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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

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

JAN 30 2009

DOCKETED BY 

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

**TRICO ELECTRIC COOPERATIVE,
INC.'S SUPPLEMENTAL COMMENTS ON
RETAIL ELECTRIC COMPETITION
REQUESTED BY THE ARIZONA
CORPORATION COMMISSION**

These Comments supplement the Comments filed by Arizona Electric Power Cooperative, Inc., Southwest Transmission Cooperative, Inc., Duncan Valley Electric Cooperative, Inc., Graham County Electric Cooperative, Inc., Navopache Electric Cooperative, Inc., Sulphur Springs Valley Electric cooperative, Inc. and Trico Electric Cooperative, Inc. (collectively, the "Cooperatives"). Such Comments are adopted herein by this reference thereto.

The Retail Electric Competition Rules ("Rules") should be repealed as set forth in the Cooperatives' Comments for the reasons set forth therein and in these Comments. In

1 the event Staff of the Arizona Corporation Commission (“Staff”) does not accept this
2 position, the Rules generally will be discussed herein without waiver of such position.

3 **I. General Comments**

4 1. The Arizona Constitution in Article 15, Section 3 commands the Arizona
5 Corporation Commission (“Commission”) to prescribe just and reasonable rates and
6 charges to be made and collected by public service corporations (“PSCs”). The Arizona
7 Supreme Court has held such rates and charges must be just and reasonable for both the
8 consumers and the PSCs. The Commission since statehood has diligently protected the
9 consumers and PSCs with respect to rates and charges as well as a multitude of other
10 matters. PSCs’ rate cases thoroughly examine all pertinent financial matters with respect to
11 rates and charges and the Commission is required to aid it in the proper discharge of its
12 duties, to ascertain the fair value of the property of every PSC that applies for a rate
13 increase or rate adjustment. Constitution, Article 15, Section 14.

14 Experience, as shown in Arizona and throughout the country and in the pending
15 Applications of PDM Energy, LLC and Sempra Energy Solutions for Certificates of
16 Convenience and Necessity (“CC&Ns”) as Electric Service Providers (“ESPs”) establishes
17 that Retail Competition is completely impracticable for residential users who make up the
18 vast number of electric customers of PSCs in Arizona. When a PSC plans its system it
19 invests in the capital improvement to serve all of its load, which includes all residential and
20 non-residential loads. The capital expended to provide service to non-residential loads in
21 many instances is very substantial. Most, if not all, ESPs will not serve residential
22 consumers because they find it uneconomical to do so. When ESPs serve nonresidential
23 loads of a PSC, such loss of loads leaves the PSC with substantial invested capital that
24 produces no revenue unless the PSC grows at such a rapid rate to absorb the loss. If it does
25 have such rapid growth the PSC still loses the benefit of serving the lost load. This
26 necessarily casts a tremendous burden on the PSC that in order to survive financially must

1 make up the shortfall of revenue from the residential class resulting in unacceptable rates
2 for the members of that class. It is the constitutional duty of the Commission to make
3 certain that the rates of the residential class are just and reasonable, which cannot be
4 accomplished if ESPs succeed in obtaining the loads of the commercial, industrial and
5 governmental classes of PSCs.

6 2. PSCs must be able to compete with ESPs. Those PSCs that provide
7 generation must plan years ahead to have available adequate generation capacity to serve
8 their entire load. Having made the capital investment to provide such generation capacity,
9 the PSCs should be entitled to compete with ESPs on an equal basis, not restricted to
10 Standard Offer Services as are required by the Rules. With respect to PSCs that do not
11 provide generation, they must still plan years ahead to insure that they will have adequate
12 generation on a reasonable, competitive basis and they should also be entitled to compete
13 with ESPs and not be limited to Standard Offer services. PSCs must plan for the indefinite
14 future. They should be entitled to the benefits of such planning, rather than (1) requiring
15 them not to compete with ESPs, (2) denying them the benefits of such planning which
16 include going concern value, and (3) forcing them out of the business of providing
17 electricity with the exception of Standard Offer Services, and being required to accept
18 stranded costs over a designated period of time for their losses.

19 3. There must be a long period of time before a customer who has elected to
20 receive electricity from an ESP is allowed to return to the PSC it has left for the customer's
21 electric service. When the customer leaves the PSC's system it has created a vacuum in
22 which there are idle electric services producing no revenue for the PSC. In the event the
23 customer leaving the PSC's system has a substantial load this results in the PSC's
24 remaining customers paying for the load loss through increased rates unless the PSC's rate
25 of growth is sufficiently rapid to absorb the load loss. The PSC should not be required to
26 anticipate the return of the customer to the PSC's system and the PSC should have a

1 sufficient period of time to replan its system to provide for the necessary electric capacity
2 and energy to service the returning customer.

3 **II. Potential Risks and Benefits of Retail Electric Competition.**

4 The potential risks greatly outweigh the benefits. The residential classes of each
5 PSC will suffer as set forth above. Large industrial and commercial customers may benefit
6 but they should not benefit at the expense of the residential classes and adversely affect the
7 financial viability of the PSC.

8 The Rural Electrification Act of 1935 resulted in the rural areas increasing the
9 electrification of farms in the U.S. from approximately 5% in 1935 to over 95% by 1955,
10 basically through electric cooperatives. Service to only a few consumers per mile of line
11 was extremely difficult to accomplish and resulted only from thorough planning, member
12 ownership and the cooperative spirit which placed cooperation above competition and the
13 profit motive. The Electric Competition Rules are the antithesis of cooperation. They
14 present severe risks to the cooperatives' programs which will certainly result in the
15 deterioration of reliability of the cooperatives' systems to the detriment of their consumers.

16 Should customers be able to change providers on an unrestricted basis from PSCs to
17 ESPs and vice versa, the viability of the PSCs will be threatened and as a result the
18 reliability of their services will be greatly lessened.

19 **III. Whether or Not Retail Competition is in the Public Interest.**

20 It certainly is not. So long as electricity cannot be stored except in minor ways,
21 electric utilities are natural monopolies that require and are necessarily subject to extremely
22 strict regulation by the Commission. Such regulation has been very successful. Consumers
23 are protected in many ways by the Commission from rates to quality of services to safe and
24 efficient facilities. Rate cases for PSCs are major projects. As required by A.A.C. R14-2-
25 103, they must justify in a detailed way not only their requested rates for each customer
26 class, but the various aspects of such rates, such as customer charges, demand or capacity

1 charges for most classes and energy charges for all classes. PSCs must strictly comply with
2 the Arizona Constitution. Their businesses are completely transparent. Their objectives are
3 to provide reliable and safe service at just and reasonable rates. On the other hand, ESPs
4 are profit motivated. They are not required to establish the just and reasonableness of their
5 rates in a thoroughly regulated process as is apparent from the lax provisions of A.A.C.
6 R14-2-1603 and 1611. Like Enron, they can be expected to treat customers in a second
7 position after profits because of the lack of the rigorous regulation by the Commission. The
8 transparency of their operations is limited and their activities can accumulate in the
9 untenable situation they imposed on California in 2000 and 2001.

10 **IV. Provider of Last Resort**

11 Because electric service is essential to every person and entity in Arizona, it can be
12 expected that existing PSC systems will continue in operation indefinitely although there
13 might be a change of ownership and/or operators. On the other hand, ESPs may over a
14 period of time cease to provide any or substantial electric service. A.A.C. R14-2-1606.A
15 requires that Standard Offer Services shall be provided by Utility Distribution Companies
16 (“UDCs”) who shall also act as Providers of Last Resort. There is always the possibility
17 that the number of customers of UDCs would become so small that the rates of a UDC
18 might become so high that they are not affordable by most customers of last resort. The
19 Commission may want to structure a Provider of Last Resort Service Fund analogous to the
20 Arizona Universal Service Fund established in Article 12, Chapter 2, of Title 14 of the
21 A.A.C. to provide rate relief to customers of last resort.

22 **V. Whether the Commission’s Current Competition Rules are Adequate.**

23 The Rules are completely inadequate. Several important basic provisions of the
24 Rules were held to be unconstitutional in *Phelps Dodge v. Arizona Elec. Power Co-op*, 207
25 Ariz. 95, 83 P.3d 573 (2004) (“*Phelps Dodge*”). Among such provisions is the basic
26 provision in R14-2-1611(A): “Market determined rates for Competitive Services, as

1 defined in R14-2-1601 shall be deemed just and reasonable.” Although the Court stated
2 that a range of permissible rates are not unconstitutional, the maximum and the minimum
3 of such range must be just and reasonable and established by proper evidence submitted to
4 the Commission. Providing that the minimum “shall not be less than marginal cost” is not
5 sufficient because the Commission, not the ESP, must establish the minimum,
6 Constitution, Article 15, Section 3, which must be set forth as a stated amount.”

7 Furthermore, in prescribing rates for ESPs, the Commission has the duty to
8 determine fair value and that duty is not conditioned on market structure or subject to the
9 Commission’s discretion, although the Commission does have discretion in the weight to
10 be given fair value. *U.S. West Communications, Inc. v. Arizona Corp. Comm’n*, 201 Ariz.
11 242, 245, 246, 34 P.3d 351, 354, 355 (2001). All CC&Ns issued to ESPs were held invalid
12 in *Phelps Dodge* because the Commission did not consider fair value in prescribing the
13 rates.

14 Rules R14-2-1615(A) and (C) are unconstitutional or lack legislative authority.
15 Subsection A provides:

16 “All competitive generation assets and competitive services
17 shall be separated from an Affected Utility prior to July 1, 2001.
18 Such separation shall either be to an unaffiliated party or a separate
19 corporate affiliate or affiliates ...”

19 *Phelps Dodge*, 205 Ariz. at 114, 83 P.3d at 592.

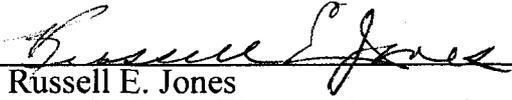
20 R14-2-1609(C)-(J) are unconstitutional or lack legislative authority. These
21 subsections direct Affected Utilities to each create an independent scheduling administrator
22 and a scheduling coordinator to oversee fair access to transmission services in a manner
23 substantially prescribed by the Commission.

24 It is obvious from reading the Rules that many provisions are out of date and others
25 are now moot. If the Commission is to consider Retail Competition it must rewrite the
26 Rules. If it should do so, comments may be submitted on specific revised Rules.

1 The obvious conclusion to the foregoing is that the Rules should be repealed.

2 DATED this 29th day of January, 2009.

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5 By 
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8 **Original and 13 copies** filed this
9 30th day of January, 2009, to:

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14 **Copy of the foregoing** mailed this
15 29th day of January, 2009, to:

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