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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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JUN 30 1999

AZ CORP COMMISSION
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AZ CORP COMMISSION

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

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

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

Pursuant to the Procedural Order dated May 25, 1999, Intervenor Arizona Consumers Council hereby submits the following comments regarding the proposed APS Settlement:

Contrary to the Parties' assertions in the Settlement Agreement, the Agreement, if approved by the Commission, would be illegal and contrary to the public interest. Specifically, the Parties' list six reasons beginning on the first page of the Settlement Agreement as the basis for their assertions that it is in the public interest. The Arizona Consumers Council disagrees with each of them.

First, the Parties assert that customers will receive substantial rate reductions. The Arizona Consumers Council believes there are significant questions about whether the rate

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1 reductions are substantial enough. On the state of the existing record in this case, there is
2 nothing to support a finding by the Commission that the rates resulting from the Agreement
3 would be just and reasonable. No financial information of any kind has been offered by any of
4 the Parties to support such a finding. Nor is there any evidence regarding the fair value of APS'
5 property upon which to base a finding that the rates would be just and reasonable.

6 The Arizona Consumers Council is concerned that the Commission would even consider
7 approving the rates proposed by the Agreement without any investigation into the financial
8 condition of APS. There is good reason to believe that the rate reductions included in the
9 Agreement are inadequate. The Agreement provides that APS will transfer its competitive assets
10 to an affiliate but does not remove those assets from APS' rate base. As a result, APS customers
11 will continue to pay a return on those assets. However, no party has offered any analysis to
12 indicate that the rates proposed in the Agreement are anywhere close to what they should be if a
13 full rate proceeding was conducted and rates determined based upon a substantially reduced rate
14 base for APS.

15 Second, the Parties assert in the Agreement that competition will be promoted through
16 the introduction of retail access faster than would have been possible without the Agreement.
17 They further assert that the Agreement will provide customers with competitive choices for
18 generation and certain other retail services. There is nothing in the Agreement or in the record in
19 this case to substantiate either assertion. Residential customers will still have no competitive
20 choices for generation if the Agreement is approved and any competition that will be promoted
21 through the Agreement will be unavailable to residential and small business customers.

22 Third, the Parties assert that economic development and the environment will benefit
23 through the rate reductions and the continuation of renewable and energy efficiency programs.
24 However, there is nothing in the Agreement that provides for the continuation of such programs.

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1 Fourth, the Parties assert that universal service will be maintained through APS' low
2 income assistance programs and establishment of "provider of last resort" obligations for
3 customers "who do not wish to participate in retail access." Settlement Agreement at 2. Once
4 again, there is nothing in the Agreement or in the record to indicate that customers will be able to
5 exercise a choice to participate in retail access.

6 Fifth, the Parties assert that APS will be able to recover its regulatory assets and stranded
7 costs without the necessity of a general rate proceeding. It is incomprehensible to the Arizona
8 Consumers Council how the failure to conduct a general rate proceeding can be touted as a
9 benefit of the Agreement. The last time APS had a rate case that was decided after a full hearing
10 and without a settlement was in 1988. Now, when we are on the verge of a complete
11 restructuring of APS' rates and there are substantial questions raised about those rates, the
12 Commission is being asked to resolve those important questions without the benefit of even the
13 most cursory of financial examinations. Not only would it be unlawful for the Commission to
14 approve new and restructured rates for APS without a rate proceeding, it would be a complete
15 abdication of the Commission's responsibility to ensure that the rates changed are just and
16 reasonable.

17 The Agreement provides that APS will not file a general rate case until June 30, 2003—
18 four years from now—and that any rate changes resulting from that filing would not become
19 effective prior to July 1, 2004. Paragraph 2.7, Settlement Agreement at 4. If the Agreement is
20 approved, it will have been 15 years between rate cases for APS. The Commission cannot
21 possibly allow that to occur especially based on the record in this case which contains no data
22 whatsoever upon which to conclude that the rates called for in the Agreement are just and
23 reasonable.

1 Sixth, the Parties assert that substantial litigation and associated costs will be avoided by
2 amicably resolving these issues. They are wrong. If the Commission approves this Settlement
3 Agreement, there will be substantial litigation challenging that approval.

4 The foregoing constitutes the general objections of the Arizona Consumers Council to
5 approval of the proposed Settlement Agreement. Additionally, the Council provides the
6 following comments with respect to the specific terms of agreement contained in the proposed
7 Settlement. The comments are referenced by the appropriate paragraph numbers.

8 1.6. This section requires the Commission to approve an adjustment clause to provide
9 full and timely recovery of the costs that are specifically denominated in that
10 section. This section is unlawful for two reasons. First, the Commission cannot
11 agree to establish an adjustment clause in the future when it has not made the
12 financial examination that would support the establishment of such a clause.
13 Second, the Commission cannot bind a future Commission to establish an
14 adjustment clause.

15 2.8. This section allows APS to seek changes in unbundled or standard offer rates
16 under certain circumstances. However, there is no similar provision for the
17 Commission. Indeed, this section provides that the unbundled and standard offer
18 rates shall remain unchanged until at least July 1, 2004. This provision is illegal
19 to the extent that it would bar the Commission from considering a petition for
20 appropriate rate changes made pursuant to A.R.S. § 40-246.

21 3.2. In this provision, the Parties assert that APS has demonstrated that its allowable
22 stranded costs after mitigation and exclusive of regulatory costs are at least \$533
23 million net present value. There has been no such demonstration in this case and,
24 on the basis of this record, it would be impossible for the Commission to so
25 conclude.

1 3.3. This section guarantees that APS will be allowed to recover 100% of the agreed
2 upon stranded costs. That is true regardless of what happens to market rates in the
3 meantime. Even if market rates increase substantially, this provision unfairly
4 allows APS to nevertheless recover the agreed upon amount.

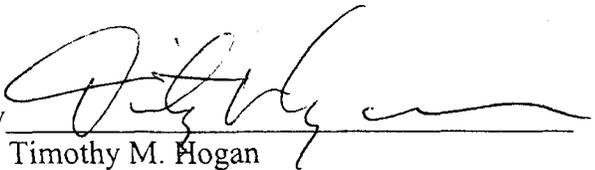
5 3.4. This section purports to bind future Commissions and specifically makes the
6 Agreement "enforceable against this and any future Commission." This provision
7 is illegal. This Commission is completely without authority to prevent future
8 Commissions from appropriately exercising their constitutional responsibilities.

9 4.1. This provision requires the Commission to approve the formation of an affiliate of
10 APS to acquire at book value the competitive services assets. Notably, the
11 Agreement does not specify the book value of those assets nor has any evidence
12 been submitted to indicate the book value of those assets.

13 The foregoing specific comments are not intended to limit the general objections
14 interposed by the Arizona Consumers Council earlier in these comments. Moreover, the Council
15 reserves the right to raise additional objections based upon data or information that it receives
16 after the date these comments are filed.

17 DATED this 30th day of June, 1999.

18 ARIZONA CENTER FOR LAW IN THE
19 PUBLIC INTEREST

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