



Arizona Utility Investors Association

2100 N. Central, Ste. 210
P.O. Box 34805
Phoenix, AZ 85067
Tel: (602) 257-9200
Fax: (602) 254-4300
Email: swpr@amug.org



0000119668

ORIGINAL EXCEPTION
AZ CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

RECEIVED

SEP 03 1999

1999 SEP -3 P 2:05

JAMES M. IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

DOCKETED BY [Signature]

AZ CORP COMMISSION
DOCKET CONTROL
E-01345A-98-0473

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

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

EXCEPTIONS
BY THE ARIZONA UTILITY INVESTORS ASSOCIATION
TO THE HEARING OFFICER'S
RECOMMENDED OPINION AND ORDER

1. Introduction

The above-captioned matters came before the Chief Hearing Officer as a proposed settlement agreement (the Agreement) which had been negotiated among Arizona Public Service Company (APS) and three consumer organizations.

We will not recite the provisions of the Agreement here, but the parties, in addition to APS, were the Residential Utility Consumers Office, Arizona Community Action Association and Arizonans for Electric Choice and Competition, a coalition of large and small commercial and industrial users.

An evidentiary hearing was held from July 14 through July 21, 1999. On August 26, the Chief Hearing Officer issued his recommended opinion and order in the matter.

In direct testimony and in its cross-examination of APS witnesses, the Arizona Utility Investors Association (AUIA) expressed concern that the Agreement places a disproportionate amount of risk for stranded cost recovery on the company's shareholders.

Nevertheless, AUIA supported the Agreement as an acceptable vehicle for commencing retail competition and ending regulatory uncertainty. We added the caveat that significant amendments could easily render the Agreement unacceptable.

In his recommended opinion and order, the Hearing Officer proposes a number of amendments, but he has left the major provisions of the Agreement intact. Although there may be objections to the recommendations from various parties, AUIA believes the Agreement remains viable under the Hearing Officer's proposed order.

2. Specific Comments

While AUIA does not concur with all of the Hearing Officer's amendments, we are limiting our exceptions to two areas of concern: the discussions captioned "Section 2.8" and "Generation Affiliate."

Section 2.8 (Pg. 8, Line 3, *et seq.*)

Here, the Hearing Officer is responding to complaints that the Agreement allows APS to seek rate relief under certain circumstances and that it may violate A.R.S. 40-246 which requires the Commission to initiate rate inquiries in response to petitions. AUIA believes these concerns are exaggerated.

The language allowing APS to seek rate relief in some conditions is pretty standard stuff in the context of a rate freeze, to account for disasters and unforeseen emergencies and acts of government. Further, it seems farfetched to conclude that this Agreement can pre-empt a legislative enactment absent a specific waiver (if such a waiver were within the Commission's power).

Nevertheless, the Hearing Officer proposes corrective language which provides in pertinent part, "The Commission shall not be prevented from commencing rate change proceedings, including responding to petitions submitted under A.R.S. 40-246." (Pg. 8, LL 12-15)

AUIA disputes the need for this language. The Agreement imposes a rate freeze except for specified rate reductions. Rates are either frozen or they aren't and the financial community will view this language as a potential threat to APS' revenue stream. The Hearing Officer's wording appears to protect stranded cost collection, but that will be seen as a hollow promise if the Commission can adjust rates whenever it feels like it.

Generation Affiliate (Pg. 9, Line 7, *et seq.*)

In his comments, the Hearing Officer cites Section 4.1, 4.2 and 2.6(3) of the Agreement which, taken together, provide that APS would be authorized prospectively to form one or more affiliates to acquire at book value the assets of any competitive services that must be divested under the Electric Competition Rules and to recover the transfer costs through an adjustment clause that would become operative July 1, 2004.

First, the Hearing Officer finds that the ratio of disallowance for stranded costs should also apply to the cost of forming a new generation affiliate. He writes:

"... we find the Company's proposed mitigation of stranded costs (i.e., the disallowance of \$183 million) in the Settlement should also apply to the costs of forming the new generation affiliate. Accordingly, Section 2.6(3) should be modified to reflect that only 67 percent of those costs to transfer generation assets to an affiliate shall be allowed to be deferred for future collection." (Pg. 9, LL 26 & 27, Pg. 10, LL 1-3, parenthetical clarification added)

AUIA is baffled by this logic.

The separation of competitive services from a utility distribution company (UDC) is compelled by Sections R14-2-1615(A) and (B) of the Electric Competition Rules. This requirement and the cost of accomplishing it are unrelated to stranded cost recovery. The cost will be the same whether the recovery ratio is 0 percent or 100 percent.

Furthermore, the expense of creating corporate affiliates and transferring assets to them may be very significant, including defeasance of financial instruments and obligations, renegotiated leasehold and partnership interests and proceedings before several state and federal regulatory agencies.

AUIA objects strongly to imposing this financial penalty on shareholders without justification and we urge the Commission to reject this finding.

Second, the Hearing officer gives voice to the concerns of some intervenors that the Agreement gives APS too much latitude in selecting the assets and determining the financial arrangements for transferring them to affiliates.

In order for APS to move resolutely toward separation, it must have clear authorization to form affiliates and transfer assets at book value and it needs assurance that it can recover its costs. The three sections of the Agreement cited above provide this writ. The Hearing Officer does not propose to eliminate or alter those sections, but instead inserts language into the Order (Pg. 10, LL 10-15) which purports to preserve the Commission's rights.

In our view, the language suggested by the Hearing Officer muddies the water without granting any authority to the Commission that it doesn't already have. While the Agreement says clearly that APS can transfer assets to an affiliate at book value, the language in the order seems to say, "Well, maybe not."

For the record, AUIA believes that APS witness Jack Davis explained credibly how the book value transfer of generating assets will occur under generally accepted accounting principles. We also have no doubt that the Commission will thoroughly examine APS' capital structure and the transfer of any competitive assets or services whether this order says so or not.

In summary, AUIA suggests this section of the recommended opinion and order should be revised. We recommend that all of the language after Line 23 on Page 9 can be eliminated as unnecessary.

RESPECTFULLY SUBMITTED,
This 3rd day of September, 1999



WALTER W. MEEK, PRESIDENT

Original and ten (10) copies of the above Exceptions were filed this 3rd day of September, 1999, with:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Copies of the above Exceptions were hand-delivered this 3rd day of September, 1999, to:

Carl J. Kunasek, Chairman
James M. Irvin, Commissioner
William A. Mundell, Commissioner
Paul M. Bullis, Legal Division
Ray Williamson, Utilities Division
Jerry Rudibaugh, Hearing Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Copies of these Exceptions were mailed this 3rd day of September, 1999, to parties of record in the above-captioned dockets.