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IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR APPROVAL
OF ITS 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 THE
COMPETITION IN THE PROVISION
OF ELECTRIC SERVICES
THROUGHOUT THE STATE OF
ARIZONA

DOCKET NO. RE-00000C-94-0165

CYPRUS CLIMAX METALS, INC., ASARCO, INCORPORATED
AND ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION'S
POST HEARING BRIEF

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1 Cyprus Climax Metals Company, ASARCO Incorporated, and Arizonans for
2 Electric Choice and Competition¹ (collectively "AECC") hereby file their Post Hearing
3 Brief in the above captioned dockets concerning the APS Settlement Agreement.
4 This brief covers three areas relating to the APS Settlement: (1) AECC's reasons for
5 supporting approval of the APS Settlement by the Arizona Corporation Commission
6 ("Commission"); (2) the failure by those opposing the APS Settlement to
7 demonstrate that the public interest warrants the Commission withholding its
8 approval of the Agreement; and (3) AECC's joinder in certain issues raised in APS'
9 Post Hearing Brief.

10 Given the expedited nature of the proceedings regarding approval of the APS
11 Settlement, as well as the massive evidentiary record that precedes the Chief Hearing
12 Officer's determination in these dockets, AECC has endeavored to state its position
13 herein in the most succinct manner possible. Neither AECC's failure to address any
14 additional issue which supports approval of the Settlement nor AECC's failure to
15 respond to any specific issue raised in opposition should be taken to mean that AECC
16 believes such issues justify denial of Commission approval. In short, given the
17 totality of the relevant circumstances, the public interest dictates that the
18 Commission approve the APS Settlement.

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21 ¹ Arizonans for Electric Choice and Competition is a coalition of energy consumers in
22 favor of competition and includes Cable Systems International, BHP Copper, Motorola,
23 Chemical Lime, Intel, Honeywell, Allied Signal, Cyprus Climax Metals, Asarco, Phelps
24 Dodge, Homebuilders of Central Arizona, Arizona Mining Industry Gets Our Support,
25 Arizona Food Marketing Alliance, Arizona Association of Industries, Arizona Multihousing
26 Association, Arizona Rock Products Association, Arizona Restaurant Association, Arizona
Retailers Association, Boeing, Arizona School Board Association, National Federation of
Independent Business, Arizona Hospital Association, Lockheed Martin, Abbot Labs, and
Raytheon.

1 **I. AECC SUPPORTS APPROVAL OF THE APS SETTLEMENT AGREEMENT**
2 **BECAUSE IT IS IN THE PUBLIC INTEREST.**

3 AECC's support for the APS Settlement is explained in the pre-filed and
4 hearing testimony of its expert witness Kevin Higgins in this docket. Nevertheless,
5 further highlighting certain of AECC's reasons for supporting approval of the APS
6 Settlement illustrates how the public interest is best served by Commission approval.

7 **A. The "Public" Interest.**

8 The Commission is charged by the Arizona Constitution with the duty to act in
9 the public interest. This means that the Commission must act to ensure that
10 ratepayers do not pay rates that are unjust, unreasonable or discriminatory. Further,
11 the Commission must set rates in a manner that allows every public service
12 corporation to recover their operating expenses and earn a reasonable rate of return.
13 Thus, the "public" that the Commission must protect is made up of regulated public
14 service corporations and the consumers of the utility services they provide.

15 The APS Settlement reflects the agreement of APS, the public service
16 corporation providing regulated electric utility services in the APS service territory, to
17 the introduction of competition in that service territory. The agreement has been
18 executed by RUCO and the Arizona Community Action Association reflecting the
19 agreement of the residential customers served by APS to the Settlement's terms and
20 conditions. The Settlement has also been agreed to by AECC, a broad based
21 coalition of commercial and industrial customers and trade associations and several of
22 its individual members. As such, the Settlement reflects the support of the non-
23 residential customers receiving utility service from APS. In other words, the "public"
24 that the Commission is charged with protecting has agreed to the terms and

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1 conditions upon which APS' service territory will be opened up to full retail access.²
2 It is now the Commission's obligation to protect that public interest by approving the
3 APS Settlement.

4 **B. Introduction of Competition in APS' Service Territory.**

5 APS possesses a certificate of convenience of necessity for the largest electric
6 utility service territory in the state of Arizona. It should not be surprising therefore
7 that APS has fought relentlessly to ensure that competition is introduced on terms
8 that APS deems fair and equitable. Although APS' past opposition to deregulation is
9 not the sole reason the benefits of competition have been withheld from consumers
10 in APS' service territory to date, such opposition is arguably the most significant
11 factor. For example, APS has sued the Commission regarding the adoption of the
12 Electric Competition Rules and the Commission's orders approving stranded cost
13 recovery and has also challenged the issuance of CC&Ns to new market entrants. By
14 approving the Settlement, the Commission ends the delay in introducing consumers
15 in APS' service territory to the benefits competition has to offer and makes the
16 state's largest utility a zealous advocate in favor of deregulation. Once the
17 Settlement is approved, APS' various legal challenges to the Commission's
18 deregulation efforts will no longer delay competition in APS' service territory.

19 In addition to guaranteeing open retail access in APS' service territory at the
20 earliest possible date, by approving the Settlement the Commission will make retail
21 access available during the transition period to a greater number of consumers than
22 the minimum set forth in the proposed Electric Competition Rules. In the Settlement,
23 APS has agreed to make an additional 140 MW of load immediately available to non-

24 ² Admittedly, the "ESPs" have not accepted these terms and conditions for introducing
25 competition in APS' service territory. However, for the reasons discussed hereinbelow,
26 the "ESPs" have fallen far short of demonstrating that approval of the Settlement would
not be in the public interest.

1 residential customers. This additional available capacity will not limit capacity for
2 residential customers who will have retail access at the same levels provided for in
3 the proposed Rules. Thus, the Settlement makes open retail access a reality for the
4 greatest number of consumers possible during the transition period.

5 **C. The Benefits of Competition to be Realized from the Settlement.**

6 Energy consumers benefit from competition because it affords them greater
7 choice. Greater choice translates into lower rates for electric utility service. Of
8 course, lower rates are not guaranteed under competition. Nevertheless, under the
9 Settlement, consumers are guaranteed both an opportunity to choose an alternative
10 supplier and lower rates.

11 As discussed, following approval of the Settlement, a substantial number of
12 customers in APS' service territory will have an immediate opportunity to choose an
13 alternative electric service provider. Several ESPs have, or are in the process of,
14 obtaining authorization from the Commission to sell competitive energy services in
15 APS' service territory. Undoubtedly, consumers will select an alternative supplier if
16 they feel that the selection will result in reduced rates for electric utility services.

17 On the other hand, for those consumers unable or unwilling to choose
18 competitive services from an ESP, the Settlement offers the guarantee of lower
19 prices for electricity. This follows from the across the board rate decreases for all
20 customers APS has agreed to in the Settlement. Absent the Settlement, these
21 guaranteed rate decreases could not be realized without a traditional rate case for
22 APS ordered by the Commission. Such proceedings would cause interested parties
23 to further incur substantial fees and costs and take several years to complete.
24 Moreover, it is not certain that the Commission would be legally entitled to order a
25 reduction in APS' rates following a rate case. In contrast, it is certain that seeking to
26 procure rate decreases through a rate case will prolong the realization of the benefits

1 of competition by consumers in the APS' service territory indefinitely.

2 **D. The Settlement is Consistent with the Commission's Proposed Rules**
3 **and Orders.**

4 Through its proposed Electric Competition Rules and the final stranded cost
5 order, the Commission has set forth the manner in which the transition to open retail
6 access will serve the public interest. That the APS Settlement furthers that public
7 interest is clearly illustrated by the agreement's consistency with the Commission's
8 Rules and orders regarding deregulation. Throughout the proceedings, the
9 Commission has encouraged the various stakeholders to undertake efforts to reach
10 agreement regarding the terms and conditions pursuant to which the incumbent
11 utilities' service territories would be open to competition. Indeed, in revising its
12 stranded cost order, the Commission explicitly recognized settlement as an option for
13 determining how an affected utility's stranded cost would be determined. At the
14 urgency of the Commission, and consistent with the stranded cost order's settlement
15 option, APS and its consumers, those obligated to pay APS' stranded costs, have
16 agreed to not only a methodology for determining and collecting stranded costs, but
17 the actual amount of stranded costs that will be recovered by APS. Thus, the
18 Settlement furthers the Commission's goal of resolving stranded cost issues on the
19 way to deregulation.

20 Similarly, the Settlement is consistent with the Commission's proposed Electric
21 Competition Rules. For instance, under the Rules, APS is required to prepare, submit
22 to the Commission and abide by an approved code of conduct designed to eliminate
23 improper cross-subsidization between affiliates and minimize abuses of market
24 power. Under the Settlement, APS is obligated to provide the parties with a
25 proposed form of conduct which, thereafter, will be submitted to the Commission for
26 approval. In fact, APS has already expedited preparation of its proposed code of

1 conduct. The Rules also require that APS' rates for various competitive and non-
2 competitive services be unbundled so that consumers are provided information
3 necessary to make informed choices regarding the selection of alternative energy
4 service providers. APS has proposed an unbundled form of tariff and bill which APS
5 believes provides information consumers need to make informed choices in a
6 competitive environment. Furthermore, at the request of the Chief Hearing Officer,
7 APS has undertaken additional efforts to improve upon its proposed unbundled bill
8 format to determine whether additional information may be provided to consumers
9 better enabling them to make informed choices.

10 The Rules also require separation of APS' generation assets from the APS
11 "wires" company. Under the Settlement, APS will separate all of its generation
12 assets from the wires company. The Commission's proposed Electric Competition
13 Rules also encourage the development of an independent system administrator and/or
14 an independent system operator. Pursuant to the Settlement Agreement, APS is
15 committed to the development of these entities, including promotion of the Arizona
16 Independent System Administrator or AISA. As such, the APS Settlement will help
17 limit market power in APS' "load pockets" and help ensure non-discriminatory access
18 to APS' transmission facilities. In sum, as these examples demonstrate, the APS
19 Settlement is consistent with the Commission's proposed Electric Competition Rules
20 and orders governing deregulation.

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1 **II. THOSE OPPOSING THE APS SETTLEMENT AGREEMENT HAVE FAILED TO**
2 **DEMONSTRATE THAT APPROVAL OF THE SETTLEMENT BY THE**
3 **COMMISSION WOULD *NOT* BE IN THE PUBLIC INTEREST.**

4 **A. The Opponents To The APS Settlement Fail To Recognize The Nature Of**
5 **A Settlement Agreement.**

6 The settlement between APS and the various customers represents a "give
7 and take" resolution. It is not being presented as the "perfect" resolution of all of the
8 issues that have delayed the introduction of open retail access in Arizona. Nor is it
9 legitimate for opponents to the APS Settlement to criticize the agreement because it
10 does not resolve all of the outstanding issues regarding the introduction of
11 competition in APS' service territory in a manner acceptable to those in opposition.
12 The APS Settlement is not the final word on the subject of competition in APS'
13 service territory. Rather, the Commission's efforts to serve the public interest by
14 making the benefits of open retail access available to consumers in APS' service
15 territory will continue for many years into the future. Certainly, the competitive
16 marketplace in Arizona will continue to be improved upon as the stakeholders begin
17 to do business in the deregulated market. Competition that improves with time is far
18 superior to the alternative which the opponents suggest; that is, additional months,
19 and more likely years, of delay, while the interested stakeholders continue to battle
20 with APS over the terms and conditions upon which competition will be introduced in
21 its service territory during which time, the resources of consumers as well as the
22 Commission will continue to be drained without any promise of greater benefit to
23 consumers. Indeed, the opposition's suggestions amount to little more than a return
24 to the starting gates. That would be demonstrably counterproductive and irreparably
25 detrimental to the public.

26 **B. The Public Interest v. The ESP's Interests**

The various opponents to the APS settlement, made up mostly of prospective

1 providers of competitive services in Arizona following deregulation, have advanced all
2 sorts of horror stories regarding the so-called negative impact approval of the APS
3 Settlement will have on Arizona's new competitive marketplace. Yet, despite six
4 days of hearings regarding the APS Settlement, the opposition has failed to produce
5 any convincing evidence that the approval of the APS Settlement would not be in the
6 public interest. Instead, the evidence demonstrates that opposition to the APS
7 Settlement by prospective energy service providers is founded almost exclusively on
8 their own self-serving interest in increasing the profit to be realized by them in
9 Arizona's deregulated market.

10 For example, some of the most outspoken opponents of the APS Settlement
11 are ESP's who have not yet obtained a CC&N authorizing the provision of
12 competitive services in Arizona. Indeed, perhaps the most outspoken opponent,
13 Commonwealth, has yet to even file a complete application for a competitive CC&N.
14 Thus, it should be apparent that these opponents desire to postpone the introduction
15 of competition in Arizona's largest electric service territory until such time as they are
16 ready to compete for retail access customers in Arizona. This is hardly a reason to
17 withhold approval of the Settlement and deny customers in APS' service territory the
18 immediate benefits which approval of the APS Settlement offers.

19 Perhaps the most significant complaint voiced by the opposition to the APS
20 Settlement involved the proposed "shopping credit." In short, entities proposing to
21 provide competitive services to consumers in APS' service territory at some unknown
22 date in the future complain that the shopping credit that would result from the APS
23 Settlement does not provide sufficient "headroom" for competition to take place.
24 Consequently, these protesters insist that the Commission must condition its
25 approval of the APS Settlement on increased shopping credits.

26 The ESPs insistence on higher shopping credits amounts to nothing more than

1 an effort to increase their potential profits. This follows from the fact that higher
2 shopping credits will allow ESPs to charge higher prices for the competitive services
3 they offer. The evidence does not demonstrate that competition will not take place
4 without higher shopping credits as claimed by the ESPs. In fact, although other
5 states deregulating their electric utility industry have authorized higher shopping
6 credits, such increased shopping credits have not always resulted in a robust
7 competitive market. As evidenced by the testimony in this proceeding, in
8 Pennsylvania, which authorized greater shopping credits, the ESP's opposing the
9 Settlement have few, if any, competitive customers. In sum, the evidence clearly
10 demonstrated that the shopping credits called for in the APS Settlement provide
11 sufficient headroom for efficient ESPs to offer competitive services in Arizona during
12 the transition period. Obviously, in the future, as APS' recovery of the CTC and
13 regulatory asset charge decreases annually, the amount of so-called "headroom" will
14 increase providing even greater opportunities for consumers to choose alternative
15 electric suppliers. Meanwhile, the benefits to be realized by consumers from the
16 approval of the APS Settlement, the introduction of competition as well as
17 guaranteed price reductions, should not be traded for the possibility of greater profits
18 for the ESPs should APS agree to accept a higher shopping credit in the APS
19 Settlement.

20 **III. AECC'S JOINDER IN APS' POST HEARING BRIEF.**

21 As reflected above, AECC joins APS in asserting that the shopping credits
22 resulting from the APS Settlement are sufficient to promote efficient competition in
23 APS' service territory. Further, AECC joins in APS' assertion that, as reflected above,
24 the APS Settlement is consistent with the Commission's Electric Competition Rules,
25 including, specifically, the Rules' requirement that APS transfer its generation assets,
26 recover the costs of complying with directives of the Commission under the Electric

1 Competition Rules, continue the provision of services covered by the System Benefits
2 charge and the unbundling of standard offer rates. In addition to joining APS in these
3 issues which are specifically addressed hereinabove by AECC, AECC offers the
4 following.

5 **A. The Commission Is Not Obligated To Determine The "Fair Value" Of**
6 **APS' Utility Property In Order To Approve The APS Settlement.**

7 APS correctly asserts that the Commission is not obligated to undertake a full
8 blown "bells and whistles" rate case in order to approve a decrease in APS' rates for
9 the provision of electrical utility service. Nothing in the Arizona Constitution nor the
10 Arizona Revised Statutes prohibits a public service corporation from voluntarily
11 reducing its rates for the services it provides. Those opposing the APS Settlement
12 including the rate reductions, advance the absurd proposition that a rate reduction is
13 not in the public interest unless the Commission first determines the fair value of
14 APS' property, its costs of service, and from there, sets rates that are "just and
15 reasonable."

16 As pointed out in APS' Post Hearing Brief, there is absolutely no legal or
17 practical requirement that the Commission determine the fair value of APS' utility
18 property before approving the rate reductions that are included in the APS
19 Settlement. It certainly will not aid the Commission in approving the rate reductions
20 to determine the fair value of such property. Rather, in contrast, postponing the
21 approval of the rate reductions set forth in the APS Settlement pending the
22 determination of the fair value of APS' property would instead be detrimental to the
23 public interest.

24 **B. The Parties To The APS Settlement Did Not Intend To Unlawfully Bind**
25 **Future Commissions.**

26 APS also correctly points out in its Post Hearing Brief that the parties intended

1 that the negotiated provisions would not be unilaterally changed in a manner that
2 could deprive the parties of the benefit of their bargain. Nevertheless, AECC is
3 cognizant of the concern that has been raised that approval of the APS Settlement
4 would be "unlawfully" binding on future Commissions on ratemaking issues related to
5 APS. Accordingly, AECC joins in APS' suggestion that Section 3.5 of the APS
6 Settlement be modified to include clarifying language in an order approving the APS
7 Settlement stating that "to the fullest extent permitted by law, the Agreement shall
8 be enforceable against this and future Commissions."

9 **IV. CONCLUSION.**

10 AECC's reasons for entering into and requesting Commission approval of the
11 APS Settlement are easily summarized: The APS Settlement represents a negotiated
12 compromise that will bring about competition in APS' service territory at the earliest
13 possible date and in a manner that brings the benefits of such competition to the
14 greatest number of consumers. As a consequence, AECC urges the Commission to
15 reject the claims of the opponents to the APS Settlement and issue its order
16 approving the APS Settlement as expeditiously as possible.

17 DATED this 4th day of. August, 1999.

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