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**BEFORE THE ARIZONA CORPORATION COMMISSION
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2009 JUL 29 P 1:31

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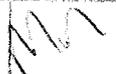
IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR A
HEARING TO DETERMINE THE FAIR VALUE OF
THE UTILITY PROPERTY OF THE COMPANY
FOR RATEMAKING PURPOSES, TO FIX A JUST
AND REASONABLE RATE OF RETURN
THEREON, TO APPROVE RATE SCHEDULES
DESIGNED TO DEVELOP SUCH RETURN.

Docket No. E-01345A-08-0172

Arizona Corporation Commission
DOCKETED

JUL 29 2009

**Direct Testimony In Opposition to the
Proposed Settlement Agreement**

DOCKETED BY 

Pursuant to the Procedural Order issued by the Arizona Corporation Commission on May 11, 2009, Barbara Wyllie-Pecora files the Direct Settlement Testimony of the following witness in opposition to the Proposed Settlement Agreement dated June 12, 2009:

1. Carl R. Faulkner

RESPECTFULLY SUBMITTED this 29th day of July, 2009,

BARBARA WYLLIE-PECORA
Intervener

By 
Barbara Wyllie-Pecora

ORIGINAL AND 13 COPIES OF THE FOREGOING
filed this 29th day of July 2009 with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Q. Please state your name, address and employer.

A. Carl Faulkner. 4109 Washington Avenue, Douglas, Arizona 85607. Sonora Development, LC. We are a land developer and general contractor company.

Q. Please describe the nature of your responsibilities there.

A. I am a managing member of Sonora Development, LC. I supervise the Arizona projects of our company.

Q. Please state the number of years you have been in the development and construction business.

A. I have been involved in construction for nearly 40 years. Our companies have developed and built residential and commercial product, including: single and multi-family residential developments, class A and B office developments, warehouses, a golf course, hotel, medical facilities, etc.

Q. Can you explain, from your experience as a Builder and Land Developer, the impact on development of the current "Service Schedule 3 Conditions Governing Extensions of Electric Distribution Lines and Services"?

A. The immediate and most obvious impact to development of the Schedule 3 policy changes is that it is limiting growth. More precisely, the current Schedule 3 policy harms land development and new construction in general and specifically adversely impacts rural Arizona because of poor market conditions, sparse population and distances from electric power services.

Q. Can you elaborate on the impact you see which results from the current Schedule 3 policy?

A. I would like to address just four issues in which the current Schedule 3 policy have adversely impacted our company and have and will adversely impact the public in general.

First, the approval of the current Schedule 3 policy, by design or by chance, has expanded what I believe to be an unregulated monopoly which appears to violate Federal Anti-trust Laws. I am no attorney but it seems clear that this is contrary to existing anti-trust laws. Under the provisions of Schedule 3 this monopoly is not regulated in its daily operations and activities, and APS may to

do whatever it deems is in its best self interest relating to the installation and upgrading of their facilities. Paragraph two of Schedule 3 states, “*All extensions shall be made in accordance with good utility construction practices, as determined by (APS), and are subject to the availability of adequate capacity, voltage and Company facilities at the beginning point of an extension as determined by Company...*” Since APS determines what schedule, materials and labor for all line extensions, the builder/customer is at the mercy of APS to install facilities in a timely manner at the most reasonable costs. It is absurd to believe that APS, a company for profit, will give more than a “passing glance” at costs when they do not have to pay them. Of course they want their facilities state of the art and upgraded at there will. There are no competitive material and labor bids, there is no competitive contractor who is allowed to do the construction of the facilities – only APS construction crews which are paid APS wages, using constantly upgraded equipment as determined by APS at their sole discretion, etc.

Sonora Development, LC is licensed in Arizona to perform much of the labor required for the installation of APS Facilities. We can provide comparable equipment and materials at a significantly lower cost than APS but under this policy we have no option but to pay more for all of the costs associated with the installation of their facilities. We must wait for APS to put us on their schedule which they assure us will be timely. I have been waiting two months to get a transformer raised to ground level. They continue to tell us that they need to send a technician out to investigate it. We did have one arrive but they say that they need to send another one. I am helplessly at their mercy. We provide the entire delivery system to APS free of all costs so they can make more profit on the power they provide to the public. And, we have no alternative or means to provide alternative power to our customers. You can be assured that the costs of materials will also rise under this Schedule 3.

Second, Schedule 3 continues, “...*All payments received for new or upgraded service under provisions of this schedule shall be non-refundable.*” (A.C.C. No. 5695 canceling A.C.C. No. 5683; Service Schedule 3 Revision No. 10 Effective: February 27, 2008). It is outrageous to believe that it is fair or right to allow APS to receive free of costs all of their facilities. Wouldn't we all love to have all of our delivery costs prepaid by others. Developers under the previous Line Extension Policy could reasonably afford the risk and cost of money to pre-pay the Line Extension costs in their development expecting reimbursement for this investment when we bring new APS customers to hook up to their power. This policy removed the risk of new Line Extensions from APS because they did not reimburse the Developer until and unless the houses were sold and new customers hooked up. Even if the developer lost his property through poor judgment or circumstances beyond his control, APS owns the facilities and the easements to maintain them and without the obligation to repay the developer.

Third, it has been stated that the intent of the ACC and APS is that “growth pays for growth”. However, Schedule 3 kills growth because it unfairly burdens the developer with addition costs and risk. In a marginal or depressed market such as we find today there is no market that can bear this burden. It is especially impactful in rural Arizona where there is no market for new housing and a few home buyers can qualify for a mortgage with these additional costs. Rural land costs will of necessity plummet because no one will want to pay the added cost or chance that APS will find “...*adequate capacity, voltage and Company facilities...*” to bring power to their property. We own nearly two hundred acres of rural land which has been devalued by this egregious policy. We have terminated operations and had to lay off construction crews because the market cannot afford the added cost of housing created by this policy. We have invested nearly \$5 million in offsite and onsite improvements, including utilities. We brought the Power facilities at our expense to our site expecting reimbursement under the old policy. Some lots have not sold to date

and APS has not had to pay anything for their facilities to these lots. Phase two of our development has forty-three lots. APS quoted me \$98,000 or \$2300 per lot in this phase. We have thirty-five lots which were scheduled to have smaller affordable housing to meet the needs of the local market. Again, the buyers would be **NEW CUSTOMERS BROUGHT TO APS** without risk or costs – this is **GROWTH PAYING FOR GROWTH**. We even give APS, free of charge, a utility easement to maintain these facilities on property we have paid for and must pledge to utility services. However, these houses are now out of reach for these potential new home buyers – they simply do not qualify for the loans. We had planned several more phases as the market improved but we have been forced to shut down because of the Schedule 3 policy changes.

Fourth, regarding the loss of the free 1,000' Line Extension, I have a man who asked me to build him a home on an "in-field" lot measuring 25' X 110' which he bought for about \$3000. In checking with an APS engineer about the cost to provide power to this existing improved lot within the City of Douglas, I was told "if the transformer was outdated they would require a new one at a cost of \$6000 and a connection fee of \$1300. The cost of the power exceeds the value of the lot by more than double. He abandoned the idea of building a house on this property and the property has been devalued. The market simply cannot pay an additional \$7300. The City has at least a hundred such lots like this one which are eyesores and must be cleaned and weeded every year by city maintenance crews at a significant cost to the city. The owners are abandoning their lots and not paying the taxes on them. The American dream of owning your own home continues to get out of reach because of accelerating costs of construction and egregious policies such as the current Schedule 3. The Federal government has been attempting many measures to stimulate growth in our economy. The majority of economists agree until housing is restored our economy will not improve and yet this policy has been approved which is the antithesis of such economic improvement.

Q Do you see any solutions to reverse the negative effects of this policy?

A The only valid and fair solution is to reverse the schedule 3 policy decision and restore what has been lost so that growth continues even in this difficult economic times. This reversal ought to be retroactive to the date of implementation.

The additional cost of power upon the reinstatement of the previous Schedule 3 policy across the APS service area will be minimal in comparison to having an unregulated monopoly determine the costs of facilities which the public is then obliged to bear; or, to kill housing and new development because builder's no longer can afford the risk and investment associated with improving land; or, having growth pay for the growth of APS rather than the growth of our economy; and finally, the additional cost of power upon the public by reinstating the old policy is minimal in comparison to the urban squalor that comes from lots which are no longer worth improving because of the costs of electrical facilities to service them. The public will actually bear the additional costs associated with this policy in higher taxes for cities to maintain these blighted properties. I respectfully urge the commission to do the right thing and reverse this policy.

Q. Does this conclude your testimony?

A. Yes, but I wish to express appreciation to the commission for allowing me to voice the grave nature and impact of this policy.