



0000121174

RECEIVED  
AZ CORP COMMISSION

JUL 8 2 31 PM '98

DOCUMENT CONTROL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN  
COMMISSIONER-CHAIRMAN  
RENZ D. JENNINGS  
COMMISSIONER  
CARL J. KUNASEK  
Commissioner

IN THE MATTER OF THE COMPETITION ) DOCKET NO. RE-00000C-94-0165  
IN THE PROVISIONS OF ELECTRIC )  
SERVICES THROUGHOUT THE STATE ) NOTICE OF FILING COMMENTS  
OF ARIZONA )  
\_\_\_\_\_ )

Navopache Electric Cooperative, Inc. hereby gives notice of its filing of the original and ten (10) copies with Docket Control of the attached Comments on Staff's Proposed Changes to the Arizona Corporation Commission's Rule on Retail Electric Competition (R14-2-1601- et seq.) dated June 25, 1998 and service thereof.

RESPECTFULLY SUBMITTED this 6th day of July, 1998.

MARTINEZ & CURTIS, P.C.

Arizona Corporation Commission

DOCKETED

JUL 06 1998

DOCKETED BY *lmh*

By: *William P. Sullivan*

William P. Sullivan  
Michael A. Curtis  
Paul R. Michaud  
2712 North Seventh Street  
Phoenix, Arizona 85006-1090  
Attorneys for Navopache Electric  
Cooperative, Inc.

1  
2  
3  
4

**Navopache Electric Cooperative, Inc.  
Comments on Staff's Proposed Changes to  
the Arizona Corporation Commission's Rule on  
Retail Electric Competition (R14-2-1601 et seq.)**

5  
6

**Overall comment.**

7  
8

Navopache is concerned that the Commission is seeking to allow markets to substitute for regulation on the one hand and is seeking to increase regulation on the other hand. Navopache believes that some consumer protection measures are appropriate but the proposed rule modifications expand the scope of regulation beyond the boundaries necessary to implement competitive markets in a fair manner.

9

**R14-2-1601 (15)**

10  
11  
12

The definition of "Installed Adequate Reserve" is unclear. Does ESP "expected annual peak capability" mean generation capability, as generation is defined in the proposed rule changes? Why is the term called "adequate"? There is no reference to what constitutes adequate reserves. Is "Installed Adequate Reserve" used in the rule?

13

**R14-2-1601 (25)**

14

The definition refers to ISA and ISO. These are undefined terms.

15

**R14-2-1603 (A)**

16  
17  
18  
19  
20  
21

The proposed change is to strike out the sentence that an affected utility does not need to apply for a CC&N for any service provided as of the date of adoption of the rule within its distribution service territory. The proposed change will create additional expense and may create upheaval. With the change, Navopache would have to re-apply for its CC&N for distribution services and standard offer services, incurring the expense of requesting to do what it already has authority to do. As a result of striking out the language, any party could apply to provide distribution service or standard offer service in Navopache's service territory or in part of Navopache's service territory. If this is the Commission's intent, the merits and shortcomings of such a policy deserve more attention than an obscure strike-out. Navopache recommends that the original language be retained.

22

**R14-2-1603 (F) (3)**

23  
24  
25  
26

This paragraph indicates that the Commission may deny certification to any applicant who does not have service acquisition agreements with a utility distribution company and scheduling coordinator if the applicant is not its own scheduling coordinator. This proposed change may be an invitation to some utilities to stall in granting service acquisition agreements to potential competitors. If the Commission desires to retain this

1 proposed change, it must add a provision for expedited review of and decisions on  
2 complaints by potential applicants pertaining to unreasonable withholding of such  
3 agreements by utility distribution companies and scheduling coordinators. Further, this  
4 paragraph assumes that an applicant which is not its own scheduling coordinator has  
5 contracted for energy supply and other services before it can market services and before  
6 it knows how many customers it will have. It may be difficult to obtain scheduling  
7 coordination agreements with third parties without some concrete information about the  
8 magnitude of the service and without contracts for future delivery. Navopache  
9 recommends deleting the requirement for having schedule coordinating agreements in  
10 place before requesting a certificate. Rather, the certificate should require the ESP to  
11 obtain schedule coordinating agreements before delivering electricity under retail  
12 contracts.

13 **R14-2-1604 (C) (4)**

14 This paragraph indicates the date by which a residential phase-in program proposal is to  
15 be filed with the Commission (September 15, 1998). Because the rule may not be finalized  
16 until September 1998 or possibly later, the due date is unreasonable. The due date should  
17 be at least 30 days after final adoption of the rule change. This could require moving back  
18 the schedule for the residential phase-in by a few months.

19 **R14-2-1604 (D)**

20 This paragraph invites (but does not require) affected utilities to lower rates. The  
21 consequence of mandated lower rates will be to reduce competitive entry into the market  
22 to serve smaller customers. This has been the experience in California and Massachusetts.  
23 We recommend deleting this paragraph. Affected utilities will be under significant  
24 pressure to lower costs (and hence prices) going forward, anyway.

25 **R14-2-1606 and R14-2-1618 (F) (1) (h) (vii)**

26 R14-2-1618 (F) (1) (h) (vii) requires inclusion of information on consumer rights  
pertaining to provision for default service. In general, default service is standard offer  
service. However, the rule is silent on the situation in which an ESP defaults and does not  
notify the end use consumer about its going out of business. (If the ESP notifies the  
customer about its going out of business the typical contract would enable the customer  
to select another supplier). The generator supplying imbalance energy to make up for  
under-scheduling by the defaulting ESP will be responsible for the costs of the imbalance  
generation and should have recourse through deposits made by the ESP for imbalance  
service or other means. However, the end use consumer does not know that the ESP is in  
default. One way to handle this situation is for the control area operator to take  
information on the absence of schedules for the defaulting ESP and notify the ISA and  
scheduling coordinators, who in turn notify the utility distribution company. The utility  
distribution company should then notify the end use consumer. Until the end use  
consumer switches suppliers, the consumer will be served as a standard offer customer of

1 the utility distribution company. The rules should provide for the automatic switching of  
2 a consumer to standard offer service if the consumer's supplier defaults without notifying  
3 the consumer that service will be terminated. The unbundled customer charge levied by  
4 the utility distribution company should include the costs of this "insurance policy."

4 **R14-2-1607 (D)**

5 This paragraph indicates that affected utilities must request Commission approval by  
6 August 24, 1998 of stranded cost recovery charges. *This rule change contradicts Decision*  
7 *No. 60977 regarding stranded costs.* In that Decision, the Commission ordered each  
8 affected utility to file an implementation plan with its stranded cost option, setting forth  
9 details of its plan including estimated stranded costs (p. 23, line 24). The Decision does  
10 not require filing of stranded cost recovery charges as the proposed rule change requires.  
11 Therefore, it is premature to require a filing of a stranded cost recovery rate (as opposed  
12 to a plan) by August 14, 1998. Further, the rule should not require filing anything before  
13 the rule goes into effect and the rule is probably not going to be in effect before September  
14 1998. Navopache recommends leaving the rule as it originally stood, with no changes in  
15 wording.

12 **R14-2-1609**

13 R14-2-1609 (C) pertains to extra credit multipliers that may be used to meet the (revised)  
14 solar portfolio standard. The application of the proposed extra credit multiplier in  
15 Paragraph (C) (1) is unclear. An example should be provided.

16 Paragraph (C) (2) (b) is unenforceable. Accurate determination of Arizona content is  
17 extremely difficult. For example, glass may be manufactured in Michigan and purchased  
18 by an Arizona manufacturer of solar panels, or wiring may be manufactured in California  
19 and purchased by an Arizona manufacturer of solar panels. But the origin of inputs into  
20 these products (glass and wires) will be difficult to determine. Similarly, a portion of the  
21 cost of solar facilities will be attributable to design. How can the value of the design input  
22 be adequately measured? The design service is not sold separately. It is the economic  
23 rent on a particular design advantage. If the economic rent is estimated, however crudely,  
24 it must still be assigned to a location. Where did the design occur? Where the inventor  
25 thought it up? How will that location be established? In conclusion, the proposed credit  
26 multiplier will produce lots of creative paperwork. Navopache recommends that the in-  
state manufacturing proposal be eliminated.

22 Paragraphs R14-2-1609 (C) (4) and (C) (6) appear to be contradictory. The proposed rule  
23 changes need clarification.

24 More generally, Navopache believes that the extra credit multipliers introduce needless  
25 complexity. The solar portfolio standard in R14-2-1609 (A) and (B) will be difficult to  
26 enforce because of the costs of verifying solar output from numerous scattered resources.  
The additional verification of suspect data simply compounds the problem. The

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Commission will need a large staff of auditors to investigate the claims made by electric service providers.

R14-2-1609 (E). This paragraph attempts to use penalties paid for under-producing solar power to build solar facilities. Although the concept advances the Commission's goal, the proposed method is not practical. First, a Solar Electric Fund must be set up and administered, including accounting and auditing of funds. The rule is silent on who will administer the Fund and how its administrative costs will be paid for. Second, the proposed rule does not address disbursement of funds to eligible applicants. Further, the paragraph does not indicate what would happen if there was insufficient interest by public entities to use or accept title to solar facilities. The Fund idea is complex (and possibly contentious) to administer and Navopache recommends that the Fund be dropped.

R14-2-1609 (J). This paragraph provides a credit if the energy service provider invests in solar electric manufacturing in Arizona. This credit may not accomplish the goal of the solar portfolio standard. Most of the output of the manufacturing plant may be exported to foreign countries. No solar power is sold to Arizona consumers but a credit is obtained. Even worse, credit is provided for investments in uneconomic or obsolete solar technologies or manufacturing systems. Suppose ABC invests in a plant that produces but does not sell 20 MW of solar equipment. A credit is given and no solar power is sold to Arizona consumers. Navopache recommends that this paragraph be eliminated.

In general, the proposed changes regarding the solar portfolio standard go well beyond the initial concept contained in the rules adopted in December 1996. If the Commission wishes to consider adding significant complexity to the solar portfolio standard to accommodate various credits and establishing and administering a fund, these matters should be taken up in a separate docket in a separate proceeding.

**R14-2-1610 (A)**

The proposed rule indicates that rights to use the transmission transfer capability shall be allocated and assigned to the retail customer load on a pro rata basis. Disregarding the issue of whether the Commission has authority over transmission, the meaning of this statement is unclear. The Commission must provide more detail on the meaning of this requirement before Navopache can offer comments. As it stands, it is insufficient.

**R14-2-1610 (C) and (D)**

These paragraphs require affected utilities to file with FERC for an approval of an ISA and to file a proposed ISA implementation plan with the Commission. Not all affected utilities would be subject to FERC jurisdiction and the rule should not require all affected utilities to file with FERC.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**R14-2-1610 (I)**

This paragraph indicates that the Commission shall determine which generation units are “must-run” units for distribution reliability and mitigation of market power and will regulate the price of power from those units. Under the proposed regulation, the Commission could “underprice” power from such units, thereby thwarting a price signal to independent companies to build more such units and lower the price for reliability services. The result is an unnecessary market intrusion which in the long run sustains above-market prices, the very problem restructuring is intended to eliminate. Further, some of the power from “must-run” units is not for distribution reliability. How will the Commission separate out the two types of electrons for pricing purposes? This proposed provision should be eliminated.

**R14-2-1612**

This section is mis-numbered (A,B,C,J,K,L).

**R14-2-1613 (C)**

This paragraph indicates that quarterly reports must be submitted to the Commission itemizing the direct complaints about slamming. A filing date is needed. Navopache suggests that the reports be due at least 45 days after the close of the quarter.

**R14-2-1614 (A) (10)**

This paragraph indicates that information on fuel mix percentages and emissions for the resources used must be reported to the Commission. Because many purchases are likely to be short term or spot market purchases from other wholesalers who are reselling purchased power, Navopache recommends that the rule allow for a category of purchased sources of unknown origin. Otherwise the Commission will receive data of doubtful veracity.

**R14-2-1616.**

This paragraph indicates that affected utilities must divest themselves of all generation assets and services or transfer competitive assets to a separate affiliate. Further, affected utilities cannot provide competitive services. Thus, if Navopache wants to sell meters or meter reading competitively, it must set up a separate organization. Navopache believes that the requirement is wasteful for small utilities. A separate organization must be set up if one large industrial customer wants to shop around for metering services and Navopache wishes to compete for those metering services. With only limited competitive sales opportunities for its separate affiliate, Navopache’s affiliate would be costly and uncompetitive. Navopache recommends that affiliates be required only if the level of all competitive activities exceeds (or is reasonably expected to exceed) \$5 million in revenues

1 per year. The proposed rule on nondiscriminatory treatment is sufficient to protect  
2 consumers and to deter market power abuses.

3 **R14-2-1617 (A) (1)**

4 This paragraph indicates that affected utilities cannot share office space, equipment,  
5 services, and systems with affiliates. This proposal is unreasonable for small utilities. For  
6 example, Navopache will have to develop a billing system for its provision of distribution  
7 services. Under the proposed rule, because billing can be a competitive service, Navopache  
8 will have to set up a separate billing system in an affiliated company to provide bills for  
9 competitively sold energy whether those bills are separate bills or consolidated bills for  
10 distribution services supplied by Navopache and energy supplied by XYZ Company. This  
11 is wasteful duplication. Navopache recommends that prohibitions on sharing of office  
12 space, equipment services and systems with affiliates be allowed if the level of all  
13 competitive activities is less than (or is reasonably expected to be less than) \$5 million in  
14 revenues per year. Otherwise, the rule will simply create numerous uncompetitive, under-  
15 employed resources that benefit no one. The proposed rule on nondiscriminatory  
16 treatment is sufficient to protect consumers and to deter market power abuses.

17 **R14-2-1617 (A) (5)**

18 This provision indicates that an affected utility cannot cause any joint communication and  
19 correspondence with any existing or potential customer. This provision prohibits  
20 consolidated bills rendered by the distribution utility. Such a prohibition is wasteful and  
21 limits the potential convenience to the customer of a consolidated bill. Further it  
22 discriminates against a Navopache affiliate which sells energy because Navopache could  
23 render a consolidated bill for Enron but not for its own affiliate. Navopache recommends  
24 that this provision be amended to explicitly allow for consolidated bills.

25 **R14-2-1617 (A) (7) (a)**

26 Under this paragraph, transfers from an affected utility to an affiliate shall be priced at the  
lower of cost or fair market value. Further, transfers from an affiliate to its utility shall be  
priced at the higher of cost or fair market value. This provision creates *perverse incentives*  
and Navopache recommends that it be eliminated. Suppose an affiliate transferred to its  
affiliated utility equipment whose cost exceeds fair market value (which could occur with  
depreciated or obsolete equipment). The utility's ratepayers will be stuck paying for this  
over-valued equipment at cost. Also, suppose the utility transfers to its affiliate  
equipment whose cost is less than fair market value. The affiliate will receive a bargain  
and the ratepayers of the utility will forego the gain on the sale. Navopache believes that  
this provision is an inapt regulatory approach to pricing when markets will handle the  
pricing correctly. Navopache recommends elimination of this provision.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**R14-2-1617 (A) (7) (c)**

This provision is completely incomprehensible and appears to be an attempt to substitute arbitrary accounting rules for market pricing. The provision should be expunged.

**R14-2-1617 (C) (2)**

This paragraph indicates that shareholders will pay for audits to verify that Navopache is in compliance with the Commission's affiliate rules. Who are Navopache's shareholders? It has no shareholders. If Navopache is required by the Commission to take on this activity, the Commission must assure that Navopache can recover the costs from its members. Navopache believes that incurring such additional costs may not be in the best interest of its members and that the requirement should be eliminated.

**R14-2-1617 (D) (3)**

This provision indicates that an affected utility cannot provide customers with assistance with regard to its affiliates or other service providers. The provision can be taken to mean that Navopache could not include on its distribution service order forms a checklist indicating the consumer's choice of energy service providers. Such a restriction will only confuse consumers and increase the transaction costs of obtaining all the necessary services to consume electricity. Navopache recommends that the paragraph be eliminated.

**R14-2-1618**

Paragraph G(3) indicates that the label and terms of service shall be available to any person upon request. Price information included on the label will be confidential. Navopache strongly objects to disclosing confidential price and other confidential contractual information to anyone on request.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**PROOF OF AND  
CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 10<sup>th</sup> day of July, 1998, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and ten (10) copies of the above to:

Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

and a copy to the following on this 10<sup>th</sup> day of July, 1998, via U.S. Mail and/or hand delivery to:

Betty Pruitt  
Arizona Community Action Association  
202 East McDowell Road, Suite 255  
Phoenix, Arizona 85004-4535

Albert Sterman  
Arizona Consumers Council  
2849 East Eighth Street  
Tucson, Arizona 85716

Bradley Carroll  
Tucson Electric Power Company  
Post Office Box 711  
Tucson, Arizona 85702

Michael Grant  
Gallagher & Kennedy  
2600 North Central Avenue  
Phoenix, Arizona 85004

Craig Marks  
Citizens Utilities Company  
2901 North Central Avenue, Suite 1660  
Phoenix, Arizona 85012

Suzanne Dallimore  
Attorney General's Office  
1275 West Washington Street  
Phoenix, Arizona 85007

Robert S. Lynch  
340 East Palm Lane, Suite 140  
Phoenix, Arizona 85004-4529

Lex Smith/Michael Patten  
Brown & Bain, P.C.  
2901 North Central Avenue  
Phoenix, Arizona 85001-0400

C. Webb Crockett  
Fennemore Craig  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913

Steve Wheeler/Thomas M. Mumaw  
Snell & Wilmer  
One Arizona Center  
400 East Van Buren Street  
Phoenix, Arizona 85004-0001

Paul Bullis, Chief Counsel  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

LAW OFFICES

MARTINEZ & CURTIS, P.C.  
2712 NORTH 7TH STREET  
PHOENIX, AZ 85006-1090  
(602) 248-0372

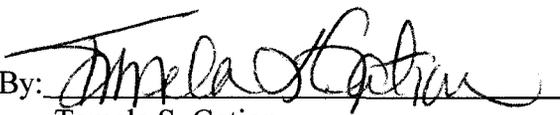
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Lawrence V. Robertson, Jr.  
Munger Chadwick, P.L.C.  
National Bank Plaza  
333 North Wilmot, Suite 300  
Tucson, Arizona 85711

Douglas Nelson  
Douglas C. Nelson, P.C.  
7000 North 16<sup>th</sup> Street, Suite 120-307  
Phoenix, Arizona 85020

Barbara Klemstine  
Arizona Public Service Company  
Law Department, Station 9909  
Post Office Box 53999  
Phoenix, Arizona 85072-3999

Teena Ingram Wolfe  
RUCO  
2828 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004

By:   
Tamela S. Gation

Walter W. Meek  
Arizona Utility Investors Association  
2100 North Central Avenue, Suite 210  
Phoenix, Arizona 85004

Rick Gilliam  
Land and Water Fund of the Rockies  
2260 Baseline Road, Suite 200  
Boulder, Colorado 80302

Norman J. Furuta  
Department of the Navy  
900 Commodore Drive, Building 107  
San Bruno, California 94066-5006

Barbara Sherman  
120 East McKellips Road  
Tempe, Arizona 85281

Loretta Humphrey  
Principal City Attorney  
Post Office Box 27210  
Tucson, Arizona 85726-7210