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ARIZONA CORPORATION COMMISSION

1999 JUL 29 A 11:38

July 29, 1999

AZ CORP COMMISSION
DOCUMENT CONTROL

Mr. Greg Patterson, Director
Residential Utility Consumer Office
2828 N. Central Ave., Suite 1200
Phoenix, Arizona 85004

Arizona Corporation Commission
DOCKETED

JUL 29 1999

Re: APS Settlement Proposal - Docket No. E-01345A-98-0473
E-01345A-97-0773
RE-00000C-94-0165

DOCKETED BY

Dear Mr. Patterson:

I read with interest some of the comments attributable to you in two recent articles, "Utility panel in turmoil," The Arizona Republic, July 24, 1999, and "Corporation Commission in turmoil," The Tribune, July 25, 1999 (attachments No. 1 and No. 2).

First of all, thank you for finally acknowledging that Commissioners Kunasek and West's decision to "stay" the Electric Competition Rules back in January of this year, "has delayed rate reductions, rebates to ratepayers and competition that ultimately will lead to lower prices." In an editorial entitled, "End the costly delays," The Tribune, June 24, 1999 (attachment No. 3), it is reported that based on figures from the Energy Information Administration, Arizona consumers have paid about \$45 million dollars more for electricity than they should have since the beginning of this year.

However, please direct your attention to the response provided by Commissioner Irvin entitled, "Arizona utilities stall competition," The Tribune, July 2, 1999 (attachment No. 4). The operative paragraph – and one that should create concern for consumers – states:

"In essence, Arizona's investor-owned electric utilities have positioned themselves brilliantly – while supporting the delay and saving their companies roughly \$45 million, they were able to get the Competition Rules changed so that any swift action by the commission will result in competition based on their terms."

Indeed, the Commission is now considering a settlement proposal negotiated between Arizona Public Service Company (APS), Arizonans for Electric Choice and Competition (AECC) – which represents large industrial interests, and RUCO. As Director of RUCO, you

have supported the settlement for a number of reasons, based primarily on the belief that it is beneficial to the residential consumers you represent. However, based on your testimony given on July 16, 1999, in a hearing concerning this matter, I believe a few clarifications are warranted.

Contrary to your assertion that consumers were not represented during negotiations resulting in the 1998 proposal by Arizona Public Service and Tucson Electric Power, they in fact were. Although RUCO's role is to advocate solely on behalf of utility consumers, it is the Corporation Commission which ultimately serves to protect the public interest in such matters. As a party to the prior negotiations, Commission staff did represent the interest of Arizona electric consumers, and carefully considered all options based on an independent analysis of issues such as stranded cost, market power and shopping credits.

However, Commission staff was not invited to actively participate in the negotiations which led to the most currently proposed APS settlement. Instead, RUCO was invited to act on behalf of consumers during the settlement process; as Director, you represented residential interests.

The settlement proposal contains, among other things, the Commission's promise that APS will recover at least \$350 million in stranded costs from ratepayers, with more to be determined at a later date (i.e. market transition costs). However, I find it disturbing that -- acting in your capacity as a consumer advocate -- you chose to use information provided by APS and AECC in concluding that the agreement is good for residential consumers. In fact, you admit by your testimony that RUCO did not perform any independent analysis or study of the factors contained in the settlement agreement. (attachment No. 5)

In an article entitled, "Poor me," appearing in the May issue of Forbes Magazine (attachment No. 6), on the issue of stranded cost recovery, it states:

"What happens if the utility doesn't get the compensation it wants? Litigation...For this reason, legislators and regulators sometimes feel like they need to cut some deal, any deal, just to get a competitive market moving forward."

Part of the APS deal includes what you believe is a benefit to Arizona consumers: the withdrawal of pending appeals by APS on the Commission's legal right to deregulate the electric industry in the first place. However, although you admit in your testimony that it was your intent in signing the agreement that APS withdraw its litigation, you understand that other parties (like TEP and AEPCO) could continue with the appeal. You essentially agreed with Mr. Robertson during cross examination that, "the Commission is being asked to approve at this point in time an agreement...without one iota of assurance that, in fact, the pending consolidated appeals of its competition orders will be dismissed at any point in time or concluded in the near future?" (attachment No.7). So I ask, where is the benefit?

The various parties who challenged the Commission's authority to deregulate the electric industry lost their case in Superior Court – that is why they are appealing the decision. So, your adulation for APS' "very aggressive, very effective counsel" (attachment No. 7) should be tempered with some recognition that consumers also enjoy the services of very effective counsel; namely, those attorneys within the Commission's legal division who successfully defended the Commission's authority to deregulate the industry in Arizona's courts.

I will not argue that APS does employ some of the finest attorneys Arizona has to offer -- attorneys who advocate very effectively for their client, and you testify to this fact:

"I understand what APS' resources are, and you could convince me subject to check that they had never filed a thing, done a thing, or said a thing, and I would tell you that they are in my opinion a very powerful organization with a tremendous amount of resources that could wreak a lot of havoc in this docket."

"And having APS against us in something like this or against the Commission in something like this is worse than not having them in it."

"I mean, APS I think is a very effective combatant in the arenas in which they fight. I think they have a lot of resources. I think they can do very well."

"I do, however, believe that APS counsel is very bright, and that having them as part of this, if I can have them agree to remove themselves from this, it's a benefit to residential consumers." (attachment No. 7)

But it is because of these tremendous resources available to utilities such as APS that we have state agencies like RUCO to protect consumers, wouldn't you agree? It is because of these tremendous resources that RUCO should not take for granted the figures and analysis provided by competing interests to residential consumers – in this case, APS and AECC – as an unquestionable statement of the facts, wouldn't you agree? And finally, it is because of APS' tremendous resources and threats to litigate this matter for eternity that you made a political decision – not one based on whether the settlement actually promotes competition in Arizona – to support the agreement, wouldn't you agree?

I will concede your point that the delays and uncertainty surrounding Arizona's move toward competition has not been good for consumers. But as a representative of the "little guy," you should not lose sight of the long-term goals in restructuring the electric industry – robust competition that brings consumer choice, technological innovation and lower rates for the average citizen at large. APS should not be allowed to hold the specter of continued litigation in an attempt to bring competition within their service area on their terms – especially given its considerable burden in appealing the Court's decision upholding the Commission's authority to implement competition on its terms. Please recognize the outstanding work of our legal division in this regard who, in a recent case involving US West, also established that Arizona utilities do

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Page 4

not possess a "regulatory compact" with the ACC. As you are aware, utilities often argue that stranded cost recovery is based on this regulatory compact concept.

In the recent Auditor General's performance audit of RUCO, it explicitly states:

"According to the act establishing RUCO, the agency is intended to represent the interests of residential consumers, *critically analyze proposals made by public service corporations to the Commission*, and formulate and present recommendations to the Commission." [Emphasis added] (attachment No. 8)

The fact that RUCO did not conduct a critical analysis of the proposed settlement between APS, AECC and RUCO seems to suggest that your organization failed to meet its obligations to residential consumers in this very important matter.

Sincerely,



Patrick J. Black, Esq.
Executive Assistant to Commissioner Irvin

Cc: Honorable Jane Dee Hull, Governor
Carl J. Kunasek, Chairman
Jim Irvin, Commissioner
William A. Mundell, Commissioner
Docket Control

Utility panel in turmoil

Criminal probe of Irvin provides new distraction

By Max Jarman
The Arizona Republic

The criminal investigation of Arizona Corporation Commissioner Jim Irvin could serve to further distract the three-member panel already hamstrung by political infighting, jealousy and revenge.

The commission's turmoil comes as it faces critical issues that demand its attention:

- US West has almost \$200 million in rate increases pending before the commission. The phone company also has submitted an application to get into the long-distance businesses, on which the fate of the deregulation of the state's telecommunications industry now hangs.

- Then there is the deregulation of the state's electricity industry. That hinges upon the commission approving a settlement agreement with Arizona Public Service Co. and other utilities, allowing them to recover from ratepayers hundreds of millions of dollars in investments they claim will be lost under



Jim
Irvin

deregulation:
• Finally, there is the sale of Southwest Gas Corp., which is at the center of a criminal investigation of Irvin and former panel Executive Secretary Jack Rose. The sale also is central

to a \$750 million civil lawsuit filed by an unsuccessful bidder for Southwest in which Irvin and Rose are defendants.

The suit, filed by Southern Union Co. of Austin, alleges that Irvin improperly influenced the decision by Southwest Gas Corp., Arizona's principal natural gas utility, to sell to Oneok Inc. of Tulsa instead of Southern Union. The companies were in a bidding war for the Nevada utility.

— Please see **UTILITY**, Page A2

Utility commission faces new turmoil

— UTILITY, from Page A1

"In my experience, I've never seen the commission with so much on its plate," observed Greg Patterson, director of the Residential Utility Consumer Office, a consumer watchdog organization with regular business before the commission.

"You have one commissioner who has been removed from office, another who is under a criminal investigation," he said. "With it difficult to regulate utilities."

Patterson believes the latest development will temporarily compromise the effectiveness of the commission, but added that he is optimistic the commissioners would be able to rise to the occasion and

deal with its issues. In addition to investor-owned utilities, the commission also regulates the state's securities industry and keeps tabs on its corporations and limited liability companies.

"There's no hiding the fact it has not been a smooth ride at the commission for the past while," said Jerry Porter, an aide to Corporation Commission Chairman Carl Kunasek. "Now there's even more friction, with everyone pointing the finger at each other."

The suit against Irvin alleges he directed Oneok and Southwest to go through Rose on matters that needed his attention, although Rose had resigned. Rose and Irvin later traveled to San Francisco where, according to Southern Union attorneys, they tried to persuade

“

In my experience, I've never seen the commission with so much on its plate. You have one commissioner who has been removed from office, another who is under a criminal investigation. With this kind of chaos it makes it very difficult to regulate utilities.

GREG PATTERSON

DIRECTOR, RESIDENTIAL UTILITY CONSUMER OFFICE

California utility regulators to send a letter to Southwest's board expressing concerns about a Southern Union-Southwest combination.

The investigation by the Maricopa County Attorney's Office, the U.S. Attorney's Office in Phoenix and the FBI is thought to focus also

responsibilities. Bad blood between Irvin and Kunasek has been festering for months.

A building adversarial relationship between Irvin and Commissioner Tony West was interrupted in May by West's removal from office. But West's aide James Fisher has given depositions to the Maricopa County Attorney's Office and to Southern Union Co. about Irvin's actions.

While West was still in office, Fisher acknowledged replacing the picture of a suspected criminal stalker on a flier with that of Irvin and posting it around the Corporation Commission.

Irvin also supported former Commissioner Rantz Jennings in a June bid to have Executive Secretary McNeil investigate Fisher for inappropriate activities such as the flier and allegations of leaking to the press a portion of the proposed settlement agreement between the commission and Arizona Public Service Co. Jennings served as commissioner in the interim between West's removal and Gov. Jane Hull's appointment of Bill Mundell.

Irvin also has offended Kunasek during public meetings, and vice versa. At a recent commission meeting, Irvin went on for 40 minutes about the alleged illegal decision made by Kunasek and West earlier this year that allowed US West to sell in-state long-distance services. The decision has been challenged by the Federal Communications Commission. The trade had Kunasek red-faced and staff members rolling their eyes and giggling.

The US West action was taken while West was out of town. It was the same meeting at which Kunasek was elected to replace Irvin as the panel's chairman. Irvin earlier resigned after learning Kunasek and West were about to vote him out. Irvin's removal was sweet revenge for Kunasek. Kunasek was furious when Irvin withdrew his support for the area-code overlay plan he backed and joined Rantz Jennings in support of a geographic split.

Jennings, whose term expired, was replaced by West in January.

"After the area code controversy, things really began to fall apart between Irvin and Carl," Baker said. According to Patterson, the animosity between Irvin and Kunasek started soon after Irvin began his six-year term in 1997.

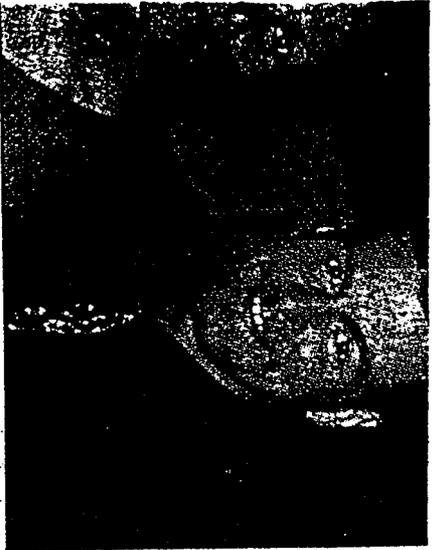
Irvin, a fellow Republican, who Kunasek thought would be an ally, quickly sided with Jennings to oust Geoffrey Gonsher as the commission's executive secretary. He was replaced by Jack Rose, a longtime Irvin political ally.

"Gonsher was Carl's appointment and I think he was surprised when Irvin sided with Rantz to get rid of Gonsher," Patterson said. Baker agreed.

"When Irvin got elected, Carl was upbeat, thinking he had a solid second vote and he would fall into place," he said.

"But Irvin has his own mind and it became clear that he wasn't going to be Carl's puppet. And I think that really made him angry."

Max Jarman can be reached at (602) 444-7351, or at max.jarman@pnd.com via e-mail.



COURTESY OF MIKE GOSSIE
 Reporter Tammy Letner and features editor
 Philip from Letner's brother in their quest for
 Wilson's disease.

time in an age of increasingly
 "get-em-in-and-get-em-out"
 medical care to spot Kayser-
 Fleischer rings in my eyes and
 alert me to the probability that I
 had Wilson's disease.
 "Wilson's disease?" I asked
 "Never heard of it."
 Not many have. After all,
 only one in 40,000 people get
 Wilson's disease.
 Wilson's disease is a genetic
 disorder that prevents people
 from metabolizing copper. Over
 a patient's lifetime, copper —
 the outer edge of the eye.

The Apache Junction
 resident was rushed
 by ambulance to St.
 Luke's with an aneur-
 ism caused by a ruptured artery to the head.
 People survive the first 24 hours.
 Physicians frantically called specialist after spe-
 cialist. Some were in surgery. One specialized in
 lungs, not hearts. And others wouldn't come in sim-
 ply because they were not on call.
 Finally, a surgeon was found who could treat
 Allen at Good Samaritan. He was rushed there, fol-
 lowed by Johana, 42.
 "I was thinking, dear Jesus, just let me get to
 him," said the preschool teacher, who has known
 her husband since she was 14.
 She made it, and so did he.

Jubilee, Front Page, 7/25/79

RIBUNE

Corporation Commission in turmoil

Infighting stalls change, delays utility rate reductions, rebates

BY MARK FLATTEN
 THE TRIBUNE

Nearly two years of turmoil on the Arizona Corporation Commission has stifled consumers and made investments in the state's utilities a high-risk nightmare, according to ratepayer advocates, independent analysts and company officials.

The fights have resulted in disarray on the commission's staff. That has delayed rate reductions, rebates to ratepayers and competition that ultimately will lead to lower prices, said Greg Patterson, head of the state's Residential Utility Consumer Office, the agency that represents

MORE INSIDE

▶ Mundell cautious with words, actions, ratepayers' interests. "I think it's primarily personality-driven," Patterson said. The squabbles also have led to an unstable regulatory environment that makes Arizona utilities high-risk investments.

Returns to investors have declined, thereby raising the companies' cost of securing the money they need to provide service to their customers, said Patrick Abramson, senior utilities analyst at PaineWebber investment firm in New York.

"Investors do not like uncertainty and that's what they've had with Arizona utilities — uncertainty and delay," Abramson

Please see **TURMOIL**, Page A9

Please see **ER**, Page A6



Carl Kunasek



Jim Irvin



Bill Mundell

What does the Arizona Corporation Commission do?

- Regulates the rates and practices of private or investor-owned utilities. This includes most power, natural gas, water and phone companies. The commission has no jurisdiction over Salt River Project or Mesa power companies, or municipal water service, because those entities are government-owned.
- Licenses and regulates securities dealers and sales.
- Regulates railroad safety.
- Maintains public records on corporations.

X		
F	D3	Landers
NEWS	E10	Movies
D	D3	People
SS		Section B
FILED		Section E
NEWS	A3	Lottery
A	A2	Obituaries
D	A2	Obituaries
I & WORLD		Pages A10-18
ACTIVE	F2	Opinion 2
S		Section C
II	C1, C4-7	Golf
C	C12	Scoreboard
ER		Section G
S		Page C11
		Page E25

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EDITORIALS

Mundell faces electric deregulation

End the costly delays

Thankfully, Gov. Jane Hull wasted no time in replacing ousted utility commissioner Tony West. Let us hope the commission will just as quickly get down to the important business of saving consumers money.

The halting, slow pace of deregulation so far is costing all of us money. Big money.

Take electric deregulation, which was supposed to kick in at the beginning of this year but was delayed for more "study." Based on figures from the Energy Information Administration, since the first of the year Arizonans have paid about \$45 million more for electricity than they should have due to the delay.

And the meter keeps spinning. (You can actually see the "Lost Savings Meter" ticking your dollars away by logging on to the Goldwater Institute's Web site at www.goldwaterinstitute.org on the Internet.)

Former state legislator Bill Mundell, appointed by Gov. Hull to replace West on the Arizona Corporation Commission, not surprisingly says his first task will be studying the key deregulation issues so he can make wise decisions. That is good.

But when it comes to deregulation, there is such a thing as too much study. There also is a very real danger of over-regulating the process of deregulation.

Congress was guilty three years ago when it passed a telecommunications deregulation law that is so hopelessly complex that it has stalled competition. It also has put way too much authority in the hands of federal bureaucrats to write rules that have preempted states' authority to foster robust competition.

Out of frustration with the mountain of federal rules, the Arizona Corporation Commission last month ripped down a barrier that had prevented US West from offering its customers in-state long-distance service. Although the move could mean lower long-distance rates for Arizona consumers, a federal official has threatened legal action to block it.

The laudable justification for establishing some rules for the process of deregulation

Former state legislator Bill Mundell, appointed by Gov. Hull to replace West on the Arizona Corporation Commission, not surprisingly says his first task will be studying the key deregulation issues so he can make wise decisions. That is good.



Bill Mundell

is to ensure it's reasonably orderly and that there is a "level playing field" among all contenders for business and residential customers. The problem is that, even under the best of circumstances, the marketplace is neither orderly nor absolutely fair.

Especially to government regulators, whose duties and instincts involve control, market forces can seem unnervingly chaotic and unjust.

That brings us back to Mr. Mundell, who is a moderate Republican and served as chairman of the House Environment Committee while in the Legislature. He worked hard to strengthen state air and water quality laws that had been shamefully lax.

It was a process that involved extending the state's regulatory tentacles into areas that needed tighter controls.

By contrast, the role of the Arizona Corporation Commission at this point in history is all about loosening controls so competition can kick in. Just as Arizonans can now shop around for the best deal in long-distance service, we also should be able to shop for our local phone service as well as our residential electric service.

The process should be reasonably orderly and fair. But it also needs to be swift.

Members of the Arizona Corporation Commission need to feel a sense of urgency to expedite deregulation — that continued delays are costing each of us plenty.

In electric charges alone, the lost savings are racking up at \$260,000 a day. That's \$3 per second.

Let's hope Bill Mundell is a quick study.

Attachment No. 3

LETTERS

Arizona utilities stall competition

I read with interest your editorial entitled "End the costly delays," which appeared June 24, 1999, claiming that Arizona consumers have lost about \$45 million from delaying electric deregulation.

On May 13, 1999, one of the reasons I stepped down as chairman of the Arizona Corporation Commission (ACC) was because of the move by my colleagues West and Kunasek to delay competition, describing it as, "cost[ing] Arizona consumers millions of dollars in anticipated savings."

However, since the Electric Competition Rules have been stayed, changes were made which now allow Arizona utilities to: 1) recover money for stranded costs based on their own estimates (Arizona Public Service and Tucson Electric Power have requested a combined reimbursement of over \$1 billion), 2) write their own rules of conduct for transactions between regulated and unregulated affiliates, and 3) disallow residential and small business consumers to aggregate power into larger purchasing blocks.

I have opposed these substantial changes with the belief that crafting Competition Rules which favor some entities over others is anti-competitive and anti-consumer. But to change them again would delay the process even further.

In essence, Arizona's investor-owned electric utilities have positioned themselves brilliantly — while supporting the delay and saving their companies roughly \$45 million, they were able to get the Competition Rules changed so that any swift action by the commission will result in competition based on their terms.

It should be no surprise to Arizona consumers that monopolies fear competition, as evidenced by the numerous lawsuits filed against the ACC in trying to deregulate both the telecommunications and electric industries. The settlement proposals submitted by both APS and TEP have been characterized by potential competitors as sacrificing true competition for short-term rate cuts for consumers.

Therefore, it is incumbent upon myself and my colleagues to consider these concerns and determine which path ultimately leads to lower prices for consumers — not only within the next five years but well into the next millennium.

In January 1999, I voted to keep deregulation on track and work on fine tuning the rules as issues arose. But we can't look back — only forward — and I am confident that the certainty resulting from the governor's well-thought and reasoned appointment of Commissioner Mundell will bring the stability that this commission needs; stability to implement a deregulation plan which is fair to utilities, potential market entrants, and most important, all classes of Arizona consumers.

Jim Irvin
Arizona Corporation
Commissioner

Attachment No. 4

RESPONSE TO COMMONWEALTH ENERGY'S DISCOVERY REQUEST

1. Promotion of Competition
 - a. Please furnish any study performed on the Settlement's ability to promote electric competition.
 - b. Please provide any study that illustrates the expected generation shopping credit that are imputed within the Direct Access tariffs.
 - c. Please provide any study that forecasts the expected numbers of customers (by class with their respective loads) that are likely to seek competitive electric services if the Settlement is approved.
 - d. Please provide any study that assures the public of no cost shifting associated with the same service that a customer receives under the Standard Offer or from an ESP.
 - e. Please provide any study on the electric cost savings associated with the Settlement.

RESPONSE:

- 1.a. RUCO has not performed any formal study on the Settlement's ability to promote electric competition.
- 1.b. RUCO has not performed or reviewed any study illustrating the expected generation shopping credits.
- 1.c. RUCO has not performed or reviewed any such study.
- 1.d. RUCO has not performed or reviewed any such study.
- 1.e. RUCO has not performed or reviewed any such study beyond the terms of the Settlement Agreement itself. The Settlement Agreement provides for a total of 7.5% in rate reductions for residential standard offer customers, implemented as 1.5% reductions each year from July 1, 1999 through July 1, 2003. In addition, the Settlement provides for decreases in the CTC and distribution charges for Direct Access customers as set forth in Exhibit A, Schedules A and B to the Settlement Agreement.

Attachment No. 5

2.0 RUCO performed study on electric cost savings

Utilities are telling the rate regulators that their old power plants are practically worthless. But they're selling them for fancy prices.

Poor me

BY CHRISTOPHER PALMERJ

THE HOMER CITY GENERATION STATION is a 34-year-old, coal-fired power plant near Pittsburgh. What's it worth? Until last year it was carried on the books of two utilities for \$540 million. Then the companies sold it for \$1.8 billion, or \$955 per kilowatt—about what it would cost to build a brand-spanking-new electric plant.

Are old plants a millstone for utilities as they enter the deregulated future? That's what the utilities are telling rate regulators. We built all these plants over the years because you told us to, they are saying—and now that newcomers are about to undercut us, we need compensation for the "stranded costs." The logic of compensation for stranded costs is unassailable. The only debate is over the amount. Is the average power plant indeed a white elephant?

According to data collected by Cambridge Energy Research Associates, the average nonnuclear power plant put up for sale in the last year sold for nearly twice its book value. Granted, the plants being sold tend to be the more desirable ones, by dint of their location or their fuel efficiency. Still, the pricing makes one wonder whether the power industry should be entitled to much of anything for stranded costs.

Some states—California, Maine, Connecticut and New York, for example—have ordered utilities to sell all or part of their generation capacity. That should set an arm's length fair price. Thanks largely to the fat prices received for its power plants, Semptra Energy, the parent of San Diego Gas & Electric, says that its stranded-cost charges related to gener-

ation—about 12% of a typical customer's bill—will be paid off by July. That is two and a half years ahead of schedule, a savings of \$400 million for southern Californians.

Not every state legislature or utility commission has the political will to force divestiture, however. If a utility does not want to sell, the utility and the regulators have to estimate the fair market value for a plant and then see if that is a lot less than book value.

This is tricky business. Last year Allegheny Energy, parent of West Penn Power Co., estimated the value of its power plants at \$148 a kilowatt, half of their book value. An expert hired by a number of industrial energy users suggested the value should be \$409. A hearing revealed that Allegheny had bought back a half-interest in one of its plants two years earlier at a price of \$612 a kilowatt. Allegheny settled with the Pennsylvania Public Utility Commission for a valuation of \$225 a kilowatt, half again the original estimate. At that price, Allegheny's 700,000 customers in western Pennsylvania are stuck paying \$670 million in stranded costs.

What happens if the utility doesn't get the compensation it wants? Litigation. In New Hampshire the state legislature passed a law designed to open up the power market in 1996. New Hampshire's power companies and utility commission have been tied up in court ever since over the issue of stranded costs.

For this reason, legislators and regulators sometimes feel like they need to cut some deal, any deal, just to get a competitive market moving forward. The state of Virginia, for example, dodged any stranded cost calculation. In a move supported by local utilities, the legislature delayed true competition and simply froze electric rates until 2007. Utilities had donated more than \$1 million to Virginia politicians in the last two election cycles.

Last year Ohio legislators proposed a bill to open up the power market. They figured stranded costs at \$6 billion, spread among Ohio's eight big utilities. Not liking that number, the utilities

came up with an \$18 billion figure. The latest compromise is \$11 billion. This number represents, in effect, the excess of the plants' book value over their market value.



Power play

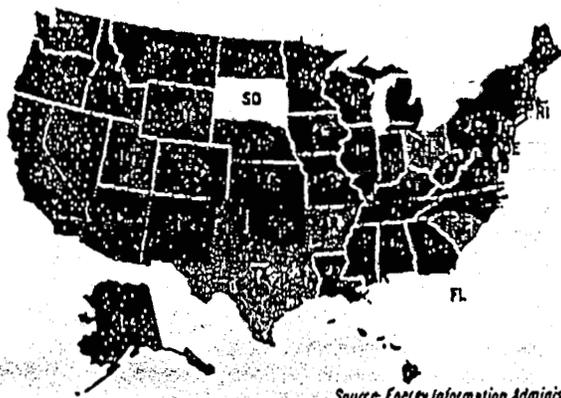
The Homer City, Pa. coal plant (above) brought a rich price. Where does electricity restructuring stand in your state? Check the map at left.

Wait a minute, says Samuel Randazzo, an attorney for some industrial power users. That \$11 billion number is more than the book value of all the plants. Can the utilities lose more than their investment? Negotiations are to continue.

"We are applying a political solution to an economic problem," shrugs Ohio utility commissioner Craig Glazer. "All intellectual arguments have been thrown out the window. Now it comes down to who screams the loudest."

Expect further screaming as utilities enter the deregulated market. ■

■ Restructuring legislation enacted ■ Commission or legislative investigation ongoing
 ■ Comprehensive deregulatory order issued ■ No ongoing significant activity
 ■ Legislation/orders pending



Source: Energy Information Administration.

1 Q. (BY MR. ROBERTSON) Do you know for a fact
2 how active APS has been in the consolidated appeals
3 vis-a-vis the other plaintiff parties?

4 A. No.

5 Q. So you made an assumption a moment ago in
6 attributing this significant player role to APS with
7 regard to those particular consolidated appeals, did
8 you not?

9 A. I understand what APS' resources are, and you
10 could convince me subject to check that they had never
11 filed a thing, done a thing, or said a thing, and I
12 would tell you that they are in my opinion a very
13 powerful organization with a tremendous amount of
14 resources that could wreak a lot of havoc in this
15 docket.

16 Q. That comment goes to what they prospectively
17 might do, because you just indicated a moment ago you
18 don't know what they've done; is that not correct?

19 A. But I think -- and to be responsive, your
20 point is, do I really see any advantage to having them
21 out of this? And the answer is not to get that
22 advantage have they been effective before or have we
23 done anything before, the question is, is it an
24 advantage to have them out so what can they do to us?

25 And the what they can do to us is not based on what

1 they've done before but on how powerful they are.

2 Q. How does it benefit the residential
3 ratepayers if those appeals continue for perhaps
4 several years whether or not APS becomes active or
5 more active?

6 A. Because my limited understanding of the court
7 system says that to the extent that you have high
8 quality counsel, high quality resources, that you do
9 better in cases than if you don't. And having APS
10 against us in something like this or against the
11 Commission in something like this is worse than not
12 having them in it. I didn't say it would be an
13 incredible difference, but I think if you got to the
14 point where you had fewer resources in this case that
15 the people could do better in this case.

16 I mean, APS I think is a very effective
17 combatant in the arenas in which they fight. I think
18 they have a lot of resources. I think they can do
19 very well. I think there is benefit from eliminating
20 their participation in these various appeals. I think
21 that's almost tautological.

22 Q. Do you know whether or not any of the other
23 plaintiffs that have been mentioned, for example,
24 Arizona Electric Power Cooperative and its power
25 distribution members who are plaintiffs in these

1 actions, are represented by Phoenix law firms who are
2 among what are regarded to be the top ten?

3 A. I have no idea who's representing the co-op.

4 Q. So you don't really know the relative impact
5 of APS' role in this litigation vis-a-vis the other
6 attorneys of record representing the other plaintiffs,
7 do you?

8 A. No, I don't know how powerful the co-ops are.
9 I don't know how good their case is. I do, however,
10 believe that APS counsel is very bright, and that
11 having them as part of this, if I can have them agree,
12 to remove themselves from this, it's a benefit to
13 residential consumers.

14 MR. WHEELER: Could I have that read back?

15 HEARING OFFICER RUDIBAUGH: He wasn't talking
16 about you, the other counsel.

17 THE WITNESS: The in-house counsel of APS is
18 very bright.

19 Q. (BY MR. ROBERTSON) Mr. Patterson, that
20 benefit's a matter of degree, however, is it not?

21 A. Absolutely.

22 Q. Now, going from that matter of degree
23 premise, is it not correct that under the settlement
24 agreement, ~~the Commission is being asked to approve at~~
25 ~~this point in time an agreement that confers certain~~

1 benefits and certain obligations upon the signatory'
2 parties, as well as certain obligations upon the part
3 of the Commission without one iota of assurance that,
4 in fact, the pending consolidated appeals of its
5 competition orders will be dismissed at any point in
6 time or concluded in the near future?

7 A. Again, referring to the Tucson Electric
8 consolidated on the left?

9 Q. Yes.

10 A. Yeah, I would say that's true.

11 Q. Let me have you turn to -- actually, you
12 don't need to turn. We can stay on Page 1.

13 A. I'm on page 7 still of my testimony.

14 MR. ROBERTSON: May I have just a moment,
15 Your Honor?

16 HEARING OFFICER RUDIBAUGH: I'll note you've
17 already gone beyond your limit, but I'm sure you're
18 getting close.

19 MR. ROBERTSON: I'll conclude my cross at
20 this point.

21 HEARING OFFICER RUDIBAUGH: Let's go to
22 Commonwealth.

23 Before I do, Enron, do you have any
24 questions? I know you have to go.

25 MS. LAWNER: No.

SUNSET FACTORS

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether the Residential Utility Consumer Office (RUCO) should be continued or terminated.

1. The objective and purpose in establishing RUCO.

The Legislature established RUCO in 1983 to represent the interests of residential utility consumers of regulated utilities in proceedings before the Arizona Corporation Commission. Prior to RUCO's existence, the Corporation Commission's Utilities Division staff was responsible for considering residential consumers' needs when making recommendations to the Commission. However, because Commission staff were also charged with making recommendations that considered a broad base of interests, including shareholder and company as well as commercial and industrial customers, they could not exclusively represent the interests of residential consumers.

According to the act establishing RUCO, the agency is intended to represent the interests of residential consumers, critically analyze proposals made by public service corporations to the Commission, and formulate and present recommendations to the Commission. As such, RUCO is authorized to prepare and present briefs, arguments, and proposed rates or orders, and to intervene or appear on behalf of residential utility consumers before hearing officers and the Commission.

2. The effectiveness with which RUCO has met its objective and purpose and the efficiency with which the agency has operated.

RUCO has generally met its objectives and purpose by intervening in matters involving residential utility consumers before the Corporation Commission. In addition, RUCO has actively participated in various forums to represent residential consumers in electric restructuring matters. However, the audit found that RUCO could more effectively meet its objectives by:

- Undertaking additional activities, such as developing a comprehensive strategic plan and formalizing its case selection process to better position itself for the future (see Finding I, pages 7 through 14).
- Improving its fiscal monitoring to comply with statutes for determining its annual assessment. In recent years, RUCO's annual assessment has been higher than necessary, generating a large and growing fund balance (see Finding II, pages 15 through 18).