



OPEN MEETING ITEM



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July 14, 1998

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

**RE: July 10, 1998 2<sup>nd</sup> Draft of Proposed Revisions to Retail Electric Competition Rules**

Dear Mr. Williamson:

PG&E Energy Services Corporation ("Energy Services") will be participating in the July 15, 1998 Open Meeting of the Commission which has been scheduled for "input from stakeholders" with regard to the above-referenced revisions. The purpose of this letter is to reduce to writing the several matters which Energy Services intends to address at that time.

**Unbundled Rates [R14-2-1606 (G) and R14-2-1607 (D)]:**

Neither of these provisions appears to provide an opportunity for interested persons, such as Energy Services, to participate in the Commission's examination of unbundled rates of the Affected Utilities. Energy Services believes that such omission represents a serious, if not fatal, deficiency in the Commission transition approach. As R14-2-1606 (G) (2) provides, "such rates shall reflect the costs of providing the [unbundled] services." Further, R14-2-1607 (D) contemplates that the distribution components thereof will reflect an accurate application of the results of the Commission's recent decision on "stranded costs" to the Affected Utility system in question. But there is no indicated means by which an affected Electric Service Provider can participate in the process by which the degree of the Affected Utility's compliance with these standards and requirements is evaluated. Given the ultimate potential effect of such unbundled rates as may be approved upon the competitive market, such procedural and due process exclusion of new entrants should not occur. Rather, the proposed revised rules should be modified to provide for intervention and hearing on unbundled rate filings made by Affected Utilities on or before August 24, 1998. The third ordering paragraph of the Commission's Decision No. 60977 on "stranded cost" appeared to contemplate such an opportunity (see page 23, lines 27-28), but the proposed revised rules do not so provide.

It is essential for unbundled rate filings to be available at the time the review of stranded cost filings is begun. Unbundled rates are the foundation upon which such a review is based. Absent unbundled rates, there is no context within which to evaluate the relative magnitude of stranded costs and the ultimate total cost of serving a customer competitively. Since the CTC charge will only apply to competitively served customers, it is especially imperative that Energy Services and other prospective new market entrants be aware of all the other unbundled charges in order

for us to be able to evaluate whether there is in fact going to be a vibrant market on January 1, 1999.

This is a real very issue. Ideally, valid unbundled tariffs would have been filed at the end of last year in compliance with the existing rules and we would have been in a position to make an informed evaluation of the upcoming stranded cost filings. Unfortunately, that is not how events have unfolded. In that regard, it is not particularly helpful for us to know that, for example, a company's stranded costs are \$500 million or that its proposed CTC charge is 0.7 cents per kilowatt hour. We need to be in a position to add the proposed CTC charge to all the other unbundled service components, then compare the result to the Standard Offer tariff and determine whether customers can achieve savings next year.

#### **Disclosure and Re-regulation [R14-2-1618 and R14-2-203(C)]**

Energy Services is not insensitive to the concerns which it understands the Commission and its staff are endeavoring to address through Sections R14-2-1618 and R14-2-203 (C) of the proposed revised rules. However, in turn, it is concerned that the resulting requirements will be unnecessarily burdensome and expensive for new market entrants, such as Energy Services, and potentially could discourage certain prospective competitors from entering the Arizona market. More specifically, a number of these requirements have been incorporated by reference from a pre-existing regulatory scheme. Others, while new, appear to have been conceived against the mindset of a regulatory background.

Energy Services respectfully submits that you cannot regulate to a market approach. To the contrary, an over regulated market environment can effectively lead to no competitive market at all, or at least one substantially diminished from what it otherwise might have been. The goal is to create an environment in which competition can work. This requires the presence of multiple viable marketers. This essential ingredient cannot be created through regulation or re-regulation of all aspects of the marketplace.

Against this background, R14-2-1618 and R14-2-203( C) strike a note of discord because of the pervasive nature of their proposed governance of competitive behavior. This is particularly true when examined in the context of non-residential customers. As a consequence, Energy Services respectfully recommends that R14-2-1618 not be applied to service arrangements between Electric Service Providers and **non**-residential customers. In addition, it recommends that a subsection (g) be added to R14-2-203 ( C) (1) providing as follows:

“The Electric Service Provider does not have a product or service offering available to the class or customer type requesting such service or products.”

**Unbundled Rates [R14-2-1606(H)(2)]:**

Section R14-2-1606(H)(2) requires rates for unbundled services "shall reflect the costs of providing the services." [Emphasis added] Either this sentence should be deleted as regards competitively provided services, or language should be added which allows for alternative market based pricing approaches. Energy Services does not have single point rates or tariffs. Rather, we enter into contracts for energy services with negotiated terms based on market conditions at the time. Furthermore, this language appears to conflict with R14-2-1612(A) which provides "market determined rates for competitively provided services as defined in R14-2-1615 shall be deemed to be just and reasonable." [Emphasis added]

**Certificate of Convenience & Necessity [R14-2-1603]:**

With reference to the changes proposed in R14-2-1603, which govern the issuance of certificates of convenience and necessity to Electric Service Providers, Energy Services would offer the following comments. The Commission must be prepared to vigorously enforce, if necessary, the requirement set forth in R14-2-1603 (7) that "Affected Utilities or their successor entities are required to negotiate in good faith" with prospective Electric Service Providers "relative to service acquisition agreements." Only in that way can the continued transition to a competitive retail electric market in Arizona be assured.

More specifically, Energy Services has previously filed an application for an Electric Service Provider certificate of convenience and necessity pursuant to R14-2-1603 in its current form; and that application has been assigned Docket No. E-0359A-98-0389. In addition, the company has contacted two of the larger Affected Utilities within the State of Arizona for the purpose of initiating negotiations relative to the execution of service acquisition agreements. Thus, at this juncture, Energy Services has done all that it can to move the process forward by means of which it will become an Electric Service Provider by January 1, 1999.

In the coming months, Energy Services will continue to do that which is required of it in order to attain that goal, including supplementing its filed application, if and as necessary, and supporting the same at the time of the public hearing thereon. Thus, it would indeed be ironic if the entire certification process were to be allowed to become "hostage" to the unwillingness of an Affected Utility to negotiate in good faith relative to a service acquisition agreement through which Energy Services could ultimately offer its competitive product to the intended market. As long as the Commission is willing to actively enforce the good faith negotiation requirement prescribed in R14-2-1603 (G) (7), such an impediment to the certification process should not occur. But, absent such a willingness upon the part of the Commission, the requirement of R14-2-1603 (G) (3) for the existence of a service acquisition agreement as a condition precedent to certification could become an effective barrier to the commencement of competition.

**Solar Portfolio Standard [R14-2-1609]:**

A revision proposed in R14-2-1609(G) is unclear and probably anti-competitive in its ultimate effect. More specifically, the solar portfolio standard applies to customers served competitively, presumably by an affiliate of an Affected Utility or an ESP. The proposed language seems to imply that an Affected Utility can provide the solar portfolio standard from within the utility and likewise "count" the amount towards existing requirements now applicable to Standard Offer. Such a counting will exacerbate the cost differential created by establishing a costly solar portfolio for competitively served customers while it reduces the corresponding costs to standard offer customers. The proposed revision should be deleted.

**Definitions [R14-2-1601]:**

The 2<sup>nd</sup> Draft has deleted the definition for "load serving entity" yet such term is used in R14-2-1618 (Information Disclosure Label). Since labeling is a costly endeavor, its applicability must include the UDC's Standard Offer as was required in the June 23, 1998 1<sup>st</sup> Draft. Hence, the definition as it appeared in the first draft should be restored.

In closing, Energy Services wishes to express its appreciation to the Commission and its staff for the opportunity to submit comments and suggestions upon the proposed revised rules.

Respectfully submitted,

PG&E ENERGY SERVICES CORPORATION

By   
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