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IN THE MATTER OF THE APPLICATION
OF TUCSON ELECTRIC POWER COMPANY
FOR APPROVAL OF ITS PLAN FOR
STRANDED COST RECOVERY.

DOCKET NO. E-01933A-98-0471✓

IN THE MATTER OF THE FILING OF
TUCSON ELECTRIC POWER COMPANY OF
UNBUNDLED TARIFFS PURSUANT TO
A.C.C. R14-2-1601 *et seq.*

DOCKET NO. E-01933A-97-0772

IN THE MATTER OF COMPETITION IN
THE PROVISION OF ELECTRIC SERVICES
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. RE-00000C-94-0165✓

**CITIZENS UTILITIES COMPANY
COMMENTS ON SETTLEMENT
PROCEDURE**

On November 5, 1998, the Utilities Division Staff ("Staff") of the Arizona Corporation Commission filed two Requests for Procedural Orders: one concerning a Proposed Agreement with Arizona Public Service Company ("APS") and the other concerning a Proposed Agreement with Tucson Electric Power Company (TEP"). Among other things, Staff requested that a hearing be held on November 20, 1998, with testimony or comments by parties other than Staff, APS, or TEP due by November 17, 1998. In a November 6, 1998, Procedural Order, Chief Hearing Officer Jerry L. Rudibaugh granted intervenor status to all parties in the above-captioned dockets in a new consolidated docket and gave intervenors until 12:00 noon on November 10, 1998, to file comments on Staff's proposed schedule. Citizens Utilities Company ("Citizens") hereby submits its comments.

1 The Staff schedule would deny intervenors their due process and equal
2 protection rights under the U.S. and Arizona Constitutions. The two Proposed
3 Agreements directly violate the June 22, 1998, Opinion and Order in Docket No.
4 RE-00000C-94-165 ("Stranded Cost Order"). The Stranded Cost Order is
5 supported by massive evidentiary underpinnings. As Mr. Rudibaugh well knows
6 (having presided over the docket), the Stranded Cost Order was only issued after
7 the following events:

- 8 1. December 6, 1997, Prehearing Conference;
- 9 2. Prefiled testimony;
- 10 3. Prefiled reply testimony;
- 11 4. Prefiled rebuttal testimony;
- 12 5. Two weeks of live testimony by and cross-examination of
13 approximately 40 witnesses;
- 14 6. Extensive briefs;
- 15 7. Reply briefs;
- 16 8. Mr. Rudibaugh's Recommended Order;
- 17 9. Additional public hearings in Phoenix, Flagstaff, and Tucson;
18 and
- 19 10. Two days of contentious open meeting.

20 After this six-and-one-half month process, the Stranded Cost Order concluded
21 that an Affected Utility, such as APS or TEP, could only recover its unmitigated
22 stranded costs if it agreed to divest all generation assets.

23 Now, after four months of closed-door negotiations, Staff asks the
24 Commission to ignore all evidence and alter its opinion to allow APS, far and away
25 Arizona's largest Affected Utility to not only keep its generation assets but to
26 acquire additional generation assets from TEP. TEP, Arizona's next biggest
27 Affected Utility, would be allowed to keep some generation, gain a monopoly on
28 high-voltage, privately-owned, transmission and still be allowed to compete in the
29 generation market through its 50%-owned subsidiary, New Energy Ventures.

1 Each utility would be able to recover all its stranded costs.

2 Staff would also have the Commission gut the Commission's Competition
3 Rules (Emergency) adopted August 10, 1998, in Docket No. RE-0000C-94-0165,
4 and the proposed Permanent Competition Rules currently being considered by the
5 Commission ("Competition Rules"). This rulemaking has also been a lengthy,
6 contentious process. The initial version of the Competition Rules was adopted in
7 late 1996, following many months of discussion. Reconsideration of the
8 Competition Rules began again in April 1998. Over the last several months the
9 Commission Staff has issued a number of iterations of draft competition rules and
10 position statements concerning retail electric competition. In response, Citizens
11 has submitted written comments to the Commission on May 14, May 22, July 6,
12 July 22, August 3, 1998, and September 18, 1998.

13 The Proposed Agreements would eviscerate the Competition Rules on the
14 threshold of competition - scheduled to begin on January 1, 1998. APS would be
15 granted eight significant waivers from the rules and, amazingly, TEP over 20.
16 Again, the thrust of the waivers appears to be to thwart competition and to
17 protect the incumbent utilities.

18 Although Staff is asking the Commission to both reverse its Stranded Cost
19 Order and gut its Competition Rules, remarkably, neither Staff, nor APS, nor TEP
20 would be required to even file any supporting testimony. But intervenors would
21 be required to file their testimony on November 17 - one week from today -
22 without benefit of meaningful direct testimony, discovery, or cross-examination.
23 Finally, Staff asks for a hearing on November 20 to bless this back-room bargain.

24 No new evidence has been offered to suggest that the Commission depart
25 from the positions taken in the Stranded Cost Order or in the Competitive Rules.
26 Nor could Citizens or any other party provide meaningful input in the time that
27 Staff would allot to prepare and file testimony. The resulting proceedings would
28 be a sham of the highest order, barely even giving lip service to the intervenors'

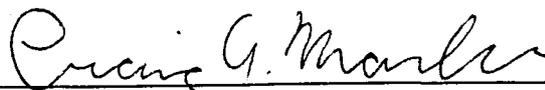
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1 constitutional rights and the Commission's obligation to issue orders that are
2 reasonably supported by the evidence and that are neither arbitrary nor
3 capricious.

4 Further, the overall proceeding would fundamentally discriminate against
5 Citizens and the Electric Cooperatives. The Stranded Cost Order and the
6 Competitive Rules applied to all Affected Utilities. The Staff would instead create
7 one set of new rules, born out of the light of day, that would apply to the two
8 giant Affected Utilities - APS and TEP. Only Citizens and the Coops would still be
9 subject to the Stranded Cost Order and the Competitive Rules. No showing has
10 been made, or even hinted at, that justifies such base discrimination.

11 If the Staff does want to change the rules, it must do so in a manner that
12 allows meaningful input from all interested parties, including customers,
13 competitors and other Affected Utilities. It must also allow time for briefing to
14 frame the issues and for a recommend order from the hearing officer to assist the
15 Commission in its final determination. Three months for the entire process would
16 be the bare minimum, given that Staff seeks to reverse the results of a six-and-
17 one-half month evidentiary proceeding and rewrite a rulemaking, three years in
18 the making.

19 RESPECTFULLY SUBMITTED November 10, 1998.

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22 

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1 Original and ten copies filed this
2 November 10, 1998, with:
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6 Copies of the foregoing mailed/delivered
7 this November 10, 1998, to:

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18 All parties in Docket Nos. E-01933A-98-0471,
19 E-01933A-97-0772, and RE-00000C-94-0165.

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By: 
Joann Zychlewicz

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