



Arizona Corporation Commission

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July 2, 1998

Mr. Ray T. Williamson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

RE: Retail Electric Competition - June 25, 1998 Draft of Proposed Rule Revisions

Dear Mr. Williamson,

Pursuant to your June 25, 1998 letter, PG&E Energy Services submits the following comments with respect to the 1st Draft of proposed revisions to the Retail Electric Competition Rules.

GENERAL COMMENTS

On the whole, we complement the Staff on the quality and comprehensiveness of the proposed revisions. The new provisions on generation tagging and emissions characteristics are, however, problematic and our concerns are addressed below.

SPECIFIC COMMENTS

Reporting and Labeling Requirements

Sections R14-2-1614.A.3 and 10 and Sections R14-2-1618.C.1, 2, 3, 4, 5, 6, 7 and E, G and H require generation composition and emissions information for an ESP's *entire* sales base. These sections must be changed to apply only to that portion of an ESP's sales for which a marketing representation is made to customers about the composition of electricity as in, for instance, a renewable product.

We will generally not know the source of much of the power we are selling. We will largely be selling what is known as "system power." Much of our electricity will be obtained in very active trading markets wherein blocks of electricity exchange hands a number of times. Unless we are the original purchaser, we will not be able to find out the generation composition or emissions information. We cannot require the earlier "owners" of such power to pass along this information.

Clearly, for any product for which we make an environmental quality claim, we will back up that claim. In such instances, we will be incurring the extra cost of owning or directly purchasing and tracking renewable resources. Such costs will necessarily be borne by customers purchasing renewable products for this to be viable in the long run.

PG&E Energy Services is not the same company as Pacific Gas and Electric Company, the utility. PG&E Energy Services is not regulated by the California Public Utilities Commission; and you do not have to buy PG&E Energy Services products in order to continue to receive quality regulated services from Pacific Gas and Electric Company, the utility.



It is our understanding that these sections of the rules have *not* been scrutinized in a manner similar to most other issues in working group efforts. We would be willing to participate in a working group on this issue. PG&E Energy Services is sensitive to environmental issues and we believe there are commercially viable environmentally friendly products. We currently have a renewable product in testing in California with residential customers.

Aggregation

1. Given the overall 20% ceiling on customer eligibility for the first two years, please consider reducing the aggregation thresholds back to the original 20 kilowatts (and a corresponding monthly maximum of 8, 250 kilowatt-hours for those lacking demand meters). 16,500 kilowatt-hours is simply too high a threshold. 16,500 at 40 kilowatts demand equates to a 57% load factor in the peak month. This means load factors in the other 11 months are likely to significantly exceed 57%. We believe competition can benefit most those customers using electricity relatively *inefficiently* today and yet the Commission's 16,500 kilowatt-hour threshold allows only the most efficient customers without demand meters to be eligible.

2. Please clarify the method for determining a customer's peak load for eligibility purposes. We recommend that the rules in R14-2-1604 Sections A and B insert the word "non-coincident" before "peak demand." Non-coincident is the demand measurement used in existing billing. This clarification is needed so that an Affected Utility cannot assert that the Commission meant "coincident" peak demand. There are tens of thousands of meters in place that measure "non-coincident" peak demand and only a few hundred which measure "coincident" peak demand.

Rates for Unbundled Services

Our "cc&n" application presented extensive information and reasons that we had hoped would lead to revisions in R14-2-1606.H (Rates for Unbundled Services) to eliminate the concept of a cost based single rate for competitively provided services. Such a concept is out of sync with commercial reality. In our cc&n application, we indicated we would neither price below short-run marginal cost nor price above 30 cents per kilowatt-hour. The latter number we selected because it was the penalty amount for the solar portfolio standard. We must have the flexibility to price our competitive products between these numbers as market conditions, financing products and customer negotiations dictate. If we charge too high a competitive price, customers can and will switch to other lower priced providers. That is the difference between competition and regulated monopoly.



Scheduled Outage Notification

R14-2-1613.D contains a new requirement for ESP's to notify customers and the Commission about outages and interruptions. This new requirement should be eliminated. First, reliability is the responsibility of the Affected Utility and the Independent System Operator and not a non-utility ESP. The ESP Service Agreements are the proper forum for providing an Affected Utility the financial assurances that imbalances will be compensated for properly. We have already provided Commission Staff with draft language that addresses this issue.

ESP Service Agreements

To date, no Affected Utility has expressed any interest or willingness to negotiate an ESP Service Agreement with us. Obviously, our affiliate Pacific Gas & Electric Company has such agreements existing with a number of Arizona utilities.

The Commission's revised rules now require such an agreement as a precondition for cc&n approval (R14-2-1603 Section F.3). Hence, we request the Commission's help in motivating the Arizona Affected Utilities. We recommend:

1. The ACC require each affected utility to offer a reasonable *standard* ESP Service Agreement by a date certain, of say, August 1, 1998.
2. The ACC require each affected utility to offer identical or better terms to new entrants filing timely cc&n applications earlier than it offers an ESP Service Agreement to its own affiliate.

Contracts

R14-2-1612.C requires "contracts whose term is 1 year or more and for service of 1 MW or more must be filed with the Director of the Utilities Division." We request the Commission eliminate this requirement. Alternatively and minimally, the Commission must provide confidentiality for filed contracts.

Buy- Through

Section R14-2-1604.H allows an Affected Utility to engage in buy-through arrangements. Given other rule revisions, we are now uncertain as to why this provision remains and to whom it applies. It appears redundant with direct access service and should be eliminated from the rules. If it is not redundant, we must ask what additional benefit buy-through conveys when it is offered by an Affected Utility to a customer? We fear it offers beneficial transmission access and / or additional price discounts. If buy-through is additionally beneficial, then it is another marketing tool for an affected utility to use to retain customers by offering features superior to



standard offer. The proposed affiliate rules do not adequately address this concern because buy-through originates from within the utility.

Is it possibly the Commission's intent for buy-through to apply only to those customers not otherwise eligible on January 1, 1999? Is it the Commission's intent that Affected Utility's must offer the same buy-through terms to a company such as PG&E Energy Services so that we can in turn offer identical buy-through arrangements and not be disadvantaged? Please clarify the rules for buy-through.

Unbundled Billing Elements

We applaud the Staff for requiring that Standard Offer bills display cost elements. We believe many Arizona customers will see that they are paying 7 cents, 8 cents or more per kilowatt hour for generation alone and will derive incentive to shop elsewhere.

For Standard Offer bills, please consider combining the "CTC" charge into "generation." We suggest this because: 1) Standard offer customers do not technically pay "CTC" under the rules; and 2) "CTC" displayed on direct access bills will be less than the *imputed* "CTC" on Standard Offer tariffs and there is no reason to confuse customers.

Rule Markups

Attached are pages 27 and 30 of the Draft rules with suggested deletions and insertions.

Respectfully submitted,

PG&E ENERGY SERVICES CORPORATION

By Tom Broderick
Tom Broderick

cc: Docket Control
Larry Robertson

- B. An Affected Utility shall not provide competitive services. However, this rule does not preclude an Affected Utility's affiliate from providing competitive services.

R14-2-1617 Electric Affiliate Transaction Rules.

A. Separation: An Affected Utility and its affiliates shall operate as separate corporate entities. Books and records shall be kept separate, in accordance with applicable Uniform System of Accounts (USOA) and Generally Accepted Accounting Procedures (GAAP). The books and records of any utility affiliate shall be open for examination by the Commission and its staff consistent with the provisions set forth in A.A.C. R14-2-1614.

1. An Affected Utility shall not share office space, equipment, services, and systems with its affiliates, nor shall an Affected Utility and its affiliates access any computer or information systems of one another, unless expressly provided for in these rules.
2. An Affected utility, its parent holding company, or a separate affiliate created solely for the purpose of corporate support functions, may share with its affiliates joint corporate oversight, governance, ~~support systems and personnel.~~ Any shared support shall be priced, reported and conducted in accordance with all applicable Commission pricing and reporting requirements. An Affected Utility shall not use shared corporate support functions as a means to transfer confidential information, allow preferential treatment, or create ~~significant~~ opportunities for cross-subsidization of its affiliates. *delete 9*
3. An Affected Utility shall not trade, promote, or advertise its affiliate's affiliation with the utility, nor allow its name or logo to be used by the affiliate in any material circulated by the affiliate, unless it discloses in plain legible or audible language, on the first page or at the first instance the Affected Utility name or logo appears, that:
 - a. The affiliate is not the same company as the Affected Utility; and
 - b. Customers do not have to buy the affiliate product in order to continue to receive quality regulated services from the
4. An Affected Utility shall not offer or provide to its affiliates advertising space in any customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.
5. An Affected Utility shall not participate in joint advertising, marketing or sales with its affiliates, or cause any joint communication and correspondence with any existing or potential customer.
6. Except as provided in Section A.2, an Affected Utility and its affiliate shall not jointly employ the same employees. This rule applies to Board of Directors and corporate officers. However, any board member or corporate officer of a holding company may also serve in the same capacity with the Affected Utility or its

affiliate, but not both. Where the Affected Utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for its affiliates, the prohibition outlined in this section shall only apply to affiliates that operate within Arizona.

7. **Transfer of Goods and Services:** to the extent that these rules do not prohibit transfer of goods and services between an Affected Utility and its affiliates, all such transfers shall be subject to the following price provisions:
 - a. Transfers from an Affected Utility to an affiliate of goods or services for sale on the open market shall be priced at the lower of cost or fair market value. Transfers from an affiliate to its affiliated utility shall be priced at the higher of cost or fair market value.
 - b. Goods and services produced, purchased or developed for sale on the open market by the Affected Utility will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise permitted by these rules or applicable law.
 - c. Goods and services not produced, purchased or developed for sale by an Affected Utility to its affiliates shall be priced at fully loaded cost, plus 5% of direct labor costs. Transfers from an affiliate to an Affected Utility for such goods and services shall be priced at the lower of fully loaded cost or fair market value.

C. **Compliance Plans:** No later than December 31, 1998, each Affected Utility shall file a compliance plan with the Commission demonstrating the procedures and mechanisms implemented to ensure that activity prohibited by these rules will not take place. The compliance plan shall be submitted to the Utility Division and shall be in effect until a determination is made regarding its adequacy under these rules. The compliance plan shall thereafter be submitted annually to reflect any material changes.

1. **New Affiliate Compliance Plan:** For each newly created affiliate subject to these rules, an Affected Utility shall file a compliance plan to be submitted to the Utility Division for review. The compliance plan shall demonstrate how the utility will implement these rules with respect to the new affiliate.
2. No later than December 31, 1999, and every year thereafter, an Affected Utility shall have audits prepared by independent auditors which verify that the utility is in compliance with the rules set forth herein. Audits shall be prepared at shareholder expense.

D. **Disclosure:** An Affected Utility shall provide customer information to its affiliates and non-affiliates on a non-discriminatory basis, provided prior affirmative customer written consent is obtained. Any non-customer specific non-public information shall be made

2. If a tariff provision allows for discretion in its application, an Affected Utility shall apply that provision equally among its affiliates and all other market participants and their respective customers. If there is no discretion in the tariff provision, the Affected Utility shall strictly enforce that tariff provision.
3. Requests from affiliates and non-affiliated entities and their customers for similar services provided by the Affected Utility shall be processed equally and within the same time.
4. An Affected Utility shall not condition or otherwise tie the provision of any service provided, nor the availability of discounts of rates or other charges or fees, rebates or waivers of terms and conditions of any services, to the taking of any goods or services from its affiliates.
5. An Affected Utility shall not assign customers to which it currently provides services to any affiliate by any means, unless that means is equally available to all competitors.
6. In the course of business development and customer relations, except as otherwise provided for in these rules, an Affected Utility shall ~~refrain from:~~
 - a. ~~providing~~^e leads to its affiliates; not
 - b. ~~soliciting~~ business on behalf of affiliates;
 - c. ~~acquiring~~^e information on behalf of, or provide to, its affiliates; and
 - d. ~~sharing~~^e market analysis reports or any non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates.
7. Any discounted rate, rebate, or other waiver of a charge or fee associated with services provided by an Affected Utility shall be recorded and maintained, for each billing period, with the following information:
 - a. name of the entity being provided services;
 - b. the affiliate's role in the transaction;
 - c. the duration of the discount or waiver;
 - d. the maximum rate;
 - e. the rate or fee actually charged during the billing period; and
 - f. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.

contemporaneously available by an Affected Utility to its affiliates and all other service providers on the same terms and conditions.

1. Any list provided by an Affected Utility to its customers which includes or identifies the utility's affiliates must include or identify non-affiliated entities as well. If a customer request is made, the Affected Utility shall provide the customer with a list of all providers of electricity or utility related goods and services operating in its service territory, including its affiliates.
2. An Affected Utility may provide non-public supplier information and data which it has received from unaffiliated suppliers to its affiliates or nonaffiliated entities only if the utility receives prior authorization from the supplier.
3. Except as otherwise provided in these rules, an Affected Utility shall not offer or provide customers advice or assistance with regard to its affiliates or other service providers.
4. An Affected Utility shall maintain contemporaneous records documenting all tariffed and non-tariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts. These records shall be maintained for a period of three years, or longer if required by this Commission or another governmental agency.
5. An Affected Utility shall maintain a record of all contracts and related bids for the provision of work, product or services to and from a utility to its affiliates for a period of three years, or longer if required by this Commission or another governmental agency.
6. To the extent that reporting rules imposed by FERC require more detailed information or more expeditious reporting, nothing in these rules shall be construed to modify such FERC requirements.

E. Nondiscrimination: an Affected Utility shall not represent that, as a result of the affiliation with the utility, its affiliates or customers of affiliates will receive any treatment different from that provided to other, non-affiliated entities or their customers. An Affected Utility shall not provide its affiliates, or customers of its affiliates, any preference over non-affiliated suppliers or their customers in the provision of services provided by the utility.

1. **Discounts:** Except when made generally available by an Affected Utility through an open, competitive bidding process, if the Affected Utility offers a discount or waives all or any part of any charge or fee to its affiliates, or offers a discount or waiver for a transaction in which its affiliates are involved, the utility shall contemporaneously make such discount or waiver available to all similarly situated market participants. All competitors serving the same market as the Affected Utility's affiliates shall be offered the same discount as the discount received by the affiliate.