0000121296

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED
SEP 18 1998
DOCKETED BY

JIM IRVIN
COMMISSIONER—CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

IN THE MATTER OF THE COMPETITION IN THE PROVISION OF ELECTRIC SERVICES THROUGHOUT THE STATE OF ARIZONA	DOCKET NO. RE-00000C94-0165 **CITIZENS UTILITIES COMPANY'S COMMENTS ON THE PROPOSED RETAIL ELECTRIC COMPETITION RULES**

On August 24, 1998, the Arizona Corporation Commission ("Commission") issued Decision No. 61071 concerning proposed rules in the above-captioned matter and requested companies or other interested parties to file comments on or before September 18, 1998. Citizens Utilities Company ("Citizens") submits the following comments in accordance with this request.

Over the last several months the Commission Staff has issued a number of iterations of draft competition rules and position statements concerning retail electric competition. In response to these, Citizens has submitted written comments to the Commission on May 14, May 22, July 6, July 22, and August 3, 1998. Some of Citizens' comments have been satisfactorily addressed in the present emergency rules and the Commission's Decision No. 60977 concerning stranded costs, however, we believe that the majority of our comments may not have been considered or were addressed in an inadequate manner. Therefore, Citizens hereby incorporates its previously-submitted comments in this filing, and requests that the Commission consider them as Citizens' additional comments on the current proposed rule.

While Citizens will not reiterate each of its previous comments in this filing, there are a number of these comments which warrant repeating and incorporation into the rules, if electric competition is to be effectively implemented in a timely fashion. These are summarized in Part I. In Part II, Citizens will address a critical flaw in the rules which undermines the ability of customers to realize the savings expected under competition.

I. SUMMARY OF PREVIOUS KEY COMMENTS

Key comments that Citizens has previously submitted fall into the areas of: Stranded Costs; Affiliate Transaction Rules; Transmission and Distribution Access; and Commission/RUCO Assessment. A summary of Citizens' comments on issues within these areas follows:

a. Stranded Costs

Transition Costs – A UDC's transition costs for enabling competitive energy and demand transactions, implementing new operational processes, complying with regulatory requirements, and conducting needed customer communications and education are a necessary and significant charge for making open access possible. In a previous draft of the Competition Rules, such transition costs were included in the definition of recoverable stranded costs. The definition of Stranded Costs should be modified, or appropriate provisions added to the rules to recognize that transition costs are real and should be recoverable. If UDCs are not allowed to recover these Commission-mandated costs, serious constitutional and statutory rights would be abridged.

Must-Run Generation – Citizens strongly urges the Commission to re-examine the rule requirements for divestiture or affiliate transfer of "must-run" generation. Because such units are essentially an integral part of the transmission and distribution functions, they should be allowed to remain with the rate-regulated UDC. Requiring divestiture in Citizens' case could very well increase the costs for the vital reliability functions these units perform.

Which Customers Pay? - The Commission should re-consider the requirement that only customers taking competitive power will pay stranded costs. As illustrated in Part II, this requirement could very well undermine customers' ability to realize savings by taking competitive power. All customers should pay a competitive transition charge ("CTC").

Metering and Billing Costs – The current rule is silent on the recovery of stranded costs associated with opening metering, billing and collections, and information services to competition. For all the same reasons that stranded costs and regulatory assets associated with generation are recoverable, the affected utilities' strandable costs associated with these competitive support functions should also be allowed for recovery.

b. Affiliate Transaction Rules

Excessive Restrictions – In its July 6 and July 22 comments, Citizens commented extensively on how the proposed rule R14-2-1617 is overly restrictive and mandates actions that are unnecessary to maintain adequate separations between an Affected Utility and its affiliate(s). Instead of rushing to address these issues solely for Affected (electric) Utilities, Citizens urges the Commission to open a generic docket that would address affiliate interest issues as they apply to all competitive utility services, whether they are gas, electric, telephone or water services. This will ensure a consistent, non-discriminatory set of affiliate rules are put in place.

Metering and Billing Services – Citizens and other parties have supported the ability for UDCs to offer metering and billing services at tariffed rates. In its May 19, 1998, position paper on electric competition, the Staff also supported the provision of these competitive services by UDCs. Just as Standard Offer electricity service will provide a safety net for customers, so should standard-offer, metering-and-billing services be available if competitive services are limited, of poor quality or high priced. While the current rule has made some movement in this direction, it falls short of providing the necessary clarity. Citizens urges the Commission to reconsider this issue and suggests that the following be added to R14-2-1605: "Affected Utilities and UDCs may provide metering, meter reading, billing, and collection services within their service areas at tariffed rates."

Auditing Requirements – R14-2-1617E remains unclear on audit procedures. It requires filing of an annual performance audit on December 31st of each year. Clearly, some date after year-end needs to be used to allow time to complete all necessary financial and regulatory reviews. In addition, we believe the correct description appearing in R14-2-1617A should be Generally Accepted Accounting Principles.

c. Transmission and Distribution Access

Priority Access to Standard Offer Customers – In its July 6 and July 22 comments, Citizens strongly urged the Commission to provide priority access to firm transmission resources to Standard Offer customers as long as the duty to serve them remains in effect. This is a serious fairness concern, and Citizens asks the Commission to re-examine this issue.

d. Commission/RUCO Assessment

Ability to Assess Utilities – As described in Citizens' July 22 comments, utilities are currently assessed annually to support the Commission and RUCO based on gross operating revenues derived from intrastate operations, for goods (electricity) to which they take title. In the competitive market, the UDCs will be delivering power to which they never take title. Further, some of this power will be delivered from out-of-state sources, which raises interstate commerce issues. Can the UDCs be assessed under current state law for this power? If they cannot, can some other entity legally be assessed? The current rules are silent on this issue; further legislation may be necessary.

II. CAN COMPETITIVE CUSTOMERS SAVE UNDER THE CURRENT RULES?

Although Citizens did not previously address this issue, Citizens is now concerned upon further review that the rules as currently configured will make it virtually impossible for competitive customers to save on their total electric costs. This will ensure that customers do not elect to participate in competition. Three features of the existing Rules work together to make this undesirable result likely.

First, the Divestiture/Auction Methodology requires divestiture of all generation assets – assets now serving all customers. Thus, once the assets are divested all generation-related stranded costs will be determined and a method established for their recovery. In Citizens' case, the generation-related stranded costs would be the above-market portion of APS purchase power contract pricing over the remaining life of the agreement—an agreement that provides power supply for all Citizens' customers.

Second, the current rules specify that the CTC "may be assessed only on customer purchases made in the competitive market...." Clearly, over the ten-year stranded cost amortization period specified in the Commission Stranded Cost Order (Decision No. 60977, June 22, 1998), only a fraction of total customer usage will be supplied by purchases made in the competitive market. Because the stranded cost associated with all customers' power supply will be assigned to only a portion of the customer base (those taking competitive power), these two features of the rule will create a situation where the actual stranded cost charge will be greater than the power cost savings achieved by switching to competitive supply.

A third feature of the rules compounds this situation. Under R14-2-1606.B: "After January 1, 2001, power purchased by a Utility Distribution Company to serve Standard Offer customers, except purchases made through spot markets, shall be acquired through competitive bid." In essence, Standard Offer customers will be served with market-priced power <u>and not be liable for paying a CTC</u>. Thus, the current requirements of the Rules virtually assure a price advantage to Standard Offer customers.

A simplified illustration of this problem follows: assume the market price for power is $.03/kWh, and a pre-competition utility has average production costs of $.05/kWh, thereby producing stranded cost of $.02/kWh. Further assume total sales of 1,000,000 MWh per year, and that 50% of sales go to competitive suppliers. Stranded costs in this example are $20,000,000 (1,000,000 MWh x $.02kWh) per year. The CTC to recover such amount from users of competitive power sources is $.04/kWh (20,000,000/500 million kWh). Their total cost of power would be $.07kWh ($.03 + $.04). At the same time, Standard Offer customers would pay something in the vicinity of $.03, since their supply is acquired by competitive bid and they are not required to pay a CTC.[1]

Citizens urges the Commission to address this issue in the pending rulemaking process. One adjustment that could alleviate this problem is to allow levying a CTC to all customers eligible for open access, a position a number of parties, including Citizens, advocated during the Working Group process.

---

[1] Of course, competitive customers faced with charges higher than Standard Offer customers will go back to the Standard Offer. This will further reduce the customer base that will be expected to support stranded-cost recovery, thereby increasing the CTC. This would push even more customers to the Standard Offer and the cycle would repeat. Economists refer to this as a "death spiral."

III. CONCLUSION

Citizens asks that the Commission modify the proposed rules as set forth above.

RESPECTFULLY SUBMITTED this 18TH day of September, 1998.

Craig A. Marks

Craig A. Marks
Associate General Counsel
Citizens Utilities Company
2901 N. Central Avenue, Suite 1660
Phoenix, Arizona 85012

Original and ten copies of the foregoing filed this 18th day of September, 1998, with:

Docket Control Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing mailed or hand delivered this 18th day of September, 1998, to:

Jerry Rudibaugh
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Paul Bullis
Christopher Kempley
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ray Williamson
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

All parties indicated on Docket service list

By Joann Zychlewicz
Joann Zychlewicz