



0000109747

COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6201
WWW.COV.COM

BEIJING
BRUSSELS
LONDON
NEW YORK
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
WASHINGTON

ORIGINAL

April 1, 2010

Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Arizona Corporation Commission

DOCKETED

APR -2 2010

DOCKETED BY

Re: Docket No. E-00000A-02-0051
E-00000A-01-0630

Enclosed please find an original and thirteen copies of the Comments of the COMPETE Coalition in the above-referenced matter.

Sincerely,

William L. Massey
Counsel for the COMPETE Coalition

Enclosures

RECEIVED
2010 APR -2 P 3:22
AZ CORP COMMISSION
DOCKET CONTROL

Comments
OF
COMPETE Coalition
Before The
Arizona Corporation Commission

Docket No. E-00000A-02-0051

April 1, 2010

Comments of the COMPETE Coalition

The COMPETE Coalition applauds the Arizona Corporation Commission (ACC) for considering issues associated with the re-introduction of retail electric competition. Competition has been the driving economic engine of our Nation for more than 200 years and **we urge the ACC to take the steps necessary to move toward a competitive electric market that will best ensure consumer choices, new jobs and technology innovation for Arizona.**

COMPETE (www.competecoalition.com) is a leading voice for pro-competition electricity consumers representing more than 400 customers, suppliers, generators, transmission owners, trade associations, and economic development corporations – all of whom support well-structured, competitive electricity markets for the economic and environmental benefit of consumers. The membership list of COMPETE is Attachment A to this filing.

Your decision regarding the future of electric policy in Arizona will greatly impact the lives and livelihoods of Arizona's residential and commercial electricity consumers. By forging a path toward competitive retail energy markets, the ACC can send a very strong message to consumers, competitive suppliers, renewable developers, and companies willing to invest capital to meet the energy needs of Arizonans.

- Electricity competition will benefit all Arizona consumers and allow Arizona to achieve targets associated with development of renewable resources and advanced energy technologies, demand response, and energy efficiency.
- *Competitive markets are far more flexible and capable of supporting the innovations necessary for the development of new technologies, including renewable and advanced energy, at lower costs than through government regulation.*
- Continued reliance upon cost-based pricing and monopoly protection will: (i) place the financial risks of construction, operation, and ownership of new and existing generating plants on captive ratepayers with little to no accountability for those risks by utility management or consequences to utility shareholders for unmanaged risks; (ii) fail to provide incentives for investors to build new merchant generating plants without assigning the investment risk to captive consumers; and (iii) impede technological innovation in retail electric markets.
- Competitive suppliers will bring to Arizona consumers the same benefits that have been enjoyed by millions of customers throughout the U.S. and Canada who have retail choice.

COMPETITION IS WORKING WELL AND DELIVERING BENEFITS TO ALL CONSUMERS

Understandably, policymakers are concerned about ensuring reasonably priced and reliable electricity for consumers. Competition will keep costs as low as possible and produce the economic and environmental benefits consumers and policymakers are seeking across the United States:

- **Advancements in reliability, conservation, energy storage, renewable energy development, and the ability of customers to purchase green power products.** With growing concerns regarding global warming, there is a market for conscientious consumers who wish to use increasing proportions of renewable green energy for their business or home. By offering choice we let individual consumers and corporations help Arizona reach various renewable energy goals, often exceeding legislative mandates.
- **A significantly better platform to promote demand response and energy efficiency than traditional cost-of-service regulation.** Demand response refers to mechanisms that provide the tools and incentives for electricity customers to reduce their consumption at critical times or in response to market prices. In cases where market prices are not transparent, consumers have little or no incentive to reduce consumption (or defer consumption to later periods) during times when production costs are significantly higher. Since costs may be substantially higher at these times, the potential for savings should not be overlooked.
- **The ability and information to make decisions and have choices regarding their electric power needs.** Consumers deserve the right to make informed decisions about their electricity purchases, just as they do with telecommunications, natural gas and airlines, which were previously monopoly-protected industries.

Solid research demonstrates that *well-run competitive markets far outperform monopoly regulation when measured by these metrics.* Residential, commercial, governmental, and industrial customers will suffer if Arizona continues down a path based upon protected monopolies, which promotes inefficiency, wasted resources and pollution.

Competition uses the drivers of innovation, efficiency, and the entrepreneurial spirit, not bureaucratic regulatory oversight, to produce results. Arizona has certainly embraced measures to advance competition in the natural gas and telecommunications industries and should do so with electricity. Effectively competing is how virtually all industries operate and thrive, and this need be no different for the provision of electricity.

Reviewing some examples of benefits achieved by a number of states with retail choice can be helpful in dispelling some negative myths concerning competitive electricity markets.

1. In **Pennsylvania**, consumers are paying 12 percent less for electricity today than they were paying in 1996 (inflation adjusted dollars). The state's electric rates were 15 percent above the national average before competition began in 1996, but are now over 4 percent below the national average. More than 550,000 customers have switched power suppliers statewide. In just one service area, 380,000 customers (including 320,000 residential customers) are purchasing electricity from competing providers, with 46 percent of total electricity demand being met by competitive suppliers. Competition-driven efficiency gains have also resulted from restructuring. Clean nuclear power plants have become more efficient, generating 1.7 million megawatt-hours more electricity than they produced a decade ago, **yielding a monetized benefit of between \$50 million and \$130 million annually for Pennsylvania's customers.** Investment in new generating capacity was encouraged by the state's move to a restructured market, leading to a 23 percent increase in capacity between 1998 and 2005 while demand only increased by 15 percent. Pennsylvania now has about 300 megawatts of wind capacity, with another 300 megawatts in development. Two newly announced wind projects will create an estimated 200 or more green jobs. And the recently announced 13 new solar power projects will put Pennsylvania on track to rank in the top five states for operating solar generating capacity.

2. In **Illinois**, over 30 certified suppliers are licensed to provide service to customers and more than 15 are actively serving small- and medium-sized businesses. During the seven-year transition period, business customers who took advantage of choice saved approximately \$1.3 billion and residential customers saved in excess of \$1 billion. **Currently, over half of all electricity is purchased from competitive suppliers.** In 1997, residential rates were 24 percent above the national average. Now they are 2 percent below the average (and 21 percent lower when adjusted for inflation). As with Pennsylvania, the generating fleet in Illinois has responded to the pressures of competition by showing dramatic efficiency and productivity improvements. The capacity factor of the state's nuclear plants went from 47 percent to 93 percent. Finally, more than 9,000 megawatts of new, cleaner, more energy efficient generating facilities have been built without assigning the investment risk to captive monopoly customers, including 1,150 megawatts of wind power, and uprates at nuclear plants have added an additional 900 megawatts..

3. In **New York**, 625,000 customers or 11 percent of residential consumers are purchasing their energy from competitive suppliers, with the state seeing a growth rate of some 55 percent in the number of residential customers on retail choice in just one year. In one utility service area, residential customers can choose among 37 different rate offerings from competitive suppliers, green power providers and the local utility. **In aggregate, 41 percent of total electricity usage in New York is provided by competitive suppliers.** Among

commercial and industrial customers, 56 percent of customers and 77 percent of load has switched to competitive suppliers. In 2008, electricity rates were 18 percent lower than in 2000, when adjusted for inflation, for a \$2.2 billion annual savings. Generator availability has gone from 87.5 percent to 94.4 percent, which is approximately a 2,400 MW savings in required capacity (or about 4 major power plants). New York has had 2,000 megawatts of wind power enter the market, and generation efficiency has improved 21 percent since 2000, thus consuming one-fifth less fuel.

4. In **Texas**, the retail choice market continues to mature, bringing lower prices, new products and more choices to consumers. Approximately 40 percent of residential customers have switched to a competitive retail electric provider since customer choice began in 2002 and an additional 27 percent have switched to competitive rate plans offered by the incumbent utility. **Consumers can now choose from 138 residential plans offered by 29 energy service providers.** Residential electricity rates in Texas were over 15 percent above the national average in 2001, and now the average competitive price is almost 9 percent below that national average.
5. In **California**, it is significant to note that the Legislature has decided to **reopen the competitive electricity market** for commercial and industrial customers beginning this month.

In these well-functioning competitive markets, competitive retail suppliers have contracts with customers of all sizes, ranging from very small commercial enterprises to major steel plants. These contracts with electricity customers can be month-to-month, three months, six months, one year, 18 months, two years, three years, and even longer, and are tailored to meet the individual needs of the customers.

In addition, there are numerous service options available from competitive suppliers to meet customer's needs, resources, budget requirements, environmental or sustainability initiatives, and price risk-management strategies. These products can be individually customized to meet the business goals, risk appetite, and needs of all types of consumers.

For example, if customers are interested in budget certainty and avoiding market volatility, competitive suppliers can offer them fixed-price contracts or savings off of the bundled utility rate. For customers that are willing to accept some market volatility, competitive suppliers can fix a portion of their energy needs, and another portion is variable based upon an index. For customers that want to pay prices pegged to a market index or rates that vary every hour, they can select such a product. Other options include setting a strike price where a fixed price is set once the market price achieves a certain pre-determined price level.

For customers seeking demand response and energy efficiency measures, or interested in selecting renewable energy resources, or wishing to support the development of new renewable energy power plants, competitive suppliers can offer green power products (wind solar, biomass, hydro, tidal, geothermal), the purchase of renewable energy credits (RECs), and other similar products.

Numerous local and national surveys demonstrate that customers overwhelmingly want competition and a choice in their electric supplier. Whether from national retail establishments that comprise the COMPETE Coalition -- such as 7-Eleven, JCPenney, Kohl's, Macy's, Petco, PetSmart, Staples, and Wal-Mart -- or from smaller local companies and residential consumers, the message is clear: **customers support the evolution and implementation of the Arizona competitive electric market.**

CONCLUSION

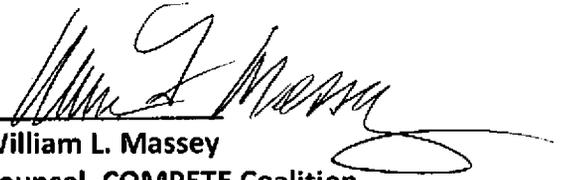
The COMPETE Coalition urges the Commission to keep the following key considerations in mind as it considers a renewed commitment to the development of retail competition:

- The competitive market place is the best means to achieve the widest possible deployment of renewable and advanced energy technologies at the lowest possible cost to consumers.
- Monopoly protection and traditional cost-based pricing impede conservation, demand response, and innovation by masking the actual cost of the electric power used in Arizona. In addition, continuing such policies result in customers bearing the financial risks associated with utility investment decisions.
- Government intervention, however well intentioned, cannot repeal the laws of supply and demand. The ACC should expand the choices available to electricity customers, rather than impose heavy-handed regulatory mandates that deny those choices.
- There is a tremendous potential for new, innovative approaches to meet Arizonans' electric needs. But if potential market entrants and their investors fear that the rules will change over and over, it becomes far too risky for them to invest scarce capital.

We commend the Arizona Corporation Commission for conducting this inquiry and look forward to participation in further discussions regarding these very important issues.

Thank you for this opportunity to submit these Comments.

COMPETE Coalition

by 

William L. Massey
Counsel, COMPETE Coalition
Covington & Burling LLP
1201 Pennsylvania Ave., NW
Washington, DC 20007



COMPETE

Electricity Competition **IS** the Public Interest

1317 F Street NW
Suite 600
Washington, DC 20004
Phone: 202-745-6331
Fax: 202-783-0329
www.competecoalition.com

Membership List

2degrees Network	Argo Navis Fundamental Power Fund, LP
7-Eleven, Inc.	ARS International, Inc.
ABB Inc.	Ashe County Renewable Energy
ABuzz Media	Asmeix Corporation dba C-SPEC
Accent Energy	Asplundh Tree Expert Co.
Acclaim Energy Advisors	AT&T
AdaptivCool	Atkinson Fire Safety Equipment
Advanta Energy Corp.	Atlantic Scaffolding Company
Advantage IQ	Atlantis Energy Systems Inc.
AEC Engineering Design & Construction Services PLLC	Aviva Energy Corp.
AeroAction	Axsess Energy Group
Affordable Solar Energy, Inc.	Bandgap Engineering
Albany International Corp.	Bay Area ndt
Allegheny Energy Supply	Beacon Power Corporation
Alliance for Clean Energy New York, Inc.	Bell Fuels Inc.
Alliance for Real Energy Options	Big Lots Stores, Inc.
Alliance for Retail Choice	BJ's Wholesale Club, Inc.
Allied Cold Storage Corporation	Blue Realty
Alpha Quality Services	BlueStar Energy Services, Inc.
ALSN	BoRE, Inc.
Alternative Energy Technologies Corps (AETECH)	Boston Market Corporation
Alumatech Fabricating	BP Energy Company
Alyx Ann Corp.	Brookfield Energy Marketing Inc.
American Insulated Wire	Brownholtz & Associates LLC
American Wind Energy Association	Buchanan Ingersoll & Rooney PC
Americas Waste to Energy, LLC	Business Energy Partners, LLC
Ames Law Offices	California Grocers Association
Amtrak	California Retailers Association
Andrews Kurth LLP	Carbon 5 LLC
A.P. Services, Inc	Cargill, Incorporated
Applewood Builders LLC	Carrols Corporation
APS Energy Services	CBAN, LLC
Arctech, Inc.	Cemtrex
Ardmore Power Logistics, LLC.	Center for Energy Studies, Louisiana State University
	Center for the Advancement of Energy Markets (CAEM)

America: Powered by Competition

CETX Energy Agency	David B. Zabetakis, LLC
ChooseEnergy.com	David Frenkel Consulting
Chrislynn Energy Services	DC Energy
Christ's Church (Las Vegas, NV)	Demand Response & Energy Consulting, LLC
Cirro Energy Services, Inc.	Direct Energy
Citi Realty Services	Distributed Energy Financial Group, LLC
Citizens for Pennsylvania's Future (PennFuture)	Dollar General
City of Lyford. Texas	Dollar Tree Stores, Inc.
CKE Restaurants, Inc.	Douglass & Liddell
Clean Currents	Downing Power Consulting, Inc.
CMC Energy Services	DPL Energy
Co-exprise	Duquesne Light Energy, LLC
Colorado Independent Energy Assoc.	Dynalectric
Columbia Rubber Corp.	DynGlobal LLC
Columbia University	EC Power
Comcast Corporation	Eco Technology Systems
Comfort Systems USA	Economic Development Corp., Fresno County
Commerce Energy Inc.	Economic Growth through Competitive Energy Markets Coalition
Commercial Environmental Services, LLC	Edge Inspection Group, Inc.
Commonwealth of Pennsylvania - Bureau of Procurement	Einstein Noah Restaurant Group
Competitive Power Ventures, Inc.	El Pollo Loco
Comverge, Inc.	Electric Advisors, Inc.
ConectiSys Corporation	Electric Power Generation Association
Conergy	Electric Power Supply Association
ConocoPhillips Company	Empower Energy Solutions Corp.
Consolidated Edison Energy	EnCap Development, LLC
Constellation Energy	Endeum
ConsumerPowerline	Energy Advisory Service
Cornell University	Energy Advisory Services
Corpus Christi Housing Authority	EnergyConnect, Inc.
Costco Wholesale	Energy Curtailment Specialists
Customer Choice Coalition (Michigan)	Energy Markets Coalition
Covidien	EnergyNext, Inc.
CreativEnergy Options	Energy Plus Holdings LLC
Crescent Real Estate Equities	Energy Power Light LLC
The Cruthirds Report	EnergyRebate, Inc.
CSI International, Inc.	Energy Services Group, Inc.
Current Group, LLC	Energy Services Providers, Inc.
Cushman & Wakefield	Energy Systems of America Inc.
Customized Energy Solutions Ltd.	Energytech
CVS/pharmacy	Energy Trust, LLC
Cypress Energy Inc.	Enermetrix
Dajalabe Engineering	EnerNOC
The Danella Companies, Inc.	EnerTel Connections
	Enerwise Global Technologies, Inc.

Engineerworx	Hines – Southwest Region
Enmass, Inc.	Hollywood Entertainment
Entrance Software	The Houston Company
ePsolutions	Howard University
EPV Solar, Inc.	HQ Energy Services (US)
E:SO	Human Dimensions TV, LLC
EUCI - Electric Utility Consultants	Illinois Competitive Energy Association
Eurus Energy America	Illinois Energy Association
Every Offset	Illinois Energy Professionals Association
Evolving Energy Systems LLC	iMonitorEnergy
Excellence Dynamics LLC	Independent Power Producers of New York
Exelon Corporation	Infrasource Inc.
Eye on Supply	Indeck Energy Services, Inc.
Fellon-McCord & Associates	Innoventive Power LLC
FirstEnergy Solutions	InStep Software
First Innovative Power	InterGen North America
First Point Power, LLC	Intermountain Wind, LLC
Four Our Eyes Only	International Finance, LLC
Freescale	ISGH
FTI Consulting	Itron, Inc.- Enterprise Energy Management Group
Future Energy Development, LLC	Jay Packaging Group
Future Home Improvements	J.C. Penney Corporation, Inc.
GABCGroup	Johnson Controls, Inc.
The Galvin Electricity Initiative	K!
Gamesa Energy USA	K-VICPEA LLC
GAP Pollution & Environmental Control Inc.	KEMA, Inc.
Gateway Energy Services Corporation	Kenny Construction Company
Gearhart McKee Inc.	Keres Consulting, Inc.
Gestalt LLC	Kimball Resources, Inc.
Glacial Energy	Kinetic Energy LLC
Glenwood Energy Partners, Ltd.	Kirby Electric, Inc.
Goldman Sachs	Kohl's Department Stores
Golub Corporation-Price Chopper Grocery Chain	Kraft Foods
GoGreenSolar.com	Lake Effect Energy Corporation
Good Energy, LP	Langan Engineering & Environmental Services
Grassfield Plumbing	Legacy Energy Solutions
The Great Atlantic & Pacific Tea Company, Inc.	Leggett & Platt, Inc.
GreenSun Energy Solutions	Lewis-Goetz & Co., Inc.
The Green City Development Group	Liberty Power
GSE Consulting, LP	Lighthouse Utility Solutions, Inc.
GTR Engineering, LLC	Little's Dental Lab
Hanson Building Materials America	Live Energy Inc.
Henkels & McCoy, Inc.	Lodestar Corporation
Hess Corporation	Lowe's Home Centers, Inc. / Lowe's HIW, Inc.
Hillsdale Policy Group	

LS Power Development, LLC
Lumen Group, Inc.
Macy's Inc.
Manufacturing Alliance of Connecticut
Market Energy 411
Martin Linskey Communications
Meade Electric Company, Inc.
Metromedia Energy, Inc.
Midwest Strategy Group, LLC
The Miriam Hospital
Mistras Holding Group
Morgan Stanley
Motive Power & Equipment Solutions,
Inc.
Musical Encounters
MXenergy
My Source Energy LLC
National Center for Policy Analysis
National Electrical Manufacturers
Association (NEMA)
National Energy Brokers Organization
(NEBO Energy)
National Grid
National Power Source
National1 Energy, LLC
Nationwide Energy Partners LTD
Navigant Consulting, Inc. (NCI)
NBC Universal
Nelson Mullins Public Strategies Group
New Era Cap Company
New England Power Generators
Association
New Leaf Energy
Ninyo & Moore
North America Power Partners
North Shore Energy Consulting, LLC
Northeast Energy and Commerce
Association, Inc.
Nova Machine Products Inc.
Numax Energy Consultants
Obsidian LLC
OfficeMax
Olbrych Realty Inc.
One World cleanenergy
OurEnergy
Pacific Technical Resources, Inc.
PAETEC Energy
Papa John's International
Patriot Energy
PCM, Inc.
Perrigo Co.
PETCO
Petrochem Insulation, Inc.
PetSmart, Inc.
PG&L, LLC
Planet Forward, LLC
Polo Ralph Lauren Corp.
Polytop Corp.
PowerGrid Systems, Inc.
Powerhouse By Solaris
Power Management Company
Power Management Company New
England, LLC
Power Brokers, LP
PPL Corporation
Prenova, Inc.
Priority Power Management
ProActive Energy Concepts
Public Energy Solutions
Public Service Enterprise Group
Public Utility Brokers
PwrCast Inc.
Quadrillion R E
Quandel Enterprises, Inc.
QuikTrip Corporation
R & L Development Company
Ra-Energy
RadioShack Corporation
Rapid Power Management
re-Source Innovations
Realgy, LLC
Recurrent Energy
Recycled Energy Development
Red Arrow Wind Energy
Red Robin Gourmet Burgers
Reecie-Ruth Dev. Int.
ReEnergy Corp
Rehabit, LLP
Renewable Energy Development LLC
RES Americas (Renewable Energy
Systems)
Retail Energy Supply Association
Retail Industry Leaders Association
Rhode Island Resource Recovery
Corporation

Rich Hessler Solar Sales Training
RRI Energy, Inc.
Safeway Inc.
St. George's School
Saporito Energy Consultants, Inc.
Satori Energy
SaveOnEnergy.com
SCD Energy Solutions
School Project for Utility Rate Reduction
Scott Specialty Gases
SEM, LP (Solutions for Energy
Management)
Sempra Energy
Sempra Energy Solutions LLC
Seven-Utility Management Consultants,
Ltd.
Shell Trading Gas and Power Company
Shoe Carnival, Inc.
Sierra Energy Group
The Sign Center
Silicon Valley Leadership Group
Site Controls, Inc.
SMC Business Councils
Smith Land Group / Laurel Self Storage
Solarpowergetics, Inc.
Source and Summit Co.
Spark Energy
Staffing One, Inc.
Staples Inc.
StarTex Power
Stone & Webster Management
Consultants
Stop & Shop
Strategic Energy Advisors, Inc.
Strategic Energy, LLC
Strategy Integration, LLC
Suffolk University
Sunbelt Sower / Direct Marketing
Network
Sunoco, Inc.
Supervalu, Inc.
Sustainable Living Consultants
Svanda Consulting
System Source Inc.
Systems West Computer Resources
Tangent Energy Solutions
Target Corporation
Telga Corporation
Tetra Tech
TES Energy Services, L.P.
Texas Competitive Power Advocates
Texas Electric Professionals Association
Texas Energy Aggregation
Texas Energy Options, Inc.
Texas Power
Thomas Dodge Builders
Thorco, Inc.
TJX Companies
TLR Energy
Tradition Energy
Traffic Control Services, LLC
Tremcor Energy, Inc.
TRC Companies Inc.
TruePFC Marketing
TXU Energy
Universal Systems of America, Inc.
U.S. Gas & Electric, Inc.
US-NRG
Usource
UtiliTech, Inc.
VIASYN, Inc.
Viridity Energy
Wal-Mart Stores, Inc.
Warwick Public Schools
Wawa, Inc.
Wearthy Ideas, LLC
Wendy's / Arby's Group
Western Power Trading Forum
Western Retail Energy
Westshare Services, Inc.
WinCo Foods, LLC
Wind Coalition
Wind Energy Corporation
WindPole
World Energy
Yuasa Battery, Inc.