



0000119615

ORIGINAL
RECEIVED

ARIZONA CORPORATION COMMISSION

JUN 21 1 25 PM '99

CARL J. KUNASEK
Chairman
JIM IRVIN
Commissioner
RENZ D. JENNINGS
Commissioner

DOCUMENT CONTROL

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

Arizona Corporation Commission

DOCKETED

DOCKET NO. E-01345A-98-0473

JUN 21 1999

IN THE MATTER OF THE FILING OF
ARIZONA PUBLIC SERVICE COMPANY
OF UNBUNDLED TARIFFS PURSUANT
TO A.A.C. R14-2-1601 ET SEQ.

DOCKETED BY

DOCKET NO. E-01345A-97-0773

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

DOCKET NO. RE-00000C-94-0165

RESPONSE TO ENRON CORP. MOTION TO AMEND PROCEDURAL ORDER

Arizona Public Service Company ("APS") hereby responds in opposition to Enron Corp.'s Motion to Amend Procedural Order to Establish Revised Procedural Dates of June 11, 1999 ("Enron Motion") and PG&E Energy Services Corporation's Comments in Support of Enron Corp.'s Motion to Amend Procedural Order to Establish Revised Procedural Dates also of June 11, 1999 ("PG&E Comments"; collectively, the "Motions"). APS objects to further postponing retail electric competition in Arizona— particularly when based on the unpersuasive rationales argued in the Motions. For the reasons set forth in more detail below, APS requests that the Chief Hearing Officer deny the Motions.

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center
Phoenix, AZ 85004-0001
(602) 382-6000

1 I. THE MOVANTS' REASONS FOR DELAYING CONSIDERATION
2 OF THE SETTLEMENT ARE UNPERSUASIVE

3 The gist of both Motions is that the "complexity of issues and ramifications of [a]
4 decision" in connection with the Settlement warrant a lengthy delay in the procedural schedule.
5 (See Enron Motion at 2.) Enron and PG&E, however, ignore several key facts that militate against
6 further delay in resolving APS's stranded costs and unbundled tariffs. Specifically, the stranded
7 cost analysis contained in the Settlement was first filed with the Commission in August
8 1998—almost a full year ago. Both Enron and PG&E filed comments to the APS's stranded cost
9 filing. (See Comments/Disagreements of PG&E Energy Services dated September 21, 1998;
10 Comments and Request for Hearing [of Enron *et al.*] dated September 21, 1998.) Further,
11 although both Staff and RUCO submitted data requests to APS in 1998, neither Enron nor PG&E
12 availed themselves of that opportunity. All parties, and particularly Enron and PG&E, have had
13 considerable time to review and evaluate APS's stranded cost filing. Similarly, unbundled tariffs
14 (albeit somewhat different from those attached to the Settlement) were first filed on February 13,
15 1999.

16 Thus, although the movants may be correct in their assertion that stranded costs and
17 unbundled tariffs are "among the most contentious ongoing issues before the Commission," they
18 are flatly incorrect in claiming—in the context of this settlement—that either the "complexity" or
19 "contentious[ness]" of APS's stranded cost analysis or unbundled tariffs warrant an additional 60-
20 day delay in the procedural schedule.

21 Enron further argues that it needs more time to evaluate other aspects of the
22 settlement. (Enron Motion at 2-3.) This complaint also rings hollow. One of Enron's local
23 counsel and a consulting expert were both intimately involved in *negotiating and drafting* the
24 Settlement and were most ardent in their meticulous examination of *every* sentence of the
25 Agreement and the substance of every material provision. Enron never claimed then that it needed
26 more time or that the Settlement provisions were unclear. In fact, Enron never raised any specific

1 objection to the Settlement. Thus, although Enron was, ultimately, not a signatory to the
2 Settlement,¹ its attempt to paint a picture of ignorance with the structure (and underlying
3 rationales) of the Settlement is nothing more than “revisionist” history.

4 Moreover, both Motions fail to note the similarity of the procedural schedule at issue
5 here and the Chief Hearing Officer’s April 21, 1999 consolidated Procedural Order addressing
6 each Affected Utility’s stranded cost and unbundling proceeding. Specifically, the April 21
7 Procedural Order contemplated APS filing its plan and testimony on June 14, 1999—with Staff
8 and intervenors filing responsive testimony on July 28, 1999—a total intervening period of 44
9 days. The procedural schedule that Enron and PG&E seek to modify involves an APS filing on
10 May 17, 1999 with responsive testimony due on June 25, 1999—a total period of 39 days. Neither
11 Enron nor PG&E expressed a single concern about the time periods in the April 21, 1999
12 Procedural Order—which would have involved a completely new and significantly higher figure
13 for APS’s stranded costs—but now cry foul over a nearly identical schedule for a more
14 technically-straightforward settlement. This concern over a five-day difference in procedural
15 schedules seems nothing more than an inappropriate tactic to further the movants’ none-too-subtle
16 desire to “oppose” (*see* PG&E Motion at 2) this Settlement.

17
18 **II. THE “IT DOESN’T MATTER WHEN YOU APPROVE THE
SETTLEMENT” EXCUSE IS UNSUPPORTABLE**

19 Enron also supports its request to delay competition by discounting the August 1,
20 1999 Commission-approval date in the Settlement. Enron begins this argument by fundamentally
21 mischaracterizing the condition in the Settlement that its effectiveness is contingent upon
22 Commission approval “without modification.” (*See* Enron Motion at 4.) Obviously, no
23 responsible party would commit to be bound by a Settlement whose terms could later be
24 unilaterally changed at will. Such simple prudence is a far cry from holding a “gun to the

25 _____
26 ¹ Enron withdrew from settlement negotiations at the eleventh hour without
explanation.

1 Commission's head", (*see id.*), and is a common provision in virtually every significant settlement
2 submitted to the Commission.

3 Next, Enron claims that even though some parties could withdraw from the
4 Settlement if the Chief Hearing Officer grants Enron's Motion, it "questions" whether anyone
5 would actually withdraw. Presumably, such withdrawals work in favor of the movants' apparent
6 objective to oppose the Settlement. However, Enron's speculation of what will or will not occur if
7 the procedural schedule is delayed provides no legal or factual support for imposing a 60-day delay
8 in considering the Settlement.

9 Further, the Chief Hearing Officer should consider Enron's lack of concern over any
10 delay in context: Enron has yet to obtain a competitive CC&N. Indeed, Enron Corp., the movant
11 in this proceeding, is not even the Enron entity seeking certification as an ESP. Although delaying
12 the resolution of the Settlement by 60 days might allow Enron and its competitive subsidiary to
13 "catch up" to other new entrants, this is hardly a compelling rationale that should be embraced by
14 this Commission. As many new entrants have noted, what is necessary is a definitive resolution of
15 issues such as stranded costs and unbundling—not further "foot dragging."

16
17 **III. THE CHIEF HEARING OFFICER SHOULD NOT DELAY THE**
18 **SETTLEMENT PROCESS BECAUSE PG&E BELIEVES THAT A**
19 **NEW COMMISSIONER WOULD HAVE A "LEARNING CURVE"**

20 PG&E also weighs in with its concern that the appointment of a new Commissioner,
21 following the Arizona Supreme Court's decision in *Jennings v. Woods*, No. CV-98-0586-SA
22 (Ariz. Supreme Ct., June 9, 1999), warrants a lengthy delay so that a new Commissioner can come
23 "up to speed" on various competition issues. The events of the last six months, however, have
24 amply demonstrated that delaying any action in anticipation of the prompt resolution of questions
25 relating to Commission structure is not productive. Moreover, because appointment of a new
26 Commissioner is still pending, PG&E cannot know whether the appointed Commissioner will or
will not require a 60-day period to come "up to speed" on competition issues. A more reasonable,

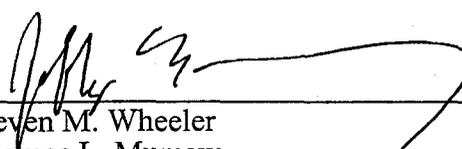
1 and far less presumptuous, assumption is that the Commissioner appointed by the Governor would
2 himself or herself express any concerns about his or her ability to make an informed decision on
3 the settlement.

4
5 **IV. CONCLUSION**

6 Enron and PG&E provide no persuasive reasons to support a 60-day delay in the
7 procedural schedule. Rather, they both ignore the similarity between this procedural schedule and
8 the Chief Hearing Officer's April 21, 1999 Procedural Order, to which neither party objected.
9 There is no reason to further delay the resolution of APS's stranded costs and unbundled tariffs, as
10 well as the other issues addressed in the Settlement. Accordingly, APS urges the Chief Hearing
11 Officer to deny the Motions.

12 RESPECTFULLY SUBMITTED this 21st day of June, 1999.

13
14 SNELL & WILMER L.L.P.

15 
16 _____
17 Steven M. Wheeler
18 Thomas L. Mumaw
19 Jeffrey B. Guldner

20 Attorneys for Arizona Public Service Company
21
22
23
24
25
26

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center
Phoenix, AZ 85004-0001
(602) 382-6000

1 A copy of the foregoing hand-delivered
2 this 21st day of June, 1999, to:

3 The Honorable Jerry Rudibaugh
4 Chief Hearing Officer
5 ARIZONA CORPORATION COMMISSION
6 1200 West Washington
7 Phoenix, AZ 85007

8 Paul Bullis
9 Chief Counsel, Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington
12 Phoenix, AZ 85007

13 and mailed to:

14 Lawrence V. Robertson, Jr.
15 MUNGER CHADWICK, P.L.C
16 National Bank Plaza
17 333 North Wilmot, Suite 300
18 Tucson, AZ 85711
19 Attorneys for ENRON and PG&E Energy Services

20
21
22
23
24
25
26


677969.02

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center
Phoenix, AZ 85004-0001
(602) 382-6000