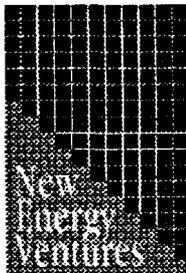




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J. Walker Martin
Vice President &
General Counsel

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July 6, 1998

VIA HAND DELIVERY

Arizona Corporation Commission
DOCKETED

JUL 06 1998

Mr. Ray T. Williamson
Acting Director, Utilities Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007-2996

DOCKETED BY *[Signature]*

RE: New Energy Venture's Comments on Staff's First
Draft of Proposed Revisions of the Retail Electric
Competition Rules
Docket No. RE-00000-94-0165

Dear Mr. Williamson:

New Energy Ventures, L.L.C. (NEV) has extensive experience providing energy and energy related services to customers in California and a number of states in the Eastern United States. We also intend to participate in the competitive process in the State of Arizona.

The following comments are based on our experience and are intended to facilitate the competitive process and maximize the benefits to the consumers in Arizona. Competitive implementation in other states has clearly proven the value, as well as the limitations, of certain rules in creating a competitive market with the highest opportunities for the end-use customer.

Due to the relatively short time frame allowed to reply to the Staff's draft, these comments are not exhaustive, and we anticipate filing supplemental recommendations.

July 6, 1998

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Nonetheless, they do address our most important issues. We offer suggestions for future drafts or propose discussions on those sections that are vague or need additional development.

Any questions regarding these comments should be directed to my attention. Thank you for the opportunity to participate in this process.

Very truly yours,

A handwritten signature in cursive script that reads "J. Walker Martin / Paul". The signature is written in dark ink and is positioned above the typed name.

J. Walker Martin

JWM:br
Enclosure

cc: Docket Control, ACC (Original and 10 copies)
cc: Nancy Day, Senior Vice President
Regulatory and Government Relations

ACC Staff First Draft of Proposed Rules
Docket No. RE-00000-94-0165

The format for NEV's comments will follow the order of the draft and reference the rule number, name, section and paragraph. Where appropriate, NEV has offered suggested language. The absence of comments does not indicate NEV's acceptance or agreement with a particular rule.

R14-2-1603. Certificates of Convenience and Necessity

Item B.3 NEV believes that while residential customers are similar enough that they may receive a uniform price for commodity and services, commercial and industrial customers are not. Attempting to limit offerings to pre-approved tariffs is inconsistent with the flexibility inherent in a competitive marketplace and will limit the benefits to customers. At a minimum, the rule should identify which services the Commission envisions in this rule so that further comment can be offered.

Recommended change: omit

Item G.1 Resource planning will be managed by the marketplace based on economics and open competition.

Recommended change: delete the words [and relative to resource planning].

Item G.2 – G.3 Additional detail is needed to understand the type of information envisioned in these two sections. The burden on the ESP and the cost necessary to meet these demands are impossible to calculate without this detail.

Recommended change: be more specific on data required or omit.

Item G.4 it is unclear which services are required to be tariffed.

Recommended change: either provide additional detail for comment or omit.

R14-2-1604 Competitive Phases.

In general, NEV believes that customers who wish to have access to the competitive marketplace should have real-time interval meters. This has proven critical in California and has facilitated the introduction of

advanced metering and information storage/transfer technologies. As a result, NEV, similar to other ESP's, now provides customer-driven solutions that include: (1) Access to real-time pricing and usage via Internet links; (2) customized billing options; and (3) customer choice in performance-based products and services. In contrast, load profiling in California has not proven to be accurate nor has it allowed customers to achieve the benefits deserved based on their actual consumption.

Item H. This language provides an opportunity for Affected Utilities to have an unfair advantage in advance of the scheduled start date for competition.

Recommended change: omit

Item I.1 All customers should have the opportunity to access the market at the same time. This language is unclear on how long a delay might be allowed for customers of electric cooperatives. By analogy, lack of a concurrent plan to introduce municipal utilities and their customers into direct access in California has arguably gerrymandered the marketplace and slowed the intended benefits of full competition.

Recommended change: please provide a more specific date.

R14-2-1606. Services Required to Be Made Available by Affected Utilities.

Item C. Affected Utilities have previously filed Unbundled Service Tariffs with the ACC. The ACC should rule on these at the earliest date so new entrants would have the opportunity to include these costs in bids prior to the start date of competition.

Recommended change: Rewrite the language to reflect what has already transpired and to require a final determination on Unbundled Service tariffs by the ACC at least four months in advance of competition.

Item G.1. The UDC will always have access to the customer's demand and energy data, and it is reasonable for the UDC to provide that information to any ESP chosen by a customer. This is essential to underwriting competitive service and product offerings.

Recommended change: line 1, change [Electric Service Provider] to [UDC].

Item I. This section pertains to the "Affected Utility".

Recommended change: line 1 [Electric Service Provider] to: [UDC or Affected Utility].

Item J. the time-frame specified in this section may not be completed by January 1, 1999. More realistic dates should be specified.

Recommended change: line 1 [90 days] to [30 days].

R14-2-1609 Solar Portfolio Standard.

Solar power is a social investment that is appropriately handled in the system benefits charge. Customers that have a desire to meet their energy demands through solar or other alternative generation sources will find specific companies to meet their demands (i.e., customer choice should better drive this technology). Requiring all ESP's to meet this requirement is inconsistent with a competitive energy market as defined by the demands of the customer.

Recommended change: Omit the solar portfolio requirement as stated and include alternative energy language as a component of the System Benefits Charge.

R14-2-1612 Rates. Deregulation is meant to encourage free market competition. The requirement to file prices, contract terms, and contracts with the Commission is inconsistent with a competitive energy market. Furthermore, many offerings will not involve standard tariffs, but rather a full menu of pricing options involving block purchases, real-time pricing and data transfer options, shared savings off various market indexes and many other options. Requiring ESPs to obtain Commission approval of contracts is burdensome and will impede competition. As proposed, NEV strongly objects to such requirements. As a minimum, the policy reasons for such requirements would appear to support consumer protection issues associated with residential service only.

Recommended change: Omit sections B, C, J, K and L

R14-2-1613 Service Quality, Consumer Protection, Safety and Billing Requirements.

Recommended change: **Item C** line 9 [Providers shall submit *annual* reports to the Commission itemizing the *unresolved* complaints filed by customers who have had their electric service...]

Item F Blanket application of this rule is unnecessarily burdensome. To the extent safety reports are appropriate, then specific circumstances should be explicitly defined.

Recommended change: Delete Item F.

Item L It is unclear what is being required in terms of volume, cost or content. If the ACC wishes to provide general education materials for consumers, the costs should be borne by Affected Utilities and included in their tariffs or should be borne by the customers who benefit from competition. Requirements in this area are best confined, as in New York, to the filing of dispute resolution protocols for residential service only.

Recommended change: Have Affected Utilities and ESP's work with Staff to develop an alternate proposal confined to residential customers or omit.

R14-2-1614 Reporting Requirements. The list of reports and schedules listed involves information that may not be readily available, is too burdensome to provide as requested or is inappropriate for public disclosure in a competitive marketplace.

Recommended change: NEV proposes to work with Staff to develop a reasonable set of reports and schedules.

R14-2-1615 Administrative Requirements. Deregulation is meant to encourage free market competition and innovative product offerings. ESP's other than UDC's should neither be required to file tariffs, nor to obtain ACC approval for competitive services. This is unworkable.

Recommended change: omit sections A and B

R14-2-1617 Electric Affiliate Transaction Rules. While NEV supports the need to prevent leveraging off the incumbent utility, there may be situations where materials should properly reference the coordination of generation and distribution issues between the UDC and any ESP, including an affiliate.

Recommended change: **Item A.5** Add to line 3 [... potential customer except for any issues related to the coordination of the UDC and ESP as provided for under these rules.]

R14-2-1618 Information Disclosure Label. NEV currently lacks the necessary reporting capability to produce the described label. There are a number of problems associated with developing the label, such as tracking energy purchases which may be daisy-chained through a host of buyers and sellers before finally reaching the consumer. The ability to provide this energy history will rely on tagging protocols that do not exist. Section 1618 is very broad and should be studied and developed in concert with all parties and the Staff to reach a reasonable solution.

Recommended change: Omit this section until such time that the Staff and ESP's can develop an alternative proposal.

MISCELLANEOUS.

Staff's proposal represents a very workable framework, but greater specificity is needed as highlighted in NEV's comments. One area of great concern pertains to the application of public utility regulations to ESP's. New, competitive market participants should not be subject to unnecessary and costly regulations such as proscribed herein, including the requirement to file for a Certificate of Convenience and Necessity. Competitive offerings and rates are determined in the marketplace, not by regulators. NEV urges the Commission to exercise extreme caution in the formulation of rules applicable to the terms and conditions of competitive services. Such rules should exist only when necessary to protect the public safety, and at most, should apply to residential service.