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EXCEPTION

AZ CORP COMMISSION

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BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN
Commissioner - Chairman
RENZ D. JENNINGS
Commissioner
CARL J. KUNASEK
Commissioner

Arizona Corporation Commission
DOCKETED

JUL 31 1998

DOCKETED BY [Signature]

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

DOCKET NO. RE-00000C-94-0165

COMMENTS AND EXCEPTIONS OF NEW ENERGY VENTURES, L.L.C. TO
THE PROPOSED EMERGENCY RULEMAKING REGARDING THE RETAIL
ELECTRIC COMPETITION RULES

New Energy Ventures, L.L.C. (NEV) submits comments and
exceptions concerning the Proposed Emergency Rulemaking regarding
the Retail Electric Competition Rules. Our previous comments on the
Staff draft proposed rules for competition is also attached. In addition,
because this Decision is proposed to be adopted on an emergency basis,
NEV would request the opportunity to provide additional input until the
Decision is permanently adopted.

NEV is committed to establishing a competitive market for electric
services in Arizona, which provides the Arizona Corporation Commission
(ACC) with sufficient oversight and is also streamlined, fair, and
consistent. We believe that Staff has done a good job of laying out the
framework for competition. However, many details necessary for
successful implementation still need to be addressed. These comments
and exceptions are meant to be additional enhancements to the Staffs
proposal, which will help to streamline the process in order to meet the
January, 1999 timeline.

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.

Exception 1. R14-2-1603 Certificate of Convenience and Necessity.

Based on our extensive experience in the emerging competitive markets, NEV believes that the ESP approval process specified in the proposed rule in R14-2-1603 and the Staff's subsequent proposed certificate of convenience and necessity is too cumbersome and places too high of a hurdle for new competitors. Furthermore, the Staff proposed CCN was apparently developed outside any regulatory process. This is a concern; NEV would certainly like to have input into this process.

As a legitimate competitor in other states, we agree that it is important for the ACC to have sufficient regulatory oversight of the ESPs to ensure that new suppliers are credit worthy and have the means of delivering on their offerings. Such oversight makes the competitive market healthier by weeding out the incompetent players.

However, we believe that too much regulatory oversight can have the opposite effect. It can damage the competitive market by raising the cost and delaying the timeliness of new companies trying to enter the Arizona energy market. This is especially important given the compressed time line to implement competition. In fact, we think that there is a reasonable risk that very few new competitors will be able to meet the Staff proposed approval requirements by 1/1/99.

Specifically, NEV is concerned that we have not had enough time to review the credit requirements placed on new ESPs. We believe that it would be valuable to compare these requirements with those in other states and with other industries to ensure that the requirements provide proper protection without creating unreasonable or burdensome obstacles to competition. In addition, we believe that much of the required information detailed in the Staff proposed CCN is excessive and overly burdensome. Examples include:

- A-8 filing tariffs and terms of services,
- B-1 computer and data exchange capabilities,
- B-2 expected number of customers and monthly kwhs, details of technical and operational personnel,
- B-5 details of solar portfolio requirements,
- B-6 details of meter service including employees, training programs, safety education programs and other miscellaneous information,
- B-7 details of meter reading personnel and programs.

Proposed Amendment: ESP Approval Process

Specifically, we propose the following amendment: R14-2-1603 be replaced with a statement that Staff will work with ESPs to establish a streamlined approval process. Staff will make final recommendations to the ACC on the ESP approval process by September 1, 1998.

Exception 2. R14-2-1612 Rates, R14-2-1615 Administrative Requirements, R14-2-1618 Disclosure of Information

There are a number of issues in the proposed rule that address consumer protection. NEV supports the Staffs effort to ensure that consumers have well informed choices and that fraud and other illegitimate business practices are minimized in the Arizona energy market. However, again there is a balance between prudent oversight and costly and inefficient regulations. We believe that the Staff proposed rule is too detailed and cumbersome in this area.

In addition, we believe that this issue is most appropriate for residential customers who might not otherwise have the best information to make informed choices or who might be most susceptible to fraudulent business practices. In California, for example, information disclosure requirements and consumer fraud protections apply only to the residential and small commercial customers, not large commercial and industrial. The latter are assumed to have sufficient knowledge and resources to identify competent providers, evaluate options, develop advantageous contracts with sufficient protections, and enforce the terms of those contracts. This process exists naturally in the competitive market and does not require regulatory intervention. We believe that this is a reasonable and prudent approach for Arizona.

Proposed Amendment: Consumer Information and Protection

NEV proposes the following amendment: the sections R14-2-1612 Rates, R14-2-1615 Administrative Requirements, R14-2-1618 Disclosure of Information be amended to apply to residential customers only.

Exception 3. UDC Service Agreements, UDC Operating Procedures, ISA Agreements

From our perspective, one of the key issues for implementing an efficient competitive energy market is to establish streamlined and consistent rules for dealing with the UDCs, and the ISA or ISO. The Staff has done a commendable job in the concept of developing an ISA and establishing UDC service agreements. We would enhance their efforts by proposing to standardize the service agreements across all of the UDCs (including SRP).

In addition, each UDC will have to develop operating procedures for dealing with the ESPs. From our experience in California, we feel it is imperative that these operating procedures also be standardized across the UDCs. Initially, this was not the case in California, which caused tremendous obstacles for implementing competition statewide. Today all of the UDCs and ESPs must go back and spend substantial time and resources to remedy the situation. We recommend that consistent agreements and procedures be established up front.

Finally, while little is known about the ISA or the form of the ESP agreements, we recommend that this is another area that would benefit from cooperative development and standardization.

Proposed Amendment: UDC Service Agreements, UDC Operating Procedures, ISA Agreements

NEV proposes the following amendment: the Staff will work with ESPs and UDCs (including SRP) to develop a standard UDC service agreement and ISA agreement by September 1, 1998. The Staff will also coordinate the ongoing development of standard operating procedures for UDCs (including SRP) to deal with ESPs.

Exception 4. Solar Portfolio

All ESPs will be incurring additional costs to meet the required portfolio standard in Arizona. These costs will have to be folded into the retail energy costs or otherwise absorbed by the ESP. In either case the solar costs will be borne by either the ESP or their customer. NEV is concerned that SRP may be allowed to include the additional solar costs in their system benefit charge. This means that the solar costs will be paid by the UDC customers, not the ESP customers. In other words, businesses in SRPs service territory will pay twice for the solar portfolio, once in SRPs system benefits charge and again in the ESP retail energy price. Conversely, customers outside of SRPs service territory buying

retail energy from SRP will not pay anything for solar power. This will provide SRP with an unfair competitive advantage compared to other ESPs who must reflect the solar costs in their energy price or else not be compensated.

Proposed Amendment: Solar Portfolio

NEV proposes the following amendment. R14-2-1609 will be amended as follows: The UDC will add an additional solar charge to their system benefit charge for customers who receive energy from an ESP affiliated with a UDC which includes the cost of the solar portfolio in their system benefit charge.

Exception 5. Electric Distribution Cooperatives

The Staff proposed rule allows electric distribution cooperatives to opt out of competition as long as they do not offer “competitive electrical services” outside of their service territory. NEV believes that this provision could result in an unintended unlevel playing field, which would be disadvantageous to other ESPs.

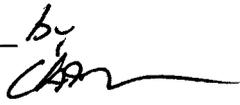
The potential problem stems from the fact that the competitive marketing by Coops are not independent efforts; they are coordinated and centrally developed by AEPCO. In fact, AEPCO has already coordinated with other Coops on a national basis to form a combined branding strategy called Touchstone Energy. Furthermore, this coordinated marketing effort could be offered to customers statewide by one small Coop, while the vast majority of Coop customers would be closed to competition. We believe this creates an imbalance in the competitive reciprocity intended by the Staff.

Proposed Amendment: Electric Distribution Cooperatives

NEV proposes that the Staff draft an amendment that remedies this problem. One potential solution would be that the Coops would have to choose to compete as a group, all or none.

Respectfully submitted this 31st day of July 31, 1998.

NEW ENERGY VENTURES, L.L.C.

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**Original and ten copies of the foregoing
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Attachment

NEV's Comments on 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. 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: 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.

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 the rules 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 proscribe 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.