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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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IN THE MATTER OF THE COMPETITION )  
IN THE PROVISIONS OF ELECTRIC )  
SERVICES THROUGHOUT THE STATE )  
OF ARIZONA. )

DOCKET NO. RE-00000C-94-0165

**CITIZENS UTILITIES  
COMPANY'S COMMENTS ON  
STAFF'S SECOND DRAFT OF  
RETAIL ELECTRIC  
COMPETITION RULES**

Citizens Utilities Company ("Citizens") submits its comments on the July 13, 1998, draft rules circulated by the Staff of the Arizona Corporation Commission. Citizens appreciates and understands the hard work that the Staff has put forth to bring this document to this point and commends the Staff for producing a functional set of rules to guide electric competition in Arizona. Citizens offers the following comments in the spirit of only fine-tuning the draft rules to clarify ambiguities and to steer around some potential future pitfalls. Although these comments reflect Citizens' best judgment at this time, Citizens reserves the right upon further study and consideration to take different positions in the formal rulemaking.

Citizens' remaining comments fall into four general areas: Standard Offer Transmission Access; Metering, Billing, and Collection Services; Affiliate Transactions; and the Information Disclosure Label. Following its comments in these four areas, Citizens will offer a few miscellaneous comments on other sections of the rules.

Arizona Corporation Commission  
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## 1   **STANDARD OFFER TRANSMISSION ACCESS**

2           Under R14-2-1610 (A), the current draft rules provide non-preferential  
3 open access to transmission capacity whether customers elect to purchase  
4 power competitively or continue taking service under the Affected Utility's  
5 Standard Offer. This requirement improperly threatens the reliability of  
6 transmission service to customers who should have the reasonable expectation  
7 of maintaining their level of reliability. Standard Offer customers should be  
8 given priority access to available transmission capacity for as long as the duty  
9 to serve these customers on a regulated basis remains with the UDC. An  
10 example illustrates why Citizens takes this position.

11           Assume there is a fast-growing population center with peak loads  
12 of 100 MW served by transmission facilities with 115 MW of load-carrying  
13 capacity. With the introduction of open access, a portion of customer  
14 loads elects to take competitive electric power. In the meantime, the  
15 Affected Utility's load continues to grow to the point that the total load is  
16 about to exceed the capacity of the available transmission.  
17

18           Two remedies to the capacity situation exist: 1) build additional  
19 transmission or local generation capacity; or 2) move some customer  
20 loads to non-firm (interruptible) transmission service as an interim  
21 measure.  
22

23           If, in this example, new capacity is not built in time to meet load growth,  
24 which customers should be at risk of losing firm transmission service? In  
25 Citizens' view, the customers who elected competitive services should be at  
26 risk. Presumably, the workings of the marketplace would alleviate the capacity  
27 shortage over the longer term. However, to the extent there is a short-term  
28 capacity issue, those who had voluntarily sought the rewards of the  
29 competitive marketplace should bear the correspondingly increased risks that  
30 may exist during periods when adequate firm transmission service for the  
31 lower-cost power is not available. Conversely, those customers who elected to  
32 remain with the traditional, regulated power provider, foregoing opportunities  
33 associated with competitive generation supply, should be given priority access

1 to firm transmission service. Fairness dictates that the party seeking the  
2 rewards of competition should not be allowed to avail itself of the safety-net of  
3 the standard offer provider.

4 Consequently, Citizens suggests that R14-2-1610 (A) be modified as  
5 follows:

6 Under normal operating conditions, the Affected Utilities shall  
7 provide non-discriminatory open access to transmission and distribution  
8 facilities to serve all customers. In general, no preference or priority  
9 shall be given to any distribution customer based on whether the  
10 customer is purchasing power under the Affected Utility's or UDC's  
11 Standard Offer or in the competitive market. Under these circumstances,  
12 any transmission capacity that is available for use by the retail customers  
13 of the Affect Utility or UDC shall be allocated among Standard Offer  
14 customers and competitive market customers on a pro-rata basis.  
15 However, in the event that a shortage of capacity for transmitting power  
16 into an Affected Utility's service territory exists, Standard Offer  
17 customers will be given priority access to available firm transmission  
18 capacity.

## 20 **METERING, BILLING, AND COLLECTION SERVICES**

21 Under R14-2-1616 (A), Affected Utilities would be required to divest "all  
22 competitive...services" to an unaffiliated party or to a separate affiliate. This  
23 would include metering, billing, and collection services, which would be  
24 competitive services under the rules. For Citizens, and other smaller utilities,<sup>1</sup>  
25 this requirement could very well result in higher costs to customers for these  
26 services. This is mainly because of the lack of economies of scale in rural,  
27 second, and third-tier markets for supporting separated competitive metering,  
28 billing, and collection functions. In short, smaller communities lack the critical  
29 mass needed for spun-off utility services operations to continue to provide  
30 these services at historical cost levels. Separation of these functions from  
31 Affected Utilities would cause additional costs, such as new office, warehousing  
32 and mechanical shop space, new vehicles no longer shared with other

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<sup>1</sup> Mr. Grant testified at the July 15, 1998, Open Meeting for Stakeholders as to the

1 functions, management personnel no longer spreading their costs over multiple  
2 functions, and employees who can no longer carry out multiple utility functions.  
3 Accordingly, the unit costs for metering, billing and collection functions would  
4 necessarily have to increase to maintain financial viability.

5 The focus of the last four years has been to deregulate generation.  
6 There has been no groundswell of public opinion demanding that competitive  
7 metering, billing, and collections be provided. Further, to the extent that  
8 customers, particularly residential customers, will benefit from deregulation, it  
9 will be generation deregulation that will provide the lion's share of the potential  
10 cost savings, not the deregulation of metering, billing, and collections.

11 It is possible that large competitive suppliers, who do have economies of  
12 scale, could move into the rural markets and take over the metering, billing,  
13 and collection services at lower costs. But the more likely result would leave  
14 customers saddled with higher costs. This is because the rural, second, and  
15 third-tier markets would probably not attract any of, or at best, only one or two  
16 of the larger players. Any that did enter this market would be faced with  
17 higher costs to serve these rural areas, but could charge whatever they  
18 pleased, largely unrestrained by competitive forces.

19 Requiring the provision of competitive metering, billing, and collections  
20 could potentially stand in the way of access to the generation market for  
21 Arizona's smaller towns and rural areas. If the UDC provides the services, it  
22 will likely be more expensive than the formerly regulated services. Other  
23 providers would likely also prove more expensive. This could cause the total  
24 price of electricity, including generation, competitive metering, billing, and  
25 collections, transmission and distribution, and system benefits charges to  
26 exceed former rates. Alternatively, if the UDC does not provide unregulated  
27 metering, billing, and collection services, a competitive generation provider  
28 might be faced with a difficult choice. It may have to also provide metering,

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hardship this rule would place upon the Cooperatives. Tr.. at p. 67.

1 billing, and collections to enter the market – a service it may not even offer –  
2 or to purchase these services from a competitor, thereby subsidizing the  
3 competitor’s ability to compete for the generation business.

4 A workable remedy for this issue is to allow Affected Utilities or UDCs to  
5 support competitive electric sales, by providing metering, billing, and collection  
6 services at rates regulated by the Commission. Energy Service Providers could  
7 either provide these services directly to customers or contract with the local  
8 UDC for metering, billing, and collection services at the tariffed rates. Through  
9 this arrangement, the existing economies from integration of these functions  
10 within UDCs will be maintained and both competition and regulation will  
11 provide the necessary restraint on pricing behavior. Further, UDCs, in their  
12 efforts to maintain market share, will likely expand their service options to  
13 meet the needs of competitive suppliers vying for customer business by  
14 providing new innovative services.

15 In its May 29, 1998, position paper on electric retail competition, the  
16 Staff supported the provision of competitive services by UDCs, a point absent  
17 from the current draft. Citizens urges the Commission to reconsider this issue  
18 and suggests that the following be added to R14-2-1605:

19 Affected Utilities and UDC’s may provide metering, meter reading, billing,  
20 and collection services within their service territories at tariffed rates.  
21

## 22 **AFFILIATE TRANSACTION RULES**

23 Citizens believes that the Commission has fully addressed the  
24 transactions between a public utility and its traditional affiliates in the Public  
25 Utility Holding Companies and Affiliated Interests Rules (“Affiliated Interest  
26 Rules”)<sup>2</sup>. In developing those rules, the Commission spent months reviewing  
27 issues with interested parties and considering policy implications. The  
28 resultant rules were carefully crafted to address transactions between a utility  
29 and a traditional affiliate.

1           Consequently, it is unnecessary for this Commission to address those  
2 areas in the current rulemaking. Therefore, in the Retail Electric Competition  
3 Rules, the Commission should focus on the transactions between the public  
4 utility and its **competitive electric affiliates only**. To have two sets of rules  
5 that overlap is troublesome, and leaves the door open to statutory construction  
6 arguments as to what rule is intended to apply. When one compares the  
7 Competitive Telecommunication Services Rules <sup>3</sup> to the Electric Competition  
8 Rules, questions of discrimination also arise. Why should the electric industry  
9 be held to a more burdensome regulatory standard than should the state's  
10 telecommunications providers? If this Commission believes that even more  
11 regulation is necessary for competitive providers, then that belief should also  
12 apply to competitive telecommunications providers (or even gas and water  
13 providers). The appropriate response would be for the Commission to examine  
14 the affiliate transaction rules in a separate docket that addresses all public  
15 utility industries.

16           While the Staff's July 10<sup>th</sup> draft of the proposed rule attempted to rein in  
17 the previous overly broad approach, there are still a number of changes that  
18 are necessary to make these rules fair and evenhanded. The most efficient  
19 way to approach this is to replace the term "**Affiliate**" with the term  
20 "**Competitive Electric Affiliate**," or, alternatively "**ESP Affiliate**."

21           Another particularly troubling proposed rule is **section R14-2-1617**  
22 **(B)(3)**, which prohibits an Affected Utility or UDC from providing customers  
23 "advice" about its affiliates or other service providers. This ignores the fact  
24 that many consumers rely on the utility's customer service departments for  
25 obtaining information. This rule in effect puts a "gag order" on those customer  
26 service representatives.

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<sup>2</sup> A.A.C.R14-2-801 through R14-2-806.

<sup>3</sup> A.A.C. R14-2-1101 through R14-2-1115.

1 Citizens suggests two alternatives:

- 2 1) Simply delete this section of the rule, as any concerns regarding  
3 joint marketing are already addressed in R14-2-1617 (A)(3).
- 4 2) Allow the Affected Utilities and UDCs to provide consumer  
5 education information in response to inquiries. The Arizona  
6 Community Action Association suggested that "Consumer  
7 Education" be defined as "impartial information provided to  
8 consumers about competition or competitive services and is distinct  
9 from advertising and marketing." Citizens supports inclusion of this  
10 definition, and the ability of the utilities to provide such customer  
11 education information to its customers.

12 **R14-2-1617 (A)(1)** prevents customers from obtaining some of the  
13 benefits of competition. This proposed rule prohibits competitive electric  
14 affiliates from sharing office space, equipment, services and systems with an  
15 Affected Utility or UDC. This provision is inefficient and precludes the benefits  
16 of such economies from being passed on to regulated customers. As long as  
17 an affiliate provides full compensation for the services, sharing common  
18 facilities should be permitted where sound economic efficiencies and effective  
19 cost accounting policies and practices warrant it.

20 Clearly in the context of the Electric Competition Rules, there has been  
21 little chance for the parties to provide input on these important affiliate  
22 transaction issues. For many of the other substantive areas, work groups met  
23 over a number of months, with on-going dialogue and discussion. In contrast,  
24 there has been no such work group or task force addressing affiliate  
25 transactions. Further, there is no pressing reason to address these issues  
26 before the initial competitive phase.

27 Because of the lack of previous discussion and consensus building, and  
28 the absence of immediate need, there is no compelling reason to push this new  
29 section of the rules through in an "emergency" rulemaking. The appropriate  
30 approach would be to address these issues in the context of an "all-utility"

1 rulemaking. The second-best approach would be to focus only on electric-  
2 affiliate" issues in the formal rulemaking that is required to follow the planned  
3 "emergency" rulemaking.

4 For now, Citizens urges the Commission to immediately appoint a task  
5 force or work group to address electric-affiliate issues. Citizens would be  
6 pleased to participate.

### 7 **INFORMATION DISCLOSURE LABEL**

8 Citizens supports the overall intent of the information disclosure label in  
9 helping customers make informed choices about their electricity purchases.  
10 Citizens further believes that the range of data and information specified for  
11 the disclosure label, the disclosure report, and the terms of service is  
12 reasonable. However, certain requirements under proposed R14-2-1618 would  
13 be burdensome, costly, and unnecessary. Specifically, the requirement under  
14 R14-2-1618 (J) to distribute the disclosure label, the disclosure report, and the  
15 terms of service to any retail customer initiating service and to each retail  
16 customer on an annual basis would result in a costly waste of resources.

17 Citizens fully supports a requirement to make it known to any customer  
18 or potential customer that such information is available to them and to make it  
19 available to any person upon request. However to require distribution to each  
20 customer is unnecessary. To some, consideration of all this information will be  
21 important; to many others it will not be; providing it to these customers will  
22 accomplish nothing, except to raise costs. Citizens strongly urges the Staff to  
23 change R14-2-1618 (J) by: 1) changing "distributed" to "made available"; and  
24 2) striking item number 2 requiring annual distribution.

### 25 **OTHER COMMENTS:**

26 **Page 10, R14-2-1606B.** Although the proposed rules would require  
27 that all standard-offer power be acquired by competitive bid, no guidance is  
28 provided. What type of bidding process is expected? Should all purchases be  
29 short-term spot purchases, or should some sort of integrated-resource-

1 planning process be required to first develop a forecast or need and the  
2 appropriate purchased-power portfolio to satisfy that need, before the bidding  
3 process is designed? With respect to comment about ratchet provisions being  
4 unreasonable, is this always true? If not, who makes the determination? Are  
5 there circumstances where ratchets may be appropriate?

6 **Page 14, R14-2-1607H.** If a utility divests its generation resources, its  
7 stranded costs will be set at that time. This benefit obviates the need for  
8 subsequent true-ups. What then is the purpose of the Commission ordering  
9 revisions to stranded cost estimates? If the revision only applies to new costs,  
10 such as transition costs, revisions might be appropriate, but not for stranded  
11 costs that are determined by the market.

12 **Page 14, R14-2-1608.** Upon the influence of significant exogenous  
13 factors or "events beyond the utility's control," can the three-year review  
14 period be shortened?

15 **Page 22, R14-2-1612A.** What is meant by "market determined rates?"  
16 What market, what service, and what time period? Some clarification is  
17 needed.

18 **Page 29, R14-2-1617A.** GAAP stands for "Generally Accepted  
19 Accounting Principles."

20 **Page 30, R14-2-1617A7a.** Often the service provided by the utility or  
21 UDC to the affiliate will not be tariffed. What is the appropriate price then?  
22 For reverse transfers, how is fair market value determined? What is the  
23 market and what if there is no market?

24 **Page 32, R14-1617D.** The audit procedure is still unclear. For  
25 example, no audit for 1999 can be done by 12/31/99. Some date after year  
26 end should be used, for example, June 1. This will allow all financial and  
27 regulatory audits to be completed before turning to this compliance audit.

1 **Page 36, R14-2-203D.** There needs to be a limit on the number of  
2 times in a year that a customer can switch from one ESP to another, or some  
3 time limit between switches. Chairman Irvin proposed this point.<sup>4</sup>

4 **Back-up Power.** Will the Affected Utility or UDC have any obligation to  
5 provide back-up generation service to a customer who departs to take  
6 competitive power? For, example, would there be a back-up obligation to an  
7 industrial purchaser purchasing competitive, interruptible service who plans to  
8 back-up the service with on-site generation? What if this purchaser's service  
9 were interrupted and the on-site generation were either out of service of  
10 uneconomical? If offered, how would it be priced? Would it be regulated?

11 **Commission/RUCO Assessment.** Pursuant to A.R.S. § 40-401,  
12 utilities are currently assessed annually to support the Commission and RUCO,  
13 based upon gross operating revenues derived from intrastate operations, for  
14 goods (electricity) to which they take title. In the competitive market, the  
15 UDCs will be delivering power for which they never take title. Further, some of  
16 this will be delivered from out-of-state, which raises interstate commerce  
17 issues. Can the UDCs be assessed under current state law for this power? If  
18 they cannot, can someone else legally be assessed? The Rules are silent on  
19 this issue; further legislation may be necessary.

20 **RESPECTFULLY SUBMITTED** this 22<sup>nd</sup> day of July, 1998.

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<sup>4</sup> July 15, 1998, Open Meeting Stakeholders Comments, Tr. at 21-22.

1 Original and ten copies of the foregoing  
2 filed this 22<sup>nd</sup> day of July, 1998, with:

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4 Docket Control Division  
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9 Copies of the foregoing mailed or hand  
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