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September 17, 1998

ARIZONA CORPORATION COMMISSION  
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DOCKETED BY: *[Signature]*

Mr. Ray Williamson  
Acting Director, Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

RE: Docket RE-00000 C-94-0165

Dear Mr. Williamson:

Pursuant to Arizona Corporation Commission Procedural Order (August 11, 1998) all interested persons are requested to file written comments on or before 4:00 p.m. on September 18, 1998. Enclosed is Arizona Public Service Company's comments. Copies of this filing have been mailed to all parties of record in Docket RE-00000 C-94-0165.

If you have any questions, please contact me at 250-2031.

Sincerely,

Barbara A. Klemstine  
Manager  
Regulatory Affairs

Enclosure

cc: Parties of Record RE-00000 C-94-0165

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission  
DOCKETED 3 43 PM '98  
SEP 18 1998  
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COMMISSIONER  
CARL J. KUNASEK  
COMMISSIONER

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

DOCKET NO. RE-00000C-94-0165

COMMENTS OF ARIZONA PUBLIC SERVICE COMPANY

Pursuant to the Procedural Order dated August 11, 1998, Arizona Public Service Company ("APS" or "Company") hereby submits its Comments on the emergency electric competition rules ("Emergency Rules") approved by the Arizona Corporation Commission ("Commission") on August 10, 1998. In doing so, APS incorporates by reference its earlier comments of July 8 and July 22, 1998, during the "emergency" stage of this docket. Moreover, the Company has at this time additional specific comments on Emergency Rules A.A.C. R14-2-1616, 1609, 1617, and 1606 ("Rules 1616," "1609," etc.).

**RULE 1616(B)**

This Rule came within 24 hours of being somewhat reconciled with Rules 1606 and 1613. On the second day of the Open Meeting at which the Emergency Rules were approved, amendments were added to Staff's original proposal (of the day before) that served to further confuse an already confusing situation. To begin with we have language in Rule 1606 (D) that requires APS to provide certain competitive services "to the extent allowed by these rules." Yet in Rule 1616 (B), the Company is prohibited from providing these very same services "except as otherwise authorized by these rules." These are circuitous and completely contradictory

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1 provisions, but it gets even more confusing. Rule 1616 (B) goes on to seemingly authorize APS to  
2 bill its customers for distribution service and to provide billing services to ESPs within the scope  
3 of its distribution service area and to provide meters to residential load profiled customers.  
4 However, it is not clear whether this sentence is intended to qualify only the first sentence of Rule  
5 1616 (B) or both Rule 1616 (B) and Rule 1606 (D). Before the reader can solve that quandary, he  
6 comes to the last sentence of Rule 1616 (B), which either contradicts the preceding sentence or so  
7 qualifies it as to make it meaningless.

8 That last sentence also renews the conflict between Rule 1616 (B) and Rule 1613 (J) (9)  
9 and (11) - a conflict that had been resolved in the prior day's Staff version of this Rule. Rule 1613  
10 mandates UDC participation (and in at least one instance, exclusive UDC participation) in various  
11 aspects of metering - a participation that is later banned by the last sentence of Rule 1616 (B)  
12 except under the most unlikely of circumstances.

13 APS has struggled to make some sense out of all this, and based in large part on the oral  
14 discussion by Staff and the Commissioners of the amendments during the course of the  
15 Commission's Open Meeting, it has arrived at the following interpretations of these various  
16 conflicting provisions:

- 17 1) APS is permitted to provide metering services to ESPs (or  
18 the ESP's customers) only under the following circumstances:
  - 19 a) for metering residential customers less than 20 kW;
  - 20 b) if there are no other authorized providers of metering  
21 services in its distribution service area.
- 22 2) APS is permitted to provide billing and collection ("B&C")  
23 services to ESPs within its distribution service area and may  
24 bill for its own distribution service whether or not there are  
25 other available providers of these services.
- 26 3) APS is prohibited from providing ESPs with information services  
whether or not such services are available from any other entity.
- 4) Because APS is prohibited from providing metering services to most  
customers served by ESPs and because Rule 1613 (J) limits most  
metering services to the "Affected Utility" (later the UDC) and "the

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ESP”, an ESP must provide metering services in conjunction with any competitive generation.

Although APS is operating under these assumptions concerning the scope of its authority to provide competitive services as it prepares for competition, this is not to say that APS is any way supports these limitations on its ability to provide those services seeming required of it under Rule 1606 (D).

Metering is a competitive service in only a handful of jurisdictions that have looked into electric restructuring, and in no jurisdiction has the incumbent utility been excluded from that market. Preventing APS from providing this service will only make it harder and more expensive for customers to take advantage of competitive generation. This is especially true if there is only one or even a few non-utility providers of these services - providers that are now free to demand prices well in excess of what the utility would have charged - or in the case of self-aggregators that are not using an ESP. It will also likely prove a market barrier against entry into Arizona of smaller ESPs, which presumedly intended to rely on the incumbent utility for these support services just as they have been able to in every other jurisdiction. This reduced competition only hurts the customer and leaves APS and its customers at a disadvantage *vis a vis* those entities not under such restrictions (i.e., SRP).

APS should be permitted to provide all of the services identified in Rule 1606 (D) within its distribution service area. The Company concedes that such services could be provided outside that area only through the separate affiliate described in Rule 1616. The easiest fix to this problem is simply to end Rule 1616 (B) after the first sentence. Deletion of the phrase “to the extent allowed by these rule” from the first sentence of Rule 1606 (D) would also contribute to the clarity of the Emergency Rules but is perhaps not so critical if the first suggested change is made by the Commission.

1 **RULE 1609 (B) AND (C)**

2 With virtually no discussion and absolutely no economic analysis, Rule 1609 (C) was  
3 added to the Emergency Rules. Since the earliest draft of Rule 1609 back in mid-1996, the solar  
4 portfolio standard (“SPS”) had only applied to competitive electric generation - not Standard Offer  
5 sales. At the same time, an important consumer protection included in the Staff’s proposed  
6 version of the Emergency Rules was, apparently by inadvertence, deleted from the final Rule.

7 In Staff’s initial proposal, the SPS could only be increased beyond the 1% of competitive  
8 sales level if the Commission established “ a kWh cost impact cap to insure that costs must decline  
9 in order for solar installation rates to increase.” That protection against solar manufacturers’  
10 failing to deliver on the claims made to this Commission of falling solar electric costs was a  
11 consensus recommendation of the Commission’s Solar Portfolio Subcommittee and somehow got  
12 lost in the last minute flurry of amendments to the Emergency Rules. Without that protection, the  
13 additional costs required, just in the case of APS, of between \$150 million and \$250 million for  
14 Standard Offer (mostly residential) customers could increase further.

15 APS asks the Commission to rethink this issue, or at the very least, make the application of  
16 the SPS to Standard Offer service in 2001 contingent upon a Commission order no later than July  
17 1, 2000 establishing a specific cost per kWh cap. This latter amendment could be accomplished  
18 by adding the following language after the word “thereafter” in Rule 1609 (C):

19 if and only if the Commission enters an order or orders establishing  
20 an average cost per kWh cap for any solar electricity purchased or generated  
21 by an Affected Utility or Utility Distribution Company for the purpose of  
22 serving Standard Offer customers. Should such an order or orders not be  
23 entered prior to July 1, 2000, the imposition of the solar portfolio requirement  
24 for Standard Offer sales shall be likewise deferred until a date six months from  
25 the entry of the aforesaid order or orders.

24 **RULE 1617**

25 No commenting party has opposed the Company’s suggestion that this rule  
26 apply equally to ESPs (both in-state and out-of-state) that are affiliated with monopoly utilities

1 (e.g., PG&E Energy Services/ Pacific Gas & Electric Company, Enron Corporation/Portland  
2 General Electric Company plus numerous gas utilities, and New West Energy/SRP). Similarly, no  
3 one has rebutted APS's concerns that the selective application of such restrictions is anti-  
4 competitive and unfair, or that the risk and harm of subsidization of competitive activities in  
5 Arizona by monopoly services is somehow less if the monopoly service is not regulated by the  
6 Commission. Supposed concerns about either the legalities or practicality of enforcing such equal  
7 treatment are unfounded. The litigation over the "Affiliate Rules" (A.A.C. R14-2-801, *et seq.*)  
8 confirmed the Commission's legal authority to impose affiliate restrictions on out-of-state entities,  
9 and the Commission has, in fact, so imposed these restrictions. Moreover, making an ESP's  
10 compliance with affiliate restrictions a condition to certification is every bit as practical and legally  
11 valid as making their compliance with tax laws, the SPS, etc., conditions to certification. The  
12 independent audit of compliance required by the Rule should negates any lingering concerns about  
13 practical enforcement of Rule 1617.

14 APS had proposed an easy fix to Rule 1617 at page 39 of its Comments dated July 8, 1998,  
15 incorporated herein. The Amendments to this Rule incorporated subsequent to the time of those  
16 comments makes amendment more complicated because the term "ESP" has been totally excluded  
17 from all portions of Rule 1617. Thus. APS would suggest attacking the problem through  
18 amendments to Rule 1603, which governs competitive CC&N applications by ESPs. Specifically,  
19 a new Rule 1603 (B) (8) would be added requiring:

- 20 8. A proposed compliance plan, as that term is used in  
21 Rule 1617 (E), demonstrating the applicant's compliance  
22 with the restrictions of Rule 1617 if the applicant is affiliated  
with any entity than would be classified as a Utility Distribution  
Company if such entity were under the Commission's jurisdiction.

23 Similarly, a new Rule 1603 (H) (8) would be added:

- 24 8. The Electric Service Provider shall comply with the provisions  
25 of R14-2-1617 if the Electric Service Provider is affiliated with  
26 any entity that would be classified as a Utility Distribution Company  
if such entity were under Commission jurisdiction.

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**RULE 1606(B)**

APS asks the Commission to strike the second sentence of this provision. The obvious presumption of the Rule in favor of “ratchet down” contracts *vis a vis* other risk management techniques will lead to higher costs for Standard Offer customers. Although the Rule does permit the UDC to request a waiver of the requirement in question, the path of least resistance is always to avoid making such a request, thus leading the UDC to select what is now known to be higher cost electricity.

**CONCLUSION**

APS makes this final plea for the Commission to carefully review its previous comments in this docket of July 8 and 22, 1998, as well as the instant Comments. It is still not too late to make these important changes to the Emergency Rules and thus facilitate the rapid implementation of fair and effective retail electric competition in Arizona.

RESPECTFULLY SUBMITTED this 18th day of September, 1998.

SNELL & WILMER L.L.P.

  
Steven M. Wheeler  
Thomas L. Mumaw

Attorneys for Arizona Public Service  
Company