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Arizona Corporation Commission JUN 30 11 52 AM '99

DOCKETED

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

JUN 30 1999
DOCKETED BY [Signature]

IN THE MATTER OF THE FILING OF) DOCKET NO. E-01345A-97-0778
ARIZONA PUBLIC SERVICE COMPANY OF)
UNBUNDLED TARIFFS PURSUANT TO A.A.C.)
R14-2-1602 et.seq.)

IN THE MATTER OF THE COMPETITION IN) DOCKET NO. RE-00000C-94-0165
THE PROVISION OF ELECTRIC SERVICES)
THROUGHOUT THE STATE OF ARIZONA.) COMMENTS ON THE PROPOSED APS STRANDED
COST SETTLEMENT)

Pursuant to Arizona Corporation Commission ("Commission") Procedural
Order dated June 23, 1999, the Arizona Transmission Dependent Utility Group¹,
by its undersigned counsel, herewith files its comments and disagreements
regarding the proposed settlement. These comments and disagreements will be
divided into two parts. The first part will be general observations and the
second part will be a seriatim listing of comments and disagreements, done in
that fashion for ease of reference and not an indication of the relative
importance of each comment or disagreement.

¹ Aguila Irrigation District, Ak-Chin Indian Community, Buckeye Water
Conservation and Drainage District, Central Arizona Water Conservation
District, Electrical District No. 3, Electrical District No. 4, Electrical
District No. 5, Electrical District No. 7, Electrical District No. 8,
Harquahala Valley Power District, Maricopa County Municipal Water District
No. 1, McMullen Valley Water Conservation and Drainage District, Roosevelt
Irrigation District, City of Safford, Tonopah Irrigation District, Wellton-
Mohawk Irrigation and Drainage District.

1 this write-off is a condition of the order.

2 The testimony of Alan Propper (pp.5-6) attempts to justify the use of
3 1996 data for analysis of this settlement and the proposed rate reductions.
4 We believe that FERC Form 1 should have been filed and available by now for
5 1998 and 1998 data would be a much better comparison for what the customers
6 of APS will actually receive in the proposal. Since there are many that
7 believe that stranded costs are illusory in the fastest growing city in the
8 nation (Arizona Republic, June 30, 1999), the least APS could do is use the
9 most recent data showing the benefit of this growth to it over the last two
10 years.

11 Throughout the settlement agreement, there is reference to the fact
12 that APS and its shareholders will be provided a "reasonable opportunity" to
13 recover stranded costs and regulatory assets. In point of fact, the recovery
14 under the settlement agreement is guaranteed. If these costs are under-
15 collected during the settlement period, the Commission will be obligated to
16 allow them to continue to be collected in the next phase of collection, i.e.,
17 costs of deregulation. In other words, APS and its shareholders are
18 guaranteed this recovery regardless of conditions that might under a
19 "reasonableness" standard allow such collection to fall short. In turn,
20 there is no remedy for overcollection except a credit against future
21 collection of deregulation costs. If the overcollection exceeds the
22 potential recovery of such deregulation costs, APS and its shareholders would
23 reap a windfall. All of this, of course, assumes that APS will actually
24 suffer the stated amount of stranded costs while its core business remains
25 serving retail electric customers in the fastest growing city in the nation.

SPECIFIC COMMENTS AND DISAGREEMENTS

24 Section 1.1. We obviously need real dates for this settlement since none of
25 the deadlines denominated as July 1, 1999 will be met.

1 **Section 1.3.** Any future negotiations need to include intervenors to this
2 proceeding and Commission staff.

3 **Section 1.4.** In this section and elsewhere, this settlement agreement would
4 overrule Commission rules wherever there might turn out to be a conflict in
5 the future. This is entirely too sweeping a provision and could be used in
6 the future to argue that the Commission is powerless to punish APS for
7 admittedly inappropriate conduct merely because the conduct can be said to
8 fall within the four corners of the settlement agreement. Moreover, in this
9 particular section, APS can argue that it does not have to allow competitors
10 retail access if it can find some excuse for not doing so in this agreement.
That is contrary to State policy.

11 **Sections 2.1 and 2.2.** Here again, the July 1, 1999 date problem arises.

12 **Section 2.5.** The test for allowing APS to request changes to specific rate
13 schedules should be that the requested change is consistent with the
14 settlement agreement and not that it might significantly affect the overall
15 earnings of the company. This settlement agreement has to do with recovery
16 of \$350 million of stranded costs. If that process is approved by the
17 Commission and goes forward on schedule, then the overall earnings of APS are
18 irrelevant and not a proper test of whether APS can request rate schedule
changes.

19 **Section 2.6.** This paragraph should be modified to clarify that the
20 adjustment clause affects retail electric customers as that definition is
21 used in the Rules. APS proposes to provide a variety of services to a
22 variety of customers, in both regulated and unregulated modes, in the future.
23 This section obviously is not intended to apply to anything other than retail
electric customers.

24 **Section 2.8.** This is perhaps the most egregious section of the entire
25 document. If something goes wrong, APS can raise rates. However, if the

1 stranded costs defined in the settlement agreement do not materialize, APS
2 gets to collect the money anyway. Even if APS has to pay the money back
3 later in terms of a credit against restructuring costs and can do so, the
4 time value of that money is a penalty to retail electric customers of APS.

5 **Section 4.1.** This section would require the Commission to allow APS to
6 retain top-down command and control over all its affiliates. Allowing this
7 would effectively reverse a portion of the Commission order granting APS
8 Energy Services its Certificate of Convenience and Necessity. That affiliate
9 has already restructured itself to become a direct subsidiary of the holding
10 company, Pinnacle West. We believe that the temptation presented by an APS-
11 controlled corporate structure is faulty because it basically denies human
12 nature. That APS is seeking carte blanche to manipulate its corporate
13 structure to its advantage and to the competitive disadvantage of others is
14 aptly demonstrated by the provisions of Sections 4.2 and 4.4.

15 **Section 4.4.** In addition to the "free range chicken" approach to corporate
16 restructuring that APS wants, it also wants the Commission to make findings
17 that will allow it to establish a subsidiary that would qualify as an exempt
18 wholesale generator. There is absolutely nothing in the record at this point
19 in time to substantiate the stated Commission determinations, nor as to
20 resources and access to books and records of APS and any "relevant"
21 associate, affiliate or subsidiary company, is there probably a way of
22 accurately supporting that statement. Indeed, under the settlement
23 agreement, the Commission's regulatory authority over APS affiliates would
24 disappear. So the statement disproves itself. APS intends to buy power from
25 its affiliate at "market based rates" but, contrary to the statement in the
section, will not be regulated by the Commission because it will operate at
the wholesale transaction level. If it is exempt from FERC regulation, then

1 there will be no one left to determine impartially whether the transactions
2 are being conducted "at market based rates".

3 **Section 4.6.** The statement here about reservation of rights under Sections
4 205 and 206 of the Federal Power Act implies that other rights under the
5 Federal Power Act are not being reserved. Is it APS' intention that parties
6 and the Commission waive any rights that would otherwise accrue elsewhere
7 under the Federal Power Act? If APS generation is housed at an exempt
8 wholesale generator, what does this statement mean? Does the reservation
9 being limited to "any APS affiliate formed under the provisions of this
10 Article IV" mean that rights under the Federal Power Act are waived as to APS
11 itself and all other affiliates formed in some other fashion?

12 **Section 6.1.** We believe the August 1 drop dead date is unrealistic and must
13 be modified. The Commission should not be stampeded.

14 **Section 6.2.** This is another example of the Commission potentially being
15 asked to agree not to hear complaints of third parties and to agree to
16 restrictions on statutory jurisdiction.

17 **Section 7.1.** This section also contains a provision that overrides the Rules
18 as to any potentially conflicting provision and is over-broad.

19 **Section 7.2.** Under this provision, if anything goes wrong, then APS gets its
20 Certificates of Convenience and Necessity back as if nothing had happened.
21 That is not consistent with State policy, either as articulated by the
22 Commission or the Arizona Legislature. Moreover, it is not good public
23 policy. Once the Commission opens Pandora's box, it cannot be closed. If
24 some other method for considering stranded cost recovery has to replace the
25 settlement agreement, so be it. If the Commission chooses to delay the start
of competition because of that eventuality, so be it. But this is one genie
that will not be forced back into the bottle.

1 Section 7.6. We do not understand why APS would file changes to its existing
2 OATT "consistent with this section" only. We are not aware that either the
3 AISA or the Desert STAR Independent System Operator are proceeding on a pace
4 that is compatible with the schedule contemplated by this settlement
5 agreement. If APS has proposed changes to its existing OATT that it has in
6 mind, those changes and their meaning with regard to the AISA, at the very
7 least, should become part of this record.

8 Section 7.7. It is unclear that the interim code of conduct promised here
9 will be a code of conduct that applies to employees of affiliates as well as
10 APS. It does no good to fashion rules of conduct for APS if its affiliates
11 are not bound by those rules.

12 Section 7.8. Here again, discussion of any disagreement over the
13 interpretation of this agreement should include the intervenors and
14 Commission staff. The provision doesn't say what happens if the disagreement
15 is not resolved, nor does it say whether the provision applies before
16 Commission approval or after or both. Obviously, some additional clarity is
17 needed.

18 While we have not had an opportunity to examine the rate schedules
19 attached to the settlement in detail, it appears that a cost shift to
20 distribution has occurred between this proposal and the one that accompanied
21 the former proposed settlement. Since any such cost shift aids APS'
22 competitive position and is a disadvantage to its competitors, it should be
23 scrutinized carefully by staff.

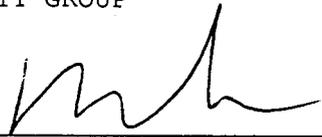
24 RESPECTFULLY SUBMITTED this 30th day of June, 1999.

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ARIZONA TRANSMISSION DEPENDENT
UTILITY GROUP

By 

Robert S. Lynch
Attorney at Law
340 E. Palm Lane, Suite 140
Phoenix, Arizona 85004-4529

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7 Original and 10 copies of the
8 foregoing filed this 30th day
of June, 1999 with:

9 Docket Control
10 Arizona Corporation Commission
11 1200 West Washington Street
12 Phoenix, Arizona

13 Copies of the foregoing mailed
14 this 30th day of June, 1999,
15 to:

16 Service List for Docket No. E-01345A-98-0473
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