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THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO. U-0000-94-165

**RUCO'S RESPONSE IN OPPOSITION
TO CONSUMERS' JOINDER IN SRP'S
OBJECTION TO PROCEDURAL ORDERS
AND REQUEST FOR A NEW PROCEDURAL
ORDER**

Arizona Corporation Commission

DOCKETED

JAN 15 1998

**RUCO'S RESPONSE IN SUPPORT OF
CONSUMERS' MOTION FOR AMENDED
PROCEDURAL ORDER**

DOCKETED BY

**RUCO'S RESPONSE TO ARIZONA PUBLIC
SERVICE COMPANY'S MOTION TO AMEND
PROCEDURAL ORDERS**

14 Within the past week, three separate motions have been filed requesting modification
15 to the procedural schedule in the generic stranded cost evidentiary hearings scheduled to
16 begin February 9, 1998. On January 9, 1998, ASARCO, Incorporated, Cyprus Climax Metals
17 Corporation, and ENRON Corp. ("ASARCO, Cyprus and ENRON")(collectively referred to in
18 their motions as "Consumers") filed a motion requesting amendment of the Procedural Order
19 to remove the parties' rights of cross-examination of witnesses in the upcoming hearing. On
20 January 12, 1998, ASARCO, Cyprus and ENRON filed a motion requesting that all parties be
21 required to file their rebuttal testimony on February 2, 1998 ("ASARCO, Cyprus and ENRON's
22 Extension Request"). On January 13, 1998, Arizona Public Service Company filed a motion
23 requesting an extension of time in which the Affected Utilities may file their rebuttal to other
24 parties' testimony ("APS Extension"). The Residential Utility Consumer Office ("RUCO")
25 hereby files its response to all three of the above-described motions.

26 **RUCO'S RESPONSE IN OPPOSITION TO CONSUMERS' JOINDER IN SRP'S OBJECTION
27 TO PROCEDURAL ORDERS AND REQUEST FOR A NEW PROCEDURAL ORDER**

28 RUCO objects to ASARCO, Cyprus and ENRON's request that the Commission amend
the Procedural Order to remove the parties' right to cross-examine witnesses. It is RUCO's
position that a formal factfinding process, including cross-examination, is critical as a means

1 for the Commission to determine the Affected Utilities' stranded costs, a complex and
2 important issue. RUCO contends that the cross-examination procedure set in place by the
3 Procedural Orders should not be altered.

4 Because any decision that the Commission makes as a result of this proceeding will
5 have far reaching implications for all parties involved, and especially for the residential utility
6 ratepayers of Arizona, RUCO believes that cross-examination of witnesses must be allowed
7 as provided for in the Procedural Orders. The ultimate goal of this stranded cost proceeding is
8 to provide the Commission with a factual basis for its decision on the very fact intensive and
9 complicated issue of stranded cost recovery. The Commission has determined that subjecting
10 the various stakeholders' viewpoints to cross-examination on the record is the best means of
11 assuring that the Commission's ultimate decision on generic issues of stranded cost recovery
12 is based on verified and elucidative factual information.

13 ASARCO, Cyprus and ENRON claim that the Commission has no authority to institute
14 evidentiary hearings in conjunction with implementing competition within Arizona. This claim
15 ignores the Commission's legislative authority and discretion to hold evidentiary factfinding
16 hearings in conjunction with rate-related rulemaking. The Commission's legislative
17 ratemaking power extends to enactment of the rules and regulations that are reasonable
18 necessary steps in ratemaking, and the Commission may exercise all powers which may be
19 necessary or essential in connection with the performance of its duties. *Arizona Corp.*
20 *Comm'n v. State ex rel Woods*, 171 Ariz. 286, 294, 830 P.2d 807, 815 (1992). Because
21 stranded cost recovery is intrinsically related to ratemaking, the Commission has full
22 constitutional authority to allow cross-examination of witnesses in an evidentiary proceeding.

23 ASARCO, Cyprus and ENRON have noted that rulemaking procedures do not **require**
24 the Commission to hold evidentiary hearings. However, nothing prevents the Commission
25 from exercising its discretion to institute an evidentiary hearing as a means of obtaining
26 factual information in its rulemaking process related to ratemaking.

27 ASARCO, Cyprus and ENRON also claim that cross-examination should not be allowed
28 because SRP has chosen not to participate in the generic stranded cost evidentiary hearing.

1 SRP has had ample opportunity to participate in this matter; its choice not to become a party
2 should not influence the manner in which the Commission chooses to conduct the
3 proceedings. To rule otherwise would give parties the ability to manipulate Commission
4 proceedings, which is contrary to the public interest.

5 Pursuant to its constitutional authority, the Commission has chosen to institute
6 evidentiary hearings, complete with the right of cross-examination, to aid it in careful
7 completion of the rulemaking process which will lead to deregulation of electric generation
8 rates. ASARCO, Cyprus and ENRON have provided no adequate justification for removing
9 the right of cross-examination from the process. Removing the right of cross examination
10 would serve only to constrain the thorough factfinding process mandated by the Commission,
11 and to inhibit a well-informed Commission decision at this critical juncture in Arizona's move
12 toward electric industry deregulation. For all the above reasons, the procedure for cross-
13 examination, as set forth in the Procedural Orders, should not be altered.

14 **RUCO'S RESPONSE IN SUPPORT OF CONSUMERS' MOTION FOR AMENDED**
15 **PROCEDURAL ORDER**

16 RUCO's understanding of the procedural schedule, as developed at the procedural
17 conference of December 9, 1998, was that while the "other parties" would may address the
18 Affected Utilities' direct testimony in a preliminary way within their direct testimony, all parties
19 would provide rebuttal on the February 2, 1998 rebuttal date. RUCO was not alone in this
20 understanding; it is apparent from APS' motion of January 13, 1998, that APS expects
21 intervenors to provide rebuttal on February 2nd.

22 RUCO agrees that if it was the Hearing Officer's intent that the existing deadlines for
23 filing of direct and rebuttal testimony require simultaneous filing, such order places RUCO and
24 all the "other parties" to this proceeding at a disadvantage for the reasons stated in ASARCO,
25 Cyprus and ENRON's Extension Request. Requiring simultaneous filing of direct and rebuttal
26 testimony by all parties other than the Affected Utilities forces the "other parties" to divide their
27 limited time and resources between preparing both direct and rebuttal testimony. This places
28 an unfair burden on the "other parties." Also, the dual deadline gives the Affected Utilities a

1 procedural advantage, in that it allows the Affected Utilities an opportunity to rebut not only
2 the other parties' direct testimony, but the other parties' rebuttal as well.

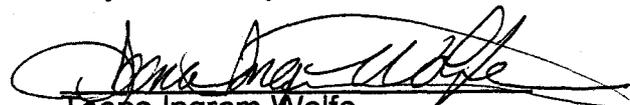
3 To maintain fairness to all the stakeholders in the stranded cost recovery proceedings,
4 RUCO joins ASARCO, Cyprus and ENRON in respectfully requesting an amendment to the
5 Procedural Order that requires all parties, including the Affected Utilities, to file their rebuttal
6 testimony on February 2, 1998.

7 **RUCO'S RESPONSE TO ARIZONA PUBLIC SERVICE COMPANY'S MOTION TO AMEND**
8 **PROCEDURAL ORDERS**

9 APS has requested that the present procedural schedule be altered to extend the
10 deadline for filing rebuttal testimony from February 2 to February 7, 1998. RUCO proposes
11 that if the Commission's Hearing Division finds it reasonable to extend the filing date for
12 Affected Utilities' rebuttal, all parties should be allowed to file simultaneous rebuttal testimony
13 on or before Friday, February 6, 1998.

14 Like APS, RUCO has no desire to unnecessarily postpone commencement of the
15 generic stranded cost hearings. However, RUCO believes that in the event the Hearing
16 Division finds it reasonable to extend to February 6 the date for filing rebuttal testimony, the
17 hearing date should be extended by 24 to 48 hours to allow parties adequate time for
18 preparation of brief and concise cross-examination questions.

19 RESPECTFULLY SUBMITTED this 15th day of January, 1998.

20 
21 Teena Ingram Wolfe
22 Staff Attorney, RUCO
23
24
25
26
27
28

1 AN ORIGINAL AND TEN COPIES of
2 the foregoing filed this 15th day of
3 January, 1998 with:

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

5 COPIES of the foregoing hand-delivered
6 this 15th day of January, 1998 to:

7 Jerry Rudibaugh, Chief Hearing Officer
8 Hearing Division
9 Arizona Corporation Commission
10 1200 West Washington
11 Phoenix, Arizona 85007

10 Paul Bullis, Chief Counsel
11 Legal Division
12 Arizona Corporation Commission
13 1200 West Washington
14 Phoenix, Arizona 85007

13 David Jankofsky, Assistant Director
14 Utilities Division
15 Arizona Corporation Commission
16 1200 West Washington
17 Phoenix, Arizona 85007

16 COPIES of the foregoing mailed
17 this 15th day of January, 1998 to:

17 Steven M. Wheeler
18 Thomas L. Mumaw
19 Snell & Wilmer
20 One Arizona Center
21 Phoenix, Arizona 85004
22 Attorneys for Arizona Public Service Company

21 Herbert I. Zinn
22 Law Department - Station 9909
23 Arizona Public Service Company
24 P.O. Box 53999
25 Phoenix, Arizona 85072-3999

24 C. Webb Crockett
25 Fennemore Craig
26 Two North Central Avenue, Suite 2200
27 Phoenix, Arizona 85004-2390

26 Karen Glennon
27 19037 North 44th Avenue
28 Glendale, Arizona 85308

- 1 Louis A. Stahl
Streich Lang
- 2 Renaissance One
Two North Central Avenue
- 3 Phoenix, Arizona 85004

- 4 Jane D. Alfano
Jessica Youle
- 5 Salt River Project
P.O. Box 52025 - PAB 300
- 6 Phoenix, Arizona 85072-2025

- 7 Bradley Carroll
Legal Department
- 8 Tucson Electric Power Company
220 West Sixth Street
- 9 P.O. Box 711
Tucson, Arizona 85701

- 10 Ajo Improvement Company
P.O. Drawer 9
- 11 Ajo, Arizona 85321

- 12 Arizona Electric Power Cooperative
P.O. Box 670
- 13 Benson, Arizona 85602

- 14 Betty K. Pruitt
ACAA Energy Coordinator
Arizona Community Action Association
- 15 202 E. McDowell, #255
Phoenix, Arizona 85004

- 16 Michael M. Grant, Esq.
Johnston, Maynard, Grant & parker
- 17 3200 North Central Avenue, Suite 2300
Phoenix, Arizona 85012
- 18 Attorneys for Arizona Electric Power Coop.

- 19 Walter Meek
Arizona Utilities Investors Association
- 20 3030 North Central Avenue, Suite 506
Phoenix, Arizona 85012

- 21 Beth Ann Burns
Citizens Utilities Company
- 22 2901 North Central Avenue, Suite 1660
Phoenix, Arizona 85012-2736

- 23 Rick Gilliam
Land & Water Fund of the Rockies
- 24 Law Fund Energy Project
- 25 2260 Baseline, Suite 200
Boulder, Colorado 80302
- 26
- 27
- 28

- 1 Graham County Electric Cooperative
P.O. Box Drawer B
- 2 Pima, Arizona 85543
- 3 Duncan Valley Electric Cooperative
P.O. Box 440
- 4 Duncan, Arizona 85534
- 5 Mohave Electric Cooperative
P.O. Box 1045
- 6 Bullhead City, Arizona 86430
- 7 Morenci Water & Electric Company
P.O. Box 68
- 8 Morenci, Arizona 85540
- 9 Navopache Electric Cooperative
P.O. Box 820
- 10 Lakeside, Arizona 85929
- 11 Sulphur Springs Valley Electric Cooperative
P.O. Box 820
- 12 Wilcox, Arizona 85644
- 13 Trico Electric Cooperative
P.O. Box 35970
- 14 Tucson, Arizona 85740
- 15 Columbus Electric Cooperative
P.O. Box 631
- 16 Deming, New Mexico 88031
- 17 Continental Divide Electric Cooperative
P.O. box 1087
- 18 Grants, New Mexico 87020
- 19 Dixie Escalante Rural Electric Association
CR box 95
- 20 Beryl, Utah 84714
- 21 Garkane Power Association
P.O. Box 790
- 22 Richfield, Utah 84701
- 23 Russell E. Jones
O'Connor Cavanagh Molloy Jones
- 24 One East Camelback Road, Suite 1100
Phoenix, Arizona 85012-1656
- 25 Attorneys for Trico Electric Cooperative
- 26 Terry Ross
Center for Energy and Economic Development
- 27 7853 East Arapahoe Court, Suite 2600
Englewood, Colorado 80112
- 28

- 1 Peter Glaser
Doherty, Rumble & Butler
2 1401 New York Avenue, N.W., Suite 1100
Washington, DC 20005
- 3
4 Richard S. Shapiro
Enron Capital & Trade Resources
1400 Smith Street, Suite 1405
5 Houston, Texas 77002
- 6 Albert Sterman
Arizona Consumer Council
7 2849 East 8th Street
Tucson, Arizona 85716
- 8
9 Calpine Power Services Company
50 West San Fernando
San Jose, California 95113
- 10
11 Jack Haenichen
Arizona Department of Commerce
3800 North Central Avenue, Suite 1500
12 Phoenix, Arizona 85012
- 13 K.R. Saline & Associates
P.O. Box 30279
14 Mesa, Arizona 85275
- 15 Robert S. Lynch
2001 North Third Street, Suite 204
16 Phoenix, Arizona 85004-1472
- 17 Dan Neidlinger
Neidlinger & Associates
18 3020 North 17th Drive
Phoenix, Arizona 85015
- 19
20 Doug Nelson
7000 North 16th Street
Suite 120-307
21 Phoenix, Arizona 85020
- 22 Michael A. Curtis
2712 North Seventh Street
23 Phoenix, Arizona 85006-1003
Attorneys for Arizona Municipal Power
24 Users' Association
- 25 Charles R. Huggins
Arizona State AFL-CIO
26 110 North 5th Avenue
P.O. Box 13488
27 Phoenix, Arizona 85002
- 28

- 1 David C. Kennedy
Law Offices of David C. Kennedy
2 100 West Clarendon Avenue, Suite 200
Phoenix, Arizona 85012-3525
- 3
4 Norman J. Furuta
Department of the Navy
900 Commodore Drive, Building 107
5 P.O. Box 272 (Attn: Code 90C)
San Bruno, California 94066-0720
- 6
7 Thomas C. Horne
Michael S. Dulberg
Horne, Kaplan & Bistrow, P.C.
8 40 North Central Avenue, Suite 2800
Phoenix, Arizona 85004
- 9
10 Barbara S. Bush
Coalition for Responsible Energy Education
315 West Riviera Drive
11 Tempe, Arizona 85252
- 12 Sam Defraw
Department of Navy
13 Naval Facilities Engineering Command
Navy Rate Intervention
14 901 M Street SE, Building 212
Washington, DC 20374
- 15
16 John Jay List
National Rural Utilities Cooperative
Finance Corporation
17 2201 Cooperative Way
Herndon, Virginia 21071
- 18
19 Sue Arnold
Program Support and Regulatory analysis
Utilities Service
20 United States Department of Agriculture
1400 Independence Avenue, S.W.
21 Mail Stop 1522
Washington, DC 20250-1522
- 22
23 Wallace F. Tillman
Susan N. Kelly
National Rural Electric Cooperative Association
24 4301 Wilson Boulevard
Arlington, Virginia 22203-1860
- 25
26 David X. Kolk
Power Resource Managers
2940 Inland Empire Boulevard, Suite 123
27 Ontario, California 91764

28

1 Debra S. Jacobson
2 State Regulatory Affairs
3 Southwest Gas Corporation
4 P.O. Box 98510
5 5241 Spring Mountain Road
6 Las Vegas, Nevada 89193-8510

7 Ellen Corkhill
8 American Association of Retired Persons
9 5606 North 17th Street
10 Phoenix, Arizona 85016

11 William D. Baker
12 Electric District No. 6
13 Pinal County, Arizona
14 P.O. Box 16450
15 Phoenix, Arizona 85011

16 Sheryl A. Taylor
17 Ryley, Carlock & Applewhite
18 101 North First Avenue, Suite 2700
19 Phoenix, Arizona 85003-1973

20 Rick Lavis
21 Arizona Cotton Growers Association
22 4139 East Broadway Road
23 Phoenix, Arizona 85040

24 Steve Brittle
25 Don't Waste Arizona, Inc.
26 6205 South 12th Street
27 Phoenix, Arizona 85040

28 Nancy Russell
Public Interest Coalition on Energy
2025 North Third Street, Suite 175
Phoenix, Arizona 85004

John Christian
Glenn Carter
Jennings, Strouss & Salmon
One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2393

Barry N. P. Huddleston
Regional Manager, Regulatory Affairs
Destec Energy
2500 City West Boulevard, Suite 150
Houston, Texas 77042

26
27 By Cheryl Fraulob
28 Cheryl Fraulob
Legal Secretary