State of Arizona.

R14-2-1601. Definitions.

This section contains all the definitions necessary to interpret and follow the provisions set forth in the proposed Rules.

R14-2-1602. Filing of Tariffs by Affected Utilities.

This section requires all Affected Utilities (defined in R14-2-1601) to file tariffs required by this Article by December 31, 1997.

R14-2-1603. Certificates of Convenience and Necessity.

This section requires all Electric Services Providers (defined in R14-2-1601) intending to supply electric services under this Article to obtain a Certificate of Convenience and Necessity from the Commission. Affected Utilities already have Certificates for their existing service area, and thus need not obtain a Certificate in order to continue to provide service therein. This section sets up the process for obtaining such Certificates, as well as grounds for denial and conditions under which they may be granted.

R14-2-1604. Competitive Phases.

This section outlines the time frames for the introduction of competition in Arizona. In the first phase, to begin in 1999, Affected Utilities are required to open up 20 percent of their base year (1995) markets (as measured by kW demand) to competition. In the second phase, to begin in 2001, this is enlarged to at least 50 percent of the incumbent utilities' base year markets. Full competition for generation, the third phase, begins in 2003. At least 15 percent of the eligible demand must be reserved for residential consumers in the competitive marketplace in the first phase, and at least 30 percent of the eligible demand must be reserved for residential consumers in the competitive marketplace in the second phase. In addition, prior to 2001, no single consumer may receive more

1 than 20 percent of the total service available in the competitive market in an Affected Utility's
2 service territory.

3 The Affected Utilities must propose how customers will be selected for participation in the
4 competitive market. Consumers who use photovoltaics or solar thermal resources (built after
5 January 1, 1997 and installed in Arizona) for at least 10 percent of their annual electricity
6 consumption are automatically included in the list of eligible customers for participation in the
7 competitive market if they wish to participate in the competitive market. To assist the Affected
8 Utilities and the Commission in understanding selection issues, a workshop will be conducted on
9 selection issues prior to the date when selection filings are due.

10 Customers served under existing contracts are eligible to participate in the competitive
11 market prior to expiration of the existing contract only if the affected utility and customer agree to
12 early revision of the contract. Buy-throughs are permitted on a voluntary basis. These mechanisms,
13 which enable the incumbent utility to purchase specific sources of energy at wholesale for the use
14 of a specific consumer, may enable some consumers to obtain some of the benefits of competition
15 prior to the start of the first competitive phase, if the Commission approves.

16 Electric cooperatives may request a modification to the schedule. Any such requests must
17 include proposals on enhancing consumer choice among generation resources. The Commission will
18 have to consider the costs and benefits of modifying the schedule in making a determination on the
19 proposed modifications.

20 **R14-2-1605. Competitive Services.**

21 This section describes services which can be provided competitively. These include
22 generation at any location (including distributed generation) plus other services except distribution
23 service and except services required by the federal government to be provided on a monopoly basis.

24 **R14-2-1606. Services Required To Be Made Available by Affected Utilities.**

25 This section deals with utilities' obligations to provide unbundled services and standard offer
26 services. Incumbent utilities must offer "Standard Offer" service in their service territories until the
27 Commission determines that competition has been substantially implemented. Standard offer service
28 consists of bundled service at regulated rates for consumers who do not or cannot participate in the

1 competitive market. In addition, by December 31, 1997, Affected Utilities will have to file
2 unbundled tariffs to provide to all eligible purchasers on a nondiscriminatory basis the following
3 services: Distribution service, metering and meter reading, billing and collection, open access
4 transmission service, and ancillary services. Such transmission and ancillary service tariffs must be
5 consistent with applicable tariffs filed with the Federal Energy Regulatory Commission ("FERC").

6 This section also sets up guidelines and practices for the authorization and release of
7 customer demand and energy data, sets up a process for the review of rates for unbundled services,
8 and sets up a series of workshops to explore various issues involved in the provision of unbundled
9 services and Standard Offer services.

10 **R14-2-1607. Recovery of Stranded Cost of Affected Utilities.**

11 This section discusses the process by which Affected Utilities may seek to recover their
12 unmitigated Stranded Costs (defined in R14-2-1601). The section sets up a working group to
13 develop recommendations for the analysis and recovery of such Stranded Costs, and sets forth
14 several factors to be considered in allowing this recovery. Stranded Costs can only be recovered
15 from customers in the competitive marketplace, and estimates of Stranded Costs must be updated
16 periodically to allow the Commission to monitor the magnitude of such costs, and to grant refunds
17 where such estimates may be overstated.

18 **R14-2-1608. System Benefits Charges.**

19 This section recognizes the availability of the recovery of costs of Commission-approved
20 utility low income, demand side management, environmental, renewables, and nuclear power plant
21 decommissioning programs. Affected Utilities are to propose the necessary charges on competitive
22 consumers (to continue existing programs) for Commission review and approval.

23 **R14-2-1609. Solar Portfolio Standard.**

24 This section requires any Electric Service Provider selling electricity under the provisions
25 of the Rules to derive at least ½ of 1% of the total retail energy sold competitively from new solar
26 resources. As of January 1, 2001, this standard becomes 1%, unless the Commission decides
27 otherwise. New solar resources are those installed on or after January 1, 1997. Electric Service
28 Providers selling electricity derived from new solar resources prior to January 1, 1999 are allowed

1 to claim credit toward the Solar Portfolio Standard for twice the electric energy generated by such
2 solar resources prior to 1999. Periodic reports of such sales of solar energy are required; Electric
3 Services Providers who fail to meet the standard in the Rules may be subject to penalties imposed
4 by the Commission.

5 **R14-2-1610. Spot Markets and Independent System Operators.**

6 This section requires the Commission to conduct an inquiry into spot market development
7 and independent system operation for the transmission system; the Commission is authorized to
8 support the development of either, and may work with other entities to help establish them.

9 **R14-2-1611. In-State Reciprocity.**

10 This section recognizes that electric utilities which are not subject to the Commission's
11 jurisdiction are not allowed to participate in the competitive electric market unless certain legislative
12 changes are made, or these electric utilities either voluntarily submit to the Commission's
13 jurisdiction for purposes of such participation, or they enter into some form of agreement with the
14 Commission to allow for their participation under mutually agreeable terms.

15 **R14-2-1612. Rates.**

16 This section sets forth the Commission's determination that rates determined by the
17 competitive market are just and reasonable. Electric Service Providers selling services under these
18 Rules are required to file with the Commission tariffs describing such services along with the
19 maximum rates of those services, subject to Commission approval. Pricing for competitive services
20 may be at or below the maximum rates specified in the tariff, provided the price is not less than the
21 marginal cost of the service. Changes in maximum rates or in terms and conditions of previously
22 approved tariffs may be filed, and are effective upon Commission approval.

23 **R14-2-1613. Service Quality, Consumer Protection, Safety, and Billing Requirements.**

24 This section explicitly recognizes that the Commission's existing rules for electric service
25 apply in the competitive arena, except in specific instances. "Slamming" by suppliers of electric
26 service is explicitly prohibited. Electric Service Providers supplying service under these Rules are
27 responsible for meeting applicable reliability standards, are required to provide customer notice if
28 it is unable to continue providing customers with any service, shall submit accident reports, shall

1 make reasonable efforts to reestablish service in the shortest possible time in the event of service
2 interruptions, and shall ensure that bills rendered on their behalf include toll free telephone numbers
3 for customer inquiries. In addition, Electric Service Providers supplying metering or meter reading
4 services shall provide access to meter readings to other Electric Service Providers serving the same
5 customer. Meter tests may be requested by a consumer or an Electric Service Provider relying on
6 meter information provided by another Electric Service Provider; such test shall be without charge
7 if an error of more than 3% is found. A working group on System Reliability and Safety is set up
8 to monitor and review such issues and make regular reports to the Commission on these issues. All
9 Electric Service Providers are required to comply with applicable reliability standards and practices
10 set forth by the Western Systems Coordinating Council and the North American Electric Reliability
11 Council or successor organizations.

12 **R14-2-1614. Reporting Requirements.**

13 This section requires regular reporting of market information so the Commission is able to
14 monitor developments in competitive markets.

15 **R14-2-1615. Administrative Requirements.**

16 This section indicates that Electric Service Providers may file to offer new services and that
17 contracts are not public documents. It further states the Commission may grant variations or
18 exemptions from portions of the Rules. The Commission may also adopt procedures to resolve
19 disputes.

20 **R14-2-1616. Legal Issues.**

21 This section sets up a working group to identify, analyze and provide recommendations to
22 the Commission on legal issues relative to these Rules. The Commission shall consider the
23 recommendations and decide the appropriate actions to take thereon.

24 **II. CHANGES IN THE TEXT OF THE PROPOSED AMENDMENT FROM THAT**
25 **CONTAINED IN THE NOTICE OF RULEMAKING FILED WITH THE**
26 **SECRETARY OF STATE.**

26 **A.A.C. R14-2-1603 Certificates of Convenience and Necessity**

27 The second sentence of R14-2-1603(B) has been amended to read: "Such Certificates shall
28 be restricted to geographical areas served by the Affected Utilities as of the date this Article is

1 adopted and to service areas added under the provisions of R14-2-1611.”

2 **A.A.C. R14-2-1611 In-State Reciprocity**

3 R14-2-1611D has been amended to read:

4 D. An Arizona electric utility, not subject to the jurisdiction of the Commission, may
5 submit a statement to the Commission that it voluntarily opens its service territory
6 for competing sellers in a manner similar to the provisions of this Article. Such
7 statement shall be accompanied by the electric utility's nondiscriminatory Standard
8 Offer tariff, electric supply tariffs, Unbundled Services rates, Stranded Cost charges,
9 System Benefits charges, Distribution Services charges and any other applicable
10 tariffs and policies for services the electric utility offers, for which these Rules
11 otherwise require compliance by Affected Utilities or Electric Service Providers.
12 Such filings shall serve as authorization for such electric utility to utilize the
13 Commission's Rules of Practice and Procedure and other applicable Rules concerning
14 any complaint that an Affected Utility or Electric Service Provider is violating any
15 provision of this Article or is otherwise discriminating against the filing electric
16 utility or failing to provide just and reasonable rates in tariffs filed under this Article.

17 R14-2-1611E has been added to read:

18 E. If an electric utility making a filing under R14-2-1611(D) is an Arizona political
19 subdivision or municipal corporation, then the existing service territory of such
20 electric utility shall be deemed open to competition if the political subdivision or
21 municipality has entered into an intergovernmental agreement with the Commission
22 that establishes nondiscriminatory terms and conditions for Distribution Services and
23 other Unbundled Services, provides a procedure for complaints arising therefrom,
24 and provides for reciprocity with Affected Utilities.

25 **III. EVALUATION OF THE ARGUMENTS FOR AND AGAINST THE PROPOSED
26 AMENDMENTS.**

27 **A. General Legal Arguments Against The Rules.**

28 **1. The Commission Has the Legal Right to Promulgate These Rules.**

One primary overriding comment made by the parties is that the Commission has no legal

1 right to adopt these Rules. This argument follows several lines of reasoning, the three primary ones
2 being that the rules modify or abrogate the regulatory compact; the rules are in violation of the
3 Arizona Administrative Procedures Act; and that the Commission does not have the authority to
4 issue, modify or delete a Certificate of Convenience and Necessity without some legislative change.

5 Issue: The Rules Are an Unlawful Modification or Abrogation of the Regulatory
6 Compact.

7 The basic argument made by the parties regarding the regulatory compact is that there is
8 some sort of "contract" between the state and the incumbent monopoly electric utility, wherein the
9 utility is obligated to supply electricity to all customers who require it at a reasonable cost, and in
10 return, the state agrees to provide the utility with the exclusive right to serve all customers within
11 a defined territory. The argument goes on to assert that since the Proposed Rules would change the
12 exclusive nature of electric service, the rules unilaterally abrogate or at least modify this contract,
13 and thus the Proposed Rules cannot be passed.

14 Staff argues that no such contract has been formed. Generally, a party asserting the formation
15 of a contract by statute must overcome a presumption against such formation, and courts will be
16 cautious both in identifying a contract within the language of a regulatory statute, and in defining
17 the outlines of any contractual obligation. Nat'l R.R. Passenger Corp. v. Atchison, Topeka, and
18 Santa Fe Ry. Co., 470 U.S. 451, 466, 105 S.Ct. 1441, 1452 (1985). "[A]bsent some clear indication
19 that the legislature intends to bind itself contractually, the presumption is that 'a law is not intended
20 to create private contractual or vested rights but merely declares a policy to be pursued until the
21 legislature shall ordain otherwise.'" Id. at 465-66, 105 S.Ct. at 1451 (quoting Dodge v. Bd. Educ.
22 of City of Chicago, 302 U.S. 74, 79, 58 S.Ct. 98, 100 (1937)). In promulgating these Proposed
23 Rules, the Commission is exercising the legislative discretion flowing from its plenary ratemaking
24 authority. See Simms v. Round Valley Light & Power, 80 Ariz. 145, 294 P.2d 378 (1956). The
25 question as to whether particular legislation creates a contractual right begins with an examination
26 of the statute itself. Nat'l R.R. Corp., 470 U.S. at 465-66, 105 S.Ct. at 1451. However, a search of
27 the Arizona Constitution reveals no such intent on the part of the State to bind itself. Indeed, the
28 Constitution expressly disfavors monopolies: "[m]onopolies and trusts shall never be allowed in this

1 State” Ariz. Const. Art. XIV, § 15.

2 Staff further notes that, while the parties cite Application of Trico Electric Co-operative, Inc.,
3 92 Ariz. 373, 377 P.2d 309 (1962) for the proposition that “the state in effect contracts” with a
4 monopoly utility, that language in Trico is clearly dicta. Additionally, other cases refer to regulated
5 monopoly as public policy rather than a contractual relationship. See Ariz. Corp. Comm’n v. Super.
6 Ct., 105 Ariz. 56, 59, 459 P.2d 489 (1969) (regulated monopoly held to be public policy of Arizona);
7 Winslow Gas Co. v. Southern Union Gas Co., 76 Ariz. 373, 385, 265 P.2d 442, 443 (1954)(referring
8 to Arizona’s public policy of controlled monopoly); James P. Paul Water Co. v. Ariz. Corp.
9 Comm’n, 137 Ariz 426, 429, 671 P.2d 404, 407 (1983)(“It is well established that Arizona’s public
10 policy respecting public service corporations . . . is one of regulated monopoly over freewheeling
11 competition.”).

12 In addition, Staff points out that it is well established that any alleged contract is subject to
13 modifications in the law. The parties seem to find the source of the regulatory compact in both the
14 Arizona Constitution and the statutes concerning public service corporations. The Constitution
15 clearly provides for changes in the law concerning public service corporations; see Ariz. Const Art.
16 XV, §3. Further, any statutes concerning public service corporations may be changed at any time
17 as well. If indeed the Constitution and the statutes have created a contract such as the parties claim,
18 then this possibility for changes in the law must also be a part of that contract.

19 Analysis: We are not convinced that the regulatory policy of the state has formed any
20 sort of contract with the Affected Utilities. It appears that the former “policy” of regulated
21 monopoly was just that- a policy, made with no intent to bind the state or the Commission. Finally,
22 we recognize, as should the utilities, that such regulatory policies are always subject to change as
23 the economics and technologies of the time also change.

24 Resolution: There is no reason to delay the promulgation of these Rules.

25 Issue: The Rules Violate the Administrative Procedures Act.

26 The next argument made by the parties is that the Commission in adopting the Proposed
27 Rules in this manner is violating the Arizona Administrative Procedures Act (“APA”), A.R.S. §41-
28 1001 et seq. There are two prongs to this argument, one being that the rules will clearly not be

1 certified by the Attorney General's office, and the other being that because the Economic Impact
2 Statement ("EIS") accompanying the Proposed Rules are somehow inadequate, interested persons
3 are not given an adequate opportunity for notice and comment as required in the APA. Both prongs
4 are without merit.

5 Staff believes that the rules are not subject to Attorney General certification, as they are quite
6 plainly a manifestation of the Commission's ratemaking authority. Clearly, the adoption of the
7 Proposed Rules will have an impact on rates, something even all the commentators seem to
8 recognize. Such an impact on rates has been recognized as grounds for the Commission's authority
9 to exercise its plenary ratemaking authority through the adoption of rules. Ariz. Corp. Comm'n v.
10 State ex rel. Woods, 171 Ariz. 286, 295, 830 P.2d 807, 816 (1992). Where rules, such as these, are
11 an exercise of that ratemaking authority, the Attorney General does not have the authority to review
12 and reject them. State ex rel. Corbin v. Ariz. Corp. Comm'n, 174 Ariz. 216, 219, 848 P.2d 301
13 (Ct.App. 1992).

14 Further, Staff notes that the Commission is expressly exempted pursuant to A.R.S. §41-1057
15 from the requirement of submitting an EIS as set forth in §41-1055. Under §41-1057, the
16 Commission is merely required to adopt substantially similar review procedures for its rules. This
17 is what Staff has done in this case in preparing the EIS forwarded to the Secretary of State as part
18 of the rulemaking package. Staff thus believes its EIS thus meets the requirements of the APA.

19 Analysis: We have previously litigated the issue of whether Commission rules
20 involving ratemaking are subject to review and certification by the Attorney general's office. The
21 Courts have been clear in deciding that they are not. Further, we are satisfied that the EIS prepared
22 by Staff meets the statutory requirements set forth in A.R.S. §41-1057.

23 Resolution: There is no reason to delay the promulgation of these Rules.

24 Issue: The Adoption of These Rules Modifies Existing CC&Ns.

25 Another argument raised by various parties in this proceeding is that the Commission has no
26 authority to enact the Rules because the legislature has not afforded the Commission the authority
27 to issue competitive CC&Ns as is contemplated by the Rules. According to this argument, the
28 Commission has no authority to promulgate the Rules until the legislature grants to the Commission

1 the authority to grant competitive CC&Ns.

2 Staff urges that the adoption of these Rules does not grant to any potential competitor the
3 right to provide electric service. Pursuant to the Rules, CC&Ns may be granted to applicants after
4 going through an application process which includes public notice of the application and an
5 opportunity for a hearing. See A.A.C. R14-2-1603. No CC&N is granted merely by the adoption
6 of the Rules, and any CC&N granted under these Rules is expressly conditional upon numerous
7 factors set forth in the rules. Therefore no additional legislative authority is required for the
8 Commission to promulgate the Rules.

9 Furthermore, Staff points out that courts have recognized that the Commission does have the
10 authority to determine when competition is in the public interest and to issue competitive CC&Ns.
11 Arizona v. People's Freight Line, 41 Ariz. 158, 166-67, 16 P.2d 420, 423 (1932); Winslow Gas Co.
12 v. Southern Union Gas Co., 76 Ariz. 383, 385, 265 P.2d 442, 443 (1954). Thus, while Staff
13 welcomes a role for the legislature in clarifying this authority, Staff believes such authority already
14 exists.

15 Analysis: The Rules as drafted set forth a framework for the introduction of competition
16 into the electric services market in Arizona. As they are merely a framework, the Rules do not grant,
17 modify, or delete any new or existing CC&N. The Rules do set up a process that must be followed
18 before any such event occurs. All of the objecting parties are anticipated and expected to participate
19 in such process. We are also persuaded by Staff's argument that we already have the authority to
20 grant competitive CC&Ns, when the public interest demands it. However, that is an issue that we
21 expect to address again before any competitive CC&Ns are issued.

22 Resolution: There is no reason to delay the promulgation of these Rules.

23 2. The Adoption of the Proposed Rules Does Not Violate Due Process.

24 Issue: Several parties in their comments have observed that the Proposed Rules as written
25 violate due process because they are impermissibly vague. They argue that the Proposed Rules defer
26 resolution of too many issues, such as stranded cost and the nature of CC&Ns under the rules, and
27 do not give the affected parties fair warning as to how these and other aspects of the rules will be
28 determined by the Commission.

1 Staff acknowledges that a statute or rule is impermissibly vague in violation of due process
2 if a) it fails to give a person of ordinary intelligence a reasonable opportunity to know what the law
3 is in order to plan accordingly, or b) it allows arbitrary or discriminatory enforcement by failing to
4 provide an objective standard. Bird v. State, 184 Ariz. 198, 908 P.2d 12 (Ct.App. 1995). However,
5 Staff believes the Rules as written do not violate this standard. First, in regard to stranded cost
6 recovery, the Rules set up a process for utilities claiming to have incurred stranded costs to seek
7 recovery of those costs. The Rules set forth several factors for the Commission to consider in
8 determining a utility's stranded cost, and allow the requesting utility to recover the appropriate
9 amount. The Rules thus give the utility an opportunity to know what the law is so it can plan ahead,
10 and sets forth an objective standard which the Commission must follow in doing so. As for CC&Ns,
11 once again it is clear to a person of ordinary intelligence that under the Rules, all new CC&Ns will
12 be competitive CC&Ns, and that under the rules there is a clear standard for granting such CC&Ns.

13 Analysis: The Rules as written give the parties a great deal of guidance in terms of what
14 is expected in the new competitive environment. Precise specificity is of course impossible; neither
15 we nor anyone else has the prescience to know exactly what will happen in the future. However, the
16 Rules do set adequate standards and processes for dealing with these future uncertainties. We thus
17 do not agree that the Rules are impermissibly vague in violation of due process.

18 Resolution: There is no reason to delay the promulgation of these Rules.

19 3. The Proposed Rules Do Not Violate Equal Protection.

20 Issue: Some parties argue that the rules as proposed do not allow for equal treatment of all
21 members of a recognized class, that class being all entities that provide electric services. The claim
22 is made that the Proposed Rules treat incumbent monopoly public service corporations differently
23 than they treat such potential competitors as the Salt River Project, municipal corporations, tribal
24 authorities and non-utility generators. According to these comments, these other entities are not
25 subject to any of the obligations of the Proposed Rules, but are still allowed to reap the benefits of
26 the rules. Such unequal treatment, it is claimed, violates equal protection.

27 Staff notes that there are serious differences between the incumbent monopoly providers and
28 other potential entrants. Equal protection is satisfied if all persons in a class are treated alike.

1 Baseball Liquors v. Circle K Corp., 129 Ariz. 215, 630 P.2d 38 (Ct.App. 1981), cert den. 454 U.S.
2 969, 102 S.Ct. 515. Legislation which applies to members of a class, but not to nonmembers of that
3 class, will be upheld under equal protection if the classification is not arbitrary and there is a
4 substantial difference between those within the class and those without. Farmer v. Killingsworth,
5 102 Ariz. 44, 424 P.2d 172 (1967). In this instance, there is one clear difference between the
6 incumbent monopoly providers, and all others: the incumbents' monopoly status. To treat all parties
7 identically under the rules would fail to recognize the incumbents' ability to use their current
8 monopoly status to inhibit the competition these rules are designed to encourage. These Proposed
9 Rules recognize that electric competition is not a race that begins with all entrants beginning at the
10 starting gate; rather, the incumbents have a significant head start and a full head of steam. The
11 Proposed Rules treat the incumbents differently because they ARE different. This does not violate
12 equal protection.

13 Analysis: As pointed out by Staff, there are clear reasons why Affected Utilities are
14 treated differently than other entities under these Rules. Indeed, it would make no sense to make
15 their treatment identical, because of their differing circumstances. The Rules identify those
16 differences and treat the classes fairly based on those differences.

17 Resolution: There is no reason to delay the promulgation of these Rules.

18 4. Passage of the Proposed Rules Does Not Constitute an Unconstitutional Taking.

19 Issue: Another argument put forth by several parties is that the property rights of regulated
20 utilities enjoy constitutional protection, and therefore the Rules constitute an unconstitutional taking
21 of this property. The primary focus of these comments is that because under the Rules the
22 Commission possibly may not allow recovery of a utility's entire stranded cost claim, this constitutes
23 a regulatory taking of the utility's property without compensation. Another argument is that the rules
24 confiscate the exclusive rights inherent in existing CC&Ns without compensation

25 Staff believes such claims are premature at this time. The Rules as written do not take
26 anything; they do not deny any utility recovery of any stranded cost, nor do they grant any new
27 CC&N. What the rules do is set forth a framework wherein a regulated entity claiming to have
28 stranded costs may come before the Commission and seek recovery of those costs. The rules also

1 establish a process wherein potential new entrants may apply for and receive a CC&N. Mere
2 adoption of the Rules will not result in any property being taken.

3 Furthermore, Staff argues that in order for a taking to be unconstitutional, it must be done
4 without compensation. The law is well-settled that takings claims are not ripe until the plaintiff has
5 been denied compensation. Pub. Serv. Comm'n of New Mexico v. City of Albuquerque, 755
6 F.Supp. 1494, 1498 (D.N.M. 1991). If a state provides an adequate procedure for seeking just
7 compensation, the property owner cannot claim a violation until it has used the procedure and been
8 denied just compensation. Williamson Co. Regional Planning Comm'n v. Hamilton Bank, 473 U.S.
9 172, 195, 105 S.Ct. 3108, 3121 (1985).

10 Any property that a utility believes has been taken once competition has been implemented
11 under the Rules is essentially a stranded cost. The Rules allow for stranded cost recovery, and set
12 forth a process wherein utilities can seek recovery of these costs.

13 Analysis: Mere adoption of these Rules does not constitute a taking. Thus claims by
14 parties that the Rules constitute an unlawful taking are clearly premature. Losses in value of utility
15 assets as a result of competition would appear to be stranded costs; as the Rules set forth a process
16 to allow for the recovery of stranded costs, it seems clear that the Rules do not constitute an
17 unconstitutional taking of any utility property.

18 Resolution: There is no reason to delay the promulgation of these Rules.

19 **B. A.A.C. R14-2-1601: Definitions**

20 Issue: Trico proposes that cooperatives be deleted from the definition of affected utilities
21 (R14-2-1601(1)).

22 Staff disagrees. The consumers located in the service areas of the cooperatives should be
23 able to benefit from competition.

24 Analysis: The Commission agrees that all customers should be able to benefit from
25 competition, including those located in the service areas of cooperatives.

26 Resolution: No amendment to R14-2-1601(1) is necessary.

27 Issue: APS wants to delete the word "net" and to delete the term "value" and substitute
28 "recorded costs of the assets and obligations" from the definition of stranded costs in R14-2-1601(8).

1 Further, APS wants to substitute "used and useful" for "necessary," pertaining to furnishing
2 electricity. APS is also concerned that stranded costs refers only to assets and obligations created
3 prior to the adoption of the article.

4 TEP is concerned that the proposed definition of stranded cost would result in
5 reconsideration of the prudence of past investment decisions. TEP states that it is unclear what
6 specific assets and obligations are included in stranded cost and whether the definition is limited to
7 balance sheet accounts. TEP states that stranded cost is not limited to generation assets and may
8 include regulatory assets and operating expenses.

9 In response to Arizona Public Service Company's concerns, Staff believes that the word "net"
10 is essential -- it reflects the fact that some assets will have market values greater than regulated
11 values and that some assets will have market values less than regulated value. Further, Staff
12 believes the rule should be general so as to permit stranded cost calculations reflecting the individual
13 circumstances of a given utility.

14 Staff expects that, in general, reconsideration such as concerns TEP would not be undertaken,
15 but cannot rule out reconsideration of the prudence of past investments in every circumstance.
16 Further, Staff believes that the definition is clear on these points: the calculation of stranded cost will
17 not consider only generation assets, and can include purchased power contracts, regulatory assets,
18 fuel contracts, etc.

19 Evaluation: The Commission should not just allow a utility to recover stranded costs only
20 for those assets whose value has decreased without offsetting that gross stranded cost with increases
21 in the value of other assets. Substituting "recorded costs of the assets and obligations" for "value"
22 is not necessary. APS' point can be dealt with in the stranded cost working group to obtain input
23 from other parties; this may be an issue on which consensus can be reached.

24 Resolution: No amendment to R14-2-1601(8) is necessary.

25 **C. R14-2-1604: Competitive Phases**

26 Issue: Several cooperatives (Arizona Electric Power Cooperative, Duncan Valley Electric
27 Cooperative, Inc., Graham County Electric Cooperative, Inc., and Sulphur Springs Valley Electric
28 Cooperative), would substitute for R14-2-1604(H), which allows for modifications of the

1 implementation schedule for cooperatives, a requirement that the cooperatives file a report
2 describing the status of the efforts to address and resolve tax exemption and contractual and federal
3 financing issues. Phelps Dodge Morenci, Inc. (Phelps Dodge) disagrees with the contention that
4 cooperatives should be exempted from competition. To do so, Phelps Dodge says, would mean that
5 rural customers will be prevented from receiving the lowest possible price of electricity.

6 Staff disagrees with the cooperatives, and agrees with Phelps Dodge, because this proposal
7 will exclude consumers served by cooperatives from the benefits of competition and dilute incentives
8 for the cooperatives to introduce competition.

9 The cooperatives propose that a new definition be added for available transmission capability
10 ("the meaning accorded it by Federal Energy Regulatory Commission Order 888 ...). The phrase
11 "subject to Available Transmission Capability" would then be added to the beginning of R14-2-
12 1604(A), (B), and (D). FERC Order 888 requires transmission providers to describe their method
13 for determining available transmission capability posted on the transmission provider's OASIS
14 (Open Access Same time Information Systems). If sufficient transmission capability may not exist
15 to accommodate a service request, the transmission provider will respond by performing a system
16 impact study (Section 15.2 of the pro-forma tariff). System impact studies are described in Section
17 32 of the pro-forma tariff. If transmission upgrades are needed to supply a service request, the
18 customer must reimburse the transmission provider for the facilities study and, if the customer wants
19 the facilities, he or she will have to pay for them. Staff believes that the cooperative's proposal
20 incorrectly gives the impression that the transmission provider is not obligated to conduct system
21 impact studies or facilities studies as required by the FERC. Therefore, Staff recommends that the
22 wording of the proposed rule not be changed as suggested by the cooperatives.

23 The cooperatives also propose to add language to R14-2-1604 that states that "Any consumer
24 which elects to participate in the competitive market shall pay all costs attributable to such election
25 including but not limited to special metering costs and any costs required to relieve transmission or
26 distribution constraints." Staff argues that these costs should be covered by rates charged for
27 unbundled services; no change in the rule is needed.

28

1 Analysis: As with Trico's objection to R14-2-1601(1), the Commission agrees that all
2 customers should be able to benefit from competition, including those located in the service areas
3 of cooperatives. Further, it appears to the Commission that the cooperatives' proposed language
4 regarding transmission service gives the misleading impression that transmission providers have no
5 obligation regarding the stated studies. Finally, the proposed language regarding competitive
6 customers paying special metering costs and other costs is not necessary.

7 Resolution: No amendment to R14-2-1604 is necessary.

8 Issue: Timing of the introduction to competition.

9 TEP proposes that unbundling of distribution services be postponed until 2002 to allow
10 operational issues with generation competition to be sorted out first and to allow time to prepare for
11 "complete competitive product and service unbundling."

12 Nordic Power of Southpoint I, Limited Partnership (Nordic Power) "supports market-based
13 rates with customer choice in the most expeditious manner reasonably feasible." Nordic Power
14 proposes that the phase-in begin no later than January 1, 1998. Enron Capital & Trade Resources
15 (ECT) agrees that competition should begin in 1998, rather than in 1999.

16 Staff believes that two years offers a practical, but aggressive schedule, in which to address
17 all of the unanswered questions that need to be resolved. Two years will allow for evidentiary
18 hearings, working group deliberations, and time to review successful programs as well as problems
19 in other state restructuring efforts.

20 Analysis: The time line in the Rule as written for the introduction of competition in
21 these services is both reasonable and feasible. It allows time for the Commission, Staff and other
22 parties to come up to speed on competition quickly, yet is not so hasty as to ignore lessons that can
23 be learned through the procedures in the rules and the experiences of other states.

24 Resolution: No amendment to R14-2-1604 is necessary.

25 **D. R14-2-1606: Services Required To Be Made Available by Affected Utilities**

26 Issue: Obligation to provide service.

27 APS wants clarification that an Affected Utility has an obligation to provide service and plan
28 for generation resources during the phase-in period for those customers not eligible for access. Staff

1 notes that R14-2-1606(A) indicates that Affected Utilities have an obligation to provide standard
2 offer service until the Commission determines otherwise.

3 Analysis: R14-2-1606(A) is clear on this subject: an Affected Utility has an obligation
4 to provide Standard Offer service until otherwise ordered by this Commission.

5 Resolution: No amendment to R14-2-1606 is necessary.

6 **E. R14-2-1607: Recovery of Stranded Cost of Affected Utilities**

7 Issue: R14-2-1607(A) requires Affected Utilities to take every feasible, cost-effective
8 measure to mitigate Stranded Costs.

9 APS wants to replace in R14-2-1607(A), "every feasible, cost effective [mitigation] measure"
10 with "reasonable [mitigation] measures..." Staff believes this proposed change may be more
11 workable than the initial wording and would not object to such a change if it were clear that the
12 Commission is serious about having utilities actively work to offset stranded costs through
13 mitigation measures. APS further proposes deletion of the examples of types of mitigation. Staff
14 believes that the examples provide additional clarity to the intent.

15 TEP states that it is unclear whether mitigation of stranded costs includes only energy related
16 activities or is all-encompassing, covering any business activity the utility and its affiliates may
17 pursue. TEP believes that profits from activities that are unrelated to the provision of electricity in
18 Arizona and that do not require use of assets acquired to serve electric customers in Arizona, and that
19 are potentially strandable, should not be considered as a source of funds to offset stranded cost.
20 Further, TEP fears that costs of mitigation activities could become stranded. Staff interprets the rule
21 as including all activities, including non-energy-related activities, as part of mitigation. An Affected
22 Utility's losses due to stranded cost are to be offset by that company's gains in other activities.
23 Further, there cannot be any recoverable stranded costs associated with mitigation since those costs
24 would not be necessary to furnish electricity to consumers in the utility's service territory *and* be
25 incurred prior to the adoption of the Article.

26 RUCO wants greater emphasis on mitigation of stranded costs.

27 Analysis: This Commission is serious about having utilities actively pursue mitigation
28 measure to offset stranded costs. Because of that, we believe it is important to retain the current

1 language requiring Affected Utilities to take “every feasible, cost-effective measure to mitigate or
2 offset Stranded Cost.” We further agree with Staff that the inclusion of examples of mitigation or
3 offset are helpful to parties in understanding what we are expecting.

4 We interpret the rule in a manner similar to Staff, in that it envisions Affected Utilities
5 utilizing a wide variety of methods to mitigate or offset Stranded Cost, including methods unrelated
6 to energy activities. We also agree with Staff that there are no recoverable Stranded Costs associated
7 with mitigation, since those costs cannot be both necessary to furnish electricity to consumers in its
8 service territory, and be incurred prior to the adoption of these Rules.

9 So far as RUCO’s comments are concerned, we believe the Rule as written adequately
10 emphasizes the importance of mitigation. Further, RUCO never indicates how this additional
11 emphasis is to be provided.

12 Resolution: No amendment to R14-2-1607(A) is necessary.

13 Issue: Guarantee of recovery of Stranded Costs.

14 RUCO wants the rule to indicate that there is no guarantee of recovery of stranded costs and
15 that the Commission should make a determination regarding the amount of stranded costs that
16 should be recoverable by each utility. The rule allows recovery of unmitigated stranded cost (R14-2-
17 1607(B)) and for the determination of the magnitude of stranded cost (R14-2-1607(I)).

18 Destec is concerned that the Commission has determined the efficacy of stranded cost
19 recovery before considering the issue.

20 Staff expects that the Commission will ultimately consider a wide range of estimates of the
21 magnitude of stranded cost offered by Affected Utilities, Staff, RUCO, consumer groups, and other
22 intervenors. The Commission must also consider several factors regarding mechanisms and charges
23 for recovery of stranded costs (R14-2-1607(I)). Staff believes that no change in the rule is needed
24 on this matter.

25 Analysis: The Rule does guarantee recovery of unmitigated Stranded Cost, but also
26 provides a process for determining the magnitude of Stranded Cost, and recovery mechanisms and
27 charges. Input from various parties as to that magnitude is provided and encouraged.

28 Resolution: No amendment to the Rule is necessary.

1 Issue: R14-2-1607(I) lists various factors to be considered by the Commission in
2 determining the mechanisms for the recovery of Stranded Cost.

3 APS wants the rule to indicate that the factors listed in R14-2-1607(I) pertain only to
4 recovery mechanisms and not to the recoverability of stranded costs. APS wants to remove R14-2-
5 1607(I)(8) pertaining to the period over which stranded cost charges may be recovered. Further,
6 APS desires prompt review of Stranded Cost recovery proposals.

7 TEP states that a specific time period over which stranded costs are computed should not
8 be ordered. The proposed rule does not specify a standard time period, but leaves this to be
9 determined on a case by base basis.

10 AEPSCO and other cooperatives propose deleting some of the factors in R14-2-1607(I)
11 because they believe that stranded cost recovery is required by law. Trico also indicates that some
12 of these should not be considered because, in Trico's view, all stranded costs are recoverable.

13 Staff believes that changes proposed by APS to R14-2-1607(I) are unnecessary. As written,
14 R14-2-1607(I) states that the list of factors is to be considered by the Commission in determining
15 mechanisms and charges for recovery of stranded cost, but not the magnitude of stranded cost. The
16 Commission cannot consider stranded cost recovery mechanisms and charges in a vacuum as
17 proposed by APS. Staff further believes that the Commission will give prompt attention to requests
18 for stranded cost recovery. However, not knowing the nature of the utilities' filings or the nature of
19 other parties' analyses, no specific time limit should be imposed now. The inclusion of R14-2-
20 1607(I)(8) is necessary to indicate that a stranded cost recovery charge is for a fixed time period to
21 be determined by the Commission after having reviewed data provided by utilities and other parties.
22 Stranded cost recovery for *an indefinite time period* is precluded.

23 Staff disagrees with the cooperatives and Trico; the effects of stranded cost recovery on
24 competition and on consumers are important factors in stranded cost recovery mechanisms and
25 should not be ignored by the Commission. Staff believes that the Commission must consider all the
26 factors listed so as to take into account impacts of stranded cost recovery mechanisms on consumers
27 and on the market in general.

28

1 Analysis: We believe that the Rule is clear in that R14-2-1607(I) identifies factors to
2 be considered in setting the mechanisms and charges for Stranded Cost recovery, not for the issue
3 of the magnitude of Stranded Cost. Further, as regards R14-2-1607(I)(8), utilities will be free to
4 propose specific methods for stranded cost recovery that are compatible with their circumstances.
5 Further, the factors identified in the Rule are necessary in order for the Commission to determine
6 the appropriate mechanisms for Stranded Cost recovery.

7 Resolution: No amendment to R14-2-1607(I) is necessary.

8 Issue: R14-2-1607(J) allows Stranded Cost recovery only from those customers
9 participating in the competitive market.

10 RUCO indicates that stranded costs should be recovered from all customers. TEP argues that
11 consumers who self generate should pay for stranded costs.

12 Staff notes that costs are only stranded when competitive market prices are below
13 traditionally regulated rates. Consumers served in non-competitive markets will pay for all
14 prudently incurred costs in their regulated rates and so, in that case, there is no stranded cost. Thus,
15 RUCO's proposed objectives are already incorporated in the rule. As for TEP's recommendation,
16 self generation has been available to consumers for years and no stranded cost recovery has been
17 imposed on such customers.

18 Analysis: The Commission agrees that consumers who will not be participating in the
19 competitive market will be paying for Stranded Costs through the regulated Standard Offer rates.
20 We also agree that there is no compelling reason to impose Stranded Cost responsibility on self
21 generators under these Rules, when none has been imposed in the past.

22 Resolution: No amendment to R14-2-1607(J) is necessary.

23 **F. R14-2-1609: Solar Portfolio Standard**

24 Issue: The Solar Portfolio Standard may not result in increased solar capacity in
25 Arizona.

26 APS suggests that the solar portfolio standard might not result in any increased solar capacity
27 in Arizona. Staff agrees that there is a possibility that no new solar capacity will be built in Arizona,
28 but notes that the purpose of the standard is to promote solar power regardless of the location of

1 generation facilities. Staff believes that economics favor Arizona locations for new solar facilities
2 serving Arizona consumers. Because out-of-state solar resources would need to acquire transmission
3 rights to transmit solar electricity into Arizona for use by the competitive customers in the phased-in
4 competition program, out-of-state resources would probably be more expensive. In addition, since
5 Arizona has the most plentiful supply of sunshine resources in the nation, it is unlikely that an
6 Electricity Service Provider would want to build a solar plant elsewhere. The double credit
7 provision for early solar electricity generation is designed to encourage the installation of the solar
8 facilities in Arizona.

9 Analysis: While the Rule does not specifically require the building of solar resource in
10 Arizona, we believe that the prevailing environmental and economic conditions will result in much
11 of the solar requirement being met by Arizona resources.

12 Resolution: No amendment to R14-2-1609 is necessary.

13 Issue: The Rules may not require that solar resources be used to serve Arizona customers.

14 APS suggests that the proposed rules do not require that the solar resources "even be used
15 to serve Arizona consumers." Staff notes that R14-2-1609(A) defines the solar portfolio standard
16 as a percentage "of the total retail energy sold competitively..." The obvious reference is for
17 electricity sold competitively in Arizona to Arizona consumers as part of the phased-in competition
18 program. However, if there is a need for clarification, Staff would not object to the addition of the
19 phrase "to Arizona consumers" after the phrase "sold competitively."

20 Analysis: These rules pertain to the provision of electric services in the State of Arizona.
21 While Staff's proposed language may be useful, it is not necessary, in that all electricity sold
22 competitively under these Rules is sold in Arizona.

23 Resolution: No amendment to R14-2-1609(A) is necessary.

24 Issue: APS' alternative solar proposal.

25 APS made an alternative proposal in its September 12, 1996 comments that it claims would
26 be far less costly, guarantee between 25 and 50 MW of new solar generation, and not serve as a
27 market barrier. The proposal would have the Commission levy a fixed fee on all kWh delivered to
28 customers in Arizona starting in June 1997. The money would be placed in an interest bearing

1 account and, starting in 1998, the money would be used to "buy down" the uneconomic portion of
2 the cost of newly installed solar systems in Arizona. The money would be disbursed on a
3 competitive-bid basis.

4 Staff does not believe that APS' proposal will accomplish what APS claims it will. The
5 proposal appears to contemplate the need for the establishment of a new bureaucracy to collect fees,
6 determine winning bidders, oversee solar plant construction and start-up. At a time where
7 competition should be encouraging the reduction of bureaucracies in the regulation of electric service
8 and the provision of those services, this proposal would seem to offer just the opposite.

9 Analysis: The APS proposal, contrary to APS' assertions, would not guarantee that any
10 solar facilities are built. It would offer an opportunity, certain incentives, and a favorable
11 environment for solar projects, but certainly no guarantees. The Staff proposal, in contrast, offers
12 a good chance that solar projects will be built because of the potentially high penalties for not
13 meeting the standard. Further, we are not convinced that APS' proposal will be less costly. The
14 costs of buying and installing solar should be about the same. In fact, there is a distinct possibility,
15 under the solar portfolio standard, that utilities or other large electricity suppliers, by buying solar
16 equipment in large volume purchases, will be able to obtain significant price reductions from solar
17 manufacturers anxious for increased market share.

18 Resolution: No amendment to R14-2-1609 is necessary.

19 Issue: The Solar Portfolio Standard is too expensive compared to wind power.

20 RUCO is concerned about the cost of the solar portfolio standard. RUCO states that wind
21 power would be cheaper than solar power.

22 Staff notes that the purpose of the solar portfolio standard, however, is to promote a specific
23 type of renewable resource and not renewables in general, some of which are already cost effective
24 in a wide range of applications. Further, Arizona has mostly Class 3 wind regions, which are not
25 currently cost effective resources, and Arizona wind resources are best in the winter when their value
26 is less than it would be during peak summer demand.

27 Analysis: The Solar Portfolio Standard as written serves properly serves its intended
28 purpose of encouraging the development of solar resources. Solar resources more accurately match

1 the electric demand needs of Arizona consumers than do wind resources, improving their cost
2 effectiveness.

3 Resolution: No amendment to R14-2-1609 is necessary.

4 Issue: R14-2-1609 should be deleted to make the Rules fuel and resource neutral.

5 The Center for Energy and Economic Development (CEED) believes that restructuring
6 should be fuel and resource neutral. Staff disagrees that restructuring should be resource and fuel
7 neutral. The Commission, over the last few years has encouraged the utilities it regulates to diversify
8 their energy portfolios to include renewable energy resources

9 Analysis: Diversification of resource portfolios benefits Arizona. We believe it
10 particularly appropriate to encourage solar because of its natural advantages in the state.

11 Resolution: No amendment to R14-2-1609 is necessary.

12 Issue: The Solar Portfolio Standard is too modest.

13 The Environmental Group is concerned that the solar portfolio standard's percentage rate is
14 too low. The group quotes two National Renewable Energy Laboratory ("NREL") reports that claim
15 that solar thermal technologies produce electricity today at 10.5 cents/kWh and that the current cost
16 of photovoltaic generated electricity is 21.8 cents/kWh. This is in contrast to Staff's estimates of 30
17 cents/kWh. The group therefore suggests that section R14-2-1609(B)(2) be modified to show that
18 only an *increase* in the solar portfolio be allowed when the standard is re-evaluated in 2001.

19 Staff disagrees with the proposal to change the solar portfolio standard. There is insufficient
20 information at this time to set future policy, and R14-2-1609(B) should not be altered in the absence
21 of this information. Staff agrees that NREL's estimated solar electricity cost numbers are probably
22 appropriate for large solar installations. However, since the early solar portfolio projects will be
23 modest in size, Staff feels that it is important to be conservative in estimates. This has resulted in
24 the modest and conservative ½ of 1 percent initial solar portfolio standard. Staff agrees with the
25 Environmental Group and NREL that solar costs in the 1999-2003 time frame will be significantly
26 lower than current costs. If this cost reduction occurs as projected, there will be a natural tendency
27 to increase the solar standard in 2001. If not, it may be appropriate to freeze the standard at ½ of 1
28 percent for a few years.

1 Analysis: While the Environmental Group may be right in regard to the information it
2 has provided from NREL, we believe it is too premature to increase the standard beyond the levels
3 set forth in the Rule.

4 Resolution: No amendment to R14-2-1609(B) is necessary.

5 Issue: Several commentators at the Public Comment session encouraged the Commission
6 to expand the Solar Portfolio Standard to include solar water heaters and other solar demand
7 reduction technologies. It was argued that many of these technologies are cost effective and reliable
8 methods to reduce the demand for electricity from the grid.

9 Analysis: While the suggestions of these commentators has some merit, we do not
10 believe it appropriate to modify the Solar Portfolio Standard at this time. As noted earlier, the
11 purpose of the Solar Portfolio Standard is to promote a specific type of renewable resource.

12 Resolution: No amendment to R14-2-1609 is necessary.

13 **G. R14-2-1611: In-State Reciprocity**

14 Issue: R14-2-1611 precludes Salt River Project and other quasi-governmental entities and
15 municipalities from participating in the competitive marketplace.

16 SRP states that the Rules do not give all Arizona customers the right to choose their Electric
17 Service Provider. SRP further states that the Rules' proposed regulation of political subdivisions
18 and municipal corporations is unconstitutional. SRP expressed concern about having to obtain
19 consent from the Affected Utilities. A concern is that some utilities will bar SRP's entrance by
20 refusing to agree to allow SRP to participate. Consequently, SRP proposed the use of
21 intergovernmental agreements to allow it to participate in competition under this Article.

22 The Irrigation and Electrical Districts' Association of Arizona (IEDA) suggests current
23 wording in the Rules may embroil jurisdictional fights and proposed rewording R14-2-1611
24 subsection D. The rewording would allow non-jurisdictional utilities to voluntarily file unbundled
25 and standard offer service tariffs and to voluntarily open its service territory to competing sellers.
26 These filings would serve as authorization for such service providers to utilize the Commission's
27 rules concerning complaints related to their participation in the competitive market.

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1 Staff believes that the rules as proposed do not make provisions for competition in the service
2 territories of utilities not regulated by the Commission. The rules do provide a framework for
3 implementing competition in the service territories of utilities regulated by the Commission and
4 several means by which nonjurisdictional utilities may participate. Staff further notes that the Rules
5 do not propose regulation of nonjurisdictional utilities in their service territories. They apply to
6 affected utilities and energy service providers authorized to do business in currently regulated service
7 areas. The rules also explicitly state that SRP would not be considered an Affected Utility unless
8 existing law changes (R14-2-1601(1)).

9 Nordic Power is concerned that the intergovernmental agreement recommended by SRP may
10 allow major utilities to carve out service territories if customers and competitive power service
11 providers are left out of the process.

12 Staff believes SRP's proposed use of intergovernmental agreements has merit and may be
13 a means of establishing adequate enforcement of nondiscriminatory rates. The concerns of other
14 utilities over level playing field issues must be considered in any resolution of SRP's status. Further,
15 there must be an objective party who can resolve disputes over whether electric service providers
16 have fair, nondiscriminatory access to SRP's distribution system. If the Commission does not have
17 this authority, some other party must take on this responsibility; other electric service providers may
18 also want to be involved in the creation of this independent party.

19 Staff agrees with Nordic Power that other parties should have the opportunity to provide
20 input into intergovernmental agreements and expects that if such an agreement is being entertained,
21 the Commission will seek that input.

22 Analysis: SRP's status as the second largest electric provider in the state, coupled with
23 its status as a political subdivision of Arizona, has vexed the Commission in the formation of Rules
24 designed to allow competition to benefit all electric consumers in the state. SRP's and IEDA's
25 proposals have merit.

26 Resolution: R14-2-1611 should be amended as follows:

27 R14-2-1611D has been amended to read:

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D. An Arizona electric utility, not subject to the jurisdiction of the Commission, may submit a statement to the Commission that it voluntarily opens its service territory for competing sellers in a manner similar to the provisions of this Article. Such statement shall be accompanied by the electric utility's nondiscriminatory Standard Offer tariff, electric supply tariffs, Unbundled Services rates, Stranded Cost charges, System Benefits charges, Distribution Services charges and any other applicable tariffs and policies for services the electric utility offers, for which these Rules otherwise require compliance by Affected Utilities or Electric Service Providers. Such filings shall serve as authorization for such electric utility to utilize the Commission's Rules of Practice and Procedure and other applicable Rules concerning any complaint that an Affected Utility or Electric Service Provider is violating any provision of this Article or is otherwise discriminating against the filing electric utility or failing to provide just and reasonable rates in tariffs filed under this Article.

R14-2-1611E has been added to read:

E. If an electric utility making a filing under R14-2-1611(D) is an Arizona political subdivision or municipal corporation, then the existing service territory of such electric utility shall be deemed open to competition if the political subdivision or municipality has entered into an intergovernmental agreement with the Commission that establishes nondiscriminatory terms and conditions for Distribution Services and other Unbundled Services, provides a procedure for complaints arising therefrom, and provides for reciprocity with Affected Utilities.

In addition, the second sentence of R14-2-1603(B) should be amended to read: "Such Certificates shall be restricted to geographical areas served by the Affected Utilities as of the date this Article is adopted and to service areas added under the provisions of R14-2-1611."

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1 suppliers; additional costs of executing, monitoring, and enforcing contracts; and additional costs
2 of maintaining power quality and transmission and generation system reliability.

3 A competitive market in electricity will benefit small businesses because it increases their
4 choices and tends to lower prices of electric service. However, small businesses must be informed
5 about their choices. The rule indicates that the Commission may undertake educational activities
6 to lower the costs of participating in the competitive market.

7 Probable costs to the Commission include costs associated with new tasks, such as reviewing
8 applications for competitive Certificates of Convenience and Necessity, and engaging in evidentiary
9 hearings for stranded investment and unbundled tariff filings. However, Commission review of tariff
10 filings should be reduced eventually and costly rate cases will be avoided for competitive services.

11 Employment opportunities could be enhanced as new energy related companies move into
12 the area or as a result of new business start-ups. However, employees at public utilities could lose
13 their positions through cost cutting measures as the utilities strive to become more cost competitive.

14 Implementation of the proposed rule should result in no increased costs to political
15 subdivisions. As an end user of competitive electricity services, a political subdivision may benefit
16 from greater choices of service options and affordable rates. Those political subdivisions which have
17 their own municipal electric utilities may feel pressure to allow competitive electric service.

18 The restructuring policy proposed is preferred to alternatives considered because it:
19 minimizes administrative complexity; requires minimal information and planning needs à priori; is
20 relatively flexible so that policy could be adjusted in mid-course; uses existing institutions;
21 minimizes utility organizational disruption; allows buyers and sellers to enter the market freely;
22 limits market power of incumbent utilities; and minimizes public confusion.

23 **3. The name and address of agency employees to contact regarding this statement.**

24 Gary Yaquinto or Bradford Borman at the Arizona Corporation Commission, 1200 West
25 Washington Street, Phoenix, Arizona 85007.

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1 **B. Economic, small business and consumer impact statement.**

2 **1. Identification of the proposed rulemaking.**

3 The proposed rule (Article 16) provides procedures and schedules for introducing
4 competition into the provision of electric service.

5 **2. Persons who will be directly affected by, bear the costs of, or directly benefit**
6 **from the proposed rulemaking.**

- 7 a. The public at large who are consumers of electricity throughout the State of Arizona.
8 b. Furnishers of electricity (serving Arizona and elsewhere), including Investor Owned
9 Utilities, consumer owned utilities/power authorities, self generators, and
10 Independent Power Producers.
11 c. Power aggregators/marketers.
12 d. Industry organizations (e.g., Regional Transmission Groups).
13 e. Transmission utilities.
14 f. Employees of furnishers of electricity.
15 g. Suppliers to furnishers of electricity.
16 h. Investors in Investor Owned Utilities and Independent Power Producers and holders
17 of bonds of consumer owned utilities and cooperatives.
18 i. Financial Organizations.
19 j. Government agencies such as the Arizona Corporation Commission, siting
20 authorities, Federal agencies (including the Federal Energy Regulatory Commission),
21 and consumer advocates such as the Residential Utility Consumers Organization.

22 **3. Cost-benefit analysis.**

23 **a. Probable costs and benefits to the implementing agency and other agencies**
24 **directly affected by the implementation and enforcement of the proposed**
25 **rulemaking.**

26 Probable costs to the Commission include costs associated with new tasks, such as reviewing
27 applications for competitive Certificates of Convenience and Necessity, and engaging in evidentiary
28 hearings for stranded costs, standard offer service, and unbundled tariff filings.

1 The proposed rule allows competitive power and energy suppliers to change rates by
 2 applying for streamlined rate treatment. Filing requirements for rate increases may be reduced.
 3 Thus, Commission review of tariff filings should be reduced eventually and costly rate cases will
 4 be avoided for competitive services.

5 **b. Probable costs and benefits to a political subdivision of this state directly**
 6 **affected by the implementation and enforcement of the proposed rulemaking.**

7 Implementation of the proposed rules should result in no increased costs to political
 8 subdivisions relative to cost changes that may otherwise occur. As an end user of competitive
 9 electricity services, a political subdivision may benefit from greater choices of service options and
 10 affordable rates. Those political subdivisions which have their own municipal electric utilities may
 11 feel pressure to allow competitive electric service.

12 **c. Probable costs and benefits to businesses directly affected by the proposed**
 13 **rulemaking, including any anticipated effect on the revenues or payroll**
 14 **expenditure of employers who are subject to the proposed rulemaking.**

15 Greater efficiency under competition should arise from lower cost electricity generation,
 16 efficient operation and maintenance, development of low cost new resources, and greater stimuli to
 17 innovation in electric generation technology. These benefits are achievable while limiting adverse
 18 financial impacts of competition on incumbent utilities; maintaining transmission and generation
 19 system reliability; countering the market power of vertically integrated utilities; and promoting solar
 20 resources.

21 Possible costs include: additional record keeping and billing costs associated with deliveries
 22 of electricity; transmission access costs; costs of interconnection arrangements such as disconnection
 23 switches to ensure that interruptible consumers are properly interrupted; additional costs of
 24 maintaining power quality and transmission and generation system reliability; additional costs of
 25 scheduling power deliveries to meet contract requirements; additional costs of executing,
 26 monitoring, and enforcing contracts; and costs of complying with legal requirements.

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1 **4. Probable impacts on private and public employment in business, agencies and**
2 **political subdivisions of this state directly affected by the proposed rulemaking.**

3 Employment opportunities could be enhanced as new energy related companies move into
4 the area or as a result of new business start-ups. However, employees at public utilities could lose
5 their positions through cost cutting measures as the utilities strive to become more cost competitive.

6 **5. Probable impact of the proposed rulemaking on small business.**

7 **a. Identification of the small businesses subject to the proposed rulemaking.**

8 Businesses subject to the proposed rulemaking are furnishers of electricity (serving
9 Arizona and elsewhere), including Investor Owned Utilities, consumer owned
10 utilities/power authorities, self generators, Independent Power Producers, and power
11 aggregators/marketers. Some of these businesses are small, but some are also large
12 regional, national, or international firms.

13 **b. Administrative and other costs required for compliance with the proposed**
14 **rulemaking.**

15 Administrative costs to providers of competitive retail electric service would include costs
16 associated with filing requests with the Commission for approval of Competitive Certificates of
17 Convenience and Necessity; filing unbundled tariffs for approval; filing semi-annual reports to
18 inform the Commission about the progress of competition during the phase-in period and annual
19 reports when competition is fully established; and requests for stranded cost recovery. Sellers may
20 be required to provide notification and informational materials to consumers about competition and
21 their choices.

22 **c. A description of the methods that the agency may use to reduce the impact on**
23 **small businesses.**

24 A competitive market in electricity will benefit small businesses because it increases their
25 choices and tends to lower prices of electric service. However, small businesses must be informed
26 about their choices. The rule indicates that the Commission may undertake educational activities
27 to lower the costs of participating in the competitive market.

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1 A possible alternative to reduce the impact on small businesses is to reduce the frequency
2 of filings during the phase-in period. As a consequence, however, the Commission may not become
3 aware of implementation problems quickly enough to offer timely solutions.

4 Another alternative would be to allow competitive service providers to engage in market
5 competition by simply registering the company with the Commission rather than requiring the
6 company to apply for a Certificate of Convenience and Necessity. However, the outcome of this
7 alternative may be undesirable if an electric service provider does not have the technical or financial
8 capability of providing reliable energy services, and if the industry becomes more prone to
9 companies that engage in fraudulent activities.

10 A third alternative is to dispense with tariff filings. However, the Commission could not
11 fulfill its Constitutional responsibilities and consumers would have less information about businesses
12 who supply electric service.

13 **d. The probable cost and benefit to private persons and consumers who are directly**
14 **affected by the proposed rulemaking.**

15 Costs of participating in the market generally involve information and risk management.
16 Possible costs include: the costs of searching out and evaluating alternatives; the cost of
17 interruptions, whether the power was intended to be interruptible or firm; costs of backup and
18 maintenance service provided by a utility or another party to deal with forced or scheduled outages
19 at the supplier's generation plant or transmission lines; and additional costs of executing, monitoring,
20 and enforcing contracts. Also, consumers of competitive energy services may be assessed a stranded
21 investment charge for sunk costs incurred by the utility from which they previously received service.

22 The proposed rule will benefit Arizona consumers by creating consumer choice among
23 energy suppliers; customizing energy services to consumer needs; stimulating innovation in
24 technology; encouraging energy efficiency; and lowering prices relative to regulated rates.
25 Important public programs, such as low income programs, will be protected and consumers who do
26 not participate in competition will be shielded from adverse effects during the early phases via
27 Commission-approved standard offer service from incumbent utilities.

28

1 **6. A statement of the probable effect on state revenues.**

2 The proposed rule could reduce state revenues received from public utilities as rates and,
3 therefore, utility revenues are reduced. However, to the degree that consumers respond to lower
4 prices by increasing their demand for electricity, the reduction in utility revenues would be offset
5 by additional revenues from increased electricity demand.

6 **7. A description of any less intrusive or less costly alternative methods of achieving**
7 **the purpose of the proposed rulemaking.**

8 A Working Group on Retail Electric Competition met in 1995 to discuss restructuring
9 options, including retail wheeling and maintaining the status quo. The Working Group was
10 comprised of individuals from utilities, alternative power providers, consumer groups, and other
11 interested parties. Several restructuring options were considered: (1) maintaining the status quo,
12 (2) introducing retail competition and requiring divestiture of utility assets, (3) introducing retail
13 competition and requiring an exclusive poolco, and (4) introducing retail competition and allowing
14 bilateral contracts for power supplies (similar to the proposed rule).

15 The first alternative is to maintain the status quo, utilizing traditional cost-plus rate-making,
16 incentive rate-making (e.g., bench-marking prices, quality and reliability standards), and flexible
17 pricing. No new institutions would be required and disruptions in utility operations would be
18 minimized. However, the effectiveness of incentives (if any) and flexible pricing are unknown.
19 Also, the circumstances which once warranted classifying utilities as "natural monopolies" are no
20 longer applicable. The economies of scale of large central station generation plants are not nearly
21 as large as they once were. Further, regulated monopolies cannot produce prices that are as low as
22 would occur in a competitive market and regulated monopolies cannot stimulate technological,
23 marketing, and organizational innovations as would occur in a competitive market.

24 A second alternative is to establish retail competition with an "exclusive poolco," which is
25 an independent system operator that controls all power transactions. All generators would sell to the
26 neutral system operator and all purchasers would buy from the system operator. With an exclusive
27 poolco, all consumers or their agents would know the market price at each hour. In addition, power
28 would be dispatched in a least cost order, subject to restrictions on transmission.

1 A major disadvantage of an exclusive poolco is that it forces all transactions to be spot
2 market transactions, thereby increasing the risk to investors of investing in new power plant capacity
3 without long term contracts to purchase the output from new plants. Further, with only spot market
4 transactions, it becomes more difficult to customize contracts to suit the circumstances of a wide
5 variety of buyers and sellers.

6 Another disadvantage of retail competition with an exclusive poolco is the unknown cost to
7 implement the poolco. Also bidders in the poolco may game their bids, especially if some have an
8 advantage because of their location or large size relative to the market.

9 A third option is to introduce retail competition and require utilities to divest their generation
10 and possibly transmission facilities. The market would become segmented by function and
11 generation companies would be expected to operate in a competitive environment. A principal
12 reason for divestiture is that any incentive for utilities to impede access to their transmission systems
13 to inhibit competition in generation could be eliminated. In addition, incentives for efficiency gains
14 could be created by unbundling services into profit centers. However, the Commission's regulatory
15 authority to require divestiture of utility assets may be questioned and result in a protracted legal
16 dispute. Further, utilities, utility shareholders, and utility debt holders may strongly resist divestiture.
17 Divestiture could be costly due to expensive debt re-financing. In addition, inefficiencies could
18 result from the loss of traditional coordination of generation, transmission, and distribution services.

19 The restructuring policy proposed is preferred to the alternatives described above because
20 it: minimizes administrative complexity; requires minimal information and planning needs à priori;
21 is relatively flexible so that policy could be adjusted in mid-course; uses existing institutions;
22 minimizes utility organizational disruption; allows buyers and sellers to enter the market freely;
23 limits market power of incumbent utilities; and minimizes public confusion.

24 The proposed rule was synthesized from comments received from interested parties on
25 electric industry restructuring and it represents a middle ground of proposals submitted by utilities,
26 potential energy service competitors, consumer groups, and others.

27 **C. If for any reason adequate data are not reasonably available to comply with the**
28 **requirements of subsection B of this section, the agency shall explain the limitations of the data**

1 and the methods that were employed in the attempt to obtain the data and shall characterize
2 the probable impacts in qualitative terms.

3 The Commission conducted a series of workshops and task forces to obtain useful
4 information to assess the costs and benefits of electric industry competition. It is not possible to
5 quantify future market prices, technological innovations, organization changes, and the like.
6 Therefore, we have described impacts in qualitative terms.

7 Among the information gathering activities were:

- 8 ♦ *An introductory workshop held on September 7, 1994.* One hundred eighteen
9 representatives from utilities, consumer organizations, other power suppliers, and
10 others attended the workshop. The workshop was summarized in a Staff Report
11 dated October 1994.
- 12 ♦ *A series of nine working group and task force meetings held in 1995 which addressed*
13 *restructuring options, implementation of the options, and advantages and*
14 *disadvantages of the options.* Fifty-one groups were represented on task forces
15 which focused on systems and markets, regulatory issues, and energy efficiency and
16 environmental issues. Members of the task forces included representatives from
17 utilities, consumer organizations, other power suppliers, and others. This work was
18 summarized in a "Report of the Working Group on Retail Electric Competition,"
19 dated October 5, 1995. The report contains an extensive bibliography on electric
20 industry restructuring.
- 21 ♦ *A request for comments on electric industry restructuring issued in February 1996.*
22 Comments were filed by 31 parties on June 28, 1996. Commenters included
23 consumer groups, Arizona utilities, other suppliers, and other parties. Staff prepared
24 a summary of the comments in July 1996.
- 25 ♦ *A workshop held on August 12, 1996 to explore and obtain feedback on a small*
26 *number of options for introducing retail electric competition.* One hundred thirty
27 workshop participants included representatives from utilities, consumer
28 organizations, other power suppliers, and others. Staff summarized the workshop in