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Arizona Corporation Commission

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Chairman

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Commissioner

JIM IRVIN
Commissioner

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BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET No. U-0000-94-165
DECISION NO. 59943
APPLICATION FOR REHEARING OF THE
IRRIGATION AND ELECTRICAL
DISTRICTS' ASSOCIATION OF ARIZONA

The Irrigation and Electrical Districts' Association of Arizona (IEDA) herewith submits its Application For Rehearing in the above-entitled docket. IEDA has participated in the informal and formal rulemaking proceedings in this docket and has previously submitted oral and written comments which are incorporated by reference.

This is an application for rehearing pursuant to A.R.S. Section 40-253 and R14-3-111. Below we summarize, then detail, our concerns about these Rules. However, we would be remiss if we did not preface our remarks with a compliment to the Commission and its staff for the serious effort it has made to address the concerns that we and others have voiced in this process. To the extent these Rules have fallen short of their mark, we comment without rancor, but rather with a serious concern that the retail competition in which we already participate be logically and carefully expanded to the benefit of all of Arizona's retail electric consumers.

1 Our overriding concern about the draft Rules was the total lack
2 of recognition of the existence of electric utilities in Arizona with
3 non-exclusive territories, such as our members. The changes made to
4 the final Rules address many of those concerns. However, one serious
5 problem remains. The second clause of R14-2-1611.A. (page 20, lines
6 26-28) could be read as an attempt to restrict non-jurisdictional
7 utilities from competing in the service territories of Affected
8 Utilities, and not merely restricting competition by jurisdictional
9 utilities not Affected Utilities. So read, it is plainly
10 unconstitutional and mars the Commission's other efforts in revising
11 the draft Rules to eliminate constitutional issues. The provision
12 also ignores the situation our members with non-exclusive territories
13 face. We are already competing! We can't and won't stop. Our
14 controlling statutes demand that we continue.
15

16 Conflict avoidance here is elementally simple. Add the
17 qualifier "subject to the jurisdiction of the Commission" to the
18 subsection and remove this remaining vestige of overreaching.
19

20 We have requested rehearing because of our concern over the
21 constitutionality of these Rules as applied to our members. In
22 addition, we ask for clarification of various provisions of these
23 Rules. The Commission could aid in the implementation of the Rules
24 by addressing our concerns, which we address seriatim:

- 25 1. Page 7, line 25: The definition of Electric Service Provider
26 should be modified to reference "public service corporation",
27
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1 not "company" to comport with the Commission's
2 constitutionally-defined jurisdiction.

3 2. Page 8, line 5: The Commission should clarify its intended
4 use of the term "verifiable" as it qualifies recoverable
5 Stranded Costs. Is the verification process circumscribed by
6 the provision in R14-2-1607.G. (page 17, lines 10-12)
7 concerning proof?
8

9 3. Page 8, lines 17-18: Beginning here and in other references
10 (see p.8, lines 25-28, for example), it appears that Affected
11 Utilities are included in the definition of Electric Service
12 Providers. Saying so directly here would help people
13 understand how the Rules work.
14

15 4. Page 9, line 1: Here again, the use of the term "company"
16 belies the true limitation of these Rules to "public service
17 corporations." The implementation of these Rules would
18 benefit from clarifying this terminology while avoiding
19 future confusion and litigation.

20 5. Page 9, lines 23-25: This notice provision is too limited.
21 Any applicant should also have to notify jurisdictional
22 utilities not Affected Utilities that have complied with R14-
23 2-1611.B., non-jurisdictional utilities that have entered
24 into intergovernmental agreements (IGA's) pursuant to R14-2-
25 1611.D., and non-jurisdictional utilities whose existing
26 service territories overlap those of any of these other
27 electric utilities. Thus, all who have agreed to "play" or
28

1 already are competing will receive notice. Sound public
2 policy is grounded in such disclosure.

3 6. Page 16, line 26: Must "negative" Stranded Costs also be
4 "verifiable", subject to market data analysis? Clarification
5 here would provide a uniform treatment of analysis.
6

7 7. Page 17, lines 10-12: Is this the compliance standard for
8 "verifiable" stranded costs? What burden of proof is
9 indicated by the term "fully supported"?

10 8. Page 18, line 20: What is a "non-bypassable" rate? What are
11 "related mechanisms"?

12 9. Page 18, lines 27-28: What evidentiary standard is indicated
13 for providing "adequate" supporting documentation of System
14 Benefit charges? Is it different from "fully supported"
15 (supra) or "clearly demonstrating" (post)?
16

17 10. Page 20, line 2: What evidentiary standard is indicated by
18 the use of the term "clearly demonstrating" solar resource
19 rule compliance?

20 11. Page 20, lines 25-28:

21 a. The first clause of this In-State Reciprocity provision
22 can lawfully restrict Affected Utilities and other
23 jurisdictional utilities complying with subsection B of
24 this Rule from competing in territories of other Arizona
25 utilities. That is the outer limit of the Commission's
26 jurisdiction. That limit should be recognized by adding
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28

1 the qualifying phrase "subject to the jurisdiction of the
2 Commission".

3 b. The second clause is:

4 (1) inaccurate as it affects jurisdictional utilities
5 that are not Affected Utilities but comply with R14-2-
6 1611.B;

7
8 (2) unconstitutional to the extent the Commission is
9 attempting to prevent statutorily-authorized non-
10 jurisdictional utility action, over which it
11 admittedly has no control; and

12 (3) unconstitutional, confusing and facially unfair as
13 to entities such as electrical and irrigation
14 districts that have overlapping service territories
15 with other utilities.
16

17 12. Page 21, lines 1-4: Since this provision only applies to
18 distribution cooperatives on the Utah and New Mexico borders,
19 why does it include a CCN requirement? Isn't that
20 unnecessary?

21 13. Page 22, lines 3-9: The IGA provision should be assigned to
22 the Legal Issues Working Group for development of standard
23 criteria. Otherwise, the Commission will be faced with
24 developing such criteria on an ad hoc/case-by-case basis, a
25 grossly inefficient process.
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1 14. Page 23, lines 5-16: These provisions govern applicability
2 of other existing rules, not Service Quality, etc., and
3 should be a separate rule.

4 15. Page 23, line 25: Here again, the term "companies" is used.
5 This coordination requirement should extend to "all other
6 Electric Service Providers or other electric utilities".
7

8 16. Page 25, lines 16-18: The Commission should assign this
9 provision to the Legal Issues Working Group and the
10 Reliability Working Group to await the outcome of current
11 NERC and WSCC deliberations on shifting from a voluntary to a
12 mandatory environment.

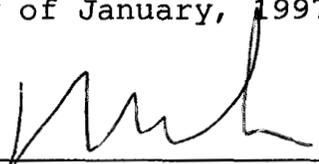
13 17. Page 27, lines 24-28: "Public interest" should not be the
14 only justification for the Commission issuing a variance or
15 exception. Undue hardship, impossibility of performance,
16 lack of necessity as to small utilities, etc., should also
17 justify such Commission action. Additionally, a burden of
18 proof should be stated to properly characterize this
19 mechanism.
20

21 18. Page 28, lines 3-4: Dispute resolution procedures should be
22 mandated for development and assigned to the Legal Issues
23 Working Group for such development.
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25 For all the above reasons, we urge the Commission to grant
26 rehearing, amend the Rules as we have suggested to avoid the problems
27 we have identified and clarify its intent so as to improve the
28 workability of these Rules.

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Respectfully submitted this 15th day of January, 1997.



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