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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

**EXCEPTIONS TO HEARING OFFICER'S
RECOMMENDED OPINION AND
ORDER**

The Arizona Consumers Council submits the following exceptions to the Hearing Officer's recommended Opinion and Order in the above-captioned matters:

If the Arizona Corporation Commission adopts the recommended Opinion and Order, it will be the first time in 20 years that the Commission will have illegally approved rate changes for a public service corporation without the benefit of any financial examination whatsoever. It was in 1978 that the courts put a stop to the Commission's practice of approving rate changes without appropriate financial examinations. *Scates v. Arizona Corporation Commission*, 118 Ariz. 531, 578 P.2d 612 (App. 1978). Since that time, no rate settlement has been approved by the Arizona Corporation Commission without the submission of financial information by the

Arizona Corporation Commission

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1 public service corporation and other parties that was adequate to properly evaluate the proposed
2 settlement and conclude that the ordered rates were just and reasonable.

3 If the Commission relapses into such illegal practices, it sets a dangerous precedent for
4 the future. In this case, the concerns are twofold. First, the Commission has no way of knowing
5 whether the proposed rate reductions are just and reasonable because absolutely no evidence was
6 submitted upon which the Commission could base such a decision. There is nothing in this
7 record to indicate that the cumulative rate reductions of 7.5% should not be two or even three
8 times higher than that. There is simply no evidence in the record to justify rate reductions at the
9 level specified in the recommended Opinion and Order, much less an explanation of why the rate
10 reduction should not be higher.
11

12 The other danger in establishing rates without an appropriate financial examination is that
13 the same rationale can be used to defend rate increases. If it is legal to implement rate reductions
14 without even a cursory analysis of the affected company's financial condition, then it must also
15 be legal to approve rate increases without such an analysis. The recommended Opinion and
16 Order focuses on the small rate reductions that the settlement contains but ignores the rate
17 increases that are contained in the form of the adjustment clause that the Commission will be
18 obligated to establish if the settlement is approved. With virtually no discussion in the
19 recommended Opinion and Order, it approves the establishment of such a clause that will permit
20 large rate increases for APS just as the last of the five 1.5% rate reductions has been
21 implemented.
22

23 If the Commission approves the recommended Opinion and Order, it will be abdicating
24 its constitutional responsibility to establish rates that are just and reasonable. Moreover, if the
25 Commission doesn't do its constitutional duty and determine whether the rate reduction should

1 be higher and further investigate the nature of the increases that the adjustment clause will
2 require, then there is very little need for an elected Corporation Commission. If all the
3 Commission does is approve settlements without an independent evaluation of their merits and
4 particularly the rate changes included in them, then the Commission is not doing the job the
5 people of the State of Arizona elected them to do.

6 In addition to the foregoing, the Arizona Consumers Council specifically objects to the
7 following portions of the recommended Opinion and Order:
8

9 1. The recommended Opinion and Order repeatedly refers to rate reductions totaling
10 7.5%. It is odd that while the rate reductions have always been characterized by APS, the parties
11 to the settlement and now the Hearing Officer in nominal dollars, stranded costs are always
12 described in present value terms. The Commission should be consistent on this point and
13 compare apples to apples. APS witness Robinson acknowledged that the present value of the
14 rate reductions to APS customers is 4.5%. That is almost a full percent less than the recent rate
15 reduction implemented by Salt River Project. Why isn't the rate reduction greater? Based on the
16 record in this case, it is impossible for the Commission to say.

17 2. On page 4 at line 28 the recommended Opinion and Order states that "the
18 settlement was entered into by RUCO and the ACAA "reflecting agreement by residential
19 customers of APS to the settlement's terms and conditions." That is an erroneous statement.
20 Neither organization has the authority to enter into agreements on behalf of residential
21 customers. RUCO is established to represent the interests of residential customers, not the
22 customers themselves. Similarly, ACAA represents the interests of low-income customers, not
23 the customers themselves. Residential customers have not agreed to the settlement's terms and
24 conditions as the recommended Opinion and Order indicates. The participation of the Arizona
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1 Consumers Council and its opposition to the settlement is explicit evidence to the contrary.
2 Indeed, if the Commission had conducted the kind of hearing that the law requires and forced the
3 proponents of the settlement to submit evidence regarding the magnitude of the rate reductions
4 included in the settlement, the Arizona Consumers Council is confident that evidence would
5 demonstrate that substantially higher rate reductions would be required. Under those
6 circumstances, it is much more likely that residential customers would reject the settlement.
7

8 3. On page 5, the recommended Opinion and Order recites Staff's response to the
9 Arizona Consumers Council's arguments that there is no evidence in this record to support a
10 finding that the rates proposed in the agreement are just and reasonable. According to the
11 Opinion and Order, Staff argued that since there had been a rate case which preceded Decision
12 No. 59601 dated April 26, 1996, those rates must remain in effect until changed in a rate
13 proceeding. Since this is not a rate proceeding, as all parties acknowledge, this case cannot be
14 about changing existing rates but instead involves the introduction of a new service – direct
15 access.

16 The recommended Opinion and Order adopts this convoluted logic. To say that rates
17 cannot be changed until there is a full rate proceeding and then at the same time say that since
18 this is not a full rate proceeding, by definition, rates are not being changed is a self-fulfilling
19 prophesy. Elsewhere in the recommended Order, there is reference to "rate reductions for
20 residential and business customers" (page 4, line 7), "providing for annual rate reductions" (page
21 4, line 17), and "APS has agreed to reductions in rates" (page 13, line 4). According to the
22 Opinion and Order, if it walks like a duck and quacks like a duck, it must be a goose. No amount
23 of illogic can disguise the fact that the settlement represents a comprehensive rate change, not
24 just the introduction of a new service.
25

1 4. On page 5 of the recommended Opinion and Order at line 10, it states that the
2 Arizona Consumers Council opposed the agreement on the grounds that it was unlawful because
3 “there was no full rate proceeding . . .” That statement mischaracterizes the position of the
4 Arizona Consumers Council. Nowhere in this proceeding has the Council stated that a full rate
5 proceeding is required in order to properly evaluate the rates that are being proposed in the
6 agreement. The statement should be removed from the recommended Opinion and Order. The
7 Arizona Consumers Council’s position has consistently been that some financial examination
8 must be conducted before a general rate change of the sort contained in the settlement can be
9 approved by the Commission. Whether that is a full rate proceeding depends on the
10 circumstances of each case. The relevant legal authorities appear to allow something less than a
11 full rate proceeding under appropriate circumstances. Whether a full rate proceeding would be
12 required in this case in order to lawfully implement the rate changes being proposed requires a
13 separate analysis. At a minimum, the Commission should examine information related to the
14 company’s current earnings, its cost of providing service and the known and measurable changes
15 that will occur like the transfer of APS’ generating assets to an affiliate. None of those issues
16 have been addressed in this case nor has any evidence been introduced which discusses them.

18 5. The recommended Opinion and Order states that APS argued that no
19 determination of fair value rate base, fair value rate of return or other financial analysis is legally
20 necessary. The Order further states that APS provided information to support a fair value rate
21 base of approximately \$5.1 billion and a fair value rate of return of 6.63%. APS did indeed
22 provide one single piece of paper that contained the number that is quoted in the recommended
23 Opinion and Order. However, that is a far cry from the kind of financial examination that the
24 law requires before the Commission can conclude that the rates proposed in the settlement are
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1 just and reasonable. Moreover, even the number cited in the Order lacks any evidentiary value
2 whatsoever. The proponent of the fair value rate base could not testify as to how the number was
3 derived, what it included or what it excluded. Additionally, it is a number that was ostensibly
4 derived using the fair value rate base amount from the company's last rate case more than three
5 years ago. Finally, the number cannot be reconciled with APS' own annual report filed with the
6 Corporation Commission.

7
8 6. Although the recommended Opinion and Order partially addresses the Arizona
9 Consumer Council's claim that the settlement unlawfully binds future Commissions, it does not
10 completely resolve the problem. The only change that the recommended Opinion and Order
11 makes is to clarify that the Commission may entertain petitions submitted under A.R.S. § 40-
12 246. However, the Council's objections extend far beyond that. First, this Commission cannot
13 bind a future Commission to establish an adjustment clause mechanism as the settlement
14 currently requires. That decision lies within the exclusive ratemaking responsibility of whatever
15 future Commission is asked to make that decision. The recommended Opinion and Order cannot
16 require it.

17
18 Second, as the Council noted during the hearing, the settlement purports to make the
19 Commission a party to the agreement and thus expose it to a future legal action for breach of
20 contract if the Commission takes any action that is inconsistent with the settlement. Although
21 this Commission may unlawfully choose to relinquish its constitutional responsibilities, it cannot
22 impair a future Commission's ability to properly discharge its legal duties prescribed by Article
23 XV of the Arizona Constitution.

24 For example, what if the Commission that is seated in 2004 determines that it is not
25 appropriate to establish an adjustment clause mechanism as the settlement requires? That

1 Commission may be exposing itself to a massive lawsuit for damages associated with the
2 inability of APS to pass through millions of dollars in costs to APS customers. The mere threat
3 of such a lawsuit constitutes a substantial impairment of that future Commission's ability to
4 lawfully perform its constitutional duties to prescribe rates that are just and reasonable.

5 7. Finding of Fact No. 23 on page 15 should be stricken. It provides that the
6 information and formula for rate reductions contained in Exhibit AP-3 provides current financial
7 support for the proposed rates. No witness in this proceeding testified to that effect. Indeed,
8 Staff witness Ray Williamson testified that he did not know if APS was overearning or under-
9 earning based upon the exhibits provided by APS. That exhibit merely reflects the formula
10 which the last rate decision put into effect for the purpose of calculating rate adjustments. No
11 one in this case testified that it was an appropriate basis for current ratemaking purposes. APS
12 witness Alan Proper even states in his testimony that it is inappropriate for that purpose.

13 Ray Williamson further testified that nobody on the Staff has verified the accuracy of the
14 numbers contained in Exhibit AP-3. But, more importantly, even if the accuracy of the numbers
15 could be verified, they still do not provide any basis for evaluating the rate changes proposed in
16 the settlement. Although the recommended Opinion and Order concludes that they provide
17 "current financial support" for the proposed rates, the recommended Opinion and Order fails to
18 explain how the exhibit does that.
19

20 8. Finding of Fact No. 28 states that an APS rate case would take a minimum of one
21 year to complete. However, no party to this proceeding has stated that a full rate case is
22 necessary in order to properly evaluate the settlement. Additionally, there is no evidence in this
23 record about how long an APS rate case would take to complete. Finally, the length of time that
24 an appropriate financial examination would take is irrelevant. It is required by the law and no
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1 COPY of the foregoing
2 mailed this 7th day of
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3 Distribution list for:
4 Docket Nos. E-01933A-98-0471
E-0193A-97-0772
5 RE-00000C-94-0165

6 Jan McArthur
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