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THE ARIZONA CORPORATION COMMISSION

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8 IN THE MATTER OF THE COMPETITION )  
9 IN THE PROVISION OF ELECTRIC )  
10 SERVICES THROUGHOUT THE STATE )  
11 OF ARIZONA )

DOCKET NO. U-0000-94-165

**RESPONSE OF ARIZONA PUBLIC  
SERVICE COMPANY TO SRP'S  
OBJECTION TO PROCEDURAL  
ORDERS AND REQUEST FOR A  
NEW PROCEDURAL ORDER**

12 Quite aside from the issues of waiver and estoppel raised by SRP's sudden attempt to  
13 "secede" from the proceedings in which it has heretofore actively participated, SRP's parting  
14 request to eliminate fundamental due process hearing requirements should be denied for the  
15 reasons advanced by Commission Staff in its January 2, 1998 response and for the additional  
16 reasons set forth below.

**SRP REQUEST TO RESTRUCTURE THE DOCKET  
AS A "LEGISLATIVE" PROCEEDING**

18 SRP requests that the procedural orders in this docket be amended to "restructure this  
19 docket as a legislative proceeding." (P.2). In SRP's mind, this means "no requirement of pre-  
20 filed sworn testimony, no discovery and no cross examination" (P.2) and no procedure to test  
21 the relevance, accuracy, credibility or probative value of public comment. None of the three  
22 arguments advanced by SRP in support of this request are meritorious.

23 SRP first asserts that it is "not appropriate for SRP to involve itself in adjudicatory  
24 proceedings before the Commission," especially in circumstances where specific data and  
25 information regarding public utilities may be produced. Why it is "not appropriate" is nowhere  
26 explained, but seemingly relates to SRP's incorrect assertion that it is "not regulated by the

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1 Commission.”<sup>1</sup> SRP is frequently involved in adjudicatory proceedings before the Commission  
2 with respect to its financing applications and its siting committee activities, the latter of which  
3 are often contentious and adversarial, with discovery, sworn testimony, cross-examination and  
4 briefing -- the very same procedures of which SRP now complains. SRP’s fear of disclosing  
5 information regarding its activities is particularly troublesome coming from a taxpayer-  
6 subsidized political subdivision of the state. SRP is already subject to the Arizona Public  
7 Records Act (A.R.S. § 39-101, *et seq.*), and thus is required by law to provide all members of  
8 the public the very information regarding its activities that it now appears loath to present to the  
9 Commission.

10 Second, SRP “suggests” that the current procedural process “imposes a chilling effect on  
11 broad public participation.” SRP further claims, without any support, that “those participants  
12 without sufficient resources will simply be shut out.” The lengthy service list of parties in this  
13 proceeding, the diversity of views they represent, and the mandate of the Commission Staff and  
14 RUCO to represent interests that do not always individually participate in ACC proceedings  
15 refutes this red herring argument.

16 SRP’s third argument is that the procedural orders have “created a proceeding which is  
17 inconsistent with rulemaking under the APA.” (P.4). SRP’s recitation of the obvious (that  
18 contested case procedural requirements are more extensive than APA rulemaking) hardly  
19 supports its position. Nothing in the APA prohibits the more protective rules adopted in the  
20 procedural orders. It is difficult to fathom why SRP would criticize the Commission for seeking  
21 an evidentiary record based on thoughtful, pre-filed testimony that is then tested by the rigors of  
22

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23  
24  
25 <sup>1</sup> SRP has been regulated by the Commission for years, without objection, with respect to both financings  
26 and the siting of its generating and transmission facilities. (*See, e.g.*, A.R.S. § 40-360 *et seq.* and A.R.S. § 48-2465).  
Moreover, SRP has repeatedly asserted that it will enter into an intergovernmental agreement with the Commission  
detailing how its customers will be provided retail supply choices and competitors will be assured fair and non-  
discriminatory access to the SRP system.

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1 discovery, peer review and cross-examination, particularly when the matters at issue are of such  
2 significance to the state and to the affected interests of all concerned.

### 3 SRP'S ATTEMPT TO WITHDRAW

4 SRP has long known that the Commission would schedule evidentiary hearings in which  
5 SRP would be expected to participate. On August 29, 1997, the Commission issued Decision  
6 No. 60351, in which the Hearing Division was directed to "produce procedural orders in order  
7 to establish hearings, evidentiary or otherwise, regarding any aspect of electric competition that  
8 is necessary and appropriate." SRP did not complain. On October 30, 1997, RUCO filed a  
9 Request for Evidentiary Hearing and Procedural Order in this docket. SRP filed no objection.  
10 The initial Procedural Order dated December 1, 1997, was not objected to by SRP. SRP  
11 participated in the pre-hearing conference held December 9, 1997, which culminated in the First  
12 Amended Procedural Order dated December 12, 1997. SRP agreed to all of the procedures set  
13 forth in that Order, including its designation as a party to the proceeding, its filing of testimony  
14 along with other Affected Utilities, and the provisions regarding discovery, cross-examination  
15 and possible briefing.

16 If the Commission is to deal comprehensively with the issues regarding statewide  
17 competition and if it is to help ensure that meaningful retail access is provided to the thousands  
18 of SRP customers, then SRP should remain a party, as it has previously agreed.

### 19 CONCLUSION

20 All parties to this proceeding, including SRP, have consented to the procedural elements  
21 set forth in the Hearing Officer's procedural orders. These orders provide a workable approach  
22 to dealing with difficult, complex and important issues in a manner that attempts to protect the  
23 due process rights of the parties consistent with traditional Commission hearing procedures.<sup>2</sup>

24  
25 <sup>2</sup> The proposed limits on cross-examination and the somewhat amorphous scope of these proceedings raise  
26 potential due process concerns. However, APS believes it would be premature to raise such issues unless and until an  
actual controversy develops.

1 The Commission should not capitulate to SRP's boycott threat.

2 RESPECTFULLY SUBMITTED this 7th day of January, 1998.

3 SNELL & WILMER L.L.P.

4  
5 by 

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11 Original and ten copies of the foregoing  
12 hand-delivered this 7th day of January, 1998, to:

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17 Copies of the foregoing hand-delivered this  
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Service List for Docket No. U-0000-94-165

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