

JENNINGS, STROUSS & SALMON, P.L.C.
ATTORNEYS AT LAW
ONE RENAISSANCE SQUARE
TWO NORTH CENTRAL AVENUE
PHOENIX, AZ 85004-2393

TELEPHONE ()
FACSIMILE 60



0000121249

Kenneth C
Direct Lin
Direct Fax: 602.253.3255
E-mail: Sundlof@jsslaw.com

RECEIVED
AZ CORP COMMISSION

JUL 31 1 29 PM '98

DOCUMENT CONTROL

EXCEPTION



Jennings Strouss & Salmon

July 30, 1998

DOCKET NO. RE-00000C-94-0165

Mr. Ray T. Williamson
Acting Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2996

Arizona Corporation Commission

DOCKETED

Re: *Response of SRP to the 1st Draft of Proposed Revisions to the Retail Electric Competition Rules (R14-2-1601 et seq.)* JUL 31 1998

Dear Ray:

DOCKETED BY *[Signature]*

The final version of the proposed rule changes contains a new change to section R14-2-1611, not in previous drafts. In this letter SRP comments on this new change, and on the failure of the rules to specifically address public power entities as that term is defined in H.B. 2663.

As we stated in our previous comments, the reciprocity concerns of the Commission regarding SRP have been addressed by the legislature in H.B. 2663. This law imposes on SRP certain requirements to transition to a competitive market and directs the elected board of SRP to conduct a public process to determine additional details of the transition. The law also provides that the Corporation Commission and SRP will coordinate their respective activities to achieve statewide consistency.

The new drafts have left the reciprocity section, R14-2-1611, unchanged despite the new provisions of law. Additionally, the current draft adds a new section E, which reads as follows:

An Affiliate of an Arizona electric utility which is not an Affected Utility shall not be allowed to compete in the service territories of Affected Utilities unless the Affiliate's parent company, the non-affected electric utility, submits a statement to the Commission indicating that the parent company will voluntarily open its service territory for competing sellers in a manner similar to the provisions of this Article and the Commission makes a finding to that effect.

This section appears to be drafted to apply to SRP's affiliate New West Energy. Because of H.B. 2663 and the other requirements placed on SRP, SRP cannot open its service territory "in a manner similar to the provisions of this Article" unless the provisions

happen to be similar to the provisions of H.B. 2663 or the decisions made in the public process, or are part of the efforts between SRP and the ACC to coordinate activities. This provision will likely place New West Energy in a position where it would be unable to be certified by the Commission (and thus unable to compete).

We request that section R14-2-1611 be modified in the manner suggested in this letter.

Summary of Applicable Provisions of H.B. 2663

H.B. 2663 has addressed the ACC's reciprocity concerns (expressed in the current version of R14-2-1611, and quite a few more. Specifically, the bill provides for nondiscriminatory terms and conditions for distribution services in section 30-805(a)(1), provides a complaint and appeal procedure in sections 30-802, 30-810 and 30-811, and provides for reciprocity in section 30-803(A).

Additionally, the new law provides:

30-803 . Competition in retail supply of electricity; open markets

A. Public power entities may participate in retail electric competition statewide and shall open the Service territory currently served by them to competition in the sale of electric generation service Not later than December 31, 1998 for at least twenty per cent of the 1995 retail load at least fifteen per Cent of which shall be reserved for customers in the residential customer class and shall open their Entire service territory to competition not later than December 31, 2000 to electricity suppliers certificated by the commission pursuant to section 40-207 and to providers of other services.

40-202(E). The commission shall order on a nondiscriminatory basis that public service corporations open their distribution territories to competition by public power entities to the same extent and under the same terms and conditions as authorized electricity suppliers are granted access through commission rules or orders.

30-802 . Electric competition; terms and conditions; determination; public notice

A. Public power entities shall determine terms and conditions for competition in the retail sale of electric generation service consistent with the provisions of this chapter. Public power entities and the commission shall coordinate their efforts in the transition to competition in electric generation service to promote consistent statewide application of their respective rules, procedures and orders.

30-806. Consumer protection; rules; confidentiality; unlawful practice

A. Public power entities shall adopt rules and procedures to protect the public against deceptive, unfair and abusive business practices. public power entities and the commission shall coordinate their respective rules and procedures to promote consistent implementation statewide. . . .

Suggested Rule Revisions

SRP requests, consistent with the new law, that the following rule revisions be made, and that the new language suggested in the current draft be deleted:

Add a new definition to R14-2-1601

"Public Power Entity":

(a) means any municipal corporation, city, town or other political subdivision that is organized under state law, that generates, transmits, distributes or otherwise provides electricity and that is not a public service corporation.

(b) does not include:

(i) a city or town with a population of less than seventy-five thousand persons according to the most recent United States decennial census that does not elect by official action to sell electric generation service in the service territory of another electricity supplier.

(ii) a power district, electrical district, irrigation and water conservation district or multi-county water conservation district established pursuant to title 48, chapter 11, 12, 19 or 22.

(iii) the Arizona Power Authority.

(iv) a city or town with a population of seventy-five thousand persons or greater according to the most recent United States decennial census that elects by official action not to sell electric generation service in the service territory of another electricity supplier.

This definition is identical to that contained in H.B. 2663, particularly section 30-802(16).

Modify R14-2-1611 as follows:

R14-2-1611

- A. The service territories of Arizona electric utilities which are not Affected Utilities or Public Power Entities shall not be open to competition under the provisions of this Article, nor shall Arizona electric utilities which are not Affected Utilities be able to compete for sales in the service territories of the Affected Utilities.
- B. An Arizona electric utility, subject to the jurisdiction of the Commission, which is not an Affected Utility may voluntarily participate under the provisions of this Article if it makes its service territory available for competing sellers, if it agrees to all of the requirements of this Article, and if it obtains an appropriate Certificate of Convenience and Necessity.
- C. An Arizona electric utility, not subject to the jurisdiction of the Commission and which is not a Public Power Entity, may submit a statement to the Commission that it voluntarily opens its service territory for competing sellers in a manner similar to the provisions of this Article. Such statement shall be accompanied by the electric utility's nondiscriminatory Standard Offer Tariff, electric supply tariffs, Unbundled Services rates, Stranded Cost charges, System Benefits charges, Distribution Services charges and any other applicable tariffs and policies for services the electric utility offers, for which these Rules otherwise require compliance by Affected Utilities or Electric Service Providers. Such filings shall serve as authorization for such electric utility to utilize the Commission's Rules of Practice and Procedure and other applicable Rules concerning any complaint that an Affected Utility or Electric Service Provider is violating any provision of this Article or is otherwise discriminating against the filing electric utility or failing to provide just and reasonable rates in tariffs filed under this Article.
- D. If an electric utility is an Arizona political subdivision or municipal corporation other than a Public Power Entity, then the existing service territory of such electric utility shall be deemed open to competition if the political subdivision or municipality has entered into an intergovernmental agreement with the Commission that establishes nondiscriminatory terms and conditions for Distribution Services and other Unbundled Services, provides a procedure for complaints arising therefrom, and provides for reciprocity with Affected Utilities or their affiliates. The Commission shall conduct a hearing to consider any such intergovernmental agreement.
- E. An Affiliate of an Arizona electric utility which is not an Affected Utility or a Public Power Entity shall not be allowed to compete in the service territories of Affected Utilities unless the Affiliate's parent company, the non-affected

electric utility, submits a statement to the Commission indicating that the parent company will voluntarily open its service territory for competing sellers in a manner similar to the provisions of this Article and the Commission makes a finding to that effect.

Modify R14-2-1603 to Provide for CC&N's in Public Power Entities Distribution Systems

B. Any company desiring such a Certificate of Convenience and Necessity shall file with the Docket Control Center the required number of copies of an application. Certificates of Convenience and Necessity shall grant authority in the geographic areas served by Affected Utilities, UDC's and Public Power Entities. [Alternative: Certificates of Convenience and Necessity shall grant statewide authority]. . . .

C. At the time of filing for a Certificate of Convenience and Necessity, each applicant shall notify the Affected Utilities and Public Power Entities in whose service territories it wishes to offer service of the application by serving a complete copy of the application on the Affected Utilities and Public Power Entities.

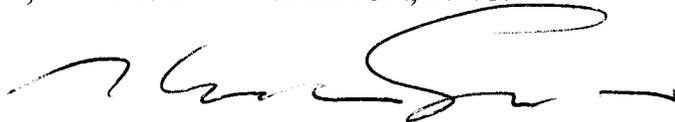
Add a New Subsection (F) to R14-2-1611:

F. Affected Utilities shall open their distribution territories to competition by Public Power Entities to the same extent and under the same terms and conditions as authorized electricity suppliers are granted access through commission rules or orders.

SRP is available to discuss and expand on these comments. Thank you for your cooperation to date.

Very truly yours,

JENNINGS, STROUSS AND SALMON, P.L.C.



By

Kenneth C. Sundlof, Jr.