

ORIGINAL



0000093253

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission 47

DOCKETED

2009 JAN 30 P 3:50

JAN 30 2009

AZ CORP COMMISSION DOCKET CONTROL

DOCKETED BY [Signature]

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

IN THE MATTER OF THE GENERIC) DOCKET NO. E-00000A-02-0051
PROCEEDING CONCERNING ELECTRIC) E-00000A-01-0630
RESTRUCTURING ISSUES.)
)
)

**ATDUG COMMENTS REGARDING
RETAIL ELECTRIC COMPETITION IN ARIZONA**

The Arizona Transmission Dependent Utility Group ("ATDUG")¹ submits these comments as requested by Barbara Keene in her e-mail of Friday, January 9, 2009. In that e-mail, Ms. Keene outlined six areas within which comments were solicited. Our comments are as follows:

POTENTIAL RISKS AND BENEFITS OF RETAIL COMPETITION

It seems intuitively obvious that the major risk to incumbent utilities of retail competition is "cherry picking". Indeed, the Sempra application that generated this inquiry is testimony in and of itself of what can happen in a competitive environment. The major benefit, which we view as being totally theoretical at this point, is lower retail prices to consumers. We are waiting for an ongoing concrete example of such savings that Arizona could learn from. Regulatory bargains that temporarily depressed or dampened increases in retail costs here in Arizona and

¹ Aguila Irrigation District, Ak-Chin Indian Community, Buckeye Water Conservation & Drainage District, Central Arizona Water Conservation District, Electrical District No. 3, Electrical District No. 4, Electrical District No. 5, Electrical District No. 7, Electrical District No. 8, Harquahala Valley Power District, Maricopa County Municipal Water District No. 1, McMullen Valley Water Conservation and Drainage District, Roosevelt Irrigation District, City of Safford, Tonopah Irrigation District, Wellton-Mohawk Irrigation and Drainage District.

1 elsewhere are no longer with us. Unless we have some new model not yet thought of by anyone
2 anywhere else in the United States, lower retail costs will remain a theoretical goal.

3 **THE PUBLIC INTEREST**

4 Intellectually, retail competition, which assumes that prices will be lowered to retail
5 consumers, is in the public interest. Arizona has not gotten there nor has anyone else. As a
6 practical matter, the so-called retail competition models that have been attempted are not
7 something Arizona should emulate.

8 **PROVIDER OF LAST RESORT**

9 In Arizona, few utilities have the size and resources to accomplish this task. If these
10 utilities are to be asked to be providers of last resort not only to their own customers but to
11 others, who will guarantee the supplies necessary for them to accomplish that task?

12 **CURRENT ELECTRIC COMPETITION RULES**

13 It would appear obvious that the current electric competition rules are not adequate.
14 Otherwise, we wouldn't be having this inquiry and the Sempra application would be going
15 forward. The next question to ask is, with the interim moratorium on rulemaking the Governor
16 has ordered to the Executive Department, and which the Commission should follow, at what
17 point will the Commission begin to explore the specifics of the inadequacies?

18 **COST OF COMPETITION**

19 In every other industry, the costs of competing are borne by the competitors. If they are
20 not to be borne by the competitors in this industry, then the competitors will be subsidized and
21 the marketplace will actually not be competitive.

22 **OTHER ISSUES**

23 In summary, there is no national model of success. Overall, the organized markets in the
24 United States have seen monumental rises in retail electric rates and equivalent significant cost
25 increases in their wholesale markets. Most of the Western United States west of the

1 Interconnection has totally resisted organized markets for a reason. The federal design managed
2 by the Federal Energy Regulatory Commission is based on the assumption that organized
3 markets will drive transmission costs up but competition among electricity generators will more
4 than compensate for that increase and drive overall retail costs down. That theory has not yet
5 been demonstrated in practice.

6 As we understand the philosophy of regulation by the Commission here in Arizona, it is
7 that retail competition cannot exist in Arizona successfully without a robust wholesale market
8 that provides competition at that level. Structuring a competitive wholesale market has turned
9 out to be a challenge beyond the capabilities of any government entity so far. Perhaps Arizona
10 should rethink its philosophy about electric competition and examine whether retail competition
11 can exist in the current climate whether there is a competitive wholesale market or not. You
12 might end up with a more interesting debate.

13 Along the way, the Commission will have to face its constitutional mandate to ensure that
14 rates are "just and reasonable". Whether market rates can be included in that concept depends on
15 whether you view the constitutional yardstick as a ceiling or not. In the meantime, our Members
16 will continue to provide electric service in our areas at the "lowest possible cost consistent with
17 sound business principles", the federal regulatory mandate which we must obey.

18 RESPECTFULLY SUBMITTED this 30th day of January, 2009.

19 ROBERT S. LYNCH & ASSOCIATES

20
21 By _____
22 Robert S. Lynch
23 Jeri Kishiyama Auther
24 340 E. Palm Lane Suite 140
25 Phoenix, AZ 85004-4603
Attorneys for the Arizona Transmission
Dependent Utility Group

1 Original and 15 copies filed this
2 30th day of January, 2009 with:

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

7 Copy of the foregoing mailed/*e-mailed
8 this 30th day of January, 2009 to:

9 Lyn Farmer
10 Chief Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
13 1200 West Washington
14 Phoenix, Arizona 85007

15 Janice Alward, Chief Counsel
16 Legal Division
17 Arizona Corporation Commission
18 1200 West Washington
19 Phoenix, Arizona 85007

20 Ernest Johnson, Director
21 Utilities Division
22 Arizona Corporation Commission
23 1200 West Washington
24 Phoenix, Arizona 85007

25 *Michael A. Curtis
*William P. Sullivan
*Ian D. Quinn
Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
501 E. Thomas Road
Phoenix, AZ 85012-3205

*Jay I. Moyes, Esq.
Moyes Sellers & Sims
1850 N. Central Avenue, Suite 1100
Phoenix, AZ 85004

*Kenneth C. Sundlof, Jr., Esq.
Jennings, Strouss & Salmon, P.L.C.
201 E. Washington Street, 11th Floor
Phoenix, AZ 85004-2385

*Russell E. Jones
Waterfall Economidis Caldwell
Hanshaw & Villamana, P.C.
5210 E. Williams Circle #800
Tucson, AZ 85711

Dimitrios J. Loloudakis
Energy Management Superintendent
Metro Facilities & Energy Management
Office
2631 S. 22nd Avenue
Phoenix, AZ 85009

*William D. Baker
Ellis & Baker, P.C.
7301 North 16th Street, Suite 102
Phoenix, AZ 85020-5266

*C. Webb Crockett
*Patrick J. Black
Fennemore Craig, P.C.
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85012-2913

*Kevin C. Higgins, Principal
Energy Strategies, LLC
215 South State Street, Suite 200
Salt Lake City, UT 84111

*John Wallace
Grand Canyon State Electric
Cooperative Association, Inc.
120 N. 44th Street, Suite 100
Phoenix, AZ 85034

1 *Kelly J. Barr, Esq.
2 *Jana Brandt
3 Salt River Project Agricultural
4 Improvement & Power District
5 Regulatory Affairs & Contracts, PAB 221
6 P.O. Box 52025
7 Phoenix, AZ 85072-2025

8 *Dave Couture
9 UniSource Energy Company
10 One South Church Avenue, Suite 200
11 Tucson, AZ 85701

12 *Michael W. Patten
13 *Jason D. Gellman
14 *Timothy J. Sabo
15 Roshka DeWulf & Patten, PLC
16 400 East Van Buren, Suite 800
17 Phoenix, AZ 85007

18 *Michael M. Grant
19 Gallagher & Kennedy, P.A.
20 2575 E. Camelback Road
21 Phoenix, AZ 85016-9225

22 *Lawrence V. Robertson, Jr.
23 P.O. Box 1448
24 2247 E. Frontage Road
25 Tubac, AZ 85646

*Peter Q. Nyce, Jr.
General Attorney, Regulatory Law Office
Office of the Judge Advocate General
Department of the Army
901 North Stuart Street, Room 713
Arlington, VA 22203-1837

*Dan Neidlinger
Neidlinger & Assoc.
3020 N. 17th Drive
Phoenix, AZ 85015

* Craig Goodman
*Stacey Rantala
National Energy Marketers Association
3333 K Street, NW, Suite 110
Washington, DC 20007

*Philip J. Dion
*Michelle Livengood
UniSource Energy Company
One South Church Avenue, Suite 2003
Tucson, AZ 85701

*Christopher Hitchcock
Law Office of Christopher Hitchcock, PLC
One Copper Queen Plaza
P.O. Box AT
Bisbee, AZ 85603-0115

*Gary Yaquinto
Arizona Investment Council
2100 N. Central Avenue, Suite 210
Phoenix, AZ 85004

*David Berry
Western Resource Advocates
P.O. Box 1064
Scottsdale, AZ 85252-1064

*Thomas L. Mumaw
*Deborah R. Scott
Pinnacle West Capital Corporation
P.O. Box 53999, MS 9708
Phoenix, AZ 85072

*Leland R. Snook
*Jeff Johnson
Arizona Public Service Company
P.O. Box 53999, MS 9708
Phoenix, AZ 85072

1 *Vicki Sandler
Interim Executive Director
2 AzISA
3 14402 S. Canyon Drive
Phoenix, AZ 85048

4 *Stephen Ahearn
5 Director
Residential Utility Consumer Office
6 1110 W. Washington, Suite 220
Phoenix, AZ 85007

7
8
9 By _____
Robert S. Lynch

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25