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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
RENZ D. JENNINGS  
COMMISSIONER

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

DOCKET NO. U-0000-94-165

NOTICE OF FILING  
ADDENDA TO REPORT

Staff of the Arizona Corporation Commission hereby files addenda to the  
Legal Issues Working Group Report, which it filed on September 30, 1997, to include  
comments to the Report from additional parties.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of October, 1997.

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

LINDY FUNKHOUSER  
CHIEF COUNSEL

OCT 06 1997

By

Lindy Funkhouser  
Chief Counsel  
Legal Division  
1200 West Washington Street  
Phoenix, Arizona 85007  
(602) 542-3402

DOCKETED BY

Original and ten copies of the  
foregoing filed this 6<sup>th</sup> day  
of October, 1997.

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Copy of the foregoing mailed  
this 6<sup>th</sup> day of October,  
1997 to:

All parties on the service list for  
Docket No. U-0000-94-165



Arizona Utility  
Investors Association

2100 N. Central, Ste. 210  
P. O. Box 34805  
Phoenix, AZ 85067  
Tel: (602) 257-9200  
Fax: (602) 254-4300  
Email: swpr@amug.org

September 30, 1997

Lindy Funkhouser, Esq.  
Chief Counsel  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

DELIVERED BY U.S. MAIL, E-MAIL & FACSIMILE

Dear Lindy:

I have detected some possible confusion over the terminology used in my letter of September 29 regarding the problem of municipal aggregation. In order to prevent any misunderstanding I would like to offer the following for clarification:

- a) In calling for additional statutory or regulatory provisions dealing with "municipal corporations," I did not mean to include Salt River Project or any municipality which is currently operating an electric utility.
- b) The Corporation Commission rule establishing electric competition already prescribes mechanisms by which electric utilities which are political subdivisions of the state may voluntarily engage in retail competition. AUIA does not object to those provisions of the rule.
- c) AUIA's concern is directed exclusively toward those municipalities (cities and towns) which are not covered by the rule and are not operating electric utilities. These entities may try to act as Electric Service Providers and aggregate customers without Commission oversight.

The term "municipal corporation" may be confusing when it is used in the context of electric restructuring. Municipal electric utilities are not numerous in Arizona and Salt River Project is unique in that it is a political subdivision of the state and also its second largest vertically integrated electric utility. Clearly, SRP has a significant role to play in the restructuring of the electric industry in Arizona, but it is not involved in the problem of municipal aggregation.

Sincerely,

Bill Meek  
President

# ELECTRIC COMPETITION COALITION

For the Pursuit of Open Markets and Consumer Choice

7000 North 16th Street ■ Suite 120-307 ■ Phoenix, Arizona ■ (602) 395-1612 ■ Fax: (602) 395-1943

## COMMENTS ON THE REPORT OF ARIZONA CORPORATION COMMISSION'S LEGAL ISSUES WORKING GROUP

The Electric Competition Coalition appreciates this opportunity to submit these comments on the Report of the Arizona Corporation Commission's Legal Issues Working Group.

**Authority of the Commission.** ECC is of the opinion that the Commission may authorize electric service providers to offer generation, billing and collection, metering and meter-reading services and other information services on a competitive basis in areas where such services were previously provided by affected utilities.

**Provider of Last Resort.** ECC is of the opinion the affected utility should make available its local distribution system, subject to its tariff, and the Commission should make generation services available competitively to all customers.

**Availability of Distribution and Other Facilities.** ECC is of the opinion the Commission may lawfully compel affected utilities to make their distribution and other facilities available to electric service providers, subject to a reasonable payment for such use.

**Procedures for Competitive Services.** ECC opposes any Commission procedure that requires a monopoly-like rate process before selling electric services competitively. The Electric Competition Rules are intended to encourage marketplace transactions rather than continue or expand the use of regulations which may have been required when customers were captive ratepayers.

**Cost Allocation and Separation Issues.** ECC strongly supports the adoption of affiliate rules and standards of conduct between the affected utilities and their marketing efforts. All sources of costs and their sources of recovery should be disclosed by the affected utilities, so as to avoid cross-subsidization among customers.

**Stranded Costs.** Uneconomic assets by affected utilities may be stranded because of competition. However, these investments were incurred on behalf of all customers. Consequently, that portion of any reasonable and verified stranded costs should be embodied within the standard offer of customers who remain with the affected utilities. Those customers who purchase from other suppliers should bear only their proportionate share of stranded costs similar to those who remain with the affected utilities.

**Affiliated Interest Rules.** ECC strongly endorses the Commission's adoption of affiliated interest rules that pertain to the conduct between the affected utilities and their marketing efforts under the Electric Competition Rules.

**Commerce Clause.** ECC is of the opinion that the Commerce Clause of the U.S. Constitution precludes the creation of barriers which inhibit the interstate sales of generation to retail customers.

**State Action Immunity Doctrine.** To the extent the Electric Competition Rules pertain to competitive services, the state action immunity doctrine should not be applicable to the affected utilities. Furthermore, to the extent the affected utilities engage in competitive practices, directly or through an affiliate, the state action immunity doctrine should likewise not be applicable to those activities.

**Code Changes.** ECC is of the opinion that there does not need to be any change in the Federal code, the Arizona statutes, or the Arizona Constitution in order for electric services to be sold competitively in Arizona.

Respectfully submitted,

  
Douglas C. Nelson  
Executive Vice President  
Electric Competition Coalition

DCN/vyg

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