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REHEARING 9/21/98

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1 Kenneth C. Sundlof, Jr. - 004430  
2 **JENNINGS, STROUSS & SALMON, P.L.C.**

3 A Professional Limited Liability Company  
4 One Renaissance Square  
5 Two North Central Avenue  
6 Phoenix, Arizona 85004-2393  
7 Telephone (602) 262-5911  
8 Facsimile (602) 253-0061

9 Jane D. Alfano - 005816  
10 Jessica J. Youle - 009367

11 **SRP**  
12 **PAB 300**  
13 Post Office Box 52025  
14 Phoenix, Arizona 85072-2025  
15 Telephone (602) 236-2249  
16 Facsimile (602) 302-9799

17 Attorneys for New West Energy

18 **BEFORE THE ARIZONA CORPORATION COMMISSION**

19 JIM IRVIN  
20 Commission-Chairman  
21 RENZ D. JENNINGS  
22 Commissioner  
23 CARL J. KUNASEK  
24 Commissioner

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

DOCKET NO. RE-00000C-94-0165  
**NEW WEST ENERGY'S  
APPLICATION FOR REHEARING**

27 New West Energy ("New West"), an Arizona Corporation and a wholly owned  
28 affiliate of the Salt River Project Agricultural Improvement and Power District ("SRP"), applies  
29 under A.R.S. § 40-253 for a rehearing of Decision Number 61071. New West requests a  
30 rehearing on these grounds:

31 1. R14-2-1611 is in excess of the Commission's constitutional jurisdiction  
32 because, as a condition for certification of New West, it would impose Commission jurisdiction  
33 on SRP, a political subdivision of the State of Arizona (Article 15, Section 2 excludes

1 “municipal” corporations from Commission jurisdiction). The Constitutional violation occurs  
2 both:

3 a. Through the provisions of subsection (E), which would require SRP, as the  
4 parent entity of New West Energy (a potential applicant for a certificate to operate  
5 as an electric service provider), to “submit a statement to the Commission  
6 indicating that the parent company will voluntarily open its service territory for  
7 competing sellers in a manner similar to the provisions of this Article and the  
8 Commission makes a finding to that effect”; and

9 b. Through the provisions of subsection (D) which would require an  
10 intergovernmental agreement between SRP and the Commission, if an affiliate of  
11 SRP applies for certification as an electric service provider.

12 New West does not object to SRP and the Commission coordinating their  
13 respective operations as required of both SRP and the Commission by A.R.S. § 30-802(A), but  
14 objects to the requirements imposed by the rules on SRP as a condition to certification of New  
15 West.

16 2. R14-2-1611 violates the provisions of A.R.S. § 30-801 through § 30-807  
17 in the following respects:

18 a. By treating New West Energy differently from other similarly situated  
19 electric service providers, the rule violates the provision of A.R.S. § 30-803(A)  
20 which expressly provides that “public power entities may participate in retail  
21 electric competition statewide”.

22 b. By requiring a “statement” or an IGA from SRP as a condition to  
23 certification of New West Energy (through the provisions of subsections (D) and  
24 (E)), the rule violates the provisions of A.R.S. § 30-802(A) (and similar terms in  
25 other parts of the aforesaid statutes), which provides:

26 Public power entities shall determine terms and

1 conditions for competition in the retail sale of  
2 electric generation service consistent with the  
3 provisions of this chapter. Public power entities and  
4 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.

5 3. The decision violates constitutional equal protection and is discriminatory  
6 and unreasonable because it treats New West Energy, an affiliate of a political subdivision of the  
7 State of Arizona, under different rules and procedures as it treats other similarly situated potential  
8 providers, without a rational basis for the different treatment.

9 DATED this 31st day of August, 1998.

10 JENNINGS, STROUSS & SALMON, P.L.C.

11  
12  
13 By 

14 Kenneth C. Sundlof, Jr.  
15 One Renaissance Square  
Two North Central  
Phoenix, Arizona 85004-2393  
Attorneys for New West Energy

16 ORIGINAL and ten copies of the  
17 foregoing hand-delivered this  
31st day of August, 1998, to:

18 Docket Control  
19 Arizona Corporation Commission  
1200 West Washington  
20 Phoenix, Arizona

21 Copy of the foregoing  
22 mailed this 31st day of  
August, 1998, to:

23 See Attached List

24 

- 1 Bradley Carroll  
Tucson Electric Power Co.  
2 P.O. Box 711  
Tucson, AZ 85702  
3  
4 Michael Grant  
Gallagher & Kennedy  
2600 N. Central Ave.  
5 Phoenix, AZ 85004  
6 Betty Pruitt  
AZ Community Action Assoc.  
7 67 E. Weldon, Ste. 310  
Phoenix, AZ 85012  
8  
9 Craig A. Marks  
Citizens Utilities Co.  
2901 N. Central Ave., Ste 1660  
10 Phoenix, AZ 85012-2736  
11 Lawrence V. Robertson, Jr.  
Munger Chadwick PLC  
12 333 N. Wilmot, Ste. 300  
Tucson, AZ 85711-2634  
13  
14 Al Sterman  
AZ Consumers Council  
3849 E. 8th St.  
15 Tucson, AZ 86716  
16 Donald G. Robinson  
Regulation and Planning  
17 AZ Public Service  
P.O. Box 53999  
18 Phoenix, AZ 85072-3999  
19 Barbara A. Klemstine  
AZ Public Service Co.  
20 P.O. Box 53999  
Phoenix, AZ 85072-3999  
21  
22 C. Webb Crockett  
Fennemore Craig  
3003 N. Central Ave, Ste. 2600  
23 Phoenix, AZ 85012-2913  
24 Deborah R. Scott  
RUCO  
25 2828 N. Central Ave., Ste.1200  
Phoenix, AZ 85004  
26

1 Lex J. Smith  
Brown & Bain, P.A.  
2 2901 N. Central Ave  
Phoenix, AZ 85001-0400  
3  
4 James K. Tarpey  
Government Affairs  
Enron Corp.  
5 1200 17th St. Ste. 2750  
Denver, CO 80202-5827  
6  
7 Chris S. King  
Strategic Plainning & Regulatory Affairs  
CellNet Data Systems  
8 125 Shoreway Rd.  
San Carlos, CA 94070  
9  
10 Loretta Humphrey  
City of Tucson  
Office of the City Attorney  
11 P.O. Box 27210  
Tucson, AZ 85726  
12  
13 Eric Blank  
LAW Fund Energy Project  
2260 Baseline Rd. Ste. 200  
14 Boulder, CO 80302  
15  
16 Greg Patterson  
Residential Utility Consumer Office  
2828 N. Central Ave., Ste. 1200  
Phoenix, AZ 85004  
17  
18 Betty Pruitt  
AZ Community Action Assoc.  
2627 N. 3rd St., Ste. 2  
19 Phoenix, AZ 85004  
20  
21 Suzanne M. Dallimore  
Antitrust Unit, Civil Division  
Office of the Attorney General  
1275 W. Washington  
22 Phoenix, AZ 85007-2926  
23  
24 Steve Brittle  
DON'T WASTE ARIZONA, INC.  
6205 S. 12th St.  
Phoenix, AZ 85040  
25  
26 Larry K. Udall  
Martinez & Curtis, P.C.

- 1 2712 N. 7th St.  
Phoenix, AZ 85006-1090
- 2
- 3 Steven M. Wheller  
Snell & Wilmer  
One Arizona Center
- 4 Phoenix, AZ 85004-0001
- 5 James H. Charters  
Department of Energy
- 6 Desert Southwest Customer Service Region  
P.O. Box 6457
- 7 Phoenix, AZ 85005-6457
- 8 Rick Gilliam  
Land and Water Fund of the Rockies
- 9 2260 Baseline Rd., Ste. 200  
Boulder, CO 80302
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
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