

EXCEPTION



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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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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 EXCEPTIONS TO THE OPINION AND ORDER

DATED AUGUST 26, 1999.

Commonwealth Energy Corporation ("Commonwealth") submits these exceptions to the Proposed Opinion and Order dated August 26, 1999, ("the proposed Order"), pertaining to the proposed Settlement for the Arizona Public Service Company ("APS"). Commonwealth expresses disappointment in that none of the major recommendations of non-party alternative providers was included in the proposed Order. In fact, the proposed Order does not even reference Commonwealth as making an appearance on page 3.

General Exceptions

Cost of service unbundled tariffs, shopping credits, and market power are three issues which Commonwealth believes the Commission should address in the proposed Order.

As to the cost of service unbundled tariffs, this proceeding did not address in a meaningful sense of APS's fair value rate base ("FVRB"), fair value rate of return (FBROR), or other financial analysis in which to determine APS's actual cost of service. No examination

1 occurred on how APS's costs were allocated among functions. Although it is clear that APS's
2 generation costs went down and its distribution rates went up, after APS made the allocation in
3 setting its new tariffs.

4 As to the shopping credit, the proposed Order fails to address the adequacy of the shopping
5 credit to encourage competition or how the Commission might assure that competition will
6 actually occur for all consumers under the proposed Settlement.

7 As to market power, the proposed Order is silent.

8 The sequence in opening an electric market is first to unbundle the cost of service, second
9 to determine the value of the unregulated, competitive generation assets of the utility, and third
10 to decide if there are any strandable generation assets and the appropriate amount. This Proposed
11 Settlement reverses that order: First, APS negotiates its stranded cost figure; second, it transfers
12 its generation assets to its competitive generation affiliate at "book value"; third, and much later,
13 it will conduct a cost of service study to determine the allocated cost between APS's regulated
14 distribution service and competitive generation service. By turning upside down the open market
15 process, the proposed Settlement will keep competitors at bay pending the actual calculation of
16 APS's embedded cost of service, while giving APS a new revenue stream from stranded costs,
17 and rewarding APS with book value generation assets. The fundamental problems with this
18 proposed Settlement is that it contains no verified numbers and it moves backwards against
19 competitive transition.

20 **Specific Exceptions**

21 1. Appearance by Commonwealth

22 Commonwealth participated extensively in this proceeding. Commonwealth should be
23 included as making an appearance under the last paragraph on page 3.

24 2. Benefits of the Proposed Settlement

25 Commonwealth disputes the contention that the proposed Settlement will allow competition
26 to begin in APS's service territory "before otherwise possible" on page 4, line 15. Alternative
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1 providers testified consistently that the inadequate shopping credit would preclude competition,
2 except perhaps for a few targeted customers.

3 The proposed Settlement does resolve the issue of APS's stranded costs and regulatory
4 assets recovery by negotiation. However, Commonwealth does not believe that the proposed
5 Settlement results in a resolution that is in a "fair and equitable manner" on page 4, line 19, nor
6 does the evidence reflect a "just and reasonable" CTC.

7 The proposed Settlement does provide for the divestiture of generation and competitive
8 services to APS's affiliate "in a cost-effective manner" for APS on page 4, line 21. However,
9 Commonwealth believes this divestiture at book value will discourage competition and encourage
10 the continuation and expansion of standard offer service by APS.

11 The proposed Settlement claims to remove "the specter of years of litigation and appeals
12 involving APS and Commission over competition-related issues" on page 4, line 23. That may
13 be true as to APS and the Commission. However, ESP's may still be confronted with litigation
14 uncertainty as to the reasonableness of those rates and a legitimate competitive environment.
15 Furthermore, the proposed Settlement does not address what this cost might be to consumers if
16 true competition does not actually occur in the near term.

17 3. Shopping Credits Should Reflect the Full Embedded Cost of APS

18 The proposed Order inadequately describes the shopping credit on page 6, lines 10-12:
19 "The 'shopping credit' is the difference between the customer's Standard Offer Rate and the
20 Direct Access Rate available to customers who take service from ESPs." This statement should
21 be modified to read: "The 'shopping credit' should reflect APS's full embedded cost for providing
22 the particular service to the customer under its Standard Offer Rate and that amount should be
23 credited to customers who desire direct access service."

24 4. ESP's Want Viable Competition

25 The proposed Order on page 5, lines 5-7, states that AECC urges the Commission to
26 protect the "public interest" by approving the proposed Settlement and not allowing ESPs to delay
27 the benefits of competition. ESPs by their very nature desire competition. However, this
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1 negotiated proposed Settlement does not foster competition, as testified to by all alternative
2 providers during the hearing.

3 **Objections to Proposed Findings of Fact**

4 In particular, Commonwealth objects to the proposed Findings of Fact Nos. 22, 23, 24, 25,
5 27, 28, 30, 31, 32 and 33, as not being supported by the record and evidence in this proceeding.

6 **Objections to Proposed Conclusions of Law**

7 Commonwealth objects to the proposed Conclusions of Law Nos. 4, 5 and 7, for the reasons
8 that the Settlement Agreement is not just and reasonable, nor in the public interest.

9 **Recommendations**

10 The proposed Settlement undermines two crucial underpinnings of a competitive market:
11 (a) fully-embedded cost-based "shopping credits" and (b) price signals to consumers based upon
12 those "shopping credits." Commonwealth urges that the following provisions be included in the
13 proposed Order:

14 1. Cost of Service

15 APS shall file a cost of service study illustrating the unbundled rates for distribution
16 service, generation service, must run generation service, transmission and ancillary services,
17 metering services, meter reading services, and billing services by February 29, 2000 with a full
18 embedded cost to become effective on or before July 1, 2000.

19 2. Market Value of APS's Generation Assets

20 By December 31, 1999, APS shall file a divestiture plan or the appraised value of its
21 generation assets, subject to the prior approval by the Commission of the appraiser, for each of
22 its generation assets. The Commission shall then issue a procedural order setting forth a hearing
23 to review or adjust the negotiated unbundled regulated asset and stranded cost figures proposed
24 in the Settlement.

25 3. Verification of Stranded Costs

26 In conjunction with the filing of the cost of service study, the Commission could order the
27 verification of the appropriate amount of stranded costs to be recovered by APS after the
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1 Commission determines the "market value" of APS's generation assets. If there is positive
2 stranded costs, the Commission could then order the appropriate fixed CTC so as to be assured
3 that competition will occur for all customers in the near term. If there is negative stranded costs,
4 that amount should be credited to the customer's generation shopping credit over an appropriate,
5 but relatively short, duration.

6 4. Competitive Benchmark

7 The Commission should impose "competitive benchmarks" to be assured that the proposed
8 Settlement will result in competition for residential and small business customers. If less than
9 20% of residential customers are not receiving competitive generation services as of February 29,
10 2000, the Commission should reopen and reevaluate the Settlement during the cost of
11 service/stranded cost verification proceeding.

12 5. APS Energy Services

13 APS's competitive affiliate should not be allowed to compete until APS has completed its
14 cost of service study and its direct access rates have been reviewed by the Commission. The
15 public, including consumers and rivals of APS should be assured that no cross-subsidization has
16 occurred.

17 6. Market Power

18 Reasonable economists can disagree on the proper way to define the relevant market in
19 which to assess the degree of power exercised by a utility. There can be no disagreement however
20 that market power must be reviewed on an on-going basis. If ESPs and alternative generation
21 projects are not serving the Arizona retail electric market, the Commission should retain
22 jurisdiction to review the market power of APS, investigate the cause of market inactivity, and
23 revise the Settlement in the context of modifying the Electric Competition Rules.

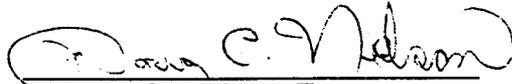
24 7. Transmission and Must-Run Units

25 On an on-going basis, the Commission should monitor and retain jurisdiction over retail
26 transmission access and the costs and charges of must-run generation units.

1 Commonwealth does not believe the approval of the proposed Settlement will result in any
2 significant competition, as has been the experience of the Salt River Project. Commonwealth
3 urges the Commission to adopt these recommendations so as to safeguard the public interest and
4 assure all consumers that the promises proposed in the Settlement will be met. In support of its
5 exceptions, Commonwealth incorporates by reference its previous filings in this proceeding.

6 RESPECTFULLY submitted this 7th day of September, 1999.

7 DOUGLAS C. NELSON, P.C.

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9 

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