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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

KRISTIN K. MAYES, Chairman
PAUL NEWMAN
GARY PIERCE
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING
ELECTRIC RESTRUCTURING ISSUES.

Docket No. E-00000A-02-0051

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE
ARIZONA INDEPENDENT
SCHEDULING ADMINISTRATOR.

Docket No. E-00000A-01-0630

**ARIZONA MUNICIPAL POWER
USERS' ASSOCIATION
COMMENTS ON RETAIL
ELECTRIC COMPETITION
REQUESTED BY THE ARIZONA
CORPORATION COMMISSION**

These Comments by the Arizona Municipal Power Users' Association are in response to the Commission's request for public comments. The membership of the Association consists of the electric utility departments of cities, towns, electrical districts, irrigation districts, Indian Tribal Utility Authorities, special districts and electric cooperatives. In the aggregate the members of the Association and their member consumers serve approximately two million (2,000,000) plus persons throughout the entire state. All of the members of the Association are municipal or not for-profit cooperative electric entities. These comments are intended to supplement the comments being filed by the Salt River Project and the Grand Canyon State Electric Cooperative Association and other individual cooperatives.

The Commission has asked six questions: (1) comment on the potential risks and benefits of retail electric competition; (2) comment whether or not retail electric competition is in the public interest; (3) comment on the subject of Provider of Last Resort;

1 (4) comment whether the Commission's current electric competition rules are adequate; (5)
2 comment on the costs of competition and (6) comment on other related issues.

3 **Current Rules:**

4 The Commission should reopen the subject of its current competitive rules
5 and abandon the current rules. The dynamics of the industry, the economy, technology and
6 the environment suggest a new beginning is needed, one not based on the old rules.

7 **Is Retail Electric Competition In The Public Interest?**

8 Not in Arizona at this time, in this economy, with the current technology and
9 current experience of other states.

10 The two million (2,000,000) plus customer members of our entities desire
11 freedom. Freedom for them is essentially defined as having access to sufficient means to
12 live, work, be healthy and to participate in the Arizona economy with the least impact
13 affordable on the environment. To be free, they need an affordable electric system.

14 The Public Interest of these people in the electric utility sector requires for
15 them to be free they be provided the following: (1) access to electricity (2) which is
16 reliable, (3) with continuity of service, (4) predictable in price, (5) affordable, (6) from
17 sources which are environmentally and technically consistent with a positive
18 environmental ethic that seeks to conserve and reduce the impact of providing them
19 electricity on the State.

20 In the midst of a depression the last social policy imposition which
21 individuals can tolerate when they have lost (1) savings, (2) homes, and (3) jobs, is a socio-
22 economic policy that prematurely and adversely impacts electric pricing, the cost of which
23 for our members and their customers in an arid environment is a necessity in life.

24 Retail electric competition is a worthwhile concept that has yet to be
25 successfully implemented. Philosophically it works. Academically it works. On the
26 ground, in the home and in business at this point in time in the industry particularly in rural

1 Arizona, it only seems to work for the large business enterprises and not the residential or
2 small customer. It is a concept in process of refinement. Arizona should not be the locus
3 of experimentation on its electric customers while the “bugs” are being worked out of the
4 concept. Other states have been and are struggling to make the concept work. Arizona
5 Public Interest requires the Commission to wait and determine from the experience of other
6 states what is the appropriate time to advance the concept in Arizona.

7 While retail competition conceptually is a goal to be pursued, the position of
8 the members of the Association is at this time it is not in the public interest to implement
9 retail electric competition in the State of Arizona. Our members and their customers are in
10 the midst of a great economic depression filled with economic uncertainty, lack of access
11 to credit, loss of jobs, insecurity of incomes, and inability of customers to pay ever
12 increasing bills which are produced by ever increasing costs of production and
13 transportation of electrical energy. It is not in the public interest to introduce retail electric
14 competition at this time for the reasons set forth hereinafter.

15 History

16 The Commission should be reminded of the October 4, 2007 presentation by
17 Dr. Ken Rose concerning retail competition. It should be remembered that nothing has
18 changed since he advised the Commission that his original conclusion after his subsequent
19 study that retail competition was a public benefit was wrong; and that he was wrong about
20 retail access. It should be remembered that when looking at the distribution utility in
21 Arizona, (1) electricity is a unique product that (2) requires a customer to be connected to a
22 supplier to receive it, that (3) there are only a limited number of electric suppliers in each
23 market, (4) there are significant barriers to entrance, and (5) demand is often inelastic.

24 Note: Electricity is not a commodity and its service reliability can be
25 threatened (as happened in Texas).

1 Dr. Rose commented then and it is true today that the following have been
2 learned from competition: (1) the costs of disintegration are higher than originally thought,
3 (2) there is greater risk of price fluctuation to the disadvantage of the retail customer, (3)
4 there is a higher cost of capital for competitive services, (4) there is a higher cost in
5 transmission and distribution to maintain reliability and (5) the exercise of the conditions
6 for market power are stronger than expected.

7 **Look Across The Country - Failure**

8 Look at the national experience: A review of the experience of states
9 throughout the United States indicates that retail competition efforts have by and large led
10 to higher rates for the retail consumer. There is no comprehensive demonstrative evidence
11 that as of now, any state experience has successfully introduced retail competition to the
12 benefit of the individual ratepayer and consumer. Whether looking at the New England
13 states, Virginia, Pennsylvania, Texas, or California, the conclusion is that so far retail
14 electric competition is an evolving experiment which has not been successful. So far, both
15 the consumers and the native utilities have suffered adverse economic circumstances from
16 the introduction of retail electric competition.

17 **Arizona Should Not Lead The Way:**

18 Our Association has provided the Staff of the Commission and the
19 Commissioners with numerous studies prepared by the American Public Power
20 Association (a trade Association of some 2,000 municipally owned cost-based electric and
21 gas utilities) and the National Rural Electric Cooperative Association (a trade Association
22 of some 5,000 plus not for profit rural electric providers) to the effect that experiments in
23 retail electric competition have universally been to the disadvantage of the retail electric
24 customer until this point in time. Indeed, the ACC Consultant, Dr. Rose was a participant
25 in some of these major national Association studies the point of which was to determine
26

1 when, where and how retail electric customers could benefit from the concept of retail
2 electric competition. The answer is no benefit at this time under these circumstances.

3 **Who Will Lend?**

4 Arizona power suppliers seek and need capital both for financing generation
5 and distribution facilities and to qualify for purchase of renewables. Acting for the benefit
6 of their consumers in what is largely a regulated electric environment, Arizona generators
7 and distributors are consistently seeking out economically feasible power supplies, both
8 classic and renewable, which have cost-benefit characteristics that will deliver
9 environmentally compatible electric resources to the consumer in a reliable fashion at the
10 lowest achievable costs. Retail electric competition does nothing to advance this objective,
11 the process of which is largely governed by the ACC.

12 **Seeking The Green.**

13 Arizona utilities seek renewable-green solutions. The public power and
14 cooperative entities in Arizona are responding to their consumer's instructions to seek
15 introduction of more renewable sources of energy. This is consistent with the rules and
16 regulations of the Arizona Corporation Commission which is mandating regulated electric
17 utilities to pursue additional amounts of renewable-Green electric resources.

18 Small as well as intermediate and large public power systems are pursuing
19 the green energy options that are being made available in the Desert Southwest. Our
20 members are seeking access to green energy options, market-based pricing options and are
21 looking at various pricing structures which include smart metering, and interruptible
22 service, demand time of use options and demand-side generation. Our members are
23 pursuing these concepts as part of a public process, the purpose of which is to not make
24 less reliable or less economic the cost of providing electricity to the ultimate customer.

25 Retail electric competition is a threat to the availability of financing: the
26 problem facing utilities and businesses today which seek additional capital in the form of

1 loans and financing is that credit institutions are reluctant to lend. Credit institutions are
2 reluctant to lend for reasons of insecurity about either the nature of the collateral or the
3 business model of the borrower. No matter what appears to be the cash flow available to
4 service debt, lenders will not or are very reluctant to loan money on the basis of collateral
5 whose ultimate value is completely questionable as the result of the concept of mark-to-
6 market. Arizona gets low marks for adequate returns either to shareholders or to companies
7 seeking loans. Additionally lenders are reluctant to make funds available to borrowers who
8 cannot assure that their source of revenue from customers will continue to be reliable and
9 in sufficient quantities to achieve repayment of the loan. Retail electric competition has so
10 far been a concept which damages the value of facilities of an electric utility which are
11 offered as collateral for a loan repayment and also threatening to the integrity of the source
12 of funds from operation because the concept is an attack on the integrity of the customer
13 base of the utility.

14 **Who Will Lend To The Rural POLR?**

15 The Provider of Last Resort will not have access to affordable capital. How
16 can a lender be expected to provide capital for hypothetical infrastructure and generation
17 which may or may not be needed for a customer base that may or may not exist, depending
18 on the vagaries of the market, the economic strength of those entities with no "duty" to
19 serve? Texas is a prime example of competitive entities enticing customers, failing to
20 perform, failing to get sufficient supplies and capital, and leaving the market and leaving
21 the customers and delivering the problem to the Provider of Last Resort.

22 Premature commitment to retail competition encourages cannibalization of
23 existing distribution electric utility facilities by attacking their customer base and leads to
24 accelerated write-off of their facilities, while at the same time burdening those utilities with
25 the responsibility of Provider of Last Resort which in many instances burdens the customer
26 with electric costs the customer cannot afford.

1 **Risk Versus Outcomes:**

2 Other than ivory tower academic models created in universities or by paid
3 consultants to the competitive industry, the overwhelming conclusion of the factual
4 evidence is that the risk in prematurely committing to retail electric competition to the
5 customer is higher than the actual, perceived or speculative benefits. Aside from the
6 difficulty in attracting capital to new projects which may be required in order to meet the
7 demand of a utility in the event that it is to be the provider of last resort, the cost of
8 expensive sources of capital are speculative and dangerously high. All of which leads to
9 greater risk for the retail electric customer.

10 **The California Experience is Diverse and Illustrative:**

11 A look at the California electric utility industry over the last eight years is
12 illustrative of two particular models. The first model is the failure and chaos that was
13 created in the private sector by the introduction of competition and restructuring. The
14 second perspective is the relative price stability and customer benefit provided through the
15 public power and municipal sector which remained vertically integrated, cost competitive
16 and whose rates remained reliably affordable with increasing amounts of and introduction
17 of renewables and green energy in a way which was not economically disruptive to local
18 communities.

19 California thus presents two different perspectives on retail electric
20 competition. The failure of the model proposed by the academics and by the state
21 legislature and the success of the model of the public power sector in California. Both
22 models seek to shift the search for electric generation to renewables. Both models are
23 successful in that regard. But at a horrible cost to the consumer under the California private
24 sector solution. However in terms of price stability and the least social and economic
25 disruption in the lives of retail electric customers, the public power model is the successful
26 model. Lesson-do not prematurely commit to retail electric competition.

1 **Elements Of Risk in Retail Electric Competition:**

2 Our Association has previously provided the Staff with access to the many
3 studies which indicate that retail electric competition creates the potential and opportunity
4 for market manipulation, introduces horrible price fluctuation situations which create
5 hardship on the customers (look at the Texas experience), makes it difficult to attract
6 capital and new projects and has little upside potential and considerable downside risk to
7 both the customer and the native utility.

8 **Can There Be A Retail Electric Competition Without A Mature Wholesale**
9 **Competitive Market With Associated Transmission?**

10 The last 12 years have demonstrated that a precursor to a successful retail
11 electric competitive structure is achieving wholesale power competitive industries that
12 have multiple sources of reliable transmission access. The delivery of generation and is
13 dependent upon transmission. The Commission is only now beginning to require
14 comprehensive transmission planning be made a matter of public process. All of the
15 utilities in Arizona and in the Desert Southwest have been working together in SWAT,
16 CAT and CRT to make possible the construction and availability of new and upgraded
17 transmission facilities to be governed by open access tariffs subject to Federal Energy
18 Regulatory Commission jurisdiction.

19 **Customer Choice Requires Education And Technological Innovation:**

20 There are limited opportunities for real savings in a retail electric competitive
21 environment. And to participate it seems to require an Apple MacIntosh expensive
22 computer, understanding of a sophisticated program for exercising choice, devotion of time
23 to explore the consequences of choice, and significant reward to the customer for all this
24 investment. The current expense of the facilities and technology required to be in place to
25 prevent the intelligent interaction of consumers using choice and power suppliers providing
26 options is still in an infant stage and the process is still very expensive. Who pays? In our

1 Association there is no buffer for members to pay the expense, and mandates are paid for
2 by the consumers. Arizona utilities have today developed programs for the progressive
3 introduction of sophisticated metering devices accompanied by innovative power programs
4 which consumers are gradually learning to utilize and exploit the benefits, explore and
5 exploit in a manner which is not economically disruptive either to the utility or to the
6 consumer.

7 **Chaos.**

8 Simply declaring implementation now of retail electric competition is
9 nothing more than the act of unleashing the dogs of chaos. The sociological and economic
10 aftermath of a pre-mature institution of retail electric competition will further work to the
11 disadvantage of the retail electric customer. It is universally accepted that in the near term
12 where retail electric competition is introduced prices have increased to the disadvantage of
13 the electric consumer.

14 **A Reliable Supply of Electricity Is Essential To Life And Business:**

15 In the midst of the worst depression since the last Great Depression, it is
16 critical the Arizona Corporation Commission maintain a consistent as well as progressive
17 regulatory environment that provides assurance to lenders and creditors that the capital
18 they advance will be properly employed and will be repaid. It is also critical that the
19 consumer of electricity understands that the Commission will continue to monitor and
20 regulate the cost of providing electricity essential to the health, safety, welfare and
21 economic life of the citizens.

22 **Summary:**

23 Our Association urges the Commission to continue to study the concept of
24 retail electric competition. It also encourages the Commission to not rush into a
25 commitment to retail electric competition. Our membership encourages the Commission to
26 continue to direct utilities in the area of greater use of renewables, wind, solar, geothermal,

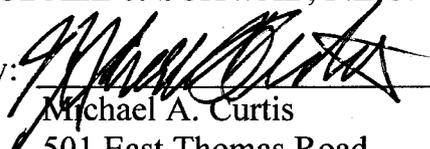
1 and biomass as well as natural gas and nuclear and coal during the transition of our society
2 to a lesser greenhouse gas footprint. Moderation, exploration and not rapid innovation in an
3 already risky world is a duty and responsibility of the Commission.

4 Arizona retail electric customers should not become the "poster-child" of
5 another failed premature experiment in retail electric competition.

6 In order to continue to present itself as a state which can provide the essential
7 electric needs of all of the elements of its society with reliable and cost-based electricity
8 managed and monitored under the careful eye of the Commission while at the same time
9 presenting itself as open to the introduction of new energy management facilities,
10 techniques and programs as well as increasing progress towards the development of
11 renewables and alternate sources of energy, the Commission must not introduce chaos into
12 the Arizona electric utility industry. Study, but go slow.

13 DATED this 29th day of January, 2009.

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