



0000119649

ORIGINAL

RECEIVED
AZ CORP COMMISSION

AUG 5 10 37 AM '99

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

DOCUMENT CONTROL

AUG 05 1999

CARL J. KUNASEK
COMMISSIONER-CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

DOCKETED BY *Yam*

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. R14-2-1601 *ET SEQ.*

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

NOTICE OF FILING COMMONWEALTH'S CLOSING BRIEF

Commonwealth Energy Corporation ("Commonwealth"), through undersigned counsel, hereby provides notice of filing Commonwealth's Closing Brief. Commonwealth previously filed its Comments which reflects previously filed testimony in these dockets on these same issues. For convenience, Commonwealth attaches those Comments.

DATED this 5th day of August, 1999.

DOUGLAS C. NELSON, P.C.

Douglas C. Nelson

Douglas C. Nelson, Esq.
7000 North 16th Street, Ste. 120, PMB-307
Phoenix, Arizona 85020
Attorney on behalf of Commonwealth Energy Corporation

1 **ORIGINAL and ten copies** of the foregoing Notice and Closing Brief
filed this 5th day of August, 1999 to:

2 Docket Control
3 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
4 Phoenix, Arizona 85007

5 **COPIES** of the foregoing Notice and Closing Brief were *hand-delivered*
this 5th day of August, 1999 to:

6 Jerry Rudibaugh, Chief Hearing Officer
7 Arizona Corporation Commission
1200 West Washington Street
8 Phoenix, Arizona 85007

9 Paul Bullis
Chief Counsel - Legal Division
10 ARIZONA CORPORATION COMMISSION
1200 West Washington
11 Phoenix, Arizona 85007

12 Ray Williamson, Acting Director
Utilities Division
13 ARIZONA CORPORATION COMMISSION
1200 West Washington
14 Phoenix, Arizona 85007

15 **COPIES** of the foregoing Notice and Closing Brief were *mailed*
this 5th day of August, 1999 to:

16 Steve Wheeler, Esq.
17 Thomas M. Mumaw, Esq.
SNELL & WILMER
18 One Arizona Center
400 E. Van Buren Street
19 Phoenix, Arizona 85004-0001
Attorneys for Arizona Public Service Company

20 C. Webb Crockett, Esq.
21 FENNEMORE CRAIG
3003 North Central Avenue, Ste. 2600
22 Phoenix, Arizona 85012-2913
Attorney for AECC, et al.

23 Robert S. Lynch, Esq.
24 340 E. Palm Lane, Ste. 140
Phoenix, Arizona 85004-4529
25 Attorney for AZ Transmission Dependent Utility Group

1 K.R. Saline
K.R. SALINE & ASSOCIATES
2 160 N. Pasadena, Ste. 101
Mesa, Arizona 85201-6764
3
4 Walter W. Meek
Arizona Utility Investors Association
2100 N. Central Avenue, Ste. 210
5 Phoenix, Arizona 85004
6
7 Lawrence V. Robertson, Jr.
MUNGER CHADWICK, PLC
333 North Wilmot, Ste. 300
Tucson, Arizona 85711
8 Attorney for PG&E Energy Services
9
10 Timothy M. Hogan
AZ CENTER FOR LAW IN THE PUBLIC INTEREST
202 E. McDowell Road, Ste. 153
Phoenix, Arizona 85004
11 Attorney for Arizona Consumers Council
12
13 Leslie Lawner
ENRON CORP.
712 N. Lea
Rosewell, New Mexico 88201
14
15 Bradley Carroll, Esq.
TUCSON ELECTRIC POWER CO.
220 W. Sixth Street
16 P.O. Box 711
Tucson, Arizona 85702-0711
17
18 Christopher Hitchcock
HITCHCOCK HICKS & CONLOGUE
P.O. Box 87
19 Bisbee, Arizona 85603-0087
Attorney for Sulphur Springs Valley Electric Cooperative, Inc.
20
21 Chuck Miessner
NEV SOUTHWEST, LLC
5151 Broadway, Ste. 100
22 Tucson, Arizona 85711
23
24 Raymond S. Heyman
ROSHKA HEYMAN & DEWULF, PLC
Two Arizona Center
400 North 5th Street, Ste. 1000
25 Phoenix, Arizona 85004
Attorney for NEV Southwest, LLC
26
27

1 Jesse W. Sears
CITY OF PHOENIX
2 200 W. Washington, #1300
Phoenix, Arizona 85003-1611
3

4 Bill Murphy, P.E.
CITY OF PHOENIX
101 S. Central Avenue
5 Phoenix, Arizona 85004

6 Lex J. Smith
BROWN & BAIN, P.A.
7 2901 N. Central Avenue
Phoenix, Arizona 85001-0400
8 Attorneys for Ajo Improvement Company and
Morenci Water and Electric Company
9

10 Michael A. Curtis
MARTINEZ & CURTIS, P.C.
2716 N. 7th Street
11 Phoenix, Arizona 85006
Attorneys for Mohave Electric Cooperative and
12 Navopache Electric Cooperative

13 Margaret McConnell
MARICOPA COMMUNITY COLLEGES
14 2411 W. 14th Street
Tempe, Arizona 85281-6942
15

16 **COPIES** of the foregoing Notice were *mailed*
this 5th day of August, 1999 to:

17 Docket No. RE-00000C-94-0165 Service List

18
19 By *Vernis Green*

20

21

22 c:\Commonwealth\Pleadings\APSSettlement\Brief.not

23

24

25

26

27

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK
 COMMISSIONER-CHAIRMAN
3 JIM IRVIN
 COMMISSIONER
4 WILLIAM A. MUNDELL
 COMMISSIONER
5

6 IN THE MATTER OF THE APPLICATION OF)
ARIZONA PUBLIC SERVICE COMPANY FOR)
7 APPROVAL OF ITS PLAN FOR STRANDED)
COST RECOVERY)
8

DOCKET NO. E-01345A-98-0473

9 IN THE MATTER OF THE FILING OF)
ARIZONA PUBLIC SERVICE COMPANY OF)
10 UNBUNDLED TARIFFS PURSUANT TO)
A.A.C. R14-2-1601 *ET SEQ.*)
11

DOCKET NO. E-01345A-97-0773

12 IN THE MATTER OF COMPETITION IN THE)
PROVISION OF ELECTRIC SERVICES)
13 THROUGHOUT THE STATE OF ARIZONA)
14

DOCKET NO. RE-00000C-94-0165

**COMMONWEALTH'S
CLOSING BRIEF**

15 I. INTRODUCTION

16 In addressing the Proposed Settlement ("the Proposal") of Arizona Public Service Company
17 ("APS") and selected parties, the Arizona Corporation Commission ("the Commission") will
18 decide if electric competition will actually occur in Arizona in the foreseeable future.
19 Commonwealth Energy Corporation ("Commonwealth") does not believe this Proposal will bring
20 competition to Arizona.

21 In this Closing Brief, Commonwealth summarizes the settlement process, the issues, APS's
22 road to competition, and the numbers and the evidence. Commonwealth closes by describing
23 what needs to be done in order to bring competition to Arizona and its recommendations.

24 II. THE SETTLEMENT PROCESS

25 Competitive rivals, such as Commonwealth, were left out of this settlement process. For
26 obvious reasons, the Proposal does not provide a framework for alternative providers to compete,
27 it did not unbundle the electric bill, it did not unbundle the costs in the electric bill, nor did it

1 reinstate the affiliate transaction rules which all competitors have demanded.¹ The Proposal was
2 negotiated under "confidential principles" with the settling parties focusing on stranded costs.²
3 No settlement, or the information used in reaching a settlement, involving the public interest
4 should be confidential. The public was denied the ability to observe the merits and potential
5 consequences of the Proposal. The Commission cannot exercise its authority, particularly as to
6 the unbundling of regulated rates, if these confidential numbers, terms and conditions are hidden
7 from public scrutiny. "Horse trading" of consumer interests in private, invited sessions should
8 not be the way this Commission decides these important public policy issues.³

9 III. THE ISSUES

10 "Competition" means any consumer that is subjected to unfair prices or experiences
11 inadequate service simply can switch vendors. Policies pursued by the Commission over the past
12 5 years is "an attempt to try to use the market forces of the competitive marketplace to bring down
13 prices and offer more choices," as testified to by Mr. Ray Williamson for Commission staff.⁴

14 Three core issues are presented in this Proposal: Will competition actually occur under this
15 Proposal? If not, and the Proposal is approved, what can the Commission do about it? How
16 should the Commission modify this Proposal to satisfy its non-parties and the public interest?

17 Mr. Frederick Bloom (Commonwealth), Mr. Williamson, Dr. Alan Rosenberg (Enron),
18 and Mr. Douglas Oglesby (PG&E Energy Services) testified that competition is highly unlikely
19
20

21 ¹ See Hearing Transcript at 326 (Davis) (The interim code of conduct came up during the end of negotiations
22 so that was why it was not filed with the Proposal.) The Hearing Transcript is referred to herein as HT, followed by
23 the page number(s) and witness.

24 ² Hearing Transcript at 87 (Higgins).

25 ³ HT at 634 (Patterson). Despite RUCO's opinion that APS is "a very powerful organization with a
26 tremendous amount of resources that could wreak a lot of havoc in this docket," the public interests of creating open
27 competition should still be protected by the Commission.

⁴ HT at 947 (Williamson).

1 if this Proposal is approved.⁵ Generation shopping credits in both the APS and Salt River Project
2 ("SRP") service areas are "grossly inadequate," and that is the reason why there is no competition
3 in the SRP service area, according to Mr. Bloom.⁶ "If Commonwealth cannot beat the standard
4 offer, Commonwealth, of course, will not enter the Arizona market. If competitors do not enter
5 the market, there will be no competition."⁷

6 Mr. Jack Davis of APS has characterized this Proposal as "a cost free put option" for
7 electric service providers ("ESPs").⁸ The Commission and interested parties should be able to
8 modify APS's "put option" so that all Arizona consumers will benefit from competition. The
9 Commission should not wager the public interest in meeting APS's put option. The Commission
10 should reassert its control over the process by first adopting consumer-friendly Electric
11 Competition Rules, reissue the order mandating divestiture for 100 percent recovery of verifiable
12 and legitimate stranded costs (including regulatory assets), and reinstating the affiliate transaction
13 rules.

14 The Proposal could be improved, according to most non-APS witnesses.⁹ APS says it is
15 unwilling to reopen the Proposal even if competition fails to materialize in a meaningful way.¹⁰
16 APS apparently believes it has "the cards", wants to control the "players", and can direct the pace
17 and process of electric competition, regardless of the impact on Arizona's citizens and economy.

18
19
20 ⁵ HT at 738 (Bloom); HT at 891 (Williamson) (Without some changes in the settlement to bring in competitors,
21 there may be no meaningful competition until 2001 or later); HT at 138 (Rosenberg) and HT at 562-563 (Oglesby)
(PG&E Energy Services will not mount any marketing effort in Arizona if the Proposal is approved).

22 ⁶ HT at 755 (Bloom); SRP's generation shopping credit is 3 cents/kWh across all classes. HT at 1072 (Davis).

23 ⁷ HT at 737 (Bloom).

24 ⁸ HT at 220 & 226 (Davis).

25 ⁹ See HT at 120 (Higgins); 167 (Rosenberg); 191 (Frankena - reject Settlement because of market power
26 concerns); HT at 749-750 (Bloom); HT at 892, 945-946 (Williamson).

27 ¹⁰ HT at 277 (Davis).

1 IV. APS's ROAD TO COMPETITION THROUGH THE PROPOSAL

2 The Proposal doesn't really settle anything. No Electric Competition Rules are in place.
3 Litigation will continue, because of pending appeals by other electric utilities and perhaps as a
4 result of this Proposal or the Proposed Rules.¹¹ The Proposal would only bind the Commission,
5 free APS to control competition in its service area, and allow APS Energy Services to sell APS's
6 generation elsewhere. Electric competition should benefit consumers. The Competition Rules
7 should become effective and apply throughout Arizona, before APS and its affiliates are granted
8 preferential treatment. Commonwealth opposes the utility-by-utility rule-making process for
9 competition. The Commission should encourage competition with the same "rules of the road"
10 for all utilities, ESP's and consumers.

11 In preparing for competition, APS conducted its internal "apportionment study" in
12 allocating costs among generation, transmission and distribution for its Direct Access rates.¹²
13 APS's Standard Offer does not have cost components so APS cannot tell how those costs are
14 allocated to Direct Access customers.¹³ No cost-of-service study is in evidence to assure the public
15 that those amounts are correct. The APS approach to the implicit "shopping credit" is merely to
16 subtract the Standard Offer bill from the Direct Access bill for each customer.¹⁴ If the cost amount
17 or allocation is wrong, customers would pay more than the actual embedded cost of APS.
18 Customers would have no incentive to switch from the Standard Offer, and ESPs cannot compete
19 -- for 5 years. History should not repeat itself. AECC settled with SRP by resolving stranded cost
20 and then was surprised by the way unbundling took place.¹⁵ The Commission should not allow

21
22 ¹¹ HT at 620-623, 627, 675-679 (Patterson).

23 ¹² HT at 436-437 & 1143 (Propper) (APS did not do a cost allocation study).

24 ¹³ HT at 1162 (Propper).

25 ¹⁴ HT at 1149 (Propper).

26 ¹⁵ HT at 114-115 (Higgins).

1 the same mistake to occur again.

2 APS admits that the "generation shopping credit" for the Direct Access customer is not the
3 same generation cost the customer would pay under the Standard Offer.¹⁶ Clearly, this illustrates
4 cost-shifting if a customer is to pay more for other Direct Access services or higher overall costs,
5 than if that customer stayed on the Standard Offer. This switching is tantamount to "economic"
6 slamming without the knowledge or consent of APS's customers or the Commission. Until this
7 is resolved, customers are denied choice, competitors cannot compete, and APS has engaged in
8 anticompetitive pricing. Clearly, these tariffs cannot be deemed "just and reasonable" as cost-
9 based.

10 If this Proposal is approved, APS will own its generation assets for the next ~~3~~ 3 1/2 years.
11 APS's generation will, in essence, be self-regulated with APS selling electricity to its Standard
12 Offer customers and others.¹⁷ APS will keep excess "wholesale" generation revenues, rather than
13 lower the customers' Standard Offer generation rates.¹⁸ Those generation and other competitive
14 assets would eventually be transferred to APS's sister generation company at "book value." APS
15 retains the freedom of deciding which other "competitive assets" it might wish to spin off to its
16 affiliate at "book value" and the financial terms, if this Proposal is approved.¹⁹ All profit goes to
17 Pinnacle West shareholders; customers pay the same regulatory asset charge (inside the
18 distribution rate) with no further rate reduction. APS customers will not receive their "just and
19 reasonable" rate reductions, if APS's general and administrative ("G&A") and other costs were
20 not properly allocated among the generation, transmission and distribution functions.

21 V. THE NUMBERS AND EVIDENCE

23 ¹⁶ HT at 1161 (Propper).

24 ¹⁷ The limited but critical exception is must-run units, as discussed later, which need to be regulated to assure
25 "retail generation" access for ESPs is available because of the lack of "retail transmission" access.

26 ¹⁸ HT at 273-274 (Davis).

27 ¹⁹ HT at 294-307 (Davis).

1 1. The Generation Shopping Credit Should Be Equal to APS's Embedded Generation
2 Costs in Its Standard Offer.

3 Commission staff expert, Ms. Lee Smith, testified she believes it's consistent with
4 Commission intent that the generation shopping credit be stated explicitly to make consumer
5 decisions easier. She testified that the generation credit proposed by APS is below retail market
6 prices and thus there will be almost no competition in Arizona.²⁰

7 The generation shopping credit is "grossly inadequate," was the testimony of Mr. Bloom.²¹
8 He compared the typical customer charges prepared by APS to the 1998 wholesale Palo Verde
9 electric prices.²² The credit does not cover the wholesale cost generation for residential and large
10 business customers. For small business customers, the credit is insufficient to cover marketing,
11 G&A, bad debt, start-up, customer service and profit. Coupled with limits on customer access,
12 and metering costs, Mr. Bloom concluded that competition will not be available to small business
13 customers.

14 Generation is to be opened to competition. Whereas, transmission and distribution
15 ("T&D") will continue to be regulated with a guaranteed recovery of costs and rate of return. The
16 numbers presented by APS to the Federal Energy Regulatory Commission ("FERC") show that
17 roughly two-thirds (over 66%) of APS's revenue comes from generation.²³ In APS's Direct
18 Access Tariff before this Commission, APS shows approximately two-thirds (over 66%) of its
19 revenue will come from distribution.²⁴

20 These are eye-catching percentages. They clearly illustrate cost-shifting from generation

21 ²⁰ HT at 958-960 (Smith).

22 ²¹ HT at 740 (Bloom).

23 ²² Commonwealth Exhibit No. 3 (APS data response Attachment Q.2.c, Q.2.d & Q.2.e), Commonwealth
24 Exhibit No. 9 (1998 Palo Verde prices), & Commonwealth Exhibit No. 5 ("How Good Is the APS Generation Shopping
25 Credit?").

26 ²³ Commonwealth Exhibit Nos. 4 & 7; HT at 658-660(Patterson).

27 ²⁴ Commonwealth Exhibit No. 5; HT at 430 (Propper).

1 to distribution. This means Direct Access customers would pay more for delivery and APS would
2 be able to market its generation at lower costs.

3 The "generation shopping credit" should equal the embedded cost of generation which the
4 Standard Offer customer otherwise would pay. This is sometimes referred to as the "top-down"
5 approach with all unbundled cost components of the Standard Offer identified and properly
6 allocated.²⁵ APS's Dr. John Landon and AECC's Mr. Kevin Higgins concur with
7 Commonwealth's assertion that this generation shopping credit should be based on APS's
8 embedded cost of generation for Standard Offer customers.²⁶ APS did not unbundled its costs.
9 It only "allocated" certain costs to distribution services. The credit should be determined on an
10 annual basis so that customers and competitors will have consistent price signals.²⁷ This generation
11 shopping credit is the "fixed" price competitors must beat before ESPs are able to compete.²⁸ As
12 with the Standard Offer generation component, it should be on a fixed annual basis so that
13 customers and competitors know the price to beat in advance.

14 APS creates the myth that a higher shopping credit means Direct Access customers will
15 pay a smaller competitive transition charge ("CTC"). That is not true. As the testimony points
16 out, the customer should pay the same amount of CTC whether or not he or she is a Standard
17 Offer or Direct Access customer.²⁹ Furthermore, the CTC line item on the customer's bill should
18 clearly reflect that the customer pays the same amount. APS attempts to create a second myth by
19 claiming a high credit means excessive profits for ESPs. Higher shopping credits attract ESPs,
20
21

22 ²⁵ HT at 858 (Kingerski); Enron Exhibit Nos. 8 & 9.

23 ²⁶ HT at 1313-1316 (Landon) and 100-107 (Higgins).

24 ²⁷ HT at 750 & 752 (Bloom).

25 ²⁸ HT at 223 (Davis - standard offer will have a bearing on what an ESP can offer a retail customer).

26 ²⁹ HT at 132-133 (Rosenberg).

1 which in turn creates competition and lowers the price to consumers.³⁰ The real fact is the low
2 shopping credit keeps out competitors and drives up profits for Pinnacle West.

3 Commonwealth recommends that the generation shopping credit mirror the fully-allocated
4 embedded cost of APS's generation for its Standard Offer customers -- nothing more, nothing less.
5 APS claims that this will take time and customers should wait until July 1, 2004 - 5 years. If this
6 Proposal is approved, APS says the Commission cannot later review past cost allocations and
7 adjust the shopping credit to foster competition.³¹ Because the evidence clearly indicates that
8 Direct Access customers will be credited with a lower generation shopping credit than APS
9 reported to the FERC, Commonwealth suggests that the Commission set a generation shopping
10 credit of not less than 5 cents per kWh until such time as APS has actually unbundled its costs.
11 This 5 cent/kWh generation & transmission shopping credit corresponds to the "typical" bills
12 prepared by APS.³² In the alternative, the Commission should order use of the 1998 FERC Form
13 1 numbers filed by APS in allocating the relative portion of generation to T&D on an interim
14 basis.

15 The Commission loses rate-making authority and jurisdiction over generation, if this
16 Proposal is approved. If APS has misallocated its G&A expenses, between generation and G&T,
17 as Commonwealth believes the evidence illustrates, the Commission will not have jurisdiction to
18 correct anticompetitive cost-shifting in the future.

19 APS must unbundle its generation costs in order to set its must-run capacity charge which
20 is collected from all APS customers in their distribution rates.³³ APS will unbundle its generation
21 costs before filing its cost-based tariff for must-run units with FERC.³⁴ Nothing is in the record

22 ³⁰ HT at 133-134 (Rosenberg).

23 ³¹ HT at 1077 (Davis).

24 ³² Attachment AP-1R of the Rebuttal Testimony of Alan Propper.

25 ³³ HT at 1273 (Hieronymus) (This must-run capacity charge is "peanut buttered around.")

26 ³⁴ HT at 1268-1269 (Hieronymus).

1 to establish those costs, which will be borne by all generation customers of APS and ESPs. The
2 Commission should be sure that all generation costs, and their allocation for shopping credit
3 purposes, are consistent as filed with FERC and as intended by this Proposal. That determination
4 can only occur after APS files all of its unbundled generation costs with a cost-of-service study.
5 APS should be ordered to do so before this Proposal is approved.

6 2. APS's Net Avoided Cost Approach in Setting Metering, Metering Reading and
7 Billing & Collection Services Is Anticompetitive.

8 "The difference between the embedded costs and the avoided costs stays in the direct access
9 rates," according to Mr. Alan Propper of APS.³⁵ Mr. Bloom testified: "There is not enough
10 shopping credit for meter, meter reading, and billing and collection using the net avoided cost
11 method proposed by APS. Therefore, I do not see competition occurring in Arizona under this
12 proposed settlement, and Commonwealth will not enter the Arizona market if this proposed
13 settlement is approved."³⁶ Direct Access customers would pay twice, some of APS's embedded
14 cost for these metering, meter reading and billing & collection services, and again from an ESP.
15 No customer would switch under the net avoided cost approach. Staff witness Smith testified that
16 decremental pricing, as proposed by APS, creates a situation where competitors have almost no
17 chance of providing service for less than the credit. Not because they are less efficient, but
18 because APS would be subsidizing its supposedly competitive metering and billing service.³⁷

19 3. No Cost-of-service Was Used in Setting These Rates.

20 Direct Access tariffs are being proposed without any cost-of-service study in evidence.
21 No study was conducted by the Residential Utility Consumer Office on the relative amount of the
22 Standard Offer rate reduction or any other aspect of this Proposal.³⁸ No study has been conducted

23 ³⁵ HT at 1146 (Propper).

24 ³⁶ HT at 738 (Bloom).

25 ³⁷ HT at 965 (Smith).

26 ³⁸ Commonwealth Exhibit No. 6 (RUCO data response); HT at 643, 645, 665-671 (Patterson).

1 by anyone outside of APS on the proper amount of Direct Access service rate reduction.³⁹ With
2 Arizona's growing population, economies of scale and declining interest rates, Mr. Bloom testified
3 that the 1.5 percent rate reduction might actually be minuscule compared to what should be given
4 after a cost-of-service study is completed.⁴⁰ Staff expert Ms. Lee said APS has been able to
5 decrease rates because of rapid customer growth by merely adding sales so that fixed costs can be
6 spread over a larger base and buy additional electricity in a surplus market.⁴¹ Approval of the
7 Proposal would require the Commission to wait until 2004 before those costs would be revealed
8 and properly allocated.⁴² During the interim, Pinnacle West repeats the benefits of Arizona's
9 growth, APS's lower costs, and more profitable generation.

10 APS claims an 11.25 percent return on equity, without supporting evidence. With the
11 reduced risk associated with needed and regulated distribution service, a lower rate comparable
12 to FERC's open access transmission charge of 9 to 10.5 percent should be imposed.⁴³

13 4. APS's Stranded Cost (including Regulatory Assets) Are Excessive.

14 If there is no competition as a result of the Proposal, there can be no stranded cost.⁴⁴ Any
15 approval of the Proposal should be conditioned on meeting the minimum levels of competition.
16 Otherwise, there is no quid pro quo for granting APS its stranded costs.

17 Potential stranded costs are the difference between book value and market value.⁴⁵
18 Estimates range from a large negative stranded cost to APS's wish for \$533 million in generation-

19
20 ³⁹ HT at 1070 (Davis).

21 ⁴⁰ HT at 773-774 (Bloom). Mr. Davis testified Arizona growth has been between 2 ½ to 3 ½ % on an energy
22 basis and 10% on a demand basis last year. HT at 278-379 (Davis).

23 ⁴¹ HT at 969 (Smith).

24 ⁴² HT at 1126 (Davis).

25 ⁴³ HT at 142-143 and 145 (Rosenberg).

26 ⁴⁴ HT at 89-90 (Higgins)

27 ⁴⁵ HT at 135 (Rosenberg)

1 related assets and \$900 million in regulatory assets.⁴⁶ Previous testimony by RUCO's expert in
2 this 94-0165 Docket illustrates that APS's stranded costs (including regulatory assets) are
3 negative, resulting in a credit to customers.⁴⁷

4 The "lion's share" of stranded costs is the \$900 million in regulatory assets, as compared
5 to the negotiated \$350 million in strandable generation assets.⁴⁸ All of that \$900 million of
6 regulatory assets is to be recovered from distribution charges. This drives up the charges all
7 customers must pay, while APS receives lower-cost generation to market elsewhere or to ESPs.⁴⁹
8 There is no separate line item and APS may over recover this windfall tax. There is no separate
9 accounting of regulatory assets; only the coincidence of new rates which are intended to go into
10 effect on July 1, 2004.⁵⁰ There is no independent determination if the \$900 million is generation-
11 related or may be double recovered through regulated distribution charges.⁵¹

12 The Settling Parties negotiated the "speculative" stranded costs.⁵² They are guessing on
13 what they thought might be future conditions (embedded costs, market generation prices, and the
14 number of Direct Access customers) in setting the stranded costs. APS acknowledges that it is a
15
16

17 ⁴⁶ HT at 91(Higgins); HT at 134-135 (Rosenberg).

18 ⁴⁷ Commonwealth Exhibit No. 7; HT at 663-664 (Patterson). RUCO now seeks to disavow Dr. Richard
19 Rosen's prior testimony in the Generic Stranded Cost docket. However, in APS's response, Ms. Scott of RUCO said:
20 "The figures and the model were made for the purpose of illustrating and supporting our methodology, and RUCO
understands that if the utilities are allowed to recover stranded costs that there would be subsequent hearings on a utility-
by-utility basis." HT at 47, *A.C.C. Docket No. RE-00000-C-94-0165* (Feb. 5, 1998).

21 ⁴⁸ HT at 94-95 (Higgins).

22 ⁴⁹ HT at 137-138 (Rosenberg). The Palo Verde Nuclear Generating Station had a greater than 89% capacity
23 factor for the fourth year; its production costs declines over half between 1990 (2.49 cents /kWh) and 1997 (1.33 cents
/kWh), whereas the national average is 2.18 cents/kWh; and its in a very liquid trading hub in selling to others.

24 ⁵⁰ HT at 96 (Higgins).

25 ⁵¹ HT at 98-99 (Higgins).

26 ⁵² HT at 90-92 (Higgins). Mr. Higgins own "mental" benchmarks for measuring APS's generation-related
27 stranded cost ranged from \$160 million to \$440 million.

1 settlement figure tied to other considerations, without a statistical or economic basis.⁵³ No
2 evidence has been presented on the actual amount of strandable costs that might be attributable to
3 generation. Therefore, the CTC is not a "just and reasonable" rate that has been determined in
4 accordance with the Arizona Constitution, statutes and laws.

5 5. Divestiture of APS's Generation Assets Will Likely Lower Its Claim to Strandable
6 Costs and Resolve Market Power Issues.

7 APS uses the Net Revenues Lost method in calculating a high stranded cost.⁵⁴ That figure
8 is used in setting the high CTC. APS then asks the Commission to allow it to buy back its
9 generation assets at book value. No evidence has been presented on the valuation of generation
10 and competitive assets APS believes are "in the money" and those which are not.⁵⁵

11 Divestiture of fossil plants have occurred in other states.⁵⁶ Recent experience in the
12 United States indicate that "the fossil plants have gone considerably above their book value."⁵⁷
13 If APS (or its affiliate) later sells its fossil plants for above market value, that excess revenue goes
14 to shareholders, not to reduce stranded costs. APS wants to transfer its generation assets to its
15 subsidiary, collect the "negotiated" CTC and reap the profits of their above-book value. If this
16 Proposal is approved, the Commission will have no further jurisdiction over those generation
17 assets or the generation price.⁵⁸

18 6. Customer Bills Should Be Unbundled to Show the Prices, Shopping Credits and
19 CTC for Both Standard Offer and Direct Access Customers.

20 Attachment A to this Brief illustrates the various components of electric service and the

21 ⁵³ HT at 213 (Davis).

22 ⁵⁴ HT at 310-311 (Davis).

23 ⁵⁵ HT at 311-312 (Davis)

24 ⁵⁶ HT at 561-562 (Oglesby).

25 ⁵⁷ HT at 150 (Rosenberg); Commonwealth Exhibit No. 1 (Direct Testimony of John G. Paton) .

26 ⁵⁸ HT at 1306 (Landon).

1 comparisons for billing customers . **The key is the proper allocation of those costs among those**
2 **functions.** Hearing Officer Exhibit No. 1 presents a beginning framework for breaking down
3 those components. Electric commodity, however, should be reflected solely in cents per kWh,
4 because the fixed and stranded charges for generation is already being recovered through the
5 distribution charge (for must-run units) and CTC for above-market generation costs. The credit
6 for generation should be denoted on the bill in cents per kWh on a flat annualized basis. Shopping
7 credits for metering, meter reading and billing & collection should likewise be illustrated on the
8 bill using the embedded average annual cost of APS for the Direct Access customer class.
9 Commonwealth Attachment B contains the modifications to the Hearing Officer Exhibit No. 1.

10 Customer confusion means no customer choice. APS attempts to create confusion by
11 including unnecessary line items in the Direct Access component, "imputing" a generation
12 shopping credit without actually stating the fixed amount for a 12-month basis, and by imputing
13 a CTC which might be different for Standard Offer versus Direct Access service.⁵⁹ APS proposes
14 a different generation shopping credit for each customer.⁶⁰ Even though APS suggests that ESPs
15 should aggregate customer load, ESPs cannot market to customers because no one knows if that
16 customer will save. The customer must sign up now for service in a month or two. The variable
17 monthly credit will have changed by then. Consequently, no market will develop for residential
18 and small business customers.

19 The CTC should be listed on both sides, for the Standard Offer and the Direct Access.
20 APS acknowledges that it does not know what the CTC is for Standard Offer customers.⁶¹ All
21 customers should bear the CTC, whether they are Standard Offer or Direct Access, and all
22 revenues from CTC charges should be used in paying down the strandable costs.

23 Pennsylvania is viewed by Mr. Bloom , as well as Dr. Landon, as an example for fostering

24 ⁵⁹ HT at 146-147 (Rosenberg) (APS appears to using an "imputed" CTC).

25 ⁶⁰ HT at 1090 & 1122-1124 (Davis).

26 ⁶¹ HT at 1162-1163 (Propper).

1 retail electric competition. Mr. Bloom testified: "The Pennsylvania approach has led to the most
2 robust, consumer friendly, productive direct access process in the United States today, primarily
3 based on the fact that there are clear-cut shopping credits that the consumer can easily identify and
4 compare against competitive services. There are no metering requirements; there are meters
5 available, but they're at the customer's option. Third-party verification is allowed, and there are
6 no constraints on customers having access to participation." Pennsylvania's shopping credits are
7 not derived by some artificial means; they reflect what the utilities have been charging for
8 generation for years. Commonwealth urges that this same approach be adopted in Arizona.⁶²

9 7. The Bill Format Should Be in Plain Language and Informative.

10 The bill format proposed by APS in Attachment AP-1R is misleading and too complex.
11 One side should read Standard Offer and the corresponding Direct Access side of the Bill should
12 reflect the same "Distribution Service Charge" (which includes the regulatory asset and sales tax
13 for distribution), CTC and System Benefit charge, with a separated component for Generation &
14 Transmission (including ancillary services) on the Standard Offer side and "Generation Shopping
15 Credit" on the Direct Access side. AP-1R does not show the corresponding components. This
16 format confuses customers and in fact would discourage customers from switching because it
17 shows no System Benefit charge or CTC for Standard Offer customers. Furthermore, it shows
18 a higher Basic Service or Delivery Charge for those who might seek competitive services.
19 Commonwealth again urges that the Commission reject the use of any Basic Delivery Service
20 charge as not being cost-based or linked to any cost causation.

21 8. Limiting Residential Access Is Discriminatory and Limits ESP Interest.

22 APS proposes to limit choice to only 9,000 residential customers per quarter, or a total of
23 45,000 customers until the year 2001 when all 700,000 residential customers will have open
24
25

26 ⁶² HT at 748 (Bloom); HT at 1320 (Landon).
27

1 access.⁶³ New entrants face substantial up-front costs.⁶⁴ Commonwealth opposes any constraints
2 on consumer access to the competitive electric market. No evidence has been introduced to
3 illustrate any technical or economic constraints associated with allowing all APS customers to have
4 access at the same time.

5 9. Market Power by APS Has Not Been Addressed Adequately.

6 Market power needs to be monitored by the Commission so "that consumers in Arizona
7 don't pay prices that have been raised because of market power."⁶⁵ "A serious analysis of
8 generation market power has yet to be done," was the conclusion of Dr. Mark Frankena, who has
9 testified on behalf of the Edison Electric Institute.⁶⁶ APS used the controversial FERC "hub and
10 spoke" method in addressing market power, which ignores transmission constraints.⁶⁷ Extensive
11 testimony was received on transmission restrictions into the APS service area and how it affects
12 must-run units. Clearly, the market power and monopolistic aspects of APS have not been
13 addressed adequately.

14 Commonwealth believes that the market power study by APS is inadequate. APS must
15 furnish a study to FERC. It may be different, or inconsistent, with the study used by APS in this
16 proceeding. All ESPs are limited in their ability to deliver electricity because of transmission
17 constraints. All ESPs will be required to purchase some must-run generation from APS (or SRP).
18 If competition does not significantly occur, the Commission should reassess the barriers to entry.⁶⁸
19 For these reasons, the Commission should retain ongoing market power monitoring and reassess
20 market power issues if not less than 20% of the 1995 retail load of APS is not receiving

21 ⁶³ HT at 237-238 (Davis).

22 ⁶⁴ HT at 1311-1312 (Landon).

23 ⁶⁵ HT at 1257 (Hieronymus).

24 ⁶⁶ HT at 179 (171-180) and 201 (Frankena).

25 ⁶⁷ HT at 1249 (Hieronymus).

26 ⁶⁸ See HT at 1276-1277 (Hieronymus).

1 competitive generation from ESPs, other than APS Energy Services, by January 1, 2000.⁶⁹

2 10. Must-Run Units Will Be Controlled by APS (or SRP), and Thus Retail Market
3 Access.

4 APS has three "load pockets," which means all ESPs must purchase electricity from APS
5 (or SRP) during certain parts of the year because of limited transmission access.⁷⁰ APS is about
6 5 percent short during the summertime and must purchase about 1,700 megawatts off the system.⁷¹
7 ESPs must "fight" for transmission access, when APS and other transmission owners need to bring
8 in more electricity. APS's witness testified that this will be resolved by saying that more than
9 2,000 megawatts of APS and SRP generation will be regulated due to load pocket issues.⁷²

10 APS wants to handle must-run units outside the Commission and through the Arizona
11 Independent System Administrator ("AISA"). The AISA is essentially controlled by APS and
12 SRP, the transmission owners, who have the information and control.⁷³ The AISA may eventually
13 evolve into Desert Star, the Independent System Operator ("ISO"), or a Regional Transmission
14 Organization ("RTO"). APS wants FERC to address how these must-run units affect retail
15 competition in Arizona. Commonwealth concurs with Staff expert Ms. Lee in her
16 recommendation that the Commission be more involved in the pricing and use of must-run
17 generation units.⁷⁴ Commonwealth urges the Commission to review and approve the must-run
18 protocol so as to protect retail consumers in Arizona.

19 11. Costs of AISA (or Desert Star ISO or the RTO) Should Be Included in the Standard
20 Offer

21 ⁶⁹ See HT at 1259-1260 (Hieronymus).

22 ⁷⁰ HT at 199 (Frankena); HT 1081-1084 (Davis); HT at 1242-1245 (Hieronymus).

23 ⁷¹ HT at 273 (Davis).

24 ⁷² HT at 1244 (Hieronymus).

25 ⁷³ HT at 823 (Delaney) Participation by new entrants in the AISA was described as like having "your nose
26 pressed up against the glass and . . . being treated like a guest in someone's house."); HT at 835-837(Delaney).

27 ⁷⁴ HT at 996 (Smith).

1 ESPs will incur AISA (or Desert Star ISO or RTO) costs when they procure transmission
2 for delivery to APS's distribution system. It is an added cost delivering generation which the
3 Direct Access customer will pay. Direct Access customers will pay twice if those charges remain
4 in Section 2.6 for collection from all APS customers. To the extent APS incurs those costs on
5 behalf of its Standard Offer customers, it should be included in the generation component of the
6 Standard Offer. APS should not ask for any rate change. One purpose of the AISA (or Desert Star
7 ISO or RTO) is to eliminate duplicative personnel and improved efficiencies in transmission
8 operations.⁷⁵ These incentives, of course, are take away if APS can continue with a cost-plus
9 approach.

10 12: The Proposal Should Not Override the Electric Competition Rules.

11 The Proposal would take precedence over the Proposed Rules.⁷⁶ The Proposed Rules
12 provide for the unbundling of costs for both Standard Offer and Direct Access customers, and the
13 reflection of those costs on the customers bills. The Proposal does not. The Proposal binds
14 present and future commissioners on the scope of their authority. The Proposal would last in
15 perpetuity.⁷⁷ Commonwealth asserts that this Proposal usurps the constitutional authority of the
16 Commission and denies consumer and citizen of their statutory protection rights, contrary to law.

17 VI. WHAT IS LEFT TO BE DONE? - AND COMMONWEALTH'S
18 RECOMMENDATIONS

19 APS has warned the Commission that it cannot look back if this Proposal is approved.
20 Like SRP, APS promises to give the numbers later; much later, 4 years from now. For that and
21 the others reasons given, Commonwealth urges the Commission to reject this Proposal. There is
22 no urgency because APS must still pursue a variety of approvals from FERC and the Commission
23 should examine those decisions in the context of this Proposal. If the Commission approves this

24
25 ⁷⁵ HT at 443 (Propper).

26 ⁷⁶ HT at 232 (Davis).

27 ⁷⁷ HT at 347-348 (Davis).

1 Proposal, competition will not occur for the foreseeable future anyway. During the interim, the
2 Commission could finalize its Electric Competition Rules, order APS to unbundle the service
3 components based upon current cost-of-service data to support its Direct Access tariffs, order APS
4 to provide that information in its bills, and order APS to provide the book values and market or
5 replacement values associated with its generation assets and to delineate which regulatory assets
6 are likely to become strandable do to competition.

7 Commonwealth believes the following steps need to be taken before competition will occur
8 in APS's service area:

- 9 1. Electric Competition Rules should become effective before the Proposal is acted
10 upon by the Commission, with these recommended changes:
 - 11 a. Complete open access for all customers should occur in the service
12 areas of all Affected Utilities.
 - 13 b. The third-party oral verification process should be adopted so that
14 customers can easily switch to alternative providers.
 - 15 c. No restrictions should be placed on customers returning to the
16 Standard Offer.
 - 17 d. Metering should be voluntary or, in the alternative, required of
18 designated customers regardless of whether or not they are receiving
19 Direct Access service.
 - 20 e. Generation for Standard Offer customers should be under a bid
21 process.⁷⁸
 - 22 f. Affiliate transaction rules (the former Rule 1617) should be
23 reinstated. APS did not asked for its removal.⁷⁹ This will create
24 uniformity for all Affected Utilities. The Commission should
25 receive assurances that no prior activity violated the Interim Code
26 of Conduct and the affiliate transaction rules, as previously was
27 contained in Rule 1617.
2. A cost-of-service study should be ordered immediately so that the unbundling of
APS's generation and T&D costs conforms to the two-thirds for generation and
one-third for T&D, as presented in APS's Form 1 filing. During the interim, the
Commission should order the annual fixed generation shopping credit shall be at
least 5 cents per kWh for residential customers.
3. Unbundling of the customer's bill should reflect those unbundled costs of
competitive services in the form of "shopping credits," as proposed by
Commonwealth in Attachment A to this Brief.

⁷⁸ HT at 963 (Smith).

⁷⁹ HT at 1094 (Davis).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

4. The Proposal should contain these modifications:

- a. All customers shall have access to competitive electric services, unless the Commission orders certain limitations based upon an application by APS which prove certain technological or managerial constraints precludes immediate full open access. (Secs. 1.1 & 1.2).
- b. The Commission should reaffirm that the unbundling of costs for APS's Standard Offer shall conform to the Proposed Rules. Customers shall pay the same for distribution services under both the Standard Offer and Direct Access tariffs. There must be a pro rata cost allocation, including G&A, overhead and allowed return, on both the unbundled Standard Offer rates and the Direct Access rates. (Sec. 2.1).
- c. APS should file a cost of service study no later than September 30, 1999 and a hearing and final order of the cost allocation shall be completed prior to December 31, 1999, with those figures used in the unbundling of the Standard Offer and Direct Access tariffs.
- d. Shopping Credits for competitive services shall reflect the average annualized full embedded generation cost component for each customer class on the customer's bill. (Sec. 2.1).
- e. APS shall not be entitled to offer any special discounts or competitive-type generation rates under its Standard Offer. (Sec. 2.5).
- f. Any rate adjustment associated with implementing the Proposed Rules (including AISA, ISO and RTO costs) should be deleted. (Sec. 2.6 (3)).⁸⁰
- g. On an interim basis, the Commission should implement the CTC as proposed by APS. (Art. III).
- h. Condition the regulatory assets and stranded cost recovery on APS's assurances that at least 20% of its 1995 retail electric load shall be receiving competitive electric services no later than June 30, 2000. (Art. III).
- i. The Commission shall order a stranded cost hearing to be held after June 30, 2000 and before December 31, 2000, to determine the verified, legitimate and unmitigated stranded costs and regulatory assets. Alternatively, APS may divest itself of its generation assets and be entitled to full recovery of its verified, legitimate and unmitigated stranded costs. (Art. III).
- j. Formation of affiliates shall be completed no later than January 1, 2000, and generation and other competitive services for Standard Offer customers shall be purchased from ESPs no later than June 30, 2000. (Sec. 4.1).
- k. APS shall be subject to the affiliate transaction rules as set forth in former Rule 1617. (Art. IV).
- l. Any decisions by the Commission should not restrict or hamper its ability to act in the public interest in seeing that retail electric competition shall promptly occur in Arizona. Furthermore, the Proposal shall be modified to conform to the Electric Competition

⁸⁰ See HT at 371 (Davis).

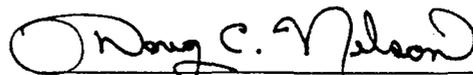
Rules. (Sec. 7.1)

m. The Commission shall approve any must-run protocols proposed by the AISA. (Sec. 7.6).

5. APS must still file its retail Open Access Transmission Tariff ("OATT") tariff with FERC.
6. APS must file a market power study with FERC when it seeks Exempt Wholesale Generation ("EWG") status for its generation. Provisionally, the Commission might consider supporting the EWG application in exchange for APS's conditions on opening its service area to competition.
7. The must-run AISA protocol must be completed and approved by FERC before competition commences in APS's service area.
8. Other AISA protocols must be completed and filed with FERC for approval.
9. Future formation of the ISO (Desert Star) or perhaps an RTO will affect retail transmission access, and the Commission should assure consumers and competitors of access to APS's transmission system. The Commission should retain jurisdiction over native load retail transmission access so as to assure Arizona of meaningful competition.⁸¹
10. APS intends to transfer its competitive assets to its affiliate no later than January 1, 2002, and perhaps file "something" with the Commission.⁸² This is two years after full open competition. APS should be ordered to transfer those assets, at "market value," no later than January 1, 2000 so that all ESPs may compete on a level playing field.
11. Regulatory asset recovery will not be reconciled until the July 1, 2004 rate case.
12. The Commission should continue to monitor the Proposal for antitrust violations.

RESPECTFULLY submitted this 5th day of August, 1999.

DOUGLAS C. NELSON, P.C.



Douglas C. Nelson, Esq.
7000 North 16th Street, Ste. 120
PMB 307
Phoenix, Arizona 85020
Attorney on behalf of Commonwealth Energy Corporation

⁸¹ HT at 1275 (Hieronymus).

⁸² HT at 379, 1095-96 (Davis).

Commonwealth Brief Attachment A

MONTHLY CUSTOMER BILL

Your total energy usage for this month _____ kWh

Standard Offer		Direct Access-Shopping Credits
a. Electric Commodity Charge (including Transmission and Ancillary Services) Cents per kWh	\$ <u>same</u> * <u>same</u> ¢	\$ <u>same</u> * <u>same</u> ¢ Generation Shopping Credit
b. Distribution Charge	\$ <u>same</u> *	\$ <u>same</u> *
c. Metering Services	\$ <u>same</u> *	\$ <u>same</u> * Shopping Credit
d. Meter Reading Services	\$ <u>same</u> *	\$ <u>same</u> * Shopping Credit
e. Billing Services	\$ <u>same</u> *	\$ <u>same</u> * Shopping Credit
f. Regulatory Assessment & State Tax	\$ <u>same</u>	\$ <u>same</u>
g. Competitive Transition Charge	\$ <u>same</u>	\$ <u>same</u>
h. System Benefits Charge	\$ <u>same</u>	\$ <u>same</u>
TOTAL	\$ _____	\$ _____

*Annualized average full embedded cost for the customer class.

Commonwealth Brief Attachment B

Hearing Officer Exhibit No. 1
July 21, 1999

APS Standard Offer Service Charges

(These are charges for services that are also available from competitive generation suppliers.)

Generation

Charge for kWh used

Charge for kWh Demand [Comment: Generation should be sold only on the energy (kWh) basis, because must-run fixed charges are in the distribution charge, and APS is seeking recovery of other fixed generation charges through the CTC.]

Transmission and Ancillary Services associated with Generation (cents/kWh)

Generation Shopping Credit (equal to the two items above) (cents/kWh on an annualized basis)

Metering (Metering Credit equal to full embedded cost of APS)

Meter Reading (Metering Credit equal to full embedded cost of APS)

Billing (Billing Credit equal to full embedded cost of APS)

APS Noncompetitive Charges

(These charges will apply whether you have a competitive generation supplier or not.)

Distribution Service

~~Transmission and Ancillary Services associated with Distribution~~ [Comment: Transmission and ancillary services are purchased separately by ESPs.]

Regulatory Charges and Taxes

(These apply whether you have a competitive generation supplier or not.)

Systems Benefits Charges

Competition Transition Charges

Regulatory Assessment

Sales Tax

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

1999 JUN 30 A 10: 57

CARL J. KUNASEK
COMMISSIONER-CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

AZ CORP COMMISSION
DOCUMENT CONTROL

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. R14-2-1601 ET SEQ.)

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

COMMONWEALTH'S COMMENTS, WITNESS LIST,

SUBJECT AREAS, AND EXHIBIT LIST

Commonwealth Energy Corporation ("Commonwealth") submits these comments, its witness list, subject areas and exhibits pertaining to this proceeding on the Settlement Agreement proposed by Arizona Public Services Company.

I. COMMONWEALTH'S COMMENTS

Table of Contents

1.	Introduction	2
2.	The Settlement Restricts Customer Access and Thus Creates a Market Barrier	3
3.	Different Unbundled Rates for Standard Offer and Competitive Service Customers Create a Market Barrier	3
4.	The Settlement Should Contain a Generation Shopping Credit Which Reflects APS's True Unbundled and Allocated Cost of Retail Generation	5
5.	Freezing APS's Rate of Return on Equity May Be Against the Public Interest	6
6.	The Premise for Stranded Cost - "the Regulatory Contract" - Is Invalid	7

1	7.	APS's Stranded Costs Are Grossly Overstated and Are Likely Negative	7
2	8.	The CTC Should Include Any Potential Recovery of Regulatory Assets	9
3	9.	Regulatory Assets of APS Are Exaggerated	10
4	10.	Stranded Costs Should Not Include Costs of Implementing Competition	10
5	11.	APS Should Not Be Allowed to Transfer at Book Value Its Generation Assets to Itself	
6		11
7	12.	APS's Market Power Is Expanded by the Settlement Because of No Affiliate	
8		Transaction Rules and APS Retains Control of Its Generation Assets	11
9	13.	Avoidance of Litigation Is a Red-Herring	14
10	14.	Conclusion	14

11 **1. Introduction**

12 Electricity is a \$3.7 billion industry in Arizona. Residential customers in Arizona paid
13 27% more than their neighbors in Colorado, Nevada and Utah, according to the Clemson
14 University study using 1995 figures. The overall average price of electricity in Arizona is 11%
15 higher than the national average and 30% higher than Arizona's neighboring low-cost states. The
16 Clemson study, sponsored by the Arizonans for Electric Choice and Competition ("AECC"),
17 concludes that Arizona's electric consumers would save \$925 million, with \$410 million going
18 to residential customers, if electric prices dropped by 25%. This savings would total \$4.625
19 billion over a five-year period.

20 Arizona Public Service Company ("APS") has the largest service area, measured in
21 revenue, customers and power bills, of any electric utility regulated by the Arizona Corporation
22 Commission. Whether or not this APS Settlement Agreement is approved, modified or rejected,
23 will determine if Arizona will actually have retail electric competition.

24 The Commission has been trying to open Arizona's electric market since 1994. Over these
25 past five years, many studies, testimonies and documents have been filed in the aforementioned
26 dockets. Commonwealth wishes to highlight some key points in the record which supports its
27 argument as to why this Settlement should be rejected or significantly modified.

1 **2. The Settlement Restricts Customer Access and Thus Creates a Market Barrier**

2 The Settlement (and the Rules) restricts who, how and when customers may enter the
3 electric competitive market and, consequently, who might be willing to serve those particular
4 customers. APS acknowledges that this is an impermissible market barrier. APS's expert, Dr.
5 John Landon, testified there should be no limits on participants or any other significant barriers:

6 An example of a barrier to entry is a legal limit on the number of taxicabs or
7 taxicab providers in a city. Such restrictions can make it impossible for new firms
8 to enter the market, to the benefit of incumbent firms and the detriment of
9 consumers. However, in the retail electricity market, there will be no limit on the
10 number of participants, nor will there be any other substantial barrier to entry.¹

11 Restrictions on customer access limit the number of participants. These are barriers to entry
12 which Dr. Landon said should not exist in the retail electric market. All customers should have
13 immediate access to competition.

14 **3. Different Unbundled Rates for Standard Offer and Competitive Service Customers**
15 **Create a Market Barrier**

16 APS admits that its unbundled rates for its Standard Offer customers will "likely" be
17 different from rates APS charges customers seeking competitive services.² Previously, APS's own
18 expert, Dr. Landon, testified this is a market barrier: "A barrier to entry that merits concern is
19 one that artificially creates a substantial cost asymmetry between incumbent and entrant."³ The
20 way in which APS proposes to charge different costs for the same service to its Standard Offer

21 ¹ Rebuttal Testimony of John H. Landon (Feb. 4, 1998 - *A.C.C. Docket No. U-0000-94-165*) at 11 ("Landon
22 Testimony").

23 ² APS opposes the "bottom up" approach to unbundling its tariff to be reflected in customer bills, claiming
24 "it may provide customers with" disinformation" because it is unlikely these "billing cost elements" will match the
25 corresponding unbundled *rates* actually paid by those who receive portions of their electric service from competitive
26 suppliers." Comments of APS on the Proposed Electric Competition Rules (May 14, 1999 - *A.C.C. Docket No. RE-*
27 *00000C-94-0165*) at 5 (emphasis in original). Hearing Testimony of Thomas Mumaw (June 14, 1999 - *A.C.C. Docket*
No. RE-00000C-94-0165)

³ *Id.*

1 customers and those seeking competitive services is a substantial cost asymmetry that creates a
2 market barrier.

3 RUCO's expert, Dr. Richard Rosen, previously testified that unbundled rates for Standard
4 Offer and competitive services should be the same:

5 The unbundling process should result in rates for distribution, transmission, and
6 customer service charges that are the same for all Standard Offer and unbundled
customers within the same customer class.⁴

7 "Unbundled rates are the hallmark of a restructured electric industry," according to
8 AECC's expert, Dr. Alan Rosenberg.⁵ With customer choice, he said, "[I]t is all the more
9 important that the distribution rates be based on cost causation so as not to distort the price signals
10 between the generator and the meter." The sum of all unbundled components should equal the
11 present bundled tariff. Until rates are unbundled with a cost-of-service study, Dr. Rosenberg
12 testified that customers, competitors and the Commission are only then able to make intelligent
13 choices:

14 Q. Why are unbundled rates important? A. First, unbundled rates are a basic
15 element of retail competition. In fact, every commission order on electric industry
16 restructuring of which I am aware, stipulates or otherwise acknowledges that
17 unbundled rates are part and parcel of the process. The electric industry is
18 vertically integrated. Without unbundled rates for each service, customers cannot
make intelligent decisions on which service they want to retain with their current
utility (assuming that the service is available on a competitive basis). Similarly,
unbundled rates allow potential competitors to the utility to make decisions as to
whether it is profitable to market their services in that territory.

19 Second, unbundled rates allow different jurisdictions to apply their regulatory
20 responsibility for those cost components that remain regulated; e.g., FERC and the
21 Arizona Corporation Commission setting cost-based rates for transmission and
22 distribution, respectively. For competitive services, such as generation, unbundled
23 rates allow the free market to exercise its discipline on the pricing and quality of
24 such service.

24 ⁴ Direct Testimony of Dr. Richard A. Rosen (Nov. 30, 1998 - A.C.C. Docket Nos. E-01933A-98-0471, et al.)
25 at 16 ("Rosen Testimony").

26 ⁵ Direct Testimony of Dr. Alan Rosenberg (Nov. 30, 1998 - A.C.C. Docket No. E-01933A-98-0471 et seq.)
27 at 14 ("Rosenberg Testimony").

1 Finally, unbundled rates help prevent unfair monopolistic practices in two ways.
2 First, it avoids the practice of tying, that is, forcing customers to take one service
3 as an unavoidable consequence of taking another. Second, it facilitates cost
4 accounting which should prevent TEP from using the profits from its regulated
5 activities to support its unregulated ventures. Just as important, proper cost
6 accounting helps regulators gauge the true profitability of the regulated activities.
Clear and explicit unbundled rates facilitate the task of ascertaining whether the
utility is making undue profits on a regulated service. For example, if a utility is
making a 20% return on equity, without unbundled rates it would be difficult to tell
if it is just being extraordinarily successful in marketing power or if it making
unreasonable profits on its monopoly service.⁶

7 Dr. Rosenberg also recommended unbundled rates be available to all customers so that even those
8 on Standard Offer service are aware of changes in the electric industry and it educates customers
9 about the costs in their electric bills.⁷

10 Commonwealth concurs with Dr. Rosen's and Dr. Rosenberg's expert opinions.

11 **4. The Settlement Should Contain a Generation Shopping Credit Which Reflects APS's**
12 **True Unbundled and Allocated Cost of Retail Generation**

13 The Settlement does not propose a "market generation credit." The Settlement must
14 contain a generation shopping credit (or "market generation credit") so that customers and
15 competitors know their savings and margins. Commonwealth has made this point repeatedly in
16 the past. RUCO's Dr. Rosen made a similar observation late last year:

17 The market generation credit should be at least as high as the retail market price
18 of generation service. It should be set at the high end of a reasonable range of
19 retail market prices. Otherwise, alternative generation suppliers will not be able
20 to match or beat the price of APS generation service. If the MGC is not somewhat
21 higher than the retail market price, little or no competition will result, just as we
22 have seen this year in California, Massachusetts, New Hampshire, and Rhode
23 Island. Most ratepayers probably need to receive at least 5 percent overall savings
24 on their electric bills before they would be induced to switch suppliers.⁸

25 Dr. Rosen was critical of the artificial setting of the market generation credit in APS's previous
26 settlement approach, because it included no retailing costs ("not even the retailing costs -
27

24 ⁶ *Id.* at 13.

25 ⁷ *Id.* at 14.

26 ⁸ Rosen Testimony at 19 (emphasis in original).
27

1 generation-related A&G -- that are currently included in APS's retail rates"). Yet, he testified
2 that "alternative suppliers will necessarily have even higher retailing costs than APS has had under
3 monopoly conditions."⁹

4 AECC's expert, Dr. Rosenberg, testified that if the market generation credit is set too low,
5 "customers will not be able to save at all; that is, competition will exist in name only, not in
6 fact."¹⁰ Dr. Rosenberg further testified that there is no similar concern if the shopping credit
7 is set too high, because "the working of a competitive market will serve to bring generation rates
8 to their appropriate levels. In fact that is the only way that a relevant market can develop."¹¹

9 APS's customers and competitors need to know what that generation shopping credit will
10 be before this Settlement is approved. If it is too low, no competition will occur and APS may
11 have shifted some costs to distribution charges and the stranded cost is obviously too high. If the
12 credit is set too high, the generation market will self correct and bring down the generation prices
13 for all customers. All competitors, including APS' competitive affiliate, will offer lower
14 generation prices to Arizona customers to meet the customers' demands for more savings.

15 **5. Freezing APS's Rate of Return on Equity May Be Against the Public Interest**

16 APS's rate of return on equity must be allocated to generation, as Commonwealth has
17 stated previously, so as to create a "level" generation shopping credit. However, that rate of
18 return on regulated services, such as distribution, should be decreased because APS will have less
19 risk and the cost of capital has declined since its last rate case. These matters must be addressed
20 in the unbundled rate case so as to protect the public interest. RUCO's Dr. Rosen raised this

21
22
23
24 ⁹ *Id.*

25 ¹⁰ Rosenberg Testimony at 5.

26 ¹¹ *Id.* at 9.
27

1 same concern in his prior testimony involving the November 1998 APS/TEP Settlement
2 Agreements.¹²

3 **6. The Premise for Stranded Cost – “the Regulatory Contract” – Is Invalid**

4 During the past several years, APS and the other utilities argued that a regulatory contract
5 or “compact” legally required the reimbursement of potential stranded costs. This premise was
6 destroyed in the recent U.S. West Communications case in which the Appellate Court held that
7 the utility’s relationship with the Commission is not contractual.¹³ With the loss of that argument,
8 the Commission should view stranded costs merely as an issue of the financial viability of the
9 utility, and not as a means of rewarding the utility for delaying the benefits of competition.

10 **7. APS’s Stranded Costs Are Grossly Overstated and Are Likely Negative**

11 The Settlement includes a generation-related stranded cost of \$350 million which is grossly
12 overstated. RUCO’s Dr. Rosen has testified that “APS has a negative strandable cost amount.
13 Therefore, it is not appropriate for APS to collect only additional amounts of stranded cost from
14 customers, as APS would under the [1998 APS] Settlement Agreement.”¹⁴

15 Dr. Rosen suggested that the Commission determine the negative stranded costs and reduce
16 the customer’s bill with a “wires” credit. He estimated APS’s stranded cost at the beginning of
17 1999 as a negative \$1.1 billion during the period of 1999-2020, because the phase-in of
18 competition allows APS to recover those generation costs under its cost-of-service basis.¹⁵ With
19 no competition, because of the barriers mentioned by Commonwealth, this negative stranded cost
20 will be even greater.

21
22
23 ¹² Rosen Testimony at 6 & 15.

24 ¹³ *U.S. West Communications, Inc. v. Arizona Corporation Commission* (1 CA-CV 97-0517) (May 18, 1999).

25 ¹⁴ Rosen Testimony (Nov. 30, 1998) at 14.

26 ¹⁵ *Id.* at 17 and Direct Testimony of Dr. Richard Rosen (Sept. 21, 1998 - *A.C.C. Docket No. E-01345A-98-*
27 *0473*).

1 When asked if the negative stranded cost to APS would be fair, Dr. Rosen testified it
2 would be, because APS can enter the competitive wholesale marketplace through its unregulated
3 subsidiary with no stranded cost, with normal rates of return over the long run. Moreover, "APS
4 would still have a tremendous advantage such as an initial 100 percent share of the retail market,
5 economies of scale, and proximity to customers."¹⁶

6 AECC's Mr. Kevin Higgins testified previously that all customers should have the cost
7 basis from which the competitive transition charge ("CTC") is calculated, so that all customers
8 will know that they are not paying more stranded costs than before competition occurs.¹⁷
9 Commonwealth still believes that is necessary, particularly for residential and small business
10 customers.

11 APS's Dr. Landon testified that the stranded cost recovery mechanism should leave APS
12 with generation assets valued at market prices.¹⁸ APS greatly influences the market price of
13 generation with its generation assets, including its interest in the Palo Verde Nuclear Generating
14 Station which has the lowest priced resource in Arizona, except for hydropower¹⁹. If APS's
15 generation is sold at market value, APS cannot logically claim any stranded costs.

16 Some utilities have stranded generation costs because they have high reserve margins that
17 are not economic in a competitive environment, according to APS's Dr. Landon.²⁰ APS recently
18
19
20

21 ¹⁶ *Id.* at 18.

22 ¹⁷ Direct Testimony of Kevin Higgins (Nov. 30, 1998 - *A.C.C. Docket Nos. E-01933A-98-0471*) at 5 ("Higgins
23 Testimony").

24 ¹⁸ Landon Testimony at 13.

25 ¹⁹ Testimony of Jack Davis (APS), *A.C.C. Stranded Cost Generic Hearings*, Transcript Vol. XII at 3798 (Feb.
26 26, 1998).

27 ²⁰ *Id.* at 23.

1 testified before the Commission that it has virtually no reserve margin.²¹ Consequently, APS does
2 not have a reasonable argument for claiming stranded costs based on excess generation capacity.

3 For these reasons, the \$350 million for generation-related stranded costs should be rejected
4 in the Settlement. After unbundling costs, the Commission should conduct a hearing on APS's
5 potential stranded costs.

6 **8. The CTC Should Include Any Potential Recovery of Regulatory Assets**

7 "Regulatory assets" is a subclass of stranded costs in the Commission's Electric
8 Competition Rules.²² The AECC questioned this separation of regulatory assets from the CTC
9 in its testimony on the earlier proposed settlement with APS. Its consultant, Mr. Higgins, said
10 this pricing element would recover approximately \$900 million which represents the lion's share
11 of APS's stranded cost.²³

12 This Settlement hides APS's claim to regulatory assets within its distribution charge.
13 Regulatory assets were viewed by APS's own expert as a component of stranded costs. Dr.
14 Landon testified that stranded costs generally fall into four categories: above market generation
15 assets, regulatory assets, purchased power contracts, and cost required to implement open access.²⁴
16 Any recovery of regulatory assets should be included within the CTC after the Commission
17 determines whether or not those regulatory assets relate to generation and might not be recoverable
18 as a result of competition.

21
22 ²¹ In the generic stranded cost proceeding, Mr. Jack Davis of APS testified that the regional (Western System
23 Coordinating Council) market is expected to have excess capacity until 2006. *A.C.C. Stranded Cost Generic Hearings*,
24 Transcript Vol. XII at 3850 (Feb. 26, 1998). During the recent A.C.C. Special Open Meeting on Summer Peaking
25 Power on June 8, 1999, he said that APS has reached or is near its reserve level.

26 ²² A.A.C. R14-2-1601(35).

27 ²³ Higgins Testimony at 9.

²⁴ Landon Testimony at 5.

1 **9. Regulatory Assets of APS Are Exaggerated**

2 APS's claim for regulatory assets includes generation-related costs, such as coal mine
3 reclamation costs and financing costs for generation.²⁵ APS's Dr. Landon defined regulatory
4 assets as unrecovered costs of energy efficiency programs, low-income programs, and unamortized
5 costs of other deferred expenses.²⁶ The first two items, the energy efficiency and low-income
6 programs, would be recovered by APS through the system benefits charge. APS should be
7 prohibited from shifting generation-related costs to its regulatory asset ledger, and in turn hide
8 those costs in its distribution charge.

9 Recovery of regulatory assets created a "loophole" in the previous settlement proposed by
10 APS, according to the AECC. Its consultant, Mr. Higgins, observed that regulatory assets only
11 become stranded if a utility is unable to recover its regulatory assets at market prices:

12 During periods when market prices are relatively high, APS ought to be able to recover
13 some, or perhaps all, of its regulatory asset charges directly from market sales. However, the
14 Settlement shields APS regulatory asset charges from changes in market prices, and as a result,
15 over-recovery of APS stranded costs is a virtual certainty if this problem is not corrected.²⁷
16 This present Settlement makes this over-recovery worse than before. These regulatory asset costs
17 are bundled into the distribution charge.

18 **10. Stranded Costs Should Not Include Costs of Implementing Competition**

19 The Settlement entitles APS to recover its costs of implementing competition, including
20 the creation of its generation affiliate. During the formulation of the Rules, the recovery of those
21 transition charges was addressed in the context of APS divesting itself of generation assets – not
22 the paper creation of an APS subsidiary for its generation assets. These costs of preparing for
23 competition should be borne by the APS shareholders and not APS customers who desire choice.

24 ²⁵ Testimony of Alan Propper (APS) (June 4, 1999 - this consolidated docket) at 9.

25 ²⁶ Landon Testimony at 5.

26 ²⁷ Higgins Testimony at 9.

1 **11. APS Should Not Be Allowed to Transfer at Book Value Its Generation Assets to Itself**

2 Commonwealth opposes the transfer of APS's generation assets to its unregulated
3 subsidiary at their net book value. They should only be spun-off at market value and the net profit
4 should be used to reduce any stranded costs (whether positive or negative). RUCO's Dr. Rosen
5 offered the same opinion in his November 1998 testimony.²⁸

6 **12. APS's Market Power Is Expanded by the Settlement Because of No Affiliate**
7 **Transaction Rules and APS Retains Control of Its Generation Assets**

8 Market power has been addressed previously in these proceedings. Dr. Mark Frankena
9 testified on behalf of the Arizona Attorney General's Office. In his published work, he described
10 the problems of market power:

11 Market power problems arise when a company operates at two or more stages -
12 fuel supply, generation, transmission, distribution, and marketing - in the
13 production and delivery of electric power. . . Vertical market power can arise
14 when one subsidiary has a monopoly (usually a regulated monopoly) at one stage
15 and a second subsidiary is engaged in a competitive (usually unregulated) activity
16 at another stage."²⁹

17 Dr. Frankena could have been referring to this APS Settlement when he described vertical
18 market power. He points out that the combination of electric distribution (the monopoly activity)
19 and retail marketing (the competitive activity) raises potential affiliate abuses, particularly (a)
20 discrimination in access to monopoly facilities, (b) other actions to raise costs and reduce
21 availability of inputs used by non-affiliated competitors, (c) improper information sharing, and
22 (d) cross-subsidization and self-dealing.³⁰

23 APS's distribution market power and its offering of competitive services through APS
24 Energy Services create an incentive for APS to discriminate against non-affiliate competitors (and
25

26 ²⁸ Rosen Testimony at 16-17.

27 ²⁹ Mark W. Frankena, Ph.D., Direct Testimony (Nov. 30, 1998 - A.C.C. Docket Nos. E-01933A-98-0471
et seq.) which included his work entitled *Addressing Market Power: The Next Step in Electric Restructuring* at 27-28
("Frankena Testimony").

³⁰ *Id.* at 28.

1 retail customers who purchase from APS's rivals). Because distribution tariffs are set without a
2 ratemaking proceeding, APS is free to allocate its costs between the regulated distribution
3 company and its competitive affiliate. APS has the incentive to exploit its distribution monopoly
4 by shifting general and administrative costs and over expenses to that "wires" business. Thus,
5 APS may induce customers to purchase electricity from either its Standard Offer or its competitive
6 affiliate, because the distribution costs of "access" are driven up and its competitive generation
7 costs are pushed down.

8 Information access by APS creates market power. In the normal course of business, APS
9 has accumulated electric use information from its customers. APS recommends that if a customer
10 is thinking of buying competitive electricity it should contact APS for the tariff and APS will
11 "provide the consumer with the most accurate information in which to compare Standard Offer
12 Service to a competitive alternative"-- instead of having a "generation shopping credit" on the
13 customer's bill.³¹ Each time a customer is thinking of switching, APS will be alerted. It may
14 target that customer for a special Standard Offer discount, allowing APS to price discriminate
15 among retail customers (in ways that other competitors cannot) or pass the lead over to its
16 competitive affiliate. APS has the incentive to share that information with its competitive affiliate.
17 The profitability of entering the Arizona market depends in part on the availability of market
18 information. Even if that information is to be confidential, the inherent incentive is for APS to
19 share that information with its affiliate. Only if competitors are entitled to equal access to that
20 information will there be any disincentive by APS. Without strict affiliate transaction rules, the
21 potential transfer of information from APS to its affiliate raises a significant entry barrier for
22 competitors.

23 The generation affiliate of APS also creates market power concerns. The Phoenix area is
24 a load pocket with APS and Salt River Project having generation ownership of 35% and 65%,
25

26 ³¹ Comments of APS on the Proposed Electric Competition Rules (May 14 1999 - A.C.C. Docket No. RE-
27 00000C-94-0165) at 5, fnote 2 (emphasis in original).

1 respectively, according to Dr. Frankena.³² APS may underprice monopolized electricity and
2 services to its competitive generation affiliate, or overprice electricity sold back to APS's Standard
3 Offer customers or rivals who wish to market generation. This is an exercise of monopoly power
4 resulting in excess profits to APS's shareholders. Nonprice favoritism might occur as well. APS,
5 as a buyer of generation from its affiliate, might refrain from enforcing contracts even though it
6 might enforce those same contractual terms against a third-party supplier.

7 Prevention of these market power abuses start with careful cost allocation of APS's
8 transmission, distribution and generation functions, as recommended by Dr. Rosenberg³³. This
9 must be followed by the advanced implementation of rigid affiliate transaction rules, followed by
10 periodic auditing of those affiliate-related transactions (at the cost of APS). The code of conduct
11 approach will not prevent potential abuses and it does not create any assurances for APS's
12 competitors or the public in general. It is virtually unenforceable because of the high cost of
13 detection and prosecution.

14 APS suggests that the separation of generation to its affiliate will resolve this market power
15 issue. It further claims there are efficiencies by delaying this process. This does not mitigate
16 market power; it extends APS's monopolistic control. Dr. Frankena testified that "market power
17 is the ability of a seller or group of sellers profitably to maintain prices above competitive levels
18 by restricting output below competitive levels."³⁴ APS's generation affiliate would have the
19 freedom to set its own unregulated rates and call them "market-based," if the Settlement is
20 approved. APS could reduce generation output or raise the price of electricity at its own whim.

21
22
23 ³² Frankena Testimony at 6.

24 ³³ Rosenberg Testimony at 13-15.

25 ³⁴ Frankena Testimony at 8. Dr. Frankena says antitrust market power issues arise if a monopolist increases
26 prices by a small but significant amount (say, 5%) above "the competitive price." With APS already owning 35% of
27 the generation in the Phoenix area, APS has the ability to manipulate prices so that it would not appear its generation
prices are anticompetitive, not unless those assets are divested.

1 APS as a corporate organization could set generation prices to keep out competitors, through this
2 horizontal market power.

3 Commonwealth supports a study of the impacts on electric prices in Arizona be completed
4 before APS is allowed to retain its generating assets, as recommended by Dr. Rosen of RUCO.³⁵
5 Because of substantial risks of market abuses, the unbundling of APS's costs in a ratemaking
6 proceeding must also be completed before competition will seriously begin.

7 **13. Avoidance of Litigation Is a Red-Herring**

8 The settling parties claim the Agreement resolves pending litigation. Therefore, it is in the
9 public interest. Those parties fail to mention that the utilities have lost at every turn during the
10 appeal of the Rules and including in the related case involving the regulatory contract theory. The
11 consumer cost of paying exorbitant stranded costs and regulatory asset charges, in light of these
12 successful defenses against APS and the other utilities, would be against the public interest.
13 Moreover, litigation will likely continue if this unfair Settlement is approved, and only APS, its
14 affiliates and the other settling parties would be free to participate in the competitive market.
15 Most Arizona customers would be denied the savings and other benefits of electric competition.

16 **14. Conclusion**

17 Based upon the previous testimony and all the evidence in these dockets, and the
18 Testimony of Fred Bloom, Commonwealth urges the Commission to reject the Settlement
19 Agreement in its entirety or, at a minimum, incorporate the recommendations of Commonwealth.

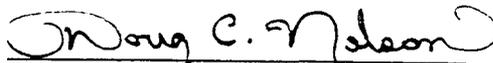
20
21 **II. WITNESS LIST**

- 22 1. Frederick Bloom, Chairman/CEO of Commonwealth.
23
24
25

26 ³⁵ Rosen Testimony at 21.
27

1 RESPECTFULLY submitted this 30th day of June, 1999.

2 DOUGLAS C. NELSON, P.C.

3 

4 Douglas C. Nelson, Esq.
5 7000 North 16th Street, Ste. 120
6 PMB 307
7 Phoenix, Arizona 85020
8 Attorney on behalf of Commonwealth Energy
9 Corporation

c:\Commonwealth\Pleadings\APSSettlement\Comments

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27