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Arizona Corporation Commission
BEFORE THE ARIZONA CORPORATION COMMISS

DOCKETED

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IN THE MATTER OF THE APPLICATION)
OF ARIZONA PUBLIC SERVICE)
COMPANY FOR APPROVAL OF ITS)
PLAN FOR STRANDED COST)
RECOVERY)

DOCKET NO. E-01345A-98-0473

IN THE MATTER OF THE FILING OF)
ARIZONA PUBLIC SERVICE COMPANY)
OF UNBUNDLED TARIFFS PURSUANT)
TO A.A.C. R-14-2-1601 et seq.)

DOCKET NO. E-01345A-97-0773

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.A.C. R14-2-1601 et seq.)

DOCKET NO. E-01933A-97-0772

Decision No. 61259

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

DOCKET NO. RE-00000C-94-0165

FILED COMMENTS OF THE ARIZONA
TRANSMISSION DEPENDENT UTILITY GROUP

Pursuant to Decision No. 61259 entered and docketed on November 25,
1998, the Arizona Corporation Commission (Commission) issued its Procedural
Order requiring, inter alia, that all parties other than Staff, Arizona
Public Service Company (APS) and Tucson Electric Power Company (TEP) file
testimony, comments, disagreements by noon on November 30, 1998 concerning
two proposed Settlement Agreements between Staff and APS and between Staff
and TEP. The two Settlement Agreements were executed on November 4, 1998 and
filed with the Commission on November 5, 1998. They were served by United

1 States mail purportedly upon all parties to the five proceedings combined for
2 purpose of consideration of these settlements.

3 The Hearing Officer issued procedural orders on these filings on
4 November 6, 13, and 24, 1998. The first two did not set a hearing date. The
5 second and third orders required supporting testimony by Staff, APS and TEP
6 by November 20, 1998. The third order set a hearing date of December 7, 1998
7 after responsive testimony by Staff, APS and TEP by noon on December 3, 1998.
8 The third order also set a prehearing conference on December 4, 1998.

9 Between the second and third procedural orders, the Staff filed a
10 Request for Reconsideration, urging a foreshortened schedule and an earlier
11 hearing date. On November 24, 1998, the Commission noticed and on November
12 25, 1998 the Commission held a special meeting to set procedures in this and
13 other proceedings. The resulting Procedural Order (Decision No. 61259), in
14 addition to requiring these responsive comments by noon on Monday, November
15 30, 1998, requires responsive testimony by Staff, APS and TEP by 4:00 p.m. on
16 December 2, 1998 and orders that the evidentiary hearing begin at 8:00 a.m.
17 on December 3, 1998 and proceed from 8:00 a.m. to 8:00 p.m. each day
18 thereafter including Saturday. These comments are filed pursuant to that
19 order. While the proceeding is combined, the two Settlement Agreements are
20 not identical and therefore must be discussed separately. Each Agreement
21 will be discussed seriatim including the posing of questions that indicate
22 the vagueness of the proposed settlements as alternatives to implementation
23 of the Commission's Rules where the Settlement Agreements and the Rules
24 conflict.

22 Staff/APS Settlement Agreement

23 Statement of Intention

24 The parties "believe" that the settlement is in the public interest.
25 They bear a significant burden of proof on that issue. Staff further

1 "believes" that the APS divestiture of transmission assets will "limit" the
2 potential for APS to exercise vertical market power. To date, no evidence
3 has been filed to support that statement nor has there been any discussion of
4 in the Settlement Agreement nor evidence addressing the subject of horizontal
5 market power resulting from the asset swap contemplated in the settlements.

6 I. Contingency of Agreement

7 The Commission must approve the Settlement Agreement in its entirety
8 and without modification and do so pursuant to a final and non-appealable
9 order. Any such order would be appealable. It would be final only if no one
10 appealed. If some party does appeal, what is the effect of that appeal? If
11 this Settlement Agreement thus self-destructs, aren't the current Commission
12 Rules then immediately applicable to APS and TEP? Having not complied with
13 the existing Rules, aren't APS and TEP immediately in violation of those
14 Rules?

15 II. Unbundled Rates

16 We will only note our view that the quarterly Market Generation Credits
17 (MGC) provided are inadequate and anti-competitive. Others will address this
18 in more detail. What is meant by "shaping" the Palo Verde Nymex futures
19 price? How will the adder be "adjusted"? The term is repeated in Exhibit A
20 and also not explained.

21 III. Recovery of Regulatory Assets

22 Are there market circumstances where market rates and accumulated over-
23 collections would dictate less than 100% recovery of regulatory assets?

24 IV. Transition Revenues/Stranded Costs

25 APS gets a guaranteed recovery of stranded costs through 2004 if it
divests itself of the identified transmission assets. The Commission may
only alter the amounts being collected under the Settlement Agreement formula
if "the Commission finds that APS or its competitive affiliate has

1 significant market power and has manipulated the market price for power in
2 the region" (p.3, emphasis supplied). Thus, APS could develop significant
3 market power and would only be in trouble if the Commission managed to catch
4 it doing something. Market power is an evil in and of itself. Moreover, the
5 "region" is not defined. Is it the State? Is it different markets within
6 the State? Market power manipulates "markets", not regions.

7 Furthermore, the divestiture is "anticipated" to occur within two
8 years. That is not a deadline. What happens if the anticipated closing is
9 not met? Are there penalties? What oversight will the Commission employ?

10 V. Divestiture

11 In addition to unsupported statements of belief about limiting vertical
12 market power, Staff articulates an objective that transmission constraints
13 and/or the allocation of available transmission capacity (ATC) should not be
14 allowed to "unduly frustrate" competition. What does this mean?

15 The settlement articulates a series of principles. It includes the
16 requirement that APS file an application with FERC to place 230 kV and below
17 facilities under the jurisdiction of the Commission "with appropriate
18 provisions for wholesale customers subject to FERC's jurisdiction" (p.4).
19 What does this mean? What are appropriate provisions? What wholesale
20 customers are intended to be covered by this filing? How will existing
21 contracts and existing FERC-approved settlements be treated?

22 The language of the principles appears to imply that Committed Uses
23 will have priority on a non-discriminatory basis for use of the combined
24 transmission system. APS has to supply a definition and explanation of all
25 Committed Uses supported by APS but we don't know when and there is no
timeframe for doing that; nor is there any notice requirement or procedural
obligation for review of this process, which will form the basis for
determination of ATC. Again, there is no mention of how existing contracts

1 and settlements will be treated.

2 VI. FERC Transmission Issues

3 While this section is obviously only about rates and misses discussing
4 a number of FERC transmission issues, there is no discussion of FERC action
5 on any filed rates or APS open access transmission tariff (OATT) filing. Is
6 the Settlement Agreement satisfied if APS and TEP make these filings? If
7 FERC rejects or substantially modifies them, are the Settlement Agreements
8 still in place?

8 VII. Rate Reductions

9 This section does not address the impacts of the asset exchange and for
10 that reason we will withhold comment at this time.

11 VIII. Separation of Monopoly and Competitive Services

12 APS must accomplish the asset transfer by the end of 2002. By that
13 time, it will have recovered stranded costs for 3 of the 5 years allowed.
14 What happens if APS misses the deadline?

15 IX. Independent Scheduling Administrator/Independent System Operator

16 Why is this provision here? It has no teeth. It has no deadlines for
17 anything actually happening. It does not recognize that it is FERC that must
18 determine whether an ISA or an ISO will be established in Arizona. If none
19 of these things happen in the times contemplated, the Commission could
20 undertake to study why they weren't happening anyway.

21 XI. Section 40-252-Certificate of Convenience and Necessity

22 Here APS is agreeing to modify its CC&N. That is the Commission's job.
23 And one it can do whether this Settlement Agreement is adopted or not.

24 XII. Resolution of Litigation

25 How far into the future is the commitment by APS to support the
Commission projected? What are "related matters" that APS will support the
Commission on?

1 XIII. Must Run Assets

2 How will the Commission determine which contracts are not subject to
3 FERC jurisdiction?

4 XIV. Waivers

5 In recommending waiver of R-14-2-801(5), what is the word "implicated"
6 mean? Concerning R14-2-805(A), how will the Commission know about a "likely
7 material adverse effect" if there is no reporting requirement?

8 XVIII. Consideration for Agreement

9 This is the "securitization" provision. The Commission's promise to
10 allow recovery of regulatory assets and stranded costs is deemed a "promise"
11 which "shall survive the expiration of the Agreement and shall be
12 specifically enforceable against this and any future Commission" (p.10).
13 Does the promise survive if it is deemed by a later Commission not to be in
14 the public interest? Is it independently enforceable if the order is not yet
15 final and unappealable and APS has not withdrawn from the other lawsuits?
16 Can this Commission prevent a future Commission from exercising its authority
17 under A.R.S. Section 40-252?

18 Miscellaneous Provisions

19 Since at least one "drop dead" date in the Settlement Agreement has
20 passed, is not the Settlement Agreement by its own terms "deemed withdrawn"
21 (p.11)? If so, are not these proceedings now moot?

22 Staff/TEP Settlement Agreement

23 Statement of Intention

24 While these parties also "believe" that the settlement is in the public
25 interest, this Settlement Agreement flatly states that the TEP divestiture
"addresses" concerns regarding vertical market power. No evidence to support
this statement is in the record, nor is there any analysis of how the
divestiture is intended to address vertical market power. Horizontal market

1 power is totally ignored.

2 I. Contingency of Agreement

3 Here a future order "necessary in order to complete securitization" is
4 required. When? When will it be made available for public comment? What is
5 necessary?

6 IV. Recovery of Stranded Cost and CTC

7 If TEP crosses the under-collection or over-collection threshold, it
8 "should" file a plan with the Commission. What if it doesn't? What
9 securitization bonds are contemplated by this transaction?

10 VI. Securitization and Accounting and Ratemaking Authority for Stranded
11 Costs

12 What is the justification for a return on equity based on a
13 "hypothetical" capital structure consisting of 35% equity and 65% debt? What
14 assets are contemplated to be purchased from SRP and/or AEPCO? What is the
15 justification for cross-subsidizing additional transmission asset purchases
16 with generation-related revenues?

17 VII. Divestiture

18 What happens to existing TEP contracts? What happens to the San Juan
19 plant? What happens if all regulatory approvals are not received? Since
20 stranded costs will be collected long before all regulatory approvals and
21 ultimate asset swapping can be accomplished, what happens if it all falls
22 apart?

23 VIII. Transco

24 Is the provision for acquisition of "non-distribution related"
25 transmission assets broader than the 345 kV and above definition of
transmission assets in the Staff/APS Settlement Agreement?

How will the Commission Staff carry forward and implement its intent
that TEP's transmission company affiliate be the sole builder and owner of

1 transmission assets in the State?

2 X. Waivers

3 What happens if the Commission does not grant all the waivers
4 recommended by the Staff?

5 Miscellaneous Provisions

6 Here again a "drop dead" date has passed without its requirements being
7 fulfilled. Is this Agreement moot?

8 There are a number of other objectionable and questionable provisions
9 in this document that are also in the other document and are already noted.
10 Those comments are incorporated by reference concerning this Settlement
11 Agreement as well.

12 Due Process

13 The Settlement Agreements contain asset transfer provisions involving
14 in excess of \$250 million worth of property by their own terms. The record
15 and oral proceedings to date confirm that the transactions involved and the
16 implementation of the Settlement Agreements constitute a complex situation
17 that contemplates future action at various times over the next 5 years. The
18 Settlement Agreements were filed less than 30 days ago. Supporting testimony
19 was filed 10 days ago. Rebuttal testimony need not be filed until 16 hours
20 before the hearing starts. The two documents are devoid of essential detail
21 and vague in terminology. Proponents have filed no market power testimony.
22 If that testimony is filed Wednesday afternoon, there will be no reasonable
23 opportunity to examine it and prepare a case on the market power issues
24 controverting the proponents' case. Proponents have the burden of proof to
25 show that these settlements are in the public interest. Market power is a
core issue here subject to that burden. Absent reasonable opportunity to
analyze the proponents' case and prepare a response, all parties to this
proceeding are handcuffed. Full and fair consideration of opposing views and

1 evidence is impossible to achieve.

2 Due process requires: (1) notice of time and place of hearings; (2) a
3 reasonable definite statement of the issues; (3) the right to produce
4 witnesses; and (4) the right to have a full consideration and determination
5 according to evidence before the Commission. Sulgar v. Arizona Corporation
6 Commission, 5 Ariz.App. 145, 423 P.2d. 145, 149 (1967). Lack of specificity
7 that unreasonably hampers preparation such that a party has an inadequate
8 opportunity to prepare constitutes denial of due process. Id., at 150.

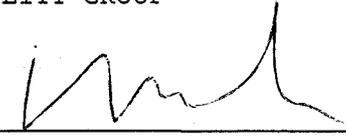
9 Here, these conditions have clearly been met. Going forward under
10 these circumstances constitutes denial of both procedural and substantive due
11 process.

12 Incorporation By Reference

13 The Arizona Consumer-Owned Electric Systems (ACES) has applied for
14 leave to intervene in this proceeding. They are filing testimony and
15 comments on the proposed Settlement Agreements, addressing market power,
16 anti-competitive and other aspects of these proposed settlements. Those
17 comments and testimony are incorporated by reference in their entirety as if
18 fully set forth herein and are adopted and supported in these comments.

19 RESPECTFULLY SUBMITTED this 30th day of November, 1998.

20 ARIZONA TRANSMISSION DEPENDENT
21 UTILITY GROUP

22 By 

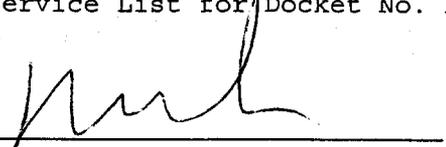
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1 Original and 10 copies of the
2 foregoing filed this 30th day
of November, 1998 with:

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

5 Copies of the foregoing mailed
6 this 27th day of November, 1998,
to:

7 Service List for Docket No. E-01345A-98-0473
8 Service List for Docket No. E-01345A-97-0773
9 Service List for Docket No. E-01933A-98-0471
10 Service List for Docket No. E-01933A-97-0772
11 Service List for Docket No. RE-00000C-94-0165


A handwritten signature in cursive script, appearing to read 'M. R. ...', is written over a horizontal line.

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