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July 22, 1998

Arizona Corporation Commission

DOCKETED

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Mr. Ray T. Williamson  
Acting Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85004

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Re: Retail Electric Competition Rules 2nd Proposed Draft - Attorney General Comments

Dear Mr. Williamson:

The Attorney General submits the following comments on the Retail Electric Competition Rules Draft dated July 10, 1998. The Attorney General incorporates his earlier comments insofar as the Rules Draft dated June 25, 1998 remained unchanged by the Rules Draft of July 10, 1998.

In Rule 14-2-1601(32), the Attorney General objects to the changes proposed in the definition of "stranded costs". The rule seems to have been changed to comply with the Commission's Order on Stranded Costs and comes after the Attorney General has objected to the order for reasons including the Commission's deviation from its own Rules. This after-the-fact change unnecessarily raises new due process and fairness issues that could lead to additional litigation. Further, the language changes give rise to new objections. Words like "includes" create market uncertainty and invite litigation as to whether a cost is included or not. Subsection "d. other transition costs approved by the Commission" swallows any limitation contained in the rule, invites endless petitions and suggests that any cost is "strandable" if there is a chance to petition the Commission for it. Subsection "c. reasonable employee severance and retraining costs..." awards future costs that every business going through market changes incur, and again opens the door to the unlimited possible claims for "stranded" costs. The Commission does not have the lawful authority to determine any cost, whether related to a "taking" or not, a stranded cost. The Attorney General urges the Commission to continue the existing version of the rule, as compared to this amendment.

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R14-2-1603 (E) should not be amended to require any applicant for a CC&N to not only notify its competitor or the UDC, but to prove to the Commission that this notice is given. In no other licensed industry must a new entrant notify its competitors. A new competition must show that it is able to deliver power to the end user and must have the necessary agreements in place to do so, but this special notice implies a right to object at the CC&N stage, which a competitor should not have.

R14-2-1603(G)(3) should impose a duty on the UDC to act to process service acquisition agreements and should have a time limitation for processing, for example 30 days.

R14-2-1603(G)(5) should be stricken. Certification of a bona fide competitor is *ipso facto* in the public interest. Requiring a new entrant to "demonstrate" that his obtaining a CC&N is in the public interest creates a new regulatory burden on competition and invites litigation from incumbents objecting to competition *per se*.

Rules R14-2-1616 and 1617 contains a new set of rules that are difficult to analyze in the short time between the publication of this draft of the rules and the comment deadline. While it is important to assure arms' length dealing between incumbent monopolists and their affiliates, too much regulation itself becomes an obstacle to competition. Creating barriers to rivals, which affiliate transactions can do, is to be condemned. Cost-effective joint venturing resulting in efficiently produced new products is to be encouraged. Some aspects of the affiliate rules may be over-regulatory. The Attorney General reserves the right to make additional comments during the formal rulemaking proceeding, and to challenge, if necessary, any emergency rule, if, on further analysis this office determines that the rule is anticompetitive.

Rule R14-2-1617(E) granting the Commission the right to waive compliance with any of the affiliate rules should be stricken. This provision invites litigation that could delay the move to competition, and market certainty requires that the rules be firm. If, in fact, the Rules interfere with pro-competitive conduct, an aggrieved party can already challenge them through appropriate administrative and judicial means.

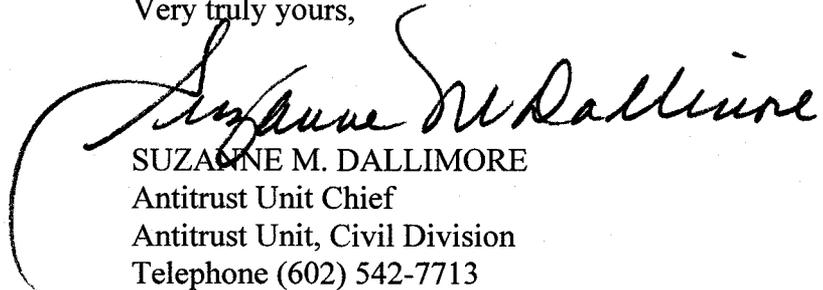
Finally, the rules raise a number of jurisdictional issues regarding the Commission's continued ability to impose regulation on activities that are not now subject to regulation. The Attorney General does not by these comments agree that the Commission has jurisdiction to regulate every aspect of the electric services industry now or after competition in generation commences.

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Thank you for your continued consideration of these comments.

Very truly yours,

A handwritten signature in cursive script, reading "Suzanne M. Dallimore". The signature is written in black ink and is positioned above the typed name and contact information.

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