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VIA HAND-DELIVERY

Mr. Ray T. Williamson
Acting Director, Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007-2929

DOCKETED BY *dd*

Re: New Energy Ventures Southwest, L.L.C.'s Comments to the Proposed Retail Electric Competition Rules; Arizona Corporation Commission Docket No. RE-00000C-94-0165

Dear Mr. Williamson:

New Energy Ventures, L.L.C. ("NEV") hereby submits its comments to the Arizona Corporation Commissioner's ("Commission") Retail Electric Competition Rules ("Rules")¹.

NEV is committed to establishing a competitive market for electric services in Arizona. We believe that while Staff has laid out the framework for competition, many details necessary for successful implementation still need to be addressed. These comments are meant to be additional enhancements to the Rules, which will help to streamline the process in order to meet the January, 1999 implementation timeline.

As emphasized in NEV's prior comments, one area of great concern pertains to the application of public utility regulations to ESPs. New, competitive market participants should not be subject to unnecessary and costly regulations, such as the requirement to file for a Certificate of Convenience and Necessity ("CC&N"). 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.

¹ NEV attaches hereto and incorporates by reference its comments on Staff's draft of the proposed Rules.

In addition to the attached prior comments and exceptions, NEV submits the following comments and exceptions to the Adopted Amendments to the Electric Competition Rules.

Exception 1. UDC Service Agreements, UDC Operating Procedures, ISA Agreements

From NEV's 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. NEV would enhance the Staff's efforts by proposing to standardize the service agreements across all of the UDCs (including SRP). While this may be difficult to accomplish before the January start date (because SRP already has developed rules and procedures independent of any of the other utilities), we urge the Commission to press for standardization over the two-year phase-in period.

In addition, each UDC will have to develop operating procedures for dealing with the ESPs. From NEV's 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 over the phase-in period.

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 over the two-year phase-in period. The Staff also will coordinate the ongoing development of standard operating procedures for UDCs (including SRP) to deal with ESPs over this period.

Exception 2. Metering and Billing

NEV is concerned that the Competitive Rules do not clearly outline the obligations and opportunities for the UDCs to provide metering, billing and information services. NEV is concerned that if an ESP is providing consolidated metering and billing for energy, transmission, and distribution, the UDC also may insist on billing for transmission and distribution costs and impose additional costs on the customer. NEV

believes that the UDCs should be allowed to provide these services within their own territories under the following conditions:

- (1) UDCs can provide metering, billing and information services to standard offer customers, under tariff rates.
- (2) UDCs can provide metering, billing and information services to ESPs, under tariff rates.
- (3) An ESP may provide metering, billing and information services for energy, transmission, and distribution, in which case the UDC cannot require additional metering or billing services or impose any additional costs.

Proposed Amendment: Metering and Billing

NEV proposes that the Staff clarify the metering and billing language in the Rules, especially sections R14-2-1605, R14-2-1606, and R14-2-1616, to reflect the points outlined above.

Exception 3. Solar Portfolio

All ESPs will be incurring additional costs to meet the required portfolio standard in Arizona. These costs will have to be incorporated 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. The initial requirement to have solar represent 0.2% of all energy sold, which would grow to 1.0% by 2003, appears to be relatively benign at first glance. However, after analyzing the potential impact on energy prices and margins, NEV believes that this requirement could significantly impact any return that ESPs expect to recover in the Arizona market. This provision alone could discourage many ESPs from offering energy services in the State.

The problem arises from the fact that the proposed methods and amounts for stranded cost recovery result in very thin margins for energy over the five to ten year recovery period. Because the market price is embedded in the standard offer, the ESP has to beat the market price to save the customer money during the stranded cost recovery period. Therefore, because any increased costs above the market price must be absorbed by the ESP, they cannot be passed on to the customer. NEV expects the average market price for energy to be around \$30 per MWH and initial margins to be in the range of \$0.30 to \$0.50 per MWH.

As displayed in the table below, the 0.2% solar requirement priced at the penalty rate of \$300 per MWH increases the average energy price from \$30 per MWH to \$30.54. The increase of \$ 0.54 would have to be borne by the ESP and would therefore wipe out any expected margin on the energy contract. The impact is even more severe in 2003, when the increased solar requirement would increase average energy prices from \$30 to

\$32.70 per MWH. This added penalty of \$2.70 per MWH would potentially cause all ESPs to lose money and probably withdraw from the Arizona market.

Even if the solar energy were priced at a more reasonable value of \$150 per MWH, the impact still would be significant. At that value, initial energy prices would increase by \$0.24, which would erase half of the ESP's expected margin. And in 2003, the solar penalty likely would create a loss for ESPs.

Projected impact of the solar portfolio on prices and margins
(at the penalty rate of \$300 per MWH for solar)

Solar requirement (% total energy)	Market energy price	ESP margin	Energy cost with solar requirement	ESP margin with solar requirement
0.2%	30 \$/MWH	0.50 \$/MWH	30.54 \$/MWH	-0.06 \$/MWH
1.0%	30 \$/MWH	0.50 \$/MWH	32.70 \$/MWH	-2.20 \$/MWH

Projected impact of the solar portfolio on prices and margins
(at a price of \$150 per MWH for solar)

Solar requirement (% total energy)	Market energy price	ESP margin	Energy cost with solar requirement	ESP margin with solar requirement
0.2%	30 \$/MWH	0.50 \$/MWH	30.24 \$/MWH	0.26 \$/MWH
1.0%	30 \$/MWH	0.50 \$/MWH	31.20 \$/MWH	-0.70 \$/MWH

In addition, as stated in earlier exceptions, 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, and not absorbed by the ESP. This would provide SRP with an unfair competitive advantage compared to other ESPs, who must either reflect the solar costs in their energy price or not be compensated.

Proposed Amendment: Solar Portfolio

NEV proposes to eliminate the solar portfolio and replace it with a solar program funded through the system benefits charge.

Exception 4. Unbundled Tariffs

As discussed above under the solar portfolio discussion, during the stranded cost recovery period, ESPs must beat average market prices in order to save customers money over the standard offer. Therefore, margins during this period are expected to be very thin. Any added costs or penalties could rapidly erode any expected returns and discourage ESPs from competing in the Arizona market.

In light of this situation, NEV is concerned that the UDCs are attempting to allocate additional costs unfairly to the ESPs. We will not know the extent of this potential problem until the UDCs file their unbundled tariffs, and SRP finalizes their

prices. However, these costs are beginning to appear in the form of additional metering and billing charges, administration costs, as well as costs and penalties for energy scheduling.

There are two important issues concerning these costs. First, NEV asserts that the costs imposed on competitive customers for metering, billing, and other administration fees should be (1) specified in the unbundled tariffs, (2) equal to the cost embedded in the standard offer, and (3) equal to the credit given to competitive customers who take metering and billing services from entities other than the UDC.

Second, NEV believes that many of the costs and penalties for energy scheduling already are included in the stranded costs and standard offer tariffs of the UDCs. For example, many UDCs are imposing penalties for scheduling errors for the ESPs. However, they are not imputing any costs to standard offer customers when the control area operator makes a forecasting error on expected loads. These errors create additional costs as operators are forced to buy and sell on the spot market to make up the difference. These costs should be credited to the competitive customer who relies on other entities to schedule energy, or they should be assumed to be included in the stranded cost (which is the total generation cost including spot purchases to accommodate forecasting errors net the market price).

Proposed Amendment: Unbundled Tariffs

Specific language could be added to R-14-2-1605 and R-14-2-1606 to accommodate these concerns. However, at this point, NEV would like the Commission to be aware of these issues and to address them when approving the UDC tariffs.

Exception 5. Labels

NEV believes that the consumer protection measures included in the Order, most notably the requirements for disclosure of information and energy labels, are appropriate for residential customers and should be applied only to that group. In addition, NEV believes that the administrative requirements for developing and distributing energy labels to business customers would be excessively burdensome and not worth the small benefit that might result.

Proposed Amendment: Labels

Change the Requirement for energy labels in R14-2-1618 for customers 1MW and below to residential customers only.

Exception 6. Aggregation

There appears to be a lot of confusion and uncertainty among customers, trade associations, ESPs, consultants, and the Staff over the issue of Aggregation. The Rules

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clearly state that an individual corporation can self-aggregate its own sites into a single purchase as long as they meet certain minimum size conditions.

However, it is unclear under what circumstances other customer groups, trade associations must establish official aggregator status and file a CC&N. NEV believes that trade organizations who arrange for an energy option for their members with a particular ESP are not aggregators per se, and should not be required to file a CC&N. In this situation, the ESP is providing the aggregation service and the contract is covered under their CC&N.

Proposed Amendment: Aggregation

NEV proposes that Staff develop a more precise definition of Aggregation and outline the situations in which an aggregator is required to file a CC&N. NEV recommends that a CC&N would not be required if the energy is contracted for and supplied by an ESP with a CC&N in Arizona.

Respectfully submitted this 21st day of September, 1998.

ROSHKA HEYMAN & DEWULF, PLC

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Original and ten copies of the foregoing
filed this 21st day of September, 1998, with:

Docket Control
ARIZONA CORPORATION COMMISSION
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Phoenix, Arizona 85007

Copy of the foregoing hand-delivered
this 21st day of September, 1998, to:

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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.