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**BEFORE THE ARIZONA CORPORATION COMMISSION** NOV 19 1998  
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- IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST RECOVERY. ) DOCKET NO. E-01933A-98-0471

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- IN THE MATTER OF THE FILING OF TUCSON ELECTRIC POWER COMPANY OF UNBUNDLED TARIFFS PURSUANT TO A.A.C. R14-2-1601 et seq. ) DOCKET NO. E-01933A-97-0772

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- IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR APPROVAL OF ITS STRANDED COST RECOVERY. ) DOCKET NO. E-01345A-98-0473

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- IN THE MATTER OF THE FILING OF ARIZONA PUBLIC SERVICE COMPANY OF UNBUNDLED TARIFFS PURSUANT TO A.A.C. R14-2-1601 et seq. ) DOCKET NO. E-01345A-97-0773

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- IN THE MATTER OF COMPETITION IN THE PROVISION OF ELECTRIC SERVICES THROUGHOUT THE STATE OF ARIZONA. ) DOCKET NO. RE-00000C-94-0165

**ATTORNEY GENERAL'S MOTION FOR A CONTINUANCE AND FOR EXPEDITED ORDER**

The Attorney General, a party in the above-captioned consolidated docket acting on behalf of the citizens of the state of Arizona and pursuant to Rule R14-3-109(Q) of the Arizona Corporation Commission rules of procedure, hereby moves for the following Orders:  
...



1 60977 and 61071. (hereafter the "APS Agreement") The same day Staff executed a different  
2 agreement with Tucson Electric Power, Inc., that contains the same settlement recital, (hereafter  
3 the "TEP Agreement"). (Collectively the APS and the TEP Agreements shall be referred to as "the  
4 Agreements".)

5 Staff filed the Agreements with the Commission on November 5, 1998, and thereupon  
6 began a fast-track to judgment by the Commission. The Attorney General's office received a  
7 copy of the seventy (70) page TEP Agreement and thirty-seven (37) page APS agreement and  
8 attached schedules and memoranda of understandings on November 5, 1998. Staff did not file  
9 Attachment "C" to the TEP Agreement until November 10, 1998, and this office did not receive a  
10 copy thereof until November 12, 1998, by mail.

11 Both Agreements contain conditions on performance, among them that the Commission  
12 approve them word for word, without change, by no later than November 25, 1998. The  
13 Agreements are conditioned on the Commission's entering a non-appealable order which would  
14 require the parties to give up their fundamental right to appeal from any Order of the Commission.  
15 On their face, the Agreements appear to reflect a mutual commitment by the three parties to push  
16 the Commission into a rush to judgment without fair deliberation or due process.

17 This rush was further evidenced when, the very same day, November 5, 1998, Staff filed  
18 its request for a Procedural Order seeking an evidentiary hearing by November 20, 1998. This  
19 would have required interested parties to analyze the Agreements, determine how to respond to  
20 them, determine what legal and factual issues existed, decide on what matters discovery was  
21 necessary, draft and file discovery answers and secure responses thereto, determine whether  
22 expert testimony was necessary, retain experts and prepare and file testimony and file that  
23 testimony by November 17, 1998 at 4:00 p.m, or eight (8) business days after the Agreements  
24 were filed. This notice fails to comport with A.R.S. §41-1061 which requires twenty days' notice

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1 of a hearing on a contested matter. *See, State v. Arizona Corporation Commission*, 143 Ariz. 219,  
2 225, 693 P. 2d 362 (Ariz. App. 1984)

3 The startling fast-track Procedural Order request evoked a flurry of objections from at least  
4 ten (10) different parties, some of whom took the risk of missing the November 25, 1998, all-or-  
5 nothing deadline and asked for more time. The Attorney General joined in this request because it  
6 at first appeared that a somewhat slower fast track was necessary to prevent a delay in the start of  
7 competition on January 1, 1999, which the Attorney General does not desire. The Hearing Officer  
8 did move some of the dates back, and has afforded interested parties until November 30, 1998, to  
9 file testimony, and given the parties to the Agreements until December 4, 1998, to file rebuttal.  
10 Staff has now requested that the hearing begin December 3, 1998. There has been no hearing date  
11 set as of now.

12 The Attorney General has now had an opportunity to review the Agreements and to consult  
13 with two experts on their market effects if implemented as written. What this office has found is  
14 that the Agreements are substantially likely to delay competition for up to two (2) years, if not  
15 longer. The adoption and implementation of the Agreements additionally may have serious  
16 additional anticompetitive effects, for example, because they purport to resolve market power  
17 issues, when they do not, and cannot. In fact, the Agreements may exacerbate horizontal market  
18 power which may exist in generation, at least at certain times. These are factual questions this  
19 office and other parties are endeavoring to answer, but simply cannot given the time frames  
20 requested by Staff.

21 The Agreements purport to resolve voluminous stranded cost and unbundled tariff filings,  
22 an adjudication of which are critical to a fledgling market. And the Agreements, if approved, will  
23 likely prejudice the Attorney General's pending civil action against the Commission over  
24 Decision No. 60977. After drafting and filing three (3) separate sets of discovery requests, to  
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1 which APS and TEP objected extensively, and after consulting with industry experts and free  
2 market experts, after discussions and consultations with industry representatives, ratepayers and  
3 the Affected Utilities, the Attorney General has formed the initial view that these Agreements do  
4 not promote competition and may well forestall its development.

5 The difficulty is that the Agreements are highly complex, contain multiple conditions and  
6 what-if situations, and have far-reaching economic effects about which there has never been any  
7 fact-finding. Without more, the Agreements' conclusions that they create an "efficient and cost  
8 effective transition... to a competitive market structure and that the incomplete divestitures  
9 contemplated "limits the potential for APS [or TEP] to exercise vertical market power" cannot be  
10 determined to be true, without a market power and agreement-affect analysis which demands a full  
11 and fair inquiry.

12 Finally, the Agreements purport to waive, alter and amend a number of Electric  
13 Competition Rules, which were enacted on an emergency basis by the Commission on August 10,  
14 1998. These Rules were the product of lengthy and voluminous hearings and rehearings, and  
15 represented the input of the many consumers, businesses and institutions individually affected by  
16 the move to competition. To simply waive these Rules by substituting these Agreements denies  
17 fundamental due process to those who have spent years getting to their final form. Without the  
18 continuance sought here, there is simply insufficient time and opportunity for the Attorney  
19 General to re-evaluate the competitive effects of those rule changes.

20 There are real dollars at stake in this proceeding which, depending on the outcome, will  
21 come from the pockets of consumers and companies and industries and will effect the economy of  
22 this state. Thus this:

23 is a [proceeding] which carries with it fundamental Procedural  
24 requirements. There must be a full hearing. There must be evidence  
25 adequate to support pertinent and necessary findings of fact. ... Facts and  
26 circumstances which ought to be considered must not be

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excluded....Findings based on the evidence must embrace the basic facts which are needed to sustain the Order. *State v. Arizona Corporation Commission*, 143 Ariz. 219, 225, 693 P.2d 362, (Ariz. App. 1984).

The Attorney General, for these reasons, therefore, hereby respectfully requests that the Hearing Officer enter an Order continuing the current dates set for filing testimony in Procedural Order dated November 13, 1998 as follows:

1. Parties to the Agreements file testimony November 30, 1998;
2. Parties to the Agreements respond to all outstanding discovery by January 8, 1999;
3. Other interested parties file testimony by February 5, 1999;
4. Rebuttal testimony filed by February 12, 1999;
5. Evidentiary hearing commences on February 22, 1999.

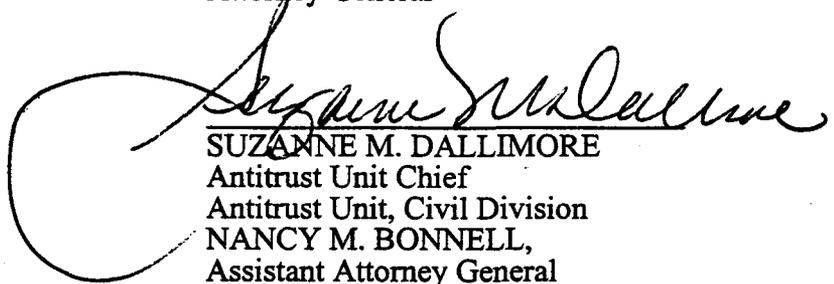
This timetable would allow a full and fair hearing on the many critical issues remaining in the consolidated dockets and raised by the Agreements. This schedule would also serve the important public policy of permitting further exploration of whether a settlement can be reached that prevents anticompetitive results and gives Arizona ratepayers and taxpayers true competitive choice.

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1 Finally, the Attorney General requests that the Hearing Officer expedite his ruling on this  
2 motion and determine by November 23, 1998 whether to grant it. This early adjudication will  
3 inform the parties quickly if there is to be a change in the schedule, and will afford the Attorney  
4 General a reasonable opportunity to move forward in preparing his case.

5 RESPECTFULLY SUBMITTED this 19th day of November, 1998.

6 GRANT WOODS  
7 Attorney General

8 

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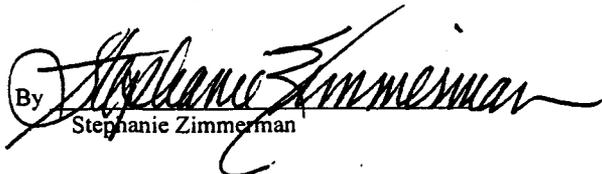
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